



## AGENDA

### BOARD OF MAYOR AND ALDERMEN WORK SESSION

Tuesday, March 15, 2016  
Council Room, 2<sup>nd</sup> Floor, City Hall, 4:00 p.m.

#### Board of Mayor and Aldermen

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

Alderman Michele Mitchell  
Alderman Tommy Olterman  
Alderman Tom C. Parham

#### 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  
Morris Baker, Community Services Director  
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. Project Status – Jeff Fleming
4. Review of Items on March 15, 2016 Business Meeting Agenda
5. KATS Transit Center – Chris McCartt
6. ONEKingsport Summit Recommendation Priorities Process – Justin Steinmann
7. Adjourn

Rearranged {

**Next Work Session, April 4, 2016:** IT – Using Technology for Efficiencies, ONEKingsport Summit – Destination City Investments, Sales Tax, Wellness Clinic, Safety & Project 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.***

# Status Updates on Active Projects sorted by Cost

Estimated Cost	Project Owner	Project Manager	Project Name	Project #	Completion Date	CurrentStatus
\$13,537,873.00	Niki Ensor	Niki Ensor	Raw Water Intake Replacement (1.5 M EDA Grant)	WA1504	5/7/2017	The four vertical pump shafts at the WTP are complete. Drillers are 180' into the main tunnel and 80' into the connector.
\$7,500,000.00	Michael Thompson	Thompson, Michael	SR 347 (Rock Springs Road) [State & MTPO funded]	No City Funds	12/31/2020	TDOT Local Programs is preparing the contract between TDOT and the City. The MTPO has voted to appropriate the agreed upon \$2 Million match.
\$5,600,000.00	Chad Austin	Norman Eichmann	Reedy Creek Sewer Trunk Line	SW1400	6/30/2017	TDOT & TDEC and CSX approvals have been received. Still working with one property owner for easement.
\$3,250,000.00	Chad Austin	Mike Hickman	Colonial Heights Ph II Sewer & Water	SW1501	3/9/2017	Set start date as 3/14/16
\$2,609,000.00	Chad Austin	Pamela Gilmer	System Wide Water Upgrades FY15 Phase 1	WA1601	5/15/2016	Running long services on Holly St. Working on Orebank Rd and tie-in at Timberlake Lane.
\$2,500,000.00	Chad Austin	Mike Hickman	Colonial Heights Ph IV Sewer & Water	SW1511	9/3/2017	Project is in design phase.
\$2,400,000.00	Kitty Frazier	Mason, David	Centennial Park	GP1533	6/15/2017	Design work is proceeding in consultation with Centennial Commission
\$1,886,220.00	Chad Austin	Pamela Gilmer	System Wide Water Upgrades FY15 Phase 2	TBD	12/31/2016	Pre-bid conference set for March 16, 2016.
\$1,700,000.00	Michael Thompson	Thompson, Michael	Main Street Rebuild [City & MTPO Funded]	GP1516	12/31/2018	Contract on 3/15/2016 Agenda for approval.
\$1,600,000.00	Chad Austin	Mike Hickman	Colonial Heights Ph III Sewer & Water	SW1502/ WA1502	4/28/2017	Aquiring easements.
\$1,123,727.93	Chad Austin	Pamela Gilmer	Ft. Henry and Moreland Dr. Sewer Rehabilitation	SW1401	10/31/2016	Pre-bid conference set for 3/9/16.
\$1,076,018.00	Ronnie Hammonds	Robbins, Steve	Demolition Landfill Clay Liner	DL 1500	5/1/2016	The contract was put on hold as of January 7, 2016 due to weather conditions. The project was 70% complete as of that date.
\$1,002,226.46	Michael Thompson	Clabaugh, Hank	Riverbend Drive - Road Improvements and Construction	GP1512	3/26/2016	Signal work continues. The electrician, AEP, signal technician, and state inspector are working through the process of making the signal operative. Signal must flash for 7 days before it can operate formally.
\$940,000.00	Kitty Frazier	Clabaugh, Hank	Kingsport Greenbelt - Eastern Extension - Phase 1 [Fed. Grant & City funded]	GP1529	11/1/2017	We have received Environmental Clearance. Pre-design meeting with Spoden Wilson has been scheduled for March 14.
\$900,000.00	Chad Austin	Sam Chase	ARC Kingsport Sewer System Upgrade	SW1504	12/31/2016	Littlejohn finalizing plans and specs.

