



AGENDA

BOARD OF MAYOR AND ALDERMEN WORK SESSION

**Monday, December 19, 2016, 4:30 p.m.
City Hall, 225 W. Center St., Council Room, 2nd Floor**

Board of Mayor and Aldermen

Mayor John Clark, Presiding
Vice Mayor Mike McIntire
Alderman Darrell Duncan
Alderman Colette George

Alderman Tommy Olterman
Alderman Tom C. Parham
Alderman Tom Segelhorst

Leadership Team

Jeff Fleming, City Manager
Chris McCartt, Assistant City Manager for Administration
Ryan McReynolds, Assistant City Manager for Operations
J. Michael Billingsley, City Attorney
Jim Demming, City Recorder/Chief Financial Officer
David Quillin, Police Chief

Craig Dye, Fire Chief
Lynn Tully, Development Services Director
George DeCroes, Human Resources Director
Heather Cook, Marketing and Public Relations Director

1. Call to Order
2. Roll Call
3. Keep Kingsport Beautiful Update – Robin Cleary
4. NETWORKS Update – Clay Walker
5. Legislative Packet – Jeff Fleming
6. Sales Tax, Wellness Clinic, Safety & Projects Status – Jeff Fleming
7. Review of Items on December 20, 2016 Business Meeting Agenda
8. Adjourn

Next Work Session, January 17, 2017: ONEKingsport, MeadowView Renovations, Audit, Sales Tax, Wellness Clinic, Safety and Projects Status

Citizens wishing to comment on agenda items please come to the podium and state your name and address. Please limit your comments to five minutes. Thank you.

BMA Report, December 19, 2016



Financial Comments, Judy Smith

Sales tax revenue was under budget for the month of October by \$19,434 and is \$4,812 above last year.

Sales for the month of October are realized in December.

The December monthly report indicates:

| | |
|------------------------------------|--------------------|
| October 2015 | \$1,392,699 |
| October 2016 | \$1,397,511 |
| • \$19,434 under budget | -1.37% |
| • \$4,812 above last year's actual | +35% |
| Year to Date 2015 | \$5,770,566 |
| Year to Date 2016 | \$5,511,869 |
| • \$195,756 under budget | -3.39% |
| • \$258,697 under last year | -4.22% |

Kingsport Employee Wellness, Terri Evans

| | 01/01/2016 – 11/30/2016 | 12/01/2016 – 12/11/2016 |
|---------------------------------|-------------------------|-------------------------|
| Total Utilization | 93.9% | 92.9% |
| City – Active Employees | 31.6% | 23.6% |
| City – Dependents | 19.7% | 24.8% |
| City – Retirees | 3.2% | 2.9% |
| Schools – Active Employees | 21.2% | 20.6% |
| Schools – Dependents | 11.5% | 14.2% |
| Schools – Retirees | 1.4% | 1.2% |
| Extended-Patient Services/Other | .4% | .6% |
| Work Comp | .2% | 0 |
| No Show | 4.7% | 5.0% |

Worker's Compensation, Terri Evans

For the month of October 2016, the City had no compensable lost time workers compensation claims.

Status Updates on Active Projects sorted by Cost

| Estimated Cost | Project Owner | Project Manager | Project Name | Project # | Completion Date | CurrentStatus |
|-----------------|------------------|-------------------|--|-----------------------|-----------------|---|
| \$13,733,749.69 | Niki Ensor | Niki Ensor | Raw Water Intake Replacement (1.5 M EDA Grant) | WA1504 | 5/7/2017 | 11/18/16 - Conducted final walkthrough of tunnel. Motor control centers are being placed. |
| \$7,500,000.00 | Ryan McReynolds | Thompson, Michael | SR 347 (Rock Springs Road) [State & MTPO funded] | No City Funds | 12/31/2020 | Survey underway. |
| \$6,411,000.00 | Chad Austin | Norman Eichmann | Reedy Creek Sewer Trunk Line | SW1400 | 12/20/2017 | Tunnel liner plates arriving 12/9, bore tunnel under Rail Road proposed to start 12/15 near Waste Water Treatment Plant. |
| \$3,300,000.00 | Michael Thompson | Thompson, Michael | Indian Trail Drive Extension | GP1615 | 12/31/2017 | Preliminary Plans received 12/15/2016 for revised alignment. Under review by staff. |
| \$3,192,108.00 | Chad Austin | Mike Hickman | Colonial Heights Ph II Sewer & Water | SW1501 | 3/9/2017 | Project is substantially complete. Cleanup, restoration, seeding, paving will be occurring over the next several weeks. |
| \$2,711,000.00 | Chris McCartt | Mason, David | Meadowview Renovations | MV1600 | 4/14/2017 | Contract executed. Pending change order to include vinyl wall covering material in the contract. |
| \$2,646,731.00 | Chad Austin | Mike Hickman | Colonial Heights Ph III Sewer & Water | SW1502/WA1502 | 12/24/2016 | Sanitary sewer is substantially complete. Water, stormsewer, and paving work continue. |
| \$2,646,731.00 | Chad Austin | Mike Hickman | Colonial Heights Ph III Sewer & Water | SW1502/WA1502 | 12/24/2016 | Sewerline is substantially complete. Crews working on storm sewer and cleanup. Notice of sewer availability sent to finance |
| \$1,926,364.00 | Chad A./Niki E. | Mike Hickman | Colonial Heights Ph IV Sewer & Water | SW1511 | 9/3/2017 | Low Bidder East Tennessee Turf and Landscaping. |
| \$1,926,364.00 | Chad A./Niki E. | Mike Hickman | Colonial Heights Ph IV Sewer & Water | SW1511 | 9/3/2017 | Contract is going to BMA with a first reading on December 20. |
| \$1,886,220.00 | Chad Austin | Pamela Gilmer | System Wide Water Upgrades FY15 Phase 2 | TBD | 4/4/2017 | Crews installing Double Springs line along tank access road. |
| \$1,700,000.00 | Michael Thompson | Thompson, Michael | Main Street Rebuild [City & MTPO Funded] | GP1516 | 4/1/2021 | Expected Action Form for survey, environmental and design services at January meeting. |
| \$1,593,370.00 | Chad Austin | Mason, David | Water/Wastewater/Stormwater Office | SW1705/WA1703/S T1708 | 7/15/2017 | Wall framing underway. |
| \$1,250,000.00 | Niki Ensor | Niki Ensor | Pipe Gallery Improvements | WA1505 | 3/31/2018 | 11/14/16- Staff met with BWS&C to review basis of design report and initiate final design. |
| \$1,245,300.00 | Justin Steinmann | Mason, David | Centennial Park | GP1533 | 7/3/2017 | Coordinating utility relocations. |
| \$1,123,727.93 | Chad Austin | Pamela Gilmer | Ft. Henry and Moreland Dr. Sewer Rehabilitation | SW1401 | 2/18/2017 | Crews performing clean-up operations of lay down areas. |

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| \$940,000.00 | Kitty Frazier | Clabaugh, Hank | Kingsport Greenbelt - Eastern Extension - Phase 1 [Fed. Grant & City funded] | GP1529 | 11/1/2017 | Title Searches have been ordered. Working to hire TDOT pre-qualified appraiser and review appraiser. |
| \$900,000.00 | Chad Austin | Sam Chase | ARC Kingsport Sewer System Upgrade | SW1504 | 4/29/2017 | Camera work ongoing. Construction on MLK. |
| \$697,475.00 | Michael Thompson | Thompson, Michael | Stone Drive (SR 1, US 11W) Sidewalk Improvements from Stonebrook Place Pvt. Dr. to American Way [95% State Funded 5% City] | TBD | 12/8/2018 | Design continues. Detailed design of small retaining walls at culvert locations underway. Geotechnical boring are being scheduled for these locations. |
| \$683,252.64 | Kitty Frazier | Thompson, Michael | Greenbelt (Rotherwood/Pedestrian Bridge) [Fed. Grant and City Funded] | GP1013 | 12/31/2016 | Contractor has completed the majority of the grading, forming, and concrete work. The shipment of the steel handrail has been delayed for several weeks. Contractor will re-mobilize and complete the project once the handrail has arrived on site. |
| \$631,700.00 | Ronnie Hammonds | Elsa, Tim | Wilcox Sidewalk Phase 5 [State & MTPO funded] | MPO15D | 7/31/2017 | Revised plans and bid book undergoing City review prior to TDOT submittal. |
| \$573,406.80 | Chad Austin | Hank Clabaugh | Miscellaneous Annexation Utility Improvements | | 4/30/2017 | Contract has been executed. |
| \$541,072.00 | Michael Thompson | Clabaugh, Hank | Enterprise Place Roadway Improvements | GP1611 | 6/30/2017 | Recommendation to award contract (Base Bid plus Bid Alternate 1) to King General Contractors will go to BMA for approval on December 20. |
| \$400,000.00 | Michael Thompson | Thompson, Michael | Signalization of the SR 126 (Memorial Blvd. at Island Road Intersection [State & MTPO Funded] | MPO15A | 9/30/2019 | All utilities have now responded and on 12/5/16 we submitted to TDOT for Utility Certification. |
| \$373,656.40 | Chad Austin/Steve Robbins | David Edwards | Site Improvements - Konnarock Water Services Center | | 12/23/2016 | Grading, water quality swales, and retaining wall complete. Work continuing this week on paving new parking lot. |
| \$250,000.00 | Chad Austin | | Border Region Area 3 Water Upgrades | | 2/17/2020 | Design to start 1/1/19. Will be included with sewer upgrades to Border Regions Area. |
| \$221,800.00 | Tim Elsa | Elsa, Tim | Lynn Garden Signal System [MTPO & City funded] | MPO15C | 1/31/2018 | Utility contact letters sent out on 12/5/16 for utility companies to review plans. |
| \$194,400.00 | Morris Baker | Mason, David | Library Children's Area | GP1400 | 7/1/2017 | Awarding base bid only. Contract documents in progress. |

| Estimated Cost | Project Owner | Project Manager | Project Name | Project # | Completion Date | CurrentStatus |
|----------------|---------------|-----------------|---|-------------------|-----------------|--|
| \$152,293.29 | Chad Austin | Hank Clabaugh | Cliffside Dr Force Main Replacement | TBD | 2/8/2017 | The Contractor and City staff performed pre construction evaluation, cleaning, etc. We have decided to reduce this contract and move to a future force main improvement project. |
| \$131,000.00 | Chad Austin | Chad Austin | JB Dennis Annexation - Water | GP1405 | 1/31/2017 | Contractor to begin construction by end of November |
| \$91,060.00 | Niki Ensor | Mason, David | Storage Building at Waste Water Treatment Plant | SW1607 | 1/15/2017 | Wall panels complete. Ready for roof panels. |
| \$90,000.00 | Kitty Frazier | Clabaugh, Hank | Reedy Creek Terrace Bridge | ST1503 | 12/31/2016 | Property acquisition documents are being finalized. |
| \$77,357.00 | | Mason, David | Bays Mountain Park CIP Improvements | GP1509 | 1/15/2017 | The new barge is operational. Work on the dock is underway using old barge as a work platform. |
| \$65,160.00 | Lewis Bausell | Mason, David | Landscape Enhancements for Wilcox/I-26 Gateway | GP1706 | 2/1/2017 | Underway. |
| \$48,967.00 | Kitty Frazier | Mason, David | Domtar Park Storage Building | GP1542 | 1/7/2017 | Building is complete. Final grading the site. |
| | | Mason, David | Riverbend Park | GP1512 | | Interviews with potential designers scheduled 1/11/17. |
| | | Mason, David | Borden Park Improvements Phase 1 | GP1510 | 5/31/2017 | In design. |
| | | Mason, David | Bays Mountain - Pavillion at Lily Pad Cove | GP1707 | 4/1/2017 | Preliminary drawings have been submitted for review. |
| | Chad Austin | Chris Alley | Camp Bays Mountain Annexation | | 4/30/2017 | Survey and design in progress |
| | Chad Austin | Mike Hickman | Colonial Heights Ph V Sewer & Water | SW1512/ WA1404 | 12/29/2017 | Meeting with residents |
| | Chris McCartt | Mason, David | New KATS Transit Center | | 12/31/2017 | Design development phase. |
| | Morris Baker | Mason, David | Bays Mountain Dam Rehabilitation | GP1707 | 12/31/2017 | Design agreement with Spoden & Wilson executed. Design underway. |

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AGENDA

BOARD OF MAYOR AND ALDERMEN

BUSINESS MEETING

**Tuesday, December 20, 2016, 7:00 p.m.
City Hall, 225 W. Center St., Courtroom, 2nd Floor**

Board of Mayor and Aldermen

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Vice Mayor Mike McIntire
Alderman Darrell Duncan
Alderman Colette George

Alderman Tommy Olterman
Alderman Tom C. Parham
Alderman Tom Segelhorst

City Administration

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Ryan McReynolds, Assistant City Manager for Operations
J. Michael Billingsley, City Attorney
James Demming, City Recorder/Chief Financial Officer
David Quillin, Police Chief
Craig Dye, Fire Chief
Lynn Tully, Development Services Director
George DeCroes, Human Resources Director
Heather Cook, Marketing and Public Relations Director

I. CALL TO ORDER

II.A. PLEDGE OF ALLEGIANCE TO THE FLAG

II.B. INVOCATION – Pastor Bryan Moore, Fordtown Baptist Church

III. ROLL CALL

IV.A RECOGNITIONS & PRESENTATIONS

1. Recognition of Bobby Harmon (Alderman Segelhorst)
2. Above and Beyond - Kingsport Fire Department
3. Jaycees/Debbie Waggoner – Nativity Restoration

IV.B APPOINTMENTS

None

V. APPROVAL OF MINUTES

1. Work Session – December 5, 2016
2. Business Meeting – December 6, 2016

VI. COMMUNITY INTEREST ITEMS

A. PUBLIC HEARINGS

1. Public Hearing for Annexation Annual Plan of Services Report (AF: 329-2016)
(Jessica Harmon)
 - Public Hearing

COMMENT

Citizens may speak on agenda items. When you come to the podium, please state your name and address and sign the register that is provided. You are encouraged to keep your comments non-personal in nature, and they should be limited to five minutes. A total of thirty minutes is allocated for public comment during this part of the agenda.

B. BUSINESS MATTERS REQUIRING FIRST READING

1. Award Contract for Enterprise Place Roadway Improvements (AF: 319-2016)
(Ryan McReynolds)
 - Resolution
 - Ordinance – First Reading
2. Award Contract and Appropriate Funds for Sanitary Sewer Facilities and Waterline Upgrades – Colonial Heights Phase IV Project (AF: 337-2016) (Ryan McReynolds)
 - Ordinance – First Reading
 - Resolution
3. Appropriate \$14,895.00 from the Office of Criminal Justice Programs of the State of Tennessee-FY17 Local Law Enforcement Equipment Program (AF: 333-2016) (David Quillin)
 - Ordinance – First Reading
4. Approve Agreement Between the City of Kingsport and the Kingsport Life Saving Crew and Approve an Ordinance to Appropriate the Necessary Funding and to Amend the Authorized Positions for FY17 (AF: 326-2016) (Craig Dye)
 - Ordinance – First Reading
 - Resolution

C. BUSINESS MATTERS REQUIRING FINAL ADOPTION

1. Annex/Adopt Plan of Service for the 1392 Ridgecrest Avenue Annexation and Amend Zoning (AF: 294-2016) (Jessica Harmon)
 - Ordinance – **Second Reading and Final Adoption**

2. Execute an Agreement with Bloomingdale Utility District for the Installation of Waterlines for the Rolling Dr. Annexation and Provide Funding (AF: 310-2016) (Ryan McReynolds)
 - Ordinance – **Second Reading and Final Adoption**
3. Accept \$1,000 Donation from GRC & Cain Rash West to the Kingsport Public Library and Appropriate Funds (AF: 312-2016) (Morris Baker)
 - Ordinance - **Second Reading and Final Adoption**
4. Appropriate Funds from FM Global (AF: 313-2016) (Craig Dye, Barry Brickey)
 - Ordinance - **Second Reading and Final Adoption**
5. Amending the City of Kingsport Code of Ordinances and Resolution 2013-079 (AF: 311-2016) (Ryan McReynolds)
 - Ordinance - **Second Reading and Final Adoption**
6. Budget Adjustment Ordinance for FY17 (AF: 316-2016) (Jeff Fleming)
 - Ordinance - **Second Reading and Final Adoption**
7. Amend the FY 2017 General Purpose School Fund Budget (AF: 322-2016) (David Frye)
 - Ordinance - **Second Reading and Final Adoption**

D. OTHER BUSINESS

1. Execute an Agreement with the Department of the Army for Water and Sewer Line Easements (AF: 317-2016) (Ryan McReynolds)
 - Resolution
2. Execute Agreements with CSX Transportation, Inc. for Sewer Line Easements (AF: 328-2016) (Ryan McReynolds)
 - Resolution
3. Amend Agreement with Cartegraph Systems, Inc. (AF: 327-2016) (Ryan McReynolds)
 - Resolution
4. Award Contract for the MeadowView Conference Center Renovations Project (AF: 334-2016) (Chris McCartt)
 - Resolution
5. Adoption of a Redevelopment Plan and Tax Increment Financing Amendment for the Riverbend Redevelopment District The Blake At Riverbend Project Area (AF: 331-2016) (Lynn Tully)
 - Resolution
6. Approve an Agreement with Source Technologies. LLC for Odor and Corrosion Control at Sewer Lift Stations (AF: 336-2016) (Ryan McReynolds)
 - Resolution

7. Contract with the Tennessee Department of Transportation for Federal and State Transportation Planning Funds on Behalf of the Kingsport MTPO (AF: 338-2016) (Bill Albright)
 - Resolution
8. Approving an Amendment to the Permanent Easement Agreement with Kingsport Hotel, LLC (AF: 325-2016) (Chris McCartt)
 - Resolution
9. Authorizing the Industrial Development Board of the City of Kingsport, Tennessee to Negotiate and Accept from Clark & Company or an Affiliated Entity Payments In Lieu Of Ad Valorem Tax with Respect to a New Professional Office Location in the City of Kingsport, Tennessee (AF: 339-2016) (Lynn Tully)
 - Resolution
10. Approve the Contract with Parsons Brinckerhoff for A&E Services for KATS Transit Center Project and Ratify the Mayor's Signature (AF: 168-2016) (Chris McCartt)
 - Resolution
11. Authorizing the Industrial Development Board of the City of Kingsport, Tennessee to Negotiate and Accept from Hull Property Group or an Affiliated Entity Payments In Lieu of Ad Valorem Tax with Respect to Retail Shopping Facilities Known as the Kingsport Town Center in the City of Kingsport, Tennessee (AF: 332-2016) (Lynn Tully)
 - Resolution

VII. CONSENT AGENDA

1. Apply for Partnership Grant from the Tennessee Arts Commission (AF: 335-2016) (Chris McCartt)
 5. Resolution
2. Approve Issuance of Certificates of Compliance for Businesses to Sell Retail Alcoholic Beverages (AF: 330-2016) (Jim Demming)
 - Resolution
3. Consideration of the 2017 Joint Tri-Cities Legislative Agenda (AF: 3400-2016) (Jeff Fleming)
 - Adopt Legislative Agenda

VIII. COMMUNICATIONS

- A. City Manager
- B. Mayor and Board Members
- C. Visitors

Citizens may speak on issue-oriented items. When you come to the podium, please state your name and address and sign the register that is provided. You are encouraged to keep your comments non-personal in nature, and they should be limited to five minutes.

IX. ADJOURN

Minutes of the Regular Work Session of the
Board of Mayor and Aldermen, City of Kingsport, Tennessee
Monday, December 5, 2016, 4:30 PM
Council Room – City Hall

PRESENT: Board of Mayor and Aldermen

| | |
|--------------------------|-------------------------|
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City Administration

Jeff Fleming, City Manager
J. Michael Billingsley, City Attorney
James H. Demming, City Recorder

1. **CALL TO ORDER:** 4:30 p.m. by Mayor Clark.
2. **ROLL CALL:** By City Recorder Demming.

Mr. Mark Addington and Ms. Julie Byers gave a presentation on the need for sidewalks on Cooks Valley Road. Discussion followed regarding possible options.

3. **CITY/COUNTY SCHOOLS UPDATE.** School Superintendant Dr. Lyle Ailshie presented this item to the board. He pointed out the reasoning behind this project originated with a need for more space at the high school. There was considerable discussion.
4. **PROJECTS STATUS.** City Manager Fleming gave an update on city projects.
5. **REVIEW OF AGENDA ITEMS ON THE DECEMBER 6, 2016 REGULAR BUSINESS MEETING AGENDA.** City Manager Fleming and members of staff gave a summary or presentation for each item on the proposed agenda. The following items were discussed at greater length or received specific questions or concerns.

VI.A.1 Annex/Adopt Plan of Service for the 1392 Ridgecrest Avenue Annexation and Amend Zoning (AF: 294-2016). City Planner Jessica Harmon gave a presentation on this item and answered questions. Alderman Segelhorst raised the issue of this property being landlocked. Development Services Director Lynn Tully provided a brief history, noting there are new owners there now. City Manager Fleming suggested sending a letter to surrounding property owners advising them of this annexation and offering them the same option.

Alderman Olterman commented on the support the city provided to the Town of Gatlinburg after the fires. Fire Chief Dye also made comments detailed the events of Kingsport's assistant efforts.

**Minutes of the Regular Work Session of the Board of Mayor and Aldermen of
Kingsport, Tennessee, Monday, December 5, 2016**

6. **ADJOURN.** Seeing no other matters presented for discussion at this work session, Mayor Clark adjourned the meeting at 6:40 p.m.

ANGELA MARSHALL
Deputy City Recorder

JOHN CLARK
Mayor

Minutes of the Regular Business Meeting of the
Board of Mayor and Aldermen of the City of Kingsport, Tennessee
Tuesday, December 6, 2016, 7:00 PM
Large Court Room – City Hall

PRESENT: Board of Mayor and Aldermen
Mayor John Clark, Presiding
Vice Mayor Mike McIntire
Alderman Darrell Duncan
Alderman Colette George
Alderman Tommy Olterman
Alderman Tom C. Parham
Alderman Tom Segelhorst

City Administration
Jeff Fleming, City Manager
J. Michael Billingsley, City Attorney
James Demming, City Recorder/Chief Financial Officer

- I. **CALL TO ORDER:** 7:00 p.m., by Mayor John Clark.
- II.A. **PLEDGE OF ALLEGIANCE TO THE FLAG:** Led by Jacob Mullins, City Manager for a Day.
- II.B. **INVOCATION:** Vice Mayor McIntire.
- III. **ROLL CALL:** By City Recorder Demming. All Present.
- IV.A. **RECOGNITIONS AND PRESENTATIONS.**
1. Margot Seay, AARP Age-Friendly Community Recognition.
 2. Jacob Mullins, City Manager for a Day.

IV.B. **APPOINTMENTS/REAPPOINTMENTS.**

1. **Reappointments to the Emergency Communications District/E-911 Board (AF: 324-2016) (Mayor Clark).**

Motion/Second: McIntire/George, to approve:
REAPPOINTMENTS OF MR. EDDIE WAMPLER AND MS. MARY MARGARET DENTON TO SERVE ANOTHER FOUR-YEAR TERM ON THE **EMERGENCY COMMUNICATONS DISTRICT/E-911 BOARD** EFFECTIVE JANUARY 1, 2017 AND ENDING ON DECEMBER 31, 2020.

Passed: All present voting "aye."

V. **APPROVAL OF MINUTES.**

Motion/Second: Parham/Duncan, to approve minutes for the following meetings:

- A. November 14, 2016 Regular Work Session
- B. November 15, 2016 Regular Business Meeting

Approved: All present voting "aye" except Segelhorst "abstained."

Minutes of the Regular Business Meeting of the Board of Mayor and Aldermen of the City of Kingsport, Tennessee, Tuesday, December 6, 2016

VI. COMMUNITY INTEREST ITEMS.

A. PUBLIC HEARINGS.

1. Annex/Adopt Plan of Service for the 1392 Ridgecrest Avenue Annexation and Amend Zoning (AF: 294-2016) (Jessica Harmon).

PUBLIC COMMENT ON ITEM VI.A.1. None.

Motion/Second: McIntire/George, to pass:

Resolution No. 2017-102, A RESOLUTION TO ANNEX THAT CERTAIN TERRITORY ADJOINING THE PRESENT CORPORATE BOUNDARIES OF THE CITY OF KINGSFORT, EMBRACING THAT CERTAIN PART OF THE 11th CIVIL DISTRICT OF SULLIVAN COUNTY, TENNESSEE, AND KNOWN AS THE 1392 RIDGECREST AVENUE ANNEXATION, AS HEREINAFTER DESCRIBED; TO INCORPORATE THE SAME WITHIN THE CORPORATE BOUNDARIES OF THE CITY OF KINGSFORT, TENNESSEE; AND TO FIX THE EFFECTIVE DATE OF THIS RESOLUTION

Passed: All present voting "aye."

Motion/Second: McIntire/Parham, to pass:

AN ORDINANCE TO FURTHER AMEND THE ZONING CODE, TEXT AND MAP, TO REZONE PROPERTY LOCATED ON RIDGECREST AVENUE FROM COUNTY R-3A, HIGH DENSITY RESIDENTIAL DISTRICT TO CITY R-1B, LOW DENSITY RESIDENTIAL DISTRICT IN THE 11TH CIVIL DISTRICT OF SULLIVAN COUNTY; TO FIX A PENALTY FOR THE VIOLATION OF THIS ORDINANCE; AND TO FIX THE EFFECTIVE DATE OF THIS ORDINANCE

Passed on first reading: All present voting "aye."

Motion/Second: McIntire/George, to pass:

Resolution No. 2017-103, A RESOLUTION ADOPTING A PLAN OF SERVICES FOR THE 1392 RIDGECREST AVENUE ANNEXATION OF THE CITY OF KINGSFORT, TENNESSEE

Passed: All present voting "aye."

NOTE: At this time, Alderman McIntire made a motion to amend the agenda and move to Item D.6. Alderman Olterman seconded the motion with all present voting "aye." The regular agenda resumed with public comment immediately following this item.

PUBLIC COMMENT. Mayor Clark invited citizens in attendance to speak about any of the remaining agenda items. There being no one coming forward to speak, the Mayor closed the public comment segment.

**Minutes of the Regular Business Meeting of the Board of Mayor and Aldermen
of the City of Kingsport, Tennessee, Tuesday, December 6, 2016**

B. BUSINESS MATTERS REQUIRING FIRST READING.

1. Execute an Agreement with Bloomingdale Utility District for the Installation of Waterlines for the Rolling Drive Annexation and Provide Funding (AF: 310-2016) (Ryan McReynolds).

Motion/Second: Duncan/Parham, to pass:

Resolution No. 2017-104, A RESOLUTION APPROVING AN AGREEMENT WITH THE BLOOMINGDALE UTILITY DISTRICT FOR THE INSTALLATION OF WATERLINES FOR THE ROLLING PRIVATE DRIVE ANNEXATION AND AUTHORIZING THE MAYOR TO EXECUTE THE AGREEMENT AND ALL OTHER DOCUMENTS NECESSARY AND PROPER TO EFFECTUATE THE PURPOSE OF THE AGREEMENT

Passed: All present voting "aye."

Motion/Second: McIntire/George, to pass:

AN ORDINANCE TO AMEND THE GENERAL PROJECT FUND BUDGET BY TRANSFERRING FUNDS TO THE ROLLING DRIVE PROJECT FOR THE YEAR ENDING JUNE 30, 2017; AND TO FIX THE EFFECTIVE DATE OF THIS ORDINANCE

Passed on first reading: All present voting "aye."

2. Accept \$1,000 Donation from GRC & Cain Rash West to the Kingsport Public Library and Appropriate Funds (AF: 312-2016) (Morris Baker).

Motion/Second: McIntire/Duncan, to pass:

Resolution No. 2017-105, A RESOLUTION ACCEPTING A DONATION FROM GRC & CAIN RASH WEST ARCHITECTS TO THE KINGSPORT PUBLIC LIBRARY

Passed: All present voting "aye."

Motion/Second: George/Duncan, to pass:

AN ORDINANCE TO AMEND THE GENERAL PROJECT SPECIAL REVENUE FUND BUDGET BY APPROPRIATING DONATIONS RECEIVED FOR THE YEAR ENDING JUNE 30, 2017; AND TO FIX THE EFFECTIVE DATE OF THIS ORDINANCE

Passed on first reading: All present voting "aye."

3. Appropriate Funds from FM Global (AF: 313-2016) (Craig Dye, Barry Brickey).

Motion/Second: McIntire/George, to pass:

AN ORDINANCE TO AMEND THE GENERAL FUND BUDGET BY APPROPRIATING GRANT FUNDS RECEIVED FROM FM GLOBAL FOR THE YEAR ENDING JUNE 30, 2017; AND TO FIX THE EFFECTIVE DATE OF THIS ORDINANCE

Passed on first reading: All present voting "aye."

**Minutes of the Regular Business Meeting of the Board of Mayor and Aldermen
of the City of Kingsport, Tennessee, Tuesday, December 6, 2016**

**4. Amend the City of Kingsport Code of Ordinances and
Resolution 2013-079 (AF: 311-2016) (Ryan McReynolds).**

Motion/Second: McIntire/George, to pass:

AN ORDINANCE TO AMEND THE CODE OF ORDINANCES, CITY OF KINGSPORT, TENNESSEE, SECTIONS 38-85 THROUGH 38-350 PERTAINING TO THE PROVISION OF STORMWATER MANAGEMENT FOR THE CITY OF KINGSPORT; TO FIX A PENALTY FOR THE VIOLATION OF THIS ORDINANCE; TO PROVIDE FOR SEVERABILITY OF THIS ORDINANCE; AND TO FIX THE EFFECTIVE DATE OF THIS ORDINANCE

Passed on first reading: All present voting "aye."

Motion/Second: McIntire/Parham, to pass:

Resolution No. 2017-106, A RESOLUTION AMENDING RESOLUTION NO. 2008-134 OF THE CITY OF KINGSPORT PERTAINING TO AN ENFORCEMENT RESPONSE PLAN FOR THE STORMWATER MANAGEMENT ORDINANCE

Passed: All present voting "aye."

~~**5. Award Contract for Enterprise Place Roadway Improvements
(AF: 319-2016) (Ryan McReynolds).**~~

- ~~• Ordinance—First Reading~~
- ~~• Resolution~~

This agenda item was withdrawn.

**6. Budget Adjustment Ordinance for FY17 (AF: 316-2016)
(Jeff Fleming).**

Motion/Second: McIntire/Parham, to pass:

AN ORDINANCE TO AMEND VARIOUS PROJECTS FOR THE YEAR ENDING JUNE 30, 2017; AND TO FIX THE EFFECTIVE DATE OF THIS ORDINANCE

Passed on first reading: All present voting "aye."

**7. Amend the FY17 General Purpose School Fund Budget
(AF: 322-2016) (David Frye).**

Motion/Second: Duncan/Parham, to pass:

AN ORDINANCE TO AMEND THE FY 2016-17 GENERAL PURPOSE SCHOOL FUND BUDGET; AND, TO FIX THE EFFECTIVE DATE OF THIS ORDINANCE

Passed on first reading: All present voting "aye."

Minutes of the Regular Business Meeting of the Board of Mayor and Aldermen of the City of Kingsport, Tennessee, Tuesday, December 6, 2016

C. BUSINESS MATTERS REQUIRING FINAL ADOPTION.

1. Amend the General Project Fund Budget by Appropriating General Obligation Public Improvement Bond Series 2016 (AF: 299-2016) (Jeff Fleming).

Motion/Second: McIntire/Parham, to pass:

ORDINANCE NO. 6626, AN ORDINANCE TO AMEND THE GENERAL PROJECT FUND, THE WATER AND SEWER FUND PROJECT BUDGETS BY APPROPRIATING GENERAL OBLIGATION PUBLIC IMPROVEMENT BOND, SERIES 2016; FOR THE FISCAL YEAR ENDING JUNE 30, 2017; AND, TO FIX THE EFFECTIVE DATE OF THIS ORDINANCE

Passed on second reading in a roll call vote: Clark, Duncan, George, McIntire, Olterman, Parham and Segelhorst voting "aye."

2. Award Contract and Budget Ordinance for Miscellaneous Annexation Utilities Improvements Project (AF: 307-2016) (Ryan McReynolds).

Motion/Second: McIntire/Duncan, to pass:

ORDINANCE NO. 6627, AN ORDINANCE TO AMEND THE WATER FUND, WATER AND SEWER PROJECT FUNDS BY TRANSFERRING FUNDS TO THE MISCELLANEOUS ANNEXATION UTILITIES IMPROVEMENTS FOR THE YEAR ENDING JUNE 30, 2017; AND TO FIX THE EFFECTIVE DATE OF THIS ORDINANCE

Passed on second reading in a roll call vote: Clark, Duncan, George, McIntire, Olterman, Parham and Segelhorst voting "aye."

D. OTHER BUSINESS.

1. Amend Resolution 2017-082 and Ratify Action Taken (AF: 314-2016) (Mike Billingsley).

Motion/Second: Parham/George, to pass:

Resolution No. 2017-107, A RESOLUTION AMENDING RESOLUTION NO. 2017-082 CORRECTING A TYPOGRAPHICAL ERROR OF THE PURCHASE PRICE OF ONE OF THE TRACTS OF LAND ACQUIRED FOR THE TRANSIT CENTER PROJECT AND RATIFYING THE ACTS TAKEN TO ACQUIRE THE PROPERTY

Passed: All present voting "aye."

2. Agreement with Headworks Incorporated for Bar Screen Rebuild at the Wastewater Treatment Plant (AF: 315-2016) (Ryan McReynolds)

Motion/Second: Duncan/Parham, to pass:

Resolution No. 2017-108, A RESOLUTION AWARDED THE BID FOR THE BAR SCREEN REBUILD AT THE WASTEWATER TREATMENT PLANT TO HEADWORKS INCORPORATED AND AUTHORIZING THE MAYOR TO SIGN AN AGREEMENT FOR

Minutes of the Regular Business Meeting of the Board of Mayor and Aldermen of the City of Kingsport, Tennessee, Tuesday, December 6, 2016

THE SAME AND ALL DOCUMENTS NECESSARY AND PROPER TO EFFECTUATE THE PURPOSE OF THE AGREEMENT

Passed: All present voting "aye."

3. Renew the Self-Funded Health Fund Excess Insurance Coverage with HCC Life Insurance Company (AF: 318-2016) (Mike Billingsley).

Motion/Second: Duncan/McIntire, to pass:

Resolution No. 2017-109, A RESOLUTION AUTHORIZING RENEWAL OF THE POLICY WITH HCC LIFE INSURANCE COMPANY FOR STOP LOSS REINSURANCE COVERAGE AND AUTHORIZING THE MAYOR TO EXECUTE THE RENEWAL OF THE POLICY AND ALL AGREEMENTS AND OTHER DOCUMENTS NECESSARY AND PROPER TO EFFECTUATE THE PURPOSE OF THE RENEWAL

Passed: All present voting "aye."

4. Award the Bid for the Purchase of Two (2) Hightop Passenger Vans (AF: 320-2016) (Chris McCartt, Steve Hightower).

Motion/Second: Duncan/Parham to pass:

Resolution No. 2017-110, A RESOLUTION AWARDING THE BID FOR THE PURCHASE OF TWO HIGHTOP PASSENGER VANS FOR USE BY KINGSFORT AREA TRANSIT SERVICE

Passed: All present voting "aye."

5. Reject the Bids for the Purchase of Two (2) 22 Passenger Cutaway Mini Buses (AF: 321-2016) (Chris McCartt, Steve Hightower).

Motion/Second: Segelhorst/Duncan, to pass:

Resolution No. 2017-111, A RESOLUTION REJECTING THE BIDS FOR PURCHASE OF TWO 22 PASSENGER CUTAWAY MINI BUSES FOR KINGSFORT AREA TRANSIT SERVICE

Passed: All present voting "aye."

6. Approve a Letter of Intent and Authorize the Mayor to Execute the Same (AF: 323-2016) (Jeff Fleming). Dr. Ailshie gave a presentation on this item. Alderman George and Alderman Olterman commented the reason they would be voting in opposition was the purchase of North High School, noting it would be more costly for Kingsport citizens in the long run. The Mayor and Vice-Mayor spoke in favor of this item and the benefits it would produce.

At this time the mayor asked citizens who wished to speak on this item to come forward. Ms. CeeGee McCord, representing Eastman, spoke in favor of this item. Mr. Miles Burdine, representing the members of the Chamber of Commerce, also spoke in support of this item.

Minutes of the Regular Business Meeting of the Board of Mayor and Aldermen of the City of Kingsport, Tennessee, Tuesday, December 6, 2016

Motion/Second: Parham/McIntire, to pass:

Resolution No. 2017-112, A RESOLUTION APPROVING A LETTER OF INTENT REGARDING THE COLLABORATION TO TRANSFORM EDUCATION IN SULLIVAN COUNTY PERTAINING TO CERTAIN ASPECTS OF THE ANITICIPATED DISTRIBUTION OF FUNDS FROM SULLIVAN COUNTY RESULTING FROM FINANCING FOR SCHOOL CONSTRUCTION AND RENOVATION AND AUTHORIZING THE MAYOR TO EXECUTE THE SAME

Passed: All present voting “aye” except George and Olterman voting “nay.”

VII. CONSENT AGENDA. None.

VIII. COMMUNICATIONS.

- A. CITY MANAGER.** Mr. Fleming gave details on the many efforts to assist Gatlinburg since the wildfires last week, pointing out we will keep it up as long as we possibly can. He stated Jacob’s grandfather lives in Gatlinburg.
- B. MAYOR AND BOARD MEMBERS.** Alderman Duncan welcomed Alderman Segelhorst back. He stated his tie was signed by the Inner City Ballet, noting their upcoming performances of the Nutcracker. Mr. Duncan commented on the city luncheon earlier today, commending the city employees. Alderman Segelhorst stated he was glad to be back and he hoped to make an impact like Alderman Mitchell did. He commented on the 105 new jobs in Kingsport from Clerk Industries and on the Christmas tree lighting last weekend. Lastly, he thanked everyone who attended in support of the School item, noting it will make good education great education. Alderman Parham stated tonight was an important time in our city, investing in our future and our children. He also stated the SBK animal shelter took supplies to Gatlinburg. Alderman Olterman stated he was for education in the Kingsport and welcomed Jacob to the meeting. He congratulated Coach Graham Clark for being inducted into the TSSAA Hall of Fame. Mr. Olterman stated Morris Baker would be an asset to Goodwill and wished him luck at his new endeavor. Alderman George spoke on the attendance at the downtown Christmas celebration. She encouraged everyone to buy local, noting that also supports our schools. Vice-Mayor McIntire stated it was good to have Alderman Segelhorst back. He thanked Fire Chief Dye, Assistant Fire Chief Boyd, and all the firefighters who went to Gatlinburg to work. He also thanked City Manager Fleming for offering other city services to help them clean up as well. Lastly he thanked the Board of Education and city/county school administrators for their efforts. Mayor Clark also welcomed Alderman Segelhorst. He commented on the Symphony of the Mountains and the Christmas tree lighting. Lastly he commended the Kingsport spirit, providing details on the “Supplies for Soldiers” project administered by Eastman employees and CVS, noting they do go to local soldiers. Vice-Mayor McIntire thanked Jaycees and Impact Plastics for redoing the nativity scene characters which were 50 years old.

**Minutes of the Regular Business Meeting of the Board of Mayor and Aldermen
of the City of Kingsport, Tennessee, Tuesday, December 6, 2016**

C. VISITORS. None.

IX. ADJOURN. Seeing no other business for consideration at this meeting, Mayor Clark adjourned the meeting at 8:30 p.m.

ANGELA MARSHALL
Deputy City Recorder

JOHN CLARK
Mayor



AGENDA ACTION FORM

Public Hearing for Annexation Annual Plan of Services Report

To: Board of Mayor and Aldermen
 From: Jeff Fleming, City Manager

Action Form No.: AF- 329- 2016
 Work Session: December 19, 2016
 First Reading: N/A
 Final Adoption: December 20, 2016
 Staff Work By: J. Harmon
 Presentation By: J. Harmon

Recommendation:

Conduct a Public Hearing and receive comment concerning the Annual Plan of Services Report for unfulfilled Annexation commitments for December 2016.

- Old Mill – Ordinance 6176 - Annual Update
- Cleek Road – Ordinance 6188 - Annual Update
- Eastern Star Road – Ordinance 6190 – Annual Update
- Kingsport South – Ordinance 6192 – Annual Update
- Emory Church – Ordinance 6202 – Annual Update
- Grandview Annex – Ordinance 6204 – Annual Update
- Diana Rd. 2 – Ordinance 6393 – Annual Update
- Bays Mountain Park Rd Annexation – Resolution 2016-015 – Annual Update
- O’Neill Annexation – Resolution 2016-016 – Annual Update

Executive Summary:

Tennessee Code Annotated 6-51-108 states in part “...upon expiration of six (6) months from the date any annexed territory for which a Plan of Service has been adopted becomes a part of the annexing of the municipality, and annually thereafter until such services have been extended according to such plan, there shall be prepared and published in the newspaper of general circulation in the municipality a report of the progress made in the preceding year... the governing body by municipality shall publish notice of the public hearing on such progress reports and changes, and hold such hearings thereon...” As a result of this statute, and the need to conduct annual public hearings concerning unfulfilled Plan of Service commitments, it is required that the Board of Mayor and Aldermen conduct a public hearing to receive comments concerning the Annual Plan of Service Reports. All annexations that are up for their annual update are highlighted in yellow on the attached spreadsheet. The Notice of Public Hearing was published December 4, 2016.

Attachments:

1. Annual Plan of Services Report
2. Notice of Public Hearing
3. Map
4. Plan of Services Spreadsheet

| | <u>Y</u> | <u>N</u> | <u>O</u> |
|------------|----------|----------|----------|
| Duncan | — | — | — |
| George | — | — | — |
| McIntire | — | — | — |
| Oltman | — | — | — |
| Parham | — | — | — |
| Segelhorst | — | — | — |
| Clark | — | — | — |

2016 ANNEXATION PLAN OF SERVICES ANNUAL UPDATE FOR December 2016

Pursuant to TCA 6-51-108, the City of Kingsport Tennessee is presenting the following report of progress on adopted Plans of Services.

All items in yellow are up for their annual update

| ANNEXATION PROJECT and LOCATION | ORD/RES No. | EFFECTIVE DATE | WATER SERVICE | SEWER SERVICE | STREET LIGHTING |
|--|----------------|-------------------|--|--|--|
| 2008 Annexations | | | | | |
| 08-301-00018 Cherry Knoll Annexation | 5784 | Dec 4, 2008 | POS Amended 12/4/16 provided when dev. occurs | POS Amended 12/4/16 provided when dev. occurs | POS Amended 12/4/16 provided when dev. occurs |
| 2011 Annexation | | | | | |
| 11-301-00017 Colonial Heights Area 6 Part A | 6147 | December 16, 2011 | December 16, 2016 Under Construction | December 16, 2016 Under Construction | Completed |
| 11-301-00014 Colonial Heights Area 6 Part B | 6149 | December 16, 2011 | December 16, 2016 Under Construction | December 16, 2016 Under Construction | Completed |
| 11-301-00015 Colonial Heights Area 6 Part C | 6151 | December 16, 2011 | December 16, 2016 Under Construction | December 16, 2016 Under Construction | Completed |
| 11-301-00016 Colonial Heights Area 6 Part D | 6153 | December 16, 2011 | December 16, 2016 Under Construction | December 16, 2016 Under Construction | Completed |
| 2012 Annexations | | | | | |
| 11-301-00005 Kendrick Creek Part B | 6166 | February 24, 2012 | February 24, 2017 Design in Progress | February 24, 2017 Design in Progress | Completed |
| 11-301-00019 Border Regions Area 1 | 6169 | March 9, 2012 | March 9, 2020 Design Complete | March 9, 2020 Design Complete | Completed |
| 11-301-00020 Border Regions Area 2 | 6171 | March 9, 2012 | March 9, 2020 Design Complete | March 9, 2020 Design Complete | Completed |
| 11-301-00021 Border Regions Area 3 | 6173 | March 9, 2012 | March 9, 2020 Design Complete | March 9, 2020 Design Complete | Completed |
| 11-301-00022 Old Mill | 6176 | Completed | Completed | Completed | Completed |
| 11-301-00024 Cleek Road Part 2 | 6188 | Completed | Completed | Completed | Completed |
| 12-301-00002 Eastern Star Road Part 2 | 6190 | Completed | Completed | Completed | JCPB Completed AEP Requested |
| 12-301-00001 Kingsport South | 6192 | Apr 20, 2012 | under contract March 2017 est completion | Completed | Completed |
| 12-301-00004 Emory Church | 6202 | July 6, 2012 | Completed | Completed | Completed |

| | | | | | |
|---|----------|-------------------|--|--|-----------|
| 12-301-00003 Grandview | 6204 | July 6, 2012 | Completed | Completed | Completed |
| 11-301-00023 JB Dennis | 6224 | Aug 10, 2012 | Under Const. By BUD August 10, 2017 | Completed | Completed |
| 12-301-00006 Colonial Heights Area 7 Part A | 6238 | Sep 21, 2012 | September 21, 2017 | September 21, 2017 | Completed |
| 12-301-00007 Colonial Heights Area 7 Part B | 6240 | Sep 21, 2012 | September 21, 2017 | September 21, 2017 | Completed |
| 12-301-00008 Colonial Heights Area 7 Part C | 6254 | Dec 7, 2012 | December, 2,2017 Design in Progress | December 2, 2017 Design in Progress | Completed |
| 12-301-00009 Colonial Heights Area 7 Part D | 6256 | Dec 7, 2012 | December 2, 2017 Design in Progress | December 2, 2017 Design in Progress | Completed |
| 12-301-00010 Colonial Heights Area 7 Part E | 6265 | Dec 21, 2012 | December, 2 2017 Design in Progress | December 2, 2017 Design in Progress | Completed |
| 2014 Annexations | | | | | |
| 13-301-00012 Diana Rd 2 Annexation | 6393 | June 6, 2014 | Completed | June 6, 2019 | Completed |
| 14-301-00007 Ridgecrest Annexation | 6437 | November 7, 2014 | Completed | November 7, 2019 | Completed |
| 2015 Annexations | | | | | |
| 14-301-00009 Ridgecrest 2 Annexation | 6470 | May 7, 2015 | Completed | May 7, 2020 | Completed |
| 15-301-00003 Bays Mountain Park Rd Annexation | 2016-015 | September 4, 2015 | Completed | Completed | Completed |
| 15-301-00004 O'Neill Annexation | 2016-016 | November 20, 2015 | Completed | Completed | Completed |
| 2016 Annexations | | | | | |
| 16-301-00002 Camp Bays Mountain Annexation | 2017-024 | October 7, 2016 | October 7, 2021 | October 7, 2021 | Completed |
| 16-301-00003 4308 Grey Fox Drive | 2017-034 | November 5, 2016 | Completed | November 5, 2021 | Completed |
| * All Annexation Plans of Services include Police & Fire Services, Electric Services, Solid Waste Disposal, Zoning Services , Recreational Facilities, Street Maintenance and City Schools. These services are established upon the effective date of the annexation* | | | | | |

NOTICE OF PUBLIC HEARING

The Kingsport Board of Mayor and Aldermen will conduct a public hearing concerning the December ANNUAL PLAN OF SERVICE (POS) REPORT, on the following annexation areas at its December 20, 2016 regular business meeting at 7:00 P.M. in the courtroom of the City Hall Building, 225 W. Center Street, Kingsport Tennessee.

Annexation Area: Old Mill, Ord. No. 6176

Effective Date: 03/23/2012

POS, deadline: Sewer Service, Water Service & Street Lights by March 23, 2017.

Annexation Area: Cleek Road – Part 2, Ord. No. 6188

Effective Date: 04/20/2012

POS, deadline: Water Service & Street Lights by April 20, 2017.

Annexation Area: Eastern Star Rd., Ord. No. 6190

Effective Date: 04/20/2012

POS, deadline: Street Lights by April 20, 2017.

Annexation Area: Kingsport South, Ord. No. 6192

Effective Date: 04/20/2012

POS, deadline: Sewer Service, Water Service & Street Lights by April 20, 2017.

Annexation Area: Emory Church, Ord. No. 6202

Effective Date: 07/06/2012

POS, deadline: Sewer Service & Water Service by July 6, 2017.

Annexation Area: Grandview Annex, Ord. No. 6204

Effective Date: 07/06/2012

POS, deadline: Sewer Service & Water Service by July 6, 2017.

Annexation Area: Diana Rd 2, Ord. No. 6393

Effective Date: 06/06/2014

POS, deadline: Sewer Service, Water Service, & Street Lights by July 6, 2019.

Annexation Area: Bays Mtn. Park Rd Annex, Res. No. 2016-015

Effective Date: 09/04/2015

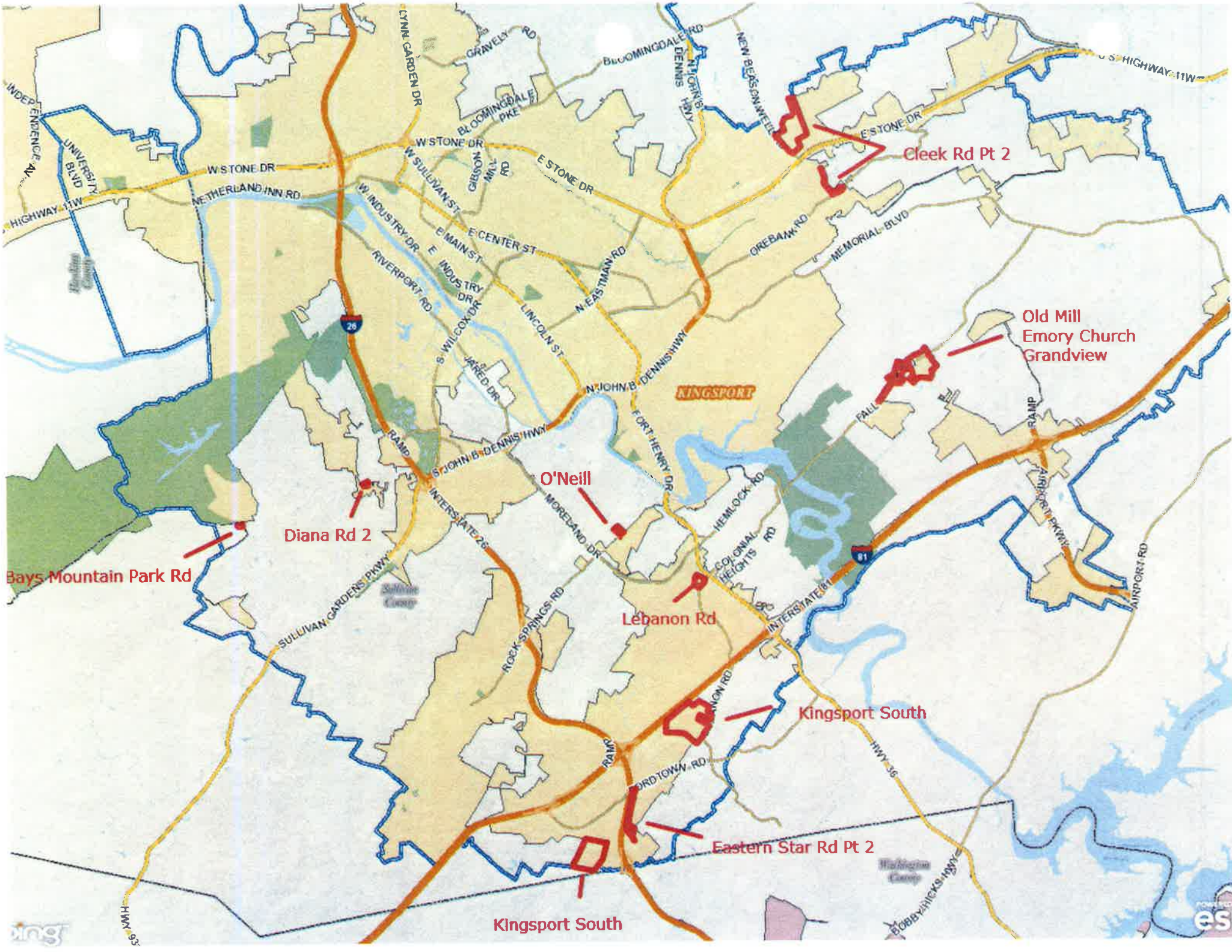
POS, deadline: Sewer Service, Water Service, & Street Lights by Sep., 4, 2020

Annexation Area: O'Neill Annexation, Res. No. 2016-060

Effective Date: 11/20/2015

POS, deadline: Sewer Service, Water Service, & Street Lights by Nov. 20, 2015

City of Kingsport
Angie Marshall, Finance Dept.
P1T: 12/04/16



Cleek Rd Pt 2

Old Mill
Emory Church
Grandview

Diana Rd 2

Bays Mountain Park Rd

O'Neill

Lebanon Rd

Kingsport South

Eastern Star Rd Pt 2

Kingsport South

DECEMBER 2016 PLAN OF SERVICES UPDATE
FOR ORDINANCE/RESOLUTION NUMBERS: 6176, 6188, 6190, 6192, 6202, 6204, 6393, 2016-015, 2016-016

| <u>Annexation Area</u> | <u>Effective Date</u> | <u>POS Deadline</u> | <u>Est. Completion</u> | <u>Status</u> |
|--|-----------------------|---------------------|------------------------|--------------------------------|
| Old Mill Ordinance No. 6176 | 03/23/2012 | Sewer Service | March 23, 2017` | Complete |
| | | Water Service | March 23, 2017 | Complete |
| | | Street Lights | March 23, 2017 | Complete |
| Cleek Road – Part 2 Ordinance No. 6188 | 04/20/2012 | Water Service | April 20, 2017 | Complete |
| Eastern Star Rd. – Part 2 Ordinance No. 6190 | 04/20/2012 | Street Lights | April 20, 2017 | JCPB Complete AEP Requested |
| Kingsport South Ordinance No. 6192 | 04/20/2012 | Sewer Service | April 20, 2020 | Complete |
| | | Water Service | April 20, 2017 | In Contact March 2017 Comp. |
| | | Street Lights | April 20, 2017 | Complete |
| Emory Church Ordinance No. 6202 | 07/06/2012 | Sewer Service | July 6, 2017 | Complete |
| | | Water Service | July 6, 2017 | Complete |
| Grandview Annex Ordinance No. 6204 | 07/06/2012 | Sewer Service | July 6, 2017 | Complete |
| | | Water Service | July 6, 2017 | Complete |
| Diana Rd. 2 Ordinance No. 6393 | 06/06/2014 | Sewer Service | June 6, 2019 | Complete |
| Bays Mountain Park Rd Annex Resolution No. 2016-015 | 09/04/2015 | Water Service | Sep. 04, 2020 | Complete |
| | | Sewer Service | Sep. 04, 2020 | Complete |
| | | Street Lights | Sep. 04, 2020 | Complete |
| O’Neill Annexation Resolution No. 2016-016 | 11/20/2015 | Water Service | Nov. 20, 2020 | Complete |
| | | Sewer Service | Nov. 20, 2020 | Complete |
| | | Street Lights | Nov. 20, 2020 | Complete |



AGENDA ACTION FORM

Award Contract for Enterprise Place Roadway Improvements

To: Board of Mayor and Aldermen
 From: Jeff Fleming, City Manager

Action Form No.: AF-319-2016
 Work Session: December 19, 2016
 First Reading: December 20, 2016

Final Adoption: January 17, 2017
 Staff Work By: M. Thompson/J. Grieb
 Presentation By: Ryan McReynolds

Recommendation:

Approve the Budget Ordinance and Resolution.

Executive Summary:

Bids were opened on November 9, 2016 for the Enterprise Place Roadway Improvements. This project consists of construction of approximately 2800 LF of sidewalk; repair, overlay and extend existing roadway; installation of stormwater culvert and other associated work. Bid Alternate #1 consists of underground conduit for street lighting and future power service. The project shall be completed within 100 days.

Funding is identified and available through this budget ordinance by reallocating funds from GP1500 to GP1611 in the amount of \$180,000.00.

City staff reviewed the bids and recommends awarding the contract including Alternate #1 to the apparent low bidder, King General Contractor, as follows:

| | |
|----------------------|------------------|
| Base Bid | \$445,192.00 |
| Alternate #1 | 95,880.00 |
| Engineering Fees 14% | 75,750.00 |
| Contingency 6% | <u>32,464.32</u> |
| Total Project Cost | \$649,286.32 |

Attachments:

1. Budget Ordinance
2. Resolution
3. Bid Opening Minutes
4. Location Map
5. Bid Tabulation

Funding source appropriate and funds are available: js

| | Y | N | O |
|------------|---|---|---|
| Duncan | — | — | — |
| George | — | — | — |
| McIntire | — | — | — |
| Olterman | — | — | — |
| Parham | — | — | — |
| Segelhorst | — | — | — |
| Clark | — | — | — |

PRE-FILED CITY RECORDER

ORDINANCE NO. _____

AN ORDINANCE TO AMEND THE GENERAL PROJECT FUND BUDGET BY TRANSFERRING FUNDS TO THE ENTERPRISE PLACE IMPROVEMENTS PROJECT FOR THE YEAR ENDING JUNE 30, 2017; AND TO FIX THE EFFECTIVE DATE OF THIS ORDINANCE

BE IT ORDAINED BY THE CITY OF KINGSPORT, as follows:

SECTION I. That the General Project Fund budget be amended by transferring funds from the Sullivan Street Improvement Phase 2 project (GP1500) to the Enterprise Place Improvements project (GP1611) in the amount of \$180,000 for construction of 2800 LF of sidewalk; repair, overlay and extend existing roadway, underground conduit for street lighting and future power service and installation of storm-water culvert and other associated work.

| <u>Account Number/Description:</u> | <u>Budget</u> | <u>Incr/<Decr></u> | <u>New Budget</u> |
|---|------------------|--------------------------|-------------------|
| Fund 311: General Project Fund | | | |
| Sullivan Street Improvement PH2 (GP1500) | | | |
| Revenues: | | | |
| 311-0000-368-1046 Series 2013B GO Pub Imp | \$ 17,726 | \$ 0 | \$ 17,726 |
| 311-0000-368-1047 Series 2014A GO | 1,702,557 | (180,000) | 1,522,557 |
| 311-0000-368-2101 Premium From Bond Sale | 174,124 | 0 | 174,124 |
| Totals: | 1,894,407 | (180,000) | 1,714,407 |
| Expenditures: | | | |
| 311-0000-601-2023 Arch/Eng/Landscaping | 219,439 | 0 | 219,439 |
| 311-0000-601-4041 Bond Sale Expense | 14,968 | 0 | 14,968 |
| 311-0000-601-9001 Land | 15,000 | 0 | 15,000 |
| 311-0000-601-9003 Improvements | 1,645,000 | (180,000) | 1,465,000 |
| Totals: | 1,894,407 | (180,000) | 1,714,407 |
| Fund 311: General Project Fund | | | |
| Enterprise Place Improvements (GP1611) | | | |
| Revenues: | | | |
| 311-0000-368-1047 Series 2014A GO | \$ 0 | \$ 180,000 | \$ 180,000 |
| 311-0000-368-1051 Series 2015A (Oct) GO PI | 535,551 | 0 | 535,551 |
| 311-0000-368-2101 Premium From Bond Sale | 18,646 | | 18,646 |
| Totals: | 554,197 | 180,000 | 734,197 |
| Expenditures: | | | |
| 311-0000-601-2023 Arch/Eng/Landscaping | 33,000 | 0 | 33,000 |
| 311-0000-601-4041 Bond Sale Expense | 10,197 | 0 | 10,197 |
| 311-0000-601-9001 Land | 4,700 | 0 | 4,700 |
| 311-0000-601-9003 Improvements | 506,300 | 180,000 | 686,300 |
| Totals: | 554,197 | 180,000 | 734,197 |

SECTION II. That this Ordinance shall take effect from and after its date of passage, as the law direct, the welfare of the City of Kingsport, Tennessee requiring it.

John Clark, Mayor

ATTEST:

ANGELA L. MARSHALL
Deputy City Recorder

APPROVED AS TO FORM:

J. MICHAEL BILLINGSLEY, City Attorney

PASSED ON 1ST READING: _____

PASSED ON 2ND READING: _____

RESOLUTION NO. _____

A RESOLUTION AWARDDING THE BID FOR ENTERPRISE PLACE ROADWAY IMPROVEMENTS TO KING GENERAL CONTRACTOR AND AUTHORIZING THE MAYOR TO EXECUTE AN AGREEMENT FOR THE SAME AND ALL DOCUMENTS NECESSARY AND PROPER TO EFFECTUATE THE PURPOSE OF THE AGREEMENT

WHEREAS, bids were opened November 9, 2016, for the Enterprise Place Roadway Improvements; and

WHEREAS, this project consists of construction of approximately 2,800 linear feet of sidewalk, repair, overlay and extend existing roadway; installation of stormwater culvert and other associated work;

WHEREAS, bid alternate 1 consists of underground conduit for street lighting and future power service; and

WHEREAS, the project shall be completed within 100 days; and

WHEREAS, upon review of the bids, the board finds King General Contractors is the apparent low bidder as follows: base bid \$445,192.00 and alternate 1 \$95,880.00 for a total of \$541,072.00; and

WHEREAS, funding is identified and available in GP1611.

Now therefore,

BE IT RESOLVED BY THE BOARD OF MAYOR AND ALDERMEN AS FOLLOWS:

SECTION I. That the bid for the Enterprise Place Roadway Improvements in the amount of \$541,072.00 is awarded to King General Contractors.

SECTION II. That the mayor, or in his absence, incapacity, or failure to act, the vice-mayor, is authorized and directed to execute, in a form approved by the city attorney and subject to the requirements of Article X, Section 10 of the Charter of the City of Kingsport, an agreement for the Enterprise Place Roadway Improvements and all documents necessary and proper to effectuate the purpose of the agreement.

SECTION III. That the board finds that the actions authorized by this resolution are for a public purpose and will promote the health, comfort and prosperity of the citizens of the city.

SECTION IV. That this resolution shall take effect from and after its adoption, the public welfare requiring it.

ADOPTED this the 20th day of December, 2016.

JOHN CLARK, MAYOR

ATTEST:

JAMES H. DEMMING, CITY RECORDER

APPROVED AS TO FORM:

J. MICHAEL BILLINGSLEY, CITY ATTORNEY

**MINUTES
BID OPENING
November 9, 2016
4:00 P.M.**

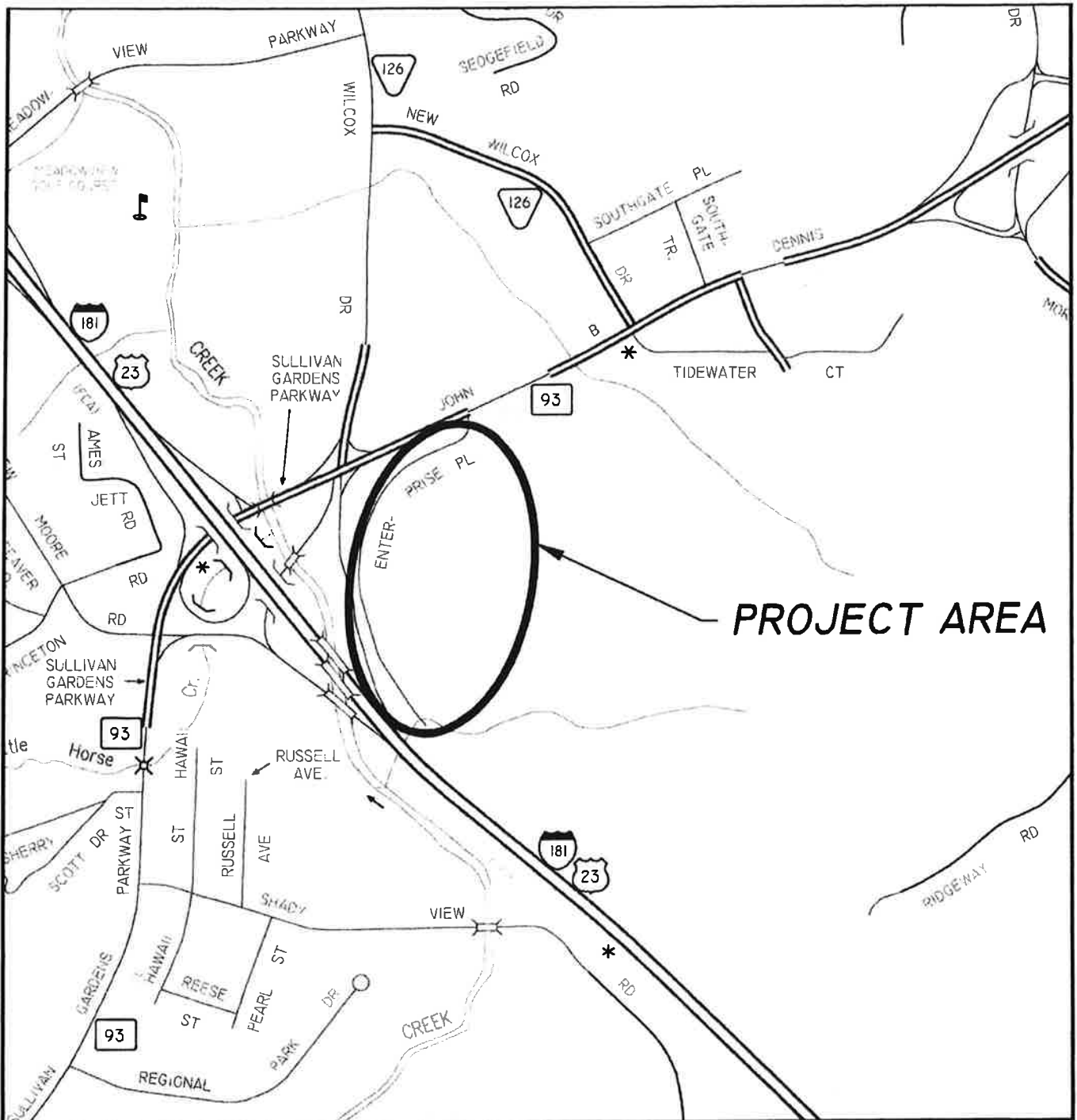
Present: Sandy Crawford, Procurement Manager; Brent Morelock, Assistant Procurement Manager; Hank Clabaugh, City Engineer; and Michael Thompson, Assistant Public Works Director

The Bid Opening was held in the Council Room, City Hall.

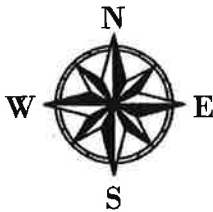
The Procurement Manager opened with the following bids:

| ENTERPRISE PLACE ROADWAY IMPROVEMENTS | | |
|--|------------------|----------------------|
| Vendor: | Base Bid: | Alternate #1: |
| Summers Taylor, Inc. | \$586,967.75 | \$ 96,000.00 |
| Thomas Construction | \$773,310.00 | \$108,000.00 |
| Baker's Construction Services | \$593,486.40 | \$115,440.00 |
| King General Contractors | \$445,192.00 | \$ 95,880.00 |

The submitted bids will be evaluated and a recommendation made at a later date.



ALL BEARINGS KGRN
(KINGSPORT GEODETIC
REFERENCE NETWORK)



**FIGURE I - MAP LOCATION
ENTERPRISE PLACE
ROADWAY IMPROVEMENTS
CITY OF KINGSPORT, TENNESSEE**

NO SCALE

23 SEPTEMBER 2016

BID TABULATION FOR ENTERPRISE PLACE ROADWAY IMPROVEMENTS

| ITEM | QUAN. | UNIT | DESCRIPTION | KING GENERAL | | SUMMERS-TAYLOR | | BAKER'S CONSTR. SERVICES | | THOMAS CONSTRUCTION | |
|--------------------------------------|--------|------|---|--------------|-------------------|----------------|-------------------|--------------------------|-------------------|--|-------------------|
| | | | | UNIT COST | TOTAL COST | UNIT COST | TOTAL COST | UNIT COST | TOTAL COST | UNIT COST | TOTAL COST |
| 1 | 1 | EA | Project Mobilization | \$ 25,000.00 | \$ 25,000.00 | \$ 24,500.00 | \$ 24,500.00 | \$ 35,000.00 | \$ 35,000.00 | \$ 33,000.00 | \$ 33,000.00 |
| 2 | 1 | EA | Project Sign | \$ 895.35 | \$ 895.35 | \$ 500.00 | \$ 500.00 | \$ 3,000.00 | \$ 3,000.00 | \$ 1,000.00 | \$ 1,000.00 |
| 3 | 1 | LS | Traffic Control | \$ 3,500.00 | \$ 3,500.00 | \$ 6,000.00 | \$ 6,000.00 | \$ 7,961.80 | \$ 7,961.80 | \$ 6,000.00 | \$ 6,000.00 |
| 4 | 1 | LS | EPSC Measures | \$ 12,582.50 | \$ 12,582.50 | \$ 27,500.00 | \$ 27,500.00 | \$ 60,000.00 | \$ 60,000.00 | \$ 14,000.00 | \$ 14,000.00 |
| 5 | 1 | LS | Grading, Excavation, Removal of Asphalt, Concrete, Storm Piping, etc. | \$ 69,625.00 | \$ 69,625.00 | \$ 156,650.00 | \$ 156,650.00 | \$ 113,110.90 | \$ 113,110.90 | \$ 254,000.00 | \$ 254,000.00 |
| 6 | 875 | TON | Bituminous grading 'D' Surface - 1.5" - (PG64-22) | \$ 91.99 | \$ 80,491.25 | \$ 93.75 | \$ 82,031.25 | \$ 84.84 | \$ 74,235.00 | \$ 95.00 | \$ 83,125.00 |
| 7 | 2,020 | TON | Base Stone - 10" - (Type 'A' Grade 'D') | \$ 24.45 | \$ 49,389.00 | \$ 28.00 | \$ 56,560.00 | \$ 27.09 | \$ 54,721.80 | \$ 35.00 | \$ 70,700.00 |
| 8 | 600 | TON | Asphaltic Binder 'B-M2' - 3" | \$ 62.17 | \$ 37,302.00 | \$ 82.00 | \$ 49,200.00 | \$ 61.58 | \$ 36,948.00 | \$ 70.00 | \$ 42,000.00 |
| 9 | 300 | CY | Undercut | \$ 18.45 | \$ 5,535.00 | \$ 51.00 | \$ 15,300.00 | \$ 21.64 | \$ 6,492.00 | \$ 40.00 | \$ 12,000.00 |
| 10 | 150 | TON | Leveling Mix - 0.5" - (TDOT 307 - C Equivalent) | \$ 62.92 | \$ 9,438.00 | \$ 115.00 | \$ 17,250.00 | \$ 60.06 | \$ 9,009.00 | \$ 65.00 | \$ 9,750.00 |
| 11 | 30 | LF | 24" RCP | \$ 78.95 | \$ 2,368.50 | \$ 60.00 | \$ 1,800.00 | \$ 55.00 | \$ 1,650.00 | \$ 160.00 | \$ 4,800.00 |
| 12 | 36 | LF | 8' x 4' Concrete Culvert Box w/ Wing Walls | \$ 1,413.95 | \$ 50,902.20 | \$ 1,425.00 | \$ 51,300.00 | \$ 1,400.00 | \$ 50,400.00 | \$ 2,600.00 | \$ 93,600.00 |
| 13 | 250 | TON | Utility Backfill | \$ 24.45 | \$ 6,112.50 | \$ 36.00 | \$ 9,000.00 | \$ 29.76 | \$ 7,440.00 | \$ 32.00 | \$ 8,000.00 |
| 14 | 1,000 | SY | Geotextile Paving Fabric (Propex Petromat or Approved Equal) | \$ 8.48 | \$ 8,480.00 | \$ 7.55 | \$ 7,550.00 | \$ 8.40 | \$ 8,400.00 | \$ 9.50 | \$ 9,500.00 |
| 15 | 60 | SY | Concrete Driveway Ramp | \$ 65.45 | \$ 3,927.00 | \$ 65.00 | \$ 3,900.00 | \$ 106.09 | \$ 6,365.40 | \$ 110.00 | \$ 6,600.00 |
| 16 | 36 | LF | 12" HDPE | \$ 45.95 | \$ 1,654.20 | \$ 38.00 | \$ 1,368.00 | \$ 60.00 | \$ 2,160.00 | \$ 100.00 | \$ 3,600.00 |
| <u>SIDEWALK</u> | | | | | | | | | | | |
| 17 | 14,310 | SF | Concrete Sidewalks (4") | \$ 5.45 | \$ 77,989.50 | \$ 5.35 | \$ 76,558.50 | \$ 6.75 | \$ 96,592.50 | \$ 8.50 | \$ 121,635.00 |
| BASE BID PROJECT TOTAL: | | | | \$ | 445,192.00 | \$ | 586,967.75 | \$ | 573,486.40 | \$ | 773,310.00 |
| | | | | | | | | | | <small>Bid form had 5593,486.40</small> | |
| <u>BID ALTERNATE 1</u> | | | | | | | | | | | |
| 18 | 12,000 | LF | 3" Schedule 40 PVC Conduit w/Pull Wire | \$ 7.99 | \$ 95,880.00 | \$ 8.00 | \$ 96,000.00 | \$ 9.62 | \$ 115,440.00 | \$ 9.00 | \$ 108,000.00 |
| PROJECT TOTAL WITH ALTERNATE: | | | | \$ | 541,072.00 | \$ | 682,967.75 | \$ | 688,926.40 | \$ | 881,310.00 |
| | | | | | | | | | | <small>Bid Form had \$708,926.40</small> | |



AGENDA ACTION FORM

Award Contract and Appropriate Funds for Sanitary Sewer Facilities and Waterline Upgrades – Colonial Heights Phase IV Project

To: Board of Mayor and Aldermen
From: Jeff Fleming, City Manager 

Action Form No.: AF-337-2016
Work Session: December 19, 2016
First Reading: December 20, 2016
Final Adoption: January 17, 2017
Staff Work By: Committee
Presentation By: R. McReynolds

Recommendation:

Approve the budget ordinance and resolution.

Executive Summary:

Bids were opened for the Sanitary Sewer Facilities and Waterline Upgrades - Colonial Heights Phase IV project on December 7, 2016. This project consists of construction of approximately 11,600 LF sanitary sewer infrastructure, including manholes and laterals; approximately 425 LF of waterlines, including appurtenances; approximately 350 LF of storm water line and appurtenances; and asphalt paving and associated site work. The construction shall be completed by September 15, 2017.

City staff reviewed the bids and recommends awarding the contract to the apparent low bidder, East Tennessee Turf and Landscape as follows:

| | |
|----------------------------|-------------------|
| Base Bid..... | \$1,926,364.00 |
| Engineering Fees 14% | 285,873.00 |
| Contingency 6% | <u>115,582.00</u> |
| Total Project Cost..... | \$2,327,819.00 |


A budget ordinance appropriating funds to WA1707 from WA1404 is requested.

The project will be funded using project numbers WA1707, SW1511, ST1709, and GP1606.

Engineering estimate for the base bid of the referenced project was \$2,349,700.00.

Attachments:

1. Budget Ordinance
2. Contract Award Resolution
3. Bid Opening Minutes
4. Location Map
5. Bid Tabulation

Funding source appropriate and funds are available: 

| | <u>Y</u> | <u>N</u> | <u>O</u> |
|------------|----------|----------|----------|
| Duncan | — | — | — |
| George | — | — | — |
| McIntire | — | — | — |
| Oiterman | — | — | — |
| Parham | — | — | — |
| Segelhorst | — | — | — |
| Clark | — | — | — |

PRE-FILED CITY RECORDER

ORDINANCE NO. _____

AN ORDINANCE TO AMEND THE WATER PROJCT FUND
BY TRANSFERRING FUNDS TO THE COLONIAL HEIGHTS
PHASE IV PROJECT FOR THE YEAR ENDING JUNE 30, 2017;
AND TO FIX THE EFFECTIVE DATE OF THIS ORDINANCE

BE IT ORDAINED BY THE CITY OF KINGSPORT, as follows:

SECTION I. That the Water Project Fund budget be amended by transferring \$61,565 from the Annex/Fire Hydrants project (WA1404) to the Colonial Heights Phase IV project (WA1707).

| <u>Account Number/Description:</u> | <u>Budget</u> | <u>Incr/<Decr></u> | <u>New Budget</u> |
|---|----------------|--------------------------|-------------------|
| Fund 451 Water Fund | | | |
| Annex/Fire Hydrants (WA1404) | | | |
| Revenues: | | | |
| 451-0000-391-0529 Series 2013B GO Pub Imp | \$ 206,790 | \$ 0 | \$ 206,790 |
| 451-0000-391-4500 From Water Fund | 87,612 | (61,565) | 26,047 |
| 451-0000-391-4600 Reserve Outside City Imp. | 56,207 | 0 | 56,207 |
| Totals: | 350,609 | (61,565) | 289,044 |
| Expenditures: | | | |
| 451-0000-605-2022 Construction Contracts | 216,230 | 0 | 216,230 |
| 451-0000-605-2023 Arch/Eng/Landscaping | 134,379 | (61,565) | 72,814 |
| Totals: | 350,609 | (61,565) | 289,044 |
| Fund 451 Water Fund | | | |
| Colonial Heights Phase IV (WA1707) | | | |
| Revenues: | | | |
| 451-0000-391-4500 From Water Fund | \$ 0 | \$ 61,565 | \$ 61,565 |
| Totals: | 0 | 61,565 | 61,565 |
| Expenditures: | | | |
| 451-0000-605-2023 Arch/Eng/Landscaping | 0 | 8,000 | 8,000 |
| 451-0000-605-9003 Improvements | 0 | 53,565 | 53,565 |
| Totals: | 0 | 61,565 | 61,565 |

SECTION II. That this Ordinance shall take effect from and after its date of passage, as the law direct, the welfare of the City of Kingsport, Tennessee requiring it.

JOHN CLARK, Mayor

ATTEST:

ANGELA L. MARSHALL
Deputy City Recorder

APPROVED AS TO FORM:

J. MICHAEL BILLINGSLEY, City Attorney

PASSED ON 1ST READING: _____
PASSED ON 2ND READING: _____

RESOLUTION NO. _____

A RESOLUTION AWARING THE BID TO AWARD FOR
SANITARY SEWER FACILITIES AND WATERLINE UPGRADES
– COLONIAL HEIGHTS PHASE IV PROJECT AND
AUTHORIZING THE MAYOR TO EXECUTE AN AGREEMENT
FOR THE SAME AND ALL OTHER DOCUMENTS NECESSARY
AND PROPER TO EFFECTUATE THE PURPOSE OF THE
AGREEMENT

WHEREAS, bids were opened for the Sanitary Sewer Facilities and Waterline Upgrades
– Colonial Heights Phase IV project on December 7, 2016; and

WHEREAS, the project consists of construction of approximately 11,600 linear feet
sanitary sewer infrastructure, including manholes and laterals; approximately 425 linear feet of
waterlines, including appurtenances; approximately 350 linear feet of storm water line and
appurtenances; and asphalt paving and associated site work; and

WHEREAS, the construction will be completed by September 15, 2017; and

WHEREAS, upon review of the bids, the board finds W-L Construction & Paving, Inc. is
the lowest responsible compliant bidder meeting specifications for the particular grade or class
of material, work or service desired and is in the best interest and advantage to the city, and the
City of Kingsport desires to enter into an agreement with East Tennessee Turf and Landscape
with a bid of \$1,926,364.00; and

WHEREAS, the project will be funded using project numbers WA1707, SW1511, ST1709
and GP1606.

Now therefore,

BE IT RESOLVED BY THE BOARD OF MAYOR AND ALDERMEN AS FOLLOWS:

SECTION I. That the bid for the Sanitary Sewer Facilities and Waterline Upgrades –
Colonial Heights Phase IV project, at a cost of \$1,926,364.00, is awarded to East Tennessee Turf
and Landscape, and the mayor is authorized to execute an agreement for same and all
documents necessary and proper to effectuate the purpose of the agreement.

SECTION II. That the board finds that the actions authorized by this resolution are for a
public purpose and will promote the health, comfort and prosperity of the citizens of the city.

SECTION III. That this resolution shall take effect from and after its adoption, the public
welfare requiring it.

ADOPTED this the 20th day of December, 2016.

JOHN CLARK, MAYOR

ATTEST:

JAMES H. DEMMING, CITY RECORDER

MINUTES
BID OPENING
December 7, 2016
4:00 P.M.

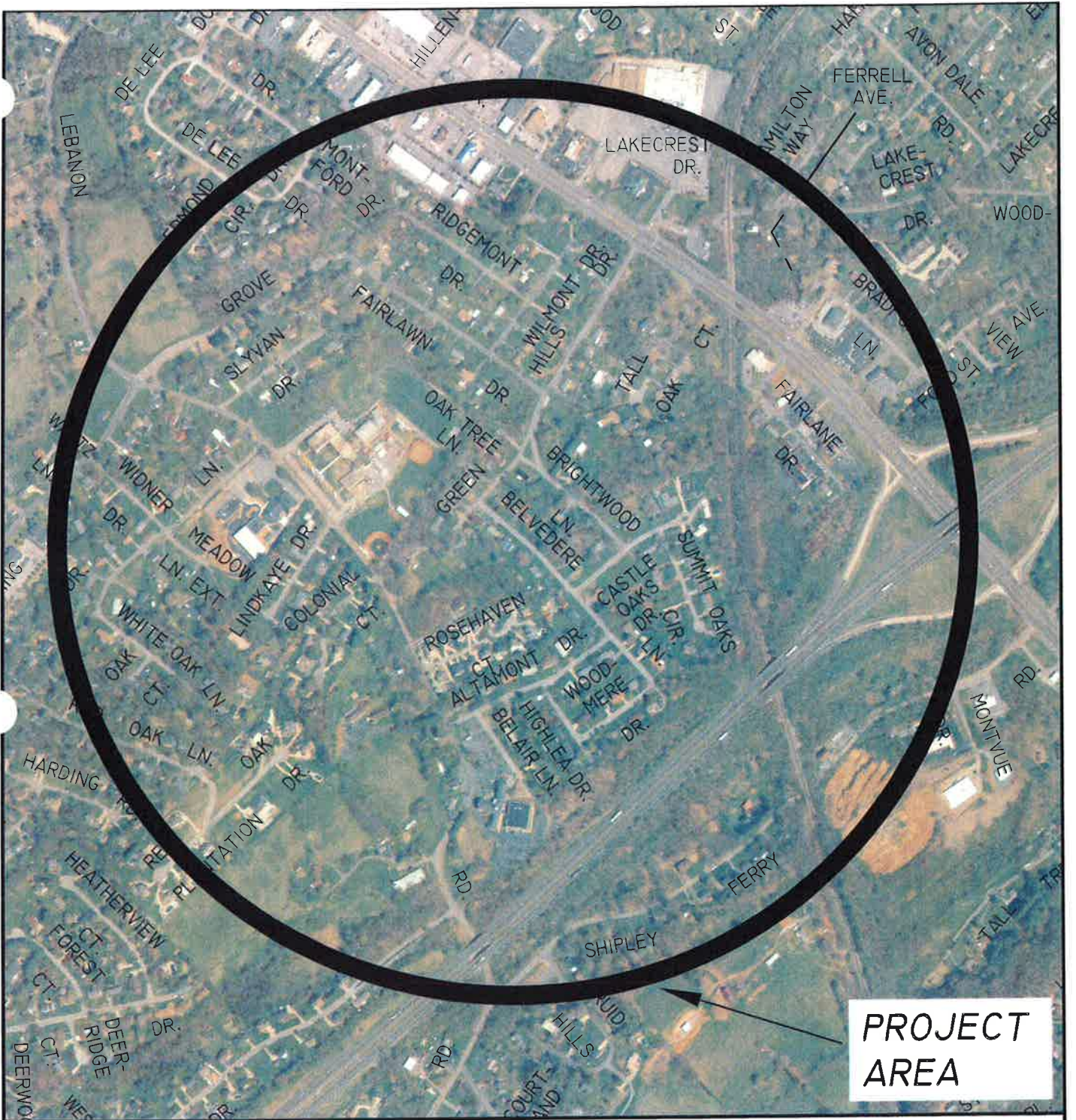
Present: Sandy Crawford, Procurement Manager; and Brent Morelock, Assistant Procurement Manager

The Bid Opening was held in the Council Room, City Hall.

The Procurement Manager opened with the following bids:

| SANITARY SEWER FACILITIES AND WATERLINE UPGRADES – COLONIAL HEIGHTS – PHASE IV | | |
|--|----------------|----------------------------------|
| Vendor: | Total Cost: | Comments: |
| Thomas Construction | \$1,990,684.00 | Markovers present and initialed. |
| Bakers Construction & Excavation | \$2,984,162.56 | N/A |
| East TN Turf and Landscape | \$1,926,364.00 | N/A |
| Merkel Brothers | \$2,003,318.00 | N/A |
| Summers Taylor | \$2,191,341.95 | N/A |
| King General Contractors | \$2,218,407.55 | N/A |
| Mike Smith Pump Service | \$2,075,259.00 | Whiteout used and initialed. |

The submitted bids will be evaluated and a recommendation made at a later date.