Estimated Cost	Project Owner	Project Manager	Project Name	Project #	Completion Date	CurrentStatus
\$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	TDOT continues to work on the Environmental document.
\$683,252.64	Kitty Frazier	Clabaugh, Hank	Greenbelt (Rotherwood/Pedestrian Bridge) [Fed. Grant and City Funded]	GP1013	7/30/2016	Setting up meeting with property owner for the official notice of proposed acquisition. Once this is complete, we can then setup appraisal of property.
\$631,700.00	Ronnie Hammonds	Elsea, Tim	Wilcox Sidewalk Phase 5 [State & MTPO funded]	MPO15D	12/31/2016	Legislation proposed this session in Nashville to remedy conflicting licensing requirement/information.
\$550,000.00	Michael Thompson	Grieb, Jacob	Enterprise Place roadway Improvements	GP1611	12/31/2016	Geotech work performed, awaiting engineering report. Awaiting TDEC wetland approval. Plans at 90%.
\$500,000.00	Michael Thompson	Clabaugh, Hank	2016 Citywide Sidewalk Extension	GP1403	12/31/2016	The Clinchfield/Stone Drive/Bloomingdale portion of the project is expected to be advertised for bids in late March/early April.
\$500,000.00	Niki Ensor	Niki Ensor	WWTP Blower (175,000 CTEG Grant)	SW1507	5/1/2016	Blower will be delivered March 10th. Contractor (RT2) will be on site week of March 7th.
\$450,000.00	Chad Austin	Chad Austin	Border Regions Areas 1, 2 & 3 - Water	TBD	2/17/2017	Currently in FY18 CIP.
\$438,000.00	Hank Clabaugh	Mason, David	130 Shelby St. - Engineering Bldg. Renovation	GP1514	8/31/2016	Pre-Construction meeting on 3/9/16.
\$400,000.00	Michael Thompson	Thompson, Michael	Signalization of the SR 126 (Memorial Blvd. at Island Road Intersection [State & MTPO Funded])	MPO15A	12/31/2016	Meetings scheduled with affected property owners. Appraisals will follow these meetings.
\$265,100.00	Helen Whittaker	Mason, David	Library Window Replacement	GP1400	3/18/2016	Primary scope of work is complete. Still waiting for custom repair of leaded glass transom to close project.
\$221,800.00	Tim Elsea	Elsea, Tim	Lynn Garden Signal System [MTPO & City funded]	MPO15C	1/31/2018	Waiting on selected consultant to provide scope and fee.
\$131,000.00	Chad Austin	Chad Austin	JB Dennis Annexation - Water	GP1405	7/1/2017	Bloomingdale has received pricing for the construction. An agreement for the City to fund the upgrades will be prepared for BMA approval.
\$90,000.00	Chad Austin	Hank Clabaugh	Kingsport South Annexation - Water	TBD	4/3/2017	Lebanon Road hydrant will be installed with CH I I Sewer Project.
\$90,000.00	Kitty Frazier	Clabaugh, Hank	Reedy Creek Terrace Bridge	ST1503	12/31/2016	The environmental reviewers are requiring wetland delineation for the project area. The developer is working with Spoden Wilson on the delineation consultant.

Estimated Cost	Project Owner	Project Manager	Project Name	Project #	Completion Date	CurrentStatus
\$81,116.00	David Quillen	Gilmer, Pamela	Police Seize Car Lot - Landfill	GP1609	5/31/2016	Advertisement canceled pending additional funding.
\$75,000.00	Chad Austin	Hank Clabaugh	Cliffside Dr Force Main Replacement	TBD	5/30/2016	The design plans are complete. The project will be advertised for bids once the Riverbend Road "B" project is closed and reallocated.
\$70,000.00	Niki Ensor	Mason, David	Storage Building at Waste Water Treatment Plant	SW1607	8/31/2016	Bids to be received March 17th.
\$50,000.00	Tim Elsea	Elsea, Tim	Portable Camera Equipment Purchase [MTPO & City funded]	MPO15B	6/30/2016	No RFQs were submitted for this project. Staff reviewing specifications and having discussions with vendors.
\$40,000.00	Chad Austin	Jim Gilreath	Clinchfield Street Waterline Replacement	Operating	6/30/2016	New waterline to be installed on west side of Clinchfield this spring.
\$20,000.00	Chad Austin	Chris Alley	Robindale Subdivison Water Service	Operating	6/30/2016	Working on details of acquiring 21 new customers of private system.
\$18,000.00	Chad Austin	Chris Alley	Sullivan County Agriculture Center Waterline Extension	Operating	6/15/2016	JC has sent plans to TDEC for approval.
\$15,000.00	Chad Austin	Harvey Page	Centennial Park sewer line replacement - Main St.	Operations	9/1/2016	Met with Engineering to discuss details. This has been placed on the Surveyor's to-do list.
	Chad Austin	Mike Hickman	Colonial Heights Ph V Sewer & Water	SW1512/ WA1404	12/29/2017	Project is in design phase.