**PROPOSED SANITARY SEWER FACILITIES
COLONIAL HEIGHTS PHASE IV**

FIGURE I - LOCATION MAP

BID TABULATION - SANITARY SEWER FACILITIES & WATERLINE UPGRADES COLONIAL HEIGHTS PHASE IV

| ITEM NO | QUAN | UNIT | DESCRIPTION | EAST TN TURF 7 LANDSCAPE | | THOMAS CONSTRUCTION | | MERKEL BROTHERS | | MIKE SMITH PUMP SERVICE | |
|---------|--------|------|--|--------------------------|---------------|---------------------|---------------|-----------------|---------------|-------------------------|---------------|
| | | | | UNIT COST | TOTAL COST | UNIT COST | TOTAL COST | UNIT COST | TOTAL COST | UNIT COST | TOTAL COST |
| 1 | 1,095 | T | CRUSHED STONE FOR PAVEMENT MAINTENANCE AND SHOULDER REPLACEMENT (SECTION 31 23 33) | \$ 21.00 | \$ 22,995.00 | \$ 1.00 | \$ 1,095.00 | \$ 1.00 | \$ 1,095.00 | \$ 2.00 | \$ 2,190.00 |
| 2 | 1 | LS | MOBILIZATION, CLEARING AND GRUBBING (SECTION 31 11 00) | \$ 140,000.00 | \$ 140,000.00 | \$ 175,000.00 | \$ 175,000.00 | \$ 100,000.00 | \$ 100,000.00 | \$ 85,000.00 | \$ 85,000.00 |
| 3 | 1 | LS | PROTECTION OF LIVING SHRUBS AND TREES (SECTION 31 11 00) | \$ 5,000.00 | \$ 5,000.00 | \$ 2,000.00 | \$ 2,000.00 | \$ 25,000.00 | \$ 25,000.00 | \$ 4,000.00 | \$ 4,000.00 |
| 4 | 8,300 | T | CRUSHED STONE FOR BACKFILL @ ROAD & DRIVEWAY CROSSINGS (SECTION 31 23 33) | \$ 22.00 | \$ 182,600.00 | \$ 12.60 | \$ 104,680.00 | \$ 22.00 | \$ 182,600.00 | \$ 20.00 | \$ 166,000.00 |
| 5 | 6,070 | CY | SOLID ROCK EXCAVATION IN TRENCH ALLOWANCE (SECTION 31 23 33) | \$ 35.00 | \$ 212,450.00 | \$ 35.00 | \$ 212,450.00 | \$ 35.00 | \$ 212,450.00 | \$ 35.00 | \$ 212,450.00 |
| 6 | 1 | EA | CREEK CROSSING (SECTION 33 05 10) (SEE DETAIL) | \$ 15,000.00 | \$ 15,000.00 | \$ 13,000.00 | \$ 13,000.00 | \$ 9,000.00 | \$ 9,000.00 | \$ 10,000.00 | \$ 10,000.00 |
| 7 | 10 | LF | 24" RCP STORM SEWER IF REQ'D (SECTION 33 40 00) | \$ 50.00 | \$ 500.00 | \$ 25.00 | \$ 250.00 | \$ 50.00 | \$ 500.00 | \$ 40.00 | \$ 400.00 |
| 8 | 10 | LF | 18" CMP STORM SEWER IF REQ'D (SECTION 33 40 00) | \$ 20.00 | \$ 200.00 | \$ 15.00 | \$ 150.00 | \$ 25.00 | \$ 250.00 | \$ 30.00 | \$ 300.00 |
| 9 | 10 | LF | 24" CMP STORM SEWER IF REQ'D (SECTION 33 40 00) | \$ 30.00 | \$ 300.00 | \$ 20.00 | \$ 200.00 | \$ 30.00 | \$ 300.00 | \$ 40.00 | \$ 400.00 |
| 10 | 20 | LF | 12" RCP STORM SEWER IF REQ'D (SECTION 33 40 00) | \$ 20.00 | \$ 400.00 | \$ 15.00 | \$ 300.00 | \$ 22.00 | \$ 440.00 | \$ 25.00 | \$ 500.00 |
| 11 | 1,135 | LF | FENCE REPLACEMENT (MATCH EXIST) (IF NECESSARY)(SECTION 32 31 13) | \$ 10.00 | \$ 11,360.00 | \$ 12.00 | \$ 13,620.00 | \$ 6.00 | \$ 6,810.00 | \$ 15.00 | \$ 17,025.00 |
| 12 | 1 | LS | SEEDING WITH MULCH (SECTION 32 92 20) | \$ 80,000.00 | \$ 80,000.00 | \$ 31,500.00 | \$ 31,500.00 | \$ 50,000.00 | \$ 50,000.00 | \$ 30,000.00 | \$ 30,000.00 |
| 13 | 353 | GA | TACK COAT (SECTION 32 12 16) | \$ 4.00 | \$ 1,412.00 | \$ 3.00 | \$ 1,059.00 | \$ 5.00 | \$ 1,765.00 | \$ 3.00 | \$ 1,059.00 |
| 14 | 730 | T | ASPHALT BINDER 4" IN TRENCH (SECTION 32 12 16) | \$ 110.00 | \$ 80,300.00 | \$ 160.00 | \$ 116,800.00 | \$ 110.00 | \$ 80,300.00 | \$ 140.00 | \$ 102,200.00 |
| 15 | 425 | T | ASPHALT TOPPING 1-1/4" - TDOT D MIX (SECTION 32 12 16) | \$ 103.00 | \$ 43,775.00 | \$ 98.00 | \$ 41,660.00 | \$ 100.00 | \$ 42,500.00 | \$ 103.00 | \$ 43,775.00 |
| 16 | 1,800 | T | ASPHALT TOPPING 1-1/4" - TDOT E MIX (SECTION 32 12 16) | \$ 90.00 | \$ 162,000.00 | \$ 86.00 | \$ 154,800.00 | \$ 76.00 | \$ 136,800.00 | \$ 90.00 | \$ 162,000.00 |
| 17 | 1 | LS | SOIL & EROSION CONTROL (SECTION 31 25 13) | \$ 10,000.00 | \$ 10,000.00 | \$ 6,300.00 | \$ 6,300.00 | \$ 10,000.00 | \$ 10,000.00 | \$ 5,000.00 | \$ 5,000.00 |
| 18 | 11,570 | LF | 8" PVC GRAVITY SEWER PIPE (SECTION 33 30 00) | \$ 35.00 | \$ 404,950.00 | \$ 44.00 | \$ 509,080.00 | \$ 44.00 | \$ 509,080.00 | \$ 46.00 | \$ 532,220.00 |
| 19 | 1,920 | LF | 6" PVC SEWER (SECTION 33 30 00) | \$ 28.00 | \$ 53,760.00 | \$ 40.00 | \$ 76,800.00 | \$ 27.00 | \$ 51,840.00 | \$ 32.00 | \$ 61,440.00 |
| 20 | 10 | EA | INSIDE DROP CONNECTION (SECTION 33 30 00) | \$ 1,500.00 | \$ 15,000.00 | \$ 1,000.00 | \$ 10,000.00 | \$ 1,200.00 | \$ 12,000.00 | \$ 1,250.00 | \$ 12,500.00 |
| 21 | 75 | EA | SEWER LATERAL ASSEMBLIES (8x8x6 PVC TEES) (SECTION 33 30 00) | \$ 400.00 | \$ 30,000.00 | \$ 100.00 | \$ 7,500.00 | \$ 150.00 | \$ 11,250.00 | \$ 125.00 | \$ 9,375.00 |

| ITEM NO | QUAN | UNIT | DESCRIPTION | EAST TN TURF 7 LANDSCAPE | | THOMAS CONSTRUCTION | | MERKEL BROTHERS | | MIKE SMITH PUMP SERVICE | |
|-------------------------------|-------|------|--|--------------------------|---------------|---------------------|---------------|-----------------|---------------|-------------------------|---------------|
| | | | | UNIT COST | TOTAL COST | UNIT COST | TOTAL COST | UNIT COST | TOTAL COST | UNIT COST | TOTAL COST |
| 22 | 87 | EA | CLEANOUT ASSEMBLIES @ LATERALS (SECTION 33 30 00) | \$ 150.00 | \$ 13,050.00 | \$ 340.00 | \$ 29,580.00 | \$ 400.00 | \$ 34,800.00 | \$ 400.00 | \$ 34,800.00 |
| 23 | 66 | EA | STANDARD SEWER MANHOLES (SECTION 33 30 00) | \$ 2,000.00 | \$ 132,000.00 | \$ 2,000.00 | \$ 132,000.00 | \$ 2,200.00 | \$ 145,200.00 | \$ 2,400.00 | \$ 158,400.00 |
| 24 | 1 | EA | ADJUST EXISTING MANHOLES (SECTION 33 30 00) | \$ 800.00 | \$ 800.00 | \$ 1,000.00 | \$ 1,000.00 | \$ 1,500.00 | \$ 1,500.00 | \$ 1,000.00 | \$ 1,000.00 |
| 25 | 2 | EA | WATERTIGHT LIDS & CASTINGS (SECTION 33 30 00) | \$ 450.00 | \$ 900.00 | \$ 450.00 | \$ 900.00 | \$ 350.00 | \$ 700.00 | \$ 500.00 | \$ 1,000.00 |
| 26 | 51 | VF | EXTRA DEPTH MANHOLE (SECTION 33 30 00) | \$ 200.00 | \$ 10,200.00 | \$ 300.00 | \$ 15,300.00 | \$ 250.00 | \$ 12,750.00 | \$ 200.00 | \$ 10,200.00 |
| 27 | 5,304 | LF | 2" PVC FORCE MAIN (SECTION 33 30 00) | \$ 9.00 | \$ 47,736.00 | \$ 16.00 | \$ 84,864.00 | \$ 20.00 | \$ 106,080.00 | \$ 22.00 | \$ 116,888.00 |
| 28 | 1,058 | LF | 4" PVC FORCE MAIN (SECTION 33 30 00) | \$ 10.00 | \$ 10,580.00 | \$ 16.00 | \$ 16,928.00 | \$ 21.00 | \$ 22,218.00 | \$ 24.00 | \$ 25,392.00 |
| 29 | 2,175 | LF | 6" PVC FORCE MAIN (SECTION 33 30 00) | \$ 15.00 | \$ 32,625.00 | \$ 17.00 | \$ 36,975.00 | \$ 25.00 | \$ 54,375.00 | \$ 32.00 | \$ 69,600.00 |
| 30 | 42 | EA | LOW PRESSURE FORCE MAIN CONNECTION (SECTION 33 30 00) | \$ 1,200.00 | \$ 50,400.00 | \$ 1,050.00 | \$ 44,100.00 | \$ 1,000.00 | \$ 42,000.00 | \$ 750.00 | \$ 31,500.00 |
| 31 | 1 | LS | LANDSCAPING ALLOWANCE | \$ 10,000.00 | \$ 10,000.00 | \$ 10,000.00 | \$ 10,000.00 | \$ 10,000.00 | \$ 10,000.00 | \$ 10,000.00 | \$ 10,000.00 |
| STORM SEWER QUANTITIES | | | | | | | | | | | |
| 32 | 347 | LF | 18" HDPE STORM PIPE | \$ 53.00 | \$ 18,391.00 | \$ 90.00 | \$ 31,230.00 | \$ 50.00 | \$ 17,350.00 | \$ 70.00 | \$ 24,290.00 |
| 33 | 2 | EA | STANDARD STORM MANHOLE | \$ 4,000.00 | \$ 8,000.00 | \$ 1,300.00 | \$ 2,600.00 | \$ 2,000.00 | \$ 4,000.00 | \$ 2,400.00 | \$ 4,800.00 |
| 34 | 1 | EA | EXTRA DEPTH STORM MANHOLE | \$ 1,500.00 | \$ 1,500.00 | \$ 3,000.00 | \$ 3,000.00 | \$ 3,000.00 | \$ 3,000.00 | \$ 6,500.00 | \$ 6,500.00 |
| 35 | 1 | EA | DOUBLE CATCH BASIN W/ STANDARD GRATES | \$ 10,000.00 | \$ 10,000.00 | \$ 3,200.00 | \$ 3,200.00 | \$ 2,500.00 | \$ 2,500.00 | \$ 5,000.00 | \$ 5,000.00 |
| 36 | 1 | EA | CONCRETE ENDWALL | \$ 2,000.00 | \$ 2,000.00 | \$ 770.00 | \$ 770.00 | \$ 1,500.00 | \$ 1,500.00 | \$ 600.00 | \$ 600.00 |
| WATERLINE QUANTITIES | | | | | | | | | | | |
| 37 | 100 | CY | SOLID ROCK EXCAVATION IN TRENCH ALLOWANCE | \$ 35.00 | \$ 3,500.00 | \$ 35.00 | \$ 3,500.00 | \$ 35.00 | \$ 3,500.00 | \$ 35.00 | \$ 3,500.00 |
| 38 | 3 | EA | FIRE HYDRANT ASSEMBLIES (SECTION 33 11 00) | \$ 5,000.00 | \$ 15,000.00 | \$ 5,000.00 | \$ 15,000.00 | \$ 4,000.00 | \$ 12,000.00 | \$ 4,700.00 | \$ 14,100.00 |
| 39 | 325 | LF | 6" DIP WATER LINE | \$ 45.00 | \$ 14,625.00 | \$ 50.00 | \$ 16,250.00 | \$ 50.00 | \$ 16,250.00 | \$ 80.00 | \$ 26,000.00 |
| 40 | 102 | LF | 2" PVC WATER LINE | \$ 20.00 | \$ 2,040.00 | \$ 24.00 | \$ 2,448.00 | \$ 30.00 | \$ 3,060.00 | \$ 65.00 | \$ 6,630.00 |
| 41 | 1 | EA | 6" TAPPING TEE, TAPPING VALVE & BOX | \$ 4,000.00 | \$ 4,000.00 | \$ 3,000.00 | \$ 3,000.00 | \$ 3,000.00 | \$ 3,000.00 | \$ 3,800.00 | \$ 3,800.00 |
| 42 | 1 | EA | 2" GATE VALVE & BOX | \$ 800.00 | \$ 800.00 | \$ 650.00 | \$ 650.00 | \$ 1,000.00 | \$ 1,000.00 | \$ 800.00 | \$ 800.00 |
| 43 | 1 | EA | 2" BLOW-OFF ASSEMBLY (SECTION 33 11 00) | \$ 1,500.00 | \$ 1,500.00 | \$ 800.00 | \$ 800.00 | \$ 1,500.00 | \$ 1,500.00 | \$ 1,500.00 | \$ 1,500.00 |
| 44 | 1 | EA | SERVICE CONNECTION TO EXISTING 3/4" SHORT WITH NEW METER BOX AND SETTER (SECTION 33 11 00) | \$ 1,000.00 | \$ 1,000.00 | \$ 750.00 | \$ 750.00 | \$ 900.00 | \$ 900.00 | \$ 800.00 | \$ 800.00 |
| 45 | 4 | EA | SERVICE CONNECTION TO EXISTING 3/4" LONG WITH NEW METER BOX AND SETTER (SECTION 33 11 00) | \$ 2,000.00 | \$ 8,000.00 | \$ 1,300.00 | \$ 5,200.00 | \$ 1,700.00 | \$ 6,800.00 | \$ 1,400.00 | \$ 5,600.00 |

| ITEM NO | QUAN | UNIT | DESCRIPTION | EAST TN TURF 7 LANDSCAPE | | THOMAS CONSTRUCTION | | MERKEL BROTHERS | | MIKE SMITH PUMP SERVICE | |
|--|------|------|--|--------------------------|------------------------|---------------------|------------------------|-----------------|------------------------|-------------------------|------------------------|
| | | | | UNIT COST | TOTAL COST | UNIT COST | TOTAL COST | UNIT COST | TOTAL COST | UNIT COST | TOTAL COST |
| <u>ROAD IMPROVEMENTS PAVING QUANTITIES</u> | | | | | | | | | | | |
| 46 | 175 | GA | TACK COAT (SECTION 32 12 16) | \$ 3.00 | \$ 826.00 | \$ 3.00 | \$ 626.00 | \$ 5.00 | \$ 875.00 | \$ 3.00 | \$ 626.00 |
| 47 | 580 | T | ASPHALT TOPPING 1-1/4" - TDOT E MIX (SECTION 32 12 16) | \$ 90.00 | \$ 52,200.00 | \$ 86.00 | \$ 49,880.00 | \$ 76.00 | \$ 44,080.00 | \$ 90.00 | \$ 52,200.00 |
| 48 | 600 | SY | ASPHALT MILLING/COLD PLANING (WHERE REQUIRED) - 1 25" (SECTION 32 12 16) | \$ 5.00 | \$ 3,000.00 | \$ 3.50 | \$ 2,100.00 | \$ 14.00 | \$ 8,400.00 | \$ 3.50 | \$ 2,100.00 |
| PROJECT TOTAL: | | | | | \$ 1,926,364.00 | | \$ 1,990,884.00 | | \$ 2,003,318.00 | | \$ 2,075,259.00 |

| ITEM NO | QUAN | UNIT | DESCRIPTION | SUMMERS TAYLOR | | KINGS GENERAL CONTRACTORS | | BAKERS CONSTR. & EXCAV. | |
|---------|--------|------|--|----------------|---------------|---------------------------|---------------|-------------------------|-----------------|
| | | | | UNIT COST | TOTAL COST | UNIT COST | TOTAL COST | UNIT COST | TOTAL COST |
| 1 | 1,095 | T | CRUSHED STONE FOR PAVEMENT MAINTENANCE AND SHOULDER REPLACEMENT (SECTION 31 23 33) | \$ 19.00 | \$ 20,805.00 | \$ 22.25 | \$ 24,363.75 | \$ 23.41 | \$ 25,833.95 |
| 2 | 1 | LS | MOBILIZATION, CLEARING AND GRUBBING (SECTION 31 11 00) | \$ 97,500.00 | \$ 97,500.00 | \$ 115,000.00 | \$ 115,000.00 | \$ 100,749.00 | \$ 100,749.00 |
| 3 | 1 | LS | PROTECTION OF LIVING SHRUBS AND TREES (SECTION 31 11 00) | \$ 2,000.00 | \$ 2,000.00 | \$ 5,000.00 | \$ 6,000.00 | \$ 16,278.89 | \$ 18,278.89 |
| 4 | 8,300 | T | CRUSHED STONE FOR BACKFILL @ ROAD & DRIVEWAY CROSSINGS (SECTION 31 23 33) | \$ 23.50 | \$ 195,050.00 | \$ 22.25 | \$ 184,675.00 | \$ 21.12 | \$ 175,296.00 |
| 5 | 6,070 | CY | SOLID ROCK EXCAVATION IN TRENCH ALLOWANCE (SECTION 31 23 33) | \$ 35.00 | \$ 212,450.00 | \$ 35.00 | \$ 212,460.00 | \$ 35.00 | \$ 212,450.00 |
| 6 | 1 | EA | CREEK CROSSING (SECTION 33 05 10) (SEE DETAIL) | \$ 15,000.00 | \$ 15,000.00 | \$ 1,465.00 | \$ 1,465.00 | \$ 10,337.85 | \$ 10,337.85 |
| 7 | 10 | LF | 24" RCP STORM SEWER IF REQ'D (SECTION 33 40 00) | \$ 59.50 | \$ 595.00 | \$ 62.55 | \$ 625.50 | \$ 200.73 | \$ 2,007.30 |
| 8 | 10 | LF | 18" CMP STORM SEWER IF REQ'D (SECTION 33 40 00) | \$ 50.00 | \$ 500.00 | \$ 54.55 | \$ 545.50 | \$ 230.41 | \$ 2,304.10 |
| 9 | 10 | LF | 24" CMP STORM SEWER IF REQ'D (SECTION 33 40 00) | \$ 55.00 | \$ 550.00 | \$ 48.95 | \$ 489.50 | \$ 191.82 | \$ 1,918.20 |
| 10 | 20 | LF | 12" RCP STORM SEWER IF REQ'D (SECTION 33 40 00) | \$ 32.00 | \$ 640.00 | \$ 43.55 | \$ 871.00 | \$ 103.99 | \$ 2,079.80 |
| 11 | 1,135 | LF | FENCE REPLACEMENT (MATCH EXIST) (IF NECESSARY)(SECTION 32 31 13) | \$ 17.50 | \$ 19,862.50 | \$ 18.00 | \$ 20,430.00 | \$ 16.22 | \$ 18,409.70 |
| 12 | 1 | LS | SEEDING WITH MULCH (SECTION 32 92 20) | \$ 118,700.00 | \$ 118,700.00 | \$ 5,895.00 | \$ 6,895.00 | \$ 27,037.50 | \$ 27,037.60 |
| 13 | 353 | GA | TACK COAT (SECTION 32 12 16) | \$ 3.65 | \$ 1,288.45 | \$ 3.95 | \$ 1,394.35 | \$ 3.03 | \$ 1,069.69 |
| 14 | 730 | T | ASPHALT BINDER 4" IN TRENCH (SECTION 32 12 16) | \$ 117.50 | \$ 85,775.00 | \$ 125.00 | \$ 91,250.00 | \$ 135.19 | \$ 98,688.70 |
| 15 | 425 | T | ASPHALT TOPPING 1-1/4" - TDOT D MIX (SECTION 32 12 16) | \$ 95.00 | \$ 40,375.00 | \$ 101.25 | \$ 43,031.25 | \$ 101.66 | \$ 43,206.50 |
| 16 | 1,800 | T | ASPHALT TOPPING 1-1/4" - TDOT E MIX (SECTION 32 12 16) | \$ 95.00 | \$ 171,000.00 | \$ 89.15 | \$ 160,470.00 | \$ 88.90 | \$ 160,020.00 |
| 17 | 1 | LS | SOIL & EROSION CONTROL (SECTION 31 25 13) | \$ 42,500.00 | \$ 42,500.00 | \$ 7,500.00 | \$ 7,500.00 | \$ 39,077.31 | \$ 39,077.31 |
| 18 | 11,570 | LF | 8" PVC GRAVITY SEWER PIPE (SECTION 33 30 00) | \$ 42.00 | \$ 486,940.00 | \$ 54.00 | \$ 624,780.00 | \$ 92.76 | \$ 1,073,233.20 |
| 19 | 1,920 | LF | 6" PVC SEWER (SECTION 33 30 00) | \$ 37.00 | \$ 71,040.00 | \$ 47.95 | \$ 92,064.00 | \$ 78.66 | \$ 151,027.20 |
| 20 | 10 | EA | INSIDE DROP CONNECTION (SECTION 33 30 00) | \$ 1,250.00 | \$ 12,500.00 | \$ 1,375.00 | \$ 13,750.00 | \$ 1,037.60 | \$ 10,376.00 |
| 21 | 75 | EA | SEWER LATERAL ASSEMBLIES (8x8x6 PVC TEES) (SECTION 33 30 00) | \$ 51.50 | \$ 3,862.50 | \$ 325.00 | \$ 24,375.00 | \$ 69.65 | \$ 5,223.75 |

| ITEM NO | QUAN | UNIT | DESCRIPTION | SUMMERS TAYLOR | | KINGS GENERAL CONTRACTORS | | BAKERS CONSTR. & EXCAV. | |
|-------------------------------|-------|------|---|----------------|---------------|---------------------------|---------------|-------------------------|---------------|
| | | | | UNIT COST | TOTAL COST | UNIT COST | TOTAL COST | UNIT COST | TOTAL COST |
| 22 | 87 | EA | CLEANOUT ASSEMBLIES @ LATERALS (SECTION 33 30 00) | \$ 435.00 | \$ 37,846.00 | \$ 695.00 | \$ 61,786.00 | \$ 350.97 | \$ 30,534.39 |
| 23 | 66 | EA | STANDARD SEWER MANHOLES (SECTION 33 30 00) | \$ 2,000.00 | \$ 132,000.00 | \$ 2,185.00 | \$ 144,210.00 | \$ 3,084.03 | \$ 203,546.98 |
| 24 | 1 | EA | ADJUST EXISTING MANHOLES (SECTION 33 30 00) | \$ 910.00 | \$ 910.00 | \$ 895.00 | \$ 895.00 | \$ 1,052.61 | \$ 1,052.81 |
| 25 | 2 | EA | WATERTIGHT LIDS & CASTINGS (SECTION 33 30 00) | \$ 525.00 | \$ 1,050.00 | \$ 465.00 | \$ 930.00 | \$ 472.53 | \$ 945.06 |
| 26 | 51 | VF | EXTRA DEPTH MANHOLE (SECTION 33 30 00) | \$ 87.00 | \$ 4,437.00 | \$ 175.00 | \$ 8,925.00 | \$ 176.29 | \$ 8,990.79 |
| 27 | 5,304 | LF | 2" PVC FORCE MAIN (SECTION 33 30 00) | \$ 22.50 | \$ 119,340.00 | \$ 17.85 | \$ 94,876.40 | \$ 28.20 | \$ 149,572.80 |
| 28 | 1,058 | LF | 4" PVC FORCE MAIN (SECTION 33 30 00) | \$ 24.00 | \$ 25,392.00 | \$ 33.25 | \$ 35,178.50 | \$ 46.74 | \$ 49,450.82 |
| 29 | 2,175 | LF | 6" PVC FORCE MAIN (SECTION 33 30 00) | \$ 30.50 | \$ 66,337.50 | \$ 31.35 | \$ 68,188.25 | \$ 53.61 | \$ 116,801.76 |
| 30 | 42 | EA | LOW PRESSURE FORCE MAIN CONNECTION (SECTION 33 30 00) | \$ 1,060.00 | \$ 44,520.00 | \$ 865.00 | \$ 36,330.00 | \$ 1,543.94 | \$ 64,846.48 |
| 31 | 1 | LS | LANDSCAPING ALLOWANCE | \$ 10,000.00 | \$ 10,000.00 | \$ 10,000.00 | \$ 10,000.00 | \$ 10,000.00 | \$ 10,000.00 |
| <u>STORM SEWER QUANTITIES</u> | | | | | | | | | |
| 32 | 347 | LF | 18" HDPE STORM PIPE | \$ 61.50 | \$ 21,340.60 | \$ 82.95 | \$ 28,783.65 | \$ 95.82 | \$ 33,249.54 |
| 33 | 2 | EA | STANDARD STORM MANHOLE | \$ 2,200.00 | \$ 4,400.00 | \$ 2,295.00 | \$ 4,600.00 | \$ 4,838.89 | \$ 9,677.78 |
| 34 | 1 | EA | EXTRA DEPTH STORM MANHOLE | \$ 4,650.00 | \$ 4,650.00 | \$ 3,975.00 | \$ 3,975.00 | \$ 3,450.20 | \$ 3,460.20 |
| 35 | 1 | EA | DOUBLE CATCH BASIN W/ STANDARD GRATES | \$ 3,000.00 | \$ 3,000.00 | \$ 3,795.00 | \$ 3,795.00 | \$ 9,222.69 | \$ 9,222.69 |
| 36 | 1 | EA | CONCRETE ENDWALL | \$ 1,130.00 | \$ 1,130.00 | \$ 475.00 | \$ 475.00 | \$ 1,012.00 | \$ 1,012.00 |
| <u>WATERLINE QUANTITIES</u> | | | | | | | | | |
| 37 | 100 | CY | SOLID ROCK EXCAVATION IN TRENCH ALLOWANCE | \$ 35.00 | \$ 3,500.00 | \$ 35.00 | \$ 3,500.00 | \$ 35.00 | \$ 3,500.00 |
| 38 | 3 | EA | FIRE HYDRANT ASSEMBLIES (SECTION 33 11 00) | \$ 4,500.00 | \$ 13,500.00 | \$ 3,495.00 | \$ 10,485.00 | \$ 5,263.16 | \$ 15,789.48 |
| 39 | 325 | LF | 6" DIP WATER LINE | \$ 43.00 | \$ 13,975.00 | \$ 37.95 | \$ 12,333.75 | \$ 60.82 | \$ 19,766.50 |
| 40 | 102 | LF | 2" PVC WATER LINE | \$ 28.00 | \$ 2,856.00 | \$ 21.95 | \$ 2,238.90 | \$ 38.43 | \$ 3,715.86 |
| 41 | 1 | EA | 6" TAPPING TEE, TAPPING VALVE & BOX | \$ 2,800.00 | \$ 2,800.00 | \$ 3,500.00 | \$ 3,500.00 | \$ 5,458.15 | \$ 5,458.15 |
| 42 | 1 | EA | 2" GATE VALVE & BOX | \$ 623.00 | \$ 623.00 | \$ 709.00 | \$ 709.00 | \$ 639.42 | \$ 639.42 |
| 43 | 1 | EA | 2" BLOW-OFF ASSEMBLY (SECTION 33 11 00) | \$ 1,250.00 | \$ 1,250.00 | \$ 999.00 | \$ 998.00 | \$ 1,274.97 | \$ 1,274.97 |
| 44 | 1 | EA | SERVICE CONNECTION TO EXISTING 3/4" -SHORT WITH NEW METER BOX AND SETTER (SECTION 33 11 00) | \$ 1,050.00 | \$ 1,050.00 | \$ 850.00 | \$ 860.00 | \$ 2,318.00 | \$ 2,318.00 |
| 45 | 4 | EA | SERVICE CONNECTION TO EXISTING 3/4" -LONG WITH NEW METER BOX AND SETTER (SECTION 33 11 00) | \$ 1,750.00 | \$ 7,000.00 | \$ 1,595.00 | \$ 6,380.00 | \$ 2,184.00 | \$ 8,736.00 |

| ITEM NO | QUAN | UNIT | DESCRIPTION | SUMMERS TAYLOR | | KINGS GENERAL CONTRACTORS | | BAKERS CONSTR. & EXCAV. | |
|--|------|------|--|----------------|------------------------|---------------------------|------------------------|-------------------------|------------------------|
| | | | | UNIT COST | TOTAL COST | UNIT COST | TOTAL COST | UNIT COST | TOTAL COST |
| <u>ROAD IMPROVEMENTS PAVING QUANTITIES</u> | | | | | | | | | |
| 46 | 175 | GA | TACK COAT (SECTION 32 12 16) | \$ 3.50 | \$ 612.50 | \$ 3.95 | \$ 691.25 | \$ 3.03 | \$ 530.25 |
| 47 | 580 | T | ASPHALT TOPPING 1-1/4" - TDOT E MIX (SECTION 32 12 16) | \$ 101.00 | \$ 58,580.00 | \$ 86.95 | \$ 50,431.00 | \$ 89.28 | \$ 51,782.40 |
| 48 | 600 | SY | ASPHALT MILLING/COLD PLANING (WHERE REQUIRED) - 1.25" (SECTION 32 12 16) | \$ 18.65 | \$ 11,190.00 | \$ 5.25 | \$ 3,150.00 | \$ 3.46 | \$ 2,076.00 |
| PROJECT TOTAL: | | | | | \$ 2,191,341.95 | | \$ 2,218,407.55 | | \$ 2,984,162.56 |



AGENDA ACTION FORM

Appropriate \$14,895.00 from the Office of Criminal Justice Programs of the State of Tennessee-FY17 Local Law Enforcement Equipment Program

To: Board of Mayor and Aldermen
From: Jeff Fleming, City Manager

Action Form No.: AF-333-2016
Work Session: December 19, 2016
First Reading: December 20, 2016

Final Adoption: January 17, 2017
Staff Work By: Captain Gore
Presentation By: Chief Quillin

Recommendation:

Approve the Budget Ordinance.


Executive Summary:

On October 18, 2016, via Action Form 273, the Board of Mayor and Aldermen approved the Mayor executing any and all documents necessary to apply for and receive an OCJP State of Tennessee-FY17 Local Law Enforcement Equipment Program grant. We have been notified that we were approved for \$14,895.00 which will be utilized to purchase equipment and/or technology improvements.

There are no matching fund requirements.

Attachments:

- 1. Budget Ordinance

Funding source appropriate and funds are available: 

| | Y | N | O |
|------------|---|---|---|
| Duncan | — | — | — |
| George | — | — | — |
| McIntire | — | — | — |
| Ottermann | — | — | — |
| Parham | — | — | — |
| Segelhorst | — | — | — |
| Clark | — | — | — |

PRE-FILED CITY RECORDER

ORDINANCE NO. _____

AN ORDINANCE TO AMEND THE JUSTICE ASSISTANT GRANT FUND BUDGET BY APPROPRIATING GRANT FUNDS RECEIVED FROM THE STATE OF TENNESSEE OFFICE OF CRIMINAL JUSTICE PROGRAMS FOR THE YEAR ENDING JUNE 30, 2017; AND TO FIX THE EFFECTIVE DATE OF THIS ORDINANCE

BE IT ORDAINED BY THE CITY OF KINGSPORT, as follows:

SECTION I. That the Justice Assistant Grant Fund budget be amended by appropriating grant funds received from the Office of Criminal Justice Programs for the State of Tennessee FY17 Local Law Enforcement Equipment program in the amount of \$14,895 to the Local Law Enforcement Equipment project (JG1701) for the purchase of equipment and /or technology improvements. No matching funds are required.

| <u>Account Number/Description:</u> | <u>Budget</u> | <u>Incr/<Decr></u> | <u>New Budget</u> |
|--|---------------|--------------------------|-------------------|
| Fund 134: Justice Assist Grant Fund | | | |
| Local Law Enforcement Equip (JG1701) | | | |
| Revenues: | | | |
| 134-0000-331-4537 Bureau of Justice/JAG | \$ 0 | \$ 14,895 | \$ 14,895 |
| Totals: | 0 | 14,895 | 14,895 |
| Expenditures: | | | |
| 134-3030-443-3020 Operating Supplies & Tools | 0 | 14,895 | 14,895 |
| Totals: | 0 | 14,895 | 14,895 |

SECTION II. That this Ordinance shall take effect from and after its date of passage, as the law direct, the welfare of the City of Kingsport, Tennessee requiring it.

JOHN CLARK, Mayor

ATTEST:

JAMES H. DEMMING
City Recorder

APPROVED AS TO FORM:

J. MICHAEL BILLINGSLEY, City Attorney

PASSED ON 1ST READING: _____

PASSED ON 2ND READING: _____



AGENDA ACTION FORM

Approve Agreement Between the City of Kingsport and the Kingsport Life Saving Crew and Approve an Ordinance to Appropriate the Necessary Funding and to Amend the Authorized Positions for FY17

To: Board of Mayor and Aldermen
From: Jeff Fleming, City Manager 

Action Form No.: AF-326-2016
Work Session: December 19, 2016
First Reading: December 20, 2016

Final Adoption: January 17, 2017
Staff Work By: Chief Dye, AC Boyd, City Attorney Mike Billingsley
Presentation By: Chief Dye

Recommendation:

Approve the Ordinance and Resolution.


Executive Summary:

Approval of this action form will authorize the City of Kingsport to accept funds from the Kingsport Life Saving Crew (KLSC) and to authorize the Mayor to sign all appropriate documents for the Inter local Agreement between the City of Kingsport and the KLSC.

It is also necessary to approve a budget ordinance to appropriate the funds from the City as well as from the KLSC. These funds are to hire, equip, and train three (3) personnel to be employed in the fire department to provide services that have been outlined in the agreement. Approval of the ordinance will also amend the authorized positions in the FY-17 budget for the Fire Department.

Attachments:

- 1. Resolution
- 2. Ordinance

Funding source appropriate and funds are available: 

| | Y | N | O |
|------------|---|---|---|
| Duncan | — | — | — |
| George | — | — | — |
| McIntire | — | — | — |
| Olterman | — | — | — |
| Parham | — | — | — |
| Segelhorst | — | — | — |
| Clark | — | — | — |

RESOLUTION NO. _____

A RESOLUTION APPROVING AN INTERLOCAL AGREEMENT
WITH SULLIVAN COUNTY, TENNESSEE AND THE KINGSPORT
LIFE SAVING CREW, INC. AND AUTHORIZING THE MAYOR TO
EXECUTE THE SAME

WHEREAS, Sullivan County, has requested that the city assist in the provision of certain rescue services in the unincorporated areas of the county; and

WHEREAS, Tennessee Code Annotated §§ 12-09-101 through 12-9-112 authorizes public agencies of the state, including the county, the city and the Rescue Squad, to enter into interlocal agreements; and

WHEREAS, a purpose of this Agreement is to provide each of the parties, through their cooperation, a predetermined plan by which each may render aid to the other, as needed, for rescue services; and

WHEREAS, the Rescue Squad has provide to the city with funds in the amount of \$150,000 for the fiscal year 2016-2017 to be used provide three additional firefighters for the city for the purpose of assisting the Rescue Squad 24/7 with rescue services in the city and unincorporated areas of the county; and

Now therefore,

BE IT RESOLVED BY THE BOARD OF MAYOR AND ALDERMEN AS FOLLOWS:

SECTION I. That an interlocal agreement with Sullivan County, Tennessee and the Kingsport Lifesaving Crew, Inc. to assist in the provision of certain rescue services in the unincorporated areas of the county is approved.

SECTION II. Subject to appropriation, three fulltime firefighter positions are created and the city manager is authorized to hire three firefighters, which will assist the city in the fulfillment of the interlocal agreement.

SECTION III. That the mayor, or in his absence, incapacity, or failure to act, the vice-mayor, is authorized and directed to execute, in a form approved by the city attorney, and subject to the requirements of Article X, Section 10 of the Charter of the City of Kingsport, the interlocal agreement with Sullivan County, Tennessee and the Kingsport Lifesaving Crew, Inc., and all other documents necessary and proper to effectuate the purpose of the agreement or this resolution, said agreement being generally as follows:

**INTERLOCAL AGREEMENT FOR
CERTAIN RESCUE SERVICES IN
THE CITY OF KINGSPORT
AND
UNINCORPORATED SULLIVAN COUNTY, TENNESSEE**

THIS INTERLOCAL AGREEMENT ("Agreement") is entered into as of the ____ day of _____, 2016, by Sullivan County, Tennessee, ("County"), the City of Kingsport, Tennessee, ("City"), and the Kingsport Lifesaving Crew, Inc., ("Rescue Squad").

WHEREAS, *Tennessee Code Annotated* §§ 12-9-101 through 12-9-112 authorizes public agencies of the state, including the County, the City and the Rescue Squad, to enter into interlocal agreements; and

WHEREAS, pursuant to *Tennessee Code Annotated* § 12-9-104 the parties have the authority to enter into interlocal agreements to provide services to their citizens; and

WHEREAS, the parties recognize that many emergencies, whether arising from natural disaster, technological hazard, man-made disaster, or other source, transcend political jurisdictional boundaries and that intergovernmental coordination of resources is often the best means to address such; and

WHEREAS, most local governments do not have all the resources that may be needed in certain types of emergencies or the capability of delivering the resources to areas where emergencies exist; and

WHEREAS, it is deemed in the public interest for the parties hereto and their citizens to enter into this Agreement to provide automatic/mutual aid response with regard to rescue services and related technical support services to assure the parties adequate protection; and

WHEREAS, the City and County have requested the Rescue Squad provide certain rescue services in the City and unincorporated areas of the County; and

WHEREAS, the City and County have provided the Rescue Squad with funds in the amount of \$75,000 for fiscal year 2016-2017 that will be used to ensure a provider will be on duty 24/7 (twenty-four hours a day, seven days a week) to assist the rescue squad with rescue services in the City and unincorporated areas of the County; and

WHEREAS, the City firefighters are considered members of the Rescue Squad; and

WHEREAS, the County and the Rescue Squad requests the City to provide an appropriately trained on-duty Kingsport firefighter 24/7 to assist the Rescue Squad in the rescue services in the City and unincorporated areas of the County; and

WHEREAS, the Rescue Squad has provided the City with funds in the amount of \$150,000 for the fiscal year 2016-2017 to be used provide three additional firefighters for the City for the purpose to assist the Rescue Squad 24/7 with rescue services in the City and unincorporated areas of the County; and

WHEREAS, the County has requested that the City, in concert with the Rescue Squad, provide automatic response of rescue services generally described in Exhibit A in the unincorporated areas of the County; and

WHEREAS, a purpose of this Agreement is to provide each of the parties, through their cooperation, a predetermined plan by which each may render aid to the other, as needed, for rescue services.

NOW THEREFORE, pursuant to *Tennessee Code Annotated* § 12-9-101, *et seq.*, and in consideration of the mutual covenants contained herein, the parties agree as follows:

1. The rendering of assistance under the terms of this Agreement shall not be mandatory but the County has requested the City and Rescue Squad, in accordance with the terms of this Agreement, to provide automatic response for the rescue services generally described in Exhibit A in the unincorporated areas of the County when dispatched.

2. As it is has personnel, volunteers and resources available the Rescue Squad will provide rescue services as generally described in Exhibit A, in the City and the unincorporated areas of the County when dispatched; provided the Rescue Squad does not guarantee to answer every call made.

3. The City will provide an on-duty firefighter to assist the Rescue Squad in providing such rescue services; provided the City does not guarantee to answer every call made.

4. The City's on-duty firefighter is a Member of the Rescue Squad and may use or operate any equipment, supplies or resources of the Rescue Squad, including the operation of vehicles owned or used by the Rescue Squad.

5. The City will not respond to such calls if in the sole discretion of the Fire Chief, or designee, it is determined that the personnel to provide rescue services pursuant to this Agreement is not reasonably available or by providing such personnel could adversely affect the security and safety of the City and its residents.

6. The on-duty firefighter of the City responding to a call pursuant to this Agreement will be under the supervision of the Fire Chief, or designee.

7. The conduct of the City's on-duty firefighter shall be the responsibility of the City's Fire Chief.

8. The Rescue Squad under the terms of this Agreement shall be liable and responsible for the damages to its own apparatus and equipment, even if the damage is caused by the City's on-duty firefighter. The provisions of the Tennessee Governmental Tort Liability Act shall apply to this Agreement.

9. The responding party assumes no responsibility or liability for damage to property or injury to any person that may occur at the actual scene of an emergency due to actions taken in responding

under this Agreement. Notwithstanding anything contained in this Interlocal Agreement to the contrary the on-duty City firefighter is a Member of the Rescue Squad and shall be considered as, and acting as, a Member of the Rescue Squad for tort liability purposes.

10. No compensation will be paid by the parties to the other parties for the mutual assistance rendered pursuant to this Agreement.

11. The parties hereto agree that no claim for compensation will be made by any party to any other party for loss, damage, or personal injury that may occur in consequence of activities conducted hereunder, and that any and all claims asserting such are hereby expressly waived.

12. At all times the on-duty City firefighter shall be an employee of the City considered acting within the course and scope of their employment for purposes of Worker's Compensation Law of the State of Tennessee.

13. The provisions of this part shall not be construed as creating a duty on the part of the responding party to stay at the scene of a call or emergency for any length of time. The responding party may depart the scene of a call or an emergency at any time at the discretion of the officer in command of the responding party.

14. All personnel employed by the parties to this Agreement shall during such time that said personnel are actually providing aid outside the jurisdictional limits of the employing party pursuant to a request for aid made in accordance with this Agreement, shall have the same powers, duties, rights, privileges, and immunities as if said personnel were performing their duties within the political subdivision in which they are normally employed.

15. The party having financial responsibility for the agency providing services, personnel, equipment, communication or facilities utilized pursuant to the provisions of this Agreement shall bear any loss or damage to the same and shall pay any and all expenses incurred in the maintenance and operation of same.

16. All exemption from ordinance and rules, and all pension, insurance, relief, disability, workmen's compensation, salary, death, and other benefits which apply to the activity of such officers, agents, or employees of any party when performing their respective functions within the territorial limits of their respective party's jurisdiction shall apply to them to the same degree, manner and extent while engaged in the performance of any provisions of this Agreement. A provision of this Agreement shall apply with equal effect to paid and auxiliary employees.

17. The term of this Agreement shall be for a period of one year from the date first herein set forth, provided any party may terminate this Agreement without cause upon written notice to the other parties at least sixty days prior to the effective date of the termination.

18. This Agreement shall take effect upon execution by the authorized representative of each party after approval of the governing body of each party, and shall remain in full force and effect until terminated or expiration of the term.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date written above.

[Acknowledgements Deleted for Inclusion in this Resolution]

EXHIBIT A

EFFECTIVE OCTOBER 10, 2016

The KINGSPORT LIFESAVING CREW SHOULD BE DISPATCHED ON THE FOLLOWING

1. ANY RESCUE RELATED CALL
2. MOTOR VEHICLE ACCIDENT WITH INJURIES(SUSPECTED or CONFIRMED)
INCLUDES VEHICLE vs PEDESTRIAN / CYCLIST
3. STRUCTURE FIRES
4. INDUSTRIAL OR CONSTRUCTION ACCIDENTS (MULTIPLE PATIENTS OR
EXTRICATION REQUIRED
5. STRUCTURAL COLLAPSE
6. TRENCH RESCUE
7. CONFINED SPACE RESCUE
8. SWIFT WATER RESCUE / OR DROWNING
9. HIGH ANGLE RESCUE
10. CAVE RESCUE
11. REMOTE AREA
12. IN ADDITION* TO FIRST RESPONDER ON "ECHO" TYPE CALLS *
 - a. Such as: CARDIAC ARREST
 - b. RESPIRATOR ARREST
 - c. AIRWAY OBSTRUCTION
 - d. MULTIPLE PATIENTS
13. BACK UP TO VFD FIRST RESPONDERS ON MEDICAL CALLS IN COUNTY

14. PUBLIC ASSIST INSIDE CITY (no chance of injury or illness requiring transport)
15. PUBLIC ASSIST COUNTY ONLY IF NO OTHER FIRST RESPONDER AVAILABLE*
16. At REQUEST OF ANY RESPONDING AGENCY OR DISPATCH CENTER
17. ANY CALL DISPATCH DETERMINES THE EQUIPMENT/ SERVICE OF KLSC IS NEEDED

[Acknowledgements Deleted for Inclusion in this Resolution]

SECTION IV. That the mayor is further authorized to make such changes approved by the mayor and the city attorney to the amendment/agreement set out herein that do not substantially alter the material provisions of the agreement, and the execution thereof by the mayor and the city attorney is conclusive evidence of the approval of such changes.

SECTION V. That the board finds that the actions authorized by this resolution are for a public purpose and will promote the health, comfort and prosperity of the citizens of the city.

SECTION VI. That this resolution shall take effect from and after its adoption, the public welfare requiring it.

ADOPTED this the 20th day of December, 2016.

JOHN CLARK, MAYOR

ATTEST:

JAMES H. DEMMING, CITY RECORDER

APPROVED AS TO FORM:

J. MICHAEL BILLINGSLEY, CITY ATTORNEY

ORDINANCE NO. _____

AN ORDINANCE TO AMEND THE GENERAL FUND BUDGET BY APPROPRIATING FUNDS RECEIVED FROM THE KINGSPORT LIFE SAVING CREW TO ASSIST IN HIRING THREE FIREFIGHTERS FOR THE YEAR ENDING JUNE 30, 2017; AND TO FIX THE EFFECTIVE DATE OF THIS ORDINANCE

BE IT ORDAINED BY THE CITY OF KINGSPORT, as follows:

SECTION I. That the General Fund operating budget be amended by appropriating funds received from the Kingsport Life Saving Crew in the amount of \$75,000 and by transferring funds from the Life Saving Crew Special programs budget to assist in funding three additional firefighters.

SECTION II. That the General Fund budget be amended by amending the authorized positions in the Fire Department 110-3501 by adding three firefighter positions at a pay grade B32 step 1 for Fiscal Year 2016-2017.

| <u>Account Number/Description:</u> | <u>Budget</u> | <u>Incr/<Decr></u> | <u>New Budget</u> |
|---|------------------|--------------------------|-------------------|
| <u>Fund 511: Fleet Fund</u> | | | |
| <u>Revenues:</u> | \$ | \$ | \$ |
| 110-0000-364-2010 From Corporations/Kpt. Lifesaving Crew | 17,000 | 75,000 | 92,000 |
| Totals: | 17,000 | 75,000 | 92,000 |
| | | | |
| <u>Expenditures:</u> | \$ | \$ | \$ |
| 110-1005-405-8075 Life Saving Crew | 75,000 | (75,000) | 0 |
| 110-3501-451-1010 Salaries & Wages | 5,426,100 | 93,700 | 5,519,800 |
| 110-3501-451-1011 Overtime | 200,000 | 6,580 | 206,580 |
| 110-3501-451-1020 Social Security | 405,100 | 7,200 | 412,300 |
| 110-3501-451-1030 Health Ins. | 950,000 | 35,000 | 985,000 |
| 110-3501-451-1040 Retirement | 965,800 | 6,000 | 971,800 |
| 110-3501-451-1060 Workmen's Comp | 63,800 | 1,400 | 65,200 |
| 110-3501-451-1061 Unemployment | 4,600 | 120 | 4,720 |
| Totals: | 8,090,400 | 75,000 | 8,165,400 |

SECTION III. That this Ordinance shall take effect from and after its date of passage, as the law direct, the welfare of the City of Kingsport, Tennessee requiring it.

JOHN CLARK, Mayor

ATTEST:

ANGIE MARSHALL
Deputy City Recorder



AGENDA ACTION FORM

Annex/Adopt Plan of Service for the 1392 Ridgecrest Avenue Annexation and Amend Zoning

To: Board of Mayor and Aldermen
 From: Jeff Fleming, City Manager

Action Form No.: AF-294-2016
 Work Session: December 5, 2016
 First Reading: December 6, 2016

Final Adoption: December 20, 2016
 Staff Work By: J. Harmon
 Presentation By: J. Harmon

Recommendation:

- ~~Hold public hearing~~
- ~~Approve resolution for the 1392 Ridgecrest Avenue annexation~~
- Approve ordinance amending the zoning ordinance for the 1392 Ridgecrest Avenue annexation
- ~~Approve resolution adopting a plan of services for the annexation area~~

Executive Summary:

This is the owner-requested 1392 Ridgecrest Avenue annexation of approximately 0.14 acres/1 parcel located off of Ridgecrest Avenue. The current county zoning of the property is County R-3A (High-Density Residential District). The proposed city zoning for the area is City R-1B (Single Family Residential District) The applicant, Jessica Keizer, is requesting annexation to take advantage of the full offering of City services, especially city schools. During their October 2016 regular meeting, the Kingsport Regional Planning Commission voted unanimously to send a favorable recommendation for the annexation, zoning, and plan of services to the Board of Mayor and Aldermen for this annexation. The Notice of Public Hearing was published November 17, 2016.

Attachments:

1. Notice of Public Hearing
2. Annexation Resolution
3. Zoning Ordinance
4. POS Resolution
5. Staff Report
6. Maps

| | <u>Y</u> | <u>N</u> | <u>O</u> |
|------------|----------|----------|----------|
| Duncan | — | — | — |
| George | — | — | — |
| McIntire | — | — | — |
| Olterman | — | — | — |
| Parham | — | — | — |
| Segelhorst | — | — | — |
| Clark | — | — | — |



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| Olterman | — | — | — |
| Parham | — | — | — |
| Segelhorst | — | — | — |
| Clark | — | — | — |

NOTICE OF PUBLIC HEARING

NOTICE IS HEREBY GIVEN to all citizens of the City of Kingsport, Tennessee, to all persons interested, and the public at large that the City of Kingsport Board of Mayor and Aldermen will conduct a Public Hearing during its regular business meeting on Tuesday, December 6, 2016, to consider the annexation, zoning, and plan of services for the 1392 Ridgecrest Avenue annexation. The regular business meeting will begin at 7:00 p.m. in the large courtroom located on the second floor of City Hall, at 225 W. Center Street, Kingsport, Tennessee.

The property proposed for annexation is generally described as follows:

BEGINNING at a point, said point being the southern corner of parcel 13, Group B, Tax Map 30B; thence in a northwestern direction, following the western boundary of parcel 13, approximately 79 feet to a point, said point being the northwestern corner of parcel 13; thence in a northeastern direction, approximately 75 feet to a point, said point being the northeastern corner of parcel 13; thence in a southeastern direction, approximately 79 feet to a point, said point being the southeastern corner of parcel 13 and the northeastern corner of parcel 12.10; thence in a southwestern direction approximately 75 feet the point of BEGINNING, and being all of parcel 13, Group B Tax Map 30B as shown on the August 2015 Sullivan County Tax Map.

All interested persons are invited to attend this meeting and public hearing. A detailed map, description, and plan of services document is on file in the offices of the City Manager, Planning Manager, and Kingsport Library for inspection. Additional information concerning this proposal may be obtained by contacting the Kingsport Planning Division of the Development Services Department, telephone 423-229-9485.

CITY OF KINGSPORT
James H. Demming, City Recorder
P1T: 11/17/16

RESOLUTION NO. _____

A RESOLUTION TO ANNEX THAT CERTAIN TERRITORY ADJOINING THE PRESENT CORPORATE BOUNDARIES OF THE CITY OF KINGSPORT, EMBRACING THAT CERTAIN PART OF THE 11th CIVIL DISTRICT OF SULLIVAN COUNTY, TENNESSEE, AND KNOWN AS THE 1392 RIDGECREST AVENUE ANNEXATION, AS HEREINAFTER DESCRIBED; TO INCORPORATE THE SAME WITHIN THE CORPORATE BOUNDARIES OF THE CITY OF KINGSPORT, TENNESSEE; AND TO FIX THE EFFECTIVE DATE OF THIS RESOLUTION

WHEREAS, a public hearing before the board of mayor and aldermen of the City of Kingsport, Tennessee, was held on the 6th day of December 2016, and notice thereof published in the Kingsport Times-News on the 17th day of November 2016; and

WHEREAS, the Board of Mayor and Aldermen finds that the annexation will materially benefit the health, safety, and welfare of the citizens and property owners of the city and the territory annexed; and

WHEREAS, the annexation of such property is deemed necessary for the welfare of the residents and property owners thereof and the city as a whole; and

WHEREAS, pursuant to *Tenn. Code Ann.* § 6-51-104(a) the property owners of the affected territory have requested annexation of their property by the City of Kingsport by submitting written consent signed by the property owners to the city; and

WHEREAS, a plan of services for this area was adopted by resolution on the 15th day of November 2016, as required by *Tenn. Code Ann.* § 6-51-102, *et seq.*

BE IT ORDAINED BY THE CITY OF KINGSPORT, AS FOLLOWS:

SECTION I. Pursuant to the authority conferred by Tennessee Code Annotated §6-51-102 *et seq.* and upon written consent signed by the property owners in the affected territory submitted to the city there is here-by annexed to the City of Kingsport, Tennessee, and incorporated within the corporate boundaries thereof, the following described territory adjoining the present corporate boundaries: embracing that certain part of Civil District No. 11 of Sullivan County, Tennessee, and more fully described to-wit:

BEGINNING at a point, said point being the southern corner of parcel 13, Group B, Tax Map 30B; thence in a northwestern direction, following the western boundary of parcel 13, approximately 79 feet to a point, said point being the northwestern corner of parcel 13; thence in a northeastern direction, approximately 75 feet to a point, said point being the northeastern corner of parcel 13; thence in a southeastern direction, approximately 79 feet to a point, said point being the southeastern corner of parcel 13 and the northeastern corner of parcel 12.10; thence in a southwestern direction approximately 75 feet the point of BEGINNING, and being all of parcel 13, Group B Tax Map 30B as shown on the August 2015 Sullivan County Tax Map.

SECTION II. That this resolution shall take effect thirty (30) days from and after the date of its adoption, the public welfare of the citizens of Kingsport, Tennessee requiring it.

ADOPTED this the 6th day of December 2016.

JOHN CLARK, Mayor

ATTEST:

JAMES H. DEMMING, City Recorder

APPROVED AS TO FORM:

J. MICHAEL BILLINGSLEY, City Attorney

**PRE-FILED
CITY RECORDER**

ORDINANCE NO. _____

AN ORDINANCE TO FURTHER AMEND THE ZONING CODE, TEXT AND MAP, TO REZONE PROPERTY LOCATED ON RIDGECREST AVENUE FROM COUNTY R-3A, HIGH DENSITY RESIDENTIAL DISTRICT TO CITY R-1B, LOW DENSITY RESIDENTIAL DISTRICT IN THE 11TH CIVIL DISTRICT OF SULLIVAN COUNTY; TO FIX A PENALTY FOR THE VIOLATION OF THIS ORDINANCE; AND TO FIX THE EFFECTIVE DATE OF THIS ORDINANCE

BE IT ORDAINED BY THE CITY OF KINGSPORT, AS FOLLOWS:

SECTION I. That the zoning code, text, and map, be and the same is hereby further amended to rezone property located on Ridgecrest Avenue from County R-3A, High Density Residential District to City R-1B, Single Family Residential District in the 11th Civil District of Sullivan County; said area to be rezoned being further and more particularly described as follows:

BEGINNING at a point, said point being the southern corner of parcel 13, Group B, Tax Map 30B; thence in a northwestern direction, following the western boundary of parcel 13, approximately 79 feet to a point, said point being the northwestern corner of parcel 13; thence in a northeastern direction, approximately 75 feet to a point, said point being the northeastern corner of parcel 13; thence in a southeastern direction, approximately 79 feet to a point, said point being the southeastern corner of parcel 13 and the northeastern corner of parcel 12.10; thence in a southwestern direction approximately 75 feet the point of BEGINNING, and being all of parcel 13, Group B Tax Map 30B as shown on the August 2015 Sullivan County Tax Map.

SECTION II. Any person violating any provisions of this ordinance shall be guilty of an offense and upon conviction shall pay a penalty of FIFTY DOLLARS (\$50.00) for each offense. Each occurrence shall constitute a separate offense.

SECTION III. That this ordinance shall take effect from and after the date of its passage and publication, as the law directs, the public welfare of the City of Kingsport, Tennessee requiring it.

JOHN CLARK
Mayor

ATTEST:

JAMES H. DEMMING
City Recorder

APPROVED AS TO FORM:

J. MICHAEL BILLINGSLEY
City Attorney

PASSED ON 1ST READING _____
PASSED ON 2ND READING _____

RESOLUTION NO. _____

A RESOLUTION ADOPTING A PLAN OF SERVICES FOR THE
1392 RIDGECREST AVENUE ANNEXATION OF THE CITY OF
KINGSPORT, TENNESSEE

WHEREAS, before any territories may be annexed under Tennessee Code Annotated §6-51-102, the governing body shall have previously adopted a plan of services setting forth the identification and timing of municipal services; and

WHEREAS, before any such plan of services shall have been adopted, it must have been submitted to the local planning commission for study and a written report; and

WHEREAS, a plan of services for the proposed 1392 Ridgecrest Avenue annexation was submitted to the Kingsport Regional Planning Commission on October 20, 2016, for its consideration and a written report; and

WHEREAS, prior to the adoption of a plan of services, the City shall hold a public hearing; and

WHEREAS, a public hearing was held December 6, 2016; and

WHEREAS, notice of the time and place of the public hearing shall be published in a newspaper of general circulation in the municipality a minimum of seven (7) days prior to the hearing; and

WHEREAS, notice of the time and place of the public hearing was published in the Kingsport Times-News on November 18, 2016; and

WHEREAS, the City of Kingsport, pursuant to the provisions of Tennessee Code Annotated, §6-51-102 has endeavored to annex a portion of the 11th Civil District of Sullivan County, Tennessee, commonly known as the 1392 Ridgecrest Avenue Annexation, said area being bounded and further described as follows:

BEGINNING at a point, said point being the southern corner of parcel 13, Group B, Tax Map 30B; thence in a northwestern direction, following the western boundary of parcel 13, approximately 79 feet to a point, said point being the northwestern corner of parcel 13; thence in a northeastern direction, approximately 75 feet to a point, said point being the northeastern corner of parcel 13; thence in a southeastern direction, approximately 79 feet to a point, said point being the southeastern corner of parcel 13 and the northeastern corner of parcel 12.10; thence in a southwestern direction approximately 75 feet the point of BEGINNING, and being all of parcel 13, Group B Tax Map 30B as shown on the August 2015 Sullivan County Tax Map.

AND WHEREAS, the City of Kingsport deems it advisable to adopt a Plan of Services for the proposed annexation area. Now, therefore,

BE IT RESOLVED BY THE BOARD OF MAYOR AND ALDERMEN OF THE CITY OF KINGSPORT, TENNESSEE, AS FOLLOWS:

SECTION I. That a Plan of Services for the 1392 Ridgecrest Avenue Annexation as bounded and described above is hereby adopted, subject to an enactment of an annexation resolution for the annexation area, the said Plan of Services to be as follows:

**1392 Ridgecrest Avenue Annexation
Plan of Services**

1. Police Protection

- A. On the date of annexation the Kingsport Police Department will respond to all calls for service for police protection, including criminal calls, traffic accidents and traffic related occurrences, and other prevention and interdiction calls for service.
- B. Effective with annexation, all resources currently available within the Kingsport Police Department will become available to the citizens of the area. The Kingsport Police Department has an authorized accredited force of 116 police officers and approximately 60 civilian personnel to provide services 24-hours per day, 365 days a year.
- C. The Kingsport Police Department is accredited with the Commission on Accreditation for Law Enforcement Agencies and has met 358 mandatory and 72 other-than mandatory standards in order to attain this status. Kingsport Police Department was only the third accredited department in the State of Tennessee and the first in northeast Tennessee.
- D. Upon annexation, existing police department personnel will be utilized to provide services by expanding the contiguous patrol sections to include the newly incorporated area. Existing police personnel and equipment will be shifted to provide needed coverage of the area. Each section will be patrolled by units of the Kingsport Police Department and will be augmented by other departments and units such as investigators, specialized assigned details etc.
- E. When needed, the Kingsport Police Department will hire additional police officers to provide more response to annexed areas. The officers will undergo 450 hours of basic recruit training before being certified as a police officer. Upon completion of the classroom training, the officers will undergo 480 hours of field officer training where they will work and be trained by designated training officers.
- F. The Kingsport Police Department will provide upon request crime prevention programs, traffic safety education programs, drug education/awareness programs including D.A.R.E. to the citizens of the area. Additional programs include department personnel to address groups on law enforcement topics or concerns, home and business security checks and establishing and maintaining neighborhood watch programs.
- G. The Kingsport Police Department currently maintains an approximate 5 minute average response time to emergency and urgent calls within the corporate limits.

2. Fire Protection

- A. On the operative date of annexation, the City of Kingsport will answer all calls for service for fire, disaster, hazardous materials, special rescue and medical first responder. The Kingsport Fire Department goes beyond the basic fire services required of a City Government.
- B. The City of Kingsport Fire Department is an Internationally Accredited Agency, one of only four in the State of Tennessee. We operate 8 fire stations, housing fire suppression, hazardous materials, rescue and other emergency equipment. Staffed by 106 full-time professional firefighters, 24 hours a day, 365 days a year to provide service. The City of Kingsport maintains a Class 2 insurance rating saving its residents the most possible on their insurance rates. Our response time average is approximately 4 minutes, 53 seconds after we receive the call from our dispatch center.
- C. Free fire safety inspections will be available upon request on the effective date of annexation. Water lines will be upgraded within five (5) years after the effective date of annexation to provide needed fire flow to protect the properties.
- D. All structures must be brought into compliance with the City-wide smoke detector ordinance within thirty (30) days of the effective date of annexation. This is strictly to provide residents with the best fire protection service available.
- E. The City of Kingsport Fire Department has a Hazardous Materials Response Team, which has state-of-the-art equipment to handle all calls of an emergency nature dealing with incidents relating to hazardous chemicals. The department also has a Technical Rescue Team that has specialized rescue capabilities and equipment for all types of hazards.
- F. The City of Kingsport Fire Department provides First Responder emergency medical services to all life-threatening medical emergencies resulting from serious illness or injury. We provide advanced life support (paramedics) for victims until ambulance service arrives for transport.

3. Water

- A. Water will be billed at in City rates rather than out of City rates, which will result in a reduction in water rates for annexed citizens already receiving City water. Those not currently receiving City water will be required to obtain a water-tap in order to obtain City water.
- B. The City of Kingsport Water Department operates and maintains a 28 MGD water filtration plant, 22 water storage tanks, 15 water booster station and over 750 miles of waterlines. The water treatment plant is staffed by state certified operators 24 hours a day, 365 days a year to provide safe drinking water to our customers.
- C. The City of Kingsport Water Department meets or exceeds water quality standards set forth by the State of Tennessee and the United States Environmental Protection Agency. The plant was the recipient of the 2005 Julian Fleming Award for Outstanding Water Treatment Plants.

- D. The Kingsport Water Treatment Plant has a capacity of 28 MGD and an average daily demand of 15 MGD leaving a surplus capacity of approximately 18 MGD for increased demand.
- E. The Water Distribution Division is managed with a professional staff who are members of key professional organizations such as: American Water Works Association, Tennessee Association of Utility Districts, National Society of Professional Engineers, American Society of Civil Engineers. Several key members of the staff also hold certificates and licenses in the operations of a distribution system in the State of Tennessee.

4. Electricity

Electric service in this area is currently under the jurisdiction of American Electric Power and is currently available.

5. Sanitary Sewer

- A. City of Kingsport sanitary sewer currently serves the annexation area.
- B. Sanitary sewer fees are based on usage of water and are direct reflection of the amount of water used by the resident.
- C. The City of Kingsport operates and maintains a 12.4 MGD wastewater treatment plant, 88 sewer lift stations and approximately 525 miles of sanitary sewer collection lines to provide sewer service to our customers.
- D. The City of Kingsport Wastewater Treatment Plant recently experienced over 21 million dollars of improvements to provide a reliable and dependable infrastructure.
- E. The wastewater treatment plant is staffed with State Certified Operators 24 hours a day, 365 days a year. Treatment plant operators exceed State of Tennessee training requirements.
- F. The Sewer Collection Division is managed with a professional staff who are members of key professional organizations such as: Water Environment Federation, Tennessee Association of Utility Districts, National Society of Professional Engineers, American Society of Civil Engineers. Several key members of the staff also hold certificates and licenses in the operations of a collection system in the State of Tennessee.

6. Solid Waste Disposal

Sanitation garbage (routine household refuse), trash (grass clippings, tree trimmings, bulky items), and recycling collection will be provided to the annexed area on the same basis as that received by properties located within the existing City Limits. Collection will begin within thirty (30) days following the effective date of annexation. Members of the collection crews receive ongoing training in their fields. The City of Kingsport also owns and operates a demolition landfill that residents can use for a fee. That landfill is supervised by a SWANA certified Manager of Landfill Operations. This supervisor also holds other certifications from SWANA and TDEC.

7. Public Road/Street Construction & Repair

- A. Emergency and routine maintenance of streets and street signs, pavement markings and other traffic control devices will begin on the operative date of annexation. Emergency pothole repairs are generally made within 24 hours of notification. Crews are available on a 24 hour basis for major emergency call-outs.
- B. Cleaning of streets of snow and ice clearing will begin on the operative date of annexation on the same basis as now provided within the present City limits. This includes major thoroughfares, State highways and emergency route to hospitals as first priority, with secondary/collector streets and finally residential streets in that order as priority II. Snow removal crews receive yearly training to help keep them up to date with changes in procedures and techniques. Snow removal crews also respond on a 24 hour emergency call in basis.
- C. Streets affected by utility construction will be repaired as soon as possible after the utility construction is completed.
- D. Routine Right of Way maintenance is also provided on the effective date of annexation. These crews include a certified Arborist, certified Pesticide Applicators, and other trained personnel to respond to emergencies and routine maintenance requests.
- E. The Streets and Sanitation Division is managed and supervised by a professional staff who are members in good standing of several Professional Organizations such as the Tennessee Chapter of the American Public Works Association, the national chapter of the American Public Works Association, the Volunteer Chapter of the Solid Waste Association of North America, the national chapter of the Solid Waste Association of North America, the Tennessee Urban Forestry Council, the Tennessee Nursery and Landscape Association, National Arbor Day Association, Tennessee Vegetation Management Association, and the Keep Kingsport Beautiful Council. The staff receives ongoing training through these Professional Organizations. Members of the staff are active in their respective organizations. Members of the staff also serve as trainers and instructors for various training venues.

8. Recreational Facilities

- A. Residents of the annexed area may use existing City recreational facilities, programs, parks, etc. on the effective date of annexation at City rates rather than out of City rates.
- B. Residents of the annexed area may use all existing library facilities and will be exempt from the non-residential fee on the effective date of annexation.
- C. Residents of the annexed area (50 years or older) will be eligible to use the Senior Citizens Center with no non-residential fees and with transportation provided on the effective date of annexation.

- D. The Department of Parks and Recreation has more than 4,800 acres of city-owned land to provide parks and recreation programs to all our citizens. The amenities and programs offered by many of the parks and recreation areas through the Leisure Services Department include playing fields for baseball and softball, basketball courts, play grounds, volley ball, tennis courts, a skate park and concession areas and restrooms to serve these facilities. Other amenities offered include General meeting areas, multi-function areas, Community Centers, senior programs, Theater and Cultural Arts programs. Many of the parks have walking and hiking trails and Bays Mountain, the City's largest park, includes animal habitats, a farm area, camping sites, and a Planetarium.

9. Street Lighting

The annexation area does not contain any streets.

10. Zoning Services

- A. The area will be zoned R-1B (Single family residential).
- B. The Kingsport Regional Planning Commission is the comprehensive planning agency and administers zoning and land subdivision regulations for the City of Kingsport as provided in State law. The Kingsport Regional Planning Commission consists of nine (9) commissioners appointed by the Mayor of the City of Kingsport.
- C. The Kingsport Regional Planning Commission will exercise planning and zoning activities for the area being annexed upon the operative date of annexation.
- D. Appeals to the Zoning regulations are heard by the Board of Zoning Appeals and variances are granted if the request meets the criteria established for granting variances under Tennessee Code Annotated.

11. Schools

- A. Upon annexation, children currently attending County schools will be allowed to attend City of Kingsport schools or remain in County schools per the prevailing County policy at the time.
- B. Tuition paid by non-city residents now attending City schools will cease upon the effective date of annexation and those students may continue to attend City schools without charge until graduation.
- C. Children at all grade levels may attend City schools tuition-free. Transportation will be provided for students, whose homes are more than 1.5 miles from their designated school, beginning with the school year following annexation.

The previous sections are titled and listed in the order prescribed by Tennessee Code Annotated 6-51-102(b) (2). The following sections are provided by the City of Kingsport in addition to the minimum requirements.

12. Traffic Control

The City will verify all street name signs and traffic control devices in accordance with the Manual on Uniform Traffic Control Devices.

13. Inspection Services

All inspection services now provided by the City on a fee basis (building, electrical, plumbing, gas, housing, sanitation, etc.) will begin in the annexed area on the effective date of annexation. A free safety inspection of plumbing vents will be required at the time sewer connections are made to make sure that proper protection is available to prevent sewer gas from entering houses.

14. Animal Control

Animal control service equivalent to that presently provided within the City will be extended to the annexed area on the effective date of annexation.

15. Storm Sewers

The installation of any needed storm sewers will be accomplished in accordance with existing standards and engineering principles provided for by present City policies. Maintenance of existing storm sewer and drainage systems is also provided on an as needed basis. Response to emergency storm drainage calls is also provided on a 24 hour call in basis.

16. Leaf Removal

The City will collect loose leaves with the vacuum truck between October 15 and January 15, and it will be provided to the annexation area on the same basis as it is currently provided to other City residents beginning on the effective date of annexation. Bagged leaves are collected year round. Leaves are transported to the City's Demolition Landfill where they are composted and used as an amendment to existing dirt stockpiles. This enhanced dirt is then used on City Projects for backfill and topsoil applications.

17. Litter Control

The City's litter control program will be extended to the area on the effective date of annexation. It is provided on a regular schedule along major routes and on an "as needed" basis throughout the City.

18. Graffiti Control

The City's graffiti control program, which is aimed at eliminating graffiti on public rights-of-way such as bridge abutments, street signs, railroad underpasses, and the like, will be extended to the area on the effective date of annexation. It is provided on an "as needed/on call" basis. Response time for "offensive" graffiti removal is generally within 48 hours.

19. Other Services

All other services not classified under the foregoing headings such as Executive, Judicial, Legal, Personnel, Risk Management, Fleet Maintenance, Finance and Administration and other support services will be available upon the effective date of annexation.

SECTION II. This Resolution shall be effective from and after its adoption, the public welfare requiring it.

ADOPTED this the 6th day of December, 2016.

ATTEST:

JOHN CLARK, Mayor

JAMES H. DEMMING, City Recorder

APPROVED AS TO FORM:

J. MICHAEL BILLINGSLEY, City Attorney

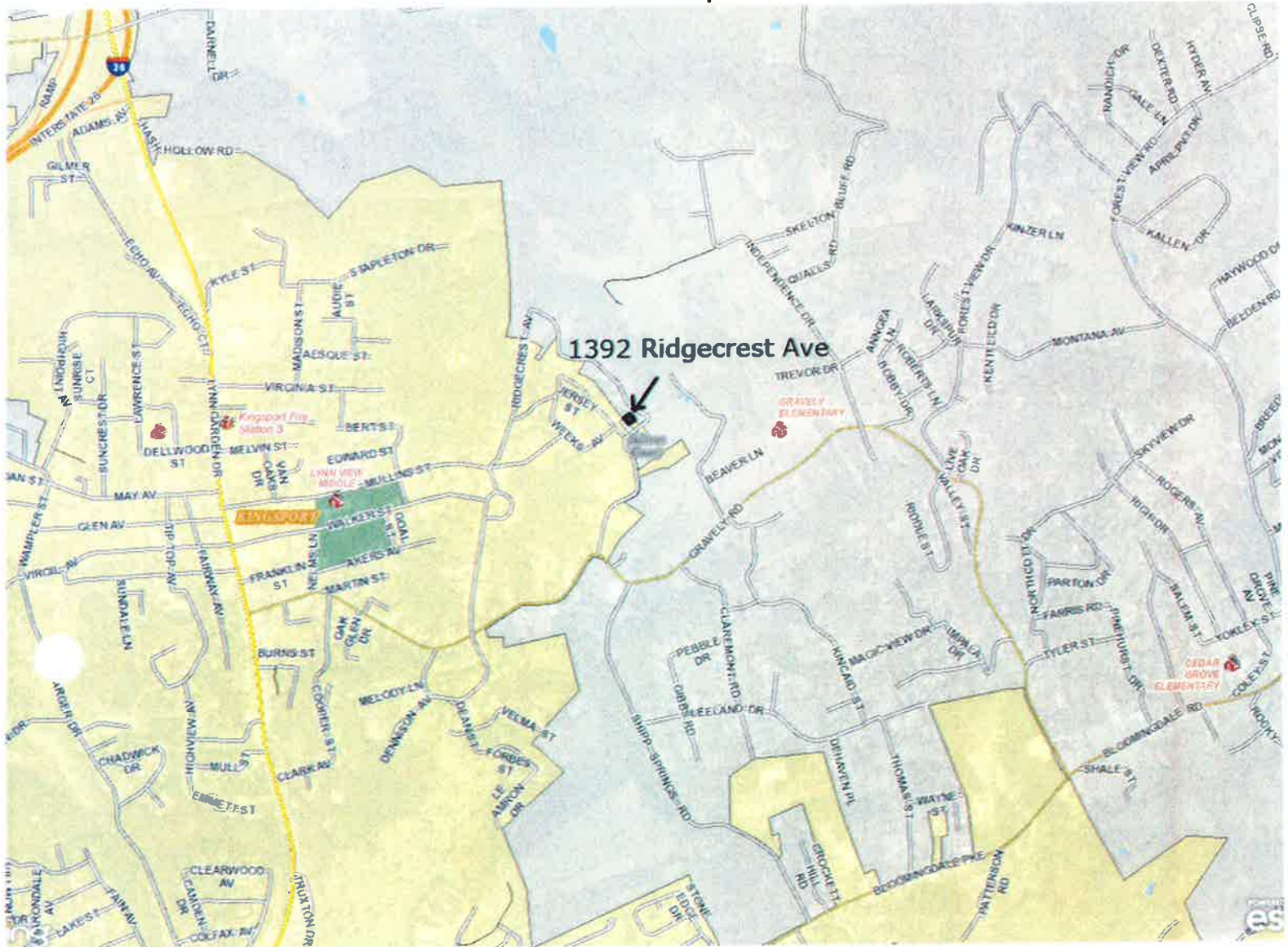
Kingsport Regional Planning Commission

Annexation Report

File Number 16-301-00004

| | | | |
|---|-----------------------------------|--|-------------------------|
| Property Information | 1392 Ridgecrest Avenue Annexation | | |
| Address | 1392 Ridgecrest Avenue | | |
| Tax Map, Group, Parcel | TM 30B, Group B, Parcel 13 | | |
| Civil District | 11 th | | |
| Overlay District | N/A | | |
| Land Use Plan Designation | Single Family Residential | | |
| Acres | 0.14 +/- | | |
| Existing Use | Residential | Existing Zoning | County R-3A |
| Proposed Use | Residential | Proposed Zoning | City R-1B |
| Owner Information | | | |
| Name: Jessica Keizer Address: 3544 Crestwood Dr. City: Kingsport State: TN Zip Code: 37664 Email: jskeizer@charter.net Phone Number: (423) 817-8349 | | Intent: <i>Annexation by request of the subject parcel, enhancing health, safety, and welfare throughout the Kingsport Planning Region.</i> | |
| Planning Department Recommendation | | | |
| <p>RECOMMENDATION: APPROVAL to recommend the Annexation, Zoning, and Plan of Services to the BMA</p> <p>The Kingsport Planning Division recommends approval for the following reasons:</p> <ul style="list-style-type: none"> • <i>The City of Kingsport should utilize annexation as urban development occurs and is necessary for present and future growth in an orderly manner.</i> • <i>It is reasonably necessary for the welfare of the residents and property owners of the affected territory.</i> • <i>The City of Kingsport can provide services through its Plan of Services that the County cannot provide to the residents of the area.</i> • <i>Annexation spurs economic growth by providing basic services at a reasonable cost and allows those costs to be spread fairly to all who enjoy those services.</i> • <i>It is reasonably necessary for the welfare of the residents and property owners of the municipality as a whole.</i> <p>Staff Field Notes and General Comments: This is a property owner-requested annexation submitted by Jessica Keizer. Mr. Benton contacted the city staff about a potential annexation so that all city services could be received, especially City Schools. Currently, the property is zoned County R-3A and staff is proposing City R-1B. This annexation meets the criteria set forth by the interim annexation policy as a small-scale residential annexation.</p> <p>Utilities: City of Kingsport water and sewer service currently serves the annexation area.</p> | | | |
| Planner: | Jessica Harmon | Date: | September 28, 2016 |
| Planning Commission Action | | Meeting Date: | October 20, 2016 |
| Approval: | | | |
| Denial: | | Reason for Denial: | |
| Deferred: | | Reason for Deferral: | |

Location Map



Current City Zoning Map



Future Land Use Map



Cost

1392 Ridgecrest Ave

Cost Estimate/ tax records as of August 2016

| Revenues | One Time | Reoccurring (annual) |
|----------------------------|----------|----------------------|
| Property Taxes | X | \$268.05 |
| State Shared | X | \$336.00 |
| Sewer Tap Fees | X | X |
| Water & Sewer Rev (loss) * | X | (\$24.27) |
| Total | x | \$579.78 |

\$2.07 city property taxes
 \$112.00 x 3 residents
 Sewer Customer
 2,000 gallon/month avg

*current water & sewer customer, therefore there will be a \$24.27 water/sewer revenue loss when annexed due to inside city rates.

| Expenses | One Time | Reoccurring (annual) |
|-------------------------|-------------|----------------------|
| Operating Budget | | |
| Police & Fire Service | 0.00 | 0.00 |
| Transit Service | 0.00 | 0.00 |
| Street Lighting | 0.00 | 0.00 |
| Traffic Controls | 0.00 | 0.00 |
| Streets & Sanitation | 0.00 | 0.00 |
| Subtotal | 0.00 | 0.00 |
| Capital Budget | | |
| Water | 0.00 | 0.00 |
| Sewer | 0.00 | 0.00 |
| Streets | 0.00 | 0.00 |
| Subtotal | 0.00 | 0.00 |
| Grand Total | 0.00 | 0.00 |

Proximity Map



Existing Surrounding Land Uses

| Location | Parcel / Zoning Petition | Zoning / Name | History Zoning Action |
|----------------|--------------------------|---|--|
| West | 1 | <u>Zone: County R-3A</u> Use: High Density Residential | No prior action known |
| North | 2 | <u>Zone: County R-1</u> Use: Single Family Residential | No prior action known |
| Northeast/East | 3 | <u>Zone: City R-1B</u> Use: Single Family Residential | Annexed 2015 as part of Ridgecrest 2 Annexation |
| South | 4 | <u>Zone: City R-1B</u> Use: Single Family Residential | Annexed 1993 as part of Gravelly/Ridgecrest Annexation |

Aerial Photo



North



West



East



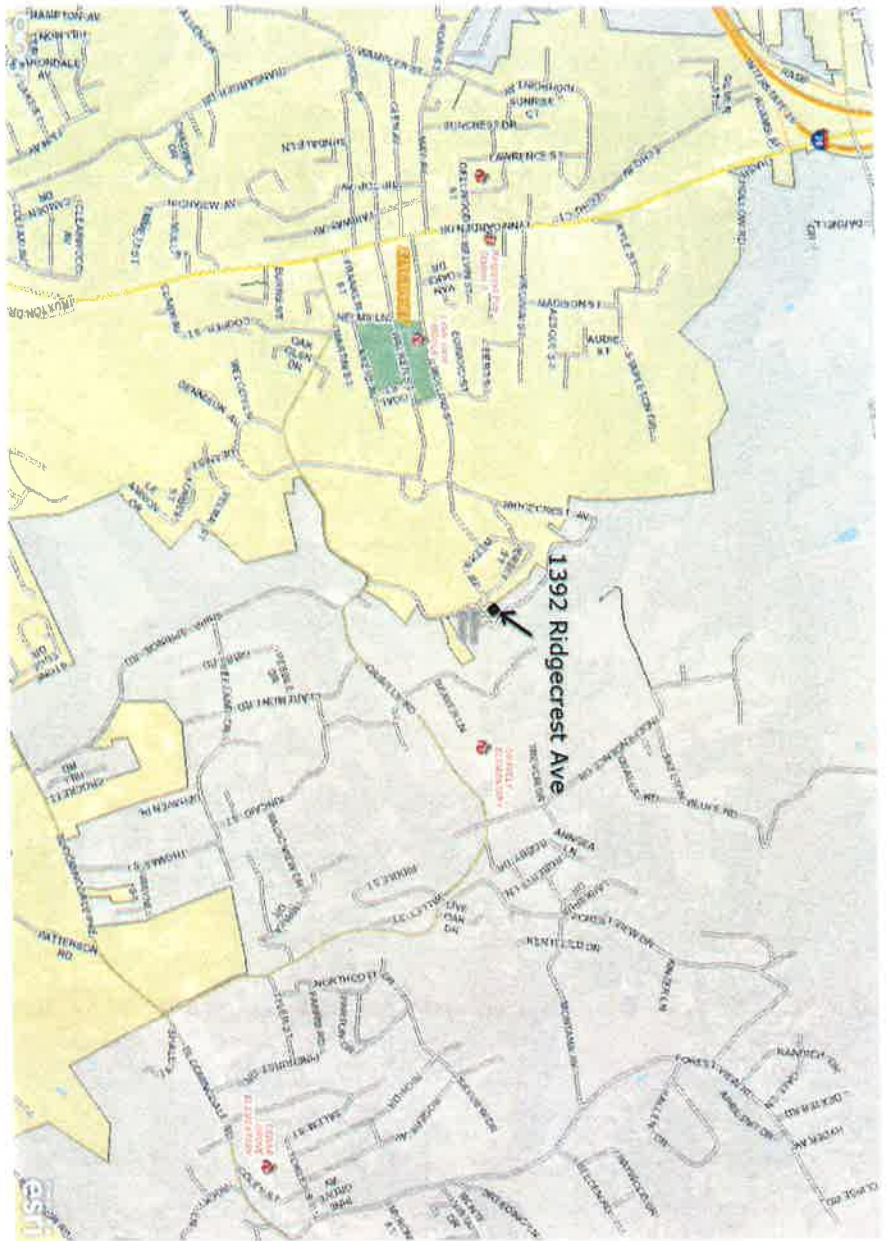
South



CONCLUSION

The Kingsport Planning Division recommends sending a favorable recommendation to the Board of Mayor and Alderman for the annexation, zoning, and Plan of Services for 1392 Ridgecrest Avenue based on the following reasons:

- *The City of Kingsport should utilize annexation as urban development occurs and is necessary for present and future growth in an orderly manner.*
- *It is reasonably necessary for the welfare of the residents and property owners of the affected territory.*
- *The City of Kingsport can provide services through its Plan of Services that the County cannot provide to the residents of the area.*
- *Annexation spurs economic growth by providing basic services at a reasonable cost and allows those costs to be spread fairly to all who enjoy those services.*
- *It is reasonably necessary for the welfare of the residents and property owners of the municipality as a whole.*





AGENDA ACTION FORM

Execute an Agreement with Bloomingdale Utility District for the Installation of Waterlines for the Rolling Dr. Annexation and Provide Funding

To: Board of Mayor and Aldermen
From: Jeff Fleming, City Manager 

Action Form No.: AF-310-2016
Work Session: December 5, 2016
First Reading: December 6, 2016

Final Adoption: December 20, 2016
Staff Work By: C. Austin
Presentation By: R. McReynolds

Recommendation:

Approve the ~~Resolution~~ and Ordinance.


Executive Summary:

The Rolling Drive Annexation was approved on October 19, 1993. As part of the Plan of Services for fire protection for the annexed parcels, Bloomingdale Utility District needs to upgrade their waterlines to provide adequate water flow and pressure. This agreement will provide funding for the project.

The agreement states that Bloomingdale will provide all engineering, materials, and construction for the project. The City will provide funding directly to Bloomingdale upon receipt of invoices for such services. The maximum amount of the agreement is \$120,000. A budget ordinance is requested to fund this project in a new General Fund project account, GP1721.

Attachments:

- 1. Resolution
- 2. Budget Ordinance
- 3. Proposed Agreement
- 4. Location Map


Funding source appropriate and funds are available: 

| | Y | N | O |
|------------|---|---|---|
| Duncan | — | — | — |
| George | — | — | — |
| McIntire | — | — | — |
| Olterman | — | — | — |
| Parham | — | — | — |
| Segelhorst | — | — | — |
| Clark | — | — | — |



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The agreement states that Bloomingdale will provide all engineering, materials, and construction for the project. The City will provide funding directly to Bloomingdale upon receipt of invoices for such services. The maximum amount of the agreement is \$120,000. A budget ordinance is requested to fund this project in a new General Fund project account, GP1721.

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| McIntire | — | — | — |
| Olterman | — | — | — |
| Parham | — | — | — |
| Segelhorst | — | — | — |
| Clark | — | — | — |

RESOLUTION NO. _____

A RESOLUTION APPROVING AN AGREEMENT WITH THE BLOOMINGDALE UTILITY DISTRICT FOR THE INSTALLATION OF WATERLINES FOR THE ROLLING PRIVATE DRIVE ANNEXATION AND AUTHORIZING THE MAYOR TO EXECUTE THE AGREEMENT AND ALL OTHER DOCUMENTS NECESSARY AND PROPER TO EFFECTUATE THE PURPOSE OF THE AGREEMENT

WHEREAS, the Rolling Drive Annexation was approved on October 19, 1993; and

WHEREAS, as part of the Plan of Services, the Bloomingdale Utility District needs to upgrade its waterlines; and

WHEREAS, the agreement set out below provides for the upgrade to the waterlines in the area, in the amount of \$120,000.00; and

WHEREAS, funding is available in GP1721.

Now therefore,

BE IT RESOLVED BY THE BOARD OF MAYOR AND ALDERMEN AS FOLLOWS:

SECTION I. That an agreement with Bloomingdale Utility District pertaining to a upgrade of waterlines for the Rolling Drive Annexation area, is approved.

SECTION II. That the mayor, or in his absence, incapacity, or failure to act, the vice-mayor, is authorized and directed to execute, in a form approved by the city attorney and subject to the requirements of Article X, Section 10 of the Charter of the City of Kingsport, the agreement with the Bloomingdale Utility District and all other documents necessary and proper, and to take such acts as necessary, to effectuate the purpose of the agreement or this resolution, said agreement being generally as follows:

AGREEMENT

This Agreement is entered into this the ____ day of _____, 2016, by and between the CITY OF KINGSPORT, hereinafter referred to as "Kingsport", a municipal corporation of the state of Tennessee, and the BLOOMINGDALE UTILITY DISTRICT, hereinafter referred to as "Bloomingdale", a utility district of the state of Tennessee.

WITNESSETH:

WHEREAS, the parties are authorized to enter into this Agreement pursuant to Tennessee Code Annotated § 7-35-416; and

WHEREAS, it is deemed in the public interest for the parties hereto to enter into this Agreement for the upgrade of waterlines for fire protection of newly annexed areas.

NOW, THEREFORE, in consideration of the premises and the mutual covenants contained herein, the parties agree as follows:

Section 1. Bloomingdale will perform, as a condition precedent to Kingsport providing its obligations set out in this Agreement, the following:

a. Provide, at its costs, engineering and construction services for waterline upgrades to provide fire protection in an area known as the Rolling Drive Annexation, effective date November 19, 1993.

b. Upgrades to the Bloomingdale water system shall provide 600 gallons per minute with fire hydrants installed within 600 feet of all properties contained in the annexation. (map is attached)

Section 2. Once Bloomingdale satisfactorily completes its obligation under Section 1, Kingsport will provide the following:

a. Kingsport will reimburse Bloomingdale upon receipt of applicable invoices for design, labor, equipment, and materials – up to \$120,000. Invoices will be provided by Bloomingdale on a monthly basis and will be paid within 30 days of approval of invoices by the Distribution & Collection Manager for Kingsport.

Section 3. The construction of waterline upgrades is to be completed by March 30, 2017.

Section 4. This Agreement is subject to such rules, regulations, or laws as may be applicable to similar agreements in the state of Tennessee, and the parties will collaborate in obtaining such permits, certificates, or the like, as may be required to comply therewith.

Section 5. Neither party will be liable to the other party or be deemed to be in breach of this Agreement for any failure or delay in rendering performance arising out of causes beyond its reasonable control and without its fault or negligence. Such causes may include but are not limited to, acts of God or the public enemy, terrorism, severe weather, thunderstorms, severe winds, significant fires, floods, earthquakes, epidemics, quarantine restrictions, strikes, freight embargoes, or governmental authorities' approval delays which are not caused by any act or omission by either party. The party whose performance is affected agrees to notify the other party promptly of the existence and nature of the delay.

Section 6. In the event that any provision or portion of this Agreement is found to be invalid or unenforceable, then such provision or portion thereof will be reformed in accordance with the applicable laws. The invalidity or unenforceability of any provision or portion of any of this Agreement will not affect the validity or enforceability of any other provision or portion of the Agreement.

Section 7. The failure of either party to perform, keep or fulfill any of the covenants, undertakings, obligations or conditions set forth in this Agreement, and the continuance of such default for a period of thirty (30) days after the defaulting party's receipt of written notice from the non-defaulting party of said failure will be a default. Upon the occurrence of an alleged default, or a dispute or disagreement between the parties hereto arising out of or in connection with any term or provision of this Agreement or, the subject matter hereof, or the interpretation or enforcement hereof (the "Dispute"), the parties will engage in informal, good faith discussions and attempt to resolve the Dispute. In connection therewith, upon written notice of either party, each of the parties will appoint a designated officer whose task it will be to meet for the purpose of attempting to resolve such Dispute. The designated officers will meet as often as the parties deem reasonably necessary. Such officers will discuss the Dispute. If the parties are unable to resolve the Dispute in accordance with this Section 7, and in the event either party concludes in good faith that amicable resolution through continued negotiation with respect to the Dispute is not reasonably likely, then the parties may mutually agree to submit to nonbinding mediation. If the matter is not resolved by mediation either party will have the right, at its sole option, without further demand or notice, to take whatever action at law or in equity may appear necessary or desirable to enforce its rights including, but not limited to, the suspension or termination of this Agreement. Venue for any litigation for any dispute arising out of or related to this Agreement, which cannot promptly be resolved by negotiation, will be the state courts for Kingsport, Sullivan County, Tennessee. This Agreement will be construed under and will be governed by the laws of the state of Tennessee.

Section 8. Notices, statements and other communications to be given under the terms of this Agreement will be in writing and delivered by hand, sent by certified mail, postage prepaid, return receipt requested, or sent by nationally recognized overnight delivery service, or email addressed to the parties as follows:

To Kingsport:

WWW Distribution and Collection Manager

City of Kingsport

225 West Center Street

Kingsport, Tennessee 37660

with copy to:

City Attorney

City of Kingsport

225 West Center Street

Kingsport, Tennessee 37660

To Bloomingdale Utility District:

Freddie Hicks, Manager

Bloomingdale Utility District

Bloomingdale Road

Kingsport, Tennessee 37660

Such notice may also be sent to such other address as is from time to time designated by the party receiving the notice. Any such notice that is sent in accordance with this Section 8 will be deemed received when hand delivery is received or refused, as shown on the return receipt if mailed or shown as delivered if sent by nationally recognized overnight delivery service.

Section 9. Both parties are governmental entities having substantial experience with the subject matter of this Agreement, and each has fully participated in the negotiation and drafting of this Agreement. Accordingly, this Agreement will be construed without regard to the rule that ambiguities in a document are to be construed against the draftsman. No inferences will be drawn from the fact that the final, duly executed Agreement differs in any respect from any previous draft hereof.

Section 10. This Agreement, together with any other writings signed by the parties expressly stated to be supplemental hereto and together with any instruments to be executed and delivered pursuant to this Agreement, constitutes the entire agreement between the parties and supersedes all prior understandings and writings, and this Agreement may only be modified or amended during the term only by a written non-electronic instrument that has been duly executed by the non-electronic signatures of authorized representatives of the parties hereto.

IN WITNESS WHEREOF, the parties have executed this Agreement in duplicate original counterparts, each of which constitutes an original.

[Acknowledgements Deleted for Inclusion in this Resolution]

SECTION III. That the mayor is further authorized to make such changes approved by the mayor and the city attorney to the agreement set out herein that do not substantially alter the material provisions of the agreement, and the execution thereof by the mayor and the city attorney is conclusive evidence of the approval of such changes.

SECTION IV. That the board finds that the actions authorized by this resolution are for a public purpose and will promote the health, comfort and prosperity of the citizens of the city.

SECTION V. That this resolution shall take effect from and after its adoption, the public welfare requiring it.

ADOPTED this the 6th day of December, 2016.

JOHN CLARK, MAYOR

ATTEST:

JAMES H. DEMMING, CITY RECORDER

APPROVED AS TO FORM:

J. MICHAEL BILLINGSLEY, CITY ATTORNEY

PRE-FILED CITY RECORDER

ORDINANCE NO. _____

AN ORDINANCE TO AMEND THE GENERAL PROJECT FUND BUDGET BY TRANSFERRING FUNDS TO THE ROLLING DRIVE PROJECT FOR THE YEAR ENDING JUNE 30, 2017; AND TO FIX THE EFFECTIVE DATE OF THIS ORDINANCE

BE IT ORDAINED BY THE CITY OF KINGSPORT, as follows:

SECTION I. That the General Project Fund budget be amended by transferring funds from the Transit Garage project (GP1727) to the Rolling Hills Drive project (GP1721) in the amount of \$13,885 to complete waterline upgrades.

| <u>Account Number/Description:</u> | <u>Budget</u> | <u>Incr/<Decr></u> | <u>New Budget</u> |
|--|----------------|--------------------------|-------------------|
| Fund 311: General Project Fund | | | |
| Transit Garage (GP1727) | | | |
| Revenues: | | | |
| 311-0000-368-1054 Series 2016 GO (Nov 4) | \$ 247,315 | \$ (13,885) | \$ 233,430 |
| 311-0000-368-2101 Premium From Bond Sale | 20,499 | 0 | 20,499 |
| Totals: | 267,814 | (13,885) | 253,929 |
| Expenditures: | | | |
| 311-0000-601-4041 Bond Sale Expense | 2,814 | 0 | 2,814 |
| 311-0000-601-9003 Improvements | 265,000 | (13,885) | 251,115 |
| Totals: | 267,814 | (13,885) | 253,929 |
| | | | |
| Fund 311: General Project Fund | | | |
| Rolling Hills Drive (GP1721) | | | |
| Revenues: | | | |
| 311-0000-368-1054 Series 2016 GO (Nov 4) | \$ 97,993 | \$ 13,885 | \$ 111,878 |
| 311-0000-368-2101 Premium From Bond Sale | 8,122 | 0 | 8,122 |
| Totals: | 106,115 | 13,885 | 120,000 |
| Expenditures: | | | |
| 311-0000-601-4041 Bond Sale Expense | 1,115 | 0 | 1,115 |
| 311-0000-601-9003 Improvements | 105,000 | 13,885 | 118,885 |
| Totals: | 106,115 | 13,885 | 120,000 |

SECTION II. That this Ordinance shall take effect from and after its date of passage, as the law direct, the welfare of the City of Kingsport, Tennessee requiring it.

John Clark, Mayor

ATTEST:

ANGELA L. MARSHALL
Deputy City Recorder

APPROVED AS TO FORM:

J. MICHAEL BILLINGSLEY, City Attorney

PASSED ON 1ST READING: _____
PASSED ON 2ND READING: _____

AGREEMENT

This Agreement is entered into this the ____ day of _____, 2016, by and between the CITY OF KINGSPORT, hereinafter referred to as "Kingsport", a municipal corporation of the state of Tennessee, and the BLOOMINGDALE UTILITY DISTRICT, hereinafter referred to as "Bloomingtondale", a utility district of the state of Tennessee.

WITNESSETH:

WHEREAS, the parties are authorized to enter into this Agreement pursuant to Tennessee Code Annotated § 7-35-416; and

WHEREAS, it is deemed in the public interest for the parties hereto to enter into this Agreement for the upgrade of waterlines for fire protection of newly annexed areas.