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## **AGENDA**

### **BOARD OF MAYOR AND ALDERMEN**

#### **BUSINESS MEETING**

**Tuesday, March 15, 2016**

**Large Courtroom – 2<sup>nd</sup> Floor, City Hall**

**7:00 p.m.**

#### **Board of Mayor and Aldermen**

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

Alderman Michele Mitchell  
Alderman Tommy Oltman  
Alderman Tom C. Parham

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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  
Morris Baker, Community Services Director  
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 Kimberly Goddard, Mafair United Methodist Church**

#### **III. ROLL CALL**

#### **IV. RECOGNITIONS & PRESENTATIONS**

1. Public Art Committee – Roy Harmon / Alderman George
2. Move to Kingsport – Jeni Long



**V. APPROVAL OF MINUTES**

1. Work Session – February 29, 2016
2. Business Meeting – March 1, 2016

**VI. COMMUNITY INTEREST ITEMS**

**A. PUBLIC HEARINGS**

1. Amend Zoning of 225 Westfield Drive, Located in the Rock Springs Area (AF: 49-2016) (Ken Weems)
  - Public Hearing
  - Ordinance – First Reading

**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. Amend the FY 2016 General Project Fund Budget – Kingsport City Schools (AF: 57-2016) (David Frye)
  - Ordinance – First Reading
2. Amending Section 22-96(e) of the Kingsport City Code to Specifically Include Exemption of Townhouse from Sprinkler Requirements and Provide for a Two Hour Fire Resistant Wall (AF: 65-2016) (Mike Billingsley)
  - Ordinance – First Reading
3. Agreement with TDOT for the Main Street Redevelopment Project and Appropriate Funds (AF: 62-2016) (Ryan McReynolds)
  - Resolution
  - Ordinance – First Reading
4. Budget Cleanup Ordinance for FY16 (AF: 60-2016) (Jeff Fleming)
  - Ordinance – First Reading
5. Appropriating Available Funds to GP1615 and Enter into an Agreement with Mattern & Craig, Inc. for the Indian Trail Drive Extension Project (AF:68-2016) (Ryan McReynolds)
  - Resolution
  - Ordinance – First Reading

**C. BUSINESS MATTERS REQUIRING FINAL ADOPTION**

1. Enter into an Agreement with TDOT for the Fort Robinson Drive Bridge Replacement Project and Appropriate Available Funds to GP1618 (AF: 44-2016) (Ryan McReynolds)
  - Ordinance – **Second Reading & Final Adoption**

2. Amending the FY 2016 CDBG Budget Ordinance for the Addition of One (1) Position within the Community Development Program (AF: 51-2016) (Lynn Tully)
  - Ordinance - **Second Reading & Final Adoption**
3. Amending the Franchise Fee with Kingsport Power Company (d.b.a. AEP Appalachian Power) (AF: 50-2016) (Ryan McReynolds)
  - Ordinance - **Second Reading & Final Adoption**

**D. OTHER BUSINESS**

1. Execute a Quitclaim Deed to Bank of Tennessee Conveying Any Interest the City may have in Certain Alleys Previously Declared Surplus (AF: 59-2016) (Mike Billingsley)
  - Resolution
2. Tennessee Heritage Conservation Trust Fund Grant for the Land Purchase at Bays Mountain Park and for Receipt of Those Funds if Awarded (AF: 66-2016) (Morris Baker)
  - Resolution
3. Lease Agreement with Cayenne Rental Properties, GP and the Option to Purchase and Right of Refusal Agreement with The Press Group, LLC (AF: 64-2016) (David Frye, Shanna Hensley)
  - Resolution

**E. APPOINTMENTS**

1. Appointment to the Kingsport Housing and Redevelopment Authority (AF: 67-2016) (Mayor Clark)
  - Appointment

**VII. CONSENT AGENDA**

1. Awarding the Bid for the Purchase of Rental Uniforms, Mats & Mops Services (AF: 54-2016) (Chris McCartt, Ryan McReynolds)
  - Resolution
2. Approval of Easements for Citywide Water Line System Improvements Phase II Project (AF: 56-2016) (Ryan McReynolds)
  - Approve Offers
3. Property Acquisition for the Kingsport City School System (AF: 53-2016) (David Frye)
  - Resolution
4. Renewing the Award of the Bid for the Purchase of Water & Wastewater Chemicals (AF: 55-2016) (Ryan McReynolds, Chris McCartt)
  - Resolution

5. Agreements with the Lynn Garden Optimist Club and the Lynn View Pee Wee Football Organization (AF: 58-2016) (Morris Baker)
  - Resolution – Lynn Garden Optimist Club
  - Resolution – Lynn View Pee Wee Football
6. Agreement with Dick's Sporting Goods for 2016 Parks and Recreation Baseball/Softball Programs (AF 52-2016) (Morris Baker)
  - Resolution
7. Issuance of Certificates of Compliance for Retail Food Stores to Sell Wine (AF: 63-2016) (Jim Demming)
  - Certificates of Compliance

#### **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, February 29, 2016, 4:30 PM  
Council Room – City Hall

PRESENT: Board of Mayor and Aldermen

Mayor John Clark

Vice-Mayor Mike McIntire

Alderman Darrell Duncan

Alderman Colette George

Alderman Michele Mitchell

Alderman Tommy Olterman

Alderman Tom C. Parham

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 Deputy City Recorder Marshall.
3. **PROJECT STATUS.** City Manager Fleming gave an update on city projects.
4. **SALES TAX, WELLNESS CLINIC & SAFETY.** City Manager Fleming provided details on these issues. Some discussion followed.
5. **REVIEW OF AGENDA ITEMS ON THE MARCH 1, 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 are items the Board discussed at greater length or which received specific questions or concerns.

**VI.B.1 Enter into an Agreement with TDOT for the Fort Robinson Drive Bridge Replacement Project and Appropriate Available Funds to GP1618 (AF: 44-2016).** City Manager Fleming gave an overall summary of this item. Assistant City Manager McReynolds provided further details, pointing out the bridge was safe, but the timing is to have it complete before load limits have to be placed on it.

**VI.B.2 Amend the FY16 CDBG Budget Ordinance for the Addition of One (1) Position within the Community Development Program (AF: 51-2016).** City Manager Fleming discussed this item. Development Services Director Lynn Tully gave further details and answered questions.

**VI.D.1 Adoption of VantageTrust II Participation Agreement for Retirement Health Savings Plan (AF: 48-2016).** City Recorder Demming provided information on this item.

**VII.1 Reimbursement of Materials Agreement Funds to Danny Karst for Edinburgh Phase 7 (AF: 42-2016).** Mr. Fleming and Mr. McReynolds discussed this item, noting the benefits these agreements provide for the city.

**Minutes of the Regular Work Session of the Board of Mayor and Aldermen of Kingsport, Tennessee, Monday, February 29, 2016**

**6. ONEKINGSPORT SUMMIT FOCUS GROUPS.** Representatives from these focus groups reported their progress to the BMA. Reporting for Health and Wellness was Mr. Charlie Glass. Housing was presented Ms. Jeanette Blazier and Development Services Director Lynn Tully. Lastly, Ms. Julie Bennett reported on Job Creation and Entrepreneurship.

**7. KINGSPORT100 – CENTENNIAL UPDATE.** Jeff and CeeGee McCord gave a presentation on the upcoming 100 year celebration that is being planned for Kingsport.

At this time, Marketing and Public Relations Director Heather Cook talked about the new format for the Senior's newsletter and her goal to improve efficiencies throughout the city. Mayor Clark commented on the Sullivan County vote regarding liquor by the drink and their moving forward with suing the city. Alderman George stated she was disappointed. Alderman Mitchell pointed out the trend so far in litigation has been in favor for the cities.

**8. ADJOURN.** Seeing no other matters presented for discussion at this work session, Mayor Clark adjourned the meeting at 5:52 p.m.

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ANGELA MARSHALL  
Deputy City Recorder

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JOHN CLARK  
Mayor

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Jeff Fleming, City Manager

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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:** SRO Brad Conkin, Kingsport Police Department.
- II.B. **INVOCATION:** Stan Leonard, Minister/Director, Mustard Seed Ministries.
- III. **ROLL CALL:** By City Recorder Demming. All Present.
- IV. **RECOGNITIONS AND PRESENTATIONS.**
  1. 911 Call Center – Alderman Tommy Olterman
  2. Emergency Preparedness Kits at John Sevier Middle School – SRO Brad Conkin/Alderman Tom Parham
- V. **APPROVAL OF MINUTES.**

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

A. February 15, 2016 Regular Work Session

B. February 16, 2016 Regular Business Meeting

Approved: All present voting “aye.”