NOW, THEREFORE, in consideration of the premises and the mutual covenants contained herein, the parties agree as follows:

Section 1. Bloomingtondale will perform, as a condition precedent to Kingsport providing its obligations set out in this Agreement, the following:

- a. Provide, at its costs, engineering and construction services for waterline upgrades to provide fire protection in an area known as the Rolling Drive Annexation, effective date November 19, 1993.
- b. Upgrades to the Bloomingtondale water system shall provide 600 gallons per minute with fire hydrants installed within 600 feet of all properties contained in the annexation. (map is attached)

Section 2. Once Bloomingtondale satisfactorily completes its obligation under Section 1, Kingsport will provide the following:

- a. Kingsport will reimburse Bloomingtondale upon receipt of applicable invoices for design, labor, equipment, and materials – up to \$120,000. Invoices will be provided by Bloomingtondale on a monthly basis and will be paid within 30 days of approval of invoices by the Distribution & Collection Manager for Kingsport.

Section 3. The construction of waterline upgrades is to be completed by March 30, 2017.

Section 4. This Agreement is subject to such rules, regulations, or laws as may be applicable to similar agreements in the state of Tennessee, and the parties will collaborate in obtaining such permits, certificates, or the like, as may be required to comply therewith.

Section 5. Neither party will be liable to the other party or be deemed to be in breach of this Agreement for any failure or delay in rendering performance arising out of causes beyond its reasonable control and without its fault or negligence. Such causes may include but are not limited to, acts of God or the public enemy, terrorism, severe weather, thunderstorms, severe winds, significant fires, floods, earthquakes, epidemics, quarantine restrictions, strikes, freight embargoes, or governmental authorities' approval delays which are not caused by any act or omission by either party. The party whose performance is affected agrees to notify the other party promptly of the existence and nature of the delay.

Section 6. In the event that any provision or portion of this Agreement is found to be invalid or unenforceable, then such provision or portion thereof will be reformed in accordance with the applicable laws. The invalidity or unenforceability of any provision or portion of any of this Agreement will not affect the validity or enforceability of any other provision or portion of the Agreement.

Section 7. The failure of either party to perform, keep or fulfill any of the covenants, undertakings, obligations or conditions set forth in this Agreement, and the continuance of such default for a period of thirty (30) days after the defaulting party's receipt of written notice from the non-defaulting party of said failure will be a default. Upon the occurrence of an alleged default, or a dispute or disagreement between the parties hereto arising out of or in connection with any term or provision of this Agreement or, the subject matter hereof, or the interpretation or enforcement hereof (the "Dispute"), the parties will engage in informal, good faith discussions and attempt to resolve the Dispute. In connection therewith, upon written notice of either party, each of the parties will appoint a designated officer whose task it will be to meet for the purpose of attempting to resolve such Dispute. The designated officers will meet as often as the parties deem reasonably necessary. Such officers will discuss the Dispute. If the parties are unable to resolve the Dispute in accordance with this Section 7, and in the event either party concludes in good faith that amicable resolution through continued negotiation with respect to the Dispute is not reasonably likely, then the parties may mutually agree to submit to nonbinding mediation. If the matter is not resolved by mediation either party will have the right, at its sole option, without further demand or notice, to take whatever action at law or in equity may appear necessary or desirable to enforce its rights including, but not limited to, the suspension or termination of this Agreement. Venue for any litigation for any dispute arising out of or related to this Agreement, which cannot promptly be resolved by negotiation, will be the state courts for Kingsport, Sullivan County, Tennessee. This Agreement will be construed under and will be governed by the laws of the state of Tennessee.

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To Kingsport:
W/WW Distribution and Collection Manager
City of Kingsport
225 West Center Street
Kingsport, Tennessee 37660

with copy to:

City Attorney
City of Kingsport
225 West Center Street
Kingsport, Tennessee 37660

To Bloomingdale Utility District:
Freddie Hicks, Manager
Bloomingdale Utility District
Bloomingdale Road
Kingsport, Tennessee 37660

Such notice may also be sent to such other address as is from time to time designated by the party receiving the notice. Any such notice that is sent in accordance with this Section 8 will be deemed received when hand delivery is received or refused, as shown on the return receipt if mailed or shown as delivered if sent by nationally recognized overnight delivery service.

Section 9. Both parties are governmental entities having substantial experience with the subject matter of this Agreement, and each has fully participated in the negotiation and drafting of this Agreement. Accordingly, this Agreement will be construed without regard to the rule that ambiguities in a document are to be construed against the draftsman. No inferences will be drawn from the fact that the final, duly executed Agreement differs in any respect from any previous draft hereof.

Section 10. This Agreement, together with any other writings signed by the parties expressly stated to be supplemental hereto and together with any instruments to be executed and delivered pursuant to this Agreement, constitutes the entire agreement between the parties and supersedes all prior understandings and writings, and this Agreement may only be modified or amended during the term only by a written non-electronic instrument that has been duly executed by the non-electronic signatures of authorized representatives of the parties hereto.

IN WITNESS WHEREOF, the parties have executed this Agreement in duplicate original counterparts, each of which constitutes an original.

BLOOMINGDALE UTILITY DISTRICT

ATTEST:

By: _____
Freddie Hicks, Manager

APPROVED AS TO FORM:

Attorney for Bloomingdale Utility District

CITY OF KINGSPORT, TENNESSEE

ATTEST:

James H. Demming, City Recorder

By: _____
John C. Clark, Mayor

APPROVED AS TO FORM:

J. Michael Billingsley
City Attorney for Kingsport



Google Earth

Rolling Drive

Packin'house Rd

Stone Drive

Windridge Estates

Fire Station #8



AGENDA ACTION FORM

Accept \$1,000 Donation from GRC & Cain Rash West to the Kingsport Public Library and Appropriate Funds

To: Board of Mayor and Aldermen
From: Jeff Fleming, City Manager *JF*

Action Form No.: AF-312-2016
Work Session: December 5, 2016
First Reading: December 6, 2016

Final Adoption: December 20, 2016
Staff Work By: Helen Whitaker
Presentation By: Morris Baker

Recommendation:

Approve the Resolution and Ordinance.

Executive Summary:

GRC & Cain Rash West Architects is making a donation of \$1,000 to the Kingsport Public Library for the library to purchase 100 children's books for the "What's Your 100" Centennial Campaign.

Attachments:

- 1. Resolution
- 2. Ordinance

| | Y | N | O |
|------------|---|---|---|
| Duncan | — | — | — |
| George | — | — | — |
| McIntire | — | — | — |
| Olterman | — | — | — |
| Parham | — | — | — |
| Segelhorst | — | — | — |
| Clark | — | — | — |



AGENDA ACTION FORM

Accept \$1,000 Donation from GRC & Cain Rash West to the Kingsport Public Library and Appropriate Funds

To: Board of Mayor and Aldermen
From: Jeff Fleming, City Manager *EDX*

Action Form No.: AF-312-2016
Work Session: December 5, 2016
First Reading: December 6, 2016

Final Adoption: December 20, 2016
Staff Work By: Helen Whitaker
Presentation By: Morris Baker

Recommendation:

Approve the Resolution.

Executive Summary:

GRC & Cain Rash West Architects is making a donation of \$1,000 to the Kingsport Public Library for the library to purchase 100 children's books for the "What's Your 100" Centennial Campaign.

Attachments:

- 1. Resolution
- 2. Ordinance

| | <u>Y</u> | <u>N</u> | <u>O</u> |
|------------|----------|----------|----------|
| Duncan | — | — | — |
| George | — | — | — |
| McIntire | — | — | — |
| Olterman | — | — | — |
| Parham | — | — | — |
| Segelhorst | — | — | — |
| Clark | — | — | — |

RESOLUTION NO. _____

A RESOLUTION ACCEPTING A DONATION FROM GRC & CAIN
RASH WEST ARCHITECTS TO THE KINGSPORT PUBLIC
LIBRARY

WHEREAS, GRC & Cain Rash West Architects would like to make a donation to the city for the Kingsport Public Library in the amount of \$1,000.00; and

WHEREAS, the funds will purchase 100 children's books for the "What's Your 100" centennial campaign; and

Now therefore,

BE IT RESOLVED BY THE BOARD OF MAYOR AND ALDERMEN AS FOLLOWS:

SECTION I. That the donation to the city from GRC & Cain Rash West Architects for the Kingsport Public Library in the amount of \$1,000.00, is accepted.

SECTION II. That this resolution shall take effect from and after its adoption, the public welfare requiring it.

ADOPTED this the 6th day of December, 2016.

JOHN CLARK, MAYOR

ATTEST:

JAMES H. DEMMING, CITY RECORDER

APPROVED AS TO FORM:

J. MICHAEL BILLINGSLEY, CITY ATTORNEY

PRE-FILED CITY RECORDER

ORDINANCE NO. _____

AN ORDINANCE TO AMEND THE GENERAL PROJECT SPECIAL REVENUE FUND BUDGET BY APPROPRIATING DONATIONS RECEIVED FOR THE YEAR ENDING JUNE 30, 2017; AND TO FIX THE EFFECTIVE DATE OF THIS ORDINANCE

BE IT ORDAINED BY THE CITY OF KINGSPORT, as follows:

SECTION I. That the General Project Special Revenue Fund budget be amended by appropriating donations received from GRC & Cain Rash West in the amount of \$1,000 to the Public Library Centennial Campaign project (NC1705) to purchase 100 children's books in the "What's your 100" Centennial Campaign".

| <u>Account Number/Description:</u> | <u>Budget</u> | <u>Incr/<Decr></u> | <u>New Budget</u> |
|---|---------------|--------------------------|-------------------|
| <u>Fund 111: General Proj-Special Rev Fund</u> | | | |
| <u>Library Centennial Campaign (NC1705)</u> | | | |
| <u>Revenues:</u> | \$ | \$ | \$ |
| 111-0000-364-2000 From Corporations | 0 | 1,000 | 1,000 |
| Totals: | 0 | 1,000 | 1,000 |
| | | | |
| <u>Expenditures:</u> | \$ | \$ | \$ |
| 111-0000-601-2005 Appropriation L Materials | 0 | 1,000 | 1,000 |
| Totals: | 0 | 1,000 | 1,000 |

SECTION II. That this Ordinance shall take effect from and after its date of passage, as the law direct, the welfare of the City of Kingsport, Tennessee requiring it.

JOHN CLARK, Mayor

ATTEST:

ANGIE MARSHALL
Deputy City Recorder

APPROVED AS TO FORM:

J. MICHAEL BILLINGSLEY, City Attorney

PASSED ON 1ST READING: _____

PASSED ON 2ND READING: _____



AGENDA ACTION FORM

Appropriate Funds from FM Global

To: Board of Mayor and Aldermen
From: Jeff Fleming, City Manager *df*

Action Form No.: AF-313-2016
Work Session: December 5, 2016
First Reading: December 6, 2016

Final Adoption: December 20, 2016
Staff Work By: Craig Dye/Barry Brickey
Presentation By: Craig Dye/Barry Brickey

Recommendation:

Approve the Ordinance.

Executive Summary:

The Kingsport Fire Department's Fire Marshal's office has received a grant from FM Global. FM Global is an insurance company that awards grants only for fire prevention/ education, pre-planning/ inspection and for fire/ arson investigations. This grant allows the Fire Marshal's to work more effectively in the field while conducting inspections. Also this grant would provide handout materials to the groups that come and participate in the station tours put on by the Fire Marshal's office.

The Kingsport Fire Department Fire Prevention Grant totals \$2,285.00 and the proceeds from this FM Global grant will provide Fire and Life Safety Public Education Materials such as children's fire helmets, stickers and pencils.

Attachments:

- 1. Ordinance

Funding source appropriate and funds are available: *je*

| | Y | N | O |
|------------|---|---|---|
| Duncan | — | — | — |
| George | — | — | — |
| McIntire | — | — | — |
| Olterman | — | — | — |
| Parham | — | — | — |
| Segelhorst | — | — | — |
| Clark | — | — | — |



AGENDA ACTION FORM

Appropriate Funds from FM Global

To: Board of Mayor and Aldermen
From: Jeff Fleming, City Manager *JF*

Action Form No.: AF-313-2016
Work Session: December 5, 2016
First Reading: December 6, 2016

Final Adoption: December 19, 2016
Staff Work By: Craig Dye/Barry Brickey
Presentation By: Craig Dye/Barry Brickey

Recommendation:

Approve the Ordinance.

Executive Summary:

The Kingsport Fire Department's Fire Marshal's office has received a grant from FM Global. FM Global is an insurance company that awards grants only for fire prevention/ education, pre-planning/ inspection and for fire/ arson investigations. This grant allows the Fire Marshal's to work more effectively in the field while conducting inspections. Also this grant would provide handout materials to the groups that come and participate in the station tours put on by the Fire Marshal's office.

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Attachments:

- 1. Ordinance

Funding source appropriate and funds are available: *JF*

| | <u>Y</u> | <u>N</u> | <u>O</u> |
|------------|----------|----------|----------|
| Duncan | — | — | — |
| George | — | — | — |
| McIntire | — | — | — |
| Olterman | — | — | — |
| Parham | — | — | — |
| Segelhorst | — | — | — |
| Clark | — | — | — |

PRE-FILED CITY RECORDER

ORDINANCE NO. _____

AN ORDINANCE TO AMEND THE GENERAL FUND BUDGET BY APPROPRIATING GRANT FUNDS RECEIVED FROM FM GLOBAL FOR THE YEAR ENDING JUNE 30, 2017; AND TO FIX THE EFFECTIVE DATE OF THIS ORDINANCE

BE IT ORDAINED BY THE CITY OF KINGSPORT, as follows:

SECTION I. That the Fire Department operating budget be amended by appropriating grant funds received from FM Global in the amount of \$2,285 to purchase Fire and Life Safety Public Education materials.

| <u>Account Number/Description:</u> | <u>Budget</u> | <u>Incr/<Decr></u> | <u>New Budget</u> |
|-------------------------------------|---------------|--------------------------|-------------------|
| Fund 110: General Fund | | | |
| Revenues: | \$ | \$ | \$ |
| 110-0000-364-2000 From Corporations | 0 | 2,285 | 2,285 |
| Totals: | 0 | 2,285 | 2,285 |
| Expenditures: | | | |
| 110-3501-451-3010 Office Supplies | 0 | 2,285 | 2,285 |
| Totals: | 0 | 2,285 | 2,285 |

SECTION II. That this Ordinance shall take effect from and after its date of passage, as the law direct, the welfare of the City of Kingsport, Tennessee requiring it.

JOHN CLARK, Mayor

ATTEST:

ANGIE MARSHALL
Deputy City Recorder

APPROVED AS TO FORM:

J. MICHAEL BILLINGSLEY, City Attorney

PASSED ON 1ST READING: _____

PASSED ON 2ND READING: _____



AGENDA ACTION FORM

Amending the City of Kingsport Code of Ordinances and Resolution 2013-079

To: Board of Mayor and Aldermen
 From: Jeff Fleming, City Manager

Action Form No.: AF-311-2016
 Work Session: December 5, 2016
 First Reading: December 6, 2016

Final Adoption: December 20, 2016
 Staff Work By: Steve Robbins
 Presentation By: Ryan McReynolds

Recommendation:

Approve the Ordinance and Resolution.

Executive Summary:

In August 2016 the Tennessee Department of Environment and Conservation (TDEC) announced the City of Kingsport as a participant in the Tennessee Qualifying Local Program (QLP). This program eliminates duplicative efforts at the state and local level in the stormwater permitting process, and also allows for a more effective construction stormwater program resulting in greater water quality protection. By streamlining the process, a one-stop shop for permitting construction sites is advantageous to development and enhances our commitment for growth. This process removes the requirement for Construction activities of submitting an application and related permit fee to the state.

The City's application to become a Qualifying Local Program (QLP) requires that the respective ordinance and resolution be updated to reflect any changes. Becoming a QLP City will allow the City's Stormwater Department to replace the Tennessee Department of Environment and Conservation (TDEC) as the permitting agency for all developments of one (1) acre and greater in size that require a stormwater pollution prevention plan.

Attachments:

1. Ordinance
2. Resolution
3. Changes Shown in Color to Proposed Ordinance
4. Changes Shown to Proposed Amendment to Resolution

| | <u>Y</u> | <u>N</u> | <u>O</u> |
|------------|----------|----------|----------|
| Duncan | — | — | — |
| George | — | — | — |
| McIntire | — | — | — |
| Olterman | — | — | — |
| Parham | — | — | — |
| Segelhorst | — | — | — |
| Clark | — | — | — |



AGENDA ACTION FORM

Amending the City of Kingsport Code of Ordinances and Resolution 2013-079

To: Board of Mayor and Aldermen
 From: Jeff Fleming, City Manager

Action Form No.: AF-311-2016
 Work Session: December 5, 2016
 First Reading: December 6, 2016

Final Adoption: December 20, 2016
 Staff Work By: Steve Robbins
 Presentation By: Ryan McReynolds

Recommendation:

Approve the Ordinance and Resolution.

Executive Summary:

In August 2016 the Tennessee Department of Environment and Conservation (TDEC) announced the City of Kingsport as a participant in the Tennessee Qualifying Local Program (QLP). This program eliminates duplicative efforts at the state and local level in the stormwater permitting process, and also allows for a more effective construction stormwater program resulting in greater water quality protection. By streamlining the process, a one-stop shop for permitting construction sites is advantageous to development and enhances our commitment for growth. This process removes the requirement for Construction activities of submitting an application and related permit fee to the state.

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Attachments:

1. Ordinance
2. Resolution
3. Changes Shown in Color to Proposed Ordinance
4. Changes Shown to Proposed Amendment to Resolution

| | <u>Y</u> | <u>N</u> | <u>O</u> |
|------------|----------|----------|----------|
| Duncan | — | — | — |
| George | — | — | — |
| McIntire | — | — | — |
| Olterman | — | — | — |
| Parham | — | — | — |
| Segelhorst | — | — | — |
| Clark | — | — | — |

ORDINANCE NO. ___

AN ORDINANCE TO AMEND THE CODE OF ORDINANCES, CITY OF KINGSPORT, TENNESSEE, SECTIONS 38-85 THROUGH 38-350 PERTAINING TO THE PROVISION OF STORMWATER MANAGEMENT FOR THE CITY OF KINGSPORT; TO FIX A PENALTY FOR THE VIOLATION OF THIS ORDINANCE; TO PROVIDE FOR SEVERABILITY OF THIS ORDINANCE; AND TO FIX THE EFFECTIVE DATE OF THIS ORDINANCE

WHEREAS, a stormwater management ordinance is needed to regulate stormwater drainage and treatment facilities, erosion prevention and sediment control, illicit discharge, grading, excavation, clearance, and other alteration of the land in order to limit the dangers of personal injury, property or environmental damage that may be caused by stormwater runoff; and

WHEREAS, the ordinance is needed to comply with state and federal regulations of the Clean Water Act; and

WHEREAS, the ordinance is needed to secure eligibility for flood insurance under Public Law 1016, 84th Congress which will promote the public health, safety, and general welfare of the citizens of the City of Kingsport; and

WHEREAS, the Tennessee Department of Environment and Conservation has issued a new NPDES General Permit for Small Municipal Storm Sewer Systems to the City of Kingsport; and

WHEREAS, the permit necessitates some changes to the ordinances governing stormwater management.

Now therefore,

BE IT ORDAINED BY THE CITY OF KINGSPORT, as follows:

SECTION I. That Sections 38-85 through 38-350, of the Code of Ordinances, City of Kingsport, Tennessee, is amended as follows:

ARTICLE III. STORMWATER MANAGEMENT

DIVISION 1. GENERALLY

Sec. 38-85. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Active channel means the area of the stream that is most subject to water flow and that includes the portion of the channel below the top of bank.

Aquatic resource alteration permit (ARAP) means a permit issued by the state department of environment and conservation (TDEC) for physically altering waters (streams and wetlands) of the state.

As-built certification means as-built, field-verified plans signed and sealed by a registered professional engineer and/or a registered land surveyor, both licensed to practice in the state,

showing contours, elevations, grades, locations, and stormwater management facilities.

Best management practices (BMPs) means schedules of activities, prohibitions of practices, maintenance procedures, structural controls and other management practices designed to prevent or reduce the discharge of pollutants to waters of the state. BMPs may include structural devices, such as stormwater management facilities, non-structural practices such as buffers or natural open spaces, treatment requirements, operating procedures, and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage.

Borrow Pit means an excavation from which erodible material (typically soil) is removed to be used as fill for another site, and there is no processing or separation of erodible material conducted at the site, and is considered a construction activity for the purposes of this article.

Buffer Zone or "Water Quality Riparian Buffer" is a strip of dense undisturbed native vegetation, either original or re-established, that borders streams and rivers, ponds and lakes, wetlands and seeps. Buffer zones are established for the purposes of slowing water runoff, enhancing water infiltration and minimizing the risk of any potential sediments, nutrients or other pollutants from leaving the upland area and reaching surface waters.

Building official means the city's representative charged with issuing land disturbing permits.

CFR means the Code of Federal Regulations.

Channel means a natural or manmade watercourse of perceptible extent, with definite bed and banks to confine and conduct continuously or periodically flowing water.

Clearing.

(1) The term "clearing" means, in the definition of discharges associated with construction activity, the removal of vegetation and/or disturbance of soil prior to grading or excavation in anticipation of construction activities. Clearing may also refer to wide area land disturbance in anticipation of nonconstruction activities; for instance, cleared forested land in order to convert forest land to pasture for wildlife management purposes.

(2) The term "clearing" does not refer to clearing of vegetation along roadways, highways or powerlines for sight distance or other maintenance and/or safety concerns, or cold planing, milling, and/or removal of concrete and/or bituminous asphalt roadway pavement surfaces.

Common plan of development or sale is broadly defined as any announcement or documentation (including a sign, public notice or hearing, sales pitch, advertisement, drawing, permit application, zoning request, computer design, etc.) or physical demarcation (including boundary signs, lot stakes, surveyor markings, etc.) indicating construction activities may occur on a specific plot. A common plan of development or sale identifies a situation in which multiple areas of disturbance are occurring on contiguous areas. This applies because the activities may take place at different times, on different schedules, by different operators.

Construction means any placement, assembly or installation of facilities or equipment (including contractual obligations to purchase such facilities or equipment) at the premises where such equipment will be used, including preparation work at such premises.

Construction-related wastes means refuse or unused materials that result from construction activities. The term "construction-related wastes" can include, but are not limited to, unused building and landscaping materials, chemicals, litter, sanitary waste and concrete truck washout.

Contaminant means any physical, chemical, biological or radiological substance or matter in water.

Conveyance means the capacity of a channel or a pipe to carry stormwater.

Covenants for permanent maintenance of stormwater facilities and best management practices means a legal document executed by the property owner, a homeowners' association or person as owner of record, and recorded with the county (Sullivan or Hawkins) register of deeds which guarantees perpetual and proper maintenance of stormwater facilities and best management practices.

Cross drain means a pipe used to convey stormwater from one side of a roadway to another. A cross drain can also be called a "culvert."

Design professional means an engineer, landscape architect, or architect competent in civil and site design and licensed to practice in the state.

Development means new and redevelopment projects that disturb equal to or greater than one acre, or less than one acre if part of a larger common plan of development or sale. and includes, but is not limited to, providing access to a site, clearing of vegetation, grading, earth moving, providing utilities, roads and other services such as parking facilities, stormwater management and erosion control systems, potable water and wastewater systems, altering land forms, or construction or demolition of a structure on the land.

Director means the public works director or designee who is responsible for the approval of development and redevelopment plans, and implementation of the provisions of this article.

Discharge means to dispose, deposit, spill, pour, inject, seep, dump, leak or place by any means, or that which is disposed, deposited, spilled, poured, injected, seeped, dumped, leaked or placed

by any means including any direct or indirect entry of any solid or liquid matter into the stormwater system by any means intentional or otherwise.

Disturbed area means the portion of any site that has been altered from existing conditions, including but not limited to the following: providing access to a site, clearing of vegetation, grading, earth moving, providing utilities and other services such as parking facilities, stormwater management and erosion control systems, potable water and wastewater systems, altering land forms, or construction or demolition of a structure on the land.

Drainage basin means the area contributing stormwater runoff to a single point.

Drainage system means the system of pipes, channels, culverts and ditches that convey stormwater from and through public and private land in the city.

Erosion means the removal of soil particles by the action of water, air, ice, gravity or other geological agents, whether naturally occurring or acting in conjunction with or promoted by manmade activities or effects.

Excavation means a cavity or hole in the land surface that is caused by the cutting, digging, or scooping and removal of soil, rock or other materials.

Exceptional Tennessee Waters are surface waters of the State of Tennessee that satisfy the characteristics as listed in Rule 0400-40-03-.06 of the official compilation rules and regulations of the State of Tennessee. Characteristics include waters within state or national parks, wildlife refuges, wilderness or natural areas; State or Federal Scenic Rivers; Federally-designated critical habitat; waters within an area designated as Lands Unsuitable for Mining; waters with naturally reproducing trout; waters with exceptional biological diversity or; other waters with outstanding ecological or recreational value as determined by the department.

Filling means any deposit or stockpiling of dirt, rocks, stumps or other natural or manmade solid waste material.

Grading means any clearing, excavating, filling or other disturbance of terrain.

Hazardous substance means any substance designated under 40 CFR 116, as amended, pursuant to section 116 of the Federal Clean Water Act.

Hotspot means an area where the land use or activities generate highly contaminated runoff, with concentrations of pollutants in excess of those typically found in stormwater.

Illicit connections means illegal and/or unauthorized connections to the municipal separate storm sewer system whether or not such connections result in discharges into that system.

Impervious area means impermeable surfaces which prevent the percolation of water into the soil including, but not limited to, pavement, parking areas and driveways, packed gravel or soil, or rooftops.

Illicit discharge means an intentional or unintentional discharge of water into the municipal separate storm sewer system that is not composed entirely stormwater, except as otherwise set out in section 38-314(b).

Inspector means a person that has successfully completed (has a valid certification from) the "Fundamentals of Erosion Prevention and Sediment Control Level I" course or equivalent course.

Land disturbing activity means any activity on a property that results in a change in the existing soil (both vegetative and nonvegetative) and/or the existing soil topography. The term "land disturbing activities" include, but are not limited to, development, redevelopment, demolition, construction, reconstruction, clearing, grading, filling, logging and/or tree chipping operations (excluding silviculture operations), haul roads associated with the development and excavation.

Land disturbing permits means a building, demolition or grading permit approved by the director and issued by the building official, authorizing commencement of land disturbing activities.

Municipal separate storm sewer system. (MS4) means a conveyance or system of conveyances (including roads with drainage systems, streets, catchbasins, curbs, gutters, ditches, constructed channels, and storm drains) designed or used for collecting or conveying stormwater.

National Pollutant Discharge Elimination System. (NPDES) means the program administered by the United States Environmental Protection Agency to eliminate or reduce pollutant discharges to the waters of the United States.

NOI means notice of intent as identified in the State of Tennessee General NPDES Permit for Discharges of Stormwater Associated with Construction Activities and administered by the City of Kingsport QLP.

NOC means notice of coverage as identified in the State of Tennessee General NPDES Permit for Discharges of Stormwater Associated with Construction Activities and administered by the City of Kingsport QLP.

NOT means notice of termination as identified in the State of Tennessee General NPDES Permit for Discharges of Stormwater Associated with Construction Activities and administered by the City of Kingsport QLP.

Obstruction means the accumulation of debris, whether intentional or otherwise, resulting in the

interference of flow through a watercourse.

Outfall means the terminus of a stormwater system where the contents are released into a larger public or private stormwater management system, or into a stream.

Owner / operator / person (owner) means any party associated with a construction project that meets any of the following two criteria:

(1) The party has design control over construction plans and specifications, including the ability to authorize modifications to those plans and specifications (this will typically be the owner or developer);

(2) The party has day-to-day operational control of those activities at a project which are necessary to ensure compliance with a stormwater pollution prevention plan (SWPPP) for the site or other permit conditions (e.g., they are authorized to direct workers at a site to carry out activities required by the SWPPP or comply with other permit conditions). (This will typically include the general contractor and would also include erosion prevention and sediment control contractors); or

(3) Any individual, firm, corporation, partnership, association, organization or entity, including governmental entities or any combination thereof.

Peak discharge means the maximum, instantaneous rate of flow of water at a particular point resulting from a storm event. The term "peak discharge" also means the maximum discharge computed for a given design flood event.

Plan means the stormwater management plan.

Pollutant means dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal and agricultural waste or any other substance that is detrimental to the quality of the waters of the state.

Priority construction activity means land disturbing activities that are located in a watershed that discharges directly into waters recognized by the state as unavailable parameter waters impaired for siltation or habitat alteration, or exceptional Tennessee waters. A property is considered to have a direct discharge, if stormwater runoff from the property does not cross any other property before entering the water of the state.

Public water means stormwater runoff that originates in whole or in part from or is conveyed by publicly owned facilities such as roads.

Qualifying Local Program (QLP) is an MS4 Stormwater Management Program for discharges associated with construction activity that has been formally approved by TDEC as having met specific minimum program requirements, including those identified in 40 CFR § 122.44(s).

Runoff means the water resulting from precipitation that is not absorbed by the soil.

Sanitary sewer means a system of underground conduits that collects and delivers wastewater from toilets, sinks and other plumbing fixtures to a wastewater treatment plant.

Sediment means solid material, either mineral or organic, that is in suspension, is being transported, or has been moved from its site of origin by erosion.

Sewage means human wastes carried by water from residences, buildings, industrial establishments or other places, together with such industrial wastes, stormwater or other water as may be present; or any substance discharged from a sanitary sewer collection system.

Sinkhole means a depression characterized by closed contours on a topographic map. A sinkhole throat, or opening to the subsurface, may or may not be visible. Field verification may be required in areas where the depth of the depression is below the tolerance of currently available topographic mapping. The extent of the area considered to be a sinkhole is, at a minimum, the limits determined by the 100 year water surface elevation, assuming plugged conditions (zero cubic feet per section (cfs) outflow).

Special flood hazard area means the land in the floodway and/or floodplain that is subject to flooding during the 100 year frequency storm. The areas of special flood hazard identified by FEMA in its flood hazard boundary map dated April 2, 1981, and any revisions thereto, are adopted by reference and declared to be a part of this article.

Stormwater means runoff from rain, snow or other forms of precipitation, which results in surface runoff and drainage.

Stormwater control measures (SCMs) are permanent practices and measures designed to reduce the discharge of pollutants from development.

Stormwater management facilities means structures and constructed features designed for the collection, conveyance, storage, treatment and disposal of stormwater runoff into and through the stormwater system. The term "stormwater management facilities" include, structural or nonstructural measures, or both, to control the increased volume, rate and quality of stormwater runoff caused by manmade changes to the land.

Stormwater management manual (manual) means the document, as amended from time to time, adopted by the city to provide guidance in understanding and implementing the requirements for

stormwater management.

Stormwater management plan (plan) means an engineering plan for the design of stormwater management facilities and best management practices for a proposed development or redevelopment.

Stormwater master plan means an engineering and planning study for the drainage system of a watershed that consists of a plan for stormwater management in the watershed. The stormwater master plans can address flooding problems, water quality problems, potential stormwater capital improvements, land use patterns and regulatory issues for existing and future conditions.

Stormwater pollution prevention plan (SWPPP) means a written plan (including site maps, plats, drawings or other graphic representations) that identifies construction/contractor activities that could cause pollutants in the stormwater, and a description of best management practices to control these pollutants and keep sediments on site.

Storm water system means the system of roadside drainage, roadside curbs and gutters, curb inlets, swales, catchbasins, culverts, cross drains, headwalls, junction boxes, outlets, manholes, gutters, ditches, pipes, lakes, ponds, sinkholes, channels, creeks, streams, storm drains, water quality best management practices and similar conveyances and facilities, both natural and manmade, located within the city which are designated or used for collecting, storing, or conveying stormwater, or through which stormwater is collected, treated, stored or conveyed, whether owned or operated by the city or other owner/operator/ person.

Stream means a surface water that is not a wet weather conveyance (TCA 69-3-10.(40)). Stream include linear watercourses, lakes, ponds, and wetlands.

Structure means anything constructed or erected such that the use of it requires a more or less permanent location on or in the ground.

Subdivision means the division, subdivision or resubdivision of any lot or parcel of land as defined in the "Subdivision Regulations of the City of Kingsport and its Planning Region," on file in the city clerk's office.

Surface water means waters upon the surface of the earth in bounds created naturally or artificially.

TDEC means the Tennessee Department of Environment and Conservation.

Top of bank means the uppermost limit of the active channel of a stream containing normal flows, usually marked by a break in slope.

Total maximum daily load (TMDL) means a calculation of the maximum amount of a pollutant that a body of water can receive and still meet water quality standards, and an allocation of that amount to the source of the pollutant.

Transporting means any moving of earth materials from one place to another, other than such movement incidental to grading, as authorized on an approved plan.

USACE means the United States Army Corps of Engineers.

Unavailable Parameters Waters means any stream segment that has been identified by TDEC as failing to support classified uses.

Utility, public or private, means any agency which under public franchise or ownership, or under certification of convenience and necessity provides the public with electricity, natural gas, steam, communication, rail transportation, water, sewage collection or other similar service.

Vegetation means an intentionally cultivated collection of plant life, including trees, shrubs, bushes, and grass, but does not include plant life that was not intentionally planted.

Waste Site means an area where waste material from a construction site is stored or deposited of, and when the material is erodible, such as soil, the site must be treated as a construction site.

Water quality volume means the volume of stormwater runoff from a proposed development or redevelopment that must be controlled for water quality treatment.

Water quality volume credit area means an area within the proposed development or redevelopment for which a reduction of the water quality volume can be obtained.

Watercourse means a channel, natural depression, gully, stream, creek, pond, reservoir or lake in which stormwater runoff and floodwater flows either regularly or infrequently. The term "watercourse" includes major drainageways for carrying urban stormwater runoff.

Waters or waters of the state means any and all waters, public or private, on or beneath the surface of the ground, which are contained within, flow through or border upon the state or any portion thereof except those bodies of water confined to and retained within the limits of private property in single ownership which do not combine or effect a junction with natural surface or underground waters.

Watershed means a region or area bounded peripherally by a divide and draining ultimately to a particular watercourse or body of water.

Wet weather conveyance means, notwithstanding any other law or rule to the contrary, man-made or natural watercourses, including natural watercourses that have been modified by channelization:

(A) That flow only in direct response to precipitation runoff in their immediate locality;

- (B) Whose channels are at all times above the groundwater table;
- (C) That are not suitable for drinking water supplies; and
- (D) In which hydrological and biological analyses indicate that, under normal weather conditions, due to naturally occurring ephemeral or low flow there is not sufficient water to support fish, or multiple populations of obligate lotic aquatic organisms whose life cycle includes an aquatic phase of at least two (2) months.

Wetland means an area that is inundated or saturated by surface water or groundwater at a frequency and duration sufficient to support, and that under normal circumstances does support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetland determination shall be made by the United States Army Corps of Engineers, and/or the state department of environment and conservation, and/or the natural resources conservation service.

Sec. 38-86. Purpose.

It is the purpose of this article to:

- (1) Apply to all areas located within the jurisdiction of the city.
- (2) Apply to all development unless exempted pursuant to Sec 38-141.
- (3) Protect, maintain, and enhance the environment of the city and the public health, safety and the general welfare of the citizens of the city, by controlling discharges of pollutants to the public stormwater system, while maintaining and improving the quality of the receiving waters of the state.
- (4) Enable the city to comply with the National Pollution Discharge Elimination System (NPDES) permit and applicable regulations, 40 CFR 122.26 for stormwater discharges.
- (5) Allow the city to exercise the powers granted in T.C.A. § 68-221-1105, which provides that, among other powers municipalities have with respect to stormwater facilities, is the power by ordinance or resolution to:
 - a. Exercise general regulation over the planning, location, construction, and operation and maintenance of stormwater facilities in the municipality, whether or not owned and operated by the municipality;
 - b. Adopt any rules and regulations deemed necessary to accomplish the purposes of this statute, which may include the adoption of a system of fees for services and permits;
 - c. Establish standards to regulate the quantity and contaminants of stormwater as may be necessary to protect water quality;
 - d. Review and approve plans and plats for stormwater management in proposed subdivisions or commercial developments;
 - e. Issue permits for stormwater discharges or for the construction, alteration, extension, or repair of stormwater facilities;
 - f. Suspend or revoke permits when it is determined that the permittee has violated any applicable ordinance, resolution or condition of the permit; and
 - g. Expend funds to remediate or mitigate the detrimental effects of contaminated land or other sources of stormwater contamination, whether public or private.

Sec. 38-87. Responsibility.

Nothing in this article shall be construed to imply a warranty or the assumption of responsibility on the part of the city for the suitability, fitness or safety of any structure with respect to flooding, water quality, or structural integrity. This article is a regulatory instrument only, and is not to be interpreted as an undertaking by the city to design any structure or facility.

Secs. 38-88 - 38-117. Reserved.

DIVISION 2. ADMINISTRATION

Sec. 38-118. Duties and authority of director.

- (a) The director has the authority to adopt additional policies, criteria, specifications, standards, rules, regulations, and guidance for the proper implementation of the requirements of this article and the stormwater management manual. The manual shall be enforceable, consistent with other provisions of this article, as if it were a part of this article.
- (b) The director shall have the authority to prepare, or have prepared, master plans for drainage basins and to establish regulations or direct capital improvements to carry out said master plans.
- (c) In the event that the director determines that a violation of any provision of this article has occurred, or that work does not have a required plan or permit, or that work does not comply with an approved plan or permit, the director may issue enforcement responses as defined in division 10 of this article, pertaining to enforcement, to the owner subject to the right of appeal set out in section 38-343.

(d) The director and the staff under the director's supervision shall administer the provisions of this article.

Sec. 38-119. Stormwater appeals board--Established; composition.

(a) There is created and established, pursuant to T.C.A. § 68-221-1106 et seq., the stormwater appeals board, referred to in this article as "appeals board," which shall be composed of four members as follows:

- (1) A member of the board of mayor and alderman, who shall serve as chair, but shall have no vote unless there is a tie among voting members;
- (2) A member of the planning commission;
- (3) The head of the planning department or designee; and
- (4) The building official.

(b) All appeals board members shall serve without pay or other compensation.

(c) The appeals board shall promulgate such procedural rules as may be deemed necessary in the interest of justice, fairness and impartiality.

(d) All members of the appeals board, except the planning director and building official shall be appointed by the mayor, subject to confirmation by the board of mayor and aldermen.

Sec. 38-120. Same--Duties and authority.

The appeals board shall have the power, duty and responsibility to:

- (1) Hear appeals from orders issued by the director assessing penalties, damages or revoking or modifying permits;
- (2) Affirm, modify or revoke such actions or orders of the director;
- (3) Issue notices of appeals and subpoenas requiring attendance of witnesses and the production of evidence;
- (4) Administer oaths and examine witnesses;
- (5) Take such testimony as the appeals board deems necessary; and
- (6) Hear appeals of owners for the purpose of reviewing the denial of a permit or imposition of terms or conditions in permits or any exceptions granted by the director.

Secs. 38-121 - 38-138. Reserved.

DIVISION 3. EROSION PREVENTION AND SEDIMENT CONTROL

Sec. 38-139. General requirements.

(a) Land disturbing activity or construction that in any way causes off-site sedimentation or sediment discharges to waters of the state or that causes the city to be in violation of its NPDES general permit for discharges from small municipal separate storm sewer systems, or its replacement, shall be a violation of this article.

(b) No owner of any property within the city shall commence land disturbing activity greater than or equal to one acre unless a land disturbing permit is issued by the building official; provided this subsection (b) shall not apply if the land disturbance is less than one acre if part of a larger common plan of development or sale that would disturb one acre or more, or is a small lot as set out in section 38-142. The issuance of a land disturbing permit shall be conditioned upon the receipt and approval by the director of a stormwater pollution prevention plan (SWPPP) and an NOC provided by the city.

(c) The city shall serve as the plan approval agency only, and in no instance are its regulations to be construed as designing erosion prevention and sediment control measures or other stormwater management facilities.

(d) No building permit, where applicable, shall be issued until the owner has obtained and is in compliance with the land disturbing permit.

(e) All land disturbing activities shall employ adequate erosion prevention and sediment control BMPs.

(f) No land disturbing activities shall commence until a certified erosion prevention and sediment control inspector has been appointed by the owner and acknowledged by the director. Inspections must be performed in accordance with Sub-sections 3.1.2 and 3.5.8 of the CGP.

(g) The owner must notify the director ten working days in advance of the commencement of construction.

(h) A pre-construction meeting with construction site operators shall be held prior to commencement of land disturbing activity.

(i) At completion of land disturbing activities and approval of stormwater management facilities by the director, a copy of the signed notice of termination (NOT) shall be provided to the city.

Sec. 38-140. Design criteria.

The city adopts as its erosion and sediment control design standards and best management practices manual the TDEC Erosion Prevention and Sediment Control Handbook, as amended.

Sec. 38-141. Stormwater pollution prevention plan (SWPPP).

(a) The requirements of the plan are as follows:

(1) The SWPPP shall be sealed by a qualified design professional licensed in the state provided the narrative portion of the SWPPP may be prepared by an individual that has a working knowledge of erosion prevention and sediment controls, such as a Certified Professional or a person that has successfully completed the Level II Design Principles for Erosion Prevention and Sediment Control for Construction Sites course;

(2) BMPs shall meet or exceed the requirements of the TDEC Erosion Prevention and Sediment Control Handbook;

(3) The SWPPP shall be subject to any additional requirements set forth in the city's subdivision regulations, chapter 114, zoning, or other city ordinances or regulations; and

(4) Construction at the site in accordance with the approved plan must commence within one year from the issue date of the grading permit, or the grading permit will become null and void and the plan must be resubmitted for approval.

(b) Stormwater pollution prevention plans shall be prepared in accordance with the Tennessee Erosion and Sediment Control Handbook and Sections 3, 4 and 5.4 of the Tennessee General NPDES Permit for Discharges Associated with Construction Activities, as amended, or any other information deemed necessary and appropriate by the owner or requested by the director.

Sec. 38-142. Small lot erosion prevention and sediment control plan.

(a) All land disturbing activities that affect less than one acre and are not part of a larger common plan of development shall adhere to the requirements of this subsection.

(b) Submittal of a small lot erosion prevention and sediment control plan is required and must be reviewed and approved by the director prior to issuance of a land disturbing permit.

(c) Small lot erosion prevention and sediment control plans shall include the following:

(1) Address/location of land disturbing activity.

(2) Owner's name and contact information;

(3) Building, grading or demolition permit number (if available);

(4) Location of streams, wetlands, ponds, sinkholes, easements, existing drainage structures with respect to the site;

(5) A description of erosion prevention and sediment control measures;

(6) Approximate disturbed area limits;

(7) Location of silt fences;

(8) Location of stabilized construction exits; and

(9) Roof drainage accommodations.

(d) The director has the discretion to require a fully engineered erosion prevention and sediment control plan in lieu of a small lot plan.

Sec. 38-143. Land disturbing requirements.

(a) *Land disturbing activity subject to approval.* Except as otherwise provided in this section, an owner shall not initiate any land disturbing activity until the city has issued written approval by the director, the SWPPP is approved by the director and an NOC supplied (where applicable), the appropriate fees are paid and any required performance bond or financial assurance is provided, as may be required in section 38-347. Such permit shall expire two years from the date of issuance. Once a permit has expired, it is a violation to continue work on the property for which the permit has been granted without obtaining a renewal of such permit, which shall include the submission and approval of a plan as set out in this article and other requirements to obtain a permit as set out in or authorized by this article.

(b) *Certain activities excepted.* No approval shall be required for the following:

(1) *Building grading and excavation.* Finished grading and excavation below the finished grade for basements and footings of a single-family or duplex residential structure, for retaining walls, swimming pools, cemeteries for human or animal burial or accessory structures related to single-family residences or duplex structures authorized by a valid building permit, provided the disturbed material or fill is handled in such a manner as to conform to any approved erosion prevention and sediment control plan for the area or, where no such plan is in effect, such work must be done in a manner which presents no significant erosion hazard.

(2) *General excavation.* An excavation or fill, provided it:

- a. Is less than four feet in vertical depth at its deepest point, as measured from the original grade;
- b. Does not result in a total quantity of more than 100 cubic yards of material being removed from, or deposited on or disturbed on any lot, parcel or subdivision thereof;
- c. Does not constitute a potential erosion hazard or act as a source of sedimentation to any adjacent land or watercourse;
- d. Has no final slopes greater than or equal to one foot vertical in two feet horizontal;
- e. Has proper vegetative cover reestablished as soon as possible on all disturbed areas; and
- f. Has no fill placed on a surface having a slope steeper than three feet horizontal to one foot vertical.

(3) *Agricultural*. Accepted agricultural land management practices such as plowing, cultivation; nursery operations such as the removal and transplanting of cultivated sod, shrubs and trees; tree cuttings at or above existing ground level; and logging operations leaving the stump, ground cover and root mat intact.

(4) *Landscaping*. Grading, as a maintenance measure, or for landscaping purposes on existing developed lots or parcels, provided the aggregate area affected or stripped at any one time does not exceed 10,000 square feet and is not within a designated floodplain; the grade change does not exceed 18 inches at any point and does not alter the drainage pattern; vegetative cover is reestablished as soon as possible on all disturbed areas, use of kudzu is prohibited; and the grading does not involve a quantity of material in excess of 100 cubic yards.

(5) *Utilities*. The installation of water and sewer lines, telephone lines, electricity lines, gas lines or other public service facilities.

Sec. 38-144. Compliance.

The owner is responsible for maintaining compliance with the approved SWPPP, and land disturbance permit. The approved SWPPP shall be followed during the entire duration of construction at the site. The director may require reports or records from the owner. No land disturbing activity shall be allowed to commence without prior SWPPP approval by the director.

Sec. 38-145. Amendments to the approved SWPPP.

- (a) The owner must modify and update the SWPPP in accordance with section 3.4.1 of the state construction general permit No. TNR100000.
- (b) The SWPPP, as amended, shall be submitted to the director for approval.

Secs. 38-146 - 38-167. Reserved.

DIVISION 4. PERMANENT STORMWATER MANAGEMENT

Sec. 38-168. General requirements.

- (a) Owners of land development activities not exempted under section 38-141 shall be required to obtain a land disturbing permit. As a condition of this permit, a stormwater management plan (plan) shall be submitted in accordance with Section 2.3.1 of the manual.
- (b) The plan shall include the specific required elements that are listed and/or described in the manual. The director may require submittal of additional information in the plan as necessary to allow an adequate review of the existing or proposed site conditions.
- (c) The plan shall be subject to any additional requirements set forth in the minimum subdivision regulations, design standards, chapter 114, pertaining to zoning, or other city regulations.
- (d) Plans shall be prepared and stamped by a design professional. Portions of the plan that require hydraulic or hydrologic calculations and design shall be prepared and stamped by a professional engineer competent in civil and site design and licensed to practice in the state.
- (e) The approved plan shall be adhered to during grading and construction activities. Under no circumstances is the owner or operator of land disturbing activities allowed to deviate from the approved plan without prior approval of a plan amendment by the director.
- (f) The approved plan shall be amended if the proposed site conditions change after plan approval is obtained, or if it is determined by the director during the course of grading or construction that the approved plan is inadequate.
- (g) Requirements for the permanent operation and maintenance of stormwater management facilities, BMPs, buffer zones and water quality volume credit areas shall be submitted with the plan for approval by the director. These will be presented through the declaration of a protective covenant, for permanent maintenance of stormwater facilities and BMP's, which shall be enforceable by the city. The covenant shall be recorded with the deed and shall run with the land and continue in perpetuity.
- (h) Stormwater management facilities, BMPs, buffer zones and areas that receive water quality

volume reductions shall be placed into a permanent management stormwater easement of sufficient area that is recorded with the deed to the parcel and held by the city.

(j) A right-of-way or permanent easement of sufficient width shall be provided for vehicular and equipment ingress and egress for access to all stormwater management facilities, BMPs and areas that receive water quality volume reductions from a driveway, public or private road.

(k) Owners of land development activities not exempted from submitting a stormwater management plan may be subject to additional watershed or site-specific requirements than those stated in section 38-140 in order to satisfy local or state NPDES, TMDL or other regulatory water quality requirements for developments or land uses that are considered pollutant hotspots, discharging to critical areas with sensitive resources or in areas where the director has determined that additional restrictions are needed to limit adverse impacts from the proposed development on water quality or channel protection.

(l) The director may waive or modify any of the requirements of this division if adequate water quality treatment and/or channel protection is suitably provided by a downstream or shared off-site stormwater facility, or if engineering studies determine that installing the required stormwater management facilities would adversely impact water quality, increase channel erosion or downstream flooding.

(m) This article is not intended to repeal, abrogate or impair any existing easements, covenants, deed restrictions or existing ordinances and regulations. However, where a provision of this article and other regulations conflict or overlap, the provision that is more restrictive or imposes higher standards or requirements on the owner shall control. The owner is required to notify the director of any such regulatory conflicts upon submittal of the plan.

Sec. 38-169. Design criteria.

(a) All developments that must submit a stormwater management plan shall provide water quality treatment in accordance with the following requirements:

(1) Stormwater runoff from the development site must be treated for water quality prior to discharge from the development site in accordance with the stormwater treatment standards and criteria provided in the manual.

(2) Water quality treatment shall be achieved through the use of one or more structural and/or nonstructural SCMs that are designed and constructed in accordance with the criteria, guidance, and specifications provided in the manual.

(3) Stormwater quality control methods, designs or technologies not provided in the manual may be submitted for approval if it is proven that such alternatives will meet or exceed the water quality control requirements set forth in the manual and this chapter.

(4) SCMs shall not be installed within public rights-of-way or on public property without prior approval of the director.

(b) All developments that must submit a plan shall provide downstream channel protection using the design criteria and guidance provided in section 3.4 of the manual.

(c) All developments that must submit a plan shall provide a downstream impact analysis addressing overbank flood control in accordance with section 3.5 of the manual.

(d) All developments that must submit a plan shall establish, protect and maintain a buffer zone, in accordance with the policies criteria and guidance set forth in the manual. Exemptions from this requirement are as follows:

(1) The perimeter of waterbodies that have no known connection to streams, other ponds, lakes or wetlands.

(2) Stormwater management facilities or BMPs that are designed, constructed and maintained for the purposes of stormwater quality and/or quantity control, unless expressly required by the design standards and criteria for the facility are provided in the manual.

(e) In addition to the requirements set forth in subsections (a) through (d) of this section, all developments that must submit a stormwater management plan shall include the following:

(1) Account for both on-site and off-site stormwater;

(2) Maintain natural drainage divides and hydrologic characteristics;

(3) Provide soils information; and

(4) Control stormwater runoff and provide peak discharge/volume control in accordance with this article using:

a. Predeveloped conditions unless otherwise specified by the director;

b. NOAA Atlas 14 rainfall data;

c. Post-development versus pre-development hydrologic/hydraulic modeling that shows attenuation of developed site runoff. Developed discharge from a site shall be less than or equal to pre-development discharge for the 2 year through 100 year design storms;

d. Longitudinal storm drains designed for a ten-year frequency storm, provided that no residential

- or commercial structures are flooded by a 100 year frequency storm;
- e. Roadway cross drains designed for a ten-year frequency storm for a local street and 100 year frequency storm for a collector street, provided no residential or commercial structures are flooded by the 100 year frequency storm. All pipes lying under the roadway shall be reinforced concrete unless otherwise approved by the director;
 - f. Drainage easements delineating the 100 year frequency storm flood fringe to prevent flooding and future disturbance; and
 - g. Pipe materials approved by the director.
- (f) Pursuant to the City of Kingsport Zoning Ordinance, a floodplain development permit is required for all development or redevelopment within federally designated floodplains as shown on the applicable FEMA Flood Insurance Rate Map(s) of latest issue.
- (g) The rational method shall be used to determine peak flow rates only. National Resource Conservation Service (NRCS) methods and those provided in the manual for water quality and channel protection shall be used in determining storage requirements.
- (h) All supporting hydrologic and hydraulic assumptions shall be submitted, as well as all maps and references used in calculations.
- (i) The design must not adversely affect adjacent or neighboring properties.
- (j) The city may allow stormwater control measures to be implemented at another location within the same USGS 12-digit hydrologic unit code (HUC) watershed as the original project. Off-site mitigation must treat a minimum of 1.5 times the amount of water not treated on site. The off-site mitigation location must be approved by the city.
- (k) If the project cannot meet pollutant removal standards, and cannot provide for off-site mitigation, the city may allow the owner to make payment in a public stormwater project fund at a level sufficient to design, install, and maintain the stormwater mitigation measures.

Sec. 38-170. Exemptions.

- (a) Developments that conform to the criteria in subsection (c) of this section are exempt from the requirements of this chapter, unless the director has determined that stormwater quality management is needed to satisfy local or state NPDES, TMDL or other regulatory water quality requirements, or the proposed development will be a pollutant hotspot, or to limit adverse stormwater quality or channel protection impacts of the proposed development.
- (b) The exemptions listed in subsection (c) of this section shall not be construed as exempting these developments from compliance with stormwater requirements stated in the minimum subdivision regulations, chapter 114, pertaining to zoning, or other city regulations.
- (c) The following developments are exempt from the requirements for a stormwater management plan:
- (1) Residential or nonresidential developments that disturb less than one acre of land and are not part of a larger common plan of development or sale that would disturb one acre or more;
 - (2) Minor land disturbing activities such as residential gardens and residential or nonresidential repairs, landscaping or maintenance work;
 - (3) Individual utility service connections, unless such activity is carried out in conjunction with the clearing, grading, excavating, transporting, or filling of a lot for which a plan would otherwise be required;
 - (4) Installation, maintenance or repair of individual septic tank lines or drainage fields, unless such activity is carried out in conjunction with the clearing, grading, excavating, transporting or filling of a lot for which a plan would otherwise be required;
 - (5) Installation of posts or poles;
 - (6) Farming activities, existing nursery and agricultural operations, but not including construction conducted as a permitted principal or accessory use by chapter 114, zoning;
 - (7) Emergency work to protect life, limb or property, and emergency repairs, provided that the land area disturbed shall be shaped and stabilized in accordance with city requirements as soon as practicable;
 - (8) Additions or modifications to existing, individual, single-family structures;
 - (9) Silvicultural activities; and
 - (10) State and federal projects subject to the submission requirements of TDEC.

Sec. 38-171. Special pollution abatement requirements.

- (a) A special pollution abatement plan shall be required for the following land uses, which are considered pollutant hotspots:
- (1) Vehicle, truck or equipment maintenance, fueling, washing or storage areas, including but not limited to:
 - a. Automotive dealerships;

- b. Automotive repair shops; and
- c. Carwash facilities;
- (2) Recycling and/or salvage yard facilities;
- (3) Restaurants, grocery stores and other food service facilities;
- (4) Commercial facilities with outside animal housing areas, including animal shelters, fish hatcheries, kennels, livestock stables, veterinary clinics or zoos; and
- (5) Other producers of pollutants identified by the director as a pollutant hotspot using information provided to or collected by the director, or reasonably deduced or estimated by the director from engineering or scientific study.
- (b) A special pollution abatement plan may be required for land uses or activities that are not identified by this article as hotspot land uses, but are deemed by the director to have the potential to generate highly contaminated runoff with concentrations of pollutants in excess of those typically found in stormwater.
- (c) The special pollution abatement plan shall be submitted as part of the plan, and the BMPs submitted on the plan shall be subject to all other provisions of this article. Technical requirements for the plan shall be based on the provisions and guidelines set forth in the stormwater management manual.
- (d) BMPs specified in the special pollution abatement plan must be appropriate for the pollutants targeted at the site and must be approved with the plan.
- (e) A special pollution abatement plan will be valid for a period of five years, at which point it must be renewed. At the time of renewal, any deficiency in the pollutant management method must be corrected.

Sec. 38-172. Sinkhole requirements.

The following sinkhole and drainage well plan information or approval from the appropriate regulating agency must be provided prior to the alteration of the natural drainage for watershed discharging to such features as sinkholes and drainage wells:

- (1) Proposed on-site and offsite drainage channels that are tributary to a sinkhole throat or drainage well inlet shall be delineated, along with appropriate hydraulic calculations to define the existing and altered (if appropriate) 100 year floodplain and to confirm that off-site flooding will not be increased;
- (2) Detailed contours are to be shown for all sinkholes that are to receive stormwater runoff from the site. These contours are to have a maximum interval of two feet and are to be verified by field surveys;
- (3) A geologic investigation of all sinkholes receiving stormwater runoff from the site shall be performed. The report from this investigation shall be signed and sealed by a registered professional experienced in geology and groundwater hydrology and shall contain the following:
 - a. Location and nature of aquifers;
 - b. Potential for siltation problems;
 - c. Foundation problems that may be expected around sinkholes;
 - d. Details of drainage structures to be built in sinkholes;
 - e. Any other factors relevant to the design of drainage from sinkholes;
 - f. Plans showing the 100 year flood-plain;
 - g. The 100 year floodplain shall be designated as a drainage easement on final subdivision plat; and
 - h. Details of plan for grading and clearing of vegetation within the 100 year floodplain;
- (4) Compliance with any and all conditions that may be required by the federal government or the state shall be documented. The state division of groundwater is the primary regulatory agency for sinkholes and drainage wells. Drainage into a sinkhole may require a permit for a Class V well under rules for underground injection control (UIC); and
- (5) Demonstration that development will not occur within the area flooded by the 100 year flood. The 100 year flood elevation may be lowered by construction of a detention pond. Calculations that document a lowering of the 100 year flood elevation shall be based on the 100 year, 24 hour storm using an appropriate safety factor for discharge into the sinkhole.

Sec. 38-173. Drainage requirements.

- (a) Private drainage systems, where drainage originates in its entirety on private property and terminates on same said property, shall be the sole responsibility of the owner.
- (b) Private drainage originating on private property and draining to an adjacent parcel of private property shall be resolved by the owners involved.
- (c) In cases where flooding stemming from the drainage system or streams are of significant magnitude, the health and welfare of private and/or public property may prompt the city to

participate in mitigating the frequency and effects. All such projects shall meet with the approval of the director prior to implementation.

(e) The requirements of subsections (a) through (d) of this section may be waived and emergency measures taken to protect the public safety during those circumstances in which, due to unforeseen events, development and/or acts of nature, the public welfare requires it. The director shall have the power to exercise all due discretion, judgment and executive directives to address any such situation and/or emergency.

(f) No watercourse shall be obstructed.

(g) Stormwater drainage shall not:

(1) Adversely impact adjacent properties or public rights-of-way;

(2) Circumvent stormwater management facilities for which that flow contribution was designed; or

(3) Be directed through a curb without a permit approved by the director.

(h) Additional curbing to control stormwater shall be installed only with approval of the director.

Secs. 38-174 - 38-198. Reserved.

DIVISION 4 5. PERMITS

Sec. 38-199. General requirements.

Owners who hold NPDES general, individual and/or multisector permits shall provide either a copy of such permit or the permit number assigned to them by the state department of environment and conservation to the director no later than 60 calendar days after issuance of the permit.

Secs. 38-200--38-224. Reserved.

DIVISION 6. AS-BUILT CERTIFICATIONS

Sec. 38-225. General requirements.

(a) Prior to the release of a performance bond required in section 38-347, certificate of occupancy or approval of final plat, an as-built certification shall be provided to the director, certifying that all drainage and treatment structures or facilities, BMPs, volumes, sizes, slopes, locations, elevations and hydraulic structures have been field verified, represent the as-built field conditions, and comply with the approved stormwater management plans, and that all required protective covenants have been properly filed with the appropriate register of deeds. Features such as roadway lines, grades, cross slopes, locations, contours, elevations, boundaries of buffer zones and areas that receive stormwater quality volume credits shall be provided to verify approved plans. Other contents of the as-built certification must be provided in accordance with guidance provided in the manual.

(b) As-built certifications shall include sufficient design information to show that stormwater management facilities required by this article will operate as approved. This shall include all necessary computations used to determine percent pollutant removal, the flow rates and treatment volumes required to size stormwater management facilities and BMPs.

(c) The as-built certification must be stamped by the appropriate design professional required to stamp the original plan, as stated in section 38-168(d).

(d) The owner shall also supply stormwater management facility certification forms, provided by the city, attesting that the facilities are constructed according to the approved design.

Secs. 38-226 - 38-252. Reserved.

DIVISION 7. INSPECTIONS, OPERATION AND MAINTENANCE

Sec. 38-253. Right-of-entry.

(a) During and after construction, the director may enter upon any property which has a stormwater management facility, BMP, buffer zone, water quality volume credit area, discharges or contributes, or is believed to discharge or contribute, to stormwater runoff or the stormwater system, streams, natural drainage ways or via any other private or public stormwater management system during all reasonable hours to inspect for compliance with the provisions of this article, or to request or perform corrective actions.

(b) Failure of an owner to allow such entry onto a property for the purposes set forth in subsection (a) of this section shall be cause for the issuance of a cease and desist order, withholding of a certificate of occupancy, and/or civil penalties and/or damage assessments in accordance with division 10 of this article.

Sec. 38-254. Requirements.

(a) The owners of stormwater management facilities, BMPs, buffer zones and water quality volume credit areas shall at all times inspect, properly operate and maintain all facilities and systems of stormwater treatment and control (and related appurtenances), and all buffer zones and water quality volume credit areas in such a manner as to maintain the full function of the facilities or BMP's which are installed or used by the owners to achieve compliance with this article.

(b) Inspection and maintenance of privately owned stormwater management facilities, BMP's, buffer zones and water quality volume credit areas shall be performed at the sole cost and expense of the owners of such facilities/areas.

(c) Inspection and maintenance shall be performed in accordance with specific requirements and guidance provided in the manual. Inspection and maintenance activities shall be documented by the owner or their designee, and such documentation shall be maintained by the owner for a minimum of three years, and shall be made available for review by the director upon request.

(d) The director has the authority to impose more stringent inspection requirements as necessary for purposes of water quality protection and public safety.

(f) The removal of sediment and/or other debris from stormwater management facilities and BMP's shall be performed in accordance with all city, state, and federal laws. Guidelines for sediment removal and disposal are referenced in the manual. The director may stipulate additional guidelines if deemed necessary for public safety.

(g) The director may order corrective actions as are necessary to properly maintain and operate erosion prevention and sediment control measures, BMP's stormwater management facilities, buffer zones and/or water quality volume credit areas within the city for the purposes of stormwater pollution prevention, water quality treatment, channel erosion protection, adherence to local performance standards and/or public safety. If the owner fails to perform corrective actions, the director shall have the authority to order the city or others to take corrective actions. In such cases where a performance bond exists, the city shall utilize the bond to perform the corrective actions. In such cases where a performance bond does not exist, the owner shall reimburse the city for all of its direct and related expenses. If the owner fails to reimburse the city, the city is authorized to file a lien for said costs against the property and to enforce the lien by judicial foreclosure proceedings.

(h) This article does not authorize access to adjoining private property by the owner or site operator. Arrangements concerning removal of sediment or pollutants on adjoining property must be settled by the owner or operator with the adjoining land owner.

Secs. 38-255 - 38-280. Reserved.

DIVISION 8. PERMIT CONTROLS AND SYSTEM INTEGRITY

Sec. 38-281. General requirements.

(a) Any alteration, improvement, or disturbance to stormwater management facilities, buffer zones or water quality volume credit areas shown in as-built drawings shall be prohibited without written authorization from the director. This does not include alterations that must be made in order to maintain the intended performance of the stormwater management facilities or BMPs.

(b) Other state and/or federal permits that may be necessary for construction in and around streams and/or wetlands shall be approved through the appropriate lead regulatory agency prior to submittal of a stormwater management plan to the city.

Secs. 38-282 - 38-304. Reserved.

DIVISION 9. NONSTORMWATER DISCHARGES

Sec. 38-305. General requirements.

(a) Except as set out in subsection (b) of this section, no owner shall introduce or cause to be introduced into the municipal separate storm sewer system any discharge that is not composed entirely of stormwater. The commencement, conduct, or continuance of any non-stormwater discharge to the municipal separate storm sewer system, whether intentional or not, is prohibited.

(b) For purposes of this article, the following are not illicit discharges unless identified as significant contributors of pollutants to the municipal separate storm sewer system:

- (1) Landscape irrigation or lawn watering with potable water;
- (2) Diverted stream flows permitted by the state;
- (3) Rising groundwater;
- (4) Groundwater infiltration (as defined at 40 CFR 35.2005(20)) to separate storm sewers;
- (5) Uncontaminated pumped groundwater;
- (6) Foundation or footing drains;

- (7) Water discharged from crawl space pumps;
- (8) Air conditioning condensate;
- (9) Springs;
- (10) Individual, residential washing of vehicles;
- (11) Flows from natural riparian habitat or wetlands;
- (12) Swimming pools (if dechlorinated, less than one part per million chlorine);
- (13) Street cleaning and deicing;
- (14) Discharges from firefighting activities;
- (15) Pursuant to a valid and effective NPDES permit issued by the state;
- (16) Discharges necessary to protect public health and safety, as specified in writing by the city;
- (17) Dye testing permitted by the city;
- (18) Water line flushing or other potable water sources;
- (19) Natural riparian habitat or wetland flows; and
- (20) Discharges authorized by the Construction General Permit (CGP).

Sec. 38-306. Prohibition of illicit connections.

The construction, use, maintenance, and continued existence of illicit connections to the municipal separate storm sewer system are prohibited. This prohibition expressly includes, without limitation, illicit connections made in the past, even if the connection was permissible under law or practices applicable or prevailing at the time.

Sec. 38-307. Elimination of discharges or connections.

- (a) Any owner of a property, which is, or may be, the source of an illicit discharge, may be required to implement, at such owner's expense, the BMPs necessary to prevent the further discharge of pollutants to the municipal separate storm sewer system.
- (b) Any owner of a property or premises where an illicit connection is located shall be required, at such owner's expense, to eliminate the connection to the municipal separate storm sewer system.
- (c) Compliance with all terms and conditions of a valid NPDES permit authorizing the discharge of stormwater associated with industrial activity, to the extent practicable, shall be deemed in compliance with the provisions of this article.
- (d) No person shall dump or otherwise deposit outside an authorized landfill, convenience center or other authorized garbage or trash collection point, any trash or garbage of any kind or description on any private or public property, occupied or unoccupied, inside the city.

Sec. 38-308. Notification of spills.

- (a) Notwithstanding other requirement of law, when any owner or tenant, or agent thereof or any person responsible for a facility or operation, or responsible for emergency response for a facility or operation, has information of any known or suspected release of a pollutant which results in, or may result in, a discharge into stormwater and/or the municipal separate stormwater system, such person shall take all necessary steps to ensure the discovery, containment, and cleanup of such release.
- (b) When any owner or tenant, or agent thereof or any person responsible for a facility or operation, or responsible for emergency response for a facility or operation, has information of any known or suspected release of hazardous substance such person shall immediately notify emergency response agencies of the occurrence by emergency dispatch services, and shall notify the director no later than the next business day of the release of hazardous materials.
- (c) When any owner or tenant, or agent thereof or any person responsible for a facility or operation, or responsible for emergency response for a facility or operation, has information of any known or suspected release of nonhazardous substance such person shall notify the director no later than the next business day.
- (d) Notifications in person or by telephone shall be confirmed by written notice addressed and mailed to the director within three business days of the telephone notice.
- (e) If the discharge of a pollutant emanates from a commercial or industrial establishment, the owner or operator of such establishment shall also retain an on-site written record of the discharge and the actions taken to prevent its recurrence. Such records shall be retained for at least three years.
- (f) Documented illicit discharges shall be responded to no more than seven days from detection, and eliminated as soon as possible.

Sec. 38-309. Actions in violation of the city's NPDES permit.

Notwithstanding any other provision in this article, no person or entity shall allow any discharge into the municipal separate storm sewer system that would be a violation of the city's NPDES general

permit for discharges from small municipal separate storm sewer system or would cause the city to be in violation of its permit.

Secs. 38-310 - 38-330. Reserved.

DIVISION 10. ENFORCEMENT

Sec. 38-331. Remedies nonexclusive.

The remedies provided for in this article are not exclusive and the director may take any, all or any combination of these actions against a noncompliant owner. The director is empowered to take more than one enforcement action against any noncompliant owner that is in violation.

Sec. 38-332. Adoption of enforcement response plan.

An enforcement response plan, including a schedule of civil penalties which may be assessed for certain specific violations or categories of violations, shall be established by resolution of the board of mayor and aldermen. Any civil penalty assessed to a violator pursuant to this section may be in addition to any other penalty assessed by a state or federal authority.

Sec. 38-333. Show cause hearing.

An owner that has been issued an assessment of damages or civil penalty or order under this article may within ten days from such action submit a written request to appear before the director and show cause why the proposed enforcement action should not be taken. Upon receipt by the director of a timely request for a show cause hearing the director shall within a reasonable time notify the owner of the time and place for the hearing. In the written request for a show cause hearing the owner is responsible for providing the director an address, email address, fax number, or such for the receipt of the notice of the show cause hearing. A show cause hearing shall not be a bar against or prerequisite for the director taking any other action against the owner, but, except as otherwise provided by section 38-346, an offer of a show cause hearing by the director shall be made before taking further action on the administrative order or assessment of damages or civil penalties.

Sec. 38-334. Appeals process.

(a) Except in emergency suspensions pursuant to section 38-346, any owner against whom an assessment for damages or civil penalty or order has been made for a violation of this article, or a permit denied, revoked, suspended by the director, shall have 30 days after having been notified of the assessment or order, or after a permit has been denied, revoked or suspended, to appeal the action to the stormwater appeals board by filing with the city recorder a written petition for appeal setting forth the grounds and reasons for the appeal, and the owner shall serve a copy of the petition for appeal on the director. The failure to serve the city recorder within 30 days with the written petition for appeal is jurisdictional, and if an appeal is not taken within the 30 days the matter shall be final.

(b) Upon receipt of a written petition for appeal the city recorder shall give the owner 30 days written notice of the time and place of the hearing. The director and the owner may agree to a continuance of the hearing; a continuance will be granted when there are not at least three members of the appeals board present for the hearing; the chairman of the appeals board may grant a continuance of the hearing for good cause shown; or as may otherwise be governed by its rules of procedure.

(c) An appeal to the appeals board shall be a de novo review.

(d) The appeals board shall have the authority to establish written rules of procedure for the conduct of its hearings, provided hearings before the appeals board shall be conducted in accordance with the following:

(1) The presence of at least three members of the appeals board shall be necessary to conduct a hearing.

(2) A verbatim record of the proceedings shall be taken. The transcript so recorded shall be made available to any party upon prepayment of a charge adequate to cover the costs of preparation.

(3) In connection with the hearing, subpoenas shall be issued in response to any reasonable request by any party to the hearing requiring the attendance and testimony of witnesses and the production of evidence relevant to any matter involved in the hearing. In case of contumacy or refusal to obey a notice of hearing or subpoena issued under this section, the chancery court shall have jurisdiction, upon application of the appeals board or the director, to issue an order requiring such person to appear and testify or produce evidence as the case may require, and any failure to obey such order of the court may be punished as contempt under law.

(4) Testimony before the appeals board shall be given under oath or affirmation, but the rules of evidence shall not apply.

(5) On the basis of the evidence produced at the hearing, the appeals board shall by majority vote of the members present make findings and enter such decisions and orders as in its opinion will best further the purposes of this article, which shall be done orally at the hearing or, if recessed, when the hearing is reconvened.

Such decisions and orders of the appeals board shall be reduced to writing, signed by one of the members present at the hearing and filed with the city recorder, as an official act of the appeals board, which writing shall be maintained in the permanent records of the city recorder and shall serve as entry of the decision. A copy shall be delivered to the director and the petitioner or mailed to them at their last known addresses.

(6) Any person to whom an emergency order is directed pursuant to section 38-346 shall comply therewith immediately, but on petition to the appeals board shall be afforded a hearing not later than three working days from the receipt of such petition.

Sec. 38-335. Civil penalties.

(a) Pursuant to T.C.A. § 68-221-1106(a), any owner in violation of the provisions of this article shall be subject to a civil penalty of not less than \$50.00 or more than \$5,000.00 per day for each day of violations. Each day of violation may constitute a separate violation. This penalty may be determined by application of the enforcement response plan as defined in section 38-341.

(b) The director may recover reasonable attorney's fees, court costs and other expenses associated with enforcement of this article and the cost of any actual damages incurred by the city.

(c) In determining the amount of the penalty to assess, the director shall consider the factors listed in section 38-345, the enforcement response plan and may consider all relevant circumstances, including but not limited to the extent of harm caused by the violation, the magnitude and duration of the violation, the compliance history of the owner and any other factor provided by law.

Sec. 38-336. Method of assessment for noncompliance.

Civil penalties shall be assessed in the following manner:

(1) The director may issue an assessment against any owner responsible for the violation;

(2) Any person against whom an assessment has been issued may secure a review of said assessment by filing with the director a written petition setting forth the grounds and reasons for their objections and asking for a hearing on the matter before the appeals board. If a petition for review of the assessment is not filed within 30 days after the date the assessment is served, the owner shall be deemed to have consented to the assessment and it shall become final;

(3) If any assessment becomes final because of an owner's failure to appeal the city's assessment, the director may apply to the appropriate court for a judgment and seek execution of said judgment, and the court in such proceedings shall treat a failure to appeal such assessment as a confession of judgment in the amount of the assessment. Upon final order, if payment is not made, the director may issue a cease and desist order;

(4) In assessing a civil penalty, the following factors may be considered:

a. The harm done to the public health or the environment;

b. Whether the civil penalty imposed will be a substantial economic deterrent to the illegal activity;

c. The economic benefit gained by the violator;

d. The amount of effort put forth by the violator to remedy this violation;

e. Any unusual or extraordinary enforcement costs incurred by the city;

f. The amount of penalty established by ordinance or resolution for specific categories of violations;

and
g. Any equities of the situation which outweigh the benefit of imposing any penalty or damage assessment;

(5) Damages may also include any expenses incurred in investigating and enforcing the requirements of this article; removing, correcting and terminating any discharge or connection; and also compensation for any actual damages to the property or personnel of the city caused by the violation, and any reasonable expenses incurred in investigating and enforcing violations of this article.

(6) Where the director has issued progressive enforcement to achieve compliance with this article, and in the judgment of the director such has not been successful, the director may refer the violation to TDEC.

Sec. 38-337. Emergency suspensions.

(a) Under this article, if the director finds that an emergency exists imperatively requiring immediate action to protect the public health, safety or welfare; the health of animals, fish or aquatic life, or a

public water supply; the director may, without prior notice, issue an order reciting the existence of such an emergency and requiring that such action be taken as the director deems necessary to meet the emergency, including suspension of a permit issued under this article.

(b) Any owner notified of a suspension shall immediately eliminate the violation. If an owner fails to immediately comply voluntarily with the suspension order, the director may take such steps as deemed necessary to remedy the endangerment. The director may allow the owner to recommence when the owner has demonstrated to the satisfaction of the director that the period of endangerment has passed.

(c) An owner that is responsible, in whole or in part, for any discharge or connection presenting imminent danger to the public health, safety or welfare; the health of animals, fish or aquatic life, or a public water supply; shall submit a detailed written statement, describing the causes of the harmful discharge or connection and the measures taken to prevent any future occurrence, to the director prior to the date of any show cause hearing under section 38-342.

(d) Nothing in this article shall be interpreted as requiring a hearing prior to any emergency suspension under this section.

(e) Any owner whose permit or operation is suspended pursuant to this section, on petition to the appeals board, shall be afforded a hearing as soon as possible, but in no case shall such hearing be held later than three working days from the receipt of such a petition by the director.

Sec. 38-338. Financial assurance.

(a) A performance bond and/or certificate of occupancy which guarantees satisfactory completion of construction work related to stormwater management facilities, channel protection, buffer zones and any BMP's shall be required. Prior to release of the performance bond and/or certificate of occupancy, the owner shall provide the city with an accurate as-built of the property and an executed protective covenant for all BMPs, buffer zones and areas that a final operations and maintenance plan, which shall include an executed legal document entitled covenants for permanent maintenance of stormwater facilities and BMP's. The owner shall record these items in the office of the county register of deeds. The location of the stormwater management facilities, BMP's, vegetated buffers, water quality volume credit areas and the water quality easements associated with these facilities/areas shall be shown on a plat that is also recorded in the office of the county register of deeds.

(b) Performance bonds shall name the city as beneficiary and shall be guaranteed in the form of a surety bond, cashier's check or letter of credit from an approved financial institution or insurance carrier. The surety bond, cashier's check or letter of credit shall be provided in a form and in an amount to be determined by the director. The actual amount shall be based on submission of plans and estimated construction, installation or potential maintenance and/or remediation expenses.

(c) The city recorder may refuse brokers or financial institutions the right to provide a surety bond, cashier's check or letter of credit based on past performance, ratings of the financial institution or other appropriate sources of reference information.

(d) The director may decline to approve a plan or issue or reissue a permit to any owner who has failed to comply with any section of this article, a permit or order issued under this article unless such owner first files a satisfactory bond, payable to the city, in a sum not to exceed a value determined by the director to be necessary to achieve consistent compliance.

Sec. 38-339. Injunctive relief.

When the director finds that an owner has violated or continues to violate any section of this article, or a permit or order issued under this article, the director may petition the appropriate court, through the city attorney, for the issuance of a temporary or permanent injunction, as appropriate, which restrains or compels the specific performance of the permit, order or other requirement imposed by this article on activities of the owner. The director may also seek such other action as is appropriate for legal and equitable relief, including a requirement for the owner to conduct environmental remediation. A petition for injunctive relief shall not be a bar against or a prerequisite for taking any other action against an owner.

Sec. 38-340. Additional stay.

The appeals board may grant an additional continuance and stay beyond that set out in section 38-343 upon the request of an owner and upon the posting of an appeal bond payable to the city in a sum to be determined by the director as necessary to protect the interests of the city.

Sec. 38-341. Appeal and judicial review.

The alleged violator may appeal a decision of the appeals board pursuant to the provisions of T.C.A. § 27-8-101 et seq.

SECTION II. It is hereby declared that the sections, clauses, sentences and parts of this ordinance are severable, are not matters of mutual essential inducement, and any of them shall be excinded if the ordinance would otherwise be unconstitutional or ineffective. If any section, sentence, clause or phrase of this ordinance should be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause or phrase of this ordinance.

SECTION III. That this ordinance shall take effect from and after the date of its passage and publication, as the law directs, the public welfare of the City of Kingsport, Tennessee requiring it.

JOHN CLARK, Mayor

ATTEST:

JAMES DEMMING
City Recorder

APPROVED AS TO FORM:

J. MICHAEL BILLINGSLEY, City Attorney

PASSED ON 1ST READING: _____

PASSED ON 2ND READING: _____

RESOLUTION NO. _____

A RESOLUTION AMENDING RESOLUTION NO. 2008-134
OF THE CITY OF KINGSPORT PERTAINING TO AN
ENFORCEMENT RESPONSE PLAN FOR THE
STORMWATER MANAGEMENT ORDINANCE

WHEREAS, the Tennessee Department of Environment and Conservation has issued a new NPDES General Permit for Small Municipal Storm Sewer Systems to the City of Kingsport; and

WHEREAS, the permit necessitates some changes to the Enforcement Response Plan.

Now therefore,

BE IT RESOLVED BY THE BOARD OF MAYOR AND ALDERMEN AS FOLLOWS:

SECTION I. That Resolution No. 2008-134 is amended as follows:

ENFORCEMENT RESPONSE PLAN

Introduction

The intent of this document is to provide guidance to city officials in enforcing the stormwater management ordinance. It should be used only as a guide while recognizing that each situation is unique. The provisions of this enforcement response plan are not mandatory. Actual enforcement procedures should consider any unusual aspects of a violation or condition, as well as special characteristics of an enforcement action, in determining the proper response.

While the purpose is to provide guidance for administration of the stormwater management ordinance, it is not intended to limit the judgment and flexibility of the director in determining an appropriate response.

Development Project Plan Review, Approval and Enforcement

The city conducts site plan review through the development project engineer, including interdepartmental consultations, to ensure comprehensive input. A letter to the developer states the city's response, soliciting any changes to the stormwater management plan. Any changes must be submitted in writing and reviewed by city staff before approval is granted.

The site plan must specifically address in the stormwater management plan how it will comply with performance standards stated in the city's stormwater management ordinance.

To ensure that permanent stormwater BMPs are installed as designed, appropriately stamped as-built certifications must be provided to the director for review and approval prior to the release of a performance bond. The owner must also supply stormwater management facility certification forms, provided by the city, attesting that the facilities are constructed according to the approved design.

NPDES Permit Referrals

If the city becomes aware that a construction activity, or an industrial stormwater discharge, exists and that the discharge must be permitted under an NPDES permit but is not so permitted, or if the city has not been able, through its enforcement mechanisms and protocol, to bring an NPDES-permitted discharge into compliance with the city's stormwater management ordinance, the city shall notify TDEC of this situation by supplying the following information to the local environmental field office (EFO): construction project or industrial facility location; name of owner or operator; estimated construction project size or type of industrial activity (including SIC

code if known); and records of communication with the owner or operator regarding filing requirements or violation, including the last two follow-up inspections, two notices of violation or administrative orders, and any response from the owner or operator.

Complaint Management

The city investigates all stormwater-related complaints. They are received in several ways; either verbally, by hotline, web page, phone or from other city departments. Ensuing investigations must be initiated within seven days from the receipt of the complaint. Violations documented as a result of complaint investigation will lead to commensurate enforcement activities.

Inspection

The city conducts inspections of permitted or unpermitted sites, activities, or projects to assess compliance with the approved stormwater pollution prevention plan and/or erosion and sediment control plan and evaluate the potential for discharge of sediment and other construction related wastes. Documentation of observations is achieved through the completion of applicable inspection reports. Enforcement occurs by initiation of corrective actions, enforcement actions and penalties, as defined in and per the terms of the City's stormwater management ordinance.

Enforcement Tracking

The city tracks instances of non-compliance either in paper files or electronically. The enforcement case documentation shall include, at a minimum, the following: name of owner/operator; location of construction project or industrial facility; description of violation; required schedule for returning to compliance; description of enforcement response used, including escalated responses if repeat violations occur or violations are not resolved in a timely manner; accompanying documentation of enforcement response; any referrals to different departments or agencies; and date violation was resolved.

Chronic Violators

The city identifies chronic violators of any stormwater management program component and reduces the rate of noncompliance recidivism by tracking the violations, applying incentives and/or disincentives, and increasing the inspection frequency at the owner/operator's site. If corrective actions are not taken, the city pursues progressive enforcement and, if need be, performs the necessary work and assesses against the owner the costs incurred for repairs.

Enforcement Responses

The order of precedence for enforcement responses outlined in this guide should not be construed to prevent the director from taking a stronger action without first implementing less stringent steps, if in his opinion, a more forceful response is necessary.

Minor infractions may be resolved by a verbal warning, or written notice advising the owner/operator/person of the nature of the violation. If such action fails to generate an adequate response by the owner/operator/person, further enforcement actions as provided by the ordinance may be taken.

Verbal Warning

In the case of the most minor violation of a permit or the ordinance, a telephone call or informal meeting may be sufficient to obtain the desired compliance. Verbal warnings should be documented by contemporaneous notes.

Written Notice

A written notice is the lowest level of formal response to a violation. It is intended for minor violations which would not cause harm to the environment.

Notice of Violation

A notice of violation (NOV) is an official notification to inform a non-compliant owner of a violation of the stormwater management ordinance. Within ten (10) days of receipt of this notice, a written explanation of the violation and a plan for the satisfactory correction and prevention thereof, to include specific required actions, shall be submitted by the owner to the director. Inspection to ensure performance of any corrective actions may be conducted by the director at his discretion. Submission of this plan in no way relieves the owner of liability for any violations occurring before or after receipt of the notice of violation.

Administrative Orders

Administrative orders (AO) are enforcement documents which direct owners to perform, or to cease, specific activities. Administrative orders may also invoke a penalty. There are three (3) primary types of administrative orders: consent orders; compliance orders; and cease and desist orders.

A show cause hearing should be offered prior to enforcement of an administrative order or assessment of damages or a civil penalty. The purpose of a show cause hearing is to provide a forum for the owner to present a defense to charges as outlined, or, for the director to obtain additional information from the owner to determine whether to proceed with enforcement.

Consent orders are entered into between the city and the owner to assure compliance as to specific actions to be taken by the owner to correct non-compliance within a specified time period. The director may enter into consent orders, assurances of voluntary compliance or other similar documents establishing an agreement with any owner responsible for noncompliance. Such documents shall include specific action to be taken by the owner to correct the noncompliance within a time period specified in the document. Such documents shall have the same force and effect as orders issued pursuant to Sections 38-87 and 38-

Compliance orders may be issued when the director finds that an owner has violated, or continues to violate, the ordinance or an order issued thereunder. It is similar to a consent order except that the consent of the owner is not implied in its issuance. When the director finds that an owner has violated or continues to violate any section of this article, or a permit or order issued under this article, the director may issue an order to the owner responsible for the violation directing that the owner come into compliance within a specified time, and such order may include assessment of a penalty to be paid if the owner does not come into compliance within the time provided. Compliance orders also may contain other requirements to address the noncompliance, including the construction of appropriate structures, installation of devices, self-monitoring and management practices designed to minimize the amount of pollutants discharged offsite. A compliance order does not relieve the owner of liability for any violation, including any continuing violation. Issuance of a compliance order shall not be a bar against or a prerequisite for taking any other action against the owner.

Cease and desist orders may be issued when the director finds that an owner has violated or continues to violate, the stormwater management ordinance or order issued thereunder. The order shall require that the owner:

- (a) Comply forthwith; and
- (b) Take such appropriate remedial or preventive action as may be needed or deemed necessary to properly address a continuing or threatened violation, including halting operations and terminating the discharge. Issuance of a cease and desist order shall not be a bar against or a prerequisite for taking any other action against the owner.

Administrative orders contain the following components:

- (a) Title - The title specifies the type of order being issued (see below), to whom it is being issued, summarizes the purpose of the order, and contains an identification number.
- (b) Legal Authority - The authority under which the order is issued (the stormwater

management ordinance).

(c) The Finding of Noncompliance - All violations must be described including the dates, the specific permit and/or ordinance provisions violated, and any damages known and attributable to the violation.

(d) Required Activity - All orders should specify the required actions, such as installation of BMPs, additional inspections, appearance at show cause hearings, etc.

(e) Milestone Dates for Corrective Actions - When compliance schedules are appropriate, all milestone dates must be established including due dates for required written reports.

(f) Supplemental Clauses - The document should contain standard clauses which provide that:

1. Compliance with the terms and conditions of the administrative order shall not be construed to relieve the owner of its obligation to comply with applicable state, federal or local law, or the permit;
2. Violation of the administrative order itself may subject the owner to additional penalties as set out in the stormwater management ordinance;
3. No provision of the order shall be construed to limit the city's authority to issue supplementary or additional orders, or to take action deemed necessary to implement this program or ordinance;
4. The order shall be binding upon the owner, its officers, directors, agents, employees, successors, assigns, and all persons, firms or corporations acting under, through or on behalf of the owner.

Administrative orders issued as a result of a violation of the stormwater management ordinance shall contain a penalty as determined using Tables 'A' and "B" in this document. Administrative orders may also be used to advise an owner of the need to take, or cease, certain actions, and in such case, may or may not be associated with penalties as defined in the ordinance or in this guide.

In accordance with the City of Kingsport Code of Ordinances, section 38-342 a show cause hearing should be offered prior to enforcement of an administrative order or assessment of damages or a civil penalty. The purpose of a show cause hearing is to provide a forum for the owner to present a defense to charges as outlined, or for the director to obtain additional information from the owner to determine whether to proceed with enforcement. An owner may appeal the decision of the director to the stormwater appeals board as permitted by the City of Kingsport Code of Ordinances, section 38-343.

Civil Litigation

Pursuant to Section 38-343 of the stormwater management ordinance, the director may, through the city attorney, petition the appropriate court(s) for issuance of preliminary or permanent injunctions to restrain or compel activities by an owner.

Penalties, Administrative or Civil

The stormwater management ordinance authorizes assessment of penalties not to exceed \$5,000 per violation per day. Additionally, Section 38-87 of the ordinance authorizes the director to assess a civil penalty for actual damages incurred by the city. Before the enforcement of any administrative penalty, a show cause hearing must be offered to the owner.

If a violation results in conditions requiring the expenditure of public funds for mitigation of damages, a penalty shall be assessed in such amount as to offset the public funds so expended. This will in no way reduce or offset the liability of the owner with respect to damages incurred.

Explanation of Use of Tables

This guide is based primarily on the use of two tables; "A", and "B". Table "A" indicates how point values are assigned for each violation, considering the severity, duration, degree of harm, and compliance history of the owner. All possible violations may not be listed; however, this does not preclude an appropriate enforcement response.

In Table "A", three columns are associated with each listed violation – the "Initial Points" column, the "Repeat Value" column, and the "Cumulative" column. If no history of violations is noted, the value in the "Initial Points" column may be used in conjunction with Table "B" to assess a typical response to the violation.

If the user has a history of similar violations, the initial point value plus the product of the number of previous occurrences times the repeat value should be used as shown in the following formula: Total Point Value (TP) = P + (N x R), where;

- P = Initial Point Value for a single violation
- N = Number of previous occurrences
- R = Repeat Value from Table "A"

Should more than one violation be noted at a time, the cumulative column should be consulted. If violations are cumulative in nature, the sum of the individual point values should be used to judge the response. If not, the greatest individual values should be used to judge response, with the documentation for that response, however, noting all violations.

Once a point value is determined, Table "B" should be consulted for recommended responses. Table "B" provides a schedule of appropriate responses based upon the number of "points" determined by Table "A".

Example

An owner violates the terms of the stormwater management ordinance. This violation is considered significant and causes harm. Investigation reveals the owner has been cited twice in the past for the same violation: Total Point Value (TP) = P + (N x R)

Therefore: TP = 3 + (2 x 1) = 5

- Where 3 = Points charged for isolated but significant discharge from Table "A"
- 2 = Number of previous occurrences; and
- 1 = Repeat value from Table "A".

Resulting options: Civil injunction or administrative order with up to \$500.00 penalty.