VI. **COMMUNITY INTEREST ITEMS.**

A. **PUBLIC HEARINGS.** None.

**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.

B. **BUSINESS MATTERS REQUIRING FIRST READING.**

**Minutes of the Regular Business Meeting of the Board of Mayor and Aldermen  
of the City of Kingsport, Tennessee, Tuesday, March 1, 2016**

**1. Enter into an Agreement with TDOT for the Fort Robinson Drive Bridge Replacement Project and Appropriate Available Funds to GP1618 (AF: 44-2016) (Ryan McReynolds).**

Motion/Second: McIntire/Duncan, to pass:

**Resolution No. 2016-118, A RESOLUTION APPROVING AN AGREEMENT WITH THE TENNESSEE DEPARTMENT OF TRANSPORTATION, 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/Duncan, to pass:

**AN ORDINANCE TO AMEND THE GENERAL PROJECT FUND BUDGET BY TRANSFERRING FUNDS TO THE FORT ROBINSON BRIDGE REPLACEMENT PROJECT FOR THE YEAR ENDING JUNE 30, 2016; AND TO FIX THE EFFECTIVE DATE OF THIS ORDINANCE**

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

**2. Amend the FY16 CDBG Budget Ordinance for the Addition of One (1) Position within the Community Development Program (AF: 51-2016) (Lynn Tully).**

Motion/Second: Duncan/Mitchell, to pass:

**AN ORDINANCE TO AMEND THE COMMUNITY DEVELOPMENT BUDGET BY ADDING A COMMUNITY DEVELOPMENT SPECIALIST POSITION FOR THE YEAR ENDING JUNE 30, 2016; AND TO FIX THE EFFECTIVE DATE OF THIS ORDINANCE**

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

**3. Amend the Franchise Fee with Kingsport Power Company (dba AEP Appalachian Power) (AF: 50-2016) (Ryan McReynolds).**

Motion/Second: Parham/McIntire, to pass:

**AN ORDINANCE AMENDING ORDINANCE NUMBER 6542 BY ENACTING A FRANCHISE FEE FOR THE USE BY KINGSPORT POWER COMPANY, D/B/A AEP APPALACHIAN POWER, OF THE PUBLIC STREETS, ALLEYS, OTHER PUBLIC PLACES FOR ITS FRANCHISE FOR A SYSTEM OF ELECTRICITY DISTRIBUTION AND TRANSMISSION LINES AND OTHER NECESSARY EQUIPMENT AND FACILITIES FOR THE PURPOSE OF TRANSMITTING AND DISTRIBUTING ELECTRICITY IN, UPON, ACROSS, ALONG AND UNDER THE HIGHWAYS, STREETS, AVENUES, ROADS, COURTS, ALLEYS, LANES, WAYS, UTILITY EASEMENTS, PARKWAYS AND PUBLIC GROUNDS OF THE CITY OF KINGSPORT, TENNESSEE; 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, March 1, 2016**

**C. BUSINESS MATTERS REQUIRING FINAL ADOPTION.**

**1. Amend Zoning of the Arch Street Property Located at the Intersection of Arch Street and Roller Street (AF: 32-2016) (Ken Weems).**

Motion/Second: McIntire/George, to pass:

**ORDINANCE NO. 6550**, AN ORDINANCE TO FURTHER AMEND THE ZONING CODE, TEXT AND MAP, TO REZONE PROPERTY ADJACENT TO ARCH STREET FROM R-4, MEDIUM DENSITY APARTMENT DISTRICT TO R-5, HIGH DENSITY APARTMENT DISTRICT IN THE 11<sup>TH</sup> 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 second reading in a roll call vote: Clark, Duncan, George, McIntire, Mitchell, Olterman and Parham voting "aye."

**2. Accept Donation from Friends of the Kingsport Public Library for Transformer and Lighting for Outside Kingsport Public Library Sign and Appropriate Funds (AF: 38-2016) (Morris Baker).**

Motion/Second: George/Olterman, to pass:

**ORDINANCE NO. 6551**, AN ORDINANCE TO AMEND THE GENERAL FUND BUDGET BY APPROPRIATING DONATIONS RECEIVED FOR THE YEAR ENDING JUNE 30, 2016; AND TO FIX THE EFFECTIVE DATE OF THIS ORDINANCE

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

**3. Agreement with Kingsport Economic Development Board for Economic Development in the Downtown Redevelopment District and Appropriation of Funds (AF: 36-2016) (Lynn Tully).**

Motion/Second: Olterman/Parham, to pass:

**ORDINANCE NO. 6552**, AN ORDINANCE TO AMEND THE GENERAL FUND BUDGET BY TRANSFERRING FUNDS TO THE KINGSFORT ECONOMIC DEVELOPMENT BOARD FAÇADE PROGRAM FOR THE YEAR ENDING JUNE 30, 2016; AND TO FIX THE EFFECTIVE DATE OF THIS ORDINANCE

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

**4. Budget Cleanup Ordinance for FY16 (AF: 37-2016) (Fleming).**

Motion/Second: McIntire/George, to pass:

**ORDINANCE NO. 6553**, AN ORDINANCE TO AMEND VARIOUS PROJECTS FOR THE YEAR ENDING JUNE 30, 2016; AND TO FIX THE EFFECTIVE DATE OF THIS ORDINANCE

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



**Minutes of the Regular Business Meeting of the Board of Mayor and Aldermen  
of the City of Kingsport, Tennessee, Tuesday, March 1, 2016**

**D. OTHER BUSINESS.**

**1. Adoption of VantageTrust II Participation Agreement for Retirement Health Savings Plan (AF: 48-2016) (Mike Billingsley, Jim Demming).**

Motion/Second: George/Mitchell, to pass:

**Resolution No. 2016-119, A RESOLUTION APPROVING A PARTICIPATION AGREEMENT WITH VANTAGETRUST, LLC, 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."

**E. APPOINTMENTS/REAPPOINTMENTS.**

**1. Reappointments to the Construction Board of Adjustments and Appeals (AF: 45-2016) (Mayor Clark).**

Motion/Second: McIntire/Parham, to approve:

REAPPOINTMENTS OF MR. DAVID STAUFFER AND MR. STEVE WILSON TO SERVE ANOTHER TERM ON THE **CONSTRUCTION BOARD OF ADJUSTMENTS AND APPEALS** EFFECTIVE IMMEDIATELY AND EXPIRING ON FEBRUARY 28, 2019.

Passed: All present voting "aye."

**2. Reappointment to the Beverage Board (AF: 46-2016) (Mayor Clark).**

Motion/Second: McIntire/George, to approve:

REAPPOINTMENT OF MR. STEPHEN LAHAIR TO SERVE ANOTHER TERM ON THE **BEVERAGE BOARD** EFFECTIVE IMMEDIATELY AND EXPIRING ON MARCH 31, 2019.

Passed: All present voting "aye."

**3. Reappointments to the Gateway Review Commission (AF: 43-2016) (Mayor Clark).**

Motion/Second: McIntire/Duncan, to approve:

REAPPOINTMENTS OF MR. JIM WRIGHT AND MRS. VIVIAN CRYMBLE TO SERVE ANOTHER TERM ON THE **GATEWAY REVIEW COMMISSION** EFFECTIVE IMMEDIATELY AND EXPIRING ON FEBRUARY 28, 2021.

Passed: All present voting "aye."

**VII. CONSENT AGENDA. (These items are considered under one motion and a roll call vote.)**

**Minutes of the Regular Business Meeting of the Board of Mayor and Aldermen of the City of Kingsport, Tennessee, Tuesday, March 1, 2016**

Motion/Second: McIntire/George, to adopt:

**1. Reimbursement of Materials Agreement Funds to Danny Karst for Edinburgh Phase 7 (AF: 42-2016) (Ryan McReynolds).**

Pass:

**Resolution No. 2016-120, A RESOLUTION AUTHORIZING REIMBURSEMENT OF MATERIALS AGREEMENT FUNDS TO DANNY KARST FOR EDINBURGH PHASE 7**

Passed: All present voting "aye."

**2. Approve and Receive Grant from FM Global (AF: 41-2016) (Craig Dye, Chris Vandagriff).**

Pass:

**Resolution No. 2016-121, A RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE ALL DOCUMENTS NECESSARY AND PROPER TO APPLY FOR AND RECEIVE A GRANT FROM FM GLOBAL**

Passed: All present voting "aye."

**3. Authorize the Mayor to Execute the Necessary Documents to Prepare an Updated Adoption Agreement for the Defined Contribution Retirement Plan per Internal Revenue Instructions (AF: 40-2016) (George DeCroes).**

Pass:

**Resolution No. 2016-122, A RESOLUTION APPROVING THE GOVERNMENT MONEY PURCHASE PLAN & TRUST ADOPTION AGREEMENT WITH ICMA-RETIREMENT CORPORATION 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."

**VIII. COMMUNICATIONS.**

**A. CITY MANAGER.** Mr. Fleming mentioned that Blue Ridge Properties would be moving into downtown Kingsport. He also commented on a Housing Development analysis case study of Edinburgh, noting the economic benefit to Kingsport is greater than that of East Stone Commons. Mr. Fleming also pointed out that Officer Kelly would be, who was in attendance, would be retiring at the end of the month.

**B. MAYOR AND BOARD MEMBERS.** Alderman Duncan stated his tie was signed by Ms. Robinson's class at Johnson Elementary. He also commented on the "Sip and Stroll" later this week and encouraged everyone to visit downtown. Alderman Mitchell commented on some upcoming events involving members of the PEAK organization. Alderman Parham

**Minutes of the Regular Business Meeting of the Board of Mayor and Aldermen  
of the City of Kingsport, Tennessee, Tuesday, March 1, 2016**

congratulated Alderman George for investing in downtown and also SRP Conkin and the police department for their service. He related the SBK sweetheart dinner was a success. Alderman Olterman commented on the Edinburgh investment. He also promoted the Lady Indians' first trip to the regional championship. Alderman George commented on the professionalism of the fire department after a recent alarm call. She pointed out the home show was this coming weekend at Meadowview. Ms. George also noted the announcement tomorrow regarding the centennial, as well as the upcoming Brass Ring Gala fundraiser to benefit the Carousel and the Centennial. Vice-Mayor McIntire recognized Mr. Good's students in attendance. He also invited citizens to the Higher Education center on March 23 to hear the final reports from the seven summit focus groups. Mayor Clark mentioned the Boys and Girls Clubs and their impact to the community. He noted he was following Alderman Duncan's example and stated his tie was signed by fire department employees. Mr. Clark pointed out Pal's recently won an award for business excellence, receiving top honors from the state of Tennessee. Lastly, he thanked Dobyns Bennett high school students and those who attended the recent girls' ballgame, noting it was the largest crowd ever with over 2,200 fans.

**C. VISITORS. None.**

**IX. ADJOURN.** Seeing no other business for consideration at this meeting, Mayor Clark adjourned the meeting at 7:48 p.m.

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ANGELA MARSHALL  
Deputy City Recorder

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JOHN CLARK  
Mayor



**AGENDA ACTION FORM**

**Amend Zoning of 225 Westfield Drive, Located in the Rock Springs Area**

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

Action Form No.: AF-49-2016  
Work Session: March 15, 2016  
First Reading: March 15, 2016

Final Adoption: April 5, 2016  
Staff Work By: Ken Weems  
Presentation By: Ken Weems

**Recommendation:**

- Hold public hearing
- Approve ordinance amending the zoning ordinance to rezone parcel 93 from R-1B, Residential District to P-1, Professional Offices District.

**Executive Summary:**

This rezoning consists of approximately 2.5 acres located in the Rock Springs area from R-1B to P-1. The purpose of the rezoning is to accommodate a future professional office use on the property. As of February 22, 2016, the Planning Department has not received any public comment on the rezoning proposal. During their February 2016 regular meeting, the Kingsport Regional Planning Commission voted unanimously to send a favorable recommendation for the rezoning to the Board of Mayor and Aldermen. The Notice of Public Hearing was published on February 29, 2016.

**Attachments:**

1. Notice of Public Hearing
2. Zoning Ordinance
3. Staff Report

	<u>Y</u>	<u>N</u>	<u>O</u>
Duncan	—	—	—
George	—	—	—
McIntire	—	—	—
Mitchell	—	—	—
Olterman	—	—	—
Parham	—	—	—
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 March 15, 2016 to consider the rezoning for parcel 93 of tax map 105 located along Westfield Drive from R-1B District to P-1 District. 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 rezoning is generally described as follows:

BEGINNING at a point, said point being the southern corner of parcel 93, Tax Map 105F; thence in a northeasterly direction, approximately 470 feet to a point, said point being the eastern corner of parcel 93 in common with the southwestern right-of-way of Westfield Drive; thence in a northwesterly direction, following the southwestern right-of-way of Westfield Drive, approximately 388 feet to a point, said point being the northern corner of parcel 93 in common with the southwestern right-of-way of Westfield Drive; thence in a southerly direction, approximately 628 feet to a point, said point being the western corner of parcel 93; thence in a southeasterly direction, approximately 70 feet to the point of BEGINNING, and being all of parcel 93, Tax Maps 105F and 105C as shown on the August 2015 Sullivan County Tax Maps.