TABLE "A"
Response Guide for Violation

| <u>DESCRIPTION OF VIOLATION</u> | <u>INITIAL POINTS</u> | <u>REPEAT VALUE</u> | <u>CUMULATIVE</u> |
|--|-----------------------|---------------------|-------------------|
| EROSION PREVENTION AND SEDIMENT CONTROL | | | |
| Violation of a single requirement: | | | |
| Not significant | 1 | 1 | No |
| Significant, no harm | 2 | 1 | Yes |
| Significant, causes harm | 3 | 1 | Yes |
| Violation of more than one requirement: | | | |
| Not significant | 2 | 1 | Yes |
| Significant, no harm | 3 | 1 | Yes |

| | | | |
|--------------------------|---|---|-----|
| Significant, causes harm | 4 | 1 | Yes |
|--------------------------|---|---|-----|

UNAUTHORIZED DISCHARGES

Illicit Discharges:

| | | | |
|---------------------------------------|---|-----|-----|
| Owner unaware of requirement, no harm | 1 | N/A | No |
| Owner unaware of requirement, harm | 2 | N/A | No |
| Owner aware of requirement, no harm | 2 | 1 | Yes |
| Owner aware of requirement, harm | 3 | 1 | Yes |

Illicit Connections:

| | | | |
|---------------------------------------|---|-----|-----|
| Owner unaware of requirement, no harm | 1 | N/A | No |
| Owner unaware of requirement, harm | 2 | N/A | No |
| Owner aware of requirement, no harm | 2 | 1 | Yes |
| Owner aware of requirement, harm | 3 | 1 | Yes |

INSPECTION

| | | | |
|---------------------|---|---|-----|
| Entry denied | 2 | 2 | Yes |
|---------------------|---|---|-----|

Inspection Records

| | | | |
|---------------|---|---|----|
| Incomplete | 1 | 2 | No |
| Not available | 1 | 2 | No |

MAINTENANCE

Failure to properly operate and maintain BMPs

| | | |
|---|---|-----|
| 1 | 1 | Yes |
|---|---|-----|

STORMWATER MANAGEMENT

Pre-Construction

| | | | |
|-------------------------------------|---|---|----|
| Failure to obtain NOC | 2 | 1 | No |
| Failure to obtain grading permit | 2 | 1 | No |
| Failure to provide performance bond | 2 | 1 | No |

Construction

| | | | |
|---|---|---|----|
| Failure to provide water quality SCMs | 2 | 2 | No |
| Failure to provide channel protection | 2 | 2 | No |
| Failure to provide downstream impact analysis | 2 | 2 | No |

Post-Construction

| | | | |
|---|---|---|----|
| Failure to provide special pollution abatement plan | 2 | 2 | No |
| Failure to provide as-built | 2 | 2 | No |
| Failure to provide covenant | 2 | 2 | No |

**TABLE "B"
VIOLATION RESPONSE GUIDE**

| <u>POINT TOTAL</u> | <u>ACTION</u> |
|--------------------|---|
| 1 | Written warning |
| 2 | Notice of Violation |
| 3 | Administrative Order with up to \$150 Penalty |
| 4 | Administrative Order with up to \$300 Penalty |
| 5 | Administrative Order with up to \$500 Penalty |
| 6 | Administrative Order with up to \$1,000 Penalty |
| 7 | Administrative Order with up to \$2,000 Penalty |
| 8 | Administrative Order with up to \$3,000 Penalty |

9 Administrative Order with up to \$4,000 Penalty
10 Administrative Order with up to \$5,000 Penalty

A cease and desist order may be issued at anytime and a civil injunction may be requested at any time, for any violation, if in the opinion of the director in consultation with the city attorney, such action is justified, needed or appropriate.

Criminal Action

In cases where criminal acts are suspected by the director, after consultation with the city attorney, information shall be gathered and forwarded to the district attorney of the appropriate county for action. Criminal prosecution, if pursued, shall be in addition to other actions authorized by ordinance.

SECTION II. That this resolution shall take effect from and after its adoption, the public welfare requiring it.

ADOPTED this the 6th day of December, 2016.

JOHN CLARK, MAYOR

ATTEST:

JAMES H. DEMMING, CITY RECORDER

APPROVED AS TO FORM:

J. MICHAEL BILLINGSLEY, CITY ATTORNEY

**CHANGES SHOWN IN COLOR TO SECTIONS 38-85 THROUGH 38-350, OF THE
CODE OF ORDINANCES, CITY OF KINGSPORT, TENNESSEE PERTAINING TO
STORMWATER MANAGEMENT**

ARTICLE III. STORMWATER MANAGEMENT

DIVISION 1. GENERALLY

Sec. 38-85. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Active channel means the area of the stream that is most subject to water flow and that includes the portion of the channel below the top of bank.

Aquatic resource alteration permit (ARAP) means a permit issued by the state department of environment and conservation (TDEC) for physically altering waters (streams and wetlands) of the state.

As-built certification means as-built, field-verified plans signed and sealed by a registered professional engineer and/or a registered land surveyor, both licensed to practice in the state, showing contours, elevations, grades, locations, ~~drainage and hydraulic structures, and detention basin volumes.~~ and **stormwater management facilities.**

Best management practices (BMPs) means schedules of activities, prohibitions of practices, maintenance procedures, structural controls and other management practices designed to prevent or reduce the discharge of pollutants to waters of the state. BMPs may include structural devices, such as stormwater management facilities, non-structural practices such as buffers or natural open spaces, treatment requirements, operating procedures, and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage.

Borrow Pit means an excavation from which erodible material (typically soil) is removed to be used as fill for another site, and there is no processing or separation of erodible material conducted at the site, and is considered a construction activity for the purposes of this article.

~~*Buffer Zone* means a setback from the top of the water body's bank of undisturbed vegetation, including trees, shrubs and herbaceous vegetation; enhanced or restored vegetation; or the reestablishment of native vegetation bordering streams, ponds, wetlands, springs, reservoirs or lakes, which exists or is established to protect those water bodies.~~ or **"Water Quality Riparian Buffer" is a strip of dense undisturbed native vegetation, either original or re-established, that borders streams and rivers, ponds and lakes, wetlands and seeps. Buffer zones are established for the purposes of slowing water runoff, enhancing water infiltration and minimizing the risk of any potential sediments, nutrients or other pollutants from leaving the upland area and reaching surface waters.**

Building official means the city's representative charged with issuing land disturbing permits.

CFR means the Code of Federal Regulations.

Channel means a natural or manmade watercourse of perceptible extent, with definite bed and banks to confine and conduct continuously or periodically flowing water.

~~*City manager* means the manager of the city or designee.~~

Clearing.

(1) The term "clearing" means, in the definition of discharges associated with construction activity, the removal of vegetation and/or disturbance of soil prior to grading or excavation in anticipation of construction activities. Clearing may also refer to wide area land disturbance in anticipation of nonconstruction activities; for instance, cleared forested land in order to convert forest land to pasture for wildlife management purposes.

(2) The term "clearing" does not refer to clearing of vegetation along roadways, highways or powerlines for sight distance or other maintenance and/or safety concerns, or cold planing, milling, and/or removal of concrete and/or bituminous asphalt roadway pavement surfaces.

~~*Commencement of construction or commencement of land disturbing activities* means the initial disturbance of soils associated with clearing, grading or excavating activities or other construction activities.~~

Common plan of development or sale is broadly defined as any announcement or documentation (including a sign, public notice or hearing, sales pitch, advertisement, drawing, permit application, zoning request, computer design, etc.) or physical demarcation (including boundary signs, lot stakes, surveyor markings, etc.) indicating construction activities may occur on a specific plot. A common plan of development or sale identifies a situation in which multiple areas of disturbance are occurring on contiguous areas. This applies because the activities may take place at different times, on different schedules, by different operators.

Construction means any placement, assembly or installation of facilities or equipment (including contractual obligations to purchase such facilities or equipment) at the premises where such equipment will be used, including preparation work at such premises.

Construction-related wastes means refuse or unused materials that result from construction activities. The term

"construction-related wastes" can include, but are not limited to, unused building and landscaping materials, chemicals, litter, sanitary waste and concrete truck washout.

Contaminant means any physical, chemical, biological or radiological substance or matter in water.

Conveyance means the capacity of a channel or a pipe to carry stormwater.

Covenants for permanent maintenance of stormwater facilities and best management practices means a legal document executed by the property owner, a homeowners' association or person as owner of record, and recorded with the county (Sullivan or Hawkins) register of deeds which guarantees perpetual and proper maintenance of stormwater facilities and best management practices.

Cross drain means a pipe used to convey stormwater from one side of a roadway to another. A cross drain can also be called a "culvert."

Design professional means an engineer, landscape architect, or architect competent in civil and site design and licensed to practice in the state.

Development means ~~any land change that alters the hydrologic or hydraulic conditions of any property, often referred to as site development~~ new and redevelopment projects that disturb equal to or greater than one acre, or less than one acre if part of a larger common plan of development or sale, and ~~The term~~ includes, but is not limited to, providing access to a site, clearing of vegetation, grading, earth moving, providing utilities, roads and other services such as parking facilities, stormwater management and erosion control systems, potable water and wastewater systems, altering land forms, or construction or demolition of a structure on the land.

Director means the public works director or designee who is responsible for the approval of development and redevelopment plans, and implementation of the provisions of this article.

Discharge means to dispose, deposit, spill, pour, inject, seep, dump, leak or place by any means, or that which is disposed, deposited, spilled, poured, injected, seeped, dumped, leaked or placed by any means including any direct or indirect entry of any solid or liquid matter into the stormwater system by any means intentional or otherwise.

Disturbed area means the portion of any site that has been altered from existing conditions, including but not limited to the following: providing access to a site, clearing of vegetation, grading, earth moving, providing utilities and other services such as parking facilities, stormwater management and erosion control systems, potable water and wastewater systems, altering land forms, or construction or demolition of a structure on the land.

Drainage basin means the area contributing stormwater runoff to a single point.

Drainage system means the system of pipes, channels, culverts and ditches that convey stormwater from and through public and private land in the city.

Erosion means the removal of soil particles by the action of water, air, ice, gravity or other geological agents, whether naturally occurring or acting in conjunction with or promoted by manmade activities or effects.

Excavation means a cavity or hole in the land surface that is caused by the cutting, digging, or scooping and removal of soil, rock or other materials.

Exceptional Tennessee Waters are surface waters of the State of Tennessee that satisfy the characteristics as listed in Rule 0400-40-03-.06 of the official compilation rules and regulations of the State of Tennessee. Characteristics include waters within state or national parks, wildlife refuges, wilderness or natural areas; State or Federal Scenic Rivers; Federally-designated critical habitat; waters within an area designated as Lands Unsuitable for Mining; waters with naturally reproducing trout; waters with exceptional biological diversity or; other waters with outstanding ecological or recreational value as determined by the department.

Filling means any deposit or stockpiling of dirt, rocks, stumps or other natural or manmade solid waste material.

Grading means any clearing, excavating, filling or other disturbance of terrain.

Hazardous substance means any substance designated under 40 CFR 116, as amended, pursuant to section 116 of the Federal Clean Water Act.

~~High quality waters means the surface waters of the state that are identified by TDEC as high quality waters. Characteristics of high quality waters are listed at Tenn. Comp. Rules and Regs. § 1200-4-3-.06. Characteristics include:~~

- ~~(1) Waters designated by the water quality control board as outstanding national resources waters (ONRW);~~
- ~~(2) Waters that provide habitat for ecologically significant populations of certain aquatic or semi-aquatic plants or animals;~~
- ~~(3) Waters that provide specialized recreational opportunities; waters that possess outstanding scenic or geologic values; or~~
- ~~(4) Waters where existing conditions are better than water quality standards.~~

~~High quality waters are sometimes referred to as tier II or tier III (ONRW) waters.~~

Hotspot means an area where the land use or activities generate highly contaminated runoff, with concentrations of pollutants in excess of those typically found in stormwater.

~~Human occupancy means any portion of any enclosed structure wherein humans principally live, work or sleep such as mobile homes, residential activities, basements, health care facilities, restaurants, office buildings, etc.~~

Illicit connections means illegal and/or unauthorized connections to the municipal separate storm sewer system whether or not such connections result in discharges into that system.

~~Impaired water means waters of the state not meeting their prescribed uses.~~

Impervious area means impermeable surfaces which prevent the percolation of water into the soil including, but not

limited to, pavement, parking areas and driveways, packed gravel or soil, or rooftops.

Illicit discharge means an intentional or unintentional discharge of water into the municipal separate storm sewer system that is not composed entirely stormwater, except as otherwise set out in section 38-314(b).

Inspector means a person that has successfully completed (has a valid certification from) the "Fundamentals of Erosion Prevention and Sediment Control Level I" course or equivalent course.

~~*Lake* means an inland body of standing water, usually of considerable size.~~

Land disturbing activity means any activity on a property that results in a change in the existing soil (both vegetative and nonvegetative) and/or the existing soil topography. The term "land disturbing activities" include, but are not limited to, development, redevelopment, demolition, construction, reconstruction, clearing, grading, filling, logging and/or tree chipping operations (excluding silviculture operations), haul roads associated with the development and excavation.

Land disturbing permits means a building, demolition or grading permit approved by the director and issued by the building official, authorizing commencement of land disturbing activities.

Municipal separate storm sewer system. (MS4) means a conveyance or system of conveyances (including roads with drainage systems, streets, catchbasins, curbs, gutters, ditches, constructed channels, and storm drains) designed or used for collecting or conveying stormwater.

National Pollutant Discharge Elimination System. (NPDES) means the program administered by the United States Environmental Protection Agency to eliminate or reduce pollutant discharges to the waters of the United States.

NOI means notice of intent as identified in the State of Tennessee General NPDES Permit for Discharges of Stormwater Associated with Construction Activities and administered by the City of Kingsport QLP.

NOC means the notice of coverage ~~from the state department of environment and conservation (TDEC)~~, as identified in the State of Tennessee General NPDES Permit for Discharges of Stormwater Associated with Construction Activities and administered by the City of Kingsport QLP.

NOT means the notice of termination ~~from the state department of environment and conservation (TDEC)~~, as identified in the State of Tennessee General NPDES Permit for Discharges of Stormwater Associated with Construction Activities and administered by the City of Kingsport QLP.

Obstruction means the accumulation of debris, whether intentional or otherwise, resulting in the interference of flow through a watercourse.

Outfall means the terminus of a stormwater system where the contents are released into a larger public or private stormwater management system, or into a stream.

Owner / operator / person (owner) means any party associated with a construction project that meets any of the following two criteria:

- (1) The party has **operational design** control over construction plans and specifications, including the ability to authorize modifications to those plans and specifications (this will typically be the owner or developer);
- (2) The party has day-to-day operational control of those activities at a project which are necessary to ensure compliance with a stormwater pollution prevention plan (SWPPP) for the site or other permit conditions (e.g., they are authorized to direct workers at a site to carry out activities required by the SWPPP or comply with other permit conditions). (This will typically include the general contractor and would also include erosion prevention and sediment control contractors); or
- (3) Any individual, firm, corporation, partnership, association, organization or entity, including governmental entities or any combination thereof.

Peak discharge means the maximum, instantaneous rate of flow of water at a particular point resulting from a storm event. The term "peak discharge" also means the maximum discharge computed for a given design flood event.

Plan means the stormwater management plan.

Pollutant means dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal and agricultural waste or any other substance that is detrimental to the quality of the waters of the state.

~~*Pond* means an inland body of standing water that is usually smaller than a lake.~~

Priority construction activity means land disturbing activities that are located in a watershed that discharges directly into waters recognized by the state as **unavailable parameter waters** impaired for siltation **or habitat alteration**, or **high-quality exceptional Tennessee** waters. A property is considered to have a direct discharge, if stormwater runoff from the property does not cross any other property before entering the water of the state.

Public water means stormwater runoff that originates in whole or in part from or is conveyed by publicly owned facilities such as roads.

Qualifying Local Program (QLP) is an MS4 Stormwater Management Program for discharges associated with construction activity that has been formally approved by TDEC as having met specific minimum program requirements, including those identified in **40 CFR § 122.44(s)**.

~~*Redevelopment* means the improvement of a lot or lots that have been previously developed.~~

~~*Rip-rap* means a combination of large stone, cobbles and boulders used to line channels, stabilize stream banks, and reduce runoff velocities.~~

Runoff means the water resulting from precipitation that is not absorbed by the soil.

Sanitary sewer means a system of underground conduits that collects and delivers wastewater from toilets, sinks and other plumbing fixtures to a wastewater treatment plant.

Sediment means solid material, either mineral or organic, that is in suspension, is being transported, or has been moved from its site of origin by erosion.

Sewage means human wastes carried by water from residences, buildings, industrial establishments or other places, together with such industrial wastes, stormwater or other water as may be present; or any substance discharged from a sanitary sewer collection system.

Sinkhole means a depression characterized by closed contours on a topographic map. A sinkhole throat, or opening to the subsurface, may or may not be visible. Field verification may be required in areas where the depth of the depression is below the tolerance of currently available topographic mapping. The extent of the area considered to be a sinkhole is, at a minimum, the limits determined by the 100 year water surface elevation, assuming plugged conditions (zero cubic feet per section (cfs) outflow).

Special flood hazard area means the land in the floodway and/or floodplain that is subject to flooding during the 100 year frequency storm. The areas of special flood hazard identified by FEMA in its flood hazard boundary map dated April 2, 1981, and any revisions thereto, are adopted by reference and declared to be a part of this article.

Stormwater means runoff from rain, snow or other forms of precipitation, which results in surface runoff and drainage.

Stormwater control measures (SCMs) are permanent practices and measures designed to reduce the discharge of pollutants from development.

Stormwater management facilities means structures and constructed features designed for the collection, conveyance, storage, treatment and disposal of stormwater runoff into and through the stormwater system. The term "stormwater management facilities" include, structural or nonstructural measures, or both, to control the increased volume, rate and quality of stormwater runoff caused by manmade changes to the land.

Stormwater management manual (manual) means the document, as amended from time to time, adopted by the city to provide guidance in understanding and implementing the requirements for stormwater management.

Stormwater management plan (plan) means an engineering plan for the design of stormwater management facilities and best management practices for a proposed development or redevelopment. ~~The term "plan" includes a map showing the extent of the land development activity, stormwater management facilities, and may contain as-built certifications and covenants for permanent maintenance of stormwater facilities and best management practices.~~

Stormwater master plan means an engineering and planning study for the drainage system of a watershed that consists of a plan for stormwater management in the watershed. The stormwater master plans can address flooding problems, water quality problems, potential stormwater capital improvements, land use patterns and regulatory issues for existing and future conditions.

Stormwater pollution prevention plan (SWPPP) means a written plan (including site maps, plats, drawings or other graphic representations) that identifies construction/contractor activities that could cause pollutants in the stormwater, and a description of best management practices to control these pollutants and keep sediments on site.

~~The SWPPP shall be prepared in accordance with the Tennessee Erosion Prevention and Sediment Control Handbook, as amended from time to time, and Section 3 of the General NPDES Permit for Discharges of Stormwater Associated with Construction Activities.~~

Storm water system means the system of roadside drainage, roadside curbs and gutters, curb inlets, swales, catchbasins, culverts, cross drains, headwalls, junction boxes, outlets, manholes, gutters, ditches, pipes, lakes, ponds, sinkholes, channels, creeks, streams, storm drains, water quality best management practices and similar conveyances and facilities, both natural and manmade, located within the city which are designated or used for collecting, storing, or conveying stormwater, or through which stormwater is collected, treated, stored or conveyed, whether owned or operated by the city or other owner/operator/ person.

~~*Stream* means, for the specific purpose of water quality buffers, a linear surface water conveyance that can be characterized with either perennial or ephemeral base flow and:~~

~~(1) Is regulated by the city as a special flood hazard area (SFHA); or~~

~~(2) Is, or has been, identified by the city, U.S. Army Corps of Engineers (USACE) or TDEC as a stream.~~

a surface water that is not a wet weather conveyance (TCA 69-3-10.(4)). Streams include linear watercourses, lakes, ponds, and wetlands.

Structure means anything constructed or erected such that the use of it requires a more or less permanent location on or in the ground.

Subdivision means the division, subdivision or resubdivision of any lot or parcel of land as defined in the "Subdivision Regulations of the City of Kingsport and its Planning Region," on file in the city clerk's office.

Surface water means waters upon the surface of the earth in bounds created naturally or artificially.

TDEC means the Tennessee Department of Environment and Conservation.

Top of bank means the uppermost limit of the active channel of a stream containing normal flows, usually marked by a break in slope.

Total maximum daily load (TMDL) means a calculation of the maximum amount of a pollutant that a body of water can receive and still meet water quality standards, and an allocation of that amount to the source of the pollutant.

Transporting means any moving of earth materials from one place to another, other than such movement incidental

to grading, as authorized on an approved plan.

USACE means the United States Army Corps of Engineers.

Unavailable Parameters Waters means any stream segment that has been identified by TDEC as failing to support classified uses.

Utility, public or private, means any agency which under public franchise or ownership, or under certification of convenience and necessity provides the public with electricity, natural gas, steam, communication, rail transportation, water, sewage collection or other similar service.

Vegetation means an intentionally cultivated collection of plant life, including trees, shrubs, bushes, and grass, but does not include plant life that was not intentionally planted.

Waste Site means an area where waste material from a construction site is stored or deposited of, and when the material is erodible, such as soil, the site must be treated as a construction site.

Water quality volume means the volume of stormwater runoff from a proposed development or redevelopment that must be controlled for water quality treatment.

Water quality volume credit area means an area within the proposed development or redevelopment for which a reduction of the water quality volume can be obtained.

Watercourse means a channel, natural depression, gully, stream, creek, pond, reservoir or lake in which stormwater runoff and floodwater flows either regularly or infrequently. The term "watercourse" includes major drainageways for carrying urban stormwater runoff.

Waters or waters of the state means any and all waters, public or private, on or beneath the surface of the ground, which are contained within, flow through or border upon the state or any portion thereof except those bodies of water confined to and retained within the limits of private property in single ownership which do not combine or effect a junction with natural surface or underground waters.

Watershed means a region or area bounded peripherally by a divide and draining ultimately to a particular watercourse or body of water.

Wet weather conveyance means, notwithstanding any other law or rule to the contrary, man-made or natural watercourses, including natural watercourses that have been modified by channelization:

(A) That flow only in direct response to precipitation runoff in their immediate locality;

(B) Whose channels are at all times above the groundwater table;

(C) That are not suitable for drinking water supplies; and

(D) In which hydrological and biological analyses indicate that, under normal weather conditions, due to naturally occurring ephemeral or low flow there is not sufficient water to support fish, or multiple populations of obligate lotic aquatic organisms whose life cycle includes an aquatic phase of at least two (2) months.

Wetland means an area that is inundated or saturated by surface water or groundwater at a frequency and duration sufficient to support, and that under normal circumstances does support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetland determination shall be made by the United States Army Corps of Engineers, and/or the state department of environment and conservation, and/or the natural resources conservation service.

Sec. 38-86. Purpose.

It is the purpose of this article to:

(1) Apply to all areas located within the jurisdiction of the city.

(2) Apply to all development unless exempted pursuant to Sec 38-141.

(3) Protect, maintain, and enhance the environment of the city and the public health, safety and the general welfare of the citizens of the city, by controlling discharges of pollutants to the public stormwater system, ~~with the intent of while maintaining and improving the quality of the receiving waters into which the stormwater outfalls flow, including, without limitation, lakes, rivers, streams, ponds, wetlands, and groundwater~~ of the state in the city.

(4) Enable the city to comply with the National Pollution Discharge Elimination System (NPDES) permit and applicable regulations, 40 CFR 122.26 for stormwater discharges.

(5) Allow the city to exercise the powers granted in T.C.A. § 68-221-1105, which provides that, among other powers municipalities have with respect to stormwater facilities, is the power by ordinance or resolution to:

a. Exercise general regulation over the planning, location, construction, and operation and maintenance of stormwater facilities in the municipality, whether or not owned and operated by the municipality;

b. Adopt any rules and regulations deemed necessary to accomplish the purposes of this statute, which may include the adoption of a system of fees for services and permits;

c. Establish standards to regulate the quantity and contaminants of stormwater as may be necessary to protect water quality;

d. Review and approve plans and plats for stormwater management in proposed subdivisions or commercial developments;

e. Issue permits for stormwater discharges or for the construction, alteration, extension, or repair of stormwater facilities;

f. Suspend or revoke permits when it is determined that the permittee has violated any applicable ordinance, resolution or condition of the permit; and

g. Expend funds to remediate or mitigate the detrimental effects of contaminated land or other sources of stormwater contamination, whether public or private.

Sec. 38-87. Responsibility.

Nothing in this article shall be construed to imply a warranty or the assumption of responsibility on the part of the city for the suitability, fitness or safety of any structure with respect to flooding, water quality, or structural integrity. This article is a regulatory instrument only, and is not to be interpreted as an undertaking by the city to design any structure or facility.

Secs. 38-88 - 38-117. Reserved.

DIVISION 2. ADMINISTRATION

Sec. 38-118. Duties and authority of director.

(a) The director has the authority to adopt additional policies, criteria, specifications, standards, rules, regulations, and guidance for the proper implementation of the requirements of this article and the stormwater management manual. The manual shall be enforceable, consistent with other provisions of this article, as if it were a part of this article.

(b) The director shall have the authority to prepare, or have prepared, master plans for drainage basins and to establish regulations or direct capital improvements to carry out said master plans.

(c) In the event that the director determines that a violation of any provision of this article has occurred, or that work does not have a required plan or permit, or that work does not comply with an approved plan or permit, the director may issue enforcement responses as defined in division 10 of this article, pertaining to enforcement, to the owner subject to the right of appeal set out in section 38-343.

(d) The director and the staff under the director's supervision shall administer the provisions of this article.

Sec. 38-119. Stormwater appeals board--Established; composition.

(a) There is created and established, pursuant to T.C.A. § 68-221-1106 et seq., the stormwater appeals board, referred to in this article as "appeals board," which shall be composed of four members as follows:

(1) A member of the board of mayor and alderman, who shall serve as chairperson, but shall have no vote unless there is a tie among voting members;

(2) A member of the planning commission;

(3) The head of the planning department ~~or designee currently called "planning and community development director";~~ and

(4) The building official.

(b) All appeals board members shall serve without pay or other compensation.

(c) The appeals board shall promulgate such procedural rules as may be deemed necessary in the interest of justice, fairness and impartiality.

(d) All members of the appeals board, except the planning director and building official shall be appointed by the mayor, subject to confirmation by the board of mayor and aldermen.

Sec. 38-120. Same--Duties and authority.

The appeals board shall have the power, duty and responsibility to:

(1) Hear appeals from orders issued by the director assessing penalties, damages or revoking or modifying permits;

(2) Affirm, modify or revoke such actions or orders of the director;

(3) Issue notices of appeals and subpoenas requiring attendance of witnesses and the production of evidence;

(4) Administer oaths and examine witnesses;

(5) Take such testimony as the appeals board deems necessary; and

(6) Hear appeals of owners for the purpose of reviewing the denial of a permit or imposition of terms or conditions in permits or any exceptions granted by the director.

Secs. 38-121 - 38-138. Reserved.

DIVISION 3. EROSION PREVENTION AND SEDIMENT CONTROL

Sec. 38-139. General requirements.

(a) Land disturbing activity or construction that in any way causes off-site sedimentation or sediment discharges to waters of the state or that causes the city to be in violation of its NPDES general permit for discharges from small municipal separate storm sewer systems, or its replacement, shall be a violation of this article.

(b) No owner of any property within the city shall commence land disturbing activity greater than or equal to one acre unless a land disturbing permit is issued by the building official; provided this subsection (b) shall not apply if the land disturbance is less than one acre if part of a larger common plan of development or sale that would disturb one

acre or more, or is a small lot as set out in section 38-142. The issuance of a land disturbing permit shall be conditioned upon the receipt and approval by the director of a stormwater pollution prevention plan (SWPPP) and an NOC provided by ~~TDEC the city and perimeter controls are in place and properly functioning.~~

(c) The city shall serve as the plan approval agency only, and in no instance are its regulations to be construed as designing erosion prevention and sediment control measures or other stormwater management facilities.

(d) No building permit, where applicable, shall be issued until the owner has obtained and is in compliance with the land disturbing permit.

(e) All land disturbing activities shall employ adequate erosion prevention and sediment control BMPs.

(f) No land disturbing activities shall commence until a certified erosion prevention and sediment control inspector has been appointed by the owner and acknowledged by the director. **Inspections must be performed in accordance with Sub-sections 3.1.2 and 3.5.8 of the CGP.**

(g) The owner must notify the director ten working days in advance of the commencement of construction.

(h) A pre-construction meeting with construction site operators shall be held prior to commencement of land disturbing activity.

(i) At completion of land disturbing activities and approval of stormwater management facilities by the director, a copy of the signed notice of termination (NOT) shall be provided to the city.

Sec. 38-140. Design criteria.

The city adopts as its erosion and sediment control design standards and best management practices manual the TDEC Erosion Prevention and Sediment Control Handbook, as amended.

Sec. 38-141. Stormwater pollution prevention plan (SWPPP).

(a) The requirements of the plan are as follows:

(1) The SWPPP shall be sealed by a qualified design professional licensed in the state provided the narrative portion of the SWPPP may be prepared by an individual that has a working knowledge of erosion prevention and sediment controls, such as a Certified Professional or a person that has successfully completed the Level II Design Principles for Erosion Prevention and Sediment Control for Construction Sites course;

(2) BMPs shall meet or exceed the requirements of the TDEC Erosion Prevention and Sediment Control Handbook;

~~(3) The SWPPP shall include measures to address legally protected state or federally listed threatened or endangered aquatic fauna and/or critical habitat, if applicable;~~

(3) The SWPPP shall be subject to any additional requirements set forth in the city's subdivision regulations, chapter 114, zoning, or other city ordinances or regulations; and

(4) Construction at the site in accordance with the approved plan must commence within one year from the issue date of the grading permit, or the grading permit will become null and void and the plan must be resubmitted for approval.

(b) ~~At a minimum;~~ Stormwater pollution prevention plans shall **be prepared in accordance with the Tennessee Erosion and Sediment Control Handbook and Sections 3, 4 and 5.4 of the Tennessee General NPDES Permit for Discharges Associated with Construction Activities, as amended, or**

~~include the following:~~

~~(1) Existing site conditions;~~

~~(2) Project description;~~

~~(3) Site maps revealing existing and proposed topographic contours at two-foot intervals;~~

~~(4) Runoff calculations using NOAA Atlas 14 rainfall data;~~

~~(5) Site description;~~

~~(6) Description of stormwater runoff controls;~~

~~(6) Erosion prevention and sediment control measures;~~

~~(7) Stormwater management measures;~~

~~(8) Stabilization practices;~~

~~(9) Structural practices;~~

~~(10) Stormwater management measures~~

~~(11) Special requirements if discharging into impaired waters;~~

~~(12) Materials management plan;~~

~~(13) Compliance with federal, state and local regulations;~~

~~(14) Inspection and maintenance procedures;~~

~~(15) Pollution prevention measures for nonstormwater discharges;~~

~~(16) TMDL documentation;~~

~~(17) A copy of the state construction general permit notice of intent (NOI) submitted to TDEC for the land disturbing activities; and~~

(18) any other information deemed necessary and appropriate by the owner or requested by the director.

Sec. 38-142. Small lot erosion prevention and sediment control plan.

(a) All land disturbing activities that affect less than one acre and are not part of a larger common plan of

development shall adhere to the requirements of this subsection. ~~or sale where BMPs are continuing to be implemented on-site, submission and approval by the director of a small lot erosion prevention and sediment control plan is required prior to obtaining a building or land disturbing permit from the building official.~~

(b) Submittal of a small lot erosion prevention and sediment control plan is required and must be reviewed and approved by the director prior to issuance of a land disturbing permit.

(c) ~~At a minimum, the~~ Small lot erosion prevention and sediment control plans shall include the following:

- (1) Address/location of land disturbing activity.
- (2) Owner's name and contact information;
- (3) Building, grading or demolition permit number (if available);
- (4) Location of streams, wetlands, ponds, sinkholes, easements, existing drainage structures with respect to the site;
- (5) A description of erosion prevention and sediment control measures;
- (6) Approximate disturbed area limits;
- (7) Location of silt fences;
- (8) Location of stabilized construction exits; and
- (9) Roof drainage accommodations.

~~(c) The small site erosion prevention and sediment control plan shall be provided before the issuance of a building permit.~~

(d) The director has the discretion to require a fully engineered erosion prevention and sediment control plan in lieu of a small lot plan.

Sec. 38-143. Land disturbing requirements.

(a) *Land disturbing activity subject to approval.* Except as otherwise provided in this section, an owner shall not initiate any land disturbing activity until the city has issued written approval by the director, the SWPPP is approved by the director and an NOC supplied (where applicable), the appropriate fees are paid and any required performance bond or financial assurance is provided, as may be required in section 38-347. Such permit shall expire two years from the date of issuance. Once a permit has expired, it is a violation to continue work on the property for which the permit has been granted without obtaining a renewal of such permit, which shall include the submission and approval of a plan as set out in this article and other requirements to obtain a permit as set out in or authorized by this article.

(b) *Certain activities excepted.* No approval shall be required for the following:

(1) *Building grading and excavation.* Finished grading and excavation below the finished grade for basements and footings of a single-family or duplex residential structure, for retaining walls, swimming pools, cemeteries for human or animal burial or accessory structures related to single-family residences or duplex structures authorized by a valid building permit, provided the disturbed material or fill is handled in such a manner as to conform to any approved erosion prevention and sediment control plan for the area or, where no such plan is in effect, such work must be done in a manner which presents no significant erosion hazard.

(2) *General excavation.* An excavation or fill, provided it:

- a. Is less than four feet in vertical depth at its deepest point, as measured from the original grade;
- b. Does not result in a total quantity of more than 100 cubic yards of material being removed from, or deposited on or disturbed on any lot, parcel or subdivision thereof;
- c. Does not constitute a potential erosion hazard or act as a source of sedimentation to any adjacent land or watercourse;
- d. Has no final slopes greater than or equal to one foot vertical in two feet horizontal;
- e. Has proper vegetative cover reestablished as soon as possible on all disturbed areas; and
- f. Has no fill placed on a surface having a slope steeper than three feet horizontal to one foot vertical.

(3) *Agricultural.* Accepted agricultural land management practices such as plowing, cultivation; ~~construction of agricultural structures;~~ nursery operations such as the removal and transplanting of cultivated sod, shrubs and trees; tree cuttings at or above existing ground level; and logging operations leaving the stump, ground cover and root mat intact.

(4) *Landscaping.* Grading, as a maintenance measure, or for landscaping purposes on existing developed lots or parcels, provided the aggregate area affected or stripped at any one time does not exceed 10,000 square feet and is not within a designated floodplain; the grade change does not exceed 18 inches at any point and does not alter the drainage pattern; vegetative cover is reestablished as soon as possible on all disturbed areas, use of kudzu is prohibited; and the grading does not involve a quantity of material in excess of 100 cubic yards.

(5) *Utilities.* The installation of water and sewer lines, telephone lines, electricity lines, gas lines or other public service facilities.

Sec. 38-144. Compliance.

The owner is responsible for maintaining compliance with the approved SWPPP, and land disturbance permit. The approved SWPPP shall be followed during the entire duration of construction at the site. The director may require reports or records from the owner. No land disturbing activity shall be allowed to commence without prior SWPPP approval by the director.

Sec. 38-145. Amendments to the approved SWPPP.

- (a) The owner must modify and update the SWPPP in accordance with section 3.4.1 of the state construction general permit No. TNR100000.
- (b) The SWPPP, as amended, shall be submitted to the director for approval.

Secs. 38-146 - 38-167. Reserved.

DIVISION 4. ~~STANDARDS AND SPECIFICATIONS~~ PERMANENT STORMWATER MANAGEMENT

Sec. 38-168. General requirements.

- (a) Owners of land development activities not exempted under section 38-141 shall be required to obtain a land disturbing permit. As a condition of this permit, ~~must submit~~ a stormwater management plan (plan). ~~The plan shall be submitted as part of the preliminary development plan to the city, as required by Chapter 114 of the Code of Ordinance, as amended, in accordance with Section 2.3.1 of the manual.~~
- (b) The plan shall include the specific required elements that are listed and/or described in the ~~stormwater management~~ manual. The director may require submittal of additional information in the plan as necessary to allow an adequate review of the existing or proposed site conditions.
- (c) The plan shall be subject to any additional requirements set forth in the minimum subdivision regulations, design standards, chapter 114, pertaining to zoning, or other city regulations.
- (d) ~~Stormwater management~~ Plans shall be prepared and stamped by a design professional. Portions of the plan that require hydraulic or hydrologic calculations and design shall be prepared and stamped by a professional engineer competent in civil and site design and licensed to practice in the state.
- (e) The approved plan shall be adhered to during grading and construction activities. Under no circumstances is the owner or operator of land ~~development disturbing~~ activities allowed to deviate from the approved plan without prior approval of a plan amendment by the director.
- (f) The approved plan shall be amended if the proposed site conditions change after plan approval is obtained, or if it is determined by the director during the course of grading or construction that the approved plan is inadequate.
- ~~(g) The plan shall include a listing of any legally protected state or federally listed threatened or endangered species and/or critical habitat (if applicable) located in the area of land disturbing activities, and a description of the measures that will be used to protect them during and after grading and construction.~~
- (g) ~~Requirements for the permanent operation and maintenance of~~ stormwater management facilities, BMPs, buffer zones and water quality volume credit areas shall be submitted with the plan for approval by the director. These will be ~~maintained presented~~ through the declaration of a protective covenant, ~~entitled covenants~~ for permanent maintenance of stormwater facilities and BMP's, which ~~must be approved and~~ shall be enforceable by the city. The covenant shall be recorded with the deed and shall run with the land and continue in perpetuity.
- (h) Stormwater management facilities, BMPs, buffer zones and areas that receive water quality volume reductions shall be placed into a permanent ~~management~~ stormwater easement of ~~sufficient area~~ that is recorded with the deed to the parcel and held by the city.
- (j) A ~~maintenance~~ right-of-way or permanent easement of sufficient width shall be provided for vehicular and equipment ingress and egress for ~~maintenance or~~ access to all stormwater management facilities, BMPs and areas that receive water quality volume reductions from a driveway, public or private road.
- (k) Owners of land development activities not exempted from submitting a stormwater management plan may be subject to additional watershed or site-specific requirements than those stated in section 38-140 in order to satisfy local or state NPDES, TMDL or other regulatory water quality requirements for developments or land uses that are considered pollutant hotspots, discharging to critical areas with sensitive resources or in areas where the director has determined that additional restrictions are needed to limit adverse impacts from the proposed development on water quality or channel protection.
- (l) The director may waive or modify any of the requirements of this division if adequate water quality treatment and/or channel protection is suitably provided by a downstream or shared off-site stormwater facility, or if engineering studies determine that installing the required stormwater management facilities would ~~actually cause~~ adversely impact ~~to~~ water quality, ~~increased~~ channel erosion or downstream flooding.
- (m) This article is not intended to repeal, abrogate or impair any existing easements, covenants, deed restrictions or existing ordinances and regulations. However, where a provision of this article and other regulations conflict or overlap, the provision that is more restrictive or imposes higher standards or requirements on the owner shall control. The owner is required to notify the director of any such regulatory conflicts upon submittal of the plan.

Sec. 38-169. Design criteria.

- (a) All developments ~~or redevelopments~~ that must submit a stormwater management plan shall provide water quality treatment in accordance with the following requirements:
 - (1) Stormwater runoff from the development ~~or redevelopment~~ site must be treated for water quality prior to

discharge from the development ~~or-redevelopment~~ site in accordance with the stormwater treatment standards and criteria provided in the manual.

(2) Water quality treatment shall be achieved through the use of one or more structural and/or nonstructural ~~BMPs~~ ~~SCMs~~ that are designed and constructed in accordance with the criteria, guidance, and specifications provided in the manual.

(3) Stormwater quality control methods, designs or technologies not provided in the manual may be submitted for approval if it is proven that such alternatives will meet or exceed the water quality control requirements set forth in the manual and this chapter.

(4) ~~BMPs~~ ~~SCMs~~ shall not be installed within public rights-of-way or on public property without prior approval of the director.

(b) All developments ~~or-redevelopments~~ that must submit a plan shall provide downstream channel protection using the design criteria and guidance provided in section 3.4 of the manual.

(c) All developments ~~and-redevelopments~~ that must submit a plan shall provide a downstream impact analysis addressing overbank flood control in accordance with section 3.5 of the manual.

(d) All developments ~~or-redevelopments~~ that must submit a plan shall establish, protect and maintain a buffer zone, in accordance with the policies criteria and guidance set forth in the manual. Exemptions from this requirement are as follows:

(1) The perimeter of ~~ponds~~ ~~waterbodies~~ that have no known connection to streams, other ponds, lakes or wetlands.

(2) Stormwater management facilities or BMPs that are designed, constructed and maintained for the purposes of stormwater quality and/or quantity control, unless expressly required by the design standards and criteria for the facility are provided in the manual.

(e) In addition to the requirements set forth in subsections (a) through (d) of this section, all developments ~~or-redevelopments~~ that must submit a stormwater management plan shall include the following:

(1) Account for both on-site and off-site stormwater;

(2) Maintain natural drainage divides and hydrologic characteristics;

(3) Provide soils information; and

(4) Control stormwater runoff and provide peak discharge/volume control in accordance with this article using:

a. Predeveloped conditions unless otherwise specified by the director;

b. NOAA Atlas 14 rainfall data;

c. ~~Two, five, ten, 25 and 100 year rainfall events or equivalent hydrologic modeling;~~ ~~Post-development versus pre-development hydrologic/hydraulic modeling that shows attenuation of developed site runoff. Developed discharge from a site shall be less than or equal to pre-development discharge for the 2 year through 100 year design storms;~~

d. Longitudinal storm drains designed for a ten-year frequency storm, provided that no residential or commercial structures are flooded by a 100 year frequency storm;

e. Roadway cross drains designed for a ten-year frequency storm for a local street and 100 year frequency storm for a collector street, provided no residential or commercial structures are flooded by the 100 year frequency storm. All ~~tiles~~ ~~pipes~~ lying under the roadway shall be reinforced concrete ~~pipe~~ unless otherwise approved by the director;

f. Drainage easements delineating the 100 year frequency storm flood fringe to prevent flooding and future disturbance; and

g. Pipe materials approved by the director.

(f) ~~All structures or fill located in floodways designated by the federal flood insurance study shall be designed to pass a 100 year frequency flood and adhere to all local floodplain development requirements in accordance with city regulations.~~ Pursuant to the City of Kingsport Zoning Ordinance, a floodplain development permit is required for all development or redevelopment within federally designated floodplains as shown on the applicable FEMA Flood Insurance Rate Map(s) of latest issue.

(g) The rational method shall be used to determine peak flow rates only. National Resource Conservation Service (NRCS) methods and those provided in the manual for water quality and channel protection shall be used in determining storage requirements.

(h) All supporting hydrologic and hydraulic assumptions shall be submitted, as well as all maps and references used in calculations.

(i) The design must not adversely affect adjacent or neighboring properties.

(j) The city may allow stormwater control measures to be implemented at another location within the same USGS 12-digit hydrologic unit code (HUC) watershed as the original project. Off-site mitigation must treat a minimum of 1.5 times the amount of water not treated on site. The off-site mitigation location must be approved by the city.

(k) If the project cannot meet pollutant removal standards, and cannot provide for off-site mitigation, the city may allow the owner to make payment in a public stormwater project fund at a level sufficient to design, install, and maintain the stormwater mitigation measures.

Sec. 38-170. Exemptions.

(a) Developments ~~and-redevelopments~~ that conform to the criteria in subsection (c) of this section are exempt from the requirements of this chapter, unless the director has determined that stormwater quality management is needed to satisfy local or state NPDES, TMDL or other regulatory water quality requirements, or the proposed development

will be a pollutant hotspot, or to limit adverse stormwater quality or channel protection impacts of the proposed development.

(b) The exemptions listed in subsection (c) of this section shall not be construed as exempting these developments ~~and redevelopments~~ from compliance with stormwater requirements stated in the minimum subdivision regulations, chapter 114, pertaining to zoning, or other city regulations.

(c) The following developments ~~and redevelopments~~ are exempt from the requirements for a stormwater management plan:

(1) Residential or nonresidential developments ~~or redevelopments~~ that disturb less than one acre of land and are not part of a larger common plan of development or sale that would disturb one acre or more;

(2) Minor land disturbing activities such as residential gardens and residential or nonresidential repairs, landscaping or maintenance work;

(3) Individual utility service connections, unless such activity is carried out in conjunction with the clearing, grading, excavating, transporting, or filling of a lot for which a ~~stormwater management~~ plan would otherwise be required;

(4) Installation, maintenance or repair of individual septic tank lines or drainage fields, unless such activity is carried out in conjunction with the clearing, grading, excavating, transporting or filling of a lot for which a ~~stormwater management~~ plan would otherwise be required;

(5) Installation of posts or poles;

(6) Farming activities, existing nursery and agricultural operations, but not including construction conducted as a permitted principal or accessory use by chapter 114, zoning;

(7) Emergency work to protect life, limb or property, and emergency repairs, provided that the land area disturbed shall be shaped and stabilized in accordance with city requirements as soon as practicable;

(8) Additions or modifications to existing, individual, single-family structures;

(9) Silvicultural activities; ~~and~~

~~(10) State and local roadways; and~~

(10) State and federal projects subject to the submission requirements of TDEC.

Sec. 38-171. Special pollution abatement requirements.

(a) A special pollution abatement plan shall be required for the following land uses, which are considered pollutant hotspots:

(1) Vehicle, truck or equipment maintenance, fueling, washing or storage areas, including but not limited to:

a. Automotive dealerships;

b. Automotive repair shops; and

c. Carwash facilities;

(2) Recycling and/or salvage yard facilities;

(3) Restaurants, grocery stores and other food service facilities;

(4) Commercial facilities with outside animal housing areas, including animal shelters, fish hatcheries, kennels, livestock stables, veterinary clinics or zoos; and

(5) Other producers of pollutants identified by the director as a pollutant hotspot using information provided to or collected by the director, or reasonably deduced or estimated by the director from engineering or scientific study.

(b) A special pollution abatement plan may be required for land uses or activities that are not identified by this article as hotspot land uses, but are deemed by the director to have the potential to generate highly contaminated runoff with concentrations of pollutants in excess of those typically found in stormwater.

(c) The special pollution abatement plan shall be submitted as part of the ~~stormwater management~~ plan, and the BMPs submitted on the plan shall be subject to all other provisions of this article. Technical requirements for the plan shall be based on the provisions and guidelines set forth in the stormwater management manual.

(d) BMPs specified in the special pollution abatement plan must be appropriate for the pollutants targeted at the site and must be approved with the ~~stormwater management~~ plan.

(e) A special pollution abatement plan will be valid for a period of five years, at which point it must be renewed. At the time of renewal, any deficiency in the pollutant management method must be corrected.

Sec. 38-172. Sinkhole requirements.

The following sinkhole and drainage well plan information or approval from the appropriate regulating agency must be provided prior to the alteration of the natural drainage for watershed discharging to such features as sinkholes and drainage wells:

(1) Proposed on-site and offsite drainage channels that are tributary to a sinkhole throat or drainage well inlet shall be delineated, along with appropriate hydraulic calculations to define the existing and altered (if appropriate) 100 year floodplain and to confirm that off-site flooding will not be increased;

(2) Detailed contours are to be shown for all sinkholes that are to receive stormwater runoff from the site. These contours are to have a maximum interval of two feet and are to be verified by field surveys;

(3) A geologic investigation of all sinkholes receiving stormwater runoff from the site shall be performed. The report from this investigation shall be signed and sealed by a registered professional experienced in geology and groundwater hydrology and shall contain the following:

- a. Location and nature of aquifers;
 - b. Potential for siltation problems;
 - c. Foundation problems that may be expected around sinkholes;
 - d. Details of drainage structures to be built in sinkholes;
 - e. Any other factors relevant to the design of drainage from sinkholes;
 - f. Plans showing the 100 year flood-plain;
 - g. The 100 year floodplain shall be designated as a drainage easement on final subdivision plat; and
 - h. Details of plan for grading and clearing of vegetation within the 100 year floodplain;
- (4) Compliance with any and all conditions that may be required by the federal government or the state shall be documented. The state division of groundwater is the primary regulatory agency for sinkholes and drainage wells. Drainage into a sinkhole may require a permit for a Class V well under rules for underground injection control (UIC); and
- (5) Demonstration that development will not occur within the area flooded by the 100 year flood. The 100 year flood elevation may be lowered by construction of a detention pond. Calculations that document a lowering of the 100 year flood elevation shall be based on the 100 year, 24 hour storm using an appropriate safety factor for discharge into the sinkhole.

Sec. 38-173. Drainage requirements.

~~(a) Drainage pipe, appurtenances and any other material shall be provided by the owner wherever a ditch, swale, etc., is to be encased and used for conveyance purposes in the public right-of-way. The following criteria apply:~~

~~(1) The director will specify the size and type of pipe;~~

~~(2) The city will install the pipe at the director's discretion; and~~

~~(3) The owner is responsible for any finishing (asphalt replacement, landscaping, etc.) work.~~

(a) Private drainage systems, where drainage originates in its entirety on private property and terminates on same said property, shall be the sole responsibility of the owner.

(b) Private drainage originating on private property and draining to an adjacent parcel of private property shall be resolved by the owners involved.

(c) In cases where flooding stemming from the drainage system or streams are of significant magnitude, the health and welfare of private and/or public property may prompt the city to participate in mitigating the frequency and effects. All such projects shall meet with the approval of the director prior to implementation.

(e) The requirements of subsections (a) through (d) of this section may be waived and emergency measures taken to protect the public safety during those circumstances in which, due to unforeseen events, development and/or acts of nature, the public welfare requires it. The director ~~and/or city manager~~ shall have the power to exercise all due discretion, judgment and executive directives to address any such situation and/or emergency.

(f) No watercourse shall be obstructed.

(g) Stormwater drainage shall not:

(1) Adversely impact adjacent properties or public rights-of-way;

(2) Circumvent stormwater management facilities for which that flow contribution was designed; or

(3) Be directed through a curb without a permit approved by the director.

(h) Additional curbing to control stormwater shall be installed only with approval of the director.

Secs. 38-174 - 38-198. Reserved.

DIVISION 4 5. PERMITS

Sec. 38-199. General requirements.

Owners who hold NPDES general, individual and/or multisector permits shall provide either a copy of such permit or the permit number assigned to them by the state department of environment and conservation to the director no later than 60 calendar days after issuance of the permit.

Secs. 38-200--38-224. Reserved.

DIVISION 6. AS-BUILT CERTIFICATIONS

Sec. 38-225. General requirements.

(a) Prior to the release of a performance bond required in section 38-347, certificate of occupancy or approval of final plat, an as-built certification shall be provided to the director, certifying that all drainage and treatment structures or facilities, BMPs, volumes, sizes, slopes, locations, elevations and hydraulic structures have been field verified, represent the as-built field conditions, and comply with the approved stormwater management plans, and that all required protective covenants have been properly filed with the appropriate register of deeds. Features such as roadway lines, grades, cross slopes, locations, contours, elevations, boundaries of buffer zones and areas that receive stormwater quality volume credits shall be provided to verify approved plans. Other contents of the as-built certification must be provided in accordance with guidance provided in the stormwater management manual.

(b) As-built certifications shall include sufficient design information to show that stormwater management facilities required by this article will operate as approved. This shall include all necessary computations used to determine percent pollutant removal, the flow rates and treatment volumes required to size stormwater management facilities and BMPs.

(c) The as-built certification must be stamped by the appropriate design professional required to stamp the original ~~stormwater management~~ plan, as stated in section 38-168(d).

(d) The owner shall also supply stormwater management facility certification forms, provided by the city, attesting that the facilities are constructed according to the approved design.

Secs. 38-226 - _____ 38-252. Reserved.

DIVISION 7. INSPECTIONS, OPERATION AND MAINTENANCE

Sec. 38-253. Right-of-entry.

(a) During and after construction, the director may enter upon any property which has a stormwater management facility, BMP, buffer zone, water quality volume credit area, discharges or contributes, or is believed to discharge or contribute, to stormwater runoff or the stormwater system, streams, natural drainage ways or via any other private or public stormwater management system during all reasonable hours to inspect for compliance with the provisions of this article, or to request or perform corrective actions.

(b) Failure of an owner to allow such entry onto a property for the purposes set forth in subsection (a) of this section shall be cause for the issuance of a cease and desist order, withholding of a certificate of occupancy, and/or civil penalties and/or damage assessments in accordance with division 10 of this article.

Sec. 38-254. Requirements.

(a) The owners of stormwater management facilities, BMPs, buffer zones and water quality volume credit areas shall at all times inspect, properly operate and maintain all facilities and systems of stormwater treatment and control (and related appurtenances), and all ~~vegetated~~ buffer zones and water quality volume credit areas in such a manner as to maintain the full function of the facilities or BMP's which are installed or used by the owners to achieve compliance with this article.

(b) Inspection and maintenance of privately owned stormwater management facilities, BMP's, buffer zones and water quality volume credit areas shall be performed at the sole cost and expense of the owners of such facilities/areas.

(c) Inspection and maintenance shall be performed in accordance with specific requirements and guidance provided in the ~~stormwater management~~ manual. Inspection and maintenance activities shall be documented by the owner or their designee, and such documentation shall be maintained by the owner for a minimum of three years, and shall be made available for review by the director upon request.

(d) The director has the authority to impose more stringent inspection requirements as necessary for purposes of water quality protection and public safety.

(f) The removal of sediment and/or other debris from stormwater management facilities and BMP's shall be performed in accordance with all city, state, and federal laws. Guidelines for sediment removal and disposal are referenced in the ~~stormwater management~~ manual. The director may stipulate additional guidelines if deemed necessary for public safety.

(g) The director may order corrective actions as are necessary to properly maintain and operate erosion prevention and sediment control measures, BMP's stormwater management facilities, buffer zones and/or water quality volume credit areas within the city for the purposes of stormwater pollution prevention, water quality treatment, channel erosion protection, adherence to local performance standards and/or public safety. If the owner fails to perform corrective actions, the director shall have the authority to order the city or others to take corrective actions. In such cases where a performance bond exists, the city shall utilize the bond to perform the corrective actions. In such cases where a performance bond does not exist, the owner shall reimburse the city for all of its direct and related expenses. If the owner fails to reimburse the city, the city is authorized to file a lien for said costs against the property and to enforce the lien by judicial foreclosure proceedings.

(h) This article does not authorize access to adjoining private property by the owner or site operator. Arrangements concerning removal of sediment or pollutants on adjoining property must be settled by the owner or operator with the adjoining land owner.

Secs. 38-255 - 38-280. Reserved.

DIVISION 8. PERMIT CONTROLS AND SYSTEM INTEGRITY

Sec. 38-281. General requirements.

(a) Any alteration, improvement, or disturbance to stormwater management facilities, buffer zones or water quality volume credit areas shown in as-built drawings shall be prohibited without written authorization from the director.

This does not include alterations that must be made in order to maintain the intended performance of the stormwater management facilities or BMPs.

(b) Other state and/or federal permits that may be necessary for construction in and around streams and/or wetlands shall be approved through the appropriate lead regulatory agency prior to submittal of a stormwater management plan to the city.

Secs. 38-282 - 38-304. Reserved.

DIVISION 9. NONSTORMWATER DISCHARGES

Sec. 38-305. General requirements.

(a) Except as set out in subsection (b) of this section, no owner shall introduce or cause to be introduced into the municipal separate storm sewer system any discharge that is not composed entirely of stormwater. The commencement, conduct, or continuance of any non-stormwater discharge to the municipal separate storm sewer system, whether intentional or not, is prohibited.

(b) For purposes of this article, the following are not illicit discharges unless identified as significant contributors of pollutants to the municipal separate storm sewer system:

- (1) Landscape irrigation or lawn watering with potable water;
- (2) Diverted stream flows permitted by the state;
- (3) Rising groundwater;
- (4) Groundwater infiltration (as defined at 40 CFR 35.2005(20)) to separate storm sewers;
- (5) **Uncontaminated** pumped groundwater;
- (6) Foundation or footing drains;
- (7) Water discharged from crawl space pumps;
- (8) Air conditioning condensate;
- (9) Springs;
- (10) Individual, residential washing of vehicles;
- (11) Flows from natural riparian habitat or wetlands;
- (12) Swimming pools (if dechlorinated, less than one part per million chlorine);
- (13) Street cleaning and deicing;
- (14) **Discharges** from ~~emergency~~ firefighting activities;
- (15) Pursuant to a valid and effective NPDES permit issued by the state;
- (16) Discharges necessary to protect public health and safety, as specified in writing by the city;
- (17) Dye testing permitted by the city;
- (18) Water line flushing or other potable water sources;
- (19) Natural riparian habitat or wetland flows; and
- (20) Discharges authorized by the Construction General Permit (CGP).

Sec. 38-306. Prohibition of illicit connections.

The construction, use, maintenance, and continued existence of illicit connections to the municipal separate storm sewer system are prohibited. This prohibition expressly includes, without limitation, illicit connections made in the past, even if the connection was permissible under law or practices applicable or prevailing at the time.

Sec. 38-307. Elimination of discharges or connections.

(a) Any owner of a property, which is, or may be, the source of an illicit discharge, may be required to implement, at such owner's expense, the BMPs necessary to prevent the further discharge of pollutants to the municipal separate storm sewer system.

(b) Any owner of a property or premises where an illicit connection is located shall be required, at such owner's expense, to eliminate the connection to the municipal separate storm sewer system.

(c) Compliance with all terms and conditions of a valid NPDES permit authorizing the discharge of stormwater associated with industrial activity, to the extent practicable, shall be deemed in compliance with the provisions of this article.

(d) No person shall dump or otherwise deposit outside an authorized landfill, convenience center or other authorized garbage or trash collection point, any trash or garbage of any kind or description on any private or public property, occupied or unoccupied, inside the city.

Sec. 38-308. Notification of spills.

(a) Notwithstanding other requirement of law, when any owner or tenant, or agent thereof or any person responsible for a facility or operation, or responsible for emergency response for a facility or operation, has information of any known or suspected release of a pollutant which results in, or may result in, a discharge into stormwater and/or the municipal separate stormwater system, such person shall take all necessary steps to ensure the discovery, containment, and cleanup of such release.

(b) When any owner or tenant, or agent thereof or any person responsible for a facility or operation, or responsible for emergency response for a facility or operation, has information of any known or suspected release of hazardous substance such person shall immediately notify emergency response agencies of the occurrence by emergency dispatch services, and shall notify the director no later than the next business day of the release of hazardous materials.

(c) When any owner or tenant, or agent thereof or any person responsible for a facility or operation, or responsible for emergency response for a facility or operation, has information of any known or suspected release of nonhazardous substance such person shall notify the director no later than the next business day.

(d) Notifications in person or by telephone shall be confirmed by written notice addressed and mailed to the director within three business days of the telephone notice.

(e) If the discharge of a pollutant emanates from a commercial or industrial establishment, the owner or operator of such establishment shall also retain an on-site written record of the discharge and the actions taken to prevent its recurrence. Such records shall be retained for at least three years.

(f) Documented illicit discharges shall be responded to no more than seven days from detection, and eliminated as soon as possible.

Sec. 38-309. Actions in violation of the city's NPDES permit.

Notwithstanding any other provision in this article, no person or entity shall allow any discharge into the municipal separate storm sewer system that would be a violation of the city's NPDES general permit for discharges from small municipal separate storm sewer system or would cause the city to be in violation of its permit.

Secs. 38-310 - 38-330. Reserved.

DIVISION 10. ENFORCEMENT

Sec. 38-331. Remedies nonexclusive.

The remedies provided for in this article are not exclusive and the director may take any, all or any combination of these actions against a noncompliant owner. The director is empowered to take more than one enforcement action against any noncompliant owner that is in violation.

Sec. 38-332. Adoption of enforcement response plan.

An enforcement response plan, including a schedule of civil penalties which may be assessed for certain specific violations or categories of violations, shall be established by resolution of the board of mayor and aldermen. Any civil penalty assessed to a violator pursuant to this section may be in addition to any other penalty assessed by a state or federal authority.

Sec. 38-333. Show cause hearing.

An owner that has been issued an assessment of damages or civil penalty or order under this article may within ten days from such action submit a written request to appear before the director and show cause why the proposed enforcement action should not be taken. Upon receipt by the director of a timely request for a show cause hearing the director shall within a reasonable time notify the owner of the time and place for the hearing. In the written request for a show cause hearing the owner is responsible for providing the director an address, email address, fax number, or such for the receipt of the notice of the show cause hearing. A show cause hearing shall not be a bar against or prerequisite for the director taking any other action against the owner, but, except as otherwise provided by section 38-346, an offer of a show cause hearing by the director shall be made before taking further action on the administrative order or assessment of damages or civil penalties.

Sec. 38-334. Appeals process.

(a) Except in emergency suspensions pursuant to section 38-346, any owner against whom an assessment for damages or civil penalty or order has been made for a violation of this article, or a permit denied, revoked, suspended by the director, shall have 30 days after having been notified of the assessment or order, or after a permit has been denied, revoked or suspended, to appeal the action to the stormwater appeals board by filing with the city recorder a written petition for appeal setting forth the grounds and reasons for the appeal, and the owner shall serve a copy of the petition for appeal on the director. The failure to serve the city recorder within 30 days with the written petition for appeal is jurisdictional, and if an appeal is not taken within the 30 days the matter shall be final.

(b) Upon receipt of a written petition for appeal the city recorder shall give the owner 30 days written notice of the time and place of the hearing. The director and the owner may agree to a continuance of the hearing; a continuance will be granted when there are not at least three members of the appeals board present for the hearing; the chairman of the appeals board may grant a continuance of the hearing for good cause shown; or as may otherwise be governed by its rules of procedure.

(c) An appeal to the appeals board shall be a de novo review.

(d) The appeals board shall have the authority to establish written rules of procedure for the conduct of its hearings, provided hearings before the appeals board shall be conducted in accordance with the following:

(1) The presence of at least three members of the appeals board shall be necessary to conduct a hearing.

(2) A verbatim record of the proceedings shall be taken. The transcript so recorded shall be made available to any party upon prepayment of a charge adequate to cover the costs of preparation.

(3) In connection with the hearing, subpoenas shall be issued in response to any reasonable request by any party to the hearing requiring the attendance and testimony of witnesses and the production of evidence relevant to any matter involved in the hearing. In case of contumacy or refusal to obey a notice of hearing or subpoena issued under this section, the chancery court shall have jurisdiction, upon application of the appeals board or the director, to issue an order requiring such person to appear and testify or produce evidence as the case may require, and any failure to obey such order of the court may be punished as contempt under law.

(4) Testimony before the appeals board shall be given under oath or affirmation, but the rules of evidence shall not apply.

(5) On the basis of the evidence produced at the hearing, the appeals board shall by majority vote of the members present make findings and enter such decisions and orders as in its opinion will best further the purposes of this article, which shall be done orally at the hearing or, if recessed, when the hearing is reconvened.

Such decisions and orders of the appeals board shall be reduced to writing, signed by one of the members present at the hearing and filed with the city recorder, as an official act of the appeals board, which writing shall be maintained in the permanent records of the city recorder and shall serve as entry of the decision. A copy shall be delivered to the director and the petitioner or mailed to them at their last known addresses.

(6) Any person to whom an emergency order is directed pursuant to section 38-346 shall comply therewith immediately, but on petition to the appeals board shall be afforded a hearing not later than three working days from the receipt of such petition.

Sec. 38-335. Civil penalties.

(a) Pursuant to T.C.A. § 68-221-1106(a), any owner in violation of the provisions of this article shall be subject to a civil penalty of not less than \$50.00 or more than \$5,000.00 per day for each day of violations. Each day of violation may constitute a separate violation. This penalty may be determined by application of the enforcement response plan as defined in section 38-341.

(b) The director may recover reasonable attorney's fees, court costs and other expenses associated with enforcement of this article and the cost of any actual damages incurred by the city.

(c) In determining the amount of the penalty to assess, the director shall consider the factors listed in section 38-345, the enforcement response plan and may consider all relevant circumstances, including but not limited to the extent of harm caused by the violation, the magnitude and duration of the violation, the compliance history of the owner and any other factor provided by law.

Sec. 38-336. Method of assessment for noncompliance.

Civil penalties shall be assessed in the following manner:

(1) The director may issue an assessment against any owner responsible for the violation;

(2) Any person against whom an assessment has been issued may secure a review of said assessment by filing with the director a written petition setting forth the grounds and reasons for their objections and asking for a hearing on the matter before the appeals board. If a petition for review of the assessment is not filed within 30 days after the date the assessment is served, the owner shall be deemed to have consented to the assessment and it shall become final;

(3) If any assessment becomes final because of an owner's failure to appeal the city's assessment, the director may apply to the appropriate court for a judgment and seek execution of said judgment, and the court in such proceedings shall treat a failure to appeal such assessment as a confession of judgment in the amount of the assessment. Upon final order, if payment is not made, the director may issue a cease and desist order;

(4) In assessing a civil penalty, the following factors may be considered:

a. The harm done to the public health or the environment;

b. Whether the civil penalty imposed will be a substantial economic deterrent to the illegal activity;

c. The economic benefit gained by the violator;

d. The amount of effort put forth by the violator to remedy this violation;

e. Any unusual or extraordinary enforcement costs incurred by the city;

f. The amount of penalty established by ordinance or resolution for specific categories of violations; and

g. Any equities of the situation which outweigh the benefit of imposing any penalty or damage assessment;

(5) Damages may also include any expenses incurred in investigating and enforcing the requirements of this article; removing, correcting and terminating any discharge or connection; and also compensation for any actual damages to the property or personnel of the city caused by the violation, and any reasonable expenses incurred in investigating and enforcing violations of this article.

(6) Where the director has issued progressive enforcement to achieve compliance with this article, and in the judgment of the director such has not been successful, the director may refer the violation to TDEC.

Sec. 38-337. Emergency suspensions.

(a) Under this article, if the director finds that an emergency exists imperatively requiring immediate action to protect the public health, safety or welfare; the health of animals, fish or aquatic life, or a public water supply; the director may, without prior notice, issue an order reciting the existence of such an emergency and requiring that such action be taken as the director deems necessary to meet the emergency, including suspension of a permit issued under this article.

(b) Any owner notified of a suspension shall immediately eliminate the violation. If an owner fails to immediately comply voluntarily with the suspension order, the director may take such steps as deemed necessary to remedy the endangerment. The director may allow the owner to recommence when the owner has demonstrated to the satisfaction of the director that the period of endangerment has passed.

(c) An owner that is responsible, in whole or in part, for any discharge or connection presenting imminent danger to the public health, safety or welfare; the health of animals, fish or aquatic life, or a public water supply; shall submit a detailed written statement, describing the causes of the harmful discharge or connection and the measures taken to prevent any future occurrence, to the director prior to the date of any show cause hearing under section 38-342.

(d) Nothing in this article shall be interpreted as requiring a hearing prior to any emergency suspension under this section.

(e) Any owner whose permit or operation is suspended pursuant to this section, on petition to the appeals board, shall be afforded a hearing as soon as possible, but in no case shall such hearing be held later than three working days from the receipt of such a petition by the director.

Sec. 38-338. Financial assurance.

(a) A performance bond and/or certificate of occupancy which guarantees satisfactory completion of construction work related to stormwater management facilities, channel protection, buffer zones and any BMP's shall be required. Prior to release of the performance bond and/or certificate of occupancy, the owner shall provide the city with an accurate as-built of the property and an executed protective covenant for all BMPs, buffer zones and areas that a final operations and maintenance plan, which shall include an executed legal document entitled covenants for permanent maintenance of stormwater facilities and BMP's. The owner shall record these items in the office of the county register of deeds. The location of the stormwater management facilities, BMP's, vegetated buffers, water quality volume credit areas and the water quality easements associated with these facilities/areas shall be shown on a plat that is also recorded in the office of the county register of deeds.

(b) Performance bonds shall name the city as beneficiary and shall be guaranteed in the form of a surety bond, cashier's check or letter of credit from an approved financial institution or insurance carrier. The surety bond, cashier's check or letter of credit shall be provided in a form and in an amount to be determined by the director. The actual amount shall be based on submission of plans and estimated construction, installation or potential maintenance and/or remediation expenses.

(c) The city recorder may refuse brokers or financial institutions the right to provide a surety bond, cashier's check or letter of credit based on past performance, ratings of the financial institution or other appropriate sources of reference information.

(d) The director may decline to approve a plan or issue or reissue a permit to any owner who has failed to comply with any section of this article, a permit or order issued under this article unless such owner first files a satisfactory bond, payable to the city, in a sum not to exceed a value determined by the director to be necessary to achieve consistent compliance.

Sec. 38-339. Injunctive relief.

When the director finds that an owner has violated or continues to violate any section of this article, or a permit or order issued under this article, the director may petition the appropriate court, through the city attorney, for the issuance of a temporary or permanent injunction, as appropriate, which restrains or compels the specific performance of the permit, order or other requirement imposed by this article on activities of the owner. The director may also seek such other action as is appropriate for legal and equitable relief, including a requirement for the owner to conduct environmental remediation. A petition for injunctive relief shall not be a bar against or a prerequisite for taking any other action against an owner.

Sec. 38-340. Additional stay.

The appeals board may grant an additional continuance and stay beyond that set out in section 38-343 upon the request of an owner and upon the posting of an appeal bond payable to the city in a sum to be determined by the director as necessary to protect the interests of the city.

Sec. 38-341. Appeal and judicial review.

The alleged violator may appeal a decision of the appeals board pursuant to the provisions of T.C.A. § 27-8-101 et seq.

CHANGES SHOWN IN COLOR TO RESOLUTION NO. 2008-134

ENFORCEMENT RESPONSE PLAN

Introduction

The intent of this document is to provide guidance to city officials in enforcing the stormwater management ordinance. It should be used only as a guide while recognizing that each situation is unique. The provisions of this enforcement response plan are not mandatory. Actual enforcement procedures should consider any unusual aspects of a violation or condition, as well as special characteristics of an enforcement action, in determining the proper response.

While the purpose is to provide guidance for administration of the stormwater management ordinance, it is not intended to limit the judgment and flexibility of the director in determining an appropriate response.

Development Project Plan Review, Approval and Enforcement

The city conducts site plan review through the development project engineer, including interdepartmental consultations, to ensure comprehensive input. A letter to the developer states the city's response, soliciting any changes to the stormwater management plan. Any changes must be submitted in writing and reviewed by city staff before approval is granted.

The site plan must specifically address in the stormwater management plan how it will comply with performance standards stated in the city's stormwater management ordinance.

To ensure that permanent stormwater BMPs are installed as designed, appropriately stamped as-built certifications must be provided to the director for review and approval prior to the release of a performance bond. The owner must also supply stormwater management facility certification forms, provided by the city, attesting that the facilities are constructed according to the approved design.

NPDES Permit Referrals

If the city becomes aware that a construction activity, or an industrial stormwater discharge, exists and that the discharge must be permitted under an NPDES permit but is not so permitted, or if the city has not been able, through its enforcement mechanisms and protocol, to bring an NPDES-permitted discharge into compliance with the city's stormwater management ordinance, the city shall notify TDEC of this situation by supplying the following information to the local environmental field office (EFO): construction project or industrial facility location; name of owner or operator; estimated construction project size or type of industrial activity (including SIC code if known); and records of communication with the owner or operator regarding filing requirements or violation, including the last two follow-up inspections, two notices of violation or administrative orders, and any response from the owner or operator.

Complaint Management

The city investigates all stormwater-related complaints. They are received in several ways; either verbally, by hotline, web page, phone or from other city departments. Ensuing investigations must be initiated within seven days from the receipt of the complaint. Violations documented as a result of complaint investigation will lead to commensurate enforcement activities.

Inspection

The city conducts inspections of permitted or unpermitted sites, activities, or projects to assess compliance with the approved stormwater pollution prevention plan and/or erosion and sediment control plan and evaluate the potential for discharge of sediment and other construction related wastes. Documentation of observations is achieved through the completion of applicable inspection reports.

Enforcement occurs by initiation of corrective actions, enforcement actions and penalties, as defined in and per the terms of the City's stormwater management ordinance.

Enforcement Tracking

The city tracks instances of non-compliance either in paper files or electronically. The enforcement case documentation shall include, at a minimum, the following: name of owner/operator; location of construction project or industrial facility; description of violation; required schedule for returning to compliance; description of enforcement response used, including escalated responses if repeat violations occur or violations are not resolved in a timely manner; accompanying documentation of enforcement response; any referrals to different departments or agencies; and date violation was resolved.

Chronic Violators

The city identifies chronic violators of any stormwater management program component and reduces the rate of noncompliance recidivism by tracking the violations, applying incentives and/or disincentives, and increasing the inspection frequency at the owner/operator's site. If corrective actions are not taken, the city pursues progressive enforcement and, if need be, performs the necessary work and assesses against the owner the costs incurred for repairs.

Enforcement Responses

The order of precedence for enforcement responses outlined in this guide should not be construed to prevent the director from taking a stronger action without first implementing less stringent steps, if in his opinion, a more forceful response is necessary.

Minor infractions may be resolved by a verbal warning, or written notice advising the owner/operator/person of the nature of the violation. If such action fails to generate an adequate response by the owner/operator/person, further enforcement actions as provided by the ordinance may be taken.

Verbal Warning

In the case of the most minor violation of a permit or the ordinance, a telephone call or informal meeting may be sufficient to obtain the desired compliance. Verbal warnings should be documented by contemporaneous notes.

Written Notice

A written notice is the lowest level of formal response to a violation. It is intended for minor violations which would not cause harm to the environment.

Notice of Violation

A notice of violation (NOV) is an official notification to inform a non-compliant owner of a violation of the stormwater management ordinance. Within ten (10) days of receipt of this notice, a written explanation of the violation and a plan for the satisfactory correction and prevention thereof, to include specific required actions, shall be submitted by the owner to the director. Inspection to ensure performance of any corrective actions may be conducted by the director at his discretion. Submission of this plan in no way relieves the owner of liability for any violations occurring before or after receipt of the notice of violation.

Administrative Orders

Administrative orders (AO) are enforcement documents which direct owners to perform, or to cease, specific activities. Administrative orders may also invoke a penalty. There are three (3) primary types of

administrative orders: consent orders; compliance orders; and cease and desist orders.

A show cause hearing should be offered prior to enforcement of an administrative order or assessment of damages or a civil penalty. The purpose of a show cause hearing is to provide a forum for the owner to present a defense to charges as outlined, or, for the director to obtain additional information from the owner to determine whether to proceed with enforcement.

Consent orders are entered into between the city and the owner to assure compliance as to specific actions to be taken by the owner to correct non-compliance within a specified time period. The director may enter into consent orders, assurances of voluntary compliance or other similar documents establishing an agreement with any owner responsible for noncompliance. Such documents shall include specific action to be taken by the owner to correct the noncompliance within a time period specified in the document. Such documents shall have the same force and effect as orders issued pursuant to Sections 38-87 and 38-

Compliance orders may be issued when the director finds that an owner has violated, or continues to violate, the ordinance or an order issued thereunder. It is similar to a consent order except that the consent of the owner is not implied in its issuance. When the director finds that an owner has violated or continues to violate any section of this article, or a permit or order issued under this article, the director may issue an order to the owner responsible for the violation directing that the owner come into compliance within a specified time, and such order may include assessment of a penalty to be paid if the owner does not come into compliance within the time provided. Compliance orders also may contain other requirements to address the noncompliance, including the construction of appropriate structures, installation of devices, self-monitoring and management practices designed to minimize the amount of pollutants discharged offsite. A compliance order does not relieve the owner of liability for any violation, including any continuing violation. Issuance of a compliance order shall not be a bar against or a prerequisite for taking any other action against the owner.

Cease and desist orders may be issued when the director finds that an owner has violated or continues to violate, the stormwater management ordinance or order issued thereunder. The order shall require that the owner:

- (a) Comply forthwith; and
- (b) Take such appropriate remedial or preventive action as may be needed or deemed necessary to properly address a continuing or threatened violation, including halting operations and terminating the discharge. Issuance of a cease and desist order shall not be a bar against or a prerequisite for taking any other action against the owner.

Administrative orders contain the following components:

- (a) Title - The title specifies the type of order being issued (see below), to whom it is being issued, summarizes the purpose of the order, and contains an identification number.
- (b) Legal Authority - The authority under which the order is issued (the stormwater management ordinance).
- (c) The Finding of Noncompliance - All violations must be described including the dates, the specific permit and/or ordinance provisions violated, and any damages known and attributable to the violation.
- (d) Required Activity - All orders should specify the required actions, such as installation of BMPs, additional inspections, appearance at show cause hearings, etc.
- (e) Milestone Dates for Corrective Actions - When compliance schedules are appropriate, all milestone dates must be established including due dates for required written reports.
- (f) Supplemental Clauses - The document should contain standard clauses which provide that:
 1. Compliance with the terms and conditions of the administrative order shall not be construed to relieve the owner of its obligation to comply with applicable state, federal or local law, or the permit;
 2. Violation of the administrative order itself may subject the owner to additional penalties as set out in the stormwater management ordinance;
 3. No provision of the order shall be construed to limit the city's authority to issue supplementary or additional orders, or to take action deemed necessary to implement this program or ordinance;
 4. The order shall be binding upon the owner, its officers, directors, agents, employees, successors,

assigns, and all persons, firms or corporations acting under, through or on behalf of the owner.

Administrative orders issued as a result of a violation of the stormwater management ordinance shall contain a penalty as determined using Tables 'A' and "B" in this document. Administrative orders may also be used to advise an owner of the need to take, or cease, certain actions, and in such case, may or may not be associated with penalties as defined in the ordinance or in this guide.

In accordance with the City of Kingsport Code of Ordinances, section 38-342 a show cause hearing should be offered prior to enforcement of an administrative order or assessment of damages or a civil penalty. The purpose of a show cause hearing is to provide a forum for the owner to present a defense to charges as outlined, or for the director to obtain additional information from the owner to determine whether to proceed with enforcement. An owner may appeal the decision of the director to the stormwater appeals board as permitted by the City of Kingsport Code of Ordinances, section 38-343.

Civil Litigation

Pursuant to Section 38-343 of the stormwater management ordinance, the director may, through the city attorney, petition the appropriate court(s) for issuance of preliminary or permanent injunctions to restrain or compel activities by an owner.

Penalties, Administrative or Civil

The stormwater management ordinance authorizes assessment of penalties not to exceed \$5,000 per violation per day. Additionally, Section 38-87 of the ordinance authorizes the director to assess a civil penalty for actual damages incurred by the city. Before the enforcement of any administrative penalty, a show cause hearing must be offered to the owner.

If a violation results in conditions requiring the expenditure of public funds for mitigation of damages, a penalty shall be assessed in such amount as to offset the public funds so expended. This will in no way reduce or offset the liability of the owner with respect to damages incurred.

Explanation of Use of Tables

This guide is based primarily on the use of two tables; "A", and "B". Table "A" indicates how point values are assigned for each violation, considering the severity, duration, degree of harm, and compliance history of the owner. All possible violations may not be listed; however, this does not preclude an appropriate enforcement response.

In Table "A", three columns are associated with each listed violation – the "Initial Points" column, the "Repeat Value" column, and the "Cumulative" column. If no history of violations is noted, the value in the "Initial Points" column may be used in conjunction with Table "B" to assess a typical response to the violation.

If the user has a history of similar violations, the initial point value plus the product of the number of previous occurrences times the repeat value should be used as shown in the following formula: Total Point Value (TP) = P + (N x R), where;

P = Initial Point Value for a single violation

N = Number of previous occurrences

R = Repeat Value from Table "A"

Should more than one violation be noted at a time, the cumulative column should be consulted. If violations are cumulative in nature, the sum of the individual point values should be used to judge the response. If not, the greatest individual values should be used to judge response, with the documentation for that response, however, noting all violations.

Once a point value is determined, Table "B" should be consulted for recommended responses. Table "B" provides a schedule of appropriate responses based upon the number of "points" determined by Table "A".

Example

An owner violates the terms of the stormwater management ordinance. This violation is considered significant and causes harm. Investigation reveals the owner has been cited twice in the past for the same violation: Total Point Value (TP) = P + (N x R)

$$\text{Therefore: TP} = 3 + (2 \times 1) = 5$$

Where 3 = Points charged for isolated but significant discharge from Table "A"

2 = Number of previous occurrences; and

1 = Repeat value from Table "A".

Resulting options: Civil injunction or administrative order with up to \$500.00 penalty.

TABLE "A"
Response Guide for Violation

| <u>DESCRIPTION OF VIOLATION</u> | <u>INITIAL POINTS</u> | <u>REPEAT VALUE</u> | <u>CUMULATIVE</u> |
|--|-----------------------|---------------------|-------------------|
| EROSION PREVENTION AND SEDIMENT CONTROL | | | |
| Violation of a single requirement: | | | |
| Not significant | 1 | 1 | No |
| Significant, no harm | 2 | 1 | Yes |
| Significant, causes harm | 3 | 1 | Yes |
| Violation of more than one requirement: | | | |
| Not significant | 2 | 1 | Yes |
| Significant, no harm | 3 | 1 | Yes |
| Significant, causes harm | 4 | 1 | Yes |
| UNAUTHORIZED DISCHARGES | | | |
| Illicit Discharges: | | | |
| Owner unaware of requirement, no harm | 1 | N/A | No |
| Owner unaware of requirement, harm | 2 | N/A | No |
| Owner aware of requirement, no harm | 2 | 1 | Yes |
| Owner aware of requirement, harm | 3 | 1 | Yes |
| Illicit Connections: | | | |
| Owner unaware of requirement, no harm | 1 | N/A | No |
| Owner unaware of requirement, harm | 2 | N/A | No |
| Owner aware of requirement, no harm | 2 | 1 | Yes |
| Owner aware of requirement, harm | 3 | 1 | Yes |
| INSPECTION | | | |
| Entry denied | 2 | 2 | Yes |
| Inspection Records | | | |
| Incomplete | 1 | 2 | No |
| Not available | 1 | 2 | No |

MAINTENANCE

| | | | |
|--|---|---|-----|
| Failure to properly operate and maintain BMPs | 1 | 1 | Yes |
|--|---|---|-----|

STORMWATER MANAGEMENT

Pre-Construction

| | | | |
|-------------------------------------|---|---|----|
| Failure to obtain NOC | 2 | 1 | No |
| Failure to obtain grading permit | 2 | 1 | No |
| Failure to provide performance bond | 2 | 1 | No |

Post-Construction

| | | | |
|---|---|---|----|
| Failure to provide water quality SCMs | 2 | 2 | No |
| Failure to provide channel protection | 2 | 2 | No |
| Failure to provide downstream impact analysis | 2 | 2 | No |

Post-Construction

| | | | |
|---|---|---|----|
| Failure to provide special pollution abatement plan | 2 | 2 | No |
| Failure to provide as-built | 2 | 2 | No |
| Failure to provide covenant | 2 | 2 | No |

**TABLE "B"
VIOLATION RESPONSE GUIDE**

| <u>POINT TOTAL</u> | <u>ACTION</u> |
|--------------------|---|
| 1 | Written warning |
| 2 | Notice of Violation |
| 3 | Administrative Order with up to \$150 Penalty |
| 4 | Administrative Order with up to \$300 Penalty |
| 5 | Administrative Order with up to \$500 Penalty |
| 6 | Administrative Order with up to \$1,000 Penalty |
| 7 | Administrative Order with up to \$2,000 Penalty |
| 8 | Administrative Order with up to \$3,000 Penalty |
| 9 | Administrative Order with up to \$4,000 Penalty |
| 10 | Administrative Order with up to \$5,000 Penalty |

A cease and desist order may be issued at anytime and a civil injunction may be requested at any time, for any violation, if in the opinion of the director in consultation with the city attorney, such action is justified, needed or appropriate.

Criminal Action

In cases where criminal acts are suspected by the director, after consultation with the city attorney, information shall be gathered and forwarded to the district attorney of the appropriate county for action. Criminal prosecution, if pursued, shall be in addition to other actions authorized by ordinance.



AGENDA ACTION FORM

Budget Adjustment Ordinance for FY17

To: Board of Mayor and Aldermen
From: Jeff Fleming, City Manager *JF*

Action Form No.: AF-316-2016
Work Session: December 5, 2016
First Reading: December 6, 2016

Final Adoption: December 20, 2016
Staff Work By: Judy Smith
Presentation By: Jeff Fleming

Recommendation:

Approve the Ordinance.

Executive Summary:

This ordinance will close old projects by transferring \$3,063 from the Radio Tower project (GP1504) and by transferring \$68,017 from the Police Storage Lot Improvement project (GP1609) to the Justice Center Improvement project (GP1731) and close projects GP1609 and GP1504. A donation of \$1,000 will be appropriated to the Centennial Park project. Funds in the amount of \$53,085 will be transferred from the Visitor's Enhancement Fund to the Brickyard Park Shade Structures project. Funds in the amount of \$13,463 will be transferred to the Centennial project (NC1613) and close NC1514 and NC1506. Funds in the amount of \$14,002 will be transferred from the City Hall/Facilities Improvements project (GP1522) to the Higher Ed Maintenance/Improvements project (GP1730) and close GP1522.

Attachments:

- 1. Ordinance

Funding source appropriate and funds are available: *JF*

| | Y | N | O |
|------------|---|---|---|
| Duncan | — | — | — |
| George | — | — | — |
| McIntire | — | — | — |
| Olterman | — | — | — |
| Parham | — | — | — |
| Segelhorst | — | — | — |
| Clark | — | — | — |



AGENDA ACTION FORM

Budget Adjustment Ordinance for FY17

To: Board of Mayor and Aldermen
 From: Jeff Fleming, City Manager *JF*

Action Form No.: AF-316-2016
 Work Session: December 5, 2016
 First Reading: December 6, 2016

Final Adoption: December 20, 2016
 Staff Work By: Judy Smith
 Presentation By: Jeff Fleming

Recommendation:

Approve the Ordinance.

Executive Summary:

This ordinance will close old projects by transferring \$3,063 from the Radio Tower project (GP1504) and by transferring \$68,017 from the Police Storage Lot Improvement project (GP1609) to the Justice Center Improvement project (GP1731) and close projects GP1609 and GP1504. A donation of \$1,000 will be appropriated to the Centennial Park project. Funds in the amount of \$53,085 will be transferred from the Visitor's Enhancement Fund to the Brickyard Park Shade Structures project. Funds in the amount of \$13,463 will be transferred to the Centennial project (NC1613) and close NC1514 and NC1506. Funds in the amount of \$14,002 will be transferred from the City Hall/Facilities Improvements project (GP1522) to the Higher Ed Maintenance/Improvements project (GP1730) and close GP1522.

Attachments:

- 1. Ordinance

Funding source appropriate and funds are available: *JF*

| | <u>Y</u> | <u>N</u> | <u>O</u> |
|------------|----------|----------|----------|
| Duncan | — | — | — |
| George | — | — | — |
| McIntire | — | — | — |
| Olterman | — | — | — |
| Parham | — | — | — |
| Segelhorst | — | — | — |
| Clark | — | — | — |

PRE-FILED CITY RECORDER

ORDINANCE NO. _____

AN ORDINANCE TO AMEND VARIOUS PROJECTS FOR
THE YEAR ENDING JUNE 30, 2017; AND TO FIX THE
EFFECTIVE DATE OF THIS ORDINANCE

BE IT ORDAINED BY THE CITY OF KINGSPORT, as follows:

SECTION I. That the General Project Fund budget be amended by transferring \$3,063 from the Radio Tower project (GP1504) and \$68,017 from the Police Storage Lot Improvement project (GP1609) to the Justice Center Improvements project (GP1731), by appropriating \$1,000 donation to the Centennial Park (GP1533), by appropriating \$1,176 Premium Bond Sale to the Sidewalk Improvements project (GP1213), by appropriating \$9,000 in Ropes Course Fees to the Bays Mountain operating budget, by appropriating \$111 to the Fire Department operating budget, by transferring \$53,085 from the Visitor's Enhancement Fund to the Brickyard Park Shade Structures project (GP1729), by transferring \$4,645 from the Centennial project (NC1506) and \$8,541 from the Website/Marketing Office (NC1514) to the Centennial Project (NC1613) and by transferring \$14,002 from the City Hall/Facilities Improvements project (GP1522) to the Higher Ed Maintenance project (GP1730). Projects GP1522, NC1514, NC1506, GP1609 and GP1504 will be closed.

| <u>Account Number/Description:</u> | <u>Budget</u> | <u>Incr/<Decr></u> | <u>New Budget</u> |
|--|----------------|--------------------------|-------------------|
| <u>Fund 311: General Project Fund</u> | | | |
| <u>Radio Tower (GP1504)</u> | | | |
| <u>Revenues:</u> | \$ | \$ | \$ |
| 311-0000-391-0100 From General Fund | 140,721 | (3,063) | 137,658 |
| <i>Totals:</i> | 140,721 | (3,063) | 137,658 |
| | | | |
| <u>Expenditures:</u> | \$ | \$ | \$ |
| 311-0000-601-2023 Arch/Eng/Landscaping | 7,793 | 0 | 7,793 |
| 311-0000-601-9003 Improvements | 132,928 | (3,063) | 129,865 |
| <i>Totals:</i> | 140,721 | (3,063) | 137,658 |
| | | | |
| <u>Fund 311: General Project Fund</u> | | | |
| <u>Police Storage Lot Imprvt (GP1609)</u> | | | |
| <u>Revenues:</u> | \$ | \$ | \$ |
| 311-0000-368-1046 Series 2013 B GO Pub Imp | 108,665 | (22,691) | 85,974 |
| 311-0000-368-1047 Series 2014 A GO Pub Imp | 39,846 | (29,790) | 10,056 |
| 311-0000-368-2101 Premium From Bond Sale | 9,654 | 0 | 9,654 |
| 311-0000-391-0100 From General Fund | 26,500 | (15,536) | 10,964 |
| <i>Totals:</i> | 184,665 | (68,017) | 116,648 |

| | | | |
|--|----------------|-----------------|----------------|
| Expenditures: | \$ | \$ | \$ |
| 311-0000-601-2023 Arch/Eng/Landscaping | 50,000 | (37,477) | 12,523 |
| 311-0000-601-9003 Improvements | 134,665 | (30,540) | 104,125 |
| Totals: | 184,665 | (68,017) | 116,648 |

Fund 311: General Project Fund
Justice Center Improvements (GP1731)

| | | | |
|--|----------|---------------|---------------|
| Revenues: | \$ | \$ | \$ |
| 311-0000-368-1046 Series 2013 B GO Pub Imp | 0 | 22,691 | 22,691 |
| 311-0000-368-1047 Series 2014 A GO Pub Imp | 0 | 29,790 | 29,790 |
| 311-0000-391-0100 From General Fund | 0 | 18,599 | 18,599 |
| Totals: | 0 | 71,080 | 71,080 |

| | | | |
|--------------------------------|----------|---------------|---------------|
| Expenditures: | \$ | \$ | \$ |
| 311-0000-601-9003 Improvements | 0 | 71,080 | 71,080 |
| Totals: | 0 | 71,080 | 71,080 |

Fund 311: General Project Fund
Centennial Park (GP1533)

| | | | |
|--|----------------|--------------|----------------|
| Revenues: | \$ | \$ | \$ |
| 311-0000-364-1000 Contribution Individual | 0 | 1,000 | 1,000 |
| 311-0000-368-1047 Series 2014 A GO Pub Imp | 193,226 | 0 | 193,226 |
| 311-0000-368-2101 Premium From Bond Sale | 29,108 | 0 | 29,108 |
| Totals: | 222,334 | 1,000 | 223,334 |

| | | | |
|--|----------------|--------------|----------------|
| Expenditures: | \$ | \$ | \$ |
| 311-0000-601-2023 Arch/Eng/Landscaping | 220,934 | 1,000 | 221,934 |
| 311-0000-601-9003 Improvements | 1,400 | 0 | 1,400 |
| Totals: | 222,334 | 1,000 | 223,334 |

Fund 311: General Project Fund
Sidewalk Improvements (GP1213)

| | | | |
|---|----------------|--------------|----------------|
| Revenues: | \$ | \$ | \$ |
| 311-0000-368-1040 Series 2011 GO Pub Imp | 302,613 | 0 | 302,613 |
| 311-0000-368-1046 Series 2013B GO Pub Imp | 100,000 | (4,965) | 95,035 |
| 311-0000-368-2101 Premium From Bond Sale | 3,671 | 6,141 | 9,812 |
| Totals: | 406,284 | 1,176 | 407,460 |

| | | | |
|--|---------|-------|---------|
| Expenditures: | \$ | \$ | \$ |
| 311-0000-601-2022 Construction Contracts | 320,313 | 80 | 320,393 |
| 311-0000-601-2023 Arch/Eng/Landscaping | 34,160 | 0 | 34,160 |
| 311-0000-601-4041 Bond Expense | 6,284 | 1,176 | 7,460 |
| 311-0000-601-9001 Land | 4,527 | 0 | 4,527 |
| 311-0000-601-9003 Improvements | 41,000 | (80) | 40,920 |

Totals:

| | | |
|----------------|--------------|----------------|
| 406,284 | 1,176 | 407,460 |
|----------------|--------------|----------------|

Fund 110: General Fund

Revenues:

| | | | |
|------------------------------------|---------------|--------------|---------------|
| | \$ | \$ | \$ |
| 110-0000-364-2000 From Corporation | 17,000 | 50 | 17,050 |
| 110-0000-368-9900 Miscellaneous | 45,000 | 61 | 45,061 |
| 110-0000-341-3070 Rope Course Fees | 10,000 | 9,000 | 19,000 |
| Totals: | 72,000 | 9,111 | 81,111 |

Expenditures:

| | | | |
|--|---------------|--------------|---------------|
| | \$ | \$ | \$ |
| 110-3501-451-4099 Other Expenses Misc. | 10000 | 111 | 10111 |
| 110-4530-473-2075 Temporary Employees | 10,000 | 9,000 | 19,000 |
| Totals: | 20,000 | 9,111 | 29,111 |

Fund 135: Visitors Enhancement Fund

Expenditures:

| | | | |
|--|----------------|----------|----------------|
| | \$ | \$ | \$ |
| 135-1015-405-9003 Improvements | 145,000 | (53,085) | 91,915 |
| 135-4804-481-7036 To General Proj Fund | 0 | 53,085 | 53,085 |
| Totals: | 145,000 | 0 | 145,000 |

Fund 311: General Project Fund

Brickyard Park Shade Structures (GP1729)

Revenues:

| | | | |
|---|----------|---------------|---------------|
| | \$ | \$ | \$ |
| 311-0000-391-6900 Visitors Enhancement Fund | 0 | 53,085 | 53,085 |
| Totals: | 0 | 53,085 | 53,085 |

Expenditures:

| | | | |
|--|----------|---------------|---------------|
| | \$ | \$ | \$ |
| 311-0000-601-9006 Purchases Over \$5,000 | 0 | 53,085 | 53,085 |
| Totals: | 0 | 53,085 | 53,085 |

Fund 111: General Project-Special Rev Fund

Centennial Project (NC1506)

Revenues:

| | | | |
|-------------------------------------|--------------|----------------|--------------|
| | \$ | \$ | \$ |
| 111-0000-391-0100 From General Fund | 5,804 | (4,645) | 1,159 |
| Totals: | 5,804 | (4,645) | 1,159 |

Expenditures:

| | | | |
|-----------------------------------|--------------|----------------|--------------|
| | \$ | \$ | \$ |
| 111-0000-601-3010 Office Supplies | 5,804 | (5,713) | 91 |
| 111-0000-601-3012 Food | 0 | 1,068 | 1,068 |
| Totals: | 5,804 | (4,645) | 1,159 |

Fund 111: General Project-Special Rev Fund

Website/Marketing Office (NC1514)

Revenues:

| | | | |
|-------------------------------------|--------|---------|--------|
| | \$ | \$ | \$ |
| 111-0000-391-0100 From General Fund | 50,000 | (8,541) | 41,459 |

| | | | |
|--|---------------|----------------|---------------|
| Totals: | 50,000 | (8,541) | 41,459 |
| Expenditures: | \$ | \$ | \$ |
| 111-0000-601-3020 Operating Supplies & Tools | 10,000 | 9,525 | 19,525 |
| 111-0000-601-9004 Equipment | 40,000 | (18,066) | 21,934 |
| Totals: | 50,000 | (8,541) | 41,459 |

**Fund 111: General Project-Special Rev Fund
Centennial Project (NC1613)**

| | | | |
|-------------------------------------|---------------|---------------|---------------|
| Revenues: | \$ | \$ | \$ |
| 111-0000-341-1087 Merchandise Sales | 0 | 277 | 277 |
| 111-0000-391-0100 From General Fund | 57,000 | 13,186 | 70,186 |
| Totals: | 57,000 | 13,463 | 70,463 |

| | | | |
|--|---------------|---------------|---------------|
| Expenditures: | \$ | \$ | \$ |
| 111-0000-601-3020 Operating Supplies & Tools | 51,600 | 13,463 | 65,063 |
| 111-0000-631-1010 Salaries & Wages | 4,310 | 0 | 4,310 |
| 111-0000-631-1020 Social Security | 1,000 | 0 | 1,000 |
| 111-0000-631-1060 Workers Comp | 10 | 0 | 10 |
| 111-0000-631-1061 Unemployment | 80 | 0 | 80 |
| Totals: | 57,000 | 13,463 | 70,463 |

**Fund 311: General Project Fund
Cty Hall/Facility Improvements (GP1522)**

| | | | |
|---|----------------|-----------------|----------------|
| Revenues: | \$ | \$ | \$ |
| 311-0000-368-1040 Series 2011 GO Pub Imp | 84,748 | 0 | 84,748 |
| 311-0000-368-1047 Series 2014A GO Pub Imp | 137,475 | 0 | 137,475 |
| 311-0000-368-2101 Premium From Bond Sale | 14,396 | 0 | 14,396 |
| 311-0000-391-0100 From General Fund | 100,756 | (14,002) | 86,754 |
| Totals: | 337,375 | (14,002) | 323,373 |

| | | | |
|--|----------------|-----------------|----------------|
| Expenditures: | \$ | \$ | \$ |
| 311-0000-601-2023 Arch/Eng/Landscaping | 15,000 | 3,614 | 18,614 |
| 311-0000-601-4041 Bond Expense | 1,871 | 0 | 1,871 |
| 311-0000-601-9003 Improvements | 320,504 | (17,616) | 302,888 |
| Totals: | 337,375 | (14,002) | 323,373 |

**Fund 311: General Project Fund
Higher Ed Maintenance/Improvements
(GP1730)**

| | | | |
|-------------------------------------|----------|---------------|---------------|
| Revenues: | \$ | \$ | \$ |
| 311-0000-391-0100 From General Fund | 0 | 14,002 | 14,002 |
| Totals: | 0 | 14,002 | 14,002 |

| | | | |
|----------------------|----|----|----|
| Expenditures: | \$ | \$ | \$ |
|----------------------|----|----|----|

311-0000-601-9003 Improvements

Totals:

| | | |
|----------|---------------|---------------|
| 0 | 14,002 | 14,002 |
| 0 | 14,002 | 14,002 |

SECTION II. That this Ordinance shall take effect from and after its date of passage, as the law direct, the welfare of the City of Kingsport, Tennessee requiring it.

JOHN CLARK, Mayor

ATTEST:

JAMES H. DEMMING, City Recorder

APPROVED AS TO FORM:

J. MICHAEL BILLINGSLEY, City Attorney

PASSED ON 1ST READING:

PASSED ON 2ND READING:



AGENDA ACTION FORM

Amend the FY 2017 General Purpose School Fund Budget

To: Board of Mayor and Aldermen
From: Jeff Fleming, City Manager

Action Form No.: AF-322-2016
Work Session: December 5, 2016
First Reading: December 6, 2016

Final Adoption: December 20, 2016
Staff Work By: David Frye
Presentation By: David Frye

Recommendation:
Approve the Ordinance.


Executive Summary:

The Board of Education approved fiscal year 2017 budget amendment number three at their meeting on December 1, 2016. This amendment increases the estimated revenue for Other Local Revenue by \$30,265 and decreases the estimated revenue for Special Education High Costs funds by \$9,925. The amendment also increases the appropriation for Curriculum and Instruction, Instructional Supplies by \$30,265 and decreases the appropriations for Special Education Instructional Supplies by \$5,000 and Special Education Travel by \$4,925.

The increase of \$30,625 in funding is supplemental funding from TN SCORE and will be used for our K-2 literacy program. The decrease in special education funding is adjusting an estimate of \$50,000 to the actual amount received.

Attachments:

- 1. Ordinance
- 2. BOE Budget Amendment Number Three – FY 2017

Funding source appropriate and funds are available: 

| | Y | N | O |
|------------|---|---|---|
| Duncan | — | — | — |
| George | — | — | — |
| McIntire | — | — | — |
| Olterman | — | — | — |
| Parham | — | — | — |
| Segelhorst | — | — | — |
| Clark | — | — | — |



AGENDA ACTION FORM

Amend the FY 2017 General Purpose School Fund Budget

To: Board of Mayor and Aldermen
From: Jeff Fleming, City Manager *JF*

Action Form No.: AF-322-2016
Work Session: December 5, 2016
First Reading: December 6, 2016

Final Adoption: December 20, 2016
Staff Work By: David Frye
Presentation By: David Frye

Recommendation:

Approve the Ordinance.

Executive Summary:

The Board of Education approved fiscal year 2017 budget amendment number three at their meeting on December 1, 2016. This amendment increases the estimated revenue for Other Local Revenue by \$30,265 and decreases the estimated revenue for Special Education High Costs funds by \$9,925. The amendment also increases the appropriation for Curriculum and Instruction, Instructional Supplies by \$30,265 and decreases the appropriations for Special Education Instructional Supplies by \$5,000 and Special Education Travel by \$4,925.

The increase of \$30,625 in funding is supplemental funding from TN SCORE and will be used for our K-2 literacy program. The decrease in special education funding is adjusting an estimate of \$50,000 to the actual amount received.

Attachments:

1. Ordinance
2. BOE Budget Amendment Number Three – FY 2017

Funding source appropriate and funds are available: *JF*

| | Y | N | O |
|------------|---|---|---|
| Duncan | — | — | — |
| George | — | — | — |
| McIntire | — | — | — |
| Olterman | — | — | — |
| Parham | — | — | — |
| Segelhorst | — | — | — |
| Clark | — | — | — |

**PRE-FILED
CITY RECORDER**

ORDINANCE NO. _____

AN ORDINANCE TO AMEND THE FY 2016-17 GENERAL PURPOSE SCHOOL FUND BUDGET; AND, TO FIX THE EFFECTIVE DATE OF THIS ORDINANCE

BE IT ORDAINED BY THE CITY OF KINGSPORT, as follows:

SECTION I. That the General Purpose School Fund budget be amended to ratify the Kingsport Board of Education approval of Budget Amendment Number Three by increasing the estimated revenue for Other Local Revenue by \$30,265 and decreasing the estimated revenue for Education for the Handicapped Act by \$9,925. The expenditure budget will be changed by increasing the appropriation for Curriculum and Instruction – Instructional Supplies by \$30,265 and decreasing the appropriation for Special Education – Instructional Supplies by \$5,000 and Special Education – Travel by \$4,925.

| <u>Account Number/Description:</u> | <u>Budget</u> | <u>Incr/<Decr></u> | <u>New Budget</u> |
|---|----------------|--------------------------|-------------------|
| Fund 141: School Fund | | | |
| Revenues: | \$ | \$ | \$ |
| 141-0000-337-7143 Ed of the Handicapped Act | 50,000 | (9,925) | 40,075 |
| 141-0000-369-4990 Other Local Revenue | 605,000 | 30,265 | 635,265 |
| Totals: | 655,000 | 20,340 | 675,340 |

| <u>Account Number/Description:</u> | <u>Budget</u> | <u>Incr/<Decr></u> | <u>New Budget</u> |
|--|----------------|--------------------------|-------------------|
| Expenditures: | \$ | \$ | \$ |
| 141-7154-711-0429 Curr. & Inst. – Inst. Supplies | 95,428 | 30,265 | 125,693 |
| 141-7150-721-0429 Special Ed – Inst. Supplies | 32,719 | (5,000) | 27,719 |
| 141-7250-782-0355 Special Ed – Travel | 12,000 | (4,925) | 7,075 |
| Totals: | 140,147 | 20,340 | 160,487 |

SECTION II. That this Ordinance shall take effect from and after its date of passage, as the law direct, the welfare of the City of Kingsport, Tennessee requiring it.

JOHN CLARK, Mayor

ATTEST:

JAMES H. DEMMING, City Recorder

APPROVED AS TO FORM:

J. MICHAEL BILLINGSLEY, City Attorney

PASSED ON 1ST READING:
PASSED ON 2ND READING:

December 1, 2016

KINGSPORT CITY SCHOOLS
FISCAL YEAR 2016-2017
BUDGET AMENDMENT NUMBER THREE

GENERAL PURPOSE SCHOOL FUND

ITEM ONE: TENNESSEE SCORE GRANT

Kingsport City Schools has received supplemental funding from Tennessee SCORE in the amount of \$30,265. These funds are to be used for our K-2 literacy initiative.

It is recommended that the estimated revenue for Other Local Revenue be increased by \$30,265 and that the appropriation for Curriculum and Instruction Instructional Supplies be increased by \$30,265.

ITEM 2: SPECIAL EDUCATION HIGH COSTS FUNDS

Kingsport City Schools applies for IDEA Special Education Funds each year, when the General Purpose budget has incurred these expenses. We apply at the end of each school year and are notified of the amount to be received in the fall. In late September we were notified that we were to receive \$40,074.93 and this amount has been received. The approved budget includes an estimated revenue amount and budget appropriation of \$50,000.

It is recommended that the estimated revenue for Special Education High Cost funds be decreased by \$9,925 and that the appropriations for Special Education Instructional Supplies and Special Education Travel be reduced by \$5,000 and \$4,925, respectively.



AGENDA ACTION FORM

Execute an Agreement with the Department of the Army for Water and Sewer Line Easements

To: Board of Mayor and Aldermen
From: Jeff Fleming, City Manager *JF*

Action Form No.: AF-317-2016
Work Session: December 19, 2016
First Reading: N/A

Final Adoption: December 20, 2016
Staff Work By: C. Austin/A. Deakins
Presentation By: R. McReynolds

Recommendation:

Approve the Resolution.

Executive Summary:

Many years ago, water and sewer lines were installed along and through property belonging to the Department of the Army. These water and sewer lines are still in service and the lease agreements have expired. The Department of the Army is requesting that we renew these agreements in order to continue using their property in this manner. These water and sewer lines are important to our continued service to our customers; therefore, we request that we renew the agreements. The easement agreements are for 50-year terms.

The costs associated with these easement agreements, \$13,100 the first year and \$600 annually for the length of the agreement, will be paid out of the operating funds of the water and sewer division.

Attachments:

- 1. Resolution
- 2. Agreements
- 3. Location Maps

Funding source appropriate and funds are available: *JF*

| | Y | N | O |
|------------|---|---|---|
| Duncan | — | — | — |
| George | — | — | — |
| McIntire | — | — | — |
| Olterman | — | — | — |
| Parham | — | — | — |
| Segelhorst | — | — | — |
| Clark | — | — | — |

RESOLUTION NO. _____

A RESOLUTION APPROVING THE AGREEMENTS WITH THE DEPARTMENT OF THE ARMY FOR WATER AND SEWER LINE EASEMENTS AND AUTHORIZING THE MAYOR TO EXECUTE THE AGREEMENTS AND ALL OTHER DOCUMENTS NECESSARY AND PROPER TO EFFECTUATE THE PURPOSE OF THE AGREEMENT

WHEREAS, many years ago water and sewer lines were installed along and through property belonging to the Department of the Army; and

WHEREAS, these water and sewer lines are still in service and the lease agreements have expired; and

WHEREAS, the Department of the Army is requesting that the city renew these agreements in order to continue using their property in this manner; and

WHEREAS, these water and sewer lines are important to our continued service to our customers; and these agreements are needed to continue service; and

WHEREAS, the easement agreements are for 50 year terms; and

WHEREAS, the costs associated with these easements are \$13,100.00 for the first year and \$600.00 annually for the length of the agreement which is 50 years; and

WHEREAS, funding for the easements will be paid out of the operating funds of the water and sewer divisions.

Now therefore,

BE IT RESOLVED BY THE BOARD OF MAYOR AND ALDERMEN AS FOLLOWS:

SECTION I. That two agreements with the Department of the Army, to continue existing easements for a term of fifty years are approved.

SECTION II. That the mayor, or in his absence, incapacity, or failure to act, the vice-mayor, is authorized and directed to execute, in a form approved by the city attorney and subjected to the requirements of Article X, Section 10 of the Charter of the City of Kingsport, two agreements with the Department of the Army, to continue existing easements, and all other documents necessary and proper, and to take such acts as necessary, to effectuate the purpose of the agreement of this resolution, said agreements are being attached hereto as an exhibit.

SECTION III. That the mayor is further authorized to make such changes approved by the mayor and the city attorney to the agreement set out herein that do not substantially alter the material provisions of the agreement, and the execution thereof by the mayor and the city attorney is conclusive evidence of the approval of such changes.

SECTION IV. That the board finds that the actions authorized by this resolution are for a public purpose and will promote the health, comfort and prosperity of the citizens of the city.

SECTION V. That this resolution shall take effect from and after its adoption, the public welfare requiring it.

ADOPTED this the 20th day of December, 2016.

JOHN CLARK, MAYOR

ATTEST:

JAMES H. DEMMING, CITY RECORDER

APPROVED AS TO FORM:

J. MICHAEL BILLINGSLEY, CITY ATTORNEY



DEPARTMENT OF THE ARMY
MOBILE DISTRICT, CORPS OF ENGINEERS
109 SAINT JOSEPH STREET
MOBILE, ALABAMA 36602-3630

October 20, 2016

REPLY TO
ATTENTION OF

Military Branch
Real Estate Division

City of Kingsport
Attn: Chad Austin
225 West Center St.
Kingsport, TN 37660

Dear Mr. Austin:

Enclosed for review and signature are duplicate originals of Department of the Army easement No. DACA01-2-16-1805. This easement grants a ten foot wide easement for the operation and maintenance of a 20-inch sanitary sewer trunk-line, and a twenty foot wide easement for a 6 inch sanitary line on Holston Army Ammunition Plant Sullivan County, Tennessee. This easement replaces easement No. DACA01-2-84-0128 and easement No. DACA01-2-76-5726

The easement is for a (50) fifty year term for the period September 26, 2016 through March 25, 2006. A one-time administrative fee of \$7500.00, with a \$300.00 annual fee for the administration and compliance inspections is due in advance. The total first year payment is \$7800.00, and \$300.00 annual thereafter. The check should be made payable to the **“FAO, USACE Mobile District,”** and delivered to **Chief, Real Estate Division, Management and Disposal Branch, U.S. Army Corps of Engineers, 109 Saint Joseph Street, Mobile AL 36602-3630**

Please fill out the Certificate of Authority, it should be completed by an officer other than the one who signs the easement. Please have both sets of documents signed, witnessed and notarized and return both copies to this office (Attn: RE-M) for execution on behalf of the Secretary of the Army. Also, please include a copy of the minutes from the City Council meeting authorizing the acceptance of the lease. Upon execution, we will furnish a fully executed copy for your records.

If you have any questions, please contact Joan Oliver at (251) 694-4182, or email joan.m.oliver@usace.army.mil.

Sincerely,

Christopher C. May
Chief, Management and Disposal Branch
Real Estate Contracting Officer

Enclosure

CERTIFICATE OF AUTHORITY

I, _____, certify that I am the _____
(Name) (Secretary or Attesting Officer)

of the _____, named as grantee/lessee/licensee herein;
(Agency Name)

that _____, who signed this Agreement on behalf
(Officer Name)

of said _____, was then _____
(Agency Name) (Officer Title)

of the Agency; and that said Agreement was duly signed for and on behalf of

the _____ by authority of its governing body and is
(Agency Name)

within the scope of its statutory powers.

Signed, _____
Secretary or Attesting Officer

(The person that signed the attached instrument cannot sign Certificate)

This form certifies that the person signing the attached instrument has the authority to do so. The signature of the Secretary/Attesting Officer and the Individual signing the attached instrument cannot be the same.

EASEMENT NO. DACA01-2-16-1805

**DEPARTMENT OF THE ARMY
EASEMENT FOR PIPELINE RIGHT-OF-WAY
LOCATED ON
HOLSTON ARMY AMMUNITION PLANT
SULLIVAN AND HAWKINS COUNTY, TENNESSEE**

THE SECRETARY OF THE ARMY, under and by virtue of the authority vested in the Secretary by Title 10, United States Code, Section 2668, having found that the granting of this easement is not incompatible with the public interest, hereby grants to, **The City of Kingsport, 225 West Center St. Kingsport, TN 37660, a political subdivision of the State of Tennessee, acting by and through the Board of Mayor and Aldermen**, hereinafter referred to as the grantee, a **ten(10) foot wide easement for the operation and maintenance of a twenty (20) inch sanitary sewer trunk-line, and a twenty (20) foot wide right of way for a six (6) inch sewer line**, hereinafter referred to as the facilities, over, across, in and upon lands of the United States as identified in **exhibits A and shown in exhibits B1 and B2**, hereinafter referred to as the premises, and which are attached hereto and made a part hereof.

THIS EASEMENT is granted subject to the following conditions.

1. TERM

This easement is granted for a term of **(50) years**, beginning **March 26, 2006**, and ending **March 25, 2056**.

2. CONSIDERATION

a. The consideration for this easement shall be the operation and maintenance of the **20-INCH SANITARY SEWER TRUNK-LINE AND A 6-INCH SANITARY SEWER LINE, WITHIN HOLSTON ARMY AMMUNITION PLANT** for the benefit of the general public in accordance with the terms and conditions hereinafter set forth.

b. In addition to consideration, the grantee will pay the total amount of **TWELVE THOUSAND AND NO/100 DOLLARS (\$12,000.00) over the term of the easement, payable THREE HUNDRED AND NO/100 DOLLARS, (\$300.00), annually**, in advance, for the period **OCTOBER 12, 2016 through MARCH 25, 2056** for the cost of administering the easement, and management and compliance activities for the term of the easement. Said payment shall be made to the order of the **"FAO, USACE"**, and delivered to **Chief, Real Estate Division, Management And Disposal Branch, U.S. Army Corps Of Engineers, 109 Saint Joseph Street, Mobile, Al 36602-3630**

3. NOTICES

All correspondence and notices to be given pursuant to this easement shall be addressed, if to the grantee, to **THE CITY OF KINGSPORT, 225 WEST CENTER ST., KINGSPORT, TENNESSEE 37660** and, if to the United States, to The **MOBILE DISTRICT, CORPS OF ENGINEERS, ATTN: Real Estate Division, Management And DISPOSAL BRANCH, 109 SAINT JOSEPH STREET MOBILE, ALABAMA 36602-3630**, or as may from time to time otherwise be directed by the parties. Notice shall be deemed to have been duly given if and when enclosed in a properly sealed envelope, or wrapper, addressed as aforesaid, and deposited postage prepaid in a post office regularly maintained by the United States Postal Service.

4. AUTHORIZED REPRESENTATIVES

Except as otherwise specifically provided, any reference herein to "Secretary", "District Engineer", "Installation Commander", or "said officer" shall include their duly authorized representatives. Any reference to "grantee" shall include assignees, transferees and their duly authorized representatives.

5. SUPERVISION BY THE INSTALLATION COMMANDER

The construction, operation, maintenance, repair or replacement of said facilities, including culverts and other drainage facilities, shall be performed at no cost or expense to the United States and subject to the approval of the Installation Commander, Holston Army Ammunition Plant, hereinafter referred to as said officer. Upon the completion of any of the above activities, the Grantee shall immediately restore the premises to the satisfaction of said officer. The use and occupation of the premises for the purposes herein granted shall be subject to such rules and regulations as said officer prescribes in writing from time to time.

6. APPLICABLE LAWS AND REGULATIONS

The grantee shall comply with all applicable Federal, state, county and municipal laws, ordinances and regulations wherein the premises are located.

7. CONDITION OF PREMISES

The grantee acknowledges that it has inspected the premises, knows the condition, and understands that the same is granted without any representation or warranties whatsoever and without any obligation on the part of the United States.

8. INSPECTION AND REPAIRS

The grantee shall inspect the facilities at reasonable intervals and immediately repair any defects found by such inspection or when required by said officer to repair any such defects.

9. PROTECTION OF GOVERNMENT PROPERTY

The grantee shall be responsible for any damage that may be caused to the property of the United States by the activities of the grantee under this easement and shall exercise due diligence in the protection of all property located on the premises against fire or damage from any and all other causes. Any property of the United States damaged or destroyed by the grantee incident to the exercise of the privileges herein granted shall be promptly repaired or replaced by the grantee to a condition satisfactory to said officer, or at the election of said officer, reimbursement made therefor by the grantee in an amount necessary to restore or replace the property to a condition satisfactory to said officer.

10. RIGHT TO ENTER

A. The right is reserved to the United States, its officers, agents, and employees to enter upon the premises at any time and for any purpose necessary or convenient in connection with government purposes, to make inspections, to remove timber or other material, except property of the grantee, to flood the premises and/or to make any other use of the lands as may be necessary in connection with government purposes, and the grantee shall have no claim for damages on account thereof against the United States or any officer, agent, or employee thereof.

B. The right is hereby reserved to the State of Tennessee, the United States, its officers, agents, and employees to enter the said premises at any time for the purpose of inspection, including the right to monitor, obtain samples and perform analysis testing; and the grantee shall have no claim of any character on account thereof against the United States or any officer, agent, or employee thereof.

11. TRANSFERS AND ASSIGNMENTS

Without prior written approval by said District Engineer, the grantee shall neither transfer nor assign this easement or any part thereof nor grant any interest, privilege or license whatsoever in connection with this easement. The provisions and conditions of this easement shall extend to and be binding upon and shall inure to the benefit of the representatives, successors and assigns of the grantee.

12. INDEMNITY

The United States shall not be responsible for damages to property or injuries to persons which may arise from or be incident to the exercise of the privileges herein granted, or for damages to the property or injuries to the person of the grantee's officers, agents, employees or others who may be on the premises at their invitation or the invitation of any one of them, and the grantee shall hold the United States harmless from any and all such claims not including damages due to the fault or negligence of the United States or its contractors.

13. SUBJECT TO EASEMENTS

This easement is subject to all other existing easements, or those subsequently granted as well as established access routes for roadways and utilities located, or to be located, on the premises, provided that the proposed grant of any new easement or route will be coordinated with the grantee, and easements will not be granted which will, in the opinion of said officer, interfere with the use of the premises by the grantee.

14. REQUIRED SERVICES

The grantee shall furnish through said facilities such services as may be required from time to time for governmental purposes, provided that payment for such service will be made by the United States at rates which shall be mutually agreeable but which shall never exceed the most favorable rates granted by the grantee for similar service.

15. RELOCATION OF FACILITIES

In the event all or any portion of the premises occupied by the said facilities shall be needed by the United States, or in the event the existence of said facilities is determined to be detrimental to governmental activities, the grantee shall from time to time, upon notice to do so, and as often as so notified, remove said facilities to such other location on the premises as may be designated by said officer. In the event said facilities shall not be removed or relocated within ninety (90) days after such notice, the United States may cause such relocation at the sole expense of the grantee.

16. TERMINATION

This easement may be terminated by the Secretary upon 30 days written notice to the grantee if the Secretary shall determine that the right-of-way hereby granted interferes with the use or disposal of said land by the United States, or it may be revoked by the Secretary for failure of the grantee to comply with any or all of the conditions of this easement, or for non-use for a period of two (2) years, or for abandonment.

17. SOIL AND WATER CONSERVATION

The grantee shall maintain, in a manner satisfactory to said officer, all soil and water conservation structures that may be in existence upon said premises at the beginning of or that may be constructed by the grantee during the term of this easement, and the grantee shall take appropriate measures to prevent or control soil erosion within the right-of-way herein granted. Any soil erosion occurring outside the premises resulting from the activities of the grantee shall be corrected by the grantee as directed by said officer.

18. ENVIRONMENTAL PROTECTION

A. Within the limits of their respective legal powers, the parties hereto shall protect the premises against pollution of its air, ground, and water. The grantee shall promptly comply with any laws, regulations, conditions or instructions affecting the activity hereby authorized if and when issued by the Environmental Protection Agency, or any Federal, state, interstate or local governmental agency having jurisdiction to abate or prevent pollution. The disposal of any toxic or hazardous materials within the premises is strictly prohibited. Such regulations, conditions, or instructions in effect or prescribed by the said Environmental Protection Agency or any Federal, state, interstate or local governmental agency are hereby made a condition of this easement. The grantee shall not discharge waste or effluent from the premises in such a manner that the discharge will contaminate streams or other bodies of water or otherwise become a public nuisance.

B. The use of any pesticides or herbicides within the premises shall be in conformance with all applicable Federal, state and local laws and regulations. The grantee must obtain approval in writing from said officer before any pesticides or herbicides are applied to the premises.

C. The grantee will use all reasonable means available to protect the environment and natural resources, and where damage nonetheless occurs arising from the grantee's activities, the grantee shall be liable to restore the damaged resources.

19. HISTORIC PRESERVATION

The grantee shall not remove or disturb, or cause or permit to be removed or disturbed, any historical, archeological, architectural or other cultural artifacts, relics, remains or objects of antiquity. In the event such items are discovered on the premises, the grantee shall immediately notify said officer and protect the site and material from further disturbance until said officer gives clearance to proceed.

20. NON-DISCRIMINATION

a. The Grantee shall not discriminate against any person or persons because of race, color, age, sex, handicap, national origin or religion

b. The Grantee, by acceptance of this easement, is receiving a type of Federal assistance and, therefore, hereby gives assurance that it will comply with the provisions of Title VI of the Civil Rights Act of 1964 as amended (42 U.S.C. § 2000d); the Age Discrimination Act of 1975 (42 U.S.C. § 6102); the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794); and all requirements imposed by or pursuant to the Directive of Defense (32 CFR Part 300) issued as Department of Defense Directive 5500.11 and 1020.1, and Army Regulation 600-7. This assurance shall be binding on the Grantee, its agents, successors, transferees, and assignees.

21. RESTORATION

On or before the expiration or termination of this easement, the grantee shall, without expense to the United States, and within such time as said officer may indicate, remove said facilities and restore the premises to the satisfaction of said officer. In the event the grantee shall fail to remove said facilities and restore the premises, the United States shall have the option to take over said facilities without compensation, or to remove said facilities and perform the restoration at the expense of the grantee, and the grantee shall have no claim for damages against the United States or its officers or agents for such action.

22. DISCLAIMER

This instrument is effective only insofar as the rights of the United States in the property are concerned, and the grantee shall obtain such permission as may be required on account of any other existing rights. It is understood that the granting of this easement does not eliminate the necessity of obtaining any Department of the Army permit which may be required pursuant to the provisions of Section 10 of the Rivers and Harbors Act of 3 March 1899 (30 Stat. 1151; 33 U.S.C. § 403), Section 404 of the Clean Water Act (33 U.S.C. § 1344) or any other permit or license which may be required by Federal, state or local statute in connection with use of the premises.

23. PROTECTION OF TREES

That the grantee shall not remove, cut, or trim trees without prior approval of the said officer. Further, the grantee will take precautions to prevent unnecessary damage to, or defacement of trees or shrubs. In the event that any trees or shrubs are removed without approval, or the said officer determines that trees or shrubs have been damaged or defaced as a result of negligence on the part of the grantee, the grantee may be required to replace all such trees or shrubs so removed, damaged, or defaced, or at the discretion of the said officer, the grantee may be required to reimburse the Government of the cost of such replacement.

24. BURIED LINES

That said lines shall be buried to a minimum depth of 24 inches, where soil conditions permit, and any related electric line will be buried with said waterline, or if, rock outcropping curtail burying the electric line, it then should be placed in conduit.

26. ELECTRICAL CODES

All electrical equipment will be installed, operated and maintained in compliance with all applicable Federal, state, county and municipal laws, ordinances and regulations wherein the premises are located, including, but not limited to, the provisions of the latest edition of the National Electrical Safety Code (NESC) and the Environmental Protection Agency regulations on Polychlorinated Biphenyls (PCB's).

27. EXECUTIVE ORDER 13658

Any reference in this section to "prime contractor" or "contractor" shall mean the Grantee and any reference to "contract" shall refer to the Easement.

The parties expressly stipulate this contract is subject to Executive Order 13658, the regulations issued by the Secretary of Labor in 29 CFR part 10 pursuant to the Executive Order, and the following provisions.

a. Minimum Wages

(1) Each worker (as defined in 29 CFR 10.2) engaged in the performance of this contract by the prime contractor or any subcontractor, regardless of any contractual relationship which may be alleged to exist between the contractor and worker, shall be paid not less than the applicable minimum wage under Executive Order 13658.

(2) The minimum wage required to be paid to each worker performing work on or in connection with this contract between January 1, 2015 and December 31, 2015 shall be \$10.10 per hour. The minimum wage shall be adjusted each time the Secretary of Labor's annual determination of the applicable minimum wage under section 2(a)(ii) of Executive Order 13658 results in a higher minimum wage. Adjustments to the Executive Order minimum wage under section 2(a)(ii) of Executive Order 13658 will be effective for all workers subject to the Executive Order beginning January 1 of the following year. If appropriate, the contracting officer, or other agency official overseeing this contract shall ensure the contractor is compensated only for the increase in labor costs resulting from the annual inflation increases in the Executive Order 13658 minimum wage beginning on January 1, 2016. The Secretary of Labor will publish annual determinations in the Federal Register no later than 90 days before such new wage is to take effect. The Secretary will also publish the applicable minimum wage on www.wdol.gov (or any

successor Web site). The applicable published minimum wage is incorporated by reference into this contract.

(3) The contractor shall pay unconditionally to each worker all wages due free and clear and without subsequent deduction (except as otherwise provided by 29 CFR 10.23), rebate, or kickback on any account. Such payments shall be made no later than one pay period following the end of the regular pay period in which such wages were earned or accrued. A pay period under this Executive Order may not be of any duration longer than semi-monthly.

(4) The prime contractor and any upper-tier subcontractor shall be responsible for the compliance by any subcontractor or lower-tier subcontractor with the Executive Order minimum wage requirements. In the event of any violation of the minimum wage obligation of this clause, the contractor and any subcontractor(s) responsible therefore shall be liable for the unpaid wages.

(5) If the commensurate wage rate paid to a worker on a covered contract whose wages are calculated pursuant to a special certificate issued under 29 U.S.C. 214(c), whether hourly or piece rate, is less than the Executive Order minimum wage, the contractor must pay the Executive Order minimum wage rate to achieve compliance with the Order. If the commensurate wage due under the certificate is greater than the Executive Order minimum wage, the contractor must pay the 14(c) worker the greater commensurate wage.

b. Withholding. The agency head shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the prime contractor under this or any other Federal contract with the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay workers the full amount of wages required by Executive Order 13658.

c. Contract Suspension/Contract Termination/Contractor Debarment. In the event of a failure to pay any worker all or part of the wages due under Executive Order 13658 or 29 CFR part 10, or a failure to comply with any other term or condition of Executive Order 13658 or 29 CFR part 10, the contracting agency may on its own action or after authorization or by direction of the Department of Labor and written notification to the contractor, take action to cause suspension of any further payment, advance or guarantee of funds until such violations have ceased. Additionally, any failure to comply with the requirements of this clause may be grounds for termination of the right to proceed with the contract work. In such event, the Government may enter into other contracts or arrangements for completion of the work, charging the contractor in default with any additional cost. A breach of the contract clause may be grounds for debarment as a contractor and subcontractor as provided in 29 CFR 10.52.

d. The contractor may not discharge any part of its minimum wage obligation under Executive Order 13658 by furnishing fringe benefits or, with respect to workers whose wages are governed by the Service Contract Act, the cash equivalent thereof.

e. Nothing herein shall relieve the contractor of any other obligation under Federal, State or local law, or under contract, for the payment of a higher wage to any worker, nor shall a lower prevailing wage under any such Federal, State, or local law, or under contract, entitle a contractor to pay less than \$10.10 (or the minimum wage as established each January thereafter) to any worker.

f. Payroll Records

(1) The contractor shall make and maintain for three years records containing the information specified in paragraphs (f)(1) (i) through (vi) of this section for each worker and shall make the records available for inspection and transcription by authorized representatives of the Wage and Hour Division of the U.S. Department of Labor:

- (i)** Name, address, and social security number.
- (ii)** The worker's occupation(s) or classification(s).
- (iii)** The rate or rates of wages paid.
- (iv)** The number of daily and weekly hours worked by each worker.
- (v)** Any deductions made; and
- (vi)** Total wages paid.

(2) The contractor shall also make available a copy of the contract, as applicable, for inspection or transcription by authorized representatives of the Wage and Hour Division.

(3) Failure to make and maintain or to make available such records for inspection and transcription shall be a violation of 29 CFR part 10 and this contract, and in the case of failure to produce such records, the contracting officer, upon direction of an authorized representative of the Department of Labor, or under its own action, shall take such action as may be necessary to cause suspension of any further payment or advance of funds until such time as the violations are discontinued.

(4) The contractor shall permit authorized representatives of the Wage and Hour Division to conduct investigations, including interviewing workers at the worksite during normal working hours.

(5) Nothing in this clause limits or otherwise modifies the contractor's payroll and recordkeeping obligations, if any, under the Davis-Bacon Act, as amended, and its implementing regulations; the Service Contract Act, as amended, and its implementing regulations; the Fair Labor Standards Act, as amended, and its implementing regulations; or any other applicable law.

g. The contractor (as defined in 29 CFR 10.2) shall insert this clause in all of its covered subcontracts and shall require its subcontractors to include this clause in any covered lower-tier subcontracts. The prime contractor and any upper-tier subcontractor shall be responsible for the compliance by any subcontractor or lower-tier subcontractor with this contract clause.

h. Certification of Eligibility.

(1) By entering into this contract, the contractor (and officials thereof) certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of the sanctions imposed pursuant to section 5 of the Service Contract Act, section 3(a) of the Davis-Bacon Act, or 29 CFR 5.12(a)(1).

(2) No part of this contract shall be subcontracted to any person or firm whose name appears on the list of persons or firms ineligible to receive Federal contracts.

(3) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

I. Tipped employees. In paying wages to a tipped employee as defined in section 3(t) of the Fair Labor Standards Act, 29 U.S.C. 203(t), the contractor may take a partial credit against the wage payment obligation (tip credit) to the extent permitted under section 3(a) of Executive Order 13658. In order to take such a tip credit, the employee must receive an amount of tips at least equal to the amount of the credit taken; where the tipped employee does not receive sufficient tips to equal the amount of the tip credit the contractor must increase the cash wage paid for the workweek so that the amount of cash wage paid and the tips received by the employee equal the applicable minimum wage under Executive Order 13658. To utilize this proviso:

(1) The employer must inform the tipped employee in advance of the use of the tip credit;

(2) The employer must inform the tipped employee of the amount of cash wage that will be paid and the additional amount by which the employee's wages will be considered increased on account of the tip credit;

(3) The employees must be allowed to retain all tips (individually or through a pooling arrangement and regardless of whether the employer elects to take a credit for tips received); and

(4) The employer must be able to show by records that the tipped employee receives at least the applicable Executive Order minimum wage through the combination of direct wages and tip credit.

J. Anti-retaliation. It shall be unlawful for any person to discharge or in any other manner discriminate against any worker because such worker has filed any complaint or instituted or caused to be instituted any proceeding under or related to Executive Order 13658 or 29 CFR part 10, or has testified or is about to testify in any such proceeding.

K. Disputes concerning labor standards. Disputes related to the application of Executive Order 13658 to this contract shall not be subject to the general disputes clause of the contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR part 10. Disputes within the meaning of this contract clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the workers or their representatives.

L. Notice. The contractor must notify all workers performing work on or in connection with a covered contract of the applicable minimum wage rate under the Executive Order. With respect to service employees on contracts covered by the Service Contract Act and laborers and mechanics on contracts covered by the Davis-Bacon Act, the contractor may meet this requirement by posting, in a prominent and accessible place at the worksite, the applicable wage determination under those statutes. With respect to workers performing work on or in connection with a covered contract whose wages are governed by the FLSA, the contractor must post a notice provided by the Department of Labor in a prominent and accessible place at the worksite so it may be readily seen by workers. Contractors that customarily post notices to workers electronically may post the notice electronically provided such electronic posting is displayed prominently on any Web site that is maintained by the contractor, whether external or internal, and customarily used for notices to workers about terms and conditions of employment.

28. APPLICABILITY OF EXECUTIVE ORDER 13658

If a duly authorized representative of the United States discovers or determines, whether before or subsequent to executing this contract, that an erroneous determination regarding the applicability of Executive Order 13658 was made, contractor, to the extent permitted by law, agrees to indemnify and hold harmless the United States, its officers, agents, and employees, for and from any and all liabilities, losses, claims, expenses, suits, fines, penalties, judgments, demands or actions, costs, fees, and damages directly or indirectly arising out of, caused by, related to, resulting from or in any way predicated upon, in whole or in part, the erroneous Executive Order 13658 determination. This includes contractor releasing any claim or entitlement it would otherwise have to an equitable adjustment to the contract and indemnifying and holding harmless the United States from the claims of subcontractors and contractor employees.

This easement replaces and supersedes DACA01-2-84-0128 and DA-01-076-ENG-5726.

This easement is not subject to Title 10, United States Code, Section 2662, as amended.

SIGNATURE PAGE TO FOLLOW

IN WITNESS WHEREOF, I have hereunto set my hand by authority of the Secretary of the Army, this _____ day of _____, _____.

CHRISTOPHER C. MAY
REAL ESTATE CONTRACTING OFFICER

ACKNOWLEDGMENT

STATE OF ALABAMA)

COUNTY OF MOBILE)

I, the undersigned, a Notary Public in and for said County and State, hereby certify that Christopher C. May, whose name as Real Estate Contracting Officer, Real Estate Division, US Army Engineer District, Mobile, is signed to the foregoing instrument and who is known to me, acknowledged before me on this day, that being informed of the contents of the instruments, he, in his official capacity, executed the same voluntarily and with full authority on the day the same bears date.

Given under my hand and seal of office this _____ day of _____, 2016.

_____ SEAL Notary Public

My Commission Expires : _____

LEGAL DESCRIPTION

Parcel A

A right-of-way 10 feet wide lying and being in the 12th Civil District of Sullivan County, Tennessee, and lying 5 feet on each side of a centerline more particularly described as follows:

Beginning at a point which is 122.38 feet west of boundary marker "No. 5" as shown on Drawing 7651-375 and on the boundary of a tract of land owned by the United States of America at Holston Army Ammunition Plant;

Thence N 62° 25' W a distance of 210.2 feet;

Thence N 08° 06' W a distance of 189.2 feet;

Thence N 41° 01' W a distance of 348.5 feet, more or less, to a point on the boundary of said United States tract.

Containing 0.17 of an acre, more or less, and being a part of Tract A-7 of the Holston Army Ammunition Plant.

Containing 0.17 of an acre more or less.

Parcel B

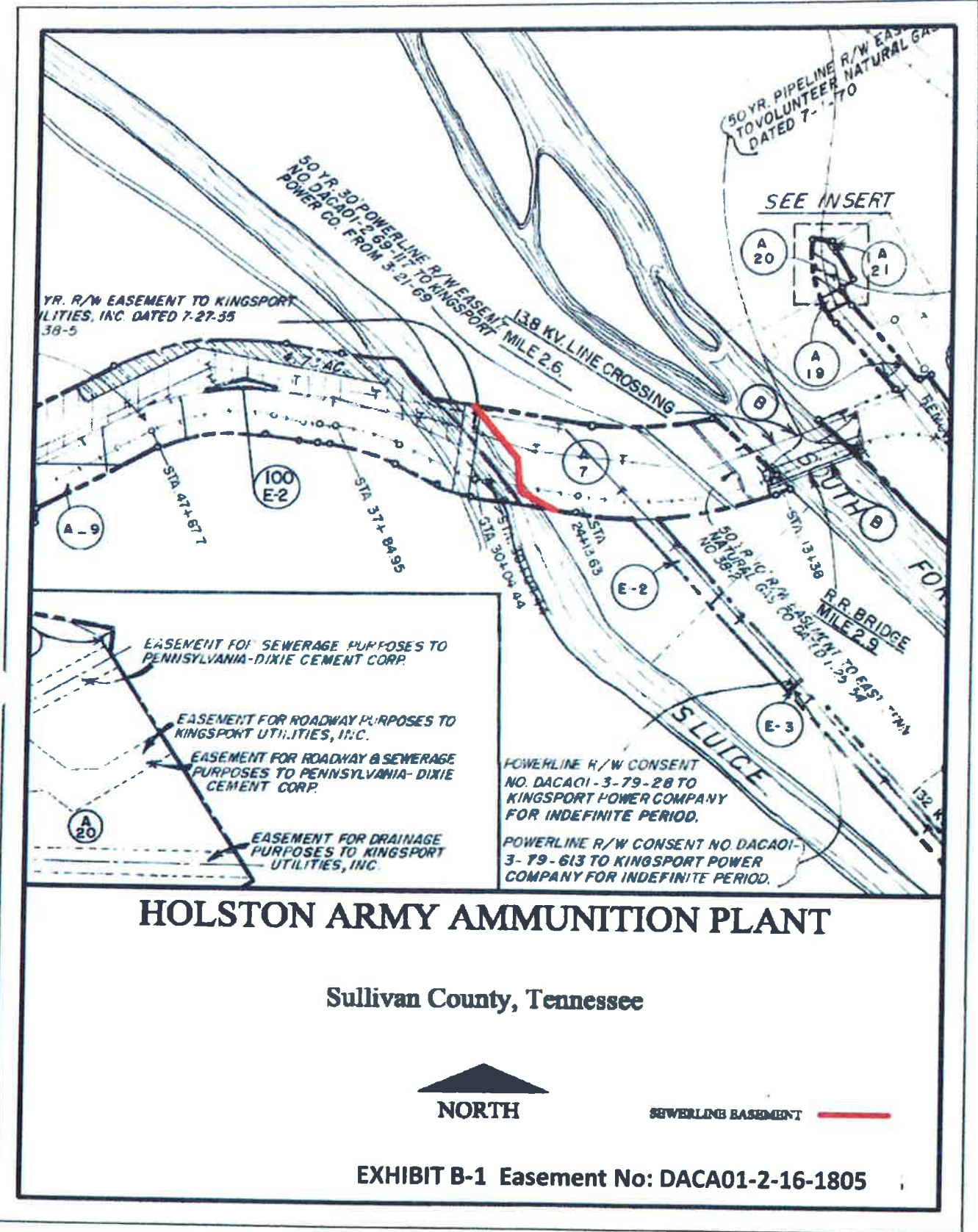
A right of way 20 feet wide lying and being within the reservation of Holston Ordnance Works, Hawkins County, Tennessee, and 10 feet on each side of a center line described as follows:

Beginning at a point which is 3.5 feet North of the South right of way line of u. s. Highway No. 11 W 226 feet, more or less, East of the center line of Holston Ordnance Works Road No. 1904 and opposite center line Station No. 2464 + 70 of New Road Project No. F-001-9(30);
thence in a Southwesterly direction forming a deflection angle of 41° 45' to the left of said right of way line 770.0 feet to an existing manhole that is located 91.5 feet Northwest of the center line of aforesaid Holston Ordnance Works Road No. 1904.

Containing 0.35 of an acre, more or less.

Total aggregate 0.52 acres, more or less

EXHIBIT A

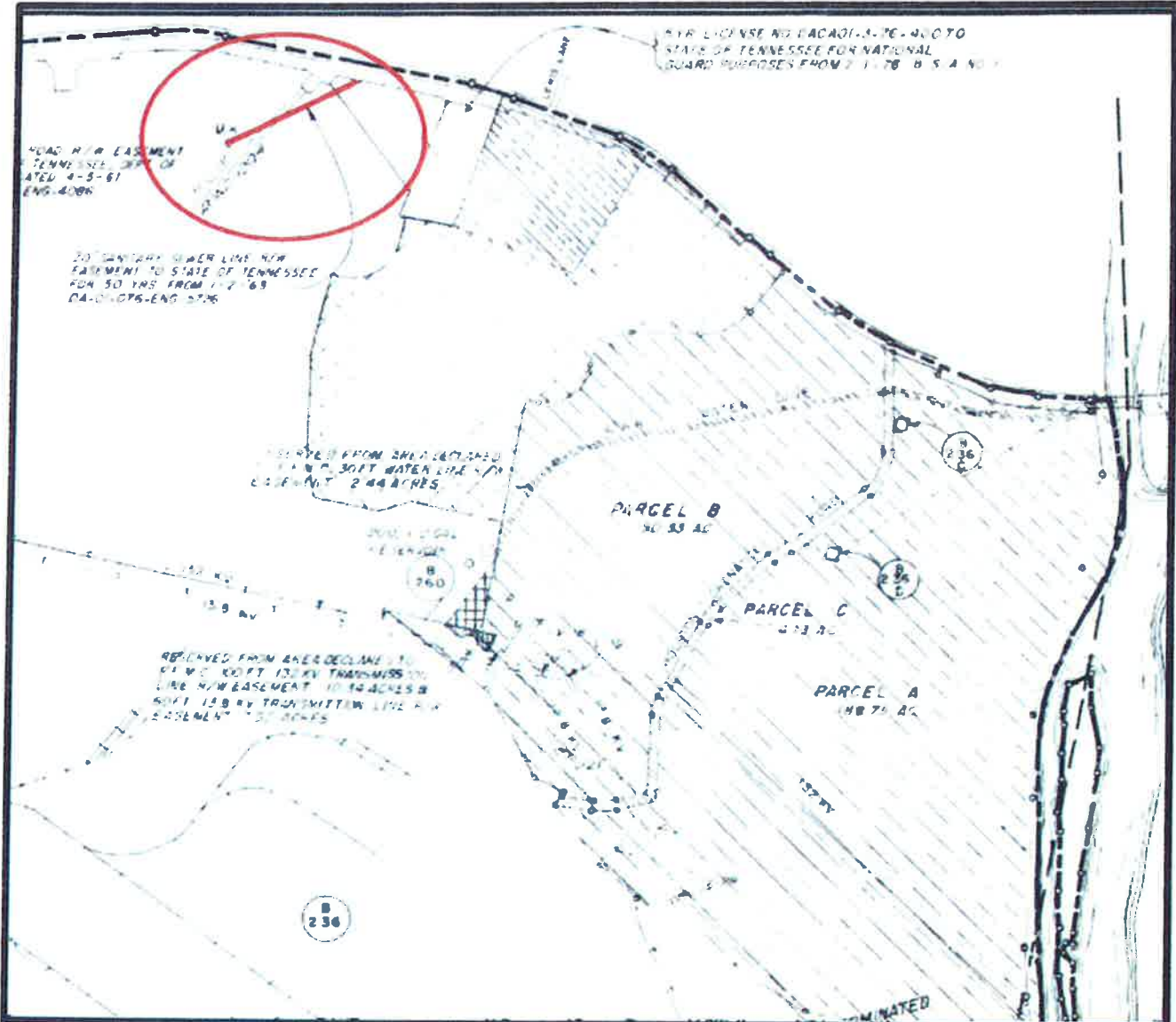


HOLSTON ARMY AMMUNITION PLANT

Sullivan County, Tennessee



EXHIBIT B-1 Easement No: DACA01-2-16-1805

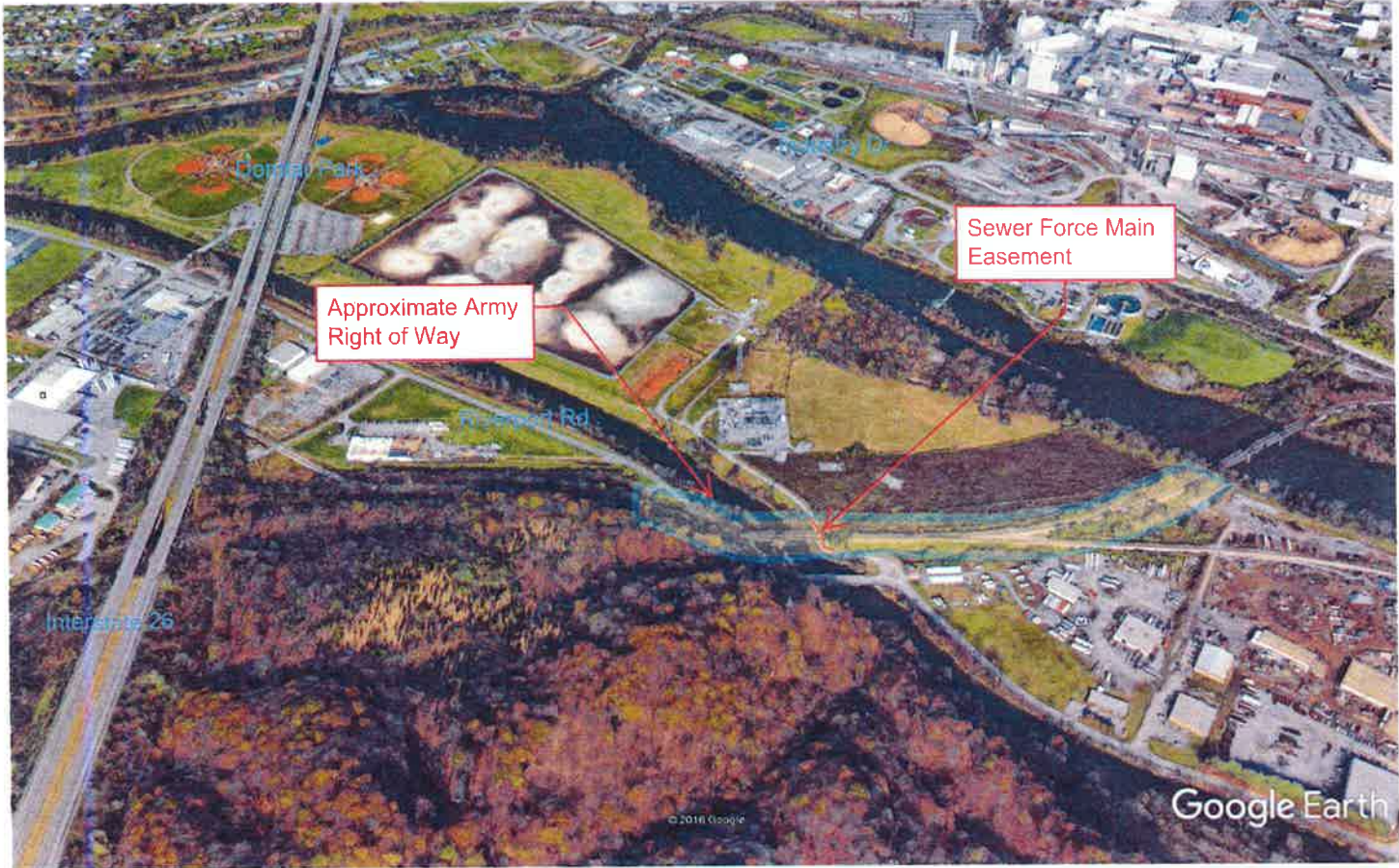


HOLSTON ARMY AMMUNITION PLANT HAWKINS COUNTY, TENNESSEE



SEWER LINE EASEMENT —

EXHIBIT B-2 Easement No: DACA01-2-16-1805



Approximate Army
Right of Way

Sewer Force Main
Easement

Interstate 26

Cotton Park

Reservoir Rd

Google Earth

© 2016 Google



Approximate location of gravity sewer line easement

University Blvd

Stony Dr

Netherland Inn Rd

Google Earth

© 2010 Google



DEPARTMENT OF THE ARMY
MOBILE DISTRICT, CORPS OF ENGINEERS
109 SAINT JOSEPH STREET
MOBILE, ALABAMA 36602-3630

October 17, 2016

REPLY TO
ATTENTION OF

Military Branch
Real Estate Division

The City of Kingsport
Attn: Chad Austin
225 West Center Street
Kingsport, TN 37660

Dear Mr. Austin:

Enclosed for review and signature are duplicate originals of Department of the Army easement No. DACA01-2-16-1821. This easement grants the right-of-way of an 8 inch water line on Holston Army Ammunition Plant Sullivan County, Tennessee. This easement replaces easement No. DA-01-076-ENG-6456.

The Easement is for a fifty year term for the period March 24, 2015 through March 23, 2065. A onetime initial \$5000 administrative fee is due in advance, for the cost of administering the easement, bringing the total first year payment to \$5300.00, and \$300.00 due annually thereafter. The check should be made payable to the **"FAO, USACE Mobile District,"** and delivered to **Chief, Real Estate Division, Management and Disposal Branch, U.S. Army Corps of Engineers, 109 Saint Joseph Street, Mobile AL 36602-3630**

Please fill out the Certificate of Authority, it should be completed by an officer other than the one who signs the easement. Please have both sets of documents signed, witnessed and notarized and return both copies to this office (Attn: RE-M) for execution on behalf of the Secretary of the Army. Also, please include a copy of the minutes from the City Council meeting authorizing the acceptance of the lease. Upon execution, we will furnish a fully executed copy for your records.

If you have any questions, please contact Joan Oliver at (251) 694-4182, or by email at joan.m.oliver@usace.army.mil

Sincerely,

Christopher C. May
Chief, Management and Disposal Branch
Real Estate Contracting Office

Enclosure

CERTIFICATE OF AUTHORITY

I, _____, certify that I am the _____
(Name) (Secretary or Attesting Officer)

of the _____, named as grantee/lessee/licensee herein;
(Agency Name)

that _____, who signed this Agreement on behalf
(Officer Name)

of said _____, was then _____
(Agency Name) (Officer Title)

of the Agency; and that said Agreement was duly signed for and on behalf of

the _____ by authority of its governing body and is
(Agency Name)

within the scope of its statutory powers.

Signed, _____
Secretary or Attesting Officer

(The person that signed the attached instrument cannot sign Certificate)

This form certifies that the person signing the attached instrument has the authority to do so. The signature of the Secretary/Attesting Officer and the Individual signing the attached instrument cannot be the same.

EASEMENT NO. DACA01-2-16-1821

**DEPARTMENT OF THE ARMY
EASEMENT FOR PIPELINE RIGHT-OF-WAY
LOCATED ON
HOLSTON ARMY AMMUNITION PLANT
SULLIVAN COUNTY, TENNESSEE**

THE SECRETARY OF THE ARMY, under and by virtue of the authority vested in the Secretary by Title 10, United States Code, Section 2668, having found that the granting of this easement is not incompatible with the public interest, hereby grants to, **The City of Kingsport, 225 West Center St. Kingsport, TN 37660, a political subdivision of the State of Tennessee, acting by and through the Board of Mayor and Aldermen**, hereinafter referred to as the grantee, a **twenty foot wide easement for the operation and maintenance of a 8-inch water line**, hereinafter referred to as the facilities, over, across, in and upon lands of the United States as identified in **Exhibit A**, and shown in **Exhibit B**, hereinafter referred to as the premises, and which are attached hereto and made a part hereof.

THIS EASEMENT is granted subject to the following conditions.

1. TERM

This easement is granted for a term of **Fifty (50) years**, beginning **March 24, 2015**, and ending **March 23, 2065**.

2. CONSIDERATION

a. The consideration for this easement shall be the operation and maintenance of an **8-inch water line within HOLSTON ARMY AMMUNITION PLANT** for the benefit of the general public in accordance with the terms and conditions hereinafter set forth.

b. In addition to consideration, **the grantee will pay the total amount of FOURTEEN THOUSAND SEVEN HUNDRED DOLLARS AND NO/100 DOLLARS (\$14,700.00) over the term of the easement, payable THREE HUNDRED AND NO/100 DOLLARS, (\$300.00), annually, in advance, for the period October 17, 2016 through March 23, 2065** for the cost of administering the easement, and management and compliance activities for the term of the easement. Said payment shall be made to the order of the **"FAO, USACE"**, and delivered to **Chief, Real Estate Division, Management and Disposal Branch, U.S. Army Corps of Engineers, 109 Saint Joseph Street, Mobile, AL 36602-3630**

c. All consideration and other payments due under the terms of this easement must be paid on or before the date they are due in order to avoid the mandatory sanctions imposed by the Debt Collection Act of 1982, (31 U.S.C. Section 3717). This statute requires the imposition of an interest charge for the late payment of debts owed to the United States; an administrative charge to cover the costs of processing and handling delinquent debts; and the assessment of an additional penalty charge on any portion of a debt that is more than 90 days past due. The provisions of the statute will be implemented as follows:

(1) The United States will impose an interest charge, the amount to be determined by law or regulation, on late payments of debts. Interest will accrue from the due date. An administrative charge to cover the cost of processing and handling each payment will also be imposed.

(2) In addition to the charges set forth above, the United States will impose a penalty charge of six percent (6%) per annum on any payment or portion thereof, more than ninety (90) days past due. The penalty shall accrue from the date of delinquency and will continue to accrue until the debt is paid in full.

(3) All payments received will be applied first to any accumulated interest, administrative and penalty charges and then to any unpaid rental or other payment balance. Interest will not accrue on any administrative or late payment penalty charge.

3. NOTICES

All correspondence and notices to be given pursuant to this easement shall be addressed, if to the grantee, to **The City Of Kingsport, 225 West Center St. Kingsport, TN 37660** and, if to the United States, to the **MOBILE DISTRICT, CORPS OF ENGINEERS, ATTN: Real Estate Division, Management and Disposal Branch, 109 Saint Joseph Street, Mobile Alabama 36602-3630**, or as may from time to time otherwise be directed by the parties. Notice shall be deemed to have been duly given if and when enclosed in a properly sealed envelope, or wrapper, addressed as aforesaid, and deposited postage prepaid in a post office regularly maintained by the United States Postal Service.

4. AUTHORIZED REPRESENTATIVES

Except as otherwise specifically provided, any reference herein to "Secretary", "District Engineer", "Installation Commander", or "said officer" shall include their duly authorized representatives. Any reference to "grantee" shall include assignees, transferees and their duly authorized representatives.

5. SUPERVISION BY THE INSTALLATION COMMANDER

The construction, operation, maintenance, repair or replacement of said facilities, including culverts and other drainage facilities, shall be performed at no cost or expense to the United States and subject to the approval of the Installation Commander, **Holston Army Ammunition Plant**, hereinafter referred to as said officer. Upon the completion of any of the above activities, the Grantee shall immediately restore the premises to the satisfaction of said officer. The use and occupation of the premises for the purposes herein granted shall be subject to such rules and regulations as said officer prescribes in writing from time to time.

6. APPLICABLE LAWS AND REGULATIONS

a. The grantee shall comply with all applicable Federal, state, county and municipal laws, ordinances and regulations wherein the premises are located.

7. CONDITION OF PREMISES

The grantee acknowledges that it has inspected the premises, knows the condition, and understands that the same is granted without any representation or warranties whatsoever and without any obligation on the part of the United States.

8. INSPECTION AND REPAIRS

The grantee shall inspect the facilities at reasonable intervals and immediately repair any defects found by such inspection or when required by said officer to repair any such defects.

9. PROTECTION OF GOVERNMENT PROPERTY

The grantee shall be responsible for any damage that may be caused to the property of the United States by the activities of the grantee under this easement and shall exercise due diligence in the protection of all property located on the premises against fire or damage from any and all other causes. Any property of the United States damaged or destroyed by the grantee incident to the exercise of the privileges herein granted shall be promptly repaired or replaced by the grantee to a condition satisfactory to said officer, or at the election of said officer, reimbursement made therefor by the grantee in an amount necessary to restore or replace the property to a condition satisfactory to said officer.

10. RIGHT TO ENTER

a. The right is reserved to the United States, its officers, agents, and employees to enter upon the premises at any time and for any purpose necessary or convenient in

connection with government purposes, to make inspections, to remove timber or other material, except property of the grantee, to flood the premises and/or to make any other use of the lands as may be necessary in connection with government purposes, and the grantee shall have no claim for damages on account thereof against the United States or any officer, agent, or employee thereof.

11. TRANSFERS AND ASSIGNMENTS

Without prior written approval by said District Engineer, the grantee shall neither transfer nor assign this easement or any part thereof nor grant any interest, privilege or license whatsoever in connection with this easement. The provisions and conditions of this easement shall extend to and be binding upon and shall inure to the benefit of the representatives, successors and assigns of the grantee.

12. INDEMNITY

The United States shall not be responsible for damages to property or injuries to persons which may arise from or be incident to the exercise of the privileges herein granted, or for damages to the property or injuries to the person of the grantee's officers, agents, employees or others who may be on the premises at their invitation or the invitation of any one of them, and the grantee shall hold the United States harmless from any and all such claims not including damages due to the fault or negligence of the United States or its contractors.

13. SUBJECT TO EASEMENTS

a. This easement is subject to all other existing easements, or those subsequently granted as well as established access routes for roadways and utilities located, or to be located, on the premises, provided that the proposed grant of any new easement or route will be coordinated with the grantee, and easements will not be granted which will, in the opinion of said officer, interfere with the use of the premises by the grantee.

14. REQUIRED SERVICES

The grantee shall furnish through said facilities such services as may be required from time to time for governmental purposes, provided that payment for such service will be made by the United States at rates which shall be mutually agreeable but which shall never exceed the most favorable rates granted by the grantee for similar service.

15. RELOCATION OF FACILITIES

In the event all or any portion of the premises occupied by the said facilities shall be needed by the United States, or in the event the existence of said facilities is determined to be detrimental to governmental activities, the grantee shall from time to

time, upon notice to do so, and as often as so notified, remove said facilities to such other location on the premises as may be designated by said officer. In the event said facilities shall not be removed or relocated within ninety (90) days after such notice, the United States may cause such relocation at the sole expense of the grantee.

16. TERMINATION

This easement may be terminated by the Secretary upon 30 days written notice to the grantee if the Secretary shall determine that the right-of-way hereby granted interferes with the use or disposal of said land by the United States, or it may be revoked by the Secretary for failure of the grantee to comply with any or all of the conditions of this easement, or for non-use for a period of two (2) years, or for abandonment.

17. SOIL AND WATER CONSERVATION

The grantee shall maintain, in a manner satisfactory to said officer, all soil and water conservation structures that may be in existence upon said premises at the beginning of or that may be constructed by the grantee during the term of this easement, and the grantee shall take appropriate measures to prevent or control soil erosion within the right-of-way herein granted. Any soil erosion occurring outside the premises resulting from the activities of the grantee shall be corrected by the grantee as directed by said officer.

18. ENVIRONMENTAL PROTECTION

a. Within the limits of their respective legal powers, the parties hereto shall protect the premises against pollution of its air, ground, and water. The grantee shall promptly comply with any laws, regulations, conditions or instructions affecting the activity hereby authorized if and when issued by the Environmental Protection Agency, or any Federal, state, interstate or local governmental agency having jurisdiction to abate or prevent pollution. The disposal of any toxic or hazardous materials within the premises is strictly prohibited. Such regulations, conditions, or instructions in effect or prescribed by the said Environmental Protection Agency or any Federal, state, interstate or local governmental agency are hereby made a condition of this easement. The grantee shall not discharge waste or effluent from the premises in such a manner that the discharge will contaminate streams or other bodies of water or otherwise become a public nuisance.

c. The use of any pesticides or herbicides within the premises shall be in conformance with all applicable Federal, state and local laws and regulations. The grantee must obtain approval in writing from said officer before any pesticides or herbicides are applied to the premises.

d. The grantee will use all reasonable means available to protect the environment and natural resources, and where damage nonetheless occurs arising from the grantee's activities, the grantee shall be liable to restore the damaged resources.

19. HISTORIC PRESERVATION

The grantee shall not remove or disturb, or cause or permit to be removed or disturbed, any historical, archeological, architectural or other cultural artifacts, relics, remains or objects of antiquity. In the event such items are discovered on the premises, the grantee shall immediately notify said officer and protect the site and material from further disturbance until said officer gives clearance to proceed.

20. NON-DISCRIMINATION

a. The Grantee shall not discriminate against any person or persons because of race, color, age, sex, handicap, national origin or religion.

b. The Grantee, by acceptance of this easement, is receiving a type of Federal assistance and, therefore, hereby gives assurance that it will comply with the provisions of Title VI of the Civil Rights Act of 1964 as amended (42 U.S.C. § 2000d); the Age Discrimination Act of 1975 (42 U.S.C. § 6102); the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794); and all requirements imposed by or pursuant to the Directive of Defense (32 CFR Part 300) issued as Department of Defense Directive 5500.11 and 1020.1, and Army Regulation 600-7. This assurance shall be binding on the Grantee, its agents, successors, transferees, and assignees.

21. RESTORATION

On or before the expiration or termination of this easement, the grantee shall, without expense to the United States, and within such time as said officer may indicate, remove said facilities and restore the premises to the satisfaction of said officer. In the event the grantee shall fail to remove said facilities and restore the premises, the United States shall have the option to take over said facilities without compensation, or to remove said facilities and perform the restoration at the expense of the grantee, and the grantee shall have no claim for damages against the United States or its officers or agents for such action.

22. DISCLAIMER

This instrument is effective only insofar as the rights of the United States in the property are concerned, and the grantee shall obtain such permission as may be required on account of any other existing rights. It is understood that the granting of this easement does not eliminate the necessity of obtaining any Department of the Army permit which may be required pursuant to the provisions of Section 10 of the Rivers and

Harbors Act of 3 March 1899 (30 Stat. 1151; 33 U.S.C. § 403), Section 404 of the Clean Water Act (33 U.S.C. § 1344) or any other permit or license which may be required by Federal, state or local statute in connection with use of the premises.

23. PROTECTION OF TREES

That the grantee shall not remove, cut, or trim trees without prior approval of the said officer. Further, the grantee will take precautions to prevent unnecessary damage to, or defacement of trees or shrubs. In the event that any trees or shrubs are removed without approval, or the said officer determines that trees or shrubs have been damaged or defaced as a result of negligence on the part of the grantee, the grantee may be required to replace all such trees or shrubs so removed, damaged, or defaced, or at the discretion of the said officer, the grantee may be required to reimburse the Government of the cost of such replacement.

24. BURIED LINES

That said lines shall be buried to a minimum depth of 24 inches, where soil conditions permit, and any related electric line will be buried with said waterline, or if, rock outcropping curtail burying the electric line, it then should be placed in conduit.

26. ELECTRICAL CODES

All electrical equipment will be installed, operated and maintained in compliance with all applicable Federal, state, county and municipal laws, ordinances and regulations wherein the premises are located, including, but not limited to, the provisions of the latest edition of the National Electrical Safety Code (NESC) and the Environmental Protection Agency regulations on Polychlorinated Biphenyls (PCB's).

27. EXECUTIVE ORDER 13658

Any reference in this section to "prime contractor" or "contractor" shall mean the Grantee and any reference to "contract" shall refer to the Easement.

The parties expressly stipulate this contract is subject to Executive Order 13658, the regulations issued by the Secretary of Labor in 29 CFR part 10 pursuant to the Executive Order, and the following provisions.

a. Minimum Wages

(1) Each worker (as defined in 29 CFR 10.2) engaged in the performance of this contract by the prime contractor or any subcontractor, regardless of any contractual relationship which may be alleged to exist between the contractor and worker, shall be paid not less than the applicable minimum wage under Executive Order 13658.

(2) The minimum wage required to be paid to each worker performing work on or in connection with this contract between January 1, 2015 and December 31, 2015 shall be \$10.10 per hour. The minimum wage shall be adjusted each time the Secretary of Labor's annual determination of the applicable minimum wage under section 2(a)(ii) of Executive Order 13658 results in a higher minimum wage. Adjustments to the Executive Order minimum wage under section 2(a)(ii) of Executive Order 13658 will be effective for all workers subject to the Executive Order beginning January 1 of the following year. If appropriate, the contracting officer, or other agency official overseeing this contract shall ensure the contractor is compensated only for the increase in labor costs resulting from the annual inflation increases in the Executive Order 13658 minimum wage beginning on January 1, 2016. The Secretary of Labor will publish annual determinations in the Federal Register no later than 90 days before such new wage is to take effect. The Secretary will also publish the applicable minimum wage on www.wdol.gov (or any successor Web site). The applicable published minimum wage is incorporated by reference into this contract.

(3) The contractor shall pay unconditionally to each worker all wages due free and clear and without subsequent deduction (except as otherwise provided by 29 CFR 10.23), rebate, or kickback on any account. Such payments shall be made no later than one pay period following the end of the regular pay period in which such wages were earned or accrued. A pay period under this Executive Order may not be of any duration longer than semi-monthly.

(4) The prime contractor and any upper-tier subcontractor shall be responsible for the compliance by any subcontractor or lower-tier subcontractor with the Executive Order minimum wage requirements. In the event of any violation of the minimum wage obligation of this clause, the contractor and any subcontractor(s) responsible therefore shall be liable for the unpaid wages.

(5) If the commensurate wage rate paid to a worker on a covered contract whose wages are calculated pursuant to a special certificate issued under 29 U.S.C. 214(c), whether hourly or piece rate, is less than the Executive Order minimum wage, the contractor must pay the Executive Order minimum wage rate to achieve compliance with the Order. If the commensurate wage due under the certificate is greater than the Executive Order minimum wage, the contractor must pay the 14(c) worker the greater commensurate wage.

b. Withholding. The agency head shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the prime contractor under this or any other Federal contract with the same prime contractor, so much of the accrued payments or advances as may be

considered necessary to pay workers the full amount of wages required by Executive Order 13658.

c. Contract Suspension/Contract Termination/Contractor Debarment. In the event of a failure to pay any worker all or part of the wages due under Executive Order 13658 or 29 CFR part 10, or a failure to comply with any other term or condition of Executive Order 13658 or 29 CFR part 10, the contracting agency may on its own action or after authorization or by direction of the Department of Labor and written notification to the contractor, take action to cause suspension of any further payment, advance or guarantee of funds until such violations have ceased. Additionally, any failure to comply with the requirements of this clause may be grounds for termination of the right to proceed with the contract work. In such event, the Government may enter into other contracts or arrangements for completion of the work, charging the contractor in default with any additional cost. A breach of the contract clause may be grounds for debarment as a contractor and subcontractor as provided in 29 CFR 10.52.

d. The contractor may not discharge any part of its minimum wage obligation under Executive Order 13658 by furnishing fringe benefits or, with respect to workers whose wages are governed by the Service Contract Act, the cash equivalent thereof.

e. Nothing herein shall relieve the contractor of any other obligation under Federal, State or local law, or under contract, for the payment of a higher wage to any worker, nor shall a lower prevailing wage under any such Federal, State, or local law, or under contract, entitle a contractor to pay less than \$10.10 (or the minimum wage as established each January thereafter) to any worker.

f. Payroll Records

(1) The contractor shall make and maintain for three years records containing the information specified in paragraphs (f)(1) (i) through (vi) of this section for each worker and shall make the records available for inspection and transcription by authorized representatives of the Wage and Hour Division of the U.S. Department of Labor:

- (i)** Name, address, and social security number.
- (ii)** The worker's occupation(s) or classification(s).
- (iii)** The rate or rates of wages paid.
- (iv)** The number of daily and weekly hours worked by each worker.
- (v)** Any deductions made; and
- (vi)** Total wages paid.

(2) The contractor shall also make available a copy of the contract, as applicable, for inspection or transcription by authorized representatives of the Wage and Hour Division.

(3) Failure to make and maintain or to make available such records for inspection and transcription shall be a violation of 29 CFR part 10 and this contract, and in the case of failure to produce such records, the contracting officer, upon direction of an authorized representative of the Department of Labor, or under its own action, shall take such action as may be necessary to cause suspension of any further payment or advance of funds until such time as the violations are discontinued.

(4) The contractor shall permit authorized representatives of the Wage and Hour Division to conduct investigations, including interviewing workers at the worksite during normal working hours.

(5) Nothing in this clause limits or otherwise modifies the contractor's payroll and recordkeeping obligations, if any, under the Davis-Bacon Act, as amended, and its implementing regulations; the Service Contract Act, as amended, and its implementing regulations; the Fair Labor Standards Act, as amended, and its implementing regulations; or any other applicable law.

g. The contractor (as defined in 29 CFR 10.2) shall insert this clause in all of its covered subcontracts and shall require its subcontractors to include this clause in any covered lower-tier subcontracts. The prime contractor and any upper-tier subcontractor shall be responsible for the compliance by any subcontractor or lower-tier subcontractor with this contract clause.

h. Certification of Eligibility.

(1) By entering into this contract, the contractor (and officials thereof) certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of the sanctions imposed pursuant to section 5 of the Service Contract Act, section 3(a) of the Davis-Bacon Act, or 29 CFR 5.12(a)(1).

(2) No part of this contract shall be subcontracted to any person or firm whose name appears on the list of persons or firms ineligible to receive Federal contracts.

(3) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

I. Tipped employees. In paying wages to a tipped employee as defined in section 3(t) of the Fair Labor Standards Act, 29 U.S.C. 203(t), the contractor may take a partial credit against the wage payment obligation (tip credit) to the extent permitted under section 3(a) of Executive Order 13658. In order to take such a tip

credit, the employee must receive an amount of tips at least equal to the amount of the credit taken; where the tipped employee does not receive sufficient tips to equal the amount of the tip credit the contractor must increase the cash wage paid for the workweek so that the amount of cash wage paid and the tips received by the employee equal the applicable minimum wage under Executive Order 13658. To utilize this proviso:

(1) The employer must inform the tipped employee in advance of the use of the tip credit;

(2) The employer must inform the tipped employee of the amount of cash wage that will be paid and the additional amount by which the employee's wages will be considered increased on account of the tip credit;

(3) The employees must be allowed to retain all tips (individually or through a pooling arrangement and regardless of whether the employer elects to take a credit for tips received); and

(4) The employer must be able to show by records that the tipped employee receives at least the applicable Executive Order minimum wage through the combination of direct wages and tip credit.

J. Anti-retaliation. It shall be unlawful for any person to discharge or in any other manner discriminate against any worker because such worker has filed any complaint or instituted or caused to be instituted any proceeding under or related to Executive Order 13658 or 29 CFR part 10, or has testified or is about to testify in any such proceeding.

K. Disputes concerning labor standards. Disputes related to the application of Executive Order 13658 to this contract shall not be subject to the general disputes clause of the contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR part 10. Disputes within the meaning of this contract clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the workers or their representatives.

L. Notice. The contractor must notify all workers performing work on or in connection with a covered contract of the applicable minimum wage rate under the Executive Order. With respect to service employees on contracts covered by the Service Contract Act and laborers and mechanics on contracts covered by the Davis-Bacon Act, the contractor may meet this requirement by posting, in a prominent and accessible place at the worksite, the applicable wage determination under those statutes. With respect to workers performing work on or in connection with a covered contract whose wages are governed by the FLSA, the contractor must post a notice provided by the Department of Labor in a prominent and accessible place at the worksite so it may be readily seen by workers. Contractors that customarily post notices to workers electronically may post the notice electronically provided such electronic posting is displayed prominently on any Web site that is maintained by the contractor,

whether external or internal, and customarily used for notices to workers about terms and conditions of employment.

28. APPLICABILITY OF EXECUTIVE ORDER 13658

If a duly authorized representative of the United States discovers or determines, whether before or subsequent to executing this contract, that an erroneous determination regarding the applicability of Executive Order 13658 was made, contractor, to the extent permitted by law, agrees to indemnify and hold harmless the United States, its officers, agents, and employees, for and from any and all liabilities, losses, claims, expenses, suits, fines, penalties, judgments, demands or actions, costs, fees, and damages directly or indirectly arising out of, caused by, related to, resulting from or in any way predicated upon, in whole or in part, the erroneous Executive Order 13658 determination. This includes contractor releasing any claim or entitlement it would otherwise have to an equitable adjustment to the contract and indemnifying and holding harmless the United States from the claims of subcontractors and contractor employees.

This EASEMENT replaces DA-01-076-ENG-6456 which expired on March 23, 2015.

THIS EASEMENT is not subject to Title 10, United States Code, Section 2662, as amended

SIGNATURE PAGE TO FOLLOW

IN WITNESS WHEREOF, I have hereunto set my hand by authority of the Secretary of the Army, this _____ day of _____, _____.

CHRISTOPHER C. MAY
REAL ESTATE CONTRACTING OFFICER

ACKNOWLEDGMENT

STATE OF ALABAMA)

COUNTY OF MOBILE)

I, the undersigned, a Notary Public in and for said County and State, hereby certify that Christopher C. May, whose name as Real Estate Contracting Officer, Real Estate Division, US Army Engineer District, Mobile, is signed to the foregoing instrument and who is known to me, acknowledged before me on this day, that being informed of the contents of the instruments, he, in his official capacity, executed the same voluntarily and with full authority on the day the same bears date.

Given under my hand and seal of office this _____ day of _____, 2016.

_____ SEAL Notary Public

My Commission Expires : _____

LEGAL DESCRIPTION

A right of way, 20 feet wide, lying and being in the Twelfth Civil District of Sullivan County, Tennessee, and 10 feet on each side of a centerline more particularly described as follows:

Beginning at a point which is on the boundary of the Reservation at Holston Army Ammunition Plant and 125.00 feet N 05° 39' W of Station 109 + 20.53 on the centerline of Plant B Railroad System Survey;

thence S 40° 01' W 126.40 feet;

thence S 85° 34' W 40.02 feet;

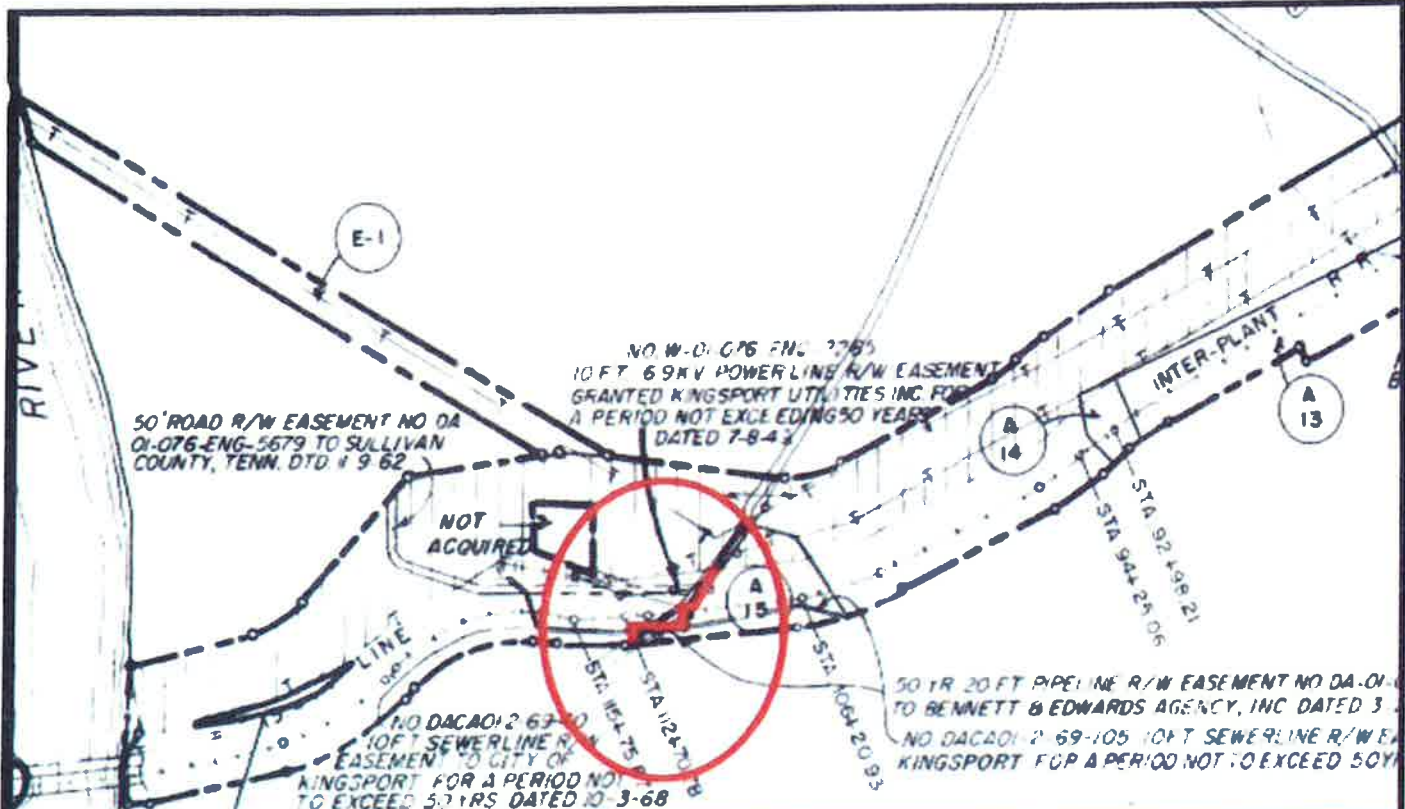
thence S 04° 26' E 70.00 feet;

thence S 85° 34' W 207.26 feet;

thence S 09° 05' E 61 feet, more or less, to aforesaid reservation boundary.

Containing 0.23 of an acre, more or less, being a portion of tract A-15 of Holston Army Ammunition Plant.

EXHIBIT A



| ACQUISITION | | | |
|-------------|----------|------------------------------------|--------|
| RE - D NO | TRACT NO | LAND OWNER | A FEE |
| 1222 | 1 | TENNESSEE EASTMAN CORP | |
| | A-1 | TENNESSEE EASTMAN CORP | 49 00 |
| | A-2 | BLUE RIDGE GLASS CORP | 22 40 |
| | A-4 | KINGSFORT BRICK CORP, | 4 88 |
| | A-5 | BRICK REALTY CORP, ET AL | 12 75 |
| | A-6 | PENN - DIXIE CEMENT CORP | 19 90 |
| | A-7 | JOHN DISHNER, ET UX | 15 74 |
| | A-8 | JAMES C WHITE & C P EDWARDS, JR | 111.70 |
| | A-9 | BEATRICE CARROLL PERSINGER, ET VIR | 1.32 |

HOLSTON ARMY AMMUNITION PLANT

Sullivan County, Tennessee



EXHIBIT B

Easement No: DACA01-2-16-1821





AGENDA ACTION FORM

Execute Agreements with CSX Transportation, Inc. for Sewer Line Easements

To: Board of Mayor and Aldermen
From: Jeff Fleming, City Manager *JF*

Action Form No.: AF-328-2016
Work Session: December 19, 2016
First Reading: N/A

Final Adoption: December 20, 2016
Staff Work By: C. Austin/A. Deakins
Presentation By: R. McReynolds

Recommendation:

Approve the Resolution.

Executive Summary:

During design of a sewer rehabilitation project along Lincoln St, it was determined that existing sanitary sewer lines located in CSX Transportation, Inc. right-of-way did not have any easements associated with them. In order to maintain these pipes, the city needs to enter into agreements with CSX Transportation, Inc. for the easements.

The costs associated with these easement agreements, \$1,500, will be paid out of the operating funds of the sewer division.

Attachments:

1. Resolution
2. Agreements
3. Location Map

Funding source appropriate and funds are available: *JF*

| | <u>Y</u> | <u>N</u> | <u>O</u> |
|------------|----------|----------|----------|
| Duncan | — | — | — |
| George | — | — | — |
| McIntire | — | — | — |
| Olterman | — | — | — |
| Parham | — | — | — |
| Segelhorst | — | — | — |
| Clark | — | — | — |

RESOLUTION NO. _____

A RESOLUTION APPROVING THREE AGREEMENTS WITH CSX TRANSPORTATION, INC. FOR THREE SEWER LINE EASEMENTS AND AUTHORIZING THE MAYOR TO EXECUTE THE AGREEMENT AND ALL OTHER DOCUMENTS NECESSARY AND PROPER TO EFFECTUATE THE PURPOSE OF THE AGREEMENT

WHEREAS, the city has been working on the design of a sewer rehabilitation project along Lincoln Street; and

WHEREAS, it was determined that the existing sanitary sewer lines located in CSX Transportation, Inc. right-of-way did not have any easements associated with them; and

WHEREAS, in order to maintain these pipes the city needs to enter into an agreement with CSX Transportation, Inc. for these easements; and

WHEREAS, the costs associated with these easements are \$1,500.00; and

WHEREAS, funding for the easements will be paid out of the operating fund of the sewer division.

Now therefore,

BE IT RESOLVED BY THE BOARD OF MAYOR AND ALDERMEN AS FOLLOWS:

SECTION I. That the three agreements with CSX Transportation, Inc., with a term of five years, to maintain the pipes located in the CSX Transportation, Inc. right-of-way are approved.

SECTION II. That the mayor, or in his absence, incapacity, or failure to act, the vice-mayor, is authorized and directed to execute, in a form approved by the city attorney and subjected to the requirements of Article X, Section 10 of the Charter of the City of Kingsport, three agreements with CSX Transportation, Inc., to maintain the pipes located in the CSX Transportation, Inc. right-of-way, and all other documents necessary and proper, and to take such acts as necessary, to effectuate the purpose of the agreements of this resolution, said agreements being attached hereto as an exhibit.

SECTION III. That the mayor is further authorized to make such changes approved by the mayor and the city attorney to the agreements set out herein that do not substantially alter the material provisions of the agreements, and the execution thereof by the mayor and the city attorney is conclusive evidence of the approval of such changes.

SECTION IV. That the board finds that the actions authorized by this resolution are for a public purpose and will promote the health, comfort and prosperity of the citizens of the city.

SECTION V. That this resolution shall take effect from and after its adoption, the public welfare requiring it.

ADOPTED this the 20th day of December, 2016.

JOHN CLARK, MAYOR

ATTEST:

JAMES H. DEMMING, CITY RECORDER

APPROVED AS TO FORM:

J. MICHAEL BILLINGSLEY, CITY ATTORNEY

FACILITY ENCROACHMENT AGREEMENT

THIS AGREEMENT, made and effective as of September 7, 2016, by and between CSX TRANSPORTATION, INC., a Virginia corporation, whose mailing address is 500 Water Street, Jacksonville, Florida 32202, hereinafter called "Licensor," and CITY OF KINGSPORT, a municipal corporation, political subdivision or state agency, under the laws of the State of Tennessee, whose mailing address is 225 West Center Street, Kingsport, Tennessee 37660, hereinafter called "Licensee," WITNESSETH:

WHEREAS, Licensee desires to construct (unless previously constructed and designated as existing herein), use and maintain the below described facility(ies), hereinafter called "Facilities," over, under or across property owned or controlled by Licensor, at the below described location(s):

1. One (1) eight inch (8") diameter sub-grade pipeline crossing, solely for the conveyance of raw/treated sewage, located at or near Kingsport, Sullivan County, Tennessee, Florence Division, Kingsport Subdivision, Milepost Z-95.18, Latitude N36:31:57.12, Longitude W82:32:34.77;

hereinafter, called the "Encroachment," as shown on print(s) labeled Exhibit "A," attached hereto and made a part hereof;

NOW, THEREFORE, in consideration of the mutual covenants, conditions, terms and agreements herein contained, the parties hereto agree and covenant as follows:

1. LICENSE:

1.1 Subject to Article 17, Licensor, insofar as it has the legal right, power and authority to do so, and its present title permits, and subject to:

- (A) Licensor's present and future right to occupy, possess and use its property within the area of the Encroachment for any and all purposes;
- (B) All encumbrances, conditions, covenants, easements, and limitations applicable to Licensor's title to or rights in the subject property; and
- (C) Compliance by Licensee with the terms and conditions herein contained;

does hereby license and permit Licensee to construct, maintain, repair, renew, operate, use, alter or change the Facilities at the Encroachment above for the term herein stated, and to remove same upon termination.

1.2 The term Facilities, as used herein, shall include only those structures and ancillary facilities devoted exclusively to the transmission usage above within the Encroachment, and as shown on attached Exhibit A.

1.3 No additional structures or other facilities shall be placed, allowed, or maintained by Licensee in, upon or on the Encroachment except upon prior separate written consent of Licensor.

2. ENCROACHMENT FEE; TERM:

2.1 Licensee shall pay Licensor a one-time nonrefundable Encroachment Fee of FIVE HUNDRED AND 00/100 U.S. DOLLARS (\$500.00) upon execution of this Agreement. Licensee agrees that the Encroachment Fee applies only to the original Licensee under this Agreement. In the event of a successor (by merger, consolidation, reorganization and/or assignment) or if the original Licensee changes its name, then Licensee shall be subject to payment of Licensor's current administrative and document preparation fees for the cost incurred by Licensor in preparing and maintaining this Agreement on a current basis.

2.2 However, Licensee assumes sole responsibility for, and shall pay directly (or reimburse Licensor), any additional annual taxes and/or periodic assessments levied against Licensor or Licensor's property solely on account of said Facilities or Encroachment.

2.3 This Agreement shall terminate as herein provided, but shall also terminate upon: (a) Licensee's cessation of use of the Facilities or Encroachment for the purpose(s) above; (b) removal of the Facilities; (c) subsequent mutual consent; and/or (d) failure of Licensee to complete installation within five (5) years from the effective date of this Agreement.

2.4 In further consideration for the license or right hereby granted, Licensee hereby agrees that Licensor shall not be charged or assessed, directly or indirectly, with any part of the cost of the installation of said Facilities and appurtenances, and/or maintenance thereof, or for any public works project of which said Facilities is a part.

3. CONSTRUCTION, MAINTENANCE AND REPAIRS:

3.1 Licensee shall construct, maintain, relocate, repair, renew, alter, and/or remove the Facilities, in a prudent, workmanlike manner, using quality materials and complying with any applicable standard(s) or regulation(s) of Licensor (CSXT Specifications), or Licensee's particular industry, National Electrical Safety Code, or any governmental or regulatory body having jurisdiction over the Encroachment.

3.2 Location and construction of Facilities shall be made strictly in accordance with design(s) and specifications furnished to and approved by Licensor and of material(s) and size(s) appropriate for the purpose(s) above recited.

3.3 All of Licensee's work, and exercise of rights hereunder, shall be undertaken at time(s) satisfactory to Licensor, and so as to eliminate or minimize any impact on or interference with the safe use and operation of Licensor's property and appurtenances thereto.

3.4 In the installation, maintenance, repair and/or removal of said Facilities, Licensee shall not use explosives of any type or perform or cause any blasting without the separate express written consent of Licensor. As a condition to such consent, a representative will be assigned by Licensor to monitor blasting, and Licensee shall reimburse Licensor for the entire cost and/or expense of furnishing said monitor.

3.5 Any repairs or maintenance to the Facilities, whether resulting from acts of Licensee, or natural or weather events, which are necessary to protect or facilitate Licensor's use of its property, shall be made by Licensee promptly, but in no event later than thirty (30) days after Licensee has notice as to the need for such repairs or maintenance.

3.6 Licensor, in order to protect or safeguard its property, rail operations, equipment and/or employees from damage or injury, may request immediate repair or renewal of the Facilities, and if the same is not performed, may make or contract to make such repairs or renewals, at the sole risk, cost and expense of Licensee.

3.7 Neither the failure of Licensor to object to any work done, material used, or method of construction or maintenance of said Encroachment, nor any approval given or supervision exercised by Licensor, shall be construed as an admission of liability or responsibility by Licensor, or as a waiver by Licensor of any of the obligations, liability and/or responsibility of Licensee under this Agreement.

3.8 All work on the Encroachment shall be conducted in accordance with Licensor's safety rules and regulations.

3.9 Licensee hereby agrees to reimburse Licensor any loss, cost or expense (including losses resulting from train delays and/or inability to meet train schedules) arising from any failure of Licensee to make repairs or conduct maintenance as required by Section 3.5 above or from improper or incomplete repairs or maintenance to the Facilities or Encroachment.

4. PERMITS, LICENSES:

4.1 Before any work hereunder is performed, or before use of the Encroachment for the contracted purpose, Licensee, at its sole cost and expense, shall obtain all necessary permit(s) (including but not limited to zoning, building, construction, health, safety or environmental matters), letter(s) or certificate(s) of approval. Licensee expressly agrees and warrants that it shall conform and limit its activities to the terms of such permit(s), approval(s) and authorization(s), and shall comply with all applicable ordinances, rules, regulations, requirements and laws of any governmental authority (State, Federal or Local) having jurisdiction over Licensee's activities, including the location, contact, excavation and protection regulations of the

Occupational Safety and Health Act (OSHA) (29 CFR 1926.651(b)), et al., and State "One Call" - "Call Before You Dig" requirements.

4.2 Licensee assumes sole responsibility for failure to obtain such permit(s) or approval(s), for any violations thereof, or for costs or expenses of compliance or remedy.

5. MARKING AND SUPPORT:

5.1 With respect to any subsurface installation or maintenance upon Licensor's property, Licensee, at its sole cost and expense, shall:

- (A) support track(s) and roadbed in a manner satisfactory to Licensor;
- (B) backfill with satisfactory material and thoroughly tamp all trenches to prevent settling of surface of land and roadbed of Licensor; and
- (C) either remove any surplus earth or material from Licensor's property or cause said surplus earth or material to be placed and distributed at location(s) and in such manner Licensor may approve.

5.2 After construction or maintenance of the Facilities, Licensee shall:

- (A) Restore any track(s), roadbed and other disturbed property; and
- (B) Erect, maintain and periodically verify the accuracy of aboveground markers, in a form approved by Licensor, indicating the location, depth and ownership of any underground Facilities or related facilities.

5.3 Licensee shall be solely responsible for any subsidence or failure of lateral or subjacent support in the Encroachment area for a period of three (3) years after completion of installation.

6. TRACK CHANGES:

6.1 In the event that rail operations and/or track maintenance result in changes in grade or alignment of, additions to, or relocation of track(s) or other facilities, or in the event future use of Licensor's rail corridor or property necessitate any change of location, height or depth in the Facilities or Encroachment, Licensee, at its sole cost and expense and within thirty (30) days after notice in writing from Licensor, shall make changes in the Facilities or Encroachment to accommodate such track(s) or operations.

6.2 If Licensee fails to do so, Licensor may make or contract to make such changes at Licensee's cost.

7. FACILITY CHANGES:

7.1 Licensee shall periodically monitor and verify the depth or height of the Facilities or Encroachment in relation to the existing tracks and facilities, and shall relocate the Facilities or change the Encroachment, at Licensee's expense, should such relocation or change be necessary to comply with the minimum clearance requirements of Licensor.

7.2 If Licensee undertakes to revise, renew, relocate or change in any manner whatsoever all or any part of the Facilities (including any change in voltage or gauge of wire or any change in circumference, diameter or radius of pipe or change in materials transmitted in and through said pipe), or is required by any public agency or court order to do so, plans therefor shall be submitted to Licensor for approval before such change. After approval, the terms and conditions of this Agreement shall apply thereto.

8. INTERFERENCE WITH RAIL FACILITIES:

8.1 Although the Facilities/Encroachment herein permitted may not presently interfere with Licensor's railroad or facilities, in the event that the operation, existence or maintenance of said Facilities, in the sole judgment of Licensor, causes: (a) interference (including, but not limited to, physical or interference from an electromagnetic induction, or interference from stray or other currents) with Licensor's power lines, communication, signal or other wires, train control system, or electrical or electronic apparatus; or (b) interference in any manner, with the operation, maintenance or use of the rail corridor, track(s), structures, pole line(s), devices, other property, or any appurtenances thereto; then and in either event, Licensee, upon receipt of written notice from Licensor of any such interference, and at Licensee's sole risk, cost and expense, shall promptly make such changes in its Facilities or installation, as may be required in the reasonable judgment of the Licensor to eliminate all such interference. Upon Licensee's failure to remedy or change, Licensor may do so or contract to do so at Licensee's sole cost.

8.2 Without assuming any duty hereunder to inspect the Facilities, Licensor hereby reserves the right to inspect same and to require Licensee to undertake repairs, maintenance or adjustments to the Facilities, which Licensee hereby agrees to make promptly, at Licensee's sole cost and expense.

9. RISK, LIABILITY, INDEMNITY:

With respect to the relative risk and liabilities of the parties, it is hereby agreed that:

9.1 To the fullest extent permitted by State law (constitutional or statutory, as amended), Licensee hereby agrees to, defend, indemnify, and hold Licensor harmless from and against any and all liability, loss, claim, suit, damage, charge or expense which Licensor may suffer, sustain, incur or in any way be subjected to, on account of death of or injury to any person whomsoever (including officers, agents, employees or invitees of Licensor), and for damage to

or loss of or destruction of any property whatsoever, arising out of, resulting from, or in any way connected with the construction, repair, maintenance, replacement, presence, existence, operations, use or removal of the Facilities or any structure in connection therewith, or restoration of premises of Licensor to good order or condition after removal, EXCEPT when proven to have been caused solely by the willful misconduct or gross negligence of Licensor. HOWEVER, to the fullest extent permitted by State law, during any period of actual construction, repair, maintenance, replacement or removal of the Facilities, wherein agents, equipment or personnel of Licensee are on the railroad rail corridor, Licensee's liability hereunder shall be absolute, irrespective of any joint, sole or contributory fault or negligence of Licensor.

9.2 Use of Licensor's rail corridor involves certain risks of loss or damage as a result of the rail operations. Notwithstanding Section 9.1, Licensee expressly assumes all risk of loss and damage to Licensee's Property or the Facilities in, on, over or under the Encroachment, including loss of or any interference with use or service thereof, regardless of cause, including electrical field creation, fire or derailment resulting from rail operations. For this Section, the term "Licensee's Property" shall include property of third parties situated or placed upon Licensor's rail corridor by Licensee or by such third parties at request of or for benefit of Licensee.

9.3 To the fullest extent permitted by State law, as above, Licensee assumes all responsibility for, and agrees to defend, indemnify and hold Licensor harmless from: (a) all claims, costs and expenses, including reasonable attorneys' fees, as a consequence of any sudden or nonsudden pollution of air, water, land and/or ground water on or off the Encroachment area, arising from or in connection with the use of this Encroachment or resulting from leaking, bursting, spilling, or any escape of the material transmitted in or through the Facilities; (b) any claim or liability arising under federal or state law dealing with either such sudden or nonsudden pollution of air, water, land and/or ground water arising therefrom or the remedy thereof; and (c) any subsidence or failure of lateral or subjacent support of the tracks arising from such Facilities leakage.

9.4 Notwithstanding Section 9.1, Licensee also expressly assumes all risk of loss which in any way may result from Licensee's failure to maintain either required clearances for any overhead Facilities or the required depth and encasement for any underground Facilities, whether or not such loss(es) result(s) in whole or part from Licensor's contributory negligence or joint fault.

9.5 Obligations of Licensee hereunder to release, indemnify and hold Licensor harmless shall also extend to companies and other legal entities that control, are controlled by, subsidiaries of, or are affiliated with Licensor, as well as any railroad that operates over the rail corridor on which the Encroachment is located, and the officers, employees and agents of each.

9.6 If a claim is made or action is brought against Licensor, and/or its operating lessee, for which Licensee may be responsible hereunder, in whole or in part, Licensee shall be

notified to assume the handling or defense of such claim or action; but Licensor may participate in such handling or defense.

9.7 Notwithstanding anything contained in this Agreement, the limitation of liability contained in the state statutes, as amended from time to time, shall not limit Licensor's ability to collect under the insurance policies required to be maintained under this Agreement.

10. INSURANCE:

10.1 Prior to commencement of surveys, installation or occupation of premises pursuant to this Agreement, Licensee shall procure and shall maintain during the continuance of this Agreement, at its sole cost and expense, a policy of

(i) The city is self-insured under the Tennessee Workers Compensation Act for injuries to its employees arising out of and in the course and scope of employment;

(ii) Commercial General Liability coverage (inclusive of contractual liability) with available limits of not less than FIVE MILLION AND 00/100 U.S. DOLLARS (\$5,000,000.00), naming Licensor, and/or its designee, as additional insured and in combined single limits for bodily injury and property damage and covering the contractual liabilities assumed under this Agreement. The evidence of insurance coverage shall be endorsed to provide for thirty (30) days' notice to Licensor, or its designee, prior to cancellation or modification of any policy, provided however, notwithstanding anything here to the contrary, tort actions or anything covered by the provisions of the Tennessee Governmental Tort Liability Act found at T.C.A. section 29-20-101 et seq., including the limits of liability, shall apply and no provision of the Agreement shall act or be deemed a waiver by the City of any immunity, its rights or privileges as a sovereign entity, as waiver can only be made by the Tennessee General Assembly. Mail CGL certificate, along with agreement, to CSX Transportation, Inc., Speed Code J180, 500 Water Street, Jacksonville, FL 32202. On each successive year, send certificate to RenewalCOI@csx.com.

(iii) Business automobile liability insurance with available limits of not more than \$300,000 for bodily injury or death of any one person in any one accident, occurrence or act, and not more than \$700,000 for bodily injury or death of all persons in any one accident, occurrence or act, and \$100,000 for injury or destruction of property of others in any one accident occurrence or act;

(iv) Such other insurance as Licensor may reasonably require.

10.2 If Licensee's existing CGL policy(ies) do(es) not automatically cover Licensee's contractual liability during periods of survey, installation, maintenance and continued occupation, a specific endorsement adding such coverage shall be purchased by Licensee if allowable due to the city being subject to and governed by the Tennessee Governmental Tort Liability Act and the limits and conditions set out in that Act apply. If said CGL policy is

written on a "claims made" basis instead of a "per occurrence" basis, Licensee shall arrange for adequate time for reporting losses. Failure to do so shall be at Licensee's sole risk.

10.3 Licensors, or its designee, may at any time request evidence of insurance purchased by Licensee to comply with this Agreement. Failure of Licensee to comply with Licensors's request shall be considered a default by Licensee.

10.4 Securing such insurance shall not limit Licensee's liability under this Agreement, but shall be security therefor.

10.5 (A) In the event Licensee finds it necessary to perform construction or demolition operations within fifty feet (50') of any operated railroad track(s) or affecting any railroad bridge, trestle, tunnel, track(s), roadbed, overpass or underpass, Licensee shall: (a) notify Licensors; and (b) require its contractor(s) performing such operations to procure and maintain during the period of construction or demolition operations, at no cost to Licensors, Railroad Protective Liability (RPL) Insurance, naming Licensors, and/or its designee, as Named Insured, written on the current ISO/RIMA Form (ISO Form No. CG 00 35 01 96) with limits of FIVE MILLION AND 00/100 U.S. DOLLARS (\$5,000,000.00) per occurrence for bodily injury and property damage, with at least TEN MILLION AND 00/100 U.S. DOLLARS (\$10,000,000.00) aggregate limit per annual policy period, with Pollution Exclusion Amendment (ISO CG 28 31 11 85) if an older ISO Form CG 00 35 is used. The original of such RPL policy shall be sent to and approved by Licensors prior to commencement of such construction or demolition. Licensors reserves the right to demand higher limits.

(B) At Licensors's option, in lieu of purchasing RPL insurance from an insurance company (but not CGL insurance), Licensee may pay Licensors, at Licensors's current rate at time of request, the cost of adding this Encroachment, or additional construction and/or demolition activities, to Licensors's Railroad Protective Liability (RPL) Policy for the period of actual construction. This coverage is offered at Licensors's discretion and may not be available under all circumstances.

10.6 Notwithstanding the provisions of Sections 10.1 and 10.2, Licensee, pursuant to State Statute(s), may self-insure or self-assume, in any amount(s), any contracted liability arising under this Agreement, under a funded program of self-insurance, which fund will respond to liability of Licensee imposed by and in accordance with the procedures established by law.

Notwithstanding anything herein to the contrary for tort actions the provision of the Tennessee Governmental Tort Liability Action found at T.C.A. § 29-20-101 et seq., including the limits of liability, shall apply and no provision of the Agreement shall act or be deemed a waiver by the Licensee of any immunity, its rights or privileges as a sovereign entity, as waiver can only be made by the Tennessee General Assembly.

11. GRADE CROSSINGS; FLAGGING:

11.1 Nothing herein contained shall be construed to permit Licensee or Licensee's contractor to move any vehicles or equipment over the track(s), except at public road crossing(s), without separate prior written approval of Licensor.

11.2 If Licensor deems it advisable, during any construction, maintenance, repair, renewal, alteration, change or removal of said Facilities, to place watchmen, flagmen, inspectors or supervisors for protection of operations of Licensor or others on Licensor's rail corridor at the Encroachment, and to keep persons, equipment or materials away from the track(s), Licensor shall have the right to do so at the expense of Licensee, but Licensor shall not be liable for failure to do so.

12. LICENSOR'S COSTS:

12.1 Any additional or alternative costs or expenses incurred by Licensor to accommodate Licensee's continued use of Licensor's property as a result of track changes or wire changes shall also be paid by Licensee.

12.2 Licensor's expense for wages ("force account" charges) and materials for any work performed at the expense of Licensee pursuant hereto shall be paid by Licensee within thirty (30) days after receipt of Licensor's bill therefor. Licensor may, at its discretion, request an advance deposit for estimated Licensor costs and expenses.

12.3 Such expense shall include, but not be limited to, cost of railroad labor and supervision under "force account" rules, plus current applicable overhead percentages, the actual cost of materials, and insurance, freight and handling charges on all material used. Equipment rentals shall be in accordance with Licensor's applicable fixed rate. Licensor may, at its discretion, require advance deposits for estimated costs of such expenses and costs.

13. DEFAULT, BREACH, WAIVER:

13.1 The proper and complete performance of each covenant of this Agreement shall be deemed of the essence thereof, and in the event Licensee fails or refuses to fully and completely perform any of said covenants or remedy any breach within thirty (30) days after receiving written notice from Licensor to do so (or within forty-eight (48) hours in the event of notice of a railroad emergency), Licensor shall have the option of immediately revoking this Agreement and the privileges and powers hereby conferred, regardless of encroachment fee(s) having been paid in advance for any annual or other period. Upon such revocation, Licensee shall make removal in accordance with Article 14.

13.2 No waiver by Licensor of its rights as to any breach of covenant or condition herein contained shall be construed as a permanent waiver of such covenant or condition, or any

subsequent breach thereof, unless such covenant or condition is permanently waived in writing by Licensor.

13.3 Neither the failure of Licensor to object to any work done, material used, or method of construction or maintenance of said Encroachment, nor any approval given or supervision exercised by Licensor, shall be construed as an admission of liability or responsibility by Licensor, or as a waiver by Licensor of any of the obligations, liability and/or responsibility of Licensee under this Agreement.

14. TERMINATION, REMOVAL:

14.1 All rights which Licensee may have hereunder shall cease upon the date of (a) termination, (b) revocation, or (c) subsequent agreement, or (d) Licensee's removal of the Facility from the Encroachment. However, neither termination nor revocation of this Agreement shall affect any claims and liabilities which have arisen or accrued hereunder, and which at the time of termination or revocation have not been satisfied; neither party, however, waiving any third party defenses or actions.

14.2 Within thirty (30) days after revocation or termination, Licensee, at its sole risk and expense, shall (a) remove the Facilities from the rail corridor of Licensor, unless the parties hereto agree otherwise, (b) restore the rail corridor of Licensor in a manner satisfactory to Licensor, and (c) reimburse Licensor any loss, cost or expense of Licensor resulting from such removal.

15. NOTICE:

15.1 Licensee shall give Licensor at least thirty (30) days written notice before doing any work on Licensor's rail corridor, except that in cases of emergency shorter notice may be given. Licensee shall provide proper notification as follows:

a. For non-emergencies, Licensee shall submit online via the CSX Property Portal from Licensor's web site, via web link:
https://propertyportal.csx.com/pub_ps_res/ps_res/jsf/public/index.faces

b. For emergencies, Licensee shall complete all of the steps outlined in Section 15.1 a. above, and shall also include detailed information of the emergency. Licensee shall also call and report details of the emergency to Licensor's Rail Operations Emergency Telephone Number: 1-800-232-0144. In the event Licensor needs to contact Licensee concerning an emergency involving Licensee's Facility(ies), the emergency phone number for Licensee is: 423-224-2601.

15.2 All other notices and communications concerning this Agreement shall be addressed to Licensee at the address above, and to Licensor at the address shown on Page 1, c/o

CSXT Contract Management, J180; or at such other address as either party may designate in writing to the other.

15.3 Unless otherwise expressly stated herein, all such notices shall be in writing and sent via Certified or Registered Mail, Return Receipt Requested, or by courier, and shall be considered delivered upon: (a) actual receipt, or (b) date of refusal of such delivery.

16. ASSIGNMENT:

16.1 The rights herein conferred are the privileges of Licensee only, and Licensee shall obtain Licensor's prior written consent to any assignment of Licensee's interest herein; said consent shall not be unreasonably withheld.

16.2 Subject to Sections 2 and 16.1, this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors or assigns.

16.3 Licensee shall give Licensor written notice of any legal succession (by merger, consolidation, reorganization, etc.) or other change of legal existence or status of Licensee, with a copy of all documents attesting to such change or legal succession, within thirty (30) days thereof.

16.4 Licensor expressly reserves the right to assign this Agreement, in whole or in part, to any grantee, lessee, or vendee of Licensor's underlying property interests in the Encroachment, upon written notice thereof to Licensee.

16.5 In the event of any unauthorized sale, transfer, assignment, sublicense or encumbrance of this Agreement, or any of the rights and privileges hereunder, Licensor, at its option, may revoke this Agreement by giving Licensee or any such assignee written notice of such revocation; and Licensee shall reimburse Licensor for any loss, cost or expense Licensor may incur as a result of Licensee's failure to obtain said consent.

17. TITLE:

17.1 Licensee understands that Licensor occupies, uses and possesses lands, rights-of-way and rail corridors under all forms and qualities of ownership rights or facts, from full fee simple absolute to bare occupation. Accordingly, nothing in this Agreement shall act as or be deemed to act as any warranty, guaranty or representation of the quality of Licensor's title for any particular Encroachment or segment of Rail Corridor occupied, used or enjoyed in any manner by Licensee under any rights created in this Agreement. It is expressly understood that Licensor does not warrant title to any Rail Corridor and Licensee will accept the grants and privileges contained herein, subject to all lawful outstanding existing liens, mortgages and superior rights in and to the Rail Corridor, and all leases, licenses and easements or other interests previously granted to others therein.

17.2 The term "license," as used herein, shall mean with regard to any portion of the Rail Corridor which is owned by Licensor in fee simple absolute, or where the applicable law of the State where the Encroachment is located otherwise permits Licensor to make such grants to Licensee, a "permission to use" the Rail Corridor, with dominion and control over such portion of the Rail Corridor remaining with Licensor, and no interest in or exclusive right to possess being otherwise granted to Licensee. With regard to any other portion of Rail Corridor occupied, used or controlled by Licensor under any other facts or rights, Licensor merely waives its exclusive right to occupy the Rail Corridor and grants no other rights whatsoever under this Agreement, such waiver continuing only so long as Licensor continues its own occupation, use or control. Licensor does not warrant or guarantee that the license granted hereunder provides Licensee with all of the rights necessary to occupy any portion of the Rail Corridor. Licensee further acknowledges that it does not have the right to occupy any portion of the Rail Corridor held by Licensor in less than fee simple absolute without also receiving the consent of the owner(s) of the fee simple absolute estate. Further, Licensee shall not obtain, exercise or claim any interest in the Rail Corridor that would impair Licensor's existing rights therein.

17.3 Licensee agrees it shall not have nor shall it make, and hereby completely and absolutely waives its right to, any claim against Licensor for damages on account of any deficiencies in title to the Rail Corridor in the event of failure or insufficiency of Licensor's title to any portion thereof arising from Licensee's use or occupancy thereof.

17.4 To the extent permitted by Tennessee law, Licensee agrees to fully and completely indemnify and defend all claims or litigation for slander of title, overburden of easement, or similar claims arising out of or based upon the Facilities placement, or the presence of the Facilities in, on or along any Encroachment(s), including claims for punitive or special damages.

17.5 Licensee shall not at any time own or claim any right, title or interest in or to Licensor's property occupied by the Encroachments, nor shall the exercise of this Agreement for any length of time give rise to any right, title or interest in Licensee to said property other than the license herein created.

17.6 Nothing in this Agreement shall be deemed to give, and Licensor hereby expressly waives, any claim of ownership in and to any part of the Facilities.

17.7 Licensee shall not create or permit any mortgage, pledge, security, interest, lien or encumbrances, including without limitation, tax liens and liens or encumbrances with respect to work performed or equipment furnished in connection with the construction, installation, repair, maintenance or operation of the Facilities in or on any portion of the Encroachment (collectively, "Liens or Encumbrances"), to be established or remain against the Encroachment or any portion thereof or any other Licensor property.

17.8 In the event that any property of Licensor becomes subject to such Liens or

Encumbrances, Licensee agrees to pay, discharge or remove the same promptly upon Licensee's receipt of notice that such Liens or Encumbrances have been filed or docketed against the Encroachment or any other property of Licensor; however, Licensee reserves the right to challenge, at its sole expense, the validity and/or enforceability of any such Liens or Encumbrances.

18. GENERAL PROVISIONS:

18.1 This Agreement, and the attached specifications, contains the entire understanding between the parties hereto.

18.2 Neither this Agreement, any provision hereof, nor any agreement or provision included herein by reference, shall operate or be construed as being for the benefit of any third person.

18.3 Except as otherwise provided herein, or in any Rider attached hereto, neither the form of this Agreement, nor any language herein, shall be interpreted or construed in favor of or against either party hereto as the sole drafter thereof.

18.4 This Agreement is executed under current interpretation of applicable Federal, State, County, Municipal or other local statute, ordinance or law(s). However, each separate division (paragraph, clause, item, term, condition, covenant or agreement) herein shall have independent and severable status for the determination of legality, so that if any separate division is determined to be void or unenforceable for any reason, such determination shall have no effect upon the validity or enforceability of each other separate division, or any combination thereof.

18.5 This Agreement shall be construed and governed by the laws of the state in which the Facilities and Encroachment are located.

18.6 If any amount due pursuant to the terms of this Agreement is not paid by the due date, it will be subject to Licensor's standard late charge and will also accrue interest at eighteen percent (18%) per annum, unless limited by local law, and then at the highest rate so permitted.

18.7 Licensee agrees to reimburse Licensor for all reasonable costs (including attorney's fees) incurred by Licensor for collecting any amount due under the Agreement.

18.8 The provisions of this License are considered confidential and may not be disclosed to a third party without the consent of the other party(s), except: (a) as required by statute, regulation or court order, (b) to a parent, affiliate or subsidiary company, (c) to an auditing firm or legal counsel that are agreeable to the confidentiality provisions, or (d) to Lessees of Licensor's land and/or track who are affected by the terms and conditions of this Agreement and will maintain the confidentiality of this Agreement. This agreement and any documents or materials obtained by the Licensee may be subject to disclosure in whole or in part

pursuant to the to the Open Records Act set out in T.C.A. § 10-7-503 et seq. without regard to any provision contained in the agreement declaring any such information confidential.

18.9 Licensor shall refund to Licensee any overpayments collected, plus any taxes paid in advance; PROVIDED, however, such refund shall not be made when the cumulative total involved is less than One Hundred Dollars (\$100.00).

19. RESERVED:

20. RESERVED:

IN WITNESS WHEREOF, the parties hereto have executed this Agreement in duplicate (each of which shall constitute an original) as of the effective date of this Agreement.

Witness for Licensor:

CSX TRANSPORTATION, INC.

By: _____

Print/Type Name: _____

Print/Type Title: _____

Witness for Licensee:

CITY OF KINGSPORT

By: _____

Who, by the execution hereof, affirms that he/she has the authority to do so and to bind the Licensee to the terms and conditions of this Agreement.

Print/Type Name: _____

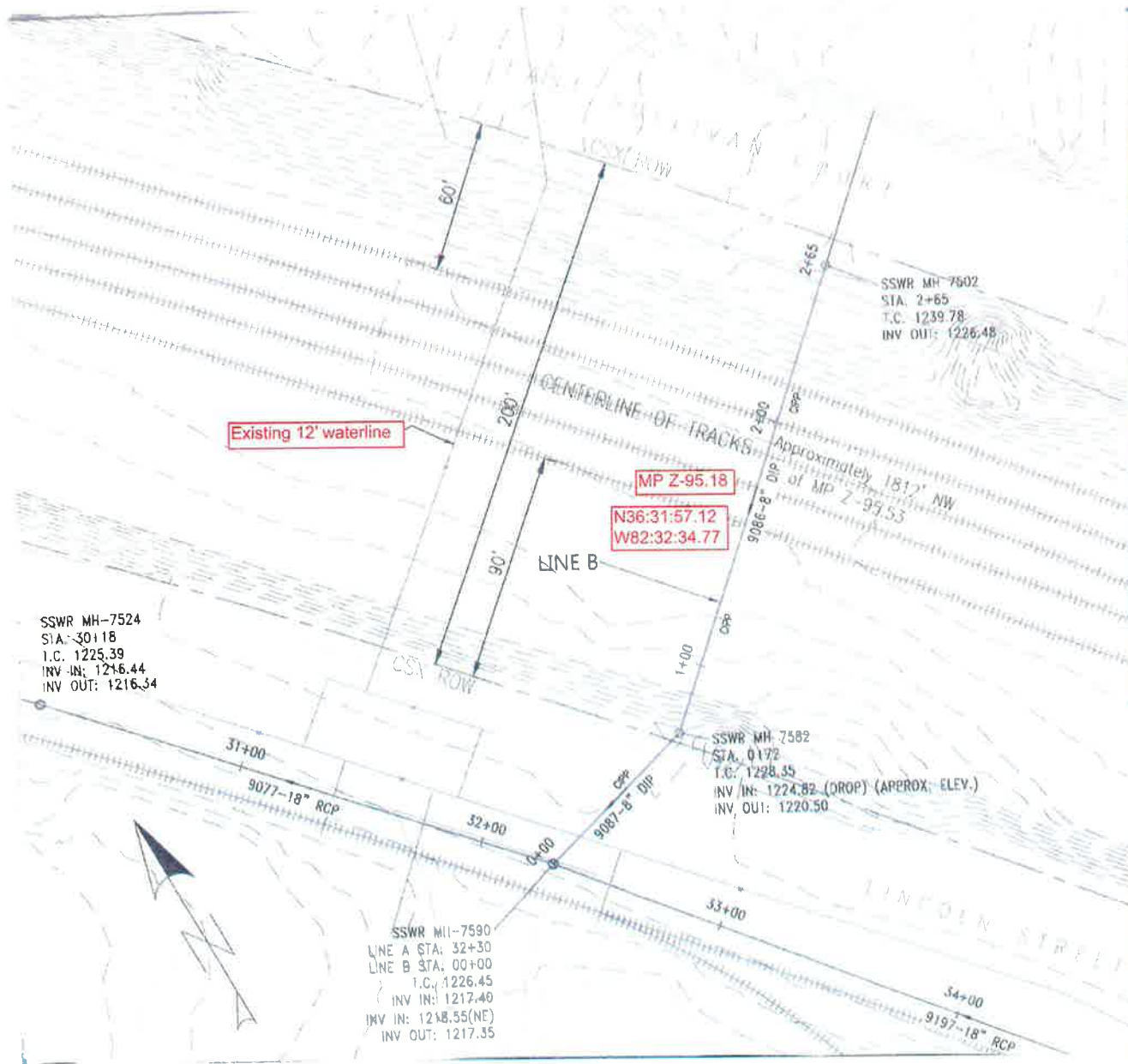
Print/Type Title: _____

Tax ID No.: _____

Authority under Ordinance or

Resolution No. _____

Dated _____



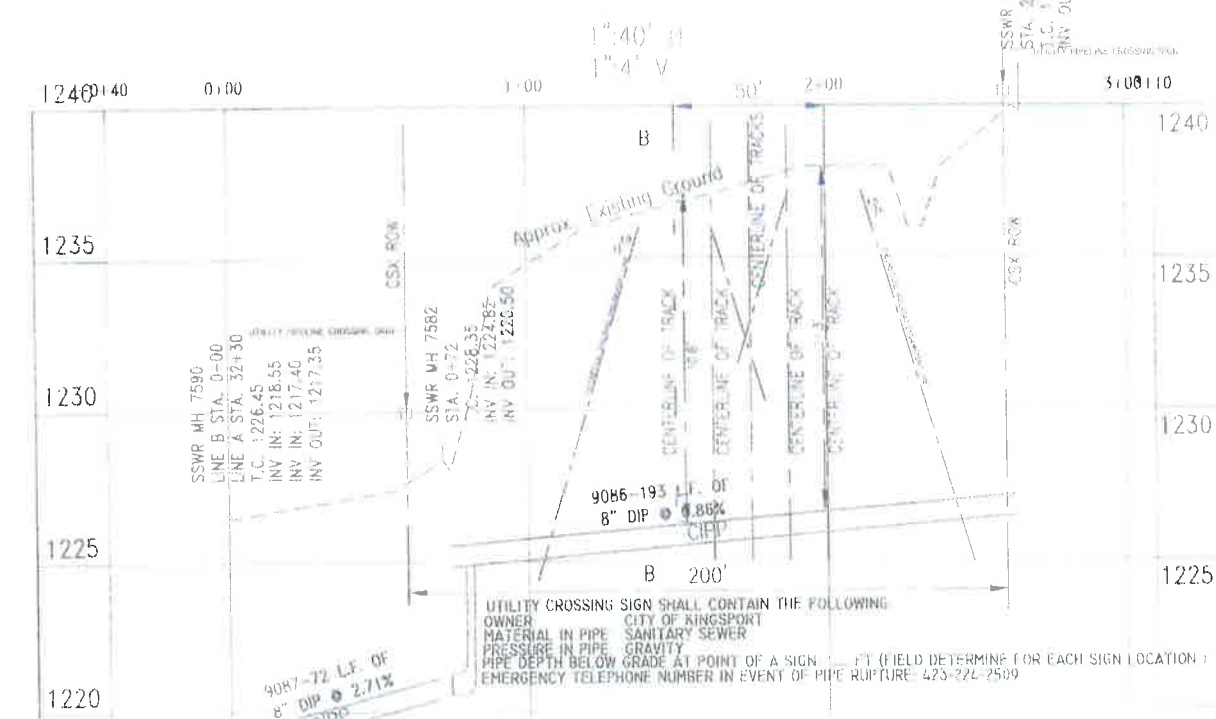
NOTES:

CSX PROPERTY SERVICES REVIEW
 No Exceptions Exceptions Noted
 This review is for the general conformance with CSX utility design specifications only. Sole responsibility for all aspects of the overall design shall remain with the facility owner. This review does not constitute approval to proceed without meeting all of CSX's safety and contractual requirements.
 By: *[Signature]*



| | | | |
|----------------|--|---------------|--------------|
| Location: | 32' SE CSX Crossing ID#243 982W @ Z 94.82 MP | | |
| Latitude: | 36.532567 | | |
| Longitude: | 82.543089 | | |
| Drawing No.: | C-05 | Sheet | 1 of |
| Drawing Date: | Feb 18, 2016 | Last Revised: | Feb 18, 2016 |
| Drawing Scale: | 1 | Inches = | 40 Feet |

LINE B PROFILE



Additional Notes/Information:

9087 - 72' L.F. OF 8" DIP @ 2.71%

| CSXT Pipeline Spec. Reference | | PIPELINE CONTENT DETAILS | |
|-------------------------------|--|---|--|
| Commodity Description | | Sanitary Sewer | |
| Maximum Operating Pressure | | Gravity Sewer | |
| Is Commodity Flammable | | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |
| CARRIER/CASING PIPE DETAILS | | | |
| | | Carrier Pipe | Casing Pipe |
| Page 13, C1, & 17, D1 | Pipe Material: | Existing Ductile Iron (lined with CIPP) | N/A |
| Page 13, C1, & 17, D1 | Material Specifications & Grade: | ASTM A746, Class 51 (ASTM F1216-07a) | N/A |
| Page 13, C1, & 17, D1 | Specified Minimum Yield Strength | N/A | N/A |
| | Nominal Size Outside Diameter (Inches) | 9.05" | N/A |
| Page 14, m, s10 | Wall Thickness (Inches) | 0.30" | N/A |
| Page 14, C1, & 17, D1 | Type of Seam | N/A | N/A |
| Page 13, C1, & 17, D1 | Type of Joints | M.J. (Continuous CIPP MH to MH) | |
| Page 16, s1 | Tunnel Liner Plates Required | <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes | |
| | Cathodic Protection | <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes | Type: |
| | Protective Coating | <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes | Type: |
| | Temp. Track Support or Rip-Rap Req. | <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes | Must Describe & Show on Drawing |

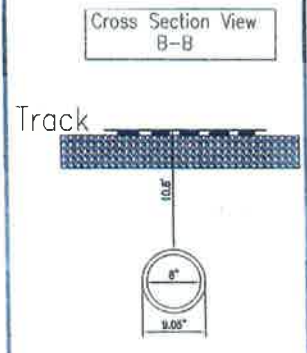
NOTES:

CSX PROPERTY SERVICES REVIEW

No Exceptions Exceptions Noted

This review is for the general conformance with CSX utility design specifications only. Sole responsibility for all aspects of the overall design shall remain with the facility owner. This review does not constitute approval to proceed without meeting all of CSX's safety and contractual requirements.

By: Joe Elton



| | | | |
|----------------|--|---------------|--------------|
| Location: | 32' SE CSXCrossingID#243 982W @ Z 94.82 MP | | |
| Latitude: | 36.532567 | | |
| Longitude: | 82.543089 | | |
| Drawing No. | C-05 | Sheet | 2 of |
| Drawing Date: | Feb. 18, 2016 | Last Revised: | Feb 18, 2016 |
| Drawing Scale: | V 1 inches = 4 Feet | | |
| Drawing Scale: | H 1 inches = 40 Feet | | |

FACILITY ENCROACHMENT AGREEMENT

THIS AGREEMENT, made and effective as of September 7, 2016, by and between CSX TRANSPORTATION, INC., a Virginia corporation, whose mailing address is 500 Water Street, Jacksonville, Florida 32202, hereinafter called "Licensor," and CITY OF KINGSPORT, a municipal corporation, political subdivision or state agency, under the laws of the State of Tennessee, whose mailing address is 225 West Center Street, Kingsport, Tennessee 37660, hereinafter called "Licensee," WITNESSETH:

WHEREAS, Licensee desires to construct (unless previously constructed and designated as existing herein), use and maintain the below described facility(ies), hereinafter called "Facilities," over, under or across property owned or controlled by Licensor, at the below described location(s):

1. One (1) eighteen inch (18") diameter sub-grade pipeline crossing, solely for the conveyance of raw/treated sewage, located at or near Kingsport, Sullivan County, Tennessee, Florence Division, Kingsport Subdivision, Milepost Z-95.53, Latitude N36:31:42.81, Longitude W82:32:21.76;

hereinafter, called the "Encroachment," as shown on print(s) labeled Exhibit "A," attached hereto and made a part hereof;

NOW, THEREFORE, in consideration of the mutual covenants, conditions, terms and agreements herein contained, the parties hereto agree and covenant as follows:

1. LICENSE:

1.1 Subject to Article 17, Licensor, insofar as it has the legal right, power and authority to do so, and its present title permits, and subject to:

- (A) Licensor's present and future right to occupy, possess and use its property within the area of the Encroachment for any and all purposes;
- (B) All encumbrances, conditions, covenants, easements, and limitations applicable to Licensor's title to or rights in the subject property; and
- (C) Compliance by Licensee with the terms and conditions herein contained;

does hereby license and permit Licensee to construct, maintain, repair, renew, operate, use, alter or change the Facilities at the Encroachment above for the term herein stated, and to remove same upon termination.

1.2 The term Facilities, as used herein, shall include only those structures and ancillary facilities devoted exclusively to the transmission usage above within the Encroachment, and as shown on attached Exhibit A.

1.3 No additional structures or other facilities shall be placed, allowed, or maintained by Licensee in, upon or on the Encroachment except upon prior separate written consent of Licensor.

2. ENCROACHMENT FEE; TERM:

2.1 Licensee shall pay Licensor a one-time nonrefundable Encroachment Fee of FIVE HUNDRED AND 00/100 U.S. DOLLARS (\$500.00) upon execution of this Agreement. Licensee agrees that the Encroachment Fee applies only to the original Licensee under this Agreement. In the event of a successor (by merger, consolidation, reorganization and/or assignment) or if the original Licensee changes its name, then Licensee shall be subject to payment of Licensor's current administrative and document preparation fees for the cost incurred by Licensor in preparing and maintaining this Agreement on a current basis.

2.2 However, Licensee assumes sole responsibility for, and shall pay directly (or reimburse Licensor), any additional annual taxes and/or periodic assessments levied against Licensor or Licensor's property solely on account of said Facilities or Encroachment.

2.3 This Agreement shall terminate as herein provided, but shall also terminate upon: (a) Licensee's cessation of use of the Facilities or Encroachment for the purpose(s) above; (b) removal of the Facilities; (c) subsequent mutual consent; and/or (d) failure of Licensee to complete installation within five (5) years from the effective date of this Agreement.

2.4 In further consideration for the license or right hereby granted, Licensee hereby agrees that Licensor shall not be charged or assessed, directly or indirectly, with any part of the cost of the installation of said Facilities and appurtenances, and/or maintenance thereof, or for any public works project of which said Facilities is a part.

3. CONSTRUCTION, MAINTENANCE AND REPAIRS:

3.1 Licensee shall construct, maintain, relocate, repair, renew, alter, and/or remove the Facilities, in a prudent, workmanlike manner, using quality materials and complying with any applicable standard(s) or regulation(s) of Licensor (CSXT Specifications), or Licensee's particular industry, National Electrical Safety Code, or any governmental or regulatory body having jurisdiction over the Encroachment.

3.2 Location and construction of Facilities shall be made strictly in accordance with design(s) and specifications furnished to and approved by Licensor and of material(s) and size(s) appropriate for the purpose(s) above recited.

3.3 All of Licensee's work, and exercise of rights hereunder, shall be undertaken at time(s) satisfactory to Licensor, and so as to eliminate or minimize any impact on or interference with the safe use and operation of Licensor's property and appurtenances thereto.

3.4 In the installation, maintenance, repair and/or removal of said Facilities, Licensee shall not use explosives of any type or perform or cause any blasting without the separate express written consent of Licensor. As a condition to such consent, a representative will be assigned by Licensor to monitor blasting, and Licensee shall reimburse Licensor for the entire cost and/or expense of furnishing said monitor.

3.5 Any repairs or maintenance to the Facilities, whether resulting from acts of Licensee, or natural or weather events, which are necessary to protect or facilitate Licensor's use of its property, shall be made by Licensee promptly, but in no event later than thirty (30) days after Licensee has notice as to the need for such repairs or maintenance.

3.6 Licensor, in order to protect or safeguard its property, rail operations, equipment and/or employees from damage or injury, may request immediate repair or renewal of the Facilities, and if the same is not performed, may make or contract to make such repairs or renewals, at the sole risk, cost and expense of Licensee.

3.7 Neither the failure of Licensor to object to any work done, material used, or method of construction or maintenance of said Encroachment, nor any approval given or supervision exercised by Licensor, shall be construed as an admission of liability or responsibility by Licensor, or as a waiver by Licensor of any of the obligations, liability and/or responsibility of Licensee under this Agreement.

3.8 All work on the Encroachment shall be conducted in accordance with Licensor's safety rules and regulations.

3.9 Licensee hereby agrees to reimburse Licensor any loss, cost or expense (including losses resulting from train delays and/or inability to meet train schedules) arising from any failure of Licensee to make repairs or conduct maintenance as required by Section 3.5 above or from improper or incomplete repairs or maintenance to the Facilities or Encroachment.

4. PERMITS, LICENSES:

4.1 Before any work hereunder is performed, or before use of the Encroachment for the contracted purpose, Licensee, at its sole cost and expense, shall obtain all necessary permit(s) (including but not limited to zoning, building, construction, health, safety or environmental matters), letter(s) or certificate(s) of approval. Licensee expressly agrees and warrants that it shall conform and limit its activities to the terms of such permit(s), approval(s) and authorization(s), and shall comply with all applicable ordinances, rules, regulations, requirements and laws of any governmental authority (State, Federal or Local) having jurisdiction over Licensee's activities, including the location, contact, excavation and protection regulations of the

Occupational Safety and Health Act (OSHA) (29 CFR 1926.651(b)), et al., and State "One Call" - "Call Before You Dig" requirements.

4.2 Licensee assumes sole responsibility for failure to obtain such permit(s) or approval(s), for any violations thereof, or for costs or expenses of compliance or remedy.

5. MARKING AND SUPPORT:

5.1 With respect to any subsurface installation or maintenance upon Licensor's property, Licensee, at its sole cost and expense, shall:

- (A) support track(s) and roadbed in a manner satisfactory to Licensor;
- (B) backfill with satisfactory material and thoroughly tamp all trenches to prevent settling of surface of land and roadbed of Licensor; and
- (C) either remove any surplus earth or material from Licensor's property or cause said surplus earth or material to be placed and distributed at location(s) and in such manner Licensor may approve.

5.2 After construction or maintenance of the Facilities, Licensee shall:

- (A) Restore any track(s), roadbed and other disturbed property; and
- (B) Erect, maintain and periodically verify the accuracy of aboveground markers, in a form approved by Licensor, indicating the location, depth and ownership of any underground Facilities or related facilities.

5.3 Licensee shall be solely responsible for any subsidence or failure of lateral or subjacent support in the Encroachment area for a period of three (3) years after completion of installation.

6. TRACK CHANGES:

6.1 In the event that rail operations and/or track maintenance result in changes in grade or alignment of, additions to, or relocation of track(s) or other facilities, or in the event future use of Licensor's rail corridor or property necessitate any change of location, height or depth in the Facilities or Encroachment, Licensee, at its sole cost and expense and within thirty (30) days after notice in writing from Licensor, shall make changes in the Facilities or Encroachment to accommodate such track(s) or operations.

6.2 If Licensee fails to do so, Licensor may make or contract to make such changes at Licensee's cost.

7. FACILITY CHANGES:

7.1 Licensee shall periodically monitor and verify the depth or height of the Facilities or Encroachment in relation to the existing tracks and facilities, and shall relocate the Facilities or change the Encroachment, at Licensee's expense, should such relocation or change be necessary to comply with the minimum clearance requirements of Licensor.

7.2 If Licensee undertakes to revise, renew, relocate or change in any manner whatsoever all or any part of the Facilities (including any change in voltage or gauge of wire or any change in circumference, diameter or radius of pipe or change in materials transmitted in and through said pipe), or is required by any public agency or court order to do so, plans therefor shall be submitted to Licensor for approval before such change. After approval, the terms and conditions of this Agreement shall apply thereto.

8. INTERFERENCE WITH RAIL FACILITIES:

8.1 Although the Facilities/Encroachment herein permitted may not presently interfere with Licensor's railroad or facilities, in the event that the operation, existence or maintenance of said Facilities, in the sole judgment of Licensor, causes: (a) interference (including, but not limited to, physical or interference from an electromagnetic induction, or interference from stray or other currents) with Licensor's power lines, communication, signal or other wires, train control system, or electrical or electronic apparatus; or (b) interference in any manner, with the operation, maintenance or use of the rail corridor, track(s), structures, pole line(s), devices, other property, or any appurtenances thereto; then and in either event, Licensee, upon receipt of written notice from Licensor of any such interference, and at Licensee's sole risk, cost and expense, shall promptly make such changes in its Facilities or installation, as may be required in the reasonable judgment of the Licensor to eliminate all such interference. Upon Licensee's failure to remedy or change, Licensor may do so or contract to do so at Licensee's sole cost.

8.2 Without assuming any duty hereunder to inspect the Facilities, Licensor hereby reserves the right to inspect same and to require Licensee to undertake repairs, maintenance or adjustments to the Facilities, which Licensee hereby agrees to make promptly, at Licensee's sole cost and expense.

9. RISK, LIABILITY, INDEMNITY:

With respect to the relative risk and liabilities of the parties, it is hereby agreed that:

9.1 To the fullest extent permitted by State law (constitutional or statutory, as amended), Licensee hereby agrees to, defend, indemnify, and hold Licensor harmless from and against any and all liability, loss, claim, suit, damage, charge or expense which Licensor may suffer, sustain, incur or in any way be subjected to, on account of death of or injury to any person whomsoever (including officers, agents, employees or invitees of Licensor), and for damage to

or loss of or destruction of any property whatsoever, arising out of, resulting from, or in any way connected with the construction, repair, maintenance, replacement, presence, existence, operations, use or removal of the Facilities or any structure in connection therewith, or restoration of premises of Licensor to good order or condition after removal, EXCEPT when proven to have been caused solely by the willful misconduct or gross negligence of Licensor. HOWEVER, to the fullest extent permitted by State law, during any period of actual construction, repair, maintenance, replacement or removal of the Facilities, wherein agents, equipment or personnel of Licensee are on the railroad rail corridor, Licensee's liability hereunder shall be absolute, irrespective of any joint, sole or contributory fault or negligence of Licensor.

9.2 Use of Licensor's rail corridor involves certain risks of loss or damage as a result of the rail operations. Notwithstanding Section 9.1, Licensee expressly assumes all risk of loss and damage to Licensee's Property or the Facilities in, on, over or under the Encroachment, including loss of or any interference with use or service thereof, regardless of cause, including electrical field creation, fire or derailment resulting from rail operations. For this Section, the term "Licensee's Property" shall include property of third parties situated or placed upon Licensor's rail corridor by Licensee or by such third parties at request of or for benefit of Licensee.

9.3 To the fullest extent permitted by State law, as above, Licensee assumes all responsibility for, and agrees to defend, indemnify and hold Licensor harmless from: (a) all claims, costs and expenses, including reasonable attorneys' fees, as a consequence of any sudden or nonsudden pollution of air, water, land and/or ground water on or off the Encroachment area, arising from or in connection with the use of this Encroachment or resulting from leaking, bursting, spilling, or any escape of the material transmitted in or through the Facilities; (b) any claim or liability arising under federal or state law dealing with either such sudden or nonsudden pollution of air, water, land and/or ground water arising therefrom or the remedy thereof; and (c) any subsidence or failure of lateral or subjacent support of the tracks arising from such Facilities leakage.

9.4 Notwithstanding Section 9.1, Licensee also expressly assumes all risk of loss which in any way may result from Licensee's failure to maintain either required clearances for any overhead Facilities or the required depth and encasement for any underground Facilities, whether or not such loss(es) result(s) in whole or part from Licensor's contributory negligence or joint fault.

9.5 Obligations of Licensee hereunder to release, indemnify and hold Licensor harmless shall also extend to companies and other legal entities that control, are controlled by, subsidiaries of, or are affiliated with Licensor, as well as any railroad that operates over the rail corridor on which the Encroachment is located, and the officers, employees and agents of each.

9.6 If a claim is made or action is brought against Licensor, and/or its operating lessee, for which Licensee may be responsible hereunder, in whole or in part, Licensee shall be

notified to assume the handling or defense of such claim or action; but Licensor may participate in such handling or defense.

9.7 Notwithstanding anything contained in this Agreement, the limitation of liability contained in the state statutes, as amended from time to time, shall not limit Licensor's ability to collect under the insurance policies required to be maintained under this Agreement.

10. INSURANCE:

10.1 Prior to commencement of surveys, installation or occupation of premises pursuant to this Agreement, Licensee shall procure and shall maintain during the continuance of this Agreement, at its sole cost and expense, a policy of

(i) The city is self-insured under the Tennessee Workers Compensation Act for injuries to its employees arising out of and in the course and scope of employment;

(ii) Commercial General Liability coverage (inclusive of contractual liability) with available limits of not less than FIVE MILLION AND 00/100 U.S. DOLLARS (\$5,000,000.00), naming Licensor, and/or its designee, as additional insured and in combined single limits for bodily injury and property damage and covering the contractual liabilities assumed under this Agreement. The evidence of insurance coverage shall be endorsed to provide for thirty (30) days' notice to Licensor, or its designee, prior to cancellation or modification of any policy, provided however, notwithstanding anything here to the contrary, tort actions or anything covered by the provisions of the Tennessee Governmental Tort Liability Act found at T.C.A. section 29-20-101 et seq., including the limits of liability, shall apply and no provision of the Agreement shall act or be deemed a waiver by the City of any immunity, its rights or privileges as a sovereign entity, as waiver can only be made by the Tennessee General Assembly. Mail CGL certificate, along with agreement, to CSX Transportation, Inc., Speed Code J180, 500 Water Street, Jacksonville, FL 32202. On each successive year, send certificate to RenewalCOI@csx.com.

(iii) Business automobile liability insurance with available limits of not more than \$300,000 for bodily injury or death of any one person in any one accident, occurrence or act, and not more than \$700,000 for bodily injury or death of all persons in any one accident, occurrence or act, and \$100,000 for injury or destruction of property of others in any one accident occurrence or act;

(iv) Such other insurance as Licensor may reasonably require.

10.2 If Licensee's existing CGL policy(ies) do(es) not automatically cover Licensee's contractual liability during periods of survey, installation, maintenance and continued occupation, a specific endorsement adding such coverage shall be purchased by Licensee if allowable due to the city being subject to and governed by the Tennessee Governmental Tort Liability Act and the limits and conditions set out in that Act apply. If said CGL policy is

written on a "claims made" basis instead of a "per occurrence" basis, Licensee shall arrange for adequate time for reporting losses. Failure to do so shall be at Licensee's sole risk.

10.3 Licensor, or its designee, may at any time request evidence of insurance purchased by Licensee to comply with this Agreement. Failure of Licensee to comply with Licensor's request shall be considered a default by Licensee.

10.4 Securing such insurance shall not limit Licensee's liability under this Agreement, but shall be security therefor.

10.5 (A) In the event Licensee finds it necessary to perform construction or demolition operations within fifty feet (50') of any operated railroad track(s) or affecting any railroad bridge, trestle, tunnel, track(s), roadbed, overpass or underpass, Licensee shall: (a) notify Licensor; and (b) require its contractor(s) performing such operations to procure and maintain during the period of construction or demolition operations, at no cost to Licensor, Railroad Protective Liability (RPL) Insurance, naming Licensor, and/or its designee, as Named Insured, written on the current ISO/RIMA Form (ISO Form No. CG 00 35 01 96) with limits of FIVE MILLION AND 00/100 U.S. DOLLARS (\$5,000,000.00) per occurrence for bodily injury and property damage, with at least TEN MILLION AND 00/100 U.S. DOLLARS (\$10,000,000.00) aggregate limit per annual policy period, with Pollution Exclusion Amendment (ISO CG 28 31 11 85) if an older ISO Form CG 00 35 is used. The original of such RPL policy shall be sent to and approved by Licensor prior to commencement of such construction or demolition. Licensor reserves the right to demand higher limits.

(B) At Licensor's option, in lieu of purchasing RPL insurance from an insurance company (but not CGL insurance), Licensee may pay Licensor, at Licensor's current rate at time of request, the cost of adding this Encroachment, or additional construction and/or demolition activities, to Licensor's Railroad Protective Liability (RPL) Policy for the period of actual construction. This coverage is offered at Licensor's discretion and may not be available under all circumstances.

10.6 Notwithstanding the provisions of Sections 10.1 and 10.2, Licensee, pursuant to State Statute(s), may self-insure or self-assume, in any amount(s), any contracted liability arising under this Agreement, under a funded program of self-insurance, which fund will respond to liability of Licensee imposed by and in accordance with the procedures established by law.

Notwithstanding anything herein to the contrary for tort actions the provision of the Tennessee Governmental Tort Liability Action found at T.C.A. § 29-20-101 et seq., including the limits of liability, shall apply and no provision of the Agreement shall act or be deemed a waiver by the Licensee of any immunity, its rights or privileges as a sovereign entity, as waiver can only be made by the Tennessee General Assembly.

11. GRADE CROSSINGS; FLAGGING:

11.1 Nothing herein contained shall be construed to permit Licensee or Licensee's contractor to move any vehicles or equipment over the track(s), except at public road crossing(s), without separate prior written approval of Licensor.

11.2 If Licensor deems it advisable, during any construction, maintenance, repair, renewal, alteration, change or removal of said Facilities, to place watchmen, flagmen, inspectors or supervisors for protection of operations of Licensor or others on Licensor's rail corridor at the Encroachment, and to keep persons, equipment or materials away from the track(s), Licensor shall have the right to do so at the expense of Licensee, but Licensor shall not be liable for failure to do so.

12. LICENSOR'S COSTS:

12.1 Any additional or alternative costs or expenses incurred by Licensor to accommodate Licensee's continued use of Licensor's property as a result of track changes or wire changes shall also be paid by Licensee.

12.2 Licensor's expense for wages ("force account" charges) and materials for any work performed at the expense of Licensee pursuant hereto shall be paid by Licensee within thirty (30) days after receipt of Licensor's bill therefor. Licensor may, at its discretion, request an advance deposit for estimated Licensor costs and expenses.

12.3 Such expense shall include, but not be limited to, cost of railroad labor and supervision under "force account" rules, plus current applicable overhead percentages, the actual cost of materials, and insurance, freight and handling charges on all material used. Equipment rentals shall be in accordance with Licensor's applicable fixed rate. Licensor may, at its discretion, require advance deposits for estimated costs of such expenses and costs.

13. DEFAULT, BREACH, WAIVER:

13.1 The proper and complete performance of each covenant of this Agreement shall be deemed of the essence thereof, and in the event Licensee fails or refuses to fully and completely perform any of said covenants or remedy any breach within thirty (30) days after receiving written notice from Licensor to do so (or within forty-eight (48) hours in the event of notice of a railroad emergency), Licensor shall have the option of immediately revoking this Agreement and the privileges and powers hereby conferred, regardless of encroachment fee(s) having been paid in advance for any annual or other period. Upon such revocation, Licensee shall make removal in accordance with Article 14.

13.2 No waiver by Licensor of its rights as to any breach of covenant or condition herein contained shall be construed as a permanent waiver of such covenant or condition, or any

subsequent breach thereof, unless such covenant or condition is permanently waived in writing by Licensor.

13.3 Neither the failure of Licensor to object to any work done, material used, or method of construction or maintenance of said Encroachment, nor any approval given or supervision exercised by Licensor, shall be construed as an admission of liability or responsibility by Licensor, or as a waiver by Licensor of any of the obligations, liability and/or responsibility of Licensee under this Agreement.

14. TERMINATION, REMOVAL:

14.1 All rights which Licensee may have hereunder shall cease upon the date of (a) termination, (b) revocation, or (c) subsequent agreement, or (d) Licensee's removal of the Facility from the Encroachment. However, neither termination nor revocation of this Agreement shall affect any claims and liabilities which have arisen or accrued hereunder, and which at the time of termination or revocation have not been satisfied; neither party, however, waiving any third party defenses or actions.

14.2 Within thirty (30) days after revocation or termination, Licensee, at its sole risk and expense, shall (a) remove the Facilities from the rail corridor of Licensor, unless the parties hereto agree otherwise, (b) restore the rail corridor of Licensor in a manner satisfactory to Licensor, and (c) reimburse Licensor any loss, cost or expense of Licensor resulting from such removal.

15. NOTICE:

15.1 Licensee shall give Licensor at least thirty (30) days written notice before doing any work on Licensor's rail corridor, except that in cases of emergency shorter notice may be given. Licensee shall provide proper notification as follows:

a. For non-emergencies, Licensee shall submit online via the CSX Property Portal from Licensor's web site, via web link:
https://propertyportal.csx.com/pub_ps_res/ps_res/jsf/public/index.faces

b. For emergencies, Licensee shall complete all of the steps outlined in Section 15.1 a. above, and shall also include detailed information of the emergency. Licensee shall also call and report details of the emergency to Licensor's Rail Operations Emergency Telephone Number: 1-800-232-0144. In the event Licensor needs to contact Licensee concerning an emergency involving Licensee's Facility(ies), the emergency phone number for Licensee is: 423-224-2601.

15.2 All other notices and communications concerning this Agreement shall be addressed to Licensee at the address above, and to Licensor at the address shown on Page 1, c/o

CSXT Contract Management, J180; or at such other address as either party may designate in writing to the other.

15.3 Unless otherwise expressly stated herein, all such notices shall be in writing and sent via Certified or Registered Mail, Return Receipt Requested, or by courier, and shall be considered delivered upon: (a) actual receipt, or (b) date of refusal of such delivery.

16. ASSIGNMENT:

16.1 The rights herein conferred are the privileges of Licensee only, and Licensee shall obtain Licensor's prior written consent to any assignment of Licensee's interest herein; said consent shall not be unreasonably withheld.

16.2 Subject to Sections 2 and 16.1, this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors or assigns.

16.3 Licensee shall give Licensor written notice of any legal succession (by merger, consolidation, reorganization, etc.) or other change of legal existence or status of Licensee, with a copy of all documents attesting to such change or legal succession, within thirty (30) days thereof.

16.4 Licensor expressly reserves the right to assign this Agreement, in whole or in part, to any grantee, lessee, or vendee of Licensor's underlying property interests in the Encroachment, upon written notice thereof to Licensee.

16.5 In the event of any unauthorized sale, transfer, assignment, sublicense or encumbrance of this Agreement, or any of the rights and privileges hereunder, Licensor, at its option, may revoke this Agreement by giving Licensee or any such assignee written notice of such revocation; and Licensee shall reimburse Licensor for any loss, cost or expense Licensor may incur as a result of Licensee's failure to obtain said consent.

17. TITLE:

17.1 Licensee understands that Licensor occupies, uses and possesses lands, rights-of-way and rail corridors under all forms and qualities of ownership rights or facts, from full fee simple absolute to bare occupation. Accordingly, nothing in this Agreement shall act as or be deemed to act as any warranty, guaranty or representation of the quality of Licensor's title for any particular Encroachment or segment of Rail Corridor occupied, used or enjoyed in any manner by Licensee under any rights created in this Agreement. It is expressly understood that Licensor does not warrant title to any Rail Corridor and Licensee will accept the grants and privileges contained herein, subject to all lawful outstanding existing liens, mortgages and superior rights in and to the Rail Corridor, and all leases, licenses and easements or other interests previously granted to others therein.

17.2 The term "license," as used herein, shall mean with regard to any portion of the Rail Corridor which is owned by Licensor in fee simple absolute, or where the applicable law of the State where the Encroachment is located otherwise permits Licensor to make such grants to Licensee, a "permission to use" the Rail Corridor, with dominion and control over such portion of the Rail Corridor remaining with Licensor, and no interest in or exclusive right to possess being otherwise granted to Licensee. With regard to any other portion of Rail Corridor occupied, used or controlled by Licensor under any other facts or rights, Licensor merely waives its exclusive right to occupy the Rail Corridor and grants no other rights whatsoever under this Agreement, such waiver continuing only so long as Licensor continues its own occupation, use or control. Licensor does not warrant or guarantee that the license granted hereunder provides Licensee with all of the rights necessary to occupy any portion of the Rail Corridor. Licensee further acknowledges that it does not have the right to occupy any portion of the Rail Corridor held by Licensor in less than fee simple absolute without also receiving the consent of the owner(s) of the fee simple absolute estate. Further, Licensee shall not obtain, exercise or claim any interest in the Rail Corridor that would impair Licensor's existing rights therein.

17.3 Licensee agrees it shall not have nor shall it make, and hereby completely and absolutely waives its right to, any claim against Licensor for damages on account of any deficiencies in title to the Rail Corridor in the event of failure or insufficiency of Licensor's title to any portion thereof arising from Licensee's use or occupancy thereof.

17.4 To the extent permitted by Tennessee law, Licensee agrees to fully and completely indemnify and defend all claims or litigation for slander of title, overburden of easement, or similar claims arising out of or based upon the Facilities placement, or the presence of the Facilities in, on or along any Encroachment(s), including claims for punitive or special damages.

17.5 Licensee shall not at any time own or claim any right, title or interest in or to Licensor's property occupied by the Encroachments, nor shall the exercise of this Agreement for any length of time give rise to any right, title or interest in Licensee to said property other than the license herein created.

17.6 Nothing in this Agreement shall be deemed to give, and Licensor hereby expressly waives, any claim of ownership in and to any part of the Facilities.

17.7 Licensee shall not create or permit any mortgage, pledge, security, interest, lien or encumbrances, including without limitation, tax liens and liens or encumbrances with respect to work performed or equipment furnished in connection with the construction, installation, repair, maintenance or operation of the Facilities in or on any portion of the Encroachment (collectively, "Liens or Encumbrances"), to be established or remain against the Encroachment or any portion thereof or any other Licensor property.

17.8 In the event that any property of Licensor becomes subject to such Liens or

Encumbrances, Licensee agrees to pay, discharge or remove the same promptly upon Licensee's receipt of notice that such Liens or Encumbrances have been filed or docketed against the Encroachment or any other property of Licensor; however, Licensee reserves the right to challenge, at its sole expense, the validity and/or enforceability of any such Liens or Encumbrances.

18. GENERAL PROVISIONS:

18.1 This Agreement, and the attached specifications, contains the entire understanding between the parties hereto.

18.2 Neither this Agreement, any provision hereof, nor any agreement or provision included herein by reference, shall operate or be construed as being for the benefit of any third person.

18.3 Except as otherwise provided herein, or in any Rider attached hereto, neither the form of this Agreement, nor any language herein, shall be interpreted or construed in favor of or against either party hereto as the sole drafter thereof.

18.4 This Agreement is executed under current interpretation of applicable Federal, State, County, Municipal or other local statute, ordinance or law(s). However, each separate division (paragraph, clause, item, term, condition, covenant or agreement) herein shall have independent and severable status for the determination of legality, so that if any separate division is determined to be void or unenforceable for any reason, such determination shall have no effect upon the validity or enforceability of each other separate division, or any combination thereof.

18.5 This Agreement shall be construed and governed by the laws of the state in which the Facilities and Encroachment are located.

18.6 If any amount due pursuant to the terms of this Agreement is not paid by the due date, it will be subject to Licensor's standard late charge and will also accrue interest at eighteen percent (18%) per annum, unless limited by local law, and then at the highest rate so permitted.

18.7 Licensee agrees to reimburse Licensor for all reasonable costs (including attorney's fees) incurred by Licensor for collecting any amount due under the Agreement.

18.8 The provisions of this License are considered confidential and may not be disclosed to a third party without the consent of the other party(s), except: (a) as required by statute, regulation or court order, (b) to a parent, affiliate or subsidiary company, (c) to an auditing firm or legal counsel that are agreeable to the confidentiality provisions, or (d) to Lessees of Licensor's land and/or track who are affected by the terms and conditions of this Agreement and will maintain the confidentiality of this Agreement. This agreement and any documents or materials obtained by the Licensee may be subject to disclosure in whole or in part

pursuant to the to the Open Records Act set out in T.C.A. § 10-7-503 et seq. without regard to any provision contained in the agreement declaring any such information confidential.

18.9 Licensor shall refund to Licensee any overpayments collected, plus any taxes paid in advance; PROVIDED, however, such refund shall not be made when the cumulative total involved is less than One Hundred Dollars (\$100.00).

19. **RESERVED:**

20. **RESERVED:**

IN WITNESS WHEREOF, the parties hereto have executed this Agreement in duplicate (each of which shall constitute an original) as of the effective date of this Agreement.

Witness for Licensor:

CSX TRANSPORTATION, INC.

By: _____

Print/Type Name: _____

Print/Type Title: _____

Witness for Licensee:

CITY OF KINGSPORT

By: _____

Who, by the execution hereof, affirms that he/she has the authority to do so and to bind the Licensee to the terms and conditions of this Agreement.

Print/Type Name: _____

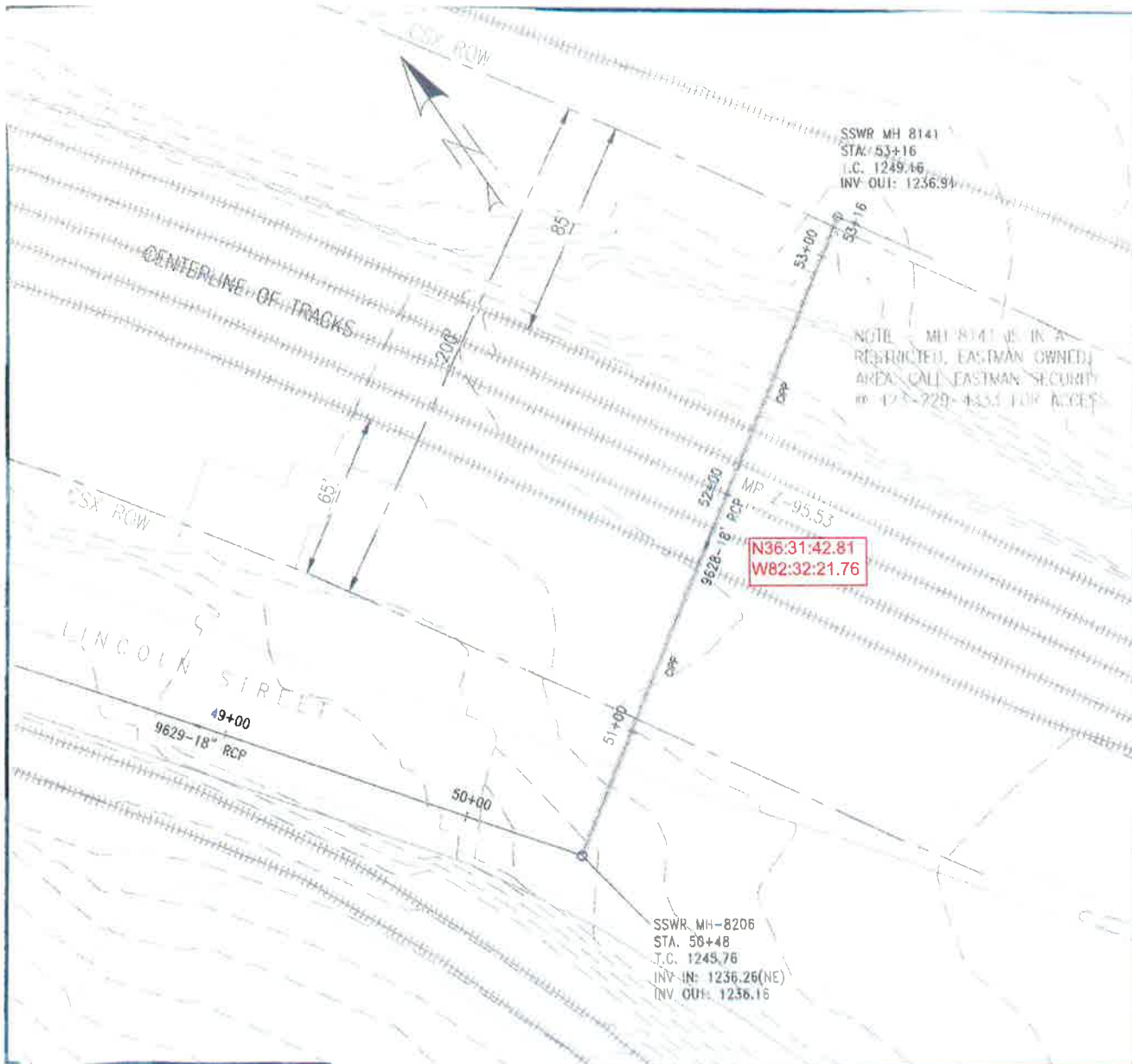
Print/Type Title: _____

Tax ID No.: _____

Authority under Ordinance or

Resolution No. _____,

Dated _____.



NOTES:

CSX PROPERTY SERVICES REVIEW

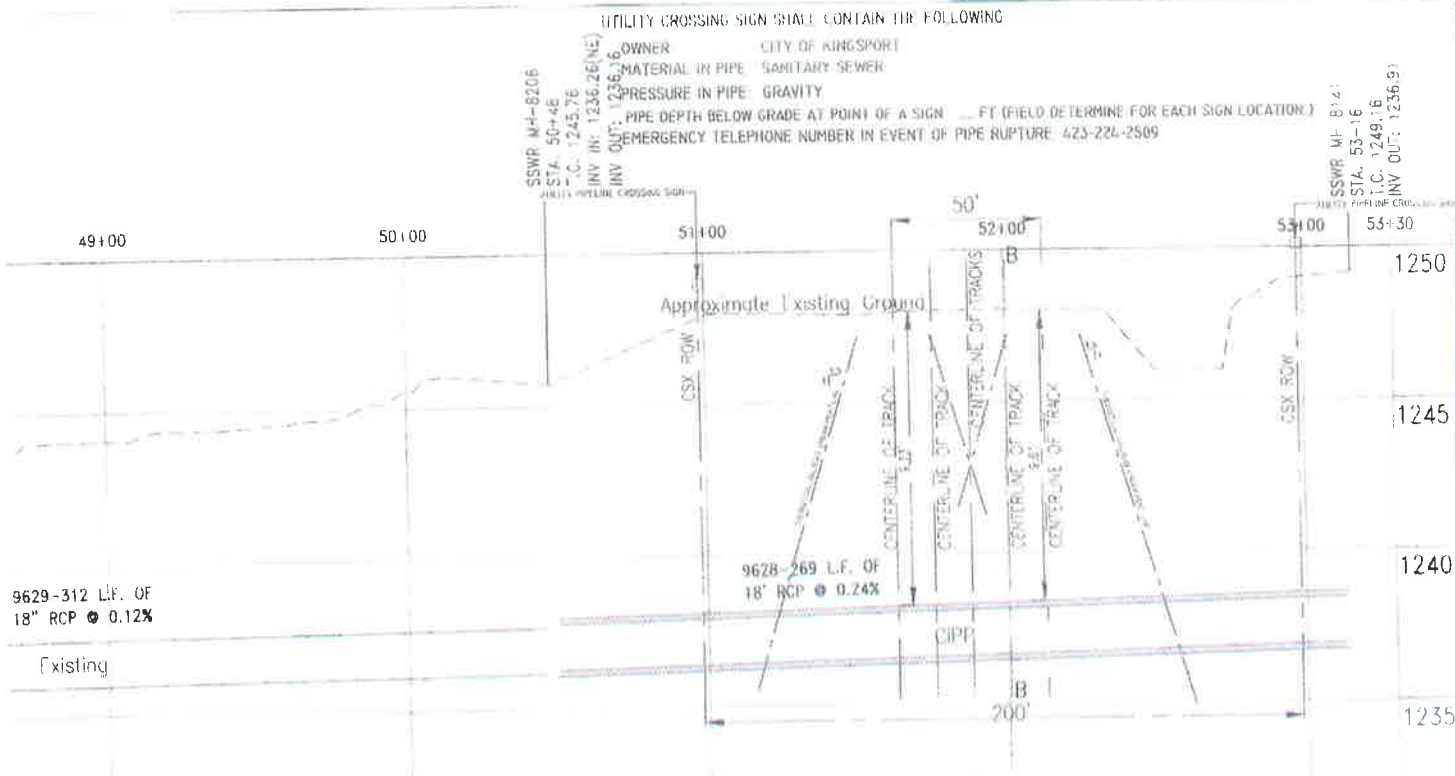
No Exceptions Exceptions Noted

This review is for the general conformance with CSX utility design specifications only. Sole responsibility for all aspects of the overall design shall remain with the facility owner. This review does not constitute approval to proceed without meeting all of CSX's safety and contractual requirements.

By: Fe Elva



| | | | |
|----------------|--|---------------|--------------|
| Location: | 3179.5' SE CSXCrossID#243 982W @ Z 94.82MP | | |
| Latitude: | 36.528558 | | |
| Longitude: | 82.539461 | | |
| Drawing No.: | C-04 | Sheet | 1 of |
| Drawing Date: | Feb 18, 2016 | Last Revised: | Feb 18, 2016 |
| Drawing Scale: | 1 inches = 40 Feet | | |



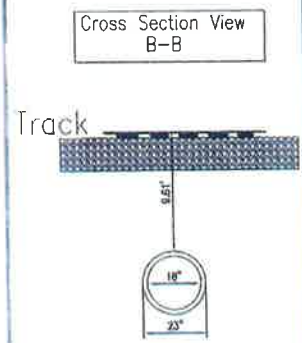
NOTES:

CSX PROPERTY SERVICES REVIEW

No Exceptions Exceptions Noted

This review is for the general conformance with CSX utility design specifications only. Sole responsibility for all aspects of the overall design shall remain with the facility owner. This review does not constitute approval to proceed without meeting all of CSX's safety and contractual requirements.

By: Paul Elmer



Additional Notes/Information:

CSXT Pipeline Spec. Reference

| PIPELINE CONTENT DETAILS | | |
|-----------------------------|--|---------------------------------|
| Commodity Description: | Sanitary Sewer | |
| Maximum Operating Pressure: | Gravity Sewer | |
| Is Commodity Flammable: | <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No | |
| CARRIER/CASING PIPE DETAILS | | |
| | Carrier Pipe | Casing Pipe |
| Page 13, C), & 17, D) | Pipe Material: Existing RCP (lined with CIPP) | N/A |
| Page 13, C), & 17, D) | Material Specifications & Grade: ASTM C76, Class V (ASTM F1216-07a) | N/A |
| Page 13, C), & 17, D) | Specified Minimum Yield Strength: N/A | N/A |
| | Nominal Size Outside Diameter (Inches): 23" | N/A |
| Page 14, u), (d) | Wall Thickness (Inches): 2.5" | N/A |
| Page 13, C), & 17, D) | Type of Seam: N/A | N/A |
| Page 13, C), & 17, D) | Type of Joints: M.J. (Continuous CIPP MH to MH) | N/A |
| Page 16, v) | Tunnel Liner Plates Required: <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes | |
| | Cathodic Protection: <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes | Type: |
| | Protective Coating: <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes | Type: |
| | Temp. Track Support or Rip-Rap Req.: <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes | Must Describe & Show on Drawing |

Location: 3179.5° SE CSXCrossID#243 982W @ Z 94.82MP

Latitude: 36.528558

Longitude: 82.539461

Drawing No: C-04 Sheet 2 of

Drawing Date: Feb. 18, 2016 Last Revised: Feb 18, 2016

Drawing Scale: V 1 Inches = 4 Feet

Drawing Scale: H 1 Inches = 40 Feet

FACILITY ENCROACHMENT AGREEMENT

THIS AGREEMENT, made and effective as of September 7, 2016, by and between CSX TRANSPORTATION, INC., a Virginia corporation, whose mailing address is 500 Water Street, Jacksonville, Florida 32202, hereinafter called "Licensor," and CITY OF KINGSPORT, a municipal corporation, political subdivision or state agency, under the laws of the State of Tennessee, whose mailing address is 225 West Center Street, Kingsport, Tennessee 37660, hereinafter called "Licensee," WITNESSETH:

WHEREAS, Licensee desires to construct (unless previously constructed and designated as existing herein), use and maintain the below described facility(ies), hereinafter called "Facilities," over, under or across property owned or controlled by Licensor, at the below described location(s):

1. One (1) eighteen inch (18") diameter sub-grade pipeline crossing, solely for the conveyance of raw/treated sewage, located at or near Kingsport, Sullivan County, Tennessee, Florence Division, Kingsport Subdivision, Milepost Z-94.93, Latitude N36:32:04.45, Longitude W82:32:47.33;

hereinafter, called the "Encroachment," as shown on print(s) labeled Exhibit "A," attached hereto and made a part hereof;

NOW, THEREFORE, in consideration of the mutual covenants, conditions, terms and agreements herein contained, the parties hereto agree and covenant as follows:

1. LICENSE:

1.1 Subject to Article 17, Licensor, insofar as it has the legal right, power and authority to do so, and its present title permits, and subject to:

- (A) Licensor's present and future right to occupy, possess and use its property within the area of the Encroachment for any and all purposes;
- (B) All encumbrances, conditions, covenants, easements, and limitations applicable to Licensor's title to or rights in the subject property; and
- (C) Compliance by Licensee with the terms and conditions herein contained;

does hereby license and permit Licensee to construct, maintain, repair, renew, operate, use, alter or change the Facilities at the Encroachment above for the term herein stated, and to remove same upon termination.

1.2 The term Facilities, as used herein, shall include only those structures and ancillary facilities devoted exclusively to the transmission usage above within the Encroachment, and as shown on attached Exhibit A.

1.3 No additional structures or other facilities shall be placed, allowed, or maintained by Licensee in, upon or on the Encroachment except upon prior separate written consent of Licensor.

2. ENCROACHMENT FEE; TERM:

2.1 Licensee shall pay Licensor a one-time nonrefundable Encroachment Fee of FIVE HUNDRED AND 00/100 U.S. DOLLARS (\$500.00) upon execution of this Agreement. Licensee agrees that the Encroachment Fee applies only to the original Licensee under this Agreement. In the event of a successor (by merger, consolidation, reorganization and/or assignment) or if the original Licensee changes its name, then Licensee shall be subject to payment of Licensor's current administrative and document preparation fees for the cost incurred by Licensor in preparing and maintaining this Agreement on a current basis.

2.2 However, Licensee assumes sole responsibility for, and shall pay directly (or reimburse Licensor), any additional annual taxes and/or periodic assessments levied against Licensor or Licensor's property solely on account of said Facilities or Encroachment.

2.3 This Agreement shall terminate as herein provided, but shall also terminate upon: (a) Licensee's cessation of use of the Facilities or Encroachment for the purpose(s) above; (b) removal of the Facilities; (c) subsequent mutual consent; and/or (d) failure of Licensee to complete installation within five (5) years from the effective date of this Agreement.

2.4 In further consideration for the license or right hereby granted, Licensee hereby agrees that Licensor shall not be charged or assessed, directly or indirectly, with any part of the cost of the installation of said Facilities and appurtenances, and/or maintenance thereof, or for any public works project of which said Facilities is a part.

3. CONSTRUCTION, MAINTENANCE AND REPAIRS:

3.1 Licensee shall construct, maintain, relocate, repair, renew, alter, and/or remove the Facilities, in a prudent, workmanlike manner, using quality materials and complying with any applicable standard(s) or regulation(s) of Licensor (CSXT Specifications), or Licensee's particular industry, National Electrical Safety Code, or any governmental or regulatory body having jurisdiction over the Encroachment.

3.2 Location and construction of Facilities shall be made strictly in accordance with design(s) and specifications furnished to and approved by Licensor and of material(s) and size(s) appropriate for the purpose(s) above recited.

3.3 All of Licensee's work, and exercise of rights hereunder, shall be undertaken at time(s) satisfactory to Licensor, and so as to eliminate or minimize any impact on or interference with the safe use and operation of Licensor's property and appurtenances thereto.

3.4 In the installation, maintenance, repair and/or removal of said Facilities, Licensee shall not use explosives of any type or perform or cause any blasting without the separate express written consent of Licensor. As a condition to such consent, a representative will be assigned by Licensor to monitor blasting, and Licensee shall reimburse Licensor for the entire cost and/or expense of furnishing said monitor.

3.5 Any repairs or maintenance to the Facilities, whether resulting from acts of Licensee, or natural or weather events, which are necessary to protect or facilitate Licensor's use of its property, shall be made by Licensee promptly, but in no event later than thirty (30) days after Licensee has notice as to the need for such repairs or maintenance.

3.6 Licensor, in order to protect or safeguard its property, rail operations, equipment and/or employees from damage or injury, may request immediate repair or renewal of the Facilities, and if the same is not performed, may make or contract to make such repairs or renewals, at the sole risk, cost and expense of Licensee.

3.7 Neither the failure of Licensor to object to any work done, material used, or method of construction or maintenance of said Encroachment, nor any approval given or supervision exercised by Licensor, shall be construed as an admission of liability or responsibility by Licensor, or as a waiver by Licensor of any of the obligations, liability and/or responsibility of Licensee under this Agreement.

3.8 All work on the Encroachment shall be conducted in accordance with Licensor's safety rules and regulations.

3.9 Licensee hereby agrees to reimburse Licensor any loss, cost or expense (including losses resulting from train delays and/or inability to meet train schedules) arising from any failure of Licensee to make repairs or conduct maintenance as required by Section 3.5 above or from improper or incomplete repairs or maintenance to the Facilities or Encroachment.

4. PERMITS, LICENSES:

4.1 Before any work hereunder is performed, or before use of the Encroachment for the contracted purpose, Licensee, at its sole cost and expense, shall obtain all necessary permit(s) (including but not limited to zoning, building, construction, health, safety or environmental matters), letter(s) or certificate(s) of approval. Licensee expressly agrees and warrants that it shall conform and limit its activities to the terms of such permit(s), approval(s) and authorization(s), and shall comply with all applicable ordinances, rules, regulations, requirements and laws of any governmental authority (State, Federal or Local) having jurisdiction over Licensee's activities, including the location, contact, excavation and protection regulations of the

Occupational Safety and Health Act (OSHA) (29 CFR 1926.651(b)), et al., and State "One Call" - "Call Before You Dig" requirements.

4.2 Licensee assumes sole responsibility for failure to obtain such permit(s) or approval(s), for any violations thereof, or for costs or expenses of compliance or remedy.

5. MARKING AND SUPPORT:

5.1 With respect to any subsurface installation or maintenance upon Licensor's property, Licensee, at its sole cost and expense, shall:

- (A) support track(s) and roadbed in a manner satisfactory to Licensor;
- (B) backfill with satisfactory material and thoroughly tamp all trenches to prevent settling of surface of land and roadbed of Licensor; and
- (C) either remove any surplus earth or material from Licensor's property or cause said surplus earth or material to be placed and distributed at location(s) and in such manner Licensor may approve.

5.2 After construction or maintenance of the Facilities, Licensee shall:

- (A) Restore any track(s), roadbed and other disturbed property; and
- (B) Erect, maintain and periodically verify the accuracy of aboveground markers, in a form approved by Licensor, indicating the location, depth and ownership of any underground Facilities or related facilities.

5.3 Licensee shall be solely responsible for any subsidence or failure of lateral or subjacent support in the Encroachment area for a period of three (3) years after completion of installation.

6. TRACK CHANGES:

6.1 In the event that rail operations and/or track maintenance result in changes in grade or alignment of, additions to, or relocation of track(s) or other facilities, or in the event future use of Licensor's rail corridor or property necessitate any change of location, height or depth in the Facilities or Encroachment, Licensee, at its sole cost and expense and within thirty (30) days after notice in writing from Licensor, shall make changes in the Facilities or Encroachment to accommodate such track(s) or operations.

6.2 If Licensee fails to do so, Licensor may make or contract to make such changes at Licensee's cost.

7. FACILITY CHANGES:

7.1 Licensee shall periodically monitor and verify the depth or height of the Facilities or Encroachment in relation to the existing tracks and facilities, and shall relocate the Facilities or change the Encroachment, at Licensee's expense, should such relocation or change be necessary to comply with the minimum clearance requirements of Licensor.

7.2 If Licensee undertakes to revise, renew, relocate or change in any manner whatsoever all or any part of the Facilities (including any change in voltage or gauge of wire or any change in circumference, diameter or radius of pipe or change in materials transmitted in and through said pipe), or is required by any public agency or court order to do so, plans therefor shall be submitted to Licensor for approval before such change. After approval, the terms and conditions of this Agreement shall apply thereto.

8. INTERFERENCE WITH RAIL FACILITIES:

8.1 Although the Facilities/Encroachment herein permitted may not presently interfere with Licensor's railroad or facilities, in the event that the operation, existence or maintenance of said Facilities, in the sole judgment of Licensor, causes: (a) interference (including, but not limited to, physical or interference from an electromagnetic induction, or interference from stray or other currents) with Licensor's power lines, communication, signal or other wires, train control system, or electrical or electronic apparatus; or (b) interference in any manner, with the operation, maintenance or use of the rail corridor, track(s), structures, pole line(s), devices, other property, or any appurtenances thereto; then and in either event, Licensee, upon receipt of written notice from Licensor of any such interference, and at Licensee's sole risk, cost and expense, shall promptly make such changes in its Facilities or installation, as may be required in the reasonable judgment of the Licensor to eliminate all such interference. Upon Licensee's failure to remedy or change, Licensor may do so or contract to do so at Licensee's sole cost.

8.2 Without assuming any duty hereunder to inspect the Facilities, Licensor hereby reserves the right to inspect same and to require Licensee to undertake repairs, maintenance or adjustments to the Facilities, which Licensee hereby agrees to make promptly, at Licensee's sole cost and expense.

9. RISK, LIABILITY, INDEMNITY:

With respect to the relative risk and liabilities of the parties, it is hereby agreed that:

9.1 To the fullest extent permitted by State law (constitutional or statutory, as amended), Licensee hereby agrees to, defend, indemnify, and hold Licensor harmless from and against any and all liability, loss, claim, suit, damage, charge or expense which Licensor may suffer, sustain, incur or in any way be subjected to, on account of death of or injury to any person whomsoever (including officers, agents, employees or invitees of Licensor), and for damage to

or loss of or destruction of any property whatsoever, arising out of, resulting from, or in any way connected with the construction, repair, maintenance, replacement, presence, existence, operations, use or removal of the Facilities or any structure in connection therewith, or restoration of premises of Licensor to good order or condition after removal, EXCEPT when proven to have been caused solely by the willful misconduct or gross negligence of Licensor. HOWEVER, to the fullest extent permitted by State law, during any period of actual construction, repair, maintenance, replacement or removal of the Facilities, wherein agents, equipment or personnel of Licensee are on the railroad rail corridor, Licensee's liability hereunder shall be absolute, irrespective of any joint, sole or contributory fault or negligence of Licensor.

9.2 Use of Licensor's rail corridor involves certain risks of loss or damage as a result of the rail operations. Notwithstanding Section 9.1, Licensee expressly assumes all risk of loss and damage to Licensee's Property or the Facilities in, on, over or under the Encroachment, including loss of or any interference with use or service thereof, regardless of cause, including electrical field creation, fire or derailment resulting from rail operations. For this Section, the term "Licensee's Property" shall include property of third parties situated or placed upon Licensor's rail corridor by Licensee or by such third parties at request of or for benefit of Licensee.

9.3 To the fullest extent permitted by State law, as above, Licensee assumes all responsibility for, and agrees to defend, indemnify and hold Licensor harmless from: (a) all claims, costs and expenses, including reasonable attorneys' fees, as a consequence of any sudden or nonsudden pollution of air, water, land and/or ground water on or off the Encroachment area, arising from or in connection with the use of this Encroachment or resulting from leaking, bursting, spilling, or any escape of the material transmitted in or through the Facilities; (b) any claim or liability arising under federal or state law dealing with either such sudden or nonsudden pollution of air, water, land and/or ground water arising therefrom or the remedy thereof; and (c) any subsidence or failure of lateral or subjacent support of the tracks arising from such Facilities leakage.

9.4 Notwithstanding Section 9.1, Licensee also expressly assumes all risk of loss which in any way may result from Licensee's failure to maintain either required clearances for any overhead Facilities or the required depth and encasement for any underground Facilities, whether or not such loss(es) result(s) in whole or part from Licensor's contributory negligence or joint fault.

9.5 Obligations of Licensee hereunder to release, indemnify and hold Licensor harmless shall also extend to companies and other legal entities that control, are controlled by, subsidiaries of, or are affiliated with Licensor, as well as any railroad that operates over the rail corridor on which the Encroachment is located, and the officers, employees and agents of each.

9.6 If a claim is made or action is brought against Licensor, and/or its operating lessee, for which Licensee may be responsible hereunder, in whole or in part, Licensee shall be

notified to assume the handling or defense of such claim or action; but Licensor may participate in such handling or defense.

9.7 Notwithstanding anything contained in this Agreement, the limitation of liability contained in the state statutes, as amended from time to time, shall not limit Licensor's ability to collect under the insurance policies required to be maintained under this Agreement.

10. INSURANCE:

10.1 Prior to commencement of surveys, installation or occupation of premises pursuant to this Agreement, Licensee shall procure and shall maintain during the continuance of this Agreement, at its sole cost and expense, a policy of

(i) The city is self-insured under the Tennessee Workers Compensation Act for injuries to its employees arising out of and in the course and scope of employment;

(ii) Commercial General Liability coverage (inclusive of contractual liability) with available limits of not less than FIVE MILLION AND 00/100 U.S. DOLLARS (\$5,000,000.00), naming Licensor, and/or its designee, as additional insured and in combined single limits for bodily injury and property damage and covering the contractual liabilities assumed under this Agreement. The evidence of insurance coverage shall be endorsed to provide for thirty (30) days' notice to Licensor, or its designee, prior to cancellation or modification of any policy, provided however, notwithstanding anything here to the contrary, tort actions or anything covered by the provisions of the Tennessee Governmental Tort Liability Action found at T.C.A. section 29-20-101 et seq., including the limits of liability, shall apply and no provision of the Agreement shall act or be deemed a waiver by the City of any immunity, its rights or privileges as a sovereign entity, as waiver can only be made by the Tennessee General Assembly. Mail CGL certificate, along with agreement, to CSX Transportation, Inc., Speed Code J180, 500 Water Street, Jacksonville, FL 32202. On each successive year, send certificate to RenewalCOI@csx.com.

(iii) Business automobile liability insurance with available limits of not more than \$300,000 for bodily injury or death of any one person in any one accident, occurrence or act, and not more than \$700,000 for bodily injury or death of all persons in any one accident, occurrence or act, and \$100,000 for injury or destruction of property of others in any one accident occurrence or act;

(iv) Such other insurance as Licensor may reasonably require.

10.2 If Licensee's existing CGL policy(ies) do(es) not automatically cover Licensee's contractual liability during periods of survey, installation, maintenance and continued occupation, a specific endorsement adding such coverage shall be purchased by Licensee if allowable due to the city being subject to and governed by the Tennessee Governmental Tort Liability Act and the limits and conditions set out in that Act apply. If said CGL policy is

written on a "claims made" basis instead of a "per occurrence" basis, Licensee shall arrange for adequate time for reporting losses. Failure to do so shall be at Licensee's sole risk.

10.3 Licensors, or its designee, may at any time request evidence of insurance purchased by Licensee to comply with this Agreement. Failure of Licensee to comply with Licensors's request shall be considered a default by Licensee.

10.4 Securing such insurance shall not limit Licensee's liability under this Agreement, but shall be security therefor.

10.5 (A) In the event Licensee finds it necessary to perform construction or demolition operations within fifty feet (50') of any operated railroad track(s) or affecting any railroad bridge, trestle, tunnel, track(s), roadbed, overpass or underpass, Licensee shall: (a) notify Licensors; and (b) require its contractor(s) performing such operations to procure and maintain during the period of construction or demolition operations, at no cost to Licensors, Railroad Protective Liability (RPL) Insurance, naming Licensors, and/or its designee, as Named Insured, written on the current ISO/RIMA Form (ISO Form No. CG 00 35 01 96) with limits of FIVE MILLION AND 00/100 U.S. DOLLARS (\$5,000,000.00) per occurrence for bodily injury and property damage, with at least TEN MILLION AND 00/100 U.S. DOLLARS (\$10,000,000.00) aggregate limit per annual policy period, with Pollution Exclusion Amendment (ISO CG 28 31 11 85) if an older ISO Form CG 00 35 is used. The original of such RPL policy shall be sent to and approved by Licensors prior to commencement of such construction or demolition. Licensors reserves the right to demand higher limits.

(B) At Licensors's option, in lieu of purchasing RPL insurance from an insurance company (but not CGL insurance), Licensee may pay Licensors, at Licensors's current rate at time of request, the cost of adding this Encroachment, or additional construction and/or demolition activities, to Licensors's Railroad Protective Liability (RPL) Policy for the period of actual construction. This coverage is offered at Licensors's discretion and may not be available under all circumstances.

10.6 Notwithstanding the provisions of Sections 10.1 and 10.2, Licensee, pursuant to State Statute(s), may self-insure or self-assume, in any amount(s), any contracted liability arising under this Agreement, under a funded program of self-insurance, which fund will respond to liability of Licensee imposed by and in accordance with the procedures established by law.

Notwithstanding anything herein to the contrary for tort actions the provision of the Tennessee Governmental Tort Liability Action found at T.C.A. § 29-20-101 et seq., including the limits of liability, shall apply and no provision of the Agreement shall act or be deemed a waiver by the Licensee of any immunity, its rights or privileges as a sovereign entity, as waiver can only be made by the Tennessee General Assembly.

11. GRADE CROSSINGS; FLAGGING:

11.1 Nothing herein contained shall be construed to permit Licensee or Licensee's contractor to move any vehicles or equipment over the track(s), except at public road crossing(s), without separate prior written approval of Licensor.

11.2 If Licensor deems it advisable, during any construction, maintenance, repair, renewal, alteration, change or removal of said Facilities, to place watchmen, flagmen, inspectors or supervisors for protection of operations of Licensor or others on Licensor's rail corridor at the Encroachment, and to keep persons, equipment or materials away from the track(s), Licensor shall have the right to do so at the expense of Licensee, but Licensor shall not be liable for failure to do so.

12. LICENSOR'S COSTS:

12.1 Any additional or alternative costs or expenses incurred by Licensor to accommodate Licensee's continued use of Licensor's property as a result of track changes or wire changes shall also be paid by Licensee.

12.2 Licensor's expense for wages ("force account" charges) and materials for any work performed at the expense of Licensee pursuant hereto shall be paid by Licensee within thirty (30) days after receipt of Licensor's bill therefor. Licensor may, at its discretion, request an advance deposit for estimated Licensor costs and expenses.

12.3 Such expense shall include, but not be limited to, cost of railroad labor and supervision under "force account" rules, plus current applicable overhead percentages, the actual cost of materials, and insurance, freight and handling charges on all material used. Equipment rentals shall be in accordance with Licensor's applicable fixed rate. Licensor may, at its discretion, require advance deposits for estimated costs of such expenses and costs.

13. DEFAULT, BREACH, WAIVER:

13.1 The proper and complete performance of each covenant of this Agreement shall be deemed of the essence thereof, and in the event Licensee fails or refuses to fully and completely perform any of said covenants or remedy any breach within thirty (30) days after receiving written notice from Licensor to do so (or within forty-eight (48) hours in the event of notice of a railroad emergency), Licensor shall have the option of immediately revoking this Agreement and the privileges and powers hereby conferred, regardless of encroachment fee(s) having been paid in advance for any annual or other period. Upon such revocation, Licensee shall make removal in accordance with Article 14.

13.2 No waiver by Licensor of its rights as to any breach of covenant or condition herein contained shall be construed as a permanent waiver of such covenant or condition, or any

subsequent breach thereof, unless such covenant or condition is permanently waived in writing by Licensor.

13.3 Neither the failure of Licensor to object to any work done, material used, or method of construction or maintenance of said Encroachment, nor any approval given or supervision exercised by Licensor, shall be construed as an admission of liability or responsibility by Licensor, or as a waiver by Licensor of any of the obligations, liability and/or responsibility of Licensee under this Agreement.

14. TERMINATION, REMOVAL:

14.1 All rights which Licensee may have hereunder shall cease upon the date of (a) termination, (b) revocation, or (c) subsequent agreement, or (d) Licensee's removal of the Facility from the Encroachment. However, neither termination nor revocation of this Agreement shall affect any claims and liabilities which have arisen or accrued hereunder, and which at the time of termination or revocation have not been satisfied; neither party, however, waiving any third party defenses or actions.

14.2 Within thirty (30) days after revocation or termination, Licensee, at its sole risk and expense, shall (a) remove the Facilities from the rail corridor of Licensor, unless the parties hereto agree otherwise, (b) restore the rail corridor of Licensor in a manner satisfactory to Licensor, and (c) reimburse Licensor any loss, cost or expense of Licensor resulting from such removal.

15. NOTICE:

15.1 Licensee shall give Licensor at least thirty (30) days written notice before doing any work on Licensor's rail corridor, except that in cases of emergency shorter notice may be given. Licensee shall provide proper notification as follows:

a. For non-emergencies, Licensee shall submit online via the CSX Property Portal from Licensor's web site, via web link:
https://propertyportal.csx.com/pub_ps_res/ps_res/jsf/public/index.faces

b. For emergencies, Licensee shall complete all of the steps outlined in Section 15.1 a. above, and shall also include detailed information of the emergency. Licensee shall also call and report details of the emergency to Licensor's Rail Operations Emergency Telephone Number: 1-800-232-0144. In the event Licensor needs to contact Licensee concerning an emergency involving Licensee's Facility(ies), the emergency phone number for Licensee is: 423-224-2601.

15.2 All other notices and communications concerning this Agreement shall be addressed to Licensee at the address above, and to Licensor at the address shown on Page 1, c/o

CSXT Contract Management, J180; or at such other address as either party may designate in writing to the other.

15.3 Unless otherwise expressly stated herein, all such notices shall be in writing and sent via Certified or Registered Mail, Return Receipt Requested, or by courier, and shall be considered delivered upon: (a) actual receipt, or (b) date of refusal of such delivery.

16. ASSIGNMENT:

16.1 The rights herein conferred are the privileges of Licensee only, and Licensee shall obtain Licensor's prior written consent to any assignment of Licensee's interest herein; said consent shall not be unreasonably withheld.

16.2 Subject to Sections 2 and 16.1, this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors or assigns.

16.3 Licensee shall give Licensor written notice of any legal succession (by merger, consolidation, reorganization, etc.) or other change of legal existence or status of Licensee, with a copy of all documents attesting to such change or legal succession, within thirty (30) days thereof.

16.4 Licensor expressly reserves the right to assign this Agreement, in whole or in part, to any grantee, lessee, or vendee of Licensor's underlying property interests in the Encroachment, upon written notice thereof to Licensee.

16.5 In the event of any unauthorized sale, transfer, assignment, sublicense or encumbrance of this Agreement, or any of the rights and privileges hereunder, Licensor, at its option, may revoke this Agreement by giving Licensee or any such assignee written notice of such revocation; and Licensee shall reimburse Licensor for any loss, cost or expense Licensor may incur as a result of Licensee's failure to obtain said consent.

17. TITLE:

17.1 Licensee understands that Licensor occupies, uses and possesses lands, rights-of-way and rail corridors under all forms and qualities of ownership rights or facts, from full fee simple absolute to bare occupation. Accordingly, nothing in this Agreement shall act as or be deemed to act as any warranty, guaranty or representation of the quality of Licensor's title for any particular Encroachment or segment of Rail Corridor occupied, used or enjoyed in any manner by Licensee under any rights created in this Agreement. It is expressly understood that Licensor does not warrant title to any Rail Corridor and Licensee will accept the grants and privileges contained herein, subject to all lawful outstanding existing liens, mortgages and superior rights in and to the Rail Corridor, and all leases, licenses and easements or other interests previously granted to others therein.

17.2 The term "license," as used herein, shall mean with regard to any portion of the Rail Corridor which is owned by Licensor in fee simple absolute, or where the applicable law of the State where the Encroachment is located otherwise permits Licensor to make such grants to Licensee, a "permission to use" the Rail Corridor, with dominion and control over such portion of the Rail Corridor remaining with Licensor, and no interest in or exclusive right to possess being otherwise granted to Licensee. With regard to any other portion of Rail Corridor occupied, used or controlled by Licensor under any other facts or rights, Licensor merely waives its exclusive right to occupy the Rail Corridor and grants no other rights whatsoever under this Agreement, such waiver continuing only so long as Licensor continues its own occupation, use or control. Licensor does not warrant or guarantee that the license granted hereunder provides Licensee with all of the rights necessary to occupy any portion of the Rail Corridor. Licensee further acknowledges that it does not have the right to occupy any portion of the Rail Corridor held by Licensor in less than fee simple absolute without also receiving the consent of the owner(s) of the fee simple absolute estate. Further, Licensee shall not obtain, exercise or claim any interest in the Rail Corridor that would impair Licensor's existing rights therein.

17.3 Licensee agrees it shall not have nor shall it make, and hereby completely and absolutely waives its right to, any claim against Licensor for damages on account of any deficiencies in title to the Rail Corridor in the event of failure or insufficiency of Licensor's title to any portion thereof arising from Licensee's use or occupancy thereof.

17.4 To the extent permitted by Tennessee law, Licensee agrees to fully and completely indemnify and defend all claims or litigation for slander of title, overburden of easement, or similar claims arising out of or based upon the Facilities placement, or the presence of the Facilities in, on or along any Encroachment(s), including claims for punitive or special damages.

17.5 Licensee shall not at any time own or claim any right, title or interest in or to Licensor's property occupied by the Encroachments, nor shall the exercise of this Agreement for any length of time give rise to any right, title or interest in Licensee to said property other than the license herein created.

17.6 Nothing in this Agreement shall be deemed to give, and Licensor hereby expressly waives, any claim of ownership in and to any part of the Facilities.

17.7 Licensee shall not create or permit any mortgage, pledge, security, interest, lien or encumbrances, including without limitation, tax liens and liens or encumbrances with respect to work performed or equipment furnished in connection with the construction, installation, repair, maintenance or operation of the Facilities in or on any portion of the Encroachment (collectively, "Liens or Encumbrances"), to be established or remain against the Encroachment or any portion thereof or any other Licensor property.

17.8 In the event that any property of Licensor becomes subject to such Liens or

Encumbrances, Licensee agrees to pay, discharge or remove the same promptly upon Licensee's receipt of notice that such Liens or Encumbrances have been filed or docketed against the Encroachment or any other property of Licensor; however, Licensee reserves the right to challenge, at its sole expense, the validity and/or enforceability of any such Liens or Encumbrances.

18. GENERAL PROVISIONS:

18.1 This Agreement, and the attached specifications, contains the entire understanding between the parties hereto.

18.2 Neither this Agreement, any provision hereof, nor any agreement or provision included herein by reference, shall operate or be construed as being for the benefit of any third person.

18.3 Except as otherwise provided herein, or in any Rider attached hereto, neither the form of this Agreement, nor any language herein, shall be interpreted or construed in favor of or against either party hereto as the sole drafter thereof.

18.4 This Agreement is executed under current interpretation of applicable Federal, State, County, Municipal or other local statute, ordinance or law(s). However, each separate division (paragraph, clause, item, term, condition, covenant or agreement) herein shall have independent and severable status for the determination of legality, so that if any separate division is determined to be void or unenforceable for any reason, such determination shall have no effect upon the validity or enforceability of each other separate division, or any combination thereof.

18.5 This Agreement shall be construed and governed by the laws of the state in which the Facilities and Encroachment are located.

18.6 If any amount due pursuant to the terms of this Agreement is not paid by the due date, it will be subject to Licensor's standard late charge and will also accrue interest at eighteen percent (18%) per annum, unless limited by local law, and then at the highest rate so permitted.

18.7 Licensee agrees to reimburse Licensor for all reasonable costs (including attorney's fees) incurred by Licensor for collecting any amount due under the Agreement.

18.8 The provisions of this License are considered confidential and may not be disclosed to a third party without the consent of the other party(s), except: (a) as required by statute, regulation or court order, (b) to a parent, affiliate or subsidiary company, (c) to an auditing firm or legal counsel that are agreeable to the confidentiality provisions, or (d) to Lessees of Licensor's land and/or track who are affected by the terms and conditions of this Agreement and will maintain the confidentiality of this Agreement. This agreement and any documents or materials obtained by the Licensee may be subject to disclosure in whole or in part

pursuant to the to the Open Records Act set out in T.C.A. § 10-7-503 et seq. without regard to any provision contained in the agreement declaring any such information confidential.

18.9 Licensor shall refund to Licensee any overpayments collected, plus any taxes paid in advance; PROVIDED, however, such refund shall not be made when the cumulative total involved is less than One Hundred Dollars (\$100.00).

19. **RESERVED:**

20. **RESERVED:**

IN WITNESS WHEREOF, the parties hereto have executed this Agreement in duplicate (each of which shall constitute an original) as of the effective date of this Agreement.

Witness for Licensor:

CSX TRANSPORTATION, INC.

By: _____

Print/Type Name: _____

Print/Type Title: _____

Witness for Licensee:

CITY OF KINGSPORT

By: _____

Who, by the execution hereof, affirms that he/she has the authority to do so and to bind the Licensee to the terms and conditions of this Agreement.

Print/Type Name: _____

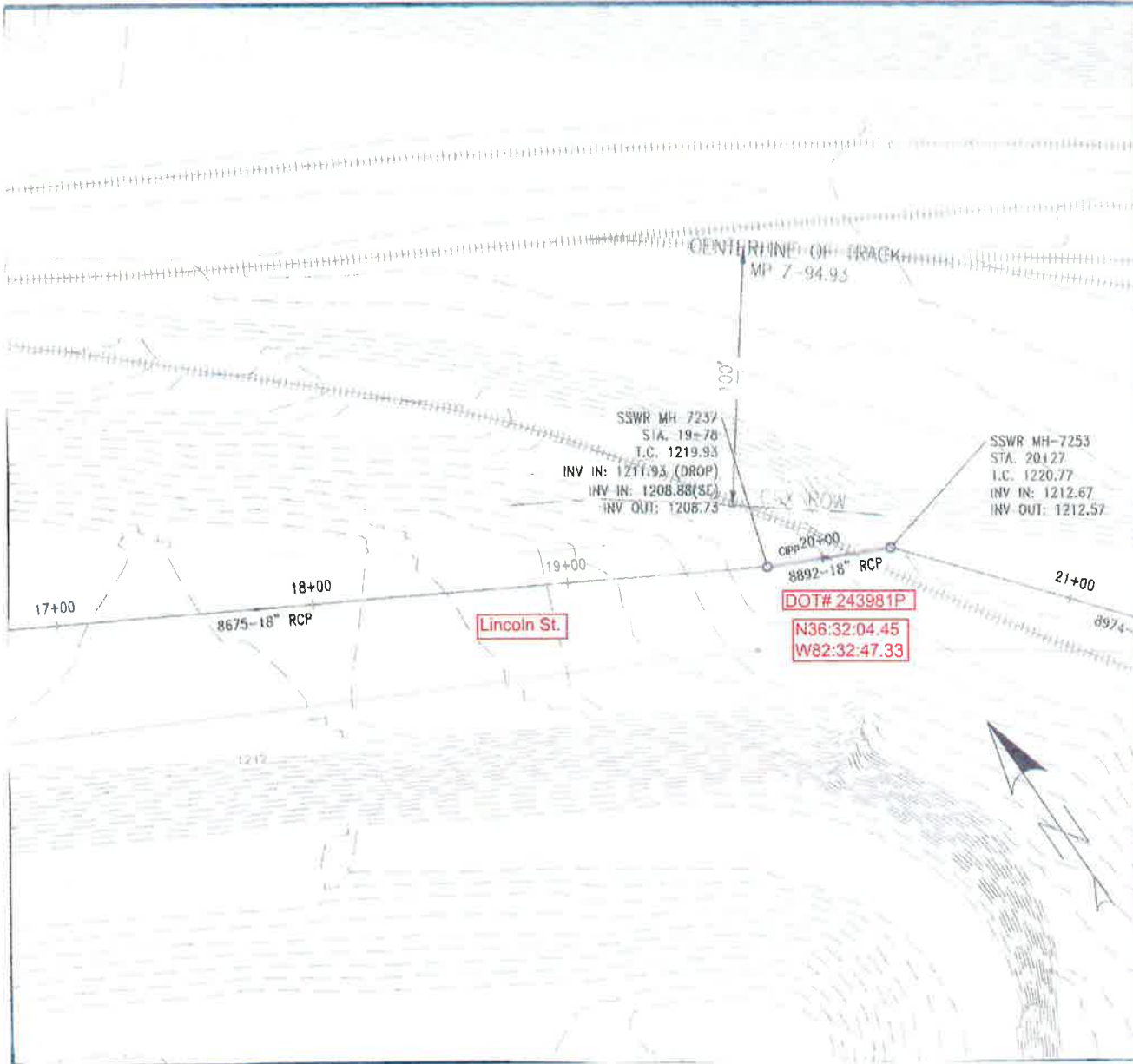
Print/Type Title: _____

Tax ID No.: _____

Authority under Ordinance or

Resolution No. _____,

Dated _____.



NOTES:

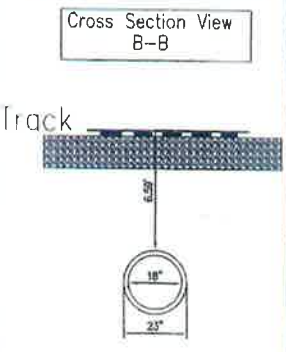
CSX PROPERTY SERVICES REVIEW
 No Exceptions Exceptions Noted
 This review is for the general conformance with CSX utility design specifications only. Sole responsibility for all aspects of the overall design shall remain with the facility owner. This review does not constitute approval to proceed without meeting all of CSX's safety and contractual requirements.
 By: Pat Elton



| | |
|----------------|---|
| Location: | CSX CrossingID#243 981 P @ Z 94.82 MP |
| Latitude: | 36.534619 |
| Longitude: | 82.546492 |
| Drawing No.: | C-02 Sheet 1 of |
| Drawing Date: | Feb 18, 2016 Last Revised: Feb 18, 2016 |
| Drawing Scale: | 1 Inches = 40 Feet |



NOTES:
CSX PROPERTY SERVICES REVIEW
 No Exceptions Exceptions Noted
 This review is for the general conformance with CSX utility design specifications only. Sole responsibility for all aspects of the overall design shall remain with the facility owner. This review does not constitute approval to proceed without meeting all of CSX's safety and contractual requirements.
 By: Pat Elmer



Additional Notes/Information:

| CSXT Pipeline Spec Reference | PIPELINE CONTENT DETAILS | |
|------------------------------|---|---|
| | Commodity Description: | Sanitary Sewer |
| | Maximum Operating Pressure: | Gravity Sewer |
| | Is Commodity Flammable: | <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No |
| CARRIER/CASING PIPE DETAILS | | |
| | Carrier Pipe | Casing Pipe |
| Page 13, C1, & 17, D1 | Pipe Material: | Existing RCP (lined with CIPP) |
| Page 13, C1, & 17, D1 | Material Specifications & Grade: | ASTM C76, Class V (ASTM F1216-07a) |
| Page 13, C1, & 17, D1 | Specified Minimum Yield Strength: | N/A |
| | Nominal Size Outside Diameter (Inches): | 23" |
| Page 14, H1, (d) | Wall Thickness (Inches): | 2.5" |
| Page 13, C1, & 17, D1 | Type of Seam: | N/A |
| Page 13, C1, & 17, D1 | Type of Joints: | Tongue & Groove (CIPP MH to MH) |
| Page 16, v1 | Tunnel Liner Plates Required: | <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes |
| | Cathodic Protection: | <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes Type: |
| | Protective Coating: | <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes Type: |
| | Temp. Track Support or Rip-Rap Req: | <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes Must Describe & Show on Drawing |

Location: CSX Crossing ID#243 981 P.06 Z.94.82 MP
 Latitude: 36.534619
 Longitude: 82.546492
 Drawing No.: C-02 Sheet 2 of
 Drawing Date: Feb. 18, 2016 Last Revised: Feb. 18, 2016
 Drawing Scale: V 1 inches = 4 Feet
 Drawing Scale: H 1 inches = 40 Feet





AGENDA ACTION FORM

Amend Agreement with Cartegraph Systems, Inc.

To: Board of Mayor and Aldermen
 From: Jeff Fleming, City Manager *JF*

Action Form No.: AF-327-2016
 Work Session: December 19, 2016
 First Reading: N/A
 Final Adoption: December 20, 2016
 Staff Work By: C. Austin / K. Steach
 Presentation By: Ryan McReynolds

Recommendation:
 Approve the Resolution.

Executive Summary:
 On May 6, 2014 the BMA approved to enter into an agreement with Cartegraph Systems, Inc. (AF-100-2014) for a software system which would allow adequate tracking of assets. The initial agreement included the software package, licensing, installation of software, and deployment/implementation services for Water, Wastewater, and Stormwater with Traffic and others implementing this system at later dates. The agreement was last amended on October 18, 2016 (AF-274-2016) for the Traffic Division to implement this system for traffic signals.

In our efforts of standardization for asset management we request amending the agreement with Cartegraph Systems, Inc. to implement Cartegraph Cloud Shared Hosting Subscription, pro-rated for the period of 12/23/16–05/31/17. Cartegraph will provide a monthly backup of our hosted database for six (6) months. The cost for this service is \$2,583.44, which includes Cartegraph OMS hosting/implementation services. Funding is available and identified in the Water / Sewer operating budget, account line items 411-5001-501.30-20 and 412-5001-501.30-20.

- Attachments:**
 1. Resolution
 2. Amendment to Agreement (4 pgs.)

Funding source appropriate and funds are available: *JF*

| | Y | N | O |
|------------|---|---|---|
| Duncan | — | — | — |
| George | — | — | — |
| McIntire | — | — | — |
| Olterman | — | — | — |
| Parham | — | — | — |
| Segelhorst | — | — | — |
| Clark | — | — | — |

RESOLUTION NO. _____

A RESOLUTION APPROVING AN AMENDMENT TO THE AGREEMENT WITH CARTEGRAPH SYSTEMS, INC.; AUTHORIZING THE MAYOR TO EXECUTE THE AMENDMENT; AND EXECUTE ALL OTHER DOCUMENTS NECESSARY AND PROPER TO EFFECTUATE THE PURPOSE OF THE AMENDMENT

WHEREAS, on May 6, 2014, the board approved a resolution authorizing the mayor to sign an agreement with Cartegraph Systems, Inc., for a software system for tracking of assets; and

WHEREAS, the initial agreement included the software package, licensing, installation of software, and deployment/implementation services for water, wastewater, and stormwater, with traffic and others implementing this system at later dates; and

WHEREAS, the last amendment to this agreement was on October 18, 2016, for the Traffic Division to implement this system for traffic signals; and

WHEREAS, for standardization for asset management an amendment is needed to implement the Cartegraph Cloud Shared Hosting Subscription, pro-rated for the period of December 23, 2016, through May 31, 2017; and

WHEREAS, Cartegraph will provide a monthly backup of the city's hosted database for six months; and

WHEREAS, the cost for this service is \$2,583.44, which includes Cartegraph OMS hosting/implementation services; and

WHEREAS, funding is available and identified in the Water/Sewer operating budget, account line items 411-5001-501.30-20 and 412-5001-501.30-20.

Now therefore,

BE IT RESOLVED BY THE BOARD OF MAYOR AND ALDERMEN AS FOLLOWS:

SECTION I. That an amendment to the agreement with Cartegraph Systems, Inc. to implement the Cartegraph Cloud Shared Hosting Subscription is approved.

SECTION II. That the mayor, or in his absence, incapacity, or failure to act, the vice-mayor, is authorized and directed to execute, in a form approved by the city attorney, and subject to the requirements of Article X, Section 10 of the Charter of the City of Kingsport, an amendment to the agreement with Cartegraph Systems, Inc., and all other documents necessary and proper to effectuate the purpose of the agreement or this resolution, said amendment being generally as follows:

Purchase Agreement

Cartegraph is pleased to present this Purchase Agreement for the implementation of world class technology solutions. This Purchase Agreement is made and entered into between City of Kingsport (hereinafter referred to as "**Customer**" or "**Licensee**") and **Cartegraph Systems, Inc.** (hereinafter referred to as "**Cartegraph**"). This Purchase Agreement is intended to supplement, clarify, and amend the Master Agreement previously executed between **Cartegraph** and **Customer**. In the case that any terms or conditions provided in the Master agreement differ from, are provided in more detail

by, or are made irrelevant by the terms and conditions provided in this Purchase Agreement, the terms in this Purchase Agreement shall control. For all terms and conditions not addressed by this Purchase Agreement, the Master Agreement, #MPA001 dated May 12, 2014 shall control.

Customer Bill To:

Mark Woomer City of Kingsport
225 W. Center Street Kingsport, TN 37660
423-229-9480

Customer Ship To: Same

Investment Summary

Cartegraph's proposed fees for this project are included in the summary below.

Date: December 7, 2016

Purchase Agreement Expiration Date: December 23, 2016

Purchase Agreement No.: #PA431

SOFTWARE PRODUCTS

Cartegraph OMS Hosting

Cartegraph Cloud Shared Hosting Subscription, pro-rated 12/23/16 – 5/31/17 – 1 - \$2,083 - \$2,083.

FIELD SERVICES

Implementation Services

Fixed Fee Service – 1 - \$1,400.00 - \$1,400.00

Discount (\$900.06)

TOTAL \$2,583.44

Notes: The pricing listed above does not include applicable sales tax.

Payment Terms and Conditions

In consideration for the Services and Products provided by **Cartegraph** to **Customer**, **Customer** agrees to pay

Cartegraph Software Costs and Professional Service Fees in U.S. Dollars as described below:

1. **Delivery:** Software Products shall be licensed upon acceptance of this Purchase Agreement. If applicable, Services will be scheduled and delivered upon your acceptance of this Purchase Agreement, which will be considered as your notification to proceed.
2. **Services Scheduling:** **Customer** agrees to work with **Cartegraph** to schedule Services in a timely manner. All undelivered Services shall expire 365 days from the signing of this Purchase Agreement.
3. **Software Invoicing:** The Software Subscription Licenses fee will be due in annual installments 15 days prior to the anniversary of the initial term as follows:
 - a. \$2,083.50 due upon execution of the Purchase Agreement.
4. **Field Services Invoicing:** Invoicing for Field Services shall be invoiced as follows:
 - a. Invoicing for the Field Services fee shall occur upon the execution of the Purchase Agreement.
5. **Payment Terms:** All payments are due Net 30 days from date of invoice.

BY EXECUTING THIS PURCHASE AGREEMENT, CUSTOMER ACKNOWLEDGES THAT IT HAS REVIEWED THE TERMS, CONDITIONS, FEES, AND CHARGES PROVIDED HEREIN AND IN THE MASTER AGREEMENT, AS WELL AS ANY OTHER EXHIBITS TO THE MASTER AGREEMENT, AND CUSTOMER AGREES TO BE LEGALLY BOUND BY EACH SUCH AGREEMENT.

[Acknowledgements Deleted for Inclusion in this Resolution]

Cartegraph Systems, Inc.

Addendum B - Field Services (Fee for Service)

The Fee for Field Service Implementation Services as listed in the *Investment Summary* of the Purchase Agreement are specific Cartegraph services which will be delivered to the Customer based on the descriptions below and any descriptions that may be found in the Purchase Agreement's Exhibits. Cartegraph will coordinate with the Customer on service delivery expectations and timeframes. This is an addendum to Customer's Master Agreement #MPA001.

Cartegraph - Scope of Work

Backup

- Cartegraph staff will provide a monthly backup of your hosted database for six (6) months. Each database backup file will be:

- o delivered to the customer via Cartegraph's FTP site.

- o a SQL 2012 backup (.bak) file.

Cartegraph will provide all services remotely via audio, video, and web conferences unless otherwise noted.

Customer Responsibility

For the project, you will be responsible for appointing a dedicated project manager that will be responsible for:

- Reviewing the implementation scope of work
- Partnering with the Cartegraph Project Manager to ensure project success

Exclusions

The following service items are not included in the scope of this project:

- Any service items discussed during demonstrations, conference calls, or other events are not included in the scope of this project unless specifically listed above.

Customer/Cartegraph Responsibilities

Project representatives from Customer and Cartegraph accepts responsibility for all aspects of project planning, management, and execution not specifically identified as the responsibility of Cartegraph in the Master Agreement or in this Purchase Agreement. Ongoing management of the day-to-day allocation of Customer and Cartegraph resources and management of project tasks is the responsibility of the Customer and Cartegraph project representatives. Customer and Cartegraph project representatives will provide overall guidance and direction for the project and will direct the project accordingly. Further, and with regard to the Cartegraph obligations listed in this Purchase Agreement, Customer understands that it is vital to the success of the project that Customer provides assistance in the following matters:

1. For those services listed under Field Services, Cartegraph personnel will conduct information gathering and evaluation sessions with various Customer users and management. While Cartegraph respects the time and workload of Customer staff, dedicated time on the part of the appropriate Customer resources is necessary to complete these exercises.
2. The installation process requires the assistance of Customer personnel and suitable access to hardware and systems (e.g., security clearance). Customer is required to supervise the installation process while systems are accessible to Cartegraph. All hardware and software, for both Personal Computers and servers, is expected to be available, installed, and operating as specified in Cartegraph's System Requirements documentation such that delivery and execution of Cartegraph Field Services will not be impeded.
3. Customer and Cartegraph understand that the successful performance of Field Services depends upon Customer fulfilling its responsibilities. The Project assumes that Customer will provide all personnel required to achieve a successful implementation.
4. Customer will provide Internet access and IT staff support as required. For those services that are web-based, Cartegraph utilizes WebEx Meeting (or similar) technology. Customer shall ensure that their workstation platform and database meet Cartegraph system requirements as specified in the Cartegraph System Requirements documentation. Cartegraph Software will be supported within new versions of these workstation platforms and databases within a reasonable period of time from their release from their manufacturer. Cartegraph will discontinue support of its Software within older versions of these workstation platforms and databases as their support is discontinued by their manufacturers.
5. Customer agrees to work with Cartegraph to schedule Field Services in a timely manner. All

undelivered Field Services shall expire 365 days from the execution of this Purchase Agreement, unless noted differently in Services Scope listed above. Upon expiration of services, the project may be cancelled at Cartegraph's discretion.

Not-to-Exceed Proposal

Cartegraph will not exceed the total included in this Purchase Agreement without written approval from Customer. In the event it becomes apparent to Cartegraph that additional service efforts will be needed due to any changes in the scope of this Purchase Agreement, Cartegraph will notify Customer prior to exceeding the approved efforts and obtain written approval if additional Software or services are required.

BY EXECUTING THIS PURCHASE AGREEMENT, CUSTOMER ACKNOWLEDGES THAT IT HAS REVIEWED THE TERMS, CONDITIONS, FEES AND CHARGES PROVIDED HEREIN AND IN THE MASTER AGREEMENT, AS WELL AS ANY OTHER EXHIBITS TO THE MASTER AGREEMENT, AND CUSTOMER AGREES TO BE LEGALLY BOUND BY EACH SUCH AGREEMENT.

[Acknowledgements Deleted for Inclusion in this Resolution]

SECTION III. That the mayor is further authorized to make such changes approved by the mayor and the city attorney to the amendment/agreement set out herein that do not substantially alter the material provisions of the agreement, and the execution thereof by the mayor and the city attorney is conclusive evidence of the approval of such changes.

SECTION IV. That the board finds that the actions authorized by this resolution are for a public purpose and will promote the health, comfort and prosperity of the citizens of the city.

SECTION V. That this resolution shall take effect from and after its adoption, the public welfare requiring it.

ADOPTED this the 20th day of December, 2016.

JOHN CLARK, MAYOR

ATTEST:

JAMES H. DEMMING, CITY RECORDER

APPROVED AS TO FORM:

J. MICHAEL BILLINGSLEY, CITY ATTORNEY

Purchase Agreement

Cartegraph is pleased to present this Purchase Agreement for the implementation of world class technology solutions. This Purchase Agreement is made and entered into between City of Kingsport (hereinafter referred to as "**Customer**" or "**Licensee**") and **Cartegraph Systems, Inc.** (hereinafter referred to as "**Cartegraph**"). This Purchase Agreement is intended to supplement, clarify, and amend the Master Agreement previously executed between **Cartegraph** and **Customer**. In the case that any terms or conditions provided in the Master agreement differ from, are provided in more detail by, or are made irrelevant by the terms and conditions provided in this Purchase Agreement, the terms in this Purchase Agreement shall control. For all terms and conditions not addressed by this Purchase Agreement, the Master Agreement, #MPA001 dated May 12, 2014 shall control.

| | |
|---|--------------------------|
| Customer Bill To: | Customer Ship To: |
| Mark Woomer City of Kingsport 225 W. Center Street Kingsport, TN 37660 423-229-9480 | Same |

Investment Summary

Cartegraph's proposed fees for this project are included in the summary below.

Date: December 7,
2016

Purchase Agreement December 23, 2016
Expiration Date:

Purchase #PA431
Agreement
No.:

| SOFTWARE PRODUCTS | | | | |
|-------------------------|--|---|------------|---------------------|
| Cartegraph OMS Hosting | Cartegraph Cloud Shared Hosting Subscription, pro-rated 12/23/16 – 5/31/17 | 1 | \$2,083.50 | \$2,083.50 |
| FIELD SERVICES | | | | |
| Implementation Services | Fixed Fee Service | 1 | \$1,400.00 | \$1,400.00 |
| <i>Discount</i> | | | | (<i>\$900.06</i>) |
| TOTAL COST | | | | \$2,583.44 |

NOTES: The pricing listed above does not include applicable sales tax.

2. The installation process requires the assistance of Customer personnel and suitable access to hardware and systems (e.g., security clearance). Customer is required to supervise the installation process while systems are accessible to Cartegraph. All hardware and software, for both Personal Computers and servers, is expected to be available, installed, and operating as specified in Cartegraph's System Requirements documentation such that delivery and execution of Cartegraph Field Services will not be impeded.
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Cartegraph Systems, Inc.

By _____
(Signature)

Randy L. Skemp
(Type or print name)

Title Vice President of Sales

Date _____

City of Kingsport

By _____
(Signature)

(Type or print name)

Title _____

Date _____

Cartegraph Systems, Inc.

Addendum B - Field Services (Fee for Service)

The Fee for Field Service Implementation Services as listed in the *Investment Summary* of the Purchase Agreement are specific Cartegraph services which will be delivered to the Customer based on the descriptions below and any descriptions that may be found in the Purchase Agreement's Exhibits. Cartegraph will coordinate with the Customer on service delivery expectations and timeframes. This is an addendum to Customer's Master Agreement #MPA001.

Cartegraph - Scope of Work

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 - delivered to the customer via Cartegraph's FTP site.
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1. For those services listed under Field Services, Cartegraph personnel will conduct information gathering and evaluation sessions with various Customer users and management. While Cartegraph respects the time and workload of Customer staff, dedicated time on the part of the appropriate Customer resources is necessary to complete these exercises.

Payment Terms and Conditions

In consideration for the Services and Products provided by **Cartegraph** to **Customer**, **Customer** agrees to pay **Cartegraph** Software Costs and Professional Service Fees in U.S. Dollars as described below:

1. **Delivery:** Software Products shall be licensed upon acceptance of this Purchase Agreement. If applicable, Services will be scheduled and delivered upon your acceptance of this Purchase Agreement, which will be considered as your notification to proceed.
2. **Services Scheduling:** **Customer** agrees to work with **Cartegraph** to schedule Services in a timely manner. All undelivered Services shall expire 365 days from the signing of this Purchase Agreement.
3. **Software Invoicing:** The Software Subscription Licenses fee will be due in annual installments 15 days prior to the anniversary of the initial term as follows:
 - a. \$2,083.50 due upon execution of the Purchase Agreement.
4. **Field Services Invoicing:** Invoicing for Field Services shall be invoiced as follows:
 - a. Invoicing for the Field Services fee shall occur upon the execution of the Purchase Agreement.
5. **Payment Terms:** All payments are due Net 30 days from date of invoice.

BY EXECUTING THIS PURCHASE AGREEMENT, CUSTOMER ACKNOWLEDGES THAT IT HAS REVIEWED THE TERMS, CONDITIONS, FEES AND CHARGES PROVIDED HEREIN AND IN THE MASTER AGREEMENT, AS WELL AS ANY OTHER EXHIBITS TO THE MASTER AGREEMENT, AND CUSTOMER AGREES TO BE LEGALLY BOUND BY EACH SUCH AGREEMENT.

Cartegraph Systems, Inc.

By _____
(Signature)

_____ Randy L. Skemp
(Type or print name)

Title Vice President of Sales

Date _____

City of Kingsport

By _____
(Signature)

(Type or print name)

Title _____

Date _____



AGENDA ACTION FORM

Award Contract for the MeadowView Conference Center Renovations Project

To: Board of Mayor and Aldermen
From: Jeff Fleming, City Manager 

Action Form No.: AF-334-2016
Work Session: December 19, 2016
First Reading: N/A

Final Adoption: December 20, 2016
Staff Work By: D. Mason
Presentation By: C. McCartt

Recommendation:

Approve the Resolution.

Executive Summary:

On November 16, 2016 the Board approved entering a contract with GRC Construction for interior renovations to the convention center and meeting room portion of the MeadowView Hotel and Convention Center.


The renovations consist of new interior finishes, flooring, and furnishings with the carpet material being purchased directly by the City in order to ensure its delivery in time for construction.

While the intent was for only the carpeting to be provided by the City, the bidding documents inadvertently also listed the vinyl wall covering material to be provided by the owner. While the project budget includes funds for the vinyl wall coverings, this material cost was not included in the bids, nor in the current contract amount. The contract does include the necessary labor to install all of the wall coverings.

This change order in the amount of \$142,735.00 will correct the omission and include the material cost within GRC Construction's contract amount.

Attachments:

- 1. Contract Award Resolution
- 2. Change Order

Funding source appropriate and funds are available: 

| | Y | N | O |
|------------|---|---|---|
| Duncan | — | — | — |
| George | — | — | — |
| McIntire | — | — | — |
| Olterman | — | — | — |
| Parham | — | — | — |
| Segelhorst | — | — | — |
| Clark | — | — | — |

RESOLUTION NO. _____

A RESOLUTION APPROVING CHANGE ORDER #1 TO THE CONTRACT WITH GOINSRASHCAIN, INC. FOR THE MEADOWVIEW CONFERENCE CENTER RENOVATIONS AND AUTHORIZING THE MAYOR TO EXECUTE ALL DOCUMENTS NECESSARY AND PROPER TO EFFECTUATE THE CHANGE ORDER

WHEREAS, the City of Kingsport entered a contract with GoinsRashCain, Inc. on November 16, 2016, for the Meadowview Conference Center Renovations; and

WHEREAS, the bidding documents inadvertently noted that the vinyl wall covering material was to be provided by the city; and

WHEREAS, it is the intent that GoinsRashCain provide the vinyl wall covering material; and

WHEREAS, GoinsRashCain has provided a materials quote in the amount of \$142,735.00 to provide the vinyl wall covering material necessary to complete the project; and

WHEREAS, it is necessary to provide for the cost of the vinyl wall covering in accordance with the material specifications established by the contract in the amount of \$142,735.00 to complete the project; and

WHEREAS, funding is available in Project MV1600.

Now therefore,

BE IT RESOLVED BY THE BOARD OF MAYOR AND ALDERMEN as follows:

SECTION I. That change order #1 to the contract with GoinsRashCain for the Meadowview Conference Center Renovations, to provide for contractor supplied vinyl wall covering material in the amount of \$142,735.00 is approved.

SECTION II. That the mayor, or in his absence, incapacity, or failure to act, the vice-mayor, is authorized and directed to execute, in a form approved by the city attorney and subject to the requirements of Article X, Section 10 of the Charter of the City of Kingsport, change order #1 to the contract for the Meadowview Conference Center Renovations and all other documents necessary and proper to effectuate the purpose of the contract as shown below:

CHANGE ORDER

Date 12/ 21/ 20 16

OWNER'S Project No. MV1600

ENGINEER'S Project No. Project

Meadowview Conference Center Renovations

CONTRACTOR

GRC Construction Services

ContractFor Interior Renovations

ContractDate 11/16/2016

To: GRC Construction Services

Contractor

You are directed to make the changes noted below in the subject

Contract:

Nature of the Changes

Delete reference to vinyl wall coverings materials to be provided by owner.

Contractor to provide vinyl wall covering materials under this contract.

Enclosures Material Quote:

These changes result in the following adjustment of Contract Price and Time:

Contract price prior to this change order: \$2,711,000.00

Net Increase Resulting from this Change Order: \$142,735.00

Current Contract Price Including This Change Order: \$2,853,735.00

Contract Time Prior to this Change Order: 4/14/2017

Days Net Increase Resulting from this Change Order: 0 Days

Current Contract Date Including this Change Order: 4/14/2017 Days or Date

[Acknowledgements Deleted for Inclusion in this Resolution]

**GARDNER PAINT SERVICES, INC.
P.O. BOX 5096 – JOHNSON CITY, TENNESSEE 37602
PROPOSAL**

DATE: December 6, 2016

To: Tim Lorimer

Company: GRC Construction

FAX: (423) 349-7414

FROM: Brandon White

Subject: Meadowview Convention Center Renovations – Add Wallcovering Material Kingsport, TN

We propose to incorporate the requested changes in the scope of work, for the above referenced project, as follows:

SCOPE OF WORK

Inclusions

- Scope of work includes furnishing the wallcovering material as discussed

Exclusions/Clarifications

- Wallcovering material is to be delivered to Meadowview and stored in a climate controlled area.
- Material must be stored lying down not standing up.
- Approval is needed ASAP as lead times are critical for this project.

| | MAT TOTAL | YRD |
|-------|--------------|------|
| WC-1 | \$26,981 | 1463 |
| WC-2 | \$36,600 | 1013 |
| WC-3 | \$7,569 | 413 |
| WC-4 | \$50,991 | 3038 |
| WC-5 | \$5,500 | 488 |
| WC-6 | \$8,441 | 600 |
| WC-7 | \$3,730 | 113 |
| WC-8 | \$935 | 37.5 |
| WC-9 | \$1,988 | 113 |
| TOTAL | \$142,735 | |

Thank you again for the opportunity to submit this proposal. Please do not hesitate to call if you have any questions.

SECTION III. That the board finds that the actions authorized by this resolution are for a public purpose and will promote the health, comfort and prosperity of the citizens of the city.

SECTION IV. That this resolution shall take effect from and after its adoption, the public welfare requiring it.

ADOPTED this the 20th day of December, 2016.

JOHN CLARK, MAYOR

ATTEST:

JAMES H. DEMMING, CITY RECORDER

APPROVED AS TO FORM:

J. MICHAEL BILLINGSLEY, CITY ATTORNEY

| | | |
|--|------------------|--------------|
| Contract Time Prior to This Change Order | <u>4/14/2017</u> | Days |
| Net <u>Increase</u> Resulting from this Change Order | <u>0</u> | Days |
| Current Contract Date Including This Change Order | <u>4/14/2017</u> | Days or Date |

The Above Changes Are Approved

Project Manager

By: David Mason

Date: _____

The Above Changes Are Accepted

Contractor

By: _____

Date: _____

Routing

1. Board of Mayor and Aldermen for approval and authorization for the Mayor to sign on behalf of the City
2. Project Manager
3. Contractor
4. City Attorney
5. Mayor
6. City Recorder

Distribution by City Recorder

1. Original executed change order to contract file
2. Copy to Contractor
3. Copy to Project Manager
4. Copy to Purchasing Director

Gardner Paint Services, Inc.
P. O. Box 5096 -- Johnson City, Tennessee 37602
Proposal

Date: December 6, 2016

To: **Tim Lorimer**
Company: **GRC Construction**
Fax: **(423) 349-7414**

From: **Brandon White**
Subject: **Meadowview Convention Center
Renovations – Add Wallcovering Material
Kingsport, TN**

Cover + (0) Pages = (1) Page

We propose to incorporate the requested changes in the scope of work, for the above referenced project, as follows:

Scope of Work

Inclusions:

- Scope of work includes furnishing the wallcovering material, as discussed.

Exclusions/Clarifications:

- Wallcovering material is to be delivered to Meadowview and stored in a climate controlled area.
- Material must be stored lying down and not standing up.
- Approval is needed ASAP as lead times are critical for this project.

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| WC-7 | \$3,730 | 113 |
| WC-8 | \$935 | 37.5 |
| WC-9 | \$1,988 | 113 |
| TOTAL | \$142,735 | |

Thank you again for the opportunity to submit this proposal.

Please do not hesitate to call if you have any questions.



IF YOU DO NOT RECEIVE THE NUMBER OF PAGES INDICATED, OR RECEIVED THIS TRANSMISSION
IN ERROR, PLEASE CALL (423) 928-8351 OR 800-821-5709



AGENDA ACTION FORM

Adoption of a Redevelopment Plan and Tax Increment Financing Amendment for the Riverbend Redevelopment District The Blake At Riverbend Project Area

To: Board of Mayor and Aldermen
 From: Jeff Fleming, City Manager 

Action Form No.: AF-331-2016
 Work Session: December 19, 2016
 First Reading: N/A

Final Adoption: December 20, 2016
 Staff Work By: Lynn Tully, AICP
 Presentation By: Lynn Tully, AICP

Recommendation:

Approve the Resolution as proposed and recommend that the same be approved by the Board of Commissioners of Sullivan County

Executive Summary:


The Board of Mayor and Alderman has previously approved the *Redevelopment Plan for Identified Districts and Study Areas*, as prepared by the Kingsport Housing & Redevelopment Authority, and various amendments over the years. KHRA has determined the necessity for expanding the Redevelopment District known as Riverbend and adoption of a Tax Increment Financing Amendment for the Riverbend Redevelopment District The Blake At Riverbend Project Area. The current project lies within the expanded development district and is therefore eligible for Tax Increment Financing.

The request is for approximately \$1 million in increment financing for the completed project over 10 years. The assisted living project includes 119 total apartment units with 170 beds and 47 of the units dedicated to memory care (Alzheimer's wing). Amenities include a full continuum of care with in-house physicians, nurses, hairdressers, and chefs as well as other social activities. This incentive will include a new public road providing for an additional 5 commercial parcels. The assisted living project alone could collect a total of almost \$2.98 million in taxes over 20 years upon development. The proposal includes approximately 47% of the available tax increment to be retained by the city and county.

KHRA held a public hearing on December 7, 2016, and approved the addition to the Riverbend Redevelopment District and also approved the Tax Increment Financing Amendment. KHRA has recommended that the Board of Mayor and Alderman approve the Riverbend TIF Amendment

Attachments:

1. Record of KHRA Action December 7, 2016
2. Resolution to Approve Adoption of a Redevelopment Plan and Tax Increment Financing Amendment for the Riverbend Redevelopment District The Blake At Riverbend Project Area
3. Map of District and property in District
4. TIF Amendment Estimate

Funding source appropriate and funds are available:  _____

| | Y | N | O |
|------------|---|---|---|
| Duncan | — | — | — |
| George | — | — | — |
| McIntire | — | — | — |
| Olterman | — | — | — |
| Parham | — | — | — |
| Segelhorst | — | — | — |
| Clark | — | — | — |

RESOLUTION NO. _____

A RESOLUTION APPROVING THE REDEVELOPMENT PLAN
AND TAX INCREMENT FINANCING AMENDMENT FOR THE
RIVERBEND REDEVELOPMENT DISTRICT FOR THE BLAKE AT
RIVERBEND PROJECT AREA

WHEREAS, Kingsport Housing & Redevelopment Authority ("KHRA") pursuant to the provisions of Title 13, Chapter 20, Tennessee Code Annotated, as supplemented and amended, has the power and authority to administer redevelopment programs located within its statutory boundaries; and

WHEREAS, KHRA has prepared a document entitled "Redevelopment Plan for Identified Districts & Study Areas" in conformance with Title 13, Chapter 20, Part 2, Tennessee Code Annotated, as supplemented and amended, which has been adopted by the City of Kingsport; and

WHEREAS, as previously authorized by the board of mayor and aldermen, KHRA conducted a public hearing on December 7, 2016, to determine the necessity for the expansion of the existing Riverbend Redevelopment District on behalf of the city and the adoption of a tax increment financing amendment which authorizes the use of tax increment financing within the expansion area; and

WHEREAS, the comments and findings of said public hearing, along with the project proposal for the Riverbend Redevelopment District have been presented to the board of mayor and aldermen; and

WHEREAS, KHRA has recommended the expansion of the existing Riverbend Redevelopment District and the proposed tax increment financing amendment and has also recommended approval of the use of tax increment financing for a project known as The Blake at Riverbend to be located within the Riverbend Redevelopment District expansion area as shown on the attached Exhibit; and

WHEREAS, the board of mayor and aldermen has reviewed the record of said public hearing, and the Tax Increment Financing Amendment, including the provisions therein for tax increment financing and desires to approve the same.

Now, therefore,

BE IT RESOLVED BY THE BOARD OF MAYOR AND ALDERMEN AS FOLLOWS:

SECTION I. That the expanded Riverbend Redevelopment District is a blighted area as defined by Tennessee Code Annotated section 13-20-201 in need of redevelopment.

SECTION II. That the Riverbend Redevelopment District Tax Increment Financing Amendment The Blake at Riverbend Project Area ("Amendment"), a copy of which is attached hereto as an exhibit, and which includes an amendment expanding the district boundary and authorizing tax increment financing, as presented and recommended by KHRA, is hereby approved, and the factual findings contained therein are affirmed and adopted by the board of mayor and aldermen.

SECTION III. That use of tax increment financing as described in the Amendment for use in support of the project known as The Blake at Riverbend is hereby approved.

SECTION IV. That KHRA is hereby authorized and empowered to implement the Redevelopment Plan and amendment on behalf of the City of Kingsport, Tennessee through the execution of a Redevelopment Agreement.

SECTION V. That the board finds that the actions authorized by this resolution are for a public purpose and will promote the health, comfort and prosperity of the citizens of the city.

SECTION VI. That this resolution shall take effect from and after its adoption, the public welfare requiring it.

ADOPTED this the 20th day of December, 2015.

JOHN CLARK, MAYOR

ATTEST:

JAMES H. DEMMING, CITY RECORDER

APPROVED AS TO FORM:

J. MICHAEL BILLINGSLEY, CITY ATTORNEY

**RIVERBEND REDEVELOPMENT DISTRICT
TAX INCREMENT FINANCING AMENDMENT
THE BLAKE AT RIVERBEND PROJECT AREA**

Tax-increment financing (“TIF”) is a redevelopment tool to be administered by housing and redevelopment authorities codified at Tenn. Code Ann. §§13-20-204 and 205, et. seq. The purpose of TIF is to provide an economic stimulus for blighted property in need of redevelopment. Upon adoption of this Amendment, TIF may be utilized to finance eligible redevelopment costs for a redevelopment project known as The Blake at Riverbend (“The Blake”) to be located within the newly expanded Riverbend Redevelopment District subject to the provisions of this Amendment. The TIF shall be administered as follows:

A. District History.

The property on which The Blake will be located is property adjacent to Wal-Mart on Fort Henry Drive which has remained undeveloped in spite of commercial activity around it. The current Riverbend Redevelopment District is shown on the map attached as Exhibit One. This Amendment would expand the Riverbend Redevelopment District to incorporate approximately 22 additional acres which consists of Sullivan County Tax Map 077H Parcels 003.00 and 004.00 as shown on Exhibit Two (“Expansion Area”). The Blake will occupy approximately 8.64 acres within the Expansion Area as shown on Exhibit Three (“Project Area”). The entire District as expanded by this Amendment will consist of approximately 45 acres. The remainder of the Expansion Area will be subdivided into additional outparcels which are expected to be developed for additional restaurant and retail space. The Project Area is under contract to be purchased by the Developer. Much of the property within the Expansion Area was graded with little to no control of erosion from the site. The property was cited for violations on several occasions. No progress has been made on the abandoned development for several years. This condition has negatively affected development in the nearby areas. In order to combat these issues for the site it is proposed that the Expansion Area (which includes the Project Area) be designated as part of the Riverbend Redevelopment District and be afforded all tax incentives as appropriate to encourage new land uses in the area.

The Expansion Area is recognized as having a potential economic return to the City and County primarily due to its desirable location near Fort Henry Drive. Delay of the redevelopment of this site will continue to have a deteriorative impact on the adjacent commercial areas. The use of TIF will allow the redevelopment of a well-located site which has previously been underutilized. The existing blight, dilapidated structures and negative impact on surrounding areas would all be remediated or eliminated by implementation of the proposed Redevelopment Project. Redevelopment of this area would also provide the opportunity to help alleviate the existing shortage of assisted living units available for rent in the Kingsport and Sullivan County markets.

Based on the foregoing circumstances and conditions, the Board of Commissioners of KHRA has determined that the Expansion Area of the District which includes the Project Area is blighted as defined by TCA 13-20-201 et seq. The District experiences the following conditions:

1. Long-term vacant and underutilized property.
2. The continued deterioration of the property due to unfinished grading and erosion control and negative impact to the surrounding properties.

It is recommended that the project be redeveloped, rehabilitated and/or renovated in order to correct such blighted, deteriorated and dilapidated conditions.

B. District Zoning and Land Use.

The redevelopment of the Riverbend Redevelopment District shall comply with the Zoning Ordinances and building codes as well as other applicable rules, laws, ordinances, codes and regulations of the City. KHRA shall also review the Plan and any redevelopment projects within the District with appropriate City agencies and officials to ensure that the Plan and the proposed redevelopment activities conform with local objectives relating to appropriate land uses, improved traffic flow, public transportation, public utilities, recreation and community facilities and other public improvements and needs. For a more complete description of the requirements and restrictions of the Zoning Ordinances of the City, reference should be made to the Ordinances themselves. This property should continue to be zoned B-4P (Planned Business District) by the City of Kingsport.

The City and KHRA will cooperate in the planning and construction of improvements to the streets, roadways, sidewalks, curbs and gutters, parking systems, lighting, landscaping and traffic signalization and control.

C. Estimated Cost of the Project.

The total estimated costs of all the proposed improvements to be made by The Blake at Kingsport, LLC (the "Developer") for The Blake, is \$21,348,625.00. The proposed improvements include construction of one building with two courtyards consisting of a total of 106,500 square feet which will include 120 units of assisted living apartments containing a total of 131 beds, on site therapy, on site healthcare, secure memory care and other related amenities (the "Redevelopment Project"). KHRA will be paid an annual administration fee equal to five percent of the total and annual tax increment revenue received by KHRA. The Project will be located in the Project Area on a portion of current Sullivan County Tax Map 077H, Control Map C, Group 077H, Parcels 003.00 and 004.00 which are the sole tax parcels within the Project Area. The TIF shall be limited to eligible expenditures for the Redevelopment Project within the Project Area.

D. Sources of Revenue to Finance the Cost of the Project.

The primary sources of revenue to pay for the Redevelopment Project are proceeds in the amount of \$17,078,900.00 from a permanent loan to the Developer, Developer investment of \$3,269,725.00, and tax-increment based debt (to be issued by the KHRA in the form of bonds, notes, or other indebtedness) in an amount not to exceed \$1,000,000.00, but in no event in an amount to exceed the estimated amount of debt that can be amortized over a 10 year increment period which are hereby authorized by City of Kingsport (the "City") and Sullivan County, Tennessee (the "County"). Current projections suggest that the tax increment from the proposed improvements within the Project Area will be sufficient to retire this amount of indebtedness within a ten (10) year amortization period for both the City and the County.

The total current property tax assessment for the Project Area is \$180,000.00. This results in annual property tax payments to the City in the amount of \$3,726.00 and annual property tax payments to the County in the amount of \$4,149.72. The Redevelopment Project would result in a total estimated assessed value for property within the Project Area of \$6,188,080.00. Based on current tax rates, this would result in total estimated annual city taxes of \$128,093.26 and total estimated annual county taxes of \$159,367.81. Because Sullivan County has dedicated \$0.166 of its \$2.5754 tax rate for repayment of indebtedness and the City of Kingsport has dedicated \$.3400 of its \$2.07 tax rate for repayment of indebtedness, that portion of the increment, pursuant to Tenn. Code Ann. §§13-20-205 and 9-23-103, shall not be allocated as provided in Paragraph G below but shall be collected and paid to the respective taxing agency as all other property taxes are collected and paid. Thus, the estimated total available increment from Sullivan County taxes after the administration fee and statutory debt service set aside is \$137,480.79. The estimated total available increment from City of Kingsport taxes after the administration fee and statutory debt service set aside is \$ 98,742.79 resulting in an estimated total annual available tax increment from City and County of \$236,223.59. A detailed calculation of these estimated projections is attached hereto as Exhibit Four. The redevelopment of the Project Area will not occur to the degree proposed without the use of tax-increment financing.

E. Amount and the Final Maturity of Bonded or other Indebtedness to be Incurred.

The amortization period for any indebtedness backed by the tax-increment revenue generated within the Project Area shall be no more than fifteen years from the date of issuance of the debt. In any event, the final maturity date of all indebtedness issued pursuant to this Amendment shall be on or before May 15, 2030. Upon retirement of all bonds, loans, or other indebtedness incurred and payable from tax-increment funds, or at such time as monies on deposit in the tax-increment fund or funds are sufficient for such purpose, all property taxes resulting from the incremental development of the project shall be retained by the appropriate taxing agency for disbursement according to law.

F. Impact of the Tax-Increment Financing Provisions Upon Taxing Agencies.

The total assessment of the City of Kingsport's real property tax base for the 2016 tax year is approximately \$1,294,676,740.00. The total assessment of Sullivan County's real property tax base for the 2016 tax year is approximately \$3,099,352,235.00. The current assessment of the Project Area represents 0.0001% of the City of Kingsport's property tax base and 0.00006% of the Sullivan County property tax base. The estimated assessment of the Proposed Improvements would represent 0.006% of the current City of Kingsport tax base and 0.0026% of the current Sullivan County tax base. Based on these small percentages, the City and the County (the two taxing agencies affected by this Redevelopment Project) will not be substantially impacted financially by this tax-increment financing provision.

The development of the Redevelopment Project will result in additional residents and economic activity within the Redevelopment District. It is estimated as many as 76 new local jobs could be created during the construction phase of the Redevelopment Project which would result in approximately \$165,000,000 in local income over the course of the project and approximately \$1,400,000.00 in local taxes and other revenue for local governments. In addition, the long term impact includes the addition of residents to our communities which means approximately 81 new local jobs which creates approximately \$3,000,000.00 in local income and other revenue for local governments. While all these numbers rely on certain assumptions and projections, the end result of the Redevelopment Project is that a need for assisted living units has been met and the City and County will receive a substantial economic boost.

G. Division of Property Taxes.

Upon approval of this Amendment, the taxes levied and collected over the Project Area shall be collected by the appropriate taxing authorities in the same manner as provided by law, except that said taxes shall be divided as follows:

1. The portion of the taxes which would be produced by the rate at which the tax is levied each year by each taxing agency, upon the assessed value of such property within the Project Area as of the 2016 tax year (which is the year of approval of this TIF amendment) ("Base Assessment"), shall be allocated to, and when collected, shall be paid to, the respective taxing agencies as taxes levied by such taxing agencies on all other property are paid; provided, that in any year in which taxes of the Project Area are less than the Base Assessment and the Dedicated Taxes, there shall be allocated and paid to those respective taxing agencies only those taxes actually imposed and collected; and provided further, that, in any year or years in which the Base Assessment would be diminished solely due to a rate reduction under Title 67, Chapter 5, Part 17, of the Tennessee Code, the Base Assessment shall nevertheless be established at the amount originally determined.

2. Subject to the restraints herein and applicable law, all of the City of Kingsport taxes levied in each year in excess of the Base Assessment and Dedicated Taxes shall be allocated to and, when collected, shall be paid into a special fund or funds

of KHRA to pay the administration fee and to pay the principal of and interest on any bonds, loans or other indebtedness incurred or to be incurred by KHRA to finance or refinance, in whole or in part, eligible redevelopment expenses of the Redevelopment Project contemplated by the Redevelopment Plan, and such other expenses as may be allowed by law.

3. Subject to the restraints herein and applicable law, sixty five percent (65%) of the Sullivan County taxes levied in each year in excess of the Base Assessment and Dedicated Taxes shall be allocated to and, when collected, shall be paid into a special fund or funds of KHRA to pay the administration fee and to pay the principal of and interest on any bonds, loans or other indebtedness incurred or to be incurred by KHRA to finance or refinance, in whole or in part, eligible redevelopment expenses of the Redevelopment Project contemplated by the Redevelopment Plan, and such other expenses as may be allowed by law. The remaining thirty five percent (35%) of the Sullivan County taxes levied in each year in excess of the Base Assessment and Dedicated Taxes shall be allocated to and, when collected, shall be paid to Sullivan County in the same manner as taxes on all other property are paid.

4. Upon retirement of all bonds, loans or other indebtedness incurred by KHRA and payable from such special fund or funds, or at such time as monies on deposit in such special fund or funds are sufficient for such purpose, all taxes levied each year in excess of the Base Assessment and Dedicated Taxes shall, when collected, be paid to the respective taxing agency as taxes levied by such taxing agencies on all other property are paid, and KHRA shall give notice to all affected taxing agencies of such retirement. Excess taxes beyond amounts necessary to fund or reserve for eligible expenditures may be applied to principal and interest of debt incurred to finance such eligible expenditures or shall revert to the taxing agency general fund. In any event, the division of property taxes required by this document shall not continue for any tax year beyond 2029.

H. Property Tax Assessments and Collection.

1. The appropriate assessor shall, in each year during the period in which taxes are to be allocated to KHRA pursuant to Paragraph G, compute and certify the net amount, if any, by which the current assessed value of all taxable property located within the Project Area which is subject to taxation by the particular taxing agency exceeds the base assessment. The net amount of any such increase is referred to in this subdivision as the incremental value for that particular year.

2. In any year in which there exists a tax increment to be allocated to KHRA, the appropriate assessor shall exclude it from the assessed value upon which the appropriate assessor computes the tax rates for taxes levied that year by the taxing agency. However, the assessor shall extend the aggregate tax rate of such taxes against the Base Assessment and the incremental value and shall apply the taxes collected there from as provided herein.

3. If in any year property comprising a portion of the Project Area shall be removed from the tax rolls of a taxing agency, the Base Assessment for the Project Area shall be reduced by the amount of the Base Assessment allocable to the property so removed for each subsequent year in which taxes are to be allocated to a particular authority pursuant to the above provisions.

I. Documentation for Assessor's Office.

Upon approval of this Amendment, KHRA shall transmit to the assessor of property and the chief financial officer for each taxing agency affected, a copy of the description of all land within the Project Area (including tax parcel numbers), the date or dates of the approval of the redevelopment plan or amendment thereto, a copy of the resolution approving the redevelopment plan or approving an Amendment thereto, a map or plat indicating the boundaries of such property and the Base Assessment with respect to the Project Area, and taxes shall thereafter, when collected, be allocated and paid in the manner provided herein.

J. Excluded Taxes.

Notwithstanding anything to the contrary in this section, taxes levied upon property subject to tax-increment financing provisions by any taxing agency for the payment of principal of and interest on all bonds, loans or other indebtedness of such taxing agency, and taxes levied by or for the benefit of the State of Tennessee (herein "Dedicated Taxes"), shall not be subject to allocation as provided in Paragraph G but shall be levied against the property and, when collected, paid to such taxing agency as taxes levied by such taxing agency on all other property are paid and collected.

K. Interpretation.

This tax-increment financing amendment is being proposed pursuant to *Tenn. Code Ann. § 13-20-201, et. seq.* and *Tenn. Code Ann. § 9-23-101, et. seq.* and all relevant provisions are hereby incorporated herein by reference. All provisions of this Amendment shall be construed in a manner consistent with said Code sections.

L. Conditions of Tax-Increment.

KHRA shall enter into a redevelopment agreement with Developer which requires Developer to pursue and complete the Redevelopment Project in a diligent manner, and in accordance with plans and specifications approved by KHRA. The redevelopment agreement to be entered into between KHRA and Developer shall contain such terms as KHRA believes reasonably necessary to accomplish this purpose.

M. Limitation of Approval.

The approval of this TIF Amendment by Sullivan County, Tennessee is limited solely to Redevelopment Project and the Project Area described herein and shall not be interpreted as an approval of any other tax increment financing project, or Redevelopment District.

EXHIBIT ONE

MAP OF CURRENT RIVERBEND REDEVELOPMENT DISTRICT



EXHIBIT TWO

MAP OF EXPANDED RIVERBEND REDEVELOPMENT DISTRICT

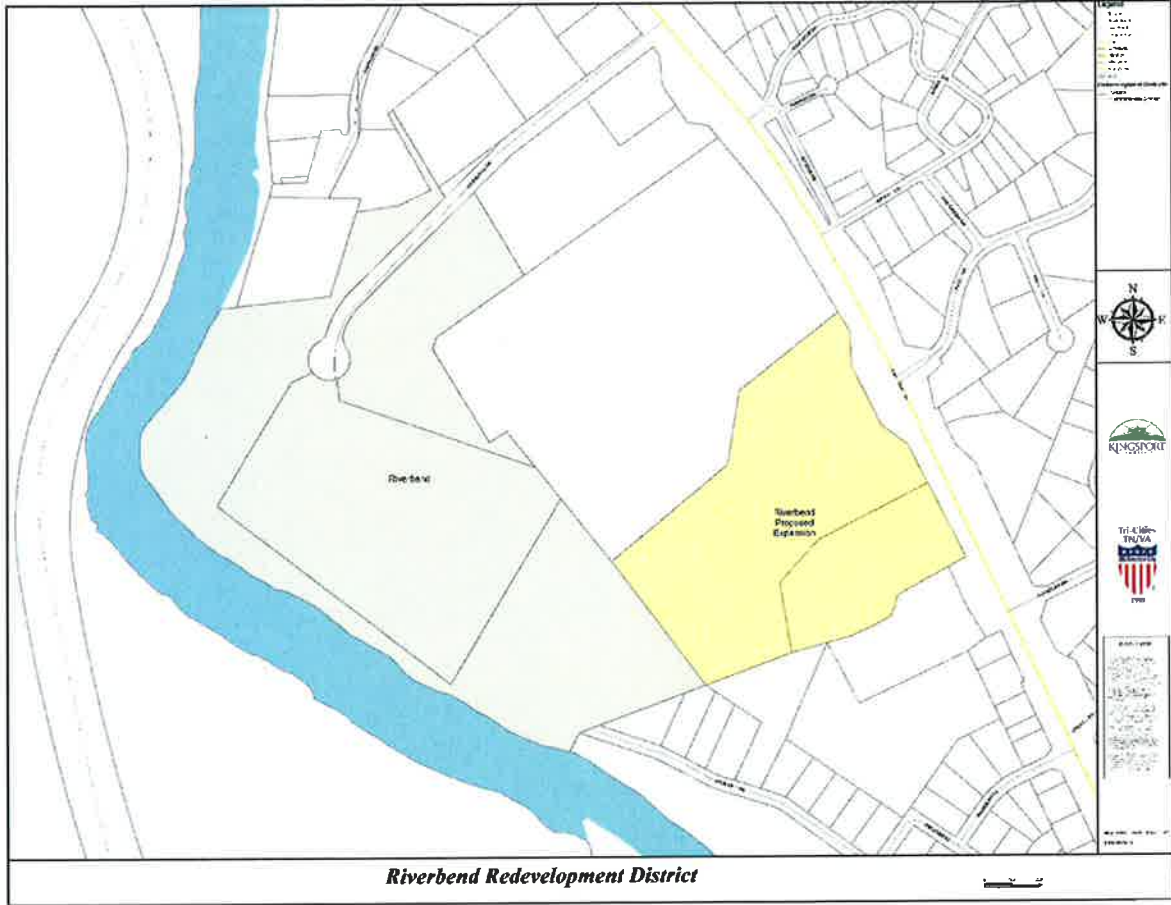


EXHIBIT THREE

MAP OF THE BLAKE PROJECT AREA

RELIQUARY LANDSCAPING PLAN

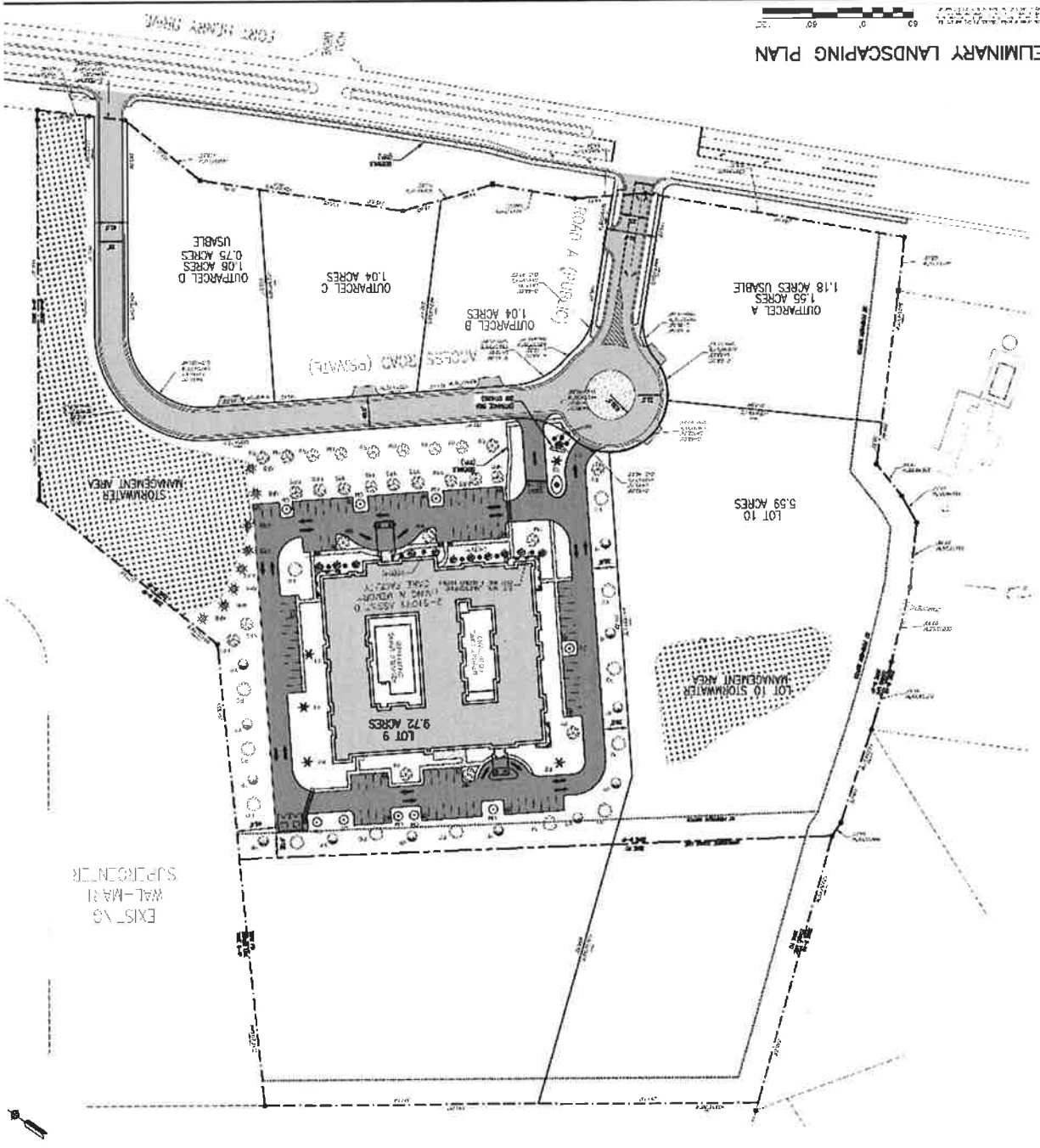


EXHIBIT FOUR

TIF ESTIMATE
RIVERBEND REDEVELOPMENT DISTRICT
THE BLAKE AT RIVERBEND PROJECT AREA

| | |
|--|---------------------|
| Total Original Assessed Value | \$180,000.00 |
| County Tax Rate | 2.5754 |
| City Tax Rate | 2.07 |
| Total Proposed Assessed Value | \$6,188,080.00 |
| County Debt Service Set Aside | 0.1667 |
| City Debt Service Set Aside | 0.3400 |
| Total Proposed County Taxes | \$159,367.81 |
| Current County Taxes | \$4,635.72 |
| Proposed County Increment | \$154,732.09 |
| County Debt Service Set Aside | \$10,015.47 |
| Total Available County Increment | \$144,716.62 |
| Net County Increment after Fee | \$137,480.79 |
| Total Proposed City Taxes | \$128,093.26 |
| Current City Taxes | \$3,726.00 |
| Proposed City Increment | \$124,367.26 |
| City Debt Service Set Aside | \$20,427.47 |
| Total Available City Increment | \$103,939.78 |
| Net City Increment After Fee | \$98,742.79 |
| Net Available City and County Increment | \$236,223.59 |

GENERAL CERTIFICATE

I, Terry W. Cunningham DO HEREBY CERTIFY as follows:

1. I am the duly appointed, qualified, and acting Secretary of the Kingsport Housing & Redevelopment Authority (herein called the "Local Agency"). In such capacity, I am custodian of its records and am familiar with its organization, membership and activities.

2. The proper and correct corporate title of the Local Agency is the Kingsport Housing & Redevelopment Authority.

3. The Local Agency was duly created pursuant to the authority of the Constitution and statutes of the State of Tennessee, including, particularly, Sullivan County, and was duly organized on the 28th day of February, 1939; and since the date of its organization, the Local Agency has continued to exist without interruption in the performance of its public corporate purposes.

4. The names and dates of election or appointment, and the dates of the beginning and ending of terms of office, of the members of the governing body of the Local Agency and of its principal officers are as follows:

| <u>Name and Officer(s)</u> | <u>Date of Election or Appointment</u> | <u>Date of Commencement of Term of Office</u> | <u>Date of Expiration of Term of Office</u> |
|----------------------------------|--|---|---|
| David A Jennings Commissioner | 08/02/05 | 08/02/05 | 03/01/18 |
| Larry Estepp Vice Chair | 03/15/14 | 04/01/14 | 03/01/19 |
| John L VandeVate Commissioner | 08/17/90 | 08/17/90 | 03/01/17 |
| Linda Calvert Chair | 10/05/04 | 10/05/04 | 03/01/20 |
| Esther Rodolphe Commissioner | 02/25/16 | 04/01/16 | 03/31/21 |

5. Each of the above named officers required to do so has duly taken and filed his oath of office and each of them legally required to give bond or undertaking has filed such bond or undertaking in form and amount as required by law and has otherwise duly qualified to act in the official capacity above designated, and each is the acting officer holding the respective office or offices stated beside his name.

6. None of the above-named officers is ineligible to hold or disqualified from holding, under the provisions of applicable law, the respective office, specified above, which he holds.

7. None of the above-named Commissioners is an officer or employee of the City of Kingsport.

8. Since April 27, 1999, there have been no changes in or amendments to the charter, by-laws, ordinances, resolutions, or proceedings of the Local Agency with respect to:

- (a) The time and place of and other provisions concerning regular meetings of the Local Agency;
- (b) The provisions concerning the calling and holding of special meetings of the Local Agency and the business which may be taken up at such meetings;
- (c) The requirements concerning a quorum;
- (d) The manner in which the charter or by-laws of the Local Agency may be amended;
- (e) The requirements regarding the introductions, passage, adoption, approval, and publication of resolutions, ordinances, or other measures, relating to the approval and execution of contracts and the authorization, award, execution, or issuance of bonds, notes, and other obligations of the Local Agency;
- (f) The officers required to sign, countersign, or attest contracts, bonds, notes, and other obligations of the Local Agency;
- (g) The office of the Local Agency; or
- (h) The seal of the Local Agency;

except as follows:

RESOLUTION 92-16

ARTICLE II - OFFICERS

SECTION 6. **Election or Appointment.** The Chairman and Vice-Chairman shall be elected at the March meeting of the Board of Commissioners of the Authority, and shall hold office for one year or until their successors are elected or qualified.

RESOLUTION 2007-30

ARTICLE III - MEETINGS

SECTION 1. **Annual Meeting.** The annual meeting of the Board of Commissioners of the Authority shall be held on the fourth Wednesday in May following the regular meeting. In the event such date shall fall on a legal holiday, the annual meeting shall be rescheduled.

SECTION 2. **Regular Meeting.** The time of the regular meeting shall be set at the annual meeting unless changed by proper resolution. Monthly meetings shall be held without notice to the Commissioners at the Conference Room in the Administration Building, 906 East Sevier Avenue Kingsport, TN on the fourth Wednesday of each month; unless the same shall be a legal holiday in which event said meeting shall be rescheduled.

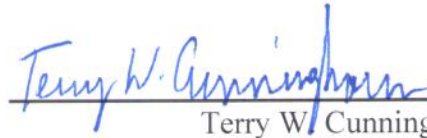
SECTION 6. **Manner of Voting.** The voting on all questions coming before the Board of the Authority that are not unanimous shall be by roll call, and the ayes and nays shall be entered upon the minutes of each meeting.

RESOLUTION 2015-31

SECTION 1. **Officers.** The officers of the Authority shall be a Chair, a Vice Chair, and a Secretary-Treasurer, and an Assistant Secretary-Treasurer.

9. The seal impressed below, opposite my signature, is the duly adopted, proper, and only official corporate seal of the Local Agency.

IN WITNESS WHEREOF, I have hereunto set my hand and the duly adopted official seal of the Local Agency this 20th day of December 2016.



Terry W. Cunningham


Secretary
Title



CERTIFICATE OF RECORDING OFFICER

I, Terry W. Cunningham the duly appointed, qualified and acting Secretary of Kingsport Housing & Redevelopment Authority, do hereby certify that the attached extract from the minutes of the Annual meeting of the Board of Directors, held on December 7, 2016 is a true and correct copy of the original minutes of such meeting on file and of record insofar as they relate to the matters set forth in the attached extract, and I do further certify that each Resolution appearing in such extract is a true and correct copy of a Resolution adopted at such meeting and on file and of record.

IN TESTIMONY WHEREOF, I have hereunto set my hand and the seal of the Kingsport Housing & Redevelopment Authority this 20th day of December 2016.



Terry W. Cunningham, Secretary

(SEAL)

EXTRACT FROM MINUTES OF MEETING

Extract from the minutes of a regular meeting of the Board of Commissioners of the Kingsport Housing & Redevelopment Authority held on the 7th day of December 2016.

The Board of Commissioners of the Kingsport Housing & Redevelopment Authority met in the annual meeting at KHRA Administration Office Conference Room, 906 E. Sevier Avenue in the City of Kingsport, Tennessee at the place, hour and date duly established for the holding of such meeting.

The Chair called the meeting to order and on roll call the following answered present:

Chair, Linda Calvert
Vice Chair, Larry Estep
Commissioner, Jack VandeVate
Commissioner, David A. "Tony" Jennings
Commissioner, Esther Rodolphe

Resolution 2016-73

.....

Riverbend Redevelopment District Expansion and TIF Project – The Blake
Motion: Commissioner VandeVate moved (seconded by Rodolphe) to approve the Riverbend Redevelopment District Expansion and TIF Project – The Blake. Vice Chair Estep abstained from conversation and voting. Motion Carried – unanimous.

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AGENDA ACTION FORM

Approve an Agreement with Source Technologies. LLC for Odor and Corrosion Control at Sewer Lift Stations

To: Board of Mayor and Aldermen
From: Jeff Fleming, City Manager *JF*

Action Form No.: AF-336-2016
Work Session: December 19, 2016
First Reading: N/A

Final Adoption: December 20, 2016
Staff Work By: Niki Ensor
Presentation By: Ryan McReynolds

Recommendation:

Approve the Resolution.

Executive Summary:

Hydrogen Sulfide (H₂S) is the primary cause of sewer odors and pipe corrosion. Hydrogen sulfide is formed from naturally occurring sulfates in sewer. In oxygen-poor environments, such as long force mains, bacteria turn all the accumulated sulfates turn to sulfide, and ultimately to corrosive sulfuric acid. If not controlled, H₂S can cause objectionable sewer odors and corrode pipes leading to premature replacement or catastrophic failures.

The BMA approved a sole source agreement with Source Technologies on August 18, 2015 for odor and corrosion control at the sewer lift stations. The agreement included a renewal option which allows the city to continue service for an additional year if costs are acceptable to both parties. There is no cost increase from the previous year. The estimated annual cost for odor/corrosion is \$80,000, which exceeds the City's procurement requirement for bidding services greater than \$50,000. It is staff's recommendation to extend for an additional year. Funding is identified in the sewer operating budget.

Attachments:

- 1. Resolution
- 2. Source Technology Proposal

Funding source appropriate and funds are available: *JF*

| | Y | N | O |
|------------|---|---|---|
| Duncan | — | — | — |
| George | — | — | — |
| McIntire | — | — | — |
| Olterman | — | — | — |
| Parham | — | — | — |
| Segelhorst | — | — | — |
| Clark | — | — | — |

RESOLUTION NO. _____

A RESOLUTION APPROVING RENEWAL OF AN AGREEMENT WITH SOURCE TECHNOLOGIES, LLC. FOR ODOR AND CORROSION CONTROL AT SEWER LIFT STATIONS AND AUTHORIZING THE MAYOR TO EXECUTE THE AGREEMENT AND ALL OTHER DOCUMENTS NECESSARY AND PROPER TO EFFECTUATE THE PURPOSE OF THE AGREEMENT

WHEREAS, hydrogen sulfide (H₂S) is the primary cause of sewer odors and pipe corrosion; and

WHEREAS, hydrogen sulfide is formed from naturally occurring sulfates in sewer; and

WHEREAS, in oxygen-poor environments, such as long force mains, bacteria turn all the accumulated sulfates turn to sulfide, and ultimately to corrosive sulfuric acid; and

WHEREAS, if not controlled, H₂S can cause objectionable sewer odors and corrode pipes leading to premature replacement or catastrophic failures; and

WHEREAS, the BMA approved a sole source agreement with Source Technologies on August 18, 2015, for odor and corrosion control at the sewer lift stations; and

WHEREAS, the agreement included a renewal option which allows the city to continue service for an additional year if costs are acceptable to both parties; and

WHEREAS, there is no cost increase from the previous year; and

WHEREAS, the estimate annual cost for odor/corrosion is \$80,000.00, which exceeds the city's procurement requirement for bidding services greater than \$50,000.00; and

WHEREAS, it is the recommendation of the public works department to extend the agreement for an additional year; and

WHEREAS, funding for the agreement is identified in the sewer operating budget.

Now therefore,

BE IT RESOLVED BY THE BOARD OF MAYOR AND ALDERMEN AS FOLLOWS:

SECTION I. That the renewal option in the agreement with Source Technologies, LLC for an additional year is approved.

SECTION II. That the mayor, or in his absence, incapacity, or failure to act, the vice-mayor, is authorized and directed to execute, in a form approved by the city attorney and subject to the requirements of Article X, Section 10 of the Charter of the City of Kingsport, an agreement with Source Technologies, LLC, to extend the current agreement for one additional year, and all other documents necessary and proper, and to take such acts as necessary, to effectuate the purpose of the agreement of this resolution, said agreement being generally as follows:

SOURCE TECHNOLOGIES
Proposal for the Elimination of Odor and Corrosion for the City of Kingsport at the Old Mill Pump Station and Hemlock on the Bank Pump Station
Submitted by Drew Kirby
Source Technologies, LLC
December 5, 2016

Technology for a Cleaner Environment

Old Mill Pump Station

Site Background

The City of Kingsport's Old Mill Pump Station and Force main consists of 22,938 linear feet of 14 inch pipe. There is an estimated daily flow of 230,000 GPD and a detention time of approximately 19.1 hours.

Product Background

Source Technologies, LLC (Source) proposes the ETX Process for the primary treatment of hydrogen sulfides in the Old Mill force main. The ETX Process, developed by Source Technologies is an efficient, cost-effective, advanced oxidation process for treatment of sulfonated organics in wastewater and bio-solids where detention times range from 4-36 hours.

The ETX Process can be employed in a variety of ways and is easily adaptable to existing treatment systems. Application of the ETX Process is very straightforward, requiring metering of the ETX catalyst with an Oxidant, in this case Hydrogen Peroxide (H₂O₂) into the targeted wastewater with adequate mixing. The reaction occurs quickly thereafter.

Experience has demonstrated that the ETX Process is particularly efficient for treatment of sulfides in this detention time range for municipal and industrial applications. The cost of sulfide treatment using the ETX Process for this detention time range is the *lowest in the industry* as compared to all currently available technology.

Hemlock on the Bank Pump Station

Site Background

The City of Kingsport's Hemlock on the Bank Pump Station and Force main consists of 2,400 linear feet of 3 inch pipe. There is an estimated daily flow of 20,000 GPD and a detention time of approximately 1.06 hours.

Treatment Objectives and Daily Operational Costs

The STX system recommended in this proposal is uniquely capable of reducing sulfide and H₂S levels to less than 1.0 MG/L and less than an average of 10 ppm respectively.

Chemical Cost

Estimated Daily Cost

Old Mill Pump Station #203

\$160.21/day

Feed rate ETX 17.8 GPD est. (\$6.00 per gal.)

Feed rate H₂O₂ 8.90 GPD est. (\$6.00 per gal.)

Hemlock on the Bank Pump Station #318

\$40.03/day

Feed rate STX 0.67 GPD est. (\$24.00 per gal.)

Feed rate H₂O₂ 4.00 GPD est. (\$6.00 per gal.)

The feed rates will fluctuate up and down throughout the year based on sulfide levels but should average out at approximately what is stated above. Source will inform the City of Kingsport if they see that feed rates need to be increased more than projected and will get approval first before increasing them. Maximum yearly expense not to exceed \$15,000 for Hemlock on the bank and \$65,000 for Old Mill.

Service Agreement

Source will provide all service and maintenance on all the equipment they provide. This will include all chemical fills which are estimated to occur every 3-4 months. A pre-approved monthly report on performance will also be submitted.

Contract Agreement

Source proposes a one year contract with the option to renew. The City of Kingsport has the right to terminate this agreement with just cause of lack of performance by Source Technologies.

ETX and H₂O₂ are blended using some commodity ingredients. As such, the price for each chemical can fluctuate somewhat depending on fluctuations in commodity prices and the cost of fuel. Source reserves the right to pass major cost increases to its customers. While we do not anticipate major fluctuations from the prices from the original quote, Source will notify the City of Kingsport in writing if a change in price is forthcoming. With any price increase the City of Kingsport maintains the right to end their contract with Source Technologies.

Please feel free to contact me should you have any questions. We look forward to working with you on this project.

Respectfully,
Drew Kirby
Project Manager

Note: This proposal is valid for 30 days.

Approval to Proceed by the City of Kingsport of Kingsport, TN

[Acknowledgements Deleted for Inclusion in this Resolution]

SECTION III. That the mayor is further authorized to make such changes approved by the mayor and the city attorney to the agreement set out herein that do not substantially alter the material provisions of the agreement, and the execution thereof by the mayor and the city attorney is conclusive evidence of the approval of such changes.

SECTION IV. That the board finds that the actions authorized by this resolution are for a public purpose and will promote the health, comfort and prosperity of the citizens of the city.

SECTION V. That this resolution shall take effect from and after its adoption, the public welfare requiring it.

ADOPTED this the 20th day of December, 2016.

JOHN CLARK, MAYOR

ATTEST:

JAMES H. DEMMING, CITY RECORDER

APPROVED AS TO FORM:

J. MICHAEL BILLINGSLEY, CITY ATTORNEY



**Proposal for the Elimination of Odor and
Corrosion for the City of Kingsport at the Old
Mill Pump Station and Hemlock on the Bank
Pump Station**

**Submitted by Drew Kirby
Source Technologies, LLC**

December 5, 2016

Technology for a cleaner environment

Old Mill Pump Station

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Contract Agreement

Source proposes a one year contract with the option to renew. The City of Kingsport has the right to terminate this agreement with just cause of lack of performance by Source Technologies.

ETX and H₂O₂ are blended using some commodity ingredients. As such, the price for each chemical can fluctuate somewhat depending on fluctuations in commodity prices and the cost of fuel. Source reserves the right to pass major

cost increases to its customers. While we do not anticipate major fluctuations from the prices from the original quote, Source will notify the City of Kingsport in writing if a change in price is forthcoming. With any price increase the City of Kingsport maintains the right to end their contract with Source Technologies.

Please feel free to contact me should you have any questions. We look forward to working with you on this project.

Respectfully,

Drew Kirby
Project Manager

Note: This proposal is valid for 30 days.

Approval to Proceed by the City of Kingsport of Kingsport, TN


Print

Signature of Authorized Agent



AGENDA ACTION FORM

Contract with the Tennessee Department of Transportation for Federal and State Transportation Planning Funds on Behalf of the Kingsport MTPO


To: Board of Mayor and Aldermen
From: Jeff Fleming, City Manager 

Action Form No.: AF-338-2016
Work Session: December 19, 2016
First Reading: N/A
Final Adoption: December 20, 2016
Staff Work By: Bill Albright
Presentation By: Bill Albright

Recommendation:
Approve the Resolution.

Executive Summary:
Annually the City of Kingsport, on behalf of the Kingsport Metropolitan Transportation Planning Organization (MTPO), receives an appropriation of "Section 5303 Planning" funds from the Federal Transit Administration via the Tennessee Department of Transportation (TDOT). These funds are authorized through the Kingsport MTPO and are used for planning and development of the City's Multi-Modal (Public Transit, Pedestrian, and Bikeway) Programs and Projects. The program allocation is based on a formula of 80% Federal, 10% State, and 10% Local match. The contract amount is for \$46,589 (Federal and State) and requires a Local match of \$5,177, which has already been allocated in the budgeting process. With Federal, State, and Local contributions, the total grant is \$51,766.

Attachments:
1. Resolution
2. Contract

Funding source appropriate and funds are available: 

| | Y | N | O |
|------------|---|---|---|
| Duncan | — | — | — |
| George | — | — | — |
| McIntire | — | — | — |
| Olterman | — | — | — |
| Parham | — | — | — |
| Segelhorst | — | — | — |
| Clark | — | — | — |

RESOLUTION NO. _____

A RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE A GRANT CONTRACT BETWEEN THE CITY OF KINGSPORT AND THE TENNESSEE DEPARTMENT OF TRANSPORTATION TO RECEIVE FEDERAL TRANSIT ADMINISTRATION SECTION 5303 PLANNING FUNDS FOR USE BY THE KINGSPORT AREA METROPOLITAN TRANSPORTATION PLANNING ORGANIZATION

WHEREAS, each year the city receives an appropriation of Federal Transit Administration Section 5303 Planning Funds through the Tennessee Department of Transportation for use by the Kingsport Area Metropolitan Transportation Planning Organization; and

WHEREAS, the city must enter into a grant contract with the Tennessee Department of Transportation to receive the funds; and

WHEREAS, the amount from state and federal funds is \$46,589.00 and requires a local match of \$5,177.00, which has been previously budgeted, for a total amount with combined local, state and federal contributions of \$51,766.00.

Now therefore,

BE IT RESOLVED BY THE BOARD OF MAYOR AND ALDERMEN AS FOLLOWS:

SECTION I. That the mayor, or in his absence, incapacity, or failure to act, the vice mayor, is authorized and directed to execute, in a form approved by the city attorney and subject to the requirements of Article X, Section 10 of the Charter of the City of Kingsport, a contract with the Tennessee Department of Transportation to receive Federal Transit Administration Section 5303 Transportation Planning Funds, in the amount from state and federal funds of \$46,589.00, requiring a local match of \$5,177.00, which has been previously budgeted, for a total amount with combined local, state and federal contributions of \$51,766.00, for use by the Kingsport Area Metropolitan Transportation Planning Organization.

SECTION II. That the board finds that the actions authorized by this resolution are for a public purpose and will promote the health, comfort and prosperity of the public.

SECTION III. That this resolution shall take effect from and after its adoption, the public welfare requiring it.

ADOPTED this the 20th day of November, 2016.

JOHN CLARK, MAYOR

ATTEST:

JAMES H. DEMMING, CITY RECORDER

APPROVED AS TO FORM:

J. MICHAEL BILLINGSLEY, CITY ATTORNEY

| | | | | | |
|---|-------------------|---|--------------------------|---|------------------------------------|
|  GOVERNMENTAL GRANT CONTRACT (cost reimbursement grant contract with a federal or Tennessee local governmental entity or their agents and instrumentalities) | | | | | |
| Begin Date October 1, 2014 | | End Date December 31, 2017 | | Agency Tracking # 40100-05217 | |
| Grantee Legal Entity Name Kingsport Metropolitan Planning Organization on behalf of City of Kingsport | | | | | Edison ID 1562 |
| Subrecipient or Contractor <input checked="" type="checkbox"/> Subrecipient <input type="checkbox"/> Contractor | | CFDA #20.505 Grantee's fiscal year end June 30 | | | |
| Service Caption (one line only) FY 15 5303 Metropolitan Transportation Planning | | | | | |
| Funding — | | | | | |
| FY | State | Federal | Interdepartmental | Other | TOTAL Grant Contract Amount |
| 17 | \$5,177.00 | \$41,412.00 | | | \$46,589.00 |
| | | | | | |
| | | | | | |
| | | | | | |
| TOTAL: | \$5,177.00 | \$41,412.00 | | | \$46,589.00 |
| Grantee Selection Process Summary | | | | | |
| <input type="checkbox"/> Competitive Selection | | Describe the competitive selection process used. | | | |
| <input type="checkbox"/> Non-competitive Selection | | There are 11 MPOs in the State and funds are formula based depending on urbanized area population | | | |
| Budget Officer Confirmation: There is a balance in the appropriation from which obligations hereunder are required to be paid that is not already encumbered to pay other obligations. | | | | <i>CPO USE - GG</i> | |
| Speed Chart (optional) TX00239489; TX00239490 | | Account Code (optional) 71302000 | | | |

Edison Vendor Address #17

**GRANT CONTRACT
BETWEEN THE STATE OF TENNESSEE,
DEPARTMENT OF TRANSPORTATION
AND
KINGSPORT METROPOLITAN PLANNING ORGANIZATION
ON BEHALF OF CITY OF KINGSPORT**

This grant contract ("Grant Contract"), by and between the State of Tennessee, Department of Transportation, hereinafter referred to as the "State" or the "Grantor State Agency" and Grantee Kingsport Metropolitan Planning Organization on behalf of City of Kingsport, hereinafter referred to as the "Grantee," is for the provision of planning assistance, as further defined in the "SCOPE OF SERVICES AND DELIVERABLES."

Grantee Edison Vendor ID # 1562

A. SCOPE OF SERVICES AND DELIVERABLES:

- A.1. The Grantee shall provide the scope of services and deliverables ("Scope") as required, described, and detailed in this Grant Contract.
- A.1. The Grantee shall provide the scope of services and deliverables ("Scope") as required, described, and detailed in this Grant Contract.
- A.2. The Grantee shall abide by the provisions of the Federal Transit Administration (FTA) Section 5303 Program, codified by U.S.C. 5303 to provide funds to Metropolitan Planning Organizations (MPOs) to support the costs of preparing long range transportation plans, financially feasible Transportation Improvement Plans, and conducting intermodal transportation planning and technical studies. Specifically, the funds will assist the Grantee with transportation planning administration, project planning, and transit planning coordination activities. The Grantee shall provide reports supporting activities with the deliverables indicating, but are not limited to, the following:

Transportation Planning Administration

- Conform to federal requirements, including support for a cooperative, continuous, and comprehensive program of activity.
- Provide resources and information to ensure public awareness and involvement in the local transportation planning process.

Project Planning

- Identify and meet the short-range transportation needs of the urban area, through the development of studies, plans and programs that promote the efficient use of existing transportation resources.
- Develop the urban area Transportation Improvement Program (TIP).
- Advise and recommend amendments to the Long Range Transportation Plan, as needed.

Transit Planning

- Assist Metropolitan Organization's and transit agency policy board members in understanding the metropolitan transportation planning process.
- Emphasize the preservation of the existing transportation system.

- Perform various special projects relating to the investigation of demand responsive transit, improvement of transit amenities, and expanded shuttle services.
- Improve the accessibility, connectivity, and mobility of people across and between transportation modes.

A.3. Incorporation of Additional Documents. Each of the following documents is included as a part of this Grant Contract by reference or attachment. In the event of a discrepancy or ambiguity regarding the Grantee's duties, responsibilities, and performance hereunder, these items shall govern in order of precedence below.

- a. this Grant Contract document with any attachments or exhibits (excluding the items listed at subsections b. below);
- b. the 5303 program application.

A.4. Incorporation of Federal Award Identification Worksheet. The federal award identification worksheet, which appears as Attachment One, is incorporated in this Grant Contract.

B. TERM OF CONTRACT:

This Grant Contract shall be effective on October 1, 2014 ("Effective Date") and extend for a period of thirty-nine (39) months after the Effective Date ("Term"). The State shall have no obligation to the Grantee for fulfillment of the Scope outside the Term.

C. PAYMENT TERMS AND CONDITIONS:

- C.1. Maximum Liability. In no event shall the maximum liability of the State under this Grant Contract exceed Forty-six Thousand, Five Hundred Eighty-nine Dollars and No Cents (\$46,589.00) ("Maximum Liability"). The Grant Budget, attached and incorporated as Attachment Two is the maximum amount due the Grantee under this Grant Contract. The Grant Budget line-items include, but are not limited to, all applicable taxes, fees, overhead, and all other direct and indirect costs incurred or to be incurred by the Grantee.
- C.2. Compensation Firm. The Maximum Liability of the State is not subject to escalation for any reason unless amended. The Grant Budget amounts are firm for the duration of the Grant Contract and are not subject to escalation for any reason unless amended, except as provided in Section C.6.
- C.3. Payment Methodology. The Grantee shall be reimbursed for actual, reasonable, and necessary costs based upon the Grant Budget, not to exceed the Maximum Liability established in Section C.1. Upon progress toward the completion of the Scope, as described in Section A of this Grant Contract, the Grantee shall submit invoices prior to any reimbursement of allowable costs.
- C.4. Travel Compensation. Reimbursement to the Grantee for travel, meals, or lodging shall be subject to amounts and limitations specified in the "State Comprehensive Travel Regulations," as they are amended from time to time, and shall be contingent upon and limited by the Grant Budget funding for said reimbursement.
- C.5. Invoice Requirements. The Grantee shall invoice the State no more often than monthly, with all necessary supporting documentation, and present such to:

Department of Transportation
Division of Multimodal Transportation Resources
505 Deaderick Street
Suite 1800, James K. Polk Bldg.
Nashville, Tennessee 37243

- a. Each invoice shall clearly and accurately detail all of the following required information (calculations must be extended and totaled correctly).

- (1) Invoice/Reference Number (assigned by the Grantee).
- (2) Invoice Date.
- (3) Invoice Period (to which the reimbursement request is applicable).
- (4) Grant Contract Number (assigned by the State).
- (5) Grantor: Department of Transportation, Division of Multimodal Transportation Resources Agency.
- (6) Grantor Number (assigned by the Grantee to the above-referenced Grantor).
- (7) Grantee Name.
- (8) Grantee Tennessee Edison Registration ID Number Referenced in Preamble of this Grant Contract.
- (9) Grantee Remittance Address.
- (10) Grantee Contact for Invoice Questions (name, phone, or fax).
- (11) Itemization of Reimbursement Requested for the Invoice Period— it must detail, at minimum, all of the following:
 - i. The amount requested by Grant Budget line-item (including any travel expenditure reimbursement requested and for which documentation and receipts, as required by "State Comprehensive Travel Regulations," are attached to the invoice).
 - ii. The amount reimbursed by Grant Budget line-item to date.
 - iii. The total amount reimbursed under the Grant Contract to date.
 - iv. The total amount requested (all line-items) for the Invoice Period.

- b. The Grantee understands and agrees to all of the following.

- (1) An invoice under this Grant Contract shall include only reimbursement requests for actual, reasonable, and necessary expenditures required in the delivery of service described by this Grant Contract and shall be subject to the Grant Budget and any other provision of this Grant Contract relating to allowable reimbursements.
- (2) An invoice under this Grant Contract shall not include any reimbursement request for future expenditures.
- (3) An invoice under this Grant Contract shall initiate the timeframe for reimbursement only when the State is in receipt of the invoice, and the invoice meets the minimum requirements of this section C.5.

C.6. Budget Line-items. Expenditures, reimbursements, and payments under this Grant Contract shall adhere to the Grant Budget. The Grantee may vary from a Grant Budget line-item amount by up to one percent (1%) of the line-item amount, provided that any increase is off-set by an equal reduction of other line-item amount(s) such that the net result of variances shall not increase the total Grant Contract amount detailed by the Grant Budget. Any increase in the Grant Budget, grand total amounts shall require an amendment of this Grant Contract.

C.7. Disbursement Reconciliation and Close Out. The Grantee shall submit any final invoice and a grant disbursement reconciliation report within sixty (60) days of the Grant Contract end date and in form and substance acceptable to the State.

- a. The Grant Budget specifies a Grantee Match Requirement and the final grant disbursement reconciliation report shall detail all Grantee expenditures recorded to meet this requirement.

- i. No Grantee expenditure shall be recorded and reported toward meeting a Grantee Match Requirement of more than one grant contract with the State.

- ii. The final grant disbursement reconciliation report shall specifically detail the exact amount of any Grantee failure to meet a Match Requirement, and the maximum total amount reimbursable by the State pursuant to this Grant Contract, as detailed by the Grant Budget column "Grant Contract," shall be reduced by the amount that the Grantee failed to contribute to the Total Project as budgeted.
 - b. If total disbursements by the State pursuant to this Grant Contract exceed the amounts permitted by the section C, payment terms and conditions of this Grant Contract (including any adjustment pursuant to subsection a.ii. above), the Grantee shall refund the difference to the State. The Grantee shall submit the refund with the final grant disbursement reconciliation report.
 - c. The State shall not be responsible for the payment of any invoice submitted to the state after the grant disbursement reconciliation report. The State will not deem any Grantee costs submitted for reimbursement after the grant disbursement reconciliation report to be allowable and reimbursable by the State, and such invoices will NOT be paid.
 - d. The Grantee's failure to provide a final grant disbursement reconciliation report to the state as required shall result in the Grantee being deemed ineligible for reimbursement under this Grant Contract, and the Grantee shall be required to refund any and all payments by the state pursuant to this Grant Contract.
 - e. The Grantee must close out its accounting records at the end of the contract period in such a way that reimbursable expenditures and revenue collections are NOT carried forward.
- C.8. Indirect Cost. Should the Grantee request reimbursement for indirect costs, the Grantee must submit to the State a copy of the indirect cost rate approved by the cognizant federal agency or the cognizant state agency, as applicable. The Grantee will be reimbursed for indirect costs in accordance with the approved indirect cost rate and amounts and limitations specified in the attached Grant Budget. Once the Grantee makes an election and treats a given cost as direct or indirect, it must apply that treatment consistently and may not change during the Term. Any changes in the approved indirect cost rate must have prior approval of the cognizant federal agency or the cognizant state agency, as applicable. If the indirect cost rate is provisional during the Term, once the rate becomes final, the Grantee agrees to remit any overpayment of funds to the State, and subject to the availability of funds the State agrees to remit any underpayment to the Grantee.
- C.9. Cost Allocation. If any part of the costs to be reimbursed under this Grant Contract are joint costs involving allocation to more than one program or activity, such costs shall be allocated and reported in accordance with the provisions of Department of Finance and Administration Policy Statement 03 or any amendments or revisions made to this policy statement during the Term.
- C.10. Payment of Invoice. A payment by the State shall not prejudice the State's right to object to or question any reimbursement, invoice, or related matter. A payment by the State shall not be construed as acceptance of any part of the work or service provided or as approval of any amount as an allowable cost.
- C.11. Non-allowable Costs. Any amounts payable to the Grantee shall be subject to reduction for amounts included in any invoice or payment that are determined by the State, on the basis of audits or monitoring conducted in accordance with the terms of this Grant Contract, to constitute unallowable costs.
- C.12. State's Right to Set Off. The State reserves the right to set off or deduct from amounts that are or shall become due and payable to the Grantee under this Grant Contract or under any other agreement between the Grantee and the State of Tennessee under which the Grantee has a right to receive payment from the State.

C.13. Prerequisite Documentation. The Grantee shall not invoice the State under this Grant Contract until the State has received the following, properly completed documentation.

- a. The Grantee shall complete, sign, and return to the State an "Authorization Agreement for Automatic Deposit (ACH Credits) Form" provided by the State. By doing so, the Grantee acknowledges and agrees that, once this form is received by the State, all payments to the Grantee under this or any other grant contract will be made by automated clearing house ("ACH").
- b. The Grantee shall complete, sign, and return to the State the State-provided W-9 form. The taxpayer identification number on the W-9 form must be the same as the Grantee's Federal Employer Identification Number or Social Security Number referenced in the Grantee's Edison registration information.

D. STANDARD TERMS AND CONDITIONS:

D.1. Required Approvals. The State is not bound by this Grant Contract until it is signed by the parties and approved by appropriate officials in accordance with applicable Tennessee laws and regulations (depending upon the specifics of this Grant Contract, the officials may include, but are not limited to, the Commissioner of Finance and Administration, the Commissioner of Human Resources, and the Comptroller of the Treasury).

D.2. Modification and Amendment. This Grant Contract may be modified only by a written amendment signed by all parties and approved by the officials who approved the Grant Contract and, depending upon the specifics of the Grant Contract as amended, any additional officials required by Tennessee laws and regulations (the officials may include, but are not limited to, the Commissioner of Finance and Administration, the Commissioner of Human Resources, and the Comptroller of the Treasury).

D.3. Termination for Convenience. The State may terminate this Grant Contract without cause for any reason. A termination for convenience shall not be a breach of this Grant Contract by the State. The State shall give the Grantee at least thirty (30) days written notice before the effective termination date. The Grantee shall be entitled to compensation for authorized expenditures and satisfactory services completed as of the termination date, but in no event shall the State be liable to the Grantee for compensation for any service that has not been rendered. The final decision as to the amount for which the State is liable shall be determined by the State. The Grantee shall not have any right to any actual general, special, incidental, consequential, or any other damages whatsoever of any description or amount for the State's exercise of its right to terminate for convenience.

D.4. Termination for Cause. If the Grantee fails to properly perform its obligations under this Grant Contract, or if the Grantee violates any terms of this Grant Contract, the State shall have the right to immediately terminate this Grant Contract and withhold payments in excess of fair compensation for completed services. Notwithstanding the exercise of the State's right to terminate this Grant Contract for cause, the Grantee shall not be relieved of liability to the State for damages sustained by virtue of any breach of this Grant Contract by the Grantee.

D.5. Subcontracting. The Grantee shall not assign this Grant Contract or enter into a subcontract for any of the services performed under this Grant Contract without obtaining the prior written approval of the State. If such subcontracts are approved by the State, each shall contain, at a minimum, sections of this Grant Contract pertaining to "Conflicts of Interest," "Lobbying," "Nondiscrimination," "Public Accountability," "Public Notice," and "Records" (as identified by the section headings). Notwithstanding any use of approved subcontractors, the Grantee shall remain responsible for all work performed.

D.6. Conflicts of Interest. The Grantee warrants that no part of the total Grant Contract Amount shall be paid directly or indirectly to an employee or official of the State of Tennessee as wages,

compensation, or gifts in exchange for acting as an officer, agent, employee, subcontractor, or consultant to the Grantee in connection with any work contemplated or performed relative to this Grant Contract.

D.7. Lobbying. The Grantee certifies, to the best of its knowledge and belief, that:

- a. No federally appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.
- b. If any funds other than federally appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this contract, grant, loan, or cooperative agreement, the Grantee shall complete and submit Standard Form-LLL, "Disclosure of Lobbying Activities," in accordance with its instructions.
- c. The Grantee shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into and is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. § 1352.

D.8. Communications and Contacts. All instructions, notices, consents, demands, or other communications required or contemplated by this Grant Contract shall be in writing and shall be made by certified, first class mail, return receipt requested and postage prepaid, by overnight courier service with an asset tracking system, or by email or facsimile transmission with recipient confirmation. All communications, regardless of method of transmission, shall be addressed to the respective party as set out below:

The State:

George Mitchell, Transportation Program Supervisor
Multimodal Transportation Resources Division
505 Deaderick Street, Suite 1800 J.K. Polk Bldg.
Nashville, Tennessee 37243
george.mitchell@tn.gov
Telephone Number: (615) 253-1044
FAX Number: (615) 253-1482

The Grantee:

Bill Albright, Transportation Planning Coordinator
Kingsport Metropolitan Planning Organization on behalf of City of Kingsport
201 West Market Street
Kingsport, Tennessee 37660
billalbright@kingsporttn.gov
Telephone Number: (423) 224-2660
FAX Number: (423) 224-2756

A change to the above contact information requires written notice to the person designated by the other party to receive notice.

All instructions, notices, consents, demands, or other communications shall be considered effectively given upon receipt or recipient confirmation as may be required.

- D.9. Subject to Funds Availability. This Grant Contract is subject to the appropriation and availability of State or Federal funds. In the event that the funds are not appropriated or are otherwise unavailable, the State reserves the right to terminate this Grant Contract upon written notice to the Grantee. The State's right to terminate this Grant Contract due to lack of funds is not a breach of this Grant Contract by the State. Upon receipt of the written notice, the Grantee shall cease all work associated with the Grant Contract. Should such an event occur, the Grantee shall be entitled to compensation for all satisfactory and authorized services completed as of the termination date. Upon such termination, the Grantee shall have no right to recover from the State any actual, general, special, incidental, consequential, or any other damages whatsoever of any description or amount.
- D.10. Nondiscrimination. The Grantee hereby agrees, warrants, and assures that no person shall be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination in the performance of this Grant Contract or in the employment practices of the Grantee on the grounds of handicap or disability, age, race, color, religion, sex, national origin, or any other classification protected by federal, Tennessee state constitutional, or statutory law. The Grantee shall, upon request, show proof of nondiscrimination and shall post in conspicuous places, available to all employees and applicants, notices of nondiscrimination.
- D.11. HIPAA Compliance. The State and the Grantee shall comply with obligations under the Health Insurance Portability and Accountability Act of 1996 (HIPAA), Health Information Technology for Economic and Clinical Health Act (HITECH) and any other relevant laws and regulations regarding privacy (collectively the "Privacy Rules"). The obligations set forth in this Section shall survive the termination of this Grant Contract.
- a. The Grantee warrants to the State that it is familiar with the requirements of the Privacy Rules and will comply with all applicable HIPAA requirements in the course of this Grant Contract.
 - b. The Grantee warrants that it will cooperate with the State, including cooperation and coordination with State privacy officials and other compliance officers required by the Privacy Rules, in the course of performance of this Grant Contract so that both parties will be in compliance with the Privacy Rules.
 - c. The State and the Grantee will sign documents, including but not limited to business associate agreements, as required by the Privacy Rules and that are reasonably necessary to keep the State and the Grantee in compliance with the Privacy Rules. This provision shall not apply if information received by the State under this Grant Contract is NOT "protected health information" as defined by the Privacy Rules, or if the Privacy Rules permit the State to receive such information without entering into a business associate agreement or signing another such document.
- D.12. Public Accountability. If the Grantee is subject to Tenn. Code Ann. § 8-4-401 *et seq.*, or if this Grant Contract involves the provision of services to citizens by the Grantee on behalf of the State, the Grantee agrees to establish a system through which recipients of services may present grievances about the operation of the service program. The Grantee shall also display in a prominent place, located near the passageway through which the public enters in order to receive Grant supported services, a sign at least eleven inches (11") in height and seventeen inches (17") in width stating:

NOTICE: THIS AGENCY IS A RECIPIENT OF TAXPAYER FUNDING. IF YOU OBSERVE AN

AGENCY DIRECTOR OR EMPLOYEE ENGAGING IN ANY ACTIVITY WHICH YOU CONSIDER TO BE ILLEGAL, IMPROPER, OR WASTEFUL, PLEASE CALL THE STATE COMPTROLLER'S TOLL-FREE HOTLINE: 1-800-232-5454.

The sign shall be on the form prescribed by the Comptroller of the Treasury. The Grantor State Agency shall obtain copies of the sign from the Comptroller of the Treasury, and upon request from the Grantee, provide Grantee with any necessary signs.

- D.13. Public Notice. All notices, informational pamphlets, press releases, research reports, signs, and similar public notices prepared and released by the Grantee in relation to this Grant Contract shall include the statement, "This project is funded under a grant contract with the State of Tennessee." All notices by the Grantee in relation to this Grant Contract shall be approved by the State.
- D.14. Licensure. The Grantee, its employees, and any approved subcontractor shall be licensed pursuant to all applicable federal, state, and local laws, ordinances, rules, and regulations and shall upon request provide proof of all licenses.
- D.15. Records. The Grantee and any approved subcontractor shall maintain documentation for all charges under this Grant Contract. The books, records, and documents of the Grantee and any approved subcontractor, insofar as they relate to work performed or money received under this Grant Contract, shall be maintained in accordance with applicable Tennessee law. In no case shall the records be maintained for a period of less than five (5) full years from the date of the final payment. The Grantee's records shall be subject to audit at any reasonable time and upon reasonable notice by the Grantor State Agency, the Comptroller of the Treasury, or their duly appointed representatives.

The records shall be maintained in accordance with Governmental Accounting Standards Board (GASB) Accounting Standards or the Financial Accounting Standards Board (FASB) Accounting Standards Codification, as applicable, and any related AICPA Industry Audit and Accounting guides.

In addition, documentation of grant applications, budgets, reports, awards, and expenditures will be maintained in accordance with U.S. Office of Management and Budget's *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards*.

Grant expenditures shall be made in accordance with local government purchasing policies and procedures and purchasing procedures for local governments authorized under state law.

The Grantee shall also comply with any recordkeeping and reporting requirements prescribed by the Tennessee Comptroller of the Treasury.

The Grantee shall establish a system of internal controls that utilize the COSO Internal Control - Integrated Framework model as the basic foundation for the internal control system. The Grantee shall incorporate any additional Comptroller of the Treasury directives into its internal control system.

Any other required records or reports which are not contemplated in the above standards shall follow the format designated by the head of the Grantor State Agency, the Central Procurement Office, or the Commissioner of Finance and Administration of the State of Tennessee.

- D.16. Monitoring. The Grantee's activities conducted and records maintained pursuant to this Grant Contract shall be subject to monitoring and evaluation by the State, the Comptroller of the Treasury, or their duly appointed representatives.
- D.17. Progress Reports. The Grantee shall submit brief, periodic, progress reports to the State as requested.
- D.18. Annual and Final Reports. The Grantee shall submit, within three (3) months of the conclusion of each year of the Term, an annual report. For grant contracts with a term of less than one (1) year, the Grantee shall submit a final report within three (3) months of the conclusion of the Term. For

grant contracts with multiyear terms, the final report will take the place of the annual report for the final year of the Term. The Grantee shall submit annual and final reports to the Grantor State Agency and the Department of Finance and Administration ("F&A"). Send electronic copies of annual and final reports to F&A at fa_audit@tn.gov. At minimum, annual and final reports shall include: (a) the Grantee's name; (b) the Grant Contract's Edison identification number, Term, and total amount; (c) a narrative section that describes the program's goals, outcomes, successes and setbacks, whether the Grantee used benchmarks or indicators to determine progress, and whether any proposed activities were not completed; and (d) other relevant details requested by the Grantor State Agency. Annual and final report documents to be completed by the Grantee shall appear on the Grantor State Agency's website or as an attachment to the Grant Contract.

- D.19. Audit Report. The Grantee shall be audited in accordance with applicable Tennessee law.

If the Grantee is subject to an audit under this provision, then the Grantee shall complete Attachment Three.

When a federal single audit is required, the audit shall be performed in accordance with U.S. Office of Management and Budget's *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards*.

A copy of the audit report shall be provided to the Comptroller by the licensed, independent public accountant. Audit reports shall be made available to the public.

- D.20. Procurement. If other terms of this Grant Contract allow reimbursement for the cost of goods, materials, supplies, equipment, motor vehicles, or contracted services, procurements by the Grantee shall be competitive where practicable. For any procurement for which reimbursement is paid under this Grant Contract, the Grantee shall document the competitive procurement method. In each instance where it is determined that use of a competitive procurement method is not practicable, supporting documentation shall include a written justification for the decision and for the use of a non-competitive procurement. If the Grantee is a subrecipient, the Grantee shall comply with 2 C.F.R. §§ 200.318—200.326 when procuring property and services under a federal award.

The Grantee shall obtain prior approval from the State before purchasing any equipment or motor vehicles under this Grant Contract.

- D.21. Strict Performance. Failure by any party to this Grant Contract to insist in any one or more cases upon the strict performance of any of the terms, covenants, conditions, or provisions of this Grant Contract is not a waiver or relinquishment of any term, covenant, condition, or provision. No term or condition of this Grant Contract shall be held to be waived, modified, or deleted except by a written amendment signed by the parties.

- D.22. Independent Contractor. The parties shall not act as employees, partners, joint venturers, or associates of one another in the performance of this Grant Contract. The parties acknowledge that they are independent contracting entities and that nothing in this Grant Contract shall be construed to create a principal/agent relationship or to allow either to exercise control or direction over the manner or method by which the other transacts its business affairs or provides its usual services. The employees or agents of one party shall not be deemed or construed to be the employees or agents of the other party for any purpose whatsoever.

- D.23. State Liability. The State shall have no liability except as specifically provided in this Grant Contract.

- D.24. Force Majeure. "Force Majeure Event" means fire, flood, earthquake, elements of nature or acts of God, wars, riots, civil disorders, rebellions or revolutions, acts of terrorism or any other similar cause beyond the reasonable control of the party except to the extent that the non-performing party is at fault in failing to prevent or causing the default or delay, and provided that the default or delay cannot reasonably be circumvented by the non-performing party through the use of alternate sources, workaroud plans or other means. A strike, lockout or labor dispute shall not

excuse either party from its obligations under this Grant Contract. Except as set forth in this Section, any failure or delay by a party in the performance of its obligations under this Grant Contract arising from a Force Majeure Event is not a default under this Grant Contract or grounds for termination. The non-performing party will be excused from performing those obligations directly affected by the Force Majeure Event, and only for as long as the Force Majeure Event continues, provided that the party continues to use diligent, good faith efforts to resume performance without delay. The occurrence of a Force Majeure Event affecting Grantee's representatives, suppliers, subcontractors, customers or business apart from this Grant Contract is not a Force Majeure Event under this Grant Contract. Grantee will promptly notify the State of any delay caused by a Force Majeure Event (to be confirmed in a written notice to the State within one (1) day of the inception of the delay) that a Force Majeure Event has occurred, and will describe in reasonable detail the nature of the Force Majeure Event. If any Force Majeure Event results in a delay in Grantee's performance longer than forty-eight (48) hours, the State may, upon notice to Grantee: (a) cease payment of the fees until Grantee resumes performance of the affected obligations; or (b) immediately terminate this Grant Contract or any purchase order, in whole or in part, without further payment except for fees then due and payable. Grantee will not increase its charges under this Grant Contract or charge the State any fees other than those provided for in this Grant Contract as the result of a Force Majeure Event.

- D.25. Tennessee Department of Revenue Registration. The Grantee shall comply with all applicable registration requirements contained in Tenn. Code Ann. §§ 67-6-601 – 608. Compliance with applicable registration requirements is a material requirement of this Grant Contract.
- D.26. **Reserved.**
- D.27. No Acquisition of Equipment or Motor Vehicles. This Grant Contract does not involve the acquisition and disposition of equipment or motor vehicles acquired with funds provided under this Grant Contract.
- D.28. State and Federal Compliance. The Grantee shall comply with all applicable state and federal laws and regulations in the performance of this Grant Contract. The U.S. Office of Management and Budget's Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards is available here: http://www.ecfr.gov/cgi-bin/text-idx?SID=c6b2f053952359ba94470ad3a7c1a975&tpl=/ecfrbrowse/Title02/2cfr200_main_02.tpl
- D.29. Governing Law. This Grant Contract shall be governed by and construed in accordance with the laws of the State of Tennessee. The Grantee agrees that it will be subject to the exclusive jurisdiction of the courts of the State of Tennessee in actions that may arise under this Grant Contract. The Grantee acknowledges and agrees that any rights or claims against the State of Tennessee or its employees hereunder, and any remedies arising there from, shall be subject to and limited to those rights and remedies, if any, available under Tenn. Code Ann. §§ 9-8-101 through 9-8-407.
- D.30. Completeness. This Grant Contract is complete and contains the entire understanding between the parties relating to the subject matter contained herein, including all the terms and conditions agreed to by the parties. This Grant Contract supersedes any and all prior understandings, representations, negotiations, or agreements between the parties, whether written or oral.
- D.31. Severability. If any terms and conditions of this Grant Contract are held to be invalid or unenforceable as a matter of law, the other terms and conditions shall not be affected and shall remain in full force and effect. To this end, the terms and conditions of this Grant Contract are declared severable.
- D.32. Headings. Section headings are for reference purposes only and shall not be construed as part of this Grant Contract.

E. SPECIAL TERMS AND CONDITIONS:

- E.1. Conflicting Terms and Conditions. Should any of these special terms and conditions conflict with any other terms and conditions of this Grant Contract, the special terms and conditions shall be subordinate to the Grant Contract's other terms and conditions.
- E.2. Debarment and Suspension. The Grantee certifies, to the best of its knowledge and belief, that it, its current and future principals, its current and future subcontractors and their principals:
- a. are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal or state department or agency;
 - b. have not within a three (3) year period preceding this Grant Contract been convicted of, or had a civil judgment rendered against them from commission of fraud, or a criminal offence in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or grant under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification, or destruction of records, making false statements, or receiving stolen property;
 - c. are not presently indicted or otherwise criminally or civilly charged by a government entity (federal, state, or local) with commission of any of the offenses detailed in section b. of this certification; and
 - d. have not within a three (3) year period preceding this Grant Contract had one or more public transactions (federal, state, or local) terminated for cause or default.

The Grantee shall provide immediate written notice to the State if at any time it learns that there was an earlier failure to disclose information or that due to changed circumstances, its principals or the principals of its subcontractors are excluded, disqualified, or presently fall under any of the prohibitions of sections a-d.

- E.3. Printing Authorization. The Grantee agrees that no publication coming within the jurisdiction of Tenn. Code Ann. § 12-7-101, *et seq.*, shall be printed pursuant to this Grant Contract unless a printing authorization number has been obtained and affixed as required by Tenn. Code Ann. § 12-7-103(d).
- E.4. Environmental Tobacco Smoke. Pursuant to the provisions of the federal "Pro-Children Act of 1994" and the "Children's Act for Clean Indoor Air of 1995," Tenn. Code Ann. §§ 39-17-1601 through 1606, the Grantee shall prohibit smoking of tobacco products within any indoor premises in which services are provided to individuals under the age of eighteen (18) years. The Grantee shall post "no smoking" signs in appropriate, permanent sites within such premises. This prohibition shall be applicable during all hours, not just the hours in which children are present. Violators of the prohibition may be subject to civil penalties and fines. This prohibition shall apply to and be made part of any subcontract related to this Grant Contract.
- E.5. Federal Funding Accountability and Transparency Act (FFATA).

This Grant Contract requires the Grantee to provide supplies or services that are funded in whole or in part by federal funds that are subject to FFATA. The Grantee is responsible for ensuring that all applicable FFATA requirements, including but not limited to those below, are met and that the Grantee provides information to the State as required.

The Grantee shall comply with the following:

- a. Reporting of Total Compensation of the Grantee's Executives.

- (1) The Grantee shall report the names and total compensation of each of its five most highly compensated executives for the Grantee's preceding completed fiscal year, if in the Grantee's preceding fiscal year it received:
- i. 80 percent or more of the Grantee's annual gross revenues from Federal procurement contracts and federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and sub awards); and
 - ii. \$25,000,000 or more in annual gross revenues from federal procurement contracts (and subcontracts), and federal financial assistance subject to the Transparency Act (and sub awards); and
 - iii. The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. § 78m(a), 78o(d)) or § 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at <http://www.sec.gov/answers/excomp.htm>.)

As defined in 2 C.F.R. § 170.315, "Executive" means officers, managing partners, or any other employees in management positions.

- (2) Total compensation means the cash and noncash dollar value earned by the executive during the Grantee's preceding fiscal year and includes the following (for more information see 17 CFR § 229.402(c)(2)):
- i. Salary and bonus.
 - ii. Awards of stock, stock options, and stock appreciation rights. Use the dollar amount recognized for financial statement reporting purposes with respect to the fiscal year in accordance with the Statement of Financial Accounting Standards No. 123 (Revised 2004) (FAS 123R), Shared Based Payments.
 - iii. Earnings for services under non-equity incentive plans. This does not include group life, health, hospitalization or medical reimbursement plans that do not discriminate in favor of executives, and are available generally to all salaried employees.
 - iv. Change in pension value. This is the change in present value of defined benefit and actuarial pension plans.
 - v. Above-market earnings on deferred compensation which is not tax qualified.
 - vi. Other compensation, if the aggregate value of all such other compensation (e.g. severance, termination payments, value of life insurance paid on behalf of the employee, perquisites or property) for the executive exceeds \$10,000.

- b. The Grantee must report executive total compensation described above to the State by the end of the month during which this Grant Contract is established.
- c. If this Grant Contract is amended to extend its term, the Grantee must submit an executive total compensation report to the State by the end of the month in which the amendment to this Grant Contract becomes effective.
- d. The Grantee will obtain a Data Universal Numbering System (DUNS) number and maintain its DUNS number for the term of this Grant Contract. More information about obtaining a DUNS Number can be found at: <http://fedgov.dnb.com/webform/>.

The Grantee's failure to comply with the above requirements is a material breach of this Grant Contract for which the State may terminate this Grant Contract for cause. The State will not be

obligated to pay any outstanding invoice received from the Grantee unless and until the Grantee is in full compliance with the above requirements.

E.6. FTA Compliance. All applicable terms of FTA Master Agreement, dated October 1, 2015 are incorporated herein by reference.

E.7. T.C.A. Section 13-10-107 Compliance.

- 1) Grantee agrees to proceed expeditiously with and complete the project in accordance with plans approved by the Commissioner of TDOT ("Commissioner");
- 2) Grantee agrees to commence and continue operation of the project on completion of the project and not to discontinue operations or dispose of all or part of the project without Commissioner's prior written approval;
- 3) Grantee agrees to apply for and make reasonable efforts to secure federal assistance for the project, subject to any conditions the Commissioner may require in order to maximize the amounts of such assistance received or to be received for all projects in the State; and
- 4) Grantee agrees to provide Grantee's share of the cost of the project and comply with T.C.A. § 13-10-107(c)(4).

IN WITNESS WHEREOF,

KINGSPORT METROPOLITAN PLANNING ORGANIZATION ON BEHALF OF CITY OF KINGSPORT:

| | |
|--------------------------|-------------|
| GRANTEE SIGNATURE | DATE |
|--------------------------|-------------|

JOHN CLARK, MAYOR

PRINTED NAME AND TITLE OF GRANTEE SIGNATORY (above)

| | |
|---|-------------|
| J. MICHAEL BILLINGSLEY CITY ATTORNEY | DATE |
|---|-------------|

| | |
|--|-------------|
| JAMES H. DEMMING DEPUTY CITY RECORDER | DATE |
|--|-------------|

DEPARTMENT OF TRANSPORTATION:

| | |
|--------------------------------------|-------------|
| JOHN C. SCHROER, COMMISSIONER | DATE |
|--------------------------------------|-------------|

JOHN REINBOLD, GENERAL COUNSEL
APPROVED AS TO FORM AND LEGALITY

DATE

ATTACHMENT ONE**Federal Award Identification Worksheet**

| | |
|--|---|
| Subrecipient's name (must match registered name in DUNS) | City of Kingsport |
| Subrecipient's DUNS number | 079027579 |
| Federal Award Identification Number (FAIN) | TN-2016-016-00 |
| Federal award date | August 26, 2016 |
| CFDA number and name | 20.505, Metropolitan Transportation Planning and State and Non-Metropolitan Planning and Research |
| Grant contract's begin date | October 1, 2014 |
| Grant contract's end date | December 31, 2017 |
| Amount of federal funds obligated by this grant contract | \$41,412.00 |
| Total amount of federal funds obligated to the subrecipient | \$41,412.00 |
| Total amount of the federal award to the pass-through entity (Grantor State Agency) | \$1,395,150.00 |
| Name of federal awarding agency | Federal Transit Administration |
| Name and contact information for the federal awarding official | Holly Peterson 230 Peachtree, NW Suite 1400 Atlanta, Georgia 30303 |
| Is the federal award for research and development? | No. |
| Indirect cost rate for the federal award (See 2 C.F.R. §200.331 for information on type of indirect cost rate) | No indirect cost rate for State for federal award. |

**Attachment Two
UNIVERSAL MULTIMODAL TRANSPORTATION RESOURCES BUDGET**

| | STATE SHARE | FEDERAL SHARE | GRANT CONTRACT | GRANTEE SHARE | TOTAL |
|---|-------------|---------------|----------------|---------------|-------------|
| SCOPE—CAPITAL | | | | | |
| 11.00.S0 Capital Assistance, Non-ADA - TDOT | | | | | |
| 11.00.S1 Capital Assistance, ADA - TDOT | | | | | |
| 11.1x.xx Revenue Rolling Stock | | | | | |
| 11.2x.xx Transitways / Line | | | | | |
| 11.3x.xx Station Stops & Terminals | | | | | |
| 11.4x.xx Support Equip / Facilities | | | | | |
| 11.5x.xx Electrification / Power Dist. | | | | | |
| 11.6x.xx Signal & Communication Equip | | | | | |
| 11.7x.xx Other Capital Items | | | | | |
| 11.8x.xx State / Programs Administration | | | | | |
| 11.9x.xx Transit Enhancements | | | | | |
| 12.xx.xx Fixed Guideway | | | | | |
| 14.xx.xx New Start | | | | | |
| SCOPE—OPERATING | | | | | |
| 30.00.00 Operating Assistance - TDOT | | | | | |
| 30.xx.xx Operating Assistance | | | | | |
| SCOPE—RURAL TRANSIT ASST PROGRAM | | | | | |
| 43.5x.xx Rural Transit Assistance Program | | | | | |
| SCOPE—PLANNING | | | | | |
| 44.00.S0 Planning - TDOT | | | | | |
| 44.xx.xx Planning | \$5,177.00 | \$41,412.00 | \$46,589.00 | \$5,177.00 | \$51,766.00 |
| SCOPE—MANAGEMENT TRAINING | | | | | |
| 50.xx.xx Management Training | | | | | |
| SCOPE—OVERSIGHT REVIEWS | | | | | |
| 51.xx.xx Oversight Review | | | | | |
| SCOPE—RESEARCH PROJECTS | | | | | |
| 55.xx.xx Research Projects | | | | | |
| SCOPE—SAFETY & SECURITY | | | | | |
| 57.xx.xx Safety and Security | | | | | |
| SCOPE - UNIVERSITY RESEARCH | | | | | |
| 70.xx.xx | | | | | |
| SCOPE - Non-Add Scope Codes | | | | | |
| 99.xx.xx | | | | | |
| SCOPE - OTHER | | | | | |
| xx.xx.xx - Other | | | | | |
| xx.xx.xx - Other | | | | | |
| GRAND TOTAL | \$5,177.00 | \$41,412.00 | \$46,589.00 | \$5,177.00 | \$51,766.00 |

GRANT BUDGET LINE-ITEM DETAIL INFORMATION

| Line Item Detail For: PLANNING | State | Federal | Grant Contract | Grantee | Total Project |
|---------------------------------------|-------------------|--------------------|-----------------------|-------------------|----------------------|
| 44..24.00 METROPOLITAN PLANNING | \$5,177.00 | \$41,412.00 | \$46,589.00 | \$5,177.00 | \$51,766.00 |
| TOTAL | \$5,177.00 | \$41,412.00 | \$46,589.00 | \$5,177.00 | \$51,766.00 |

ATTACHMENT THREE

Parent Child Information

The Grantee should complete this form and submit it with the Grant Contract. The Grantee should submit only one, completed "Parent Child Information" document to the State during the Grantee's fiscal year.

"Parent" means an entity whose IRS filing contains the information of at least one other entity.

"Child" means an entity whose information is contained in another entity's IRS filing.

Grantee's Edison Vendor ID number:

Is Grantee Legal Entity Name a parent? Yes No

If yes, provide the name and Edison Vendor ID number, if applicable, of any child entities.

Is Grantee Legal Entity Name a child? Yes No

If yes, complete the fields below.

Parent entity's name: _____

Parent entity's tax identification number: _____

Note: If the parent entity's tax identification number is a social security number, this form must be submitted via US mail to:

Central Procurement Office, Grants Program Manager
3rd Floor, WRS Tennessee Tower
312 Rosa L Parks Avenue
Nashville, TN 37243

Parent entity's contact information

Name of primary contact person: _____

Address: _____

Phone number: _____

Email address: _____

Parent entity's Edison Vendor ID number, if applicable: _____



AGENDA ACTION FORM

Approving an Amendment to the Permanent Easement Agreement with Kingsport Hotel, LLC

To: Board of Mayor and Aldermen
 From: Jeff Fleming, City Manager

Action Form No.: AF-325-2016
 Work Session: December 19, 2016
 First Reading: N/A

Final Adoption: December 20, 2016
 Staff Work By: Chris McCartt
 Presentation By: Chris McCartt

Recommendation:
 Approve the Resolution.

Executive Summary:
 The city has a permanent easement agreement with Kingsport Hotel, LLC pertaining to the MeadowView Conference, Resort and Convention Center. From time to time it is necessary for the city and Kingsport Hotel, LLC to review and make adjustments to this agreement, when it is in the best interest of the property (Meadowview). The city currently receives a percentage of the gross room revenues, as defined in the agreement, from the hotel operation due to a November 2015, a copy of which is attached. The 2015 amendment provides for a change in the calculation of the rate beginning in 2017 so that the percentage will be based on a modified gross room rate (defined in a previous amendment). The proposed amendment, a copy of which is set out in the resolution, extends the fee based on the gross room revenue through 2017.

The revenue the city receives from this agreement goes to support various capital items for MeadowView.

- Attachments:**
1. Resolution
 2. Copy of Amendment to Permanent Easement

| | <u>Y</u> | <u>N</u> | <u>O</u> |
|------------|----------|----------|----------|
| Duncan | — | — | — |
| George | — | — | — |
| McIntire | — | — | — |
| Olterman | — | — | — |
| Parham | — | — | — |
| Segelhorst | — | — | — |
| Clark | — | — | — |

RESOLUTION NO. _____

A RESOLUTION APPROVING AN AMENDMENT TO THE PERMANENT EASEMENT AGREEMENT WITH KINGSPORT HOTEL, LLC AND AUTHORIZING THE MAYOR TO EXECUTE THE SAME AND ALL DOCUMENT NECESSARY AND PROPER TO EFFECTUATE THE PURPOSE OF THE AMENDMENT TO THE AGREEMENT

WHEREAS, the city has a permanent easement agreement with Kingsport Hotel, LLC pertaining to the MeadowView Conference, Resort and Convention Center; and

WHEREAS, the city currently receives a percentage of the gross room revenues from the hotel operation due to a November, 2015 amendment to the permanent easement agreement; and

WHEREAS, the November, 2015 amendment provides for the calculation of the rate to change beginning in 2017; and

WHEREAS, the parties would like to continue the current calculation through 2017.

Now, therefore,

BE IT RESOLVED BY THE BOARD OF MAYOR AND ALDERMEN AS FOLLOWS:

SECTION I. That an amendment to the permanent easement agreement with Kingsport Hotel, LLC pertaining to the fee for gross room revenue paid to the city is approved.

SECTION II. That the mayor, or in his absence, incapacity, or failure to act, the vice mayor, is authorized and directed to execute, in a form approved by the city attorney, an amendment to the permanent easement agreement with Kingsport Hotel, LLC and all other documents necessary and proper to effectuate the purpose of the amendment, said amendment being generally as follows:

Amendment to Permanent Easement

This amendment further amends the Permanent Easement Agreement, dated January 31, 1995, as amended, by and between Kingsport Hotel L.L.C. (the "Owner") and the City of Kingsport, Tennessee (the "City"). The following amendment is to extend the period for the Percentage Fee.

The parties agree to amend the Permanent Agreement as follows:

1. Effective immediately upon execution, the amendment to the Permanent Easement Agreement dated November 11, 2015 is deleted in its entirety and replaced as follows:

"For a three (3) year period effective beginning January 1, 2015 and ending December 31, 2017, the Percentage Fee (as set out in section 6.1) shall be two percent (2%) of gross room revenue. Absent any mutual agreement to further modify the Percentage Fee, the Percentage Fee shall revert on January 1, 2018, to two percent (2%) of the Modified Monthly Gross Room Revenues as that term is described in a prior amendment dated May 26, 2011."

2. Within ten (10) days after the City's written notice received by Owner of the commencement of installation of a replacement dish water, Owner shall make an additional one-time payment to the City (as a supplemental Percentage Fee) of sixty thousand dollars (\$60,000) for the sole purpose to partially defray the City's cost of a replacement dish washer.

3. No other amendment is intended or implied. Both parties warrant and represent that the signatories have taken all necessary approval actions and therefore have the binding authority to execute this amendment.

[Acknowledgements deleted for inclusion in this resolution.]

SECTION III. That the mayor is further authorized to make such changes approved by the mayor and the city attorney to the amendment set out herein that do not substantially alter the material provisions of the agreement, and the execution thereof by the mayor and the city attorney is conclusive evidence of the approval of such changes.

SECTION IV. That the board finds that the actions authorized by this resolution are for a public purpose and will promote the health, comfort and prosperity of the citizens of the city.

SECTION V. That this resolution shall take effect from and after its adoption, the public welfare requiring it.

ADOPTED this the 20th day of December, 2016.

JOHN CLARK, MAYOR

ATTEST:

JAMES H. DEMMING, CITY RECORDER

APPROVED AS TO FORM:

J. MICHAEL BILLINGSLEY, CITY ATTORNEY


Amendment to Permanent Easement

This amendment further amends the Permanent Easement Agreement, dated January 31, 1995, as amended, by and between Kingsport Hotel L.L.C. (the "Owner") and the City of Kingsport, Tennessee (the "City"). The following amendment is to resolve an issue regarding the Percentage Fee.

The parties agree to amend the Permanent Easement Agreement as follows:

- 1 For a two (2) year period effective beginning at the first of calendar year 2015 and ending at the end of calendar year 2016, the Percentage Fee (as set out in section 6.1) shall be two percent (2%) of gross room revenue. Absent any mutual agreement to further modify the Percentage Fee and beginning with the calendar year 2017, the Percentage Fee shall revert to two percent (2%) of the Modified Monthly Gross Room Revenues as that term is described in a prior amendment dated May 26, 2011.
- 2 No other amendment is intended or implied.

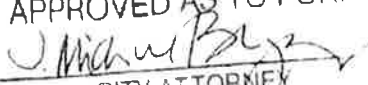
Agreed to as of the date of the last signature:

 November 11-12-15
Kingsport Hotel LLC Officer Title and Date

 Mayor 11/2/15
City of Kingsport, Tennessee Executive Title and Date

ATTEST:

DEPUTY CITY RECORDER

APPROVED AS TO FORM:

CITY ATTORNEY



AGENDA ACTION FORM

Authorizing the Industrial Development Board of the City of Kingsport, Tennessee to Negotiate and Accept from Clark & Company or an Affiliated Entity Payments In Lieu Of Ad Valorem Tax with Respect to a New Professional Office Location in the City of Kingsport, Tennessee

To: Board of Mayor and Aldermen
 From: Jeff Fleming, City Manager 

Action Form No.: AF-339-2016
 Work Session: December 19, 2016
 First Reading: N/A

Final Adoption: December 20, 2016
 Staff Work By: Lynn Tully, AICP
 Presentation By: Lynn Tully, AICP

Recommendation:

Approve the Resolution as proposed.

Executive Summary:

The Board of Mayor and Alderman has previously authorized the incorporation of The Industrial Development Board of the City of Kingsport, Tennessee as an industrial development board duly organized and existing under the provisions of Title 53 of Chapter 7, Tennessee Code Annotated. As such the Industrial Development Board is charged with acquiring, and managing properties in public ownership and partnering with private entities for economic development purposes. Clark & Company has requested the KEDB to take leasehold ownership of certain property on which the Company proposes to locate new office headquarters. The project lies within the city limits and is therefore eligible for payments in lieu of taxes.

The request is for Payments in lieu of taxes for the project over a period of 5 years. The project includes a new location of an office headquarters business bringing approximately 50 jobs. Similar to other PILOT agreements in the city this current proposal pays back the incentive amount in less than the PILOT agreement length.

The final agreement negotiated by the KEDB will be brought to the BMA for final approval.

Attachments:

- Resolution

| | Y | N | O |
|------------|---|---|---|
| Duncan | — | — | — |
| George | — | — | — |
| McIntire | — | — | — |
| Oltzman | — | — | — |
| Parham | — | — | — |
| Segelhorst | — | — | — |
| Clark | — | — | — |

RESOLUTION NO. 2016-_____

A RESOLUTION AUTHORIZING THE INDUSTRIAL DEVELOPMENT BOARD OF THE CITY OF KINGSPORT, TENNESSEE TO NEGOTIATE AND ACCEPT FROM CLARK AND COMPANY OR AN AFFILIATED ENTITY PAYMENTS IN LIEU OF AD VALOREM TAX WITH RESPECT TO OFFICE HEADQUARTERS FACILITIES IN THE CITY OF KINGSPORT, TENNESSEE, AND FINDING THAT SUCH PAYMENTS ARE DEEMED TO BE IN FURTHERANCE OF THE PUBLIC PURPOSES OF THE BOARD AS DEFINED IN TENNESSEE CODE ANNOTATED SECTION 7-53-305

WHEREAS, the Board of Mayor and Aldermen (the "Governing Body") of the City of Kingsport, Tennessee (the "Municipality") has met pursuant to proper notice; and

WHEREAS, the Governing Body had previously authorized the incorporation of The Industrial Development Board of the City of Kingsport, Tennessee (the "Board") as an industrial development board duly organized and existing under the provisions of Title 53 of Chapter 7, Tennessee Code Annotated (the "Act"); and

WHEREAS, Clark & Company (the "Company") has requested the Board to take leasehold ownership of certain property on which the Company proposes to locate an office headquarters, which is a project that is eligible to be owned by the Board under the Act and which is located in the Municipality (the "Project"); and

WHEREAS, as a part of such discussions, the Company has requested that the Board lease the Project to the Company or an affiliated entity under an arrangement whereby the Company or its affiliated entity will make payments in lieu of ad valorem taxes; and

WHEREAS, upon the acquisition of the Project by the Board and the lease of the Project to the Company or an affiliated entity, the Company intends to locate an office headquarters with approximately fifty (50) new jobs on the Project site; and

WHEREAS, Tennessee Code Annotated Section 7-53-305(b) authorizes the Governing Body to delegate to the Board the authority to negotiate and accept from the lessees of the Board payments in lieu of ad valorem taxes upon the finding that such payments are deemed to be in furtherance of the public purposes of the Board as defined in that Code Section; and

WHEREAS, the improvement and renovations of the Project would maintain and increase employment opportunities, and would generate additional sales tax revenues and other revenues for the Municipality,

Now therefore,

BE IT RESOLVED BY THE BOARD OF MAYOR AND ALDERMEN AS FOLLOWS:

SECTION I. The Governing Body hereby finds that the negotiation and acceptance by the Board from the Company of payments in lieu of ad valorem taxes consistent with this resolution are deemed to be in furtherance of the public purposes of the Board as defined in Tennessee Code Annotated Section 7-53-305, and the City hereby delegates to the Board the authority to

negotiate and accept such payments in lieu of ad valorem taxes from the Company or an affiliated entity.

SECTION II. The Board's agreement with the Company concerning payments in lieu of ad valorem taxes may provide that any ad valorem taxes paid by the Company to any taxing jurisdiction with respect to its leasehold interest in the Project shall constitute a credit against the payments in lieu of ad valorem taxes due such taxing jurisdiction.

SECTION III. The Board's agreement with the Company concerning payments in lieu of ad valorem taxes may contain such administrative provisions not inconsistent with this resolution as the Board deems appropriate.

SECTION IV. That the Board shall submit the final agreement to the Board of Mayor and Aldermen for approval.

SECTION V. All other resolutions and orders, or parts thereof, in conflict with the provisions of this resolution are, to the extent of such conflict, hereby repealed and this resolution shall be in immediate effect from and after its adoption.

ADOPTED this the 20th day of December, 2016.

JOHN CLARK, Mayor

ATTEST:

JAMES H. DEMMING, City Recorder


APPROVED AS TO FORM:

J. MICHAEL BILLINGSLEY, City Attorney



AGENDA ACTION FORM

Approve the Contract with Parsons Brinckerhoff for A&E Services for KATS Transit Center Project and Ratify the Mayor's Signature

To: Board of Mayor and Aldermen
 From: Jeff Fleming, City Manager 

Action Form No.: AF-168-2016
 Work Session: October 3, 2016
 First Reading: October 4, 2016
 Second Reading: October 18, 2016

Final Adoption: December 20, 2016 (resolution)
Staff Work By: KATS Staff
Presentation By: Chris McCartt

Recommendation:

Approve the Resolution and Ordinance.

Executive Summary:

Kingsport and the Kingsport Area Transit Service (KATS) is proposing to construct a comprehensive transit facility for passenger boarding and transferring, as well as to house various transit related functions, including: dispatch, administration, passenger waiting areas, bus wash station, and a bus storage facility. The proposed center is to be located on the Foundry Site and will enhance the gateway into downtown. Due to funding, the project will be divided into two primary phases. The first phase (Phase I) will involve the schematic design of the entire site, as well as interim design, final design, and construction oversight and management of the transit center, bus transfer island and associated parking improvements. Staff recommends selecting Parsons Brinckerhoff to provide these services. If funding should become available to implement the entire project, the schedule for Phase II of the project (bus storage and vehicle wash facilities) will be accelerated to coincide with the implementation of Phase I. ~~A 20% match of the Parsons Brinckerhoff contract is required and is available in project FTA 015. A Budget Ordinance is needed to appropriate the \$4,124,000 in federal funding.~~ **Funding is available in project FTA 015.**

~~The resolution to approve the services will be at second reading — Oct. 18, 2016.~~

This resolution will approve the contract and ratify the Mayor's signature.

Attachments:

1. Ordinance (The Budget Ordinance to appropriate funding was approved at the Oct. 4 & 18, 2016 BMA meetings.)
2. Resolution

| | Y | N | O |
|----------|---|---|---|
| Duncan | — | — | — |
| George | — | — | — |
| McIntire | — | — | — |
| Olterman | — | — | — |
| Parham | — | — | — |
| Mitchell | — | — | — |
| Clark | — | — | — |

RESOLUTION NO. _____

A RESOLUTION APPROVING AN AGREEMENT WITH PARSONS BRINCKERHOFF FOR DESIGN SERVICES FOR THE KINGSPORT AREA TRANSIT CENTER; RATIFYING THE MAYOR'S SIGNATURE; AUTHORIZING THE MAYOR TO EXECUTE THE AGREEMENT AND ALL OTHER DOCUMENTS NECESSARY AND PROPER TO EFFECTUATE THE PURPOSE OF THE AGREEMENT

WHEREAS, the city has been working towards constructing a new Kingsport Area Transit Center; and

WHEREAS, city staff recommends Parsons Brinckerhoff to provide design services for Phase I for the proposed site, including the schematic design of the entire site, interim design, final design, and construction oversight and management of the transit center, bus transfer island and associated parking improvements; and

WHEREAS, the total cost for Phase I is estimated to be \$350,000.00; and

WHEREAS, the agreement was entered into by the city on December 5, 2016; and

WHEREAS, the funds are available in FTA015.

Now therefore,

BE IT RESOLVED BY THE BOARD OF MAYOR AND ALDERMEN AS FOLLOWS:

SECTION I. That the agreement entered into on December 5, 2016, with Parsons Brinckerhoff to provide design services for Phase I of the new Kingsport Area Transit Center is ratified and approved.

SECTION II. That the mayor, or in his absence, incapacity, or failure to act, the vice-mayor, is authorized and directed to execute, in a form approved by the city attorney and subject to the requirements of Article X, Section 10 of the Charter of the City of Kingsport, the agreement with Parsons Brinckerhoff and all other documents necessary and proper, and to take such acts as necessary, to effectuate the purpose of the agreement or this resolution.

SECTION III. That the mayor is further authorized to make such changes approved by the mayor and the city attorney to the agreement set out herein that do not substantially alter the material provisions of the agreement, and the execution thereof by the mayor and the city attorney is conclusive evidence of the approval of such changes.

SECTION IV. That the board finds that the actions authorized by this resolution are for a public purpose and will promote the health, comfort and prosperity of the citizens of the city.

SECTION V. That this resolution shall take effect from and after its adoption, the public welfare requiring it.

ADOPTED this the 20th day of December, 2016.

JOHN CLARK, MAYOR

ATTEST:

JAMES H. DEMMING, CITY RECORDER

APPROVED AS TO FORM:

J. MICHAEL BILLINGSLEY, CITY ATTORNEY



AGENDA ACTION FORM

Authorizing the Industrial Development Board of the City of Kingsport, Tennessee to Negotiate and Accept from Hull Property Group or an Affiliated Entity Payments In Lieu of Ad Valorem Tax with Respect to Retail Shopping Facilities Known as the Kingsport Town Center in the City of Kingsport, Tennessee

To: Board of Mayor and Aldermen
 From: Jeff Fleming, City Manager *JF*

Action Form No.: AF-332-2016
 Work Session: December 19, 2016
 First Reading: December 20, 2016

Final Adoption: December 20, 2016
 Staff Work By: Lynn Tully, AICP
 Presentation By: Lynn Tully, AICP

Recommendation:

Approve the Resolution as proposed.

Executive Summary:

The Board of Mayor and Alderman has previously authorized the incorporation of The Industrial Development Board of the City of Kingsport, Tennessee as an industrial development board duly organized and existing under the provisions of Title 53 of Chapter 7, Tennessee Code Annotated. As such the Industrial Development Board is charged with acquiring, and managing properties in public ownership and partnering with private entities for economic development purposes. Hull Property Group has requested the KEDB to take leasehold ownership of certain property on which the Company proposes to make renovations and improvements to retail shopping facilities currently known as the Kingsport Town Center. The current project lies within the city limits and is therefore eligible for payments in lieu of taxes.

The request is for Payments in lieu of taxes for the project over a period of 20 years. The project includes various renovations and improved retail square footage as well as replacement operators for entertainment venues in the first phase. Historically these improvements have brought a year over year increase in sales to their similar projects at an average over 18%. With a conservative 15% increase in current sales and the new improvements the city would return more than \$73,000 annually. Similar to other PILOT agreements in the city this current proposal pays back the incentive amount in less than the PILOT length as proposed with no further additions or expansions. The Hull Property Group has additional plans for expansion based on the stabilization of the current retailers and success of phase I.

The final agreement negotiated by the KEDB will be brought to the BMA for final approval.

Attachments:

- 1. Resolution

| | <u>Y</u> | <u>N</u> | <u>O</u> |
|------------|----------|----------|----------|
| Duncan | — | — | — |
| George | — | — | — |
| McIntire | — | — | — |
| Olterman | — | — | — |
| Parham | — | — | — |
| Segelhorst | — | — | — |
| Clark | — | — | — |

RESOLUTION NO. 2016-_____

A RESOLUTION AUTHORIZING THE INDUSTRIAL DEVELOPMENT BOARD OF THE CITY OF KINGSPORT, TENNESSEE TO NEGOTIATE AND ACCEPT FROM HULL PROPERTY GROUP OR AN AFFILIATED ENTITY PAYMENTS IN LIEU OF AD VALOREM TAX WITH RESPECT TO RETAIL SHOPPING FACILITIES KNOWN AS THE KINGSPORT TOWN CENTER IN THE CITY OF KINGSPORT, TENNESSEE, AND FINDING THAT SUCH PAYMENTS ARE DEEMED TO BE IN FURTHERANCE OF THE PUBLIC PURPOSES OF THE BOARD AS DEFINED IN TENNESSEE CODE ANNOTATED SECTION 7-53-305

WHEREAS, the Board of Mayor and Aldermen (the "Governing Body") of the City of Kingsport, Tennessee (the "Municipality") has met pursuant to proper notice; and

WHEREAS, the Governing Body had previously authorized the incorporation of The Industrial Development Board of the City of Kingsport, Tennessee (the "Board") as an industrial development board duly organized and existing under the provisions of Title 53 of Chapter 7, Tennessee Code Annotated (the "Act"); and

WHEREAS, Hull Property Group (the "Company") has requested the Board to take leasehold ownership of certain property on which the Company proposes to make improvements to retail shopping facilities currently known as the Kingsport Town Center, which is a project that is eligible to be owned by the Board under the Act and which is located in the Municipality (the "Project"); and

WHEREAS, as a part of such discussions, the Company has requested that the Board lease the Project to the Company or an affiliated entity under an arrangement whereby the Company or its affiliated entity will make payments in lieu of ad valorem taxes; and

WHEREAS, upon the acquisition of the Project by the Board and the lease of the Project to the Company or an affiliated entity, the Company intends to make improvements to and renovate facilities on the Project site; and

WHEREAS, Tennessee Code Annotated Section 7-53-305(b) authorizes the Governing Body to delegate to the Board the authority to negotiate and accept from the lessees of the Board payments in lieu of ad valorem taxes upon the finding that such payments are deemed to be in furtherance of the public purposes of the Board as defined in that Code Section; and

WHEREAS, the improvement and renovations of the Project would stabilize declining sales and property values, and enhance, retail opportunities in the City of Kingsport, Tennessee and would maintain and increase employment opportunities, generate additional sales tax revenues and other revenues for the Municipality,

Now therefore,

BE IT RESOLVED BY THE BOARD OF MAYOR AND ALDERMEN AS FOLLOWS:

SECTION I. The Governing Body hereby finds that the negotiation and acceptance by the

Board from the Company of payments in lieu of ad valorem taxes consistent with this resolution are deemed to be in furtherance of the public purposes of the Board as defined in Tennessee Code Annotated Section 7-53-305, and the City hereby delegates to the Board the authority to negotiate and accept such payments in lieu of ad valorem taxes from the Company or an affiliated entity.

SECTION II. The Board's agreement with the Company concerning payments in lieu of ad valorem taxes may provide that any ad valorem taxes paid by the Company to any taxing jurisdiction with respect to its leasehold interest in the Project shall constitute a credit against the payments in lieu of ad valorem taxes due such taxing jurisdiction.

SECTION III. The Board's agreement with the Company concerning payments in lieu of ad valorem taxes may contain such administrative provisions not inconsistent with this resolution as the Board deems appropriate.

SECTION IV. The Board shall submit the final agreement to the Board of Mayor and Aldermen for approval.

SECTION V. All other resolutions and orders, or parts thereof, in conflict with the provisions of this resolution are, to the extent of such conflict, hereby repealed and this resolution shall be in immediate effect from and after its adoption.

ADOPTED this the 20th day of December, 2016.

JOHN CLARK, Mayor

ATTEST:

JAMES H. DEMMING, City Recorder

APPROVED AS TO FORM:

J. MICHAEL BILLINGSLEY, City Attorney



AGENDA ACTION FORM

Apply for Partnership Grant from the Tennessee Arts Commission

To: Board of Mayor and Aldermen
From: Jeff Fleming, City Manager *JF*

Action Form No.: AF-335-2016
Work Session: December 19, 2016
First Reading: N/A

Final Adoption: December 20, 2016
Staff Work By: B. Macdonald
Presentation By: C. McCart

Recommendation:

Approve the Resolution

Executive Summary:

Annually, the Tennessee Arts Commission calls for applications for an array of grants. For the last 10 years the City of Kingsport Office of Cultural Arts has received a project grant. This year the City of Kingsport Office of Cultural Arts has been approved to apply in the partnership category which is a maximum of 12% of the previous year's cash expenses up to \$40,000. Given last year's recorded expenses, the maximum grant award potential is \$25,000. This will be matched by operating dollars allocated by the City of Kingsport during FY18 budget process to assist in promoting cultural activities including public art and community engagement.

Attachments:

- 1. Resolution

| | <u>Y</u> | <u>N</u> | <u>O</u> |
|------------|----------|----------|----------|
| Duncan | — | — | — |
| George | — | — | — |
| McIntire | — | — | — |
| Olterman | — | — | — |
| Parham | — | — | — |
| Segelhorst | — | — | — |
| Clark | — | — | — |

RESOLUTION NO. _____

A RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE ALL DOCUMENTS NECESSARY AND PROPER TO APPLY FOR A PARTNERSHIP GRANT FROM THE TENNESSEE ARTS COMMISSION

WHEREAS, the city, through the Kingsport Office of Cultural Arts, would like to apply for a partnership grant through the Tennessee Arts Commission; and

WHEREAS, the funds will assist in promoting cultural activities including public art and community engagement.

Now therefore,

BE IT RESOLVED BY THE BOARD OF MAYOR AND ALDERMEN AS FOLLOWS:

SECTION I. That the mayor, or in his absence, incapacity, or failure to act, the vice mayor, is authorized and directed to execute, in a form approved by the city attorney, and subject to the requirements of Article X, Section 10 of the Charter of the City of Kingsport, all documents necessary and proper to apply for grant funds from the Tennessee Arts Commission in the amount of \$25,000.00 and requires a local match of \$25,000.00.

SECTION II. That the mayor is authorized to execute any and all documents including those necessary and proper to demonstrate the city's compliance with the grant requirements or its provisions necessary to effectuate the purpose of the grant or this resolution.

SECTION III. That the board finds that the actions authorized by this resolution are for a public purpose and will promote the health, comfort and prosperity of the public.

SECTION IV. That this resolution shall take effect from and after its adoption, the public welfare requiring it.

ADOPTED this the 20th day of December, 2016.

JOHN CLARK, MAYOR

ATTEST:

JAMES H. DEMMING, CITY RECORDER

APPROVED AS TO FORM:

J. MICHAEL BILLINGSLEY, CITY ATTORNEY



AGENDA ACTION FORM

Approve Issuance of Certificates of Compliance for Businesses to Sell Retail Alcoholic Beverages

To: Board of Mayor and Aldermen
From: Jeff Fleming, City Manager *JF*

Action Form No.: AF-330-2016
Work Session: December 19, 2016
First Reading: N/A

Final Adoption: December 20, 2016
Staff Work By: Angie Marshall
Presentation By: Jim Demming

Recommendation:

Approve the issuance of Certificates of Compliance to the following businesses to sell retail alcoholic beverages.

1. B & B Package Store
2. Colonial Heights Package Store
3. Discount Package Store
4. Greenacres Package Store
5. Kelley's Package Store
6. North Plaza Package Store
7. Park Place Liquor & Wine Package Store
8. Sam's Package Store
9. West Kingsport Package Store

Executive Summary:

Attached is a summary of the applications for nine package stores who have filed with the City Recorder for renewal of their Certificate of Compliance to sell retail beverages.

Section 6-67 of the City Code states that to assure that all requirements are satisfied, no original or renewal Certificate of Compliance shall be issued for any location until:

1. An application has been filed with the City Recorder; and
2. The application complies with all restrictions as to location and number of retail licenses to be issued within the City; and
3. The application has been considered at a regular or called meeting of the Board and approved by a Majority vote.

These applications have met the requirements of Section 6-67 of the City Code. Police background checks have been conducted on each of the applicants with nothing found that would prevent any from their certificates.

Attachments:

1. Summary Spreadsheet

| | Y | N | O |
|------------|---|---|---|
| Duncan | — | — | — |
| George | — | — | — |
| McIntire | — | — | — |
| Olterman | — | — | — |
| Parham | — | — | — |
| Segelhorst | — | — | — |
| Clark | — | — | — |


CERTIFICATE OF COMPLIANCE RENEWALS FOR 2017

| <u>Store Name</u> | <u>Address</u> | <u>Applicant(s)</u> | <u>Approved by Police</u> | <u>Approved by Planning</u> |
|--|----------------------------------|--|--------------------------------------|--|
| Allandale Package Store | 4528 West Stone Drive | Bobbie Phillips | YES | YES |
| B&B Package Store | 3636 Fort Henry Drive | Thomas & Robin K. Carter | YES | YES |
| Colonial Heights Package Store | 4311 Fort Henry Drive | Kim Owens & John Owens, III | YES | YES |
| Discount Package Store | 2716 John B. Dennis Highway | John Cox | YES | YES |
| Greeneacres Package Store | 1229 North Eastman Road, Ste 225 | Kenneth W. Glass | YES | YES |
| North Plaza Package Store | 812 Lynn Garden Drive | Nancy L. East | YES | YES |
| Park Place Liquor & Wine Package Store | 1309 S. John B. Dennis Highway | Parker & Sandra Hill & Parker Hill, II | YES | YES |
| Sam's Package Store | 1304 East Stone Drive | Kenneth W. Glass | YES | YES |
| West Kingsport Package Store | 2217 West Stone Drive | George Todd East | YES | YES |



AGENDA ACTION FORM

Consideration of the 2017 Joint Tri-Cities Legislative Agenda

To: Board of Mayor and Aldermen
 From: Jeff Fleming, City Manager 

Action Form No.: AF-340-2016
 Work Session: December 19, 2016
 First Reading: N/A

Final Adoption: December 20, 2016
 Staff Work By: Jeff Fleming
 Presentation By: Jeff Fleming

Recommendation:

Adopt the 2017 Tri-Cities legislative agenda.

Executive Summary:

Attached is a copy of the proposed 2017 Tri-cities legislative agenda. It is a result of the cooperative work between Kingsport, Bristol and Johnson City and reflects a continuing commitment to work cooperatively on legislative matters of regional and statewide importance.

The legislative agenda addresses issues pertaining to land planning, including deannexation, local revenue needs including sharing of county wide revenue for schools, public safety issues such pain clinics, economic development opportunities, including aerospace industry opportunities, BEP and K-12 school funding, and transportation needs.

The legislative agenda has already been approved by the governing bodies for Bristol and Johnson City.

Attachments:

- Proposed 2017 Legislative Agenda

| | <u>Y</u> | <u>N</u> | <u>O</u> |
|------------|----------|----------|----------|
| Duncan | — | — | — |
| George | — | — | — |
| McIntire | — | — | — |
| Olterman | — | — | — |
| Parham | — | — | — |
| Segelhorst | — | — | — |
| Clark | — | — | — |



2017 Tri-Cities Joint Legislative Policy

**110th General Assembly
First Session**

January 2017

Foreword

In these annual Joint Legislative Policy statements, the Tri-Cities have consistently conveyed the message that cities are the economic growth engines of Tennessee. This includes not only the “big four” cities, but also Tennessee’s small to mid-size municipalities. Cities attract industry necessary to employ Tennessee’s citizens. Cities are commercial centers where citizens go to obtain their most basic needs, from medical care to groceries. Cities also serve as vibrant centers of culture and the arts, making life more enjoyable. It’s clear that Tennessee needs its smaller and mid-sized cities to continue to grow and prosper.

Yet, cities continue to struggle to operate as economic engines for the state of Tennessee. Cities face a number of threats: erosion of revenue sources, uncertainties over boundaries due to changes in annexation and deannexation laws, and loss of control over municipal concerns. Cities need the help of our legislators to make Tennessee thrive.

Local legislators have an obligation and commitment to their constituents to create an atmosphere of growth and stability. Their voices must be heard in the statewide debate of policies that will affect their ability to govern on a local level. We must work to understand how statewide legislative enactments – at least on major issues – are consistent with local public demands and local needs.

The following pages contain greater detail about the Tri-Cities’ legislative priorities, but we can summarize what the Tri-Cities need with one short request. Let our city legislators do what they are elected to do – making policy and law in the best interests of the cities that they serve.

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Top Priorities

Urban Growth & Planning

Deannexation

We believe that cities are the economic engines of Tennessee. Since 1999, cities have followed prevailing law and allocated extensive capital to provide services to annexed areas through the required “plan of services” (waterline upgrades for fire flow, sewer, stormwater, street lights, paving, garbage/trash collection, schools, police, parks, etc.). Extracting the taxable properties that were included in the repayment assumptions for this capital could be catastrophic to municipal bond ratings. We believe that deannexation should only be available if the city has failed to meet its plan of services (in other words, failed to allocate the capital necessary to extend services).

We oppose any deannexation unless the city involved is in default of its plan of services.

Annexation

All cities should be extended the right to annex non-contiguous territory that was granted to Williamson County in 2015.

Annexation laws should be clarified so that both annexation and deannexation can proceed in an orderly, predictable manner. The legislature should define terms such as qualified voter to make it clear who is actually entitled to vote in an annexation referendum.

Planning

We oppose any legislation that would reduce the authority of Regional Planning Commissions to regulate land use within cities’ urban growth boundaries.

Education Funding

Public Chapter 305

Since the passage of Public Chapter 305 of the Public Acts of 2013, state law has allowed local governments to appropriate funds for non-recurring educational expenditures without those funds being counted toward the local government’s maintenance of efforts requirements. Unfortunately, PC 305 also provided that such one-time expenditures would be excluded from any apportionment requirement under the Education Finance Act. Excluding non-recurring educational expenditures from maintenance of efforts requirements gave local governments the flexibility to undertake one-time expenses while still controlling maintenance of efforts growth; however, excluding those expenditures

from apportionment requirements had the unintended side effect of allowing counties to divert funds from the cities where those funds were collected. Counties can appropriate one-time expenditures to county schools without sharing those funds with the city schools within the county. City property owners pay both city and county property taxes, and this effectively deprives city property tax payers of the benefit of an expenditure that is funded in part by their property taxes.

The City of Athens Board of Education v. McMinn County case

City schools suffered another blow in 2014 with the Tennessee Court of Appeals' decision in *City of Athens Board of Education v. McMinn County*. The Education Finance Act requires that when a county collects school funds for current operation and maintenance, the county must apportion those funds among the Local Education Agencies in the county. Between 1996 and 2011, McMinn County allocated funds to both a general purpose school fund and to an educational capital projects fund. While funds in the general purpose school fund were apportioned to all the LEAs in McMinn County, funds in the educational capital projects fund were not – instead they were used for renovations and additions to county schools. When the Boards of Education of the cities of Athens and Etowah sued for their share of the funds in the educational capital projects fund, the Court of Appeals held that the plain language of the statute provided that only funds allocated for “operation and maintenance” of schools must be apportioned – funds allocated for other purposes did not have to be apportioned to the cities' schools. The court's opinion blessed McMinn County's practice of diverting property taxes derived from residents of the cities into capital project funds that might never be used to benefit those same city taxpayers.

Because of this ruling, similar scenarios are playing out across Tennessee. For example, in Washington County, the county recently enacted a 40-cent county increase in the property tax rate, with 32 cents of that increase flowing into a county capital projects fund. Under this plan, residents of Johnson City will fund over \$5 million in educational capital projects outside city limits, and the Johnson City school system will not benefit. It is simply unfair for city property tax payers to fund over 60% of the capital improvements scheduled to be made in Washington County without the county being obligated to apportion any of those funds to city schools.

We ask the legislature to amend or repeal Public Chapter 305 to provide that one-time expenditures should be apportioned in the same manner as funds allocated for operation and maintenance, and to amend the Education Finance Act to overturn the Court of Appeals' decision in *City of Athens Board of Education v. McMinn County*. Basic fairness dictates that funds allocated by counties for educational purposes, whether one-time or recurring, and whether for operation and maintenance or capital improvements, should be apportioned both to the counties and to the cities and special school districts within those counties.

Local Revenue

In May 2016, Governor Haslam signed Public Chapter 1064 into law. This bill reduces the Hall Income Tax on dividends and interest effective for tax returns due in April 2017 from 6% to 5%. The legislative intent expressed in the bill is for the tax rate to be reduced by 1% annually, but regardless of whether reductions are phased in over the next 5 years, the Hall Income Tax will be eliminated entirely in 2022.

Each of the Tri-Cities has relied on the Hall Income Tax to fund the provision of services to citizens. For FY 2016, Bristol received \$526,683 from its portion of the Hall Income Tax, or the equivalent of \$.08 on the property tax rate. Johnson City received \$1,190,390, or \$.07 on the property tax rate, while Kingsport received \$1,068,350, or \$.06 on the property tax rate.

With the Hall Income Tax's reduction and eventual elimination, the cities are losing a long-standing reliable revenue source. Municipalities are charged with providing police and fire safety services, public parks and recreation amenities, transportation systems and roadway maintenance, community planning and economic development efforts, and ever more expensive education services. Without more options for raising local revenue, the cities are faced with property tax increases.

Tennessee municipalities need local funding options that will allow them to identify revenue sources that are tailored to individual cities and their residents. We ask our legislators to consider allowing cities the following local options:

- Raising or Eliminating the Single-Article Sales Tax Cap. The single-article sales tax cap further hinders the ability of cities to realize their economic success as commercial centers. Cities and counties in the Tri-Cities can only collect local option sales tax on the first \$1,600 of the sales price of single articles of personal property, such as motor vehicles, boats, televisions, large machinery or equipment. The local option sales tax on items such as this is no more than \$44 per item, regardless of the total sales price, meaning a buyer pays the same tax whether purchasing a new Lexus or a used Toyota. Giving cities and counties the opportunity to collect their local option sales taxes on a greater portion of the sales price would increase local revenues by up to \$27.50 per \$1,000 of sales price, depending on the applicable local option sales tax rate.
- Local Option Restaurant Privilege Tax. Similar to what Sevierville, Pigeon Forge, and Gatlinburg are now able to do, this would allow cities to decide for themselves to levy a privilege tax of up to 2% on the amounts charged by restaurants, cafes and other such establishments. A large portion of the revenue generated from such a privilege tax would be dedicated to infrastructure and programs that support tourism, with the remainder going to the city's general fund.
- Local Option Fuel Tax. Local governments should be given the opportunity to add a tax of up to \$0.05 per gallon of gasoline or diesel fuel, with the revenue earmarked for non-state/federal road maintenance. This would provide much needed funding for road and bridge maintenance.

- Reducing or Eliminating Trustee fees. Currently, the State Department of Revenue collects local option taxes, and charges local governments a fee of 1.125% of the total amount for administrative costs. The taxes are then transferred to the county Trustee, whose office deducts another 1% before transferring the money to the city where the tax was generated. The county performs no calculations in order to make this transfer – it simply writes a check. In FY2016, Kingsport lost \$177,000 to county Trustee fees, Bristol lost \$126,000, and Johnson City lost approximately \$227,000. These amounts are disproportionate to the work performed by the county. In an automated era, these Trustee fees are unnecessary and serve to punish cities for generating sales taxes. We urge our legislators to make the Department of Revenue responsible for direct distribution of taxes, eliminating Trustee fees

Adoption of these priorities would help cities offset the coming loss of the Hall Income Tax, and we ask our delegation to consider pursuing all of these measures. This will give each of the Tri-Cities, and all Tennessee cities, the flexibility to pursue one or more, or none, of these new sources of local revenue, depending on the needs of the citizens in each city.

Finally, because the local option sales tax is a vital component of the Tri-Cities' revenue streams, the Cities need accurate information about the sales taxes that they will collect. In its last session, the legislature addressed the Cities' need to access county situs reports. We urge the legislature to give local governments the right to receive information such as how much tax is paid by individual tax payers. This would enable those local governments to prepare their budgets with greater confidence.

Public Safety

Pain Clinics

There are currently 35 medical professionals in Sullivan County and 20 in Washington County prescribing products containing Buprenorphine such as Subutex and Suboxone. Unlike Methadone clinics, these prescribers are not required to apply for and obtain a certificate of need to operate a clinic for opiate addiction. The failure to properly regulate these prescribers has resulted in Sullivan County and Washington County becoming a destination for individuals seeking to obtain Buprenorphine for criminal purposes as opposed to legitimate treatment. Therefore, legislation is necessary to insure that Buprenorphine is being dispensed for legitimate medical purposes as opposed to a profit-driven enterprise operating under the guise of a medical practice devoted to opiate treatment.

Drug Trafficking and DUI Seizures

The Tri-Cities oppose any legislation that would restrict local government's ability to seize assets related to drug trafficking and DUI arrests. In the event seizures are not allowed to occur until after the conviction, it will limit the intended impact of such seizures, especially since convictions in criminal cases

can take months and sometimes years. Currently, seizures are subject to judicial review before a forfeiture warrant is issued.

Any change that impedes law enforcement's ability to seize assets from applicable DUI and drug cases in a timely manner causes us concern. It is important to have the ability to seize assets used in a criminal enterprise as the seizure impacts the ability of criminals to continue illegal activity in our communities. With vehicles seized in connection with a driving under the influence charge, there are parameters under which the vehicle may be seized, and for good reason, as prescribed in Tennessee Code Annotated § 55-10-414(c).

Although there may be a few isolated incidents, the current process is an effective system that over time has served our communities and law enforcement well and should not be discarded wholesale.

The Tri-Cities oppose any legislation that would impair the existing ability of local law enforcement agencies to pursue forfeiture of assets that relate to the commission of offenses related to drug trafficking or driving under the influence. The Tri-Cities also oppose any legislation that would divert funds away from local drug task forces, without providing for an alternate, equivalent source of funds.

Other Priorities

Economic Development

Aerospace Industry Opportunities

In order to further the development of Aerospace Park at Tri-Cities Regional Airport, TN/VA, the Tri-Cities supports the amendment of two sections of the Tennessee Code:

- In 2011, T.C.A. § 42-3-104 was amended to permit the formation of the Tri-Cities Airport Authority. This statute needs to be further amended to broaden the definition of “Airport” so that it mirrors the definition used in the Metropolitan Airport Authority Act. The statute should also be amended to specifically authorize projects and improvements funded by Federal Aviation Administration funds and other federal and state funds, as permitted activities of the Tri-Cities Airport Authority.
- T.C.A. § 42-3-111, the bond statute of the Regional Airport Authority Act, should be amended to adopt language from both the Metropolitan Airport Authority Act, T.C.A. § 42-4-109, and the Port Authority Act, T.C.A. § 7-87-109, and to permit the former owners of Tri-Cities Regional Airport, TN/VA, now known as “creating municipalities”, to individually or collectively guarantee bonds issued by the Tri-Cities Airport Authority. This would permit much more flexibility in the manner in which Aerospace Park is developed without endangering the financial stability of the Airport Authority.

Historic Tax Credits

Historic tax credits have proven a valuable tool in downtown and urban core revitalization, particularly in conversion of obsolete manufacturing and commercial facilities to productive new uses.

Tax credits make such projects viable by reducing the financial risk in projects that often contain many structural unknowns. By reducing this risk, projects that might not be feasible, yet are important to the cultural fabric of the community, become affordable.

All states contiguous to Tennessee provide historic preservation tax credits. The lack of this incentive places our border communities and others at a competitive disadvantage as state tax credits may add 25 percent to the existing 20 percent federal credit for renovations.

Education

BEP Funding

We oppose any effort to implement BEP funding formula changes that would reduce state funding to city systems, principally Tennessee's best performing districts that use significant local revenue above state sources to enhance K-12 education, and support making full funding of the BEP formula a priority ahead of further tax cuts.

The fact that these city systems receive significant local funding is often overlooked or even discredited in the education funding debate. In times past, such systems have been the losers as state funding formulas have been reworked.

We encourage support of the BEP Review Committee's priorities, which this year included:

- A sustained commitment to teacher compensation;
- English Language Learner funding;
- Increasing funding so that the number of guidance counselors can be closer to national best practices;
- Funding Response to Instruction and Intervention positions; and
- Sustained funding for educational technology.

Other K-12 Education Issues

The Tri-Cities support other policies that will enhance K-12 education, including:

- Providing traditional public schools the same options as charter schools in terms of flexibility;
- Developing system-level incentives for districts that perform at an exemplary level in terms of student achievement;
- Expanding the state's efforts to provide more electronic curriculum choices for school systems, including open source materials and promoting system collaboration to maximize the use of time and resources; and
- Allowing record keepers to charge fees for inspection of public documents (a change that would benefit not only the school system, but also all municipal government functions).

The Tri-Cities oppose:

- Any voucher program that would result in public dollars being taken from public education and given to a private operator; and
- Any new education funding formula that would penalize cities for providing financial resources beyond what is provided by county funding bodies.
- Any changes to the process of appointing School Superintendents by Local Education Agencies, such as moving to elected School Superintendents.

Local Revenue

Adoption of Property Tax Rate

To allow the most possible lead time for property owners, we request the delegation work to require city and county governments to adopt an annual property tax rate by August 1st, except for reappraisal years when the deadline is extended to September 30th. To add flexibility, a local government could receive an extension approved by the Comptroller's Office for extenuating circumstances.

PC 901 Mixed Drink Tax

Legislation enacted in 2014 is vague as to the future distribution of liquor-by-the-drink taxes. We feel it is inappropriate for cities funding an independent school system and having adopted liquor-by-the-drink by a public referendum to be required to share those revenues with counties for education. This is especially true in light of the fact that most counties have not even passed a liquor-by-the-drink referendum. This vagueness has created costly litigation between counties and cities over whether liquor-by-the-drink taxes must be shared with counties. The Legislature has approved successive one-year extensions to TCA Section 57-4-306(a)(2)(A), and we would ask that these extensions continue until the court system finally disposes of this matter.

Utilities

It is imperative that municipal-owned utilities be allowed to recoup costs for water and sewer line extensions outside of the corporate boundaries. Failing to do so could jeopardize the finances of municipal-owned utilities, hindering economic expansion. It can also damage public health and welfare by obstructing the ability to provide safe drinking water and preventing the clean-up of public waters by eliminating older sanitary septic systems. The Tri-Cities oppose any effort to eliminate or reduce utility rate differentials for customers located outside of the corporate limits.

Public Safety

Methamphetamine

It is the position of the Tri-Cities that clean-up costs associated with the rampant manufacture of methamphetamine continue to pose a major public health threat and jeopardize law enforcement and hazardous response budgets of local governments. The State must maintain primary response and funding for the cleanup of illegal meth labs through the Tennessee Methamphetamine Task Force. The Tri-Cities support any legislation that continues to provide funding to the Tennessee Bureau of Investigation for maintaining this important public service.

Prescription Drug Abuse

Previous legislative efforts, including the 2002 Controlled Substance Monitoring Act, as updated by the 2012 Prescription Safety Act, required doctors and pharmacies to update and query the Controlled Substance Monitoring Database in an effort to limit doctor shopping and abusive dispensing practices.

We encourage the state through its various agencies to begin careful study and scrutiny of this database and to consider expanding the registry beyond opioids and benzodiazepines to include all prescription drugs that are addictive and have the potential to be abused.

Transportation

Maintenance Funding

We strongly support efforts to enhance funding sources available for the maintenance of state and local roadways and bridges. Over the past decade, resurfacing costs have more than doubled, with the cost of asphalt skyrocketing, while per gallon taxes available for maintenance and construction have declined as vehicles become far more fuel efficient.

The loss of funding for maintenance and construction has had a serious impact, with even routine repaving projects often delayed. In addition to public safety, the failure to address the issue of adequately funding road and bridge maintenance will have a negative impact on growth and development in the State. The Tri-Cities have offered several possible solutions.

The Governor has proposed raising the gas tax. Another alternative would be to increase the vehicle registration fee and dedicate the additional proceeds to roadway maintenance. We support all efforts to enhance funding for roadway maintenance, whether by increasing the gas tax, the vehicle registration fee, a combination of these two, or other funding options.

Open Container Bill

Annually, more than \$8 million in federal transportation funding is diverted away from road construction because Tennessee's Open Container law is antiquated. While motor vehicle operators are prohibited from having an open alcohol container, this prohibition does not apply to vehicle passengers. We urge the delegation to support common-sense open container legislation, and unlock millions in federal construction funding to be used for much-needed road construction.

Passenger & Freight Rail Service

We support rail service as an alternate mode of transportation that can improve safety and reduce traffic congestion, fuel consumption, and pollution. Given this premise, we support the establishment of direct intermodal rail service from Bristol to Memphis, including Knoxville and Chattanooga, to facilitate the movement of passengers and freight across the state, eliminating semi-trucks and vehicles that neither originate nor terminate within the State. We encourage TDOT to coordinate with Virginia Department of Rail and Public Transportation to incorporate the extension of rail service along the Interstate 81 and Interstate 75 corridors.