All interested persons are invited to attend this meeting and public hearing. A detailed map and description is on file in the offices of the City Manager, Kingsport Library, and Planning Manager 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  
Angie Marshall, Deputy City Clerk  
PIT: 2/29/2016

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE TO FURTHER AMEND THE ZONING CODE, TEXT AND MAP, TO REZONE PROPERTY ADJACENT TO WESTFIELD DRIVE FROM R-1B, RESIDENTIAL DISTRICT TO P-1, PROFESSIONAL OFFICES DISTRICT IN THE 13<sup>TH</sup> 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 adjacent to Westfield Drive from R-1B, Residential District to P-1, Professional Offices District in the 13<sup>th</sup> 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 93, Tax Map 105F; thence in a northeasterly direction, approximately 470 feet to a point, said point being the eastern corner of parcel 93 in common with the southwestern right-of-way of Westfield Drive; thence in a northwesterly direction, following the southwestern right-of-way of Westfield Drive, approximately 388 feet to a point, said point being the northern corner of parcel 93 in common with the southwestern right-of-way of Westfield Drive; thence in a southerly direction, approximately 628 feet to a point, said point being the western corner of parcel 93; thence in a southeasterly direction, approximately 70 feet to the point of BEGINNING, and being all of parcel 93, Tax Maps 105F and 105C as shown on the August 2015 Sullivan County Tax Maps.

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.

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JOHN CLARK  
Mayor

ATTEST:

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JAMES H. DEMMING  
City Recorder

APPROVED AS TO FORM:

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J. MICHAEL BILLINGSLEY  
City Attorney

PASSED ON 1ST READING \_\_\_\_\_  
PASSED ON 2ND READING \_\_\_\_\_

Westfield Drive Rezoning

<b>Property Information</b>			
<b>Address</b>		252 Westfield Drive, Kingsport, TN 37664	
<b>Tax Map, Group, Parcel</b>		Map 105, parcel 93	
<b>Civil District</b>		13	
<b>Overlay District</b>		Gateway	
<b>Land Use Designation</b>		Retail	
<b>Acres</b>		2.5 acres +/-	
<b>Existing Use</b>		<b>Existing Zoning</b>	R-1B
<b>Proposed Use</b>		<b>Proposed Zoning</b>	P-1
<b>Owner /Applicant Information</b>			
<b>Name:</b> City of Kingsport <b>Address:</b> 225 W. Center St. <b>City:</b> Kingsport <b>State:</b> TN <b>Phone:</b> (423) 229-9485		<b>Zip Code:</b> 37660  <b>Intent:</b> <i>To rezone from R-1B (Residential District) to P-1 (Professional Offices District) to accommodate a professional office use in the existing on-site building.</i>	
<b>Planning Department Recommendation</b>			
<p><b>The Kingsport Planning Division recommends approval for the following reasons:</b></p> <ul style="list-style-type: none"> <li><i>This parcel was annexed in 2009 as part of the Rock Springs Area 6 annexation and assigned an R-1B zone in the process. Prior to annexation this parcel held a County B-1 (neighborhood business) zoning designation. This rezoning action is staff-initiated in an effort to restore a business zone that is more consistent with the previously held county zone (prior to annexation).</i></li> <li><i>The rezoning proposal is consistent with the future land use plan (retail use).</i></li> </ul> <p><b>Staff Field Notes and General Comments:</b></p> <ul style="list-style-type: none"> <li><i>The rezoning site contains a structure that operated as a day care facility until November, 2014.</i></li> <li><i>Ingress/egress to the rezoning site will be from Westfield Drive.</i></li> <li><i>As of February 8, 2016, the Planning Department has not received any public comment about the rezoning effort.</i></li> <li><i>The property owners are currently trying to sell the property to someone interested in a professional office use for the building.</i></li> </ul>			
<b>Planner:</b>	Ken Weems	<b>Date:</b>	February 8, 2016
<b>Planning Commission Action</b>		<b>Meeting Date:</b>	<b>February 18, 2016</b>
<b>Approval:</b>			
<b>Denial:</b>		<b>Reason for Denial:</b>	
<b>Deferred:</b>		<b>Reason for Deferral:</b>	



**PROPERTY INFORMATION**

<b>ADDRESS</b>	252 Westfield Dr., Kingsport, TN 37664
<b>DISTRICT</b>	13
<b>OVERLAY DISTRICT</b>	Gateway
<b>EXISTING ZONING</b>	R-1B (Residential District)
<b>PROPOSED ZONING</b>	P-1 (Professional Offices District)
<b>ACRES</b>	2.5 +/-
<b>EXISTING USE</b>	former day care facility
<b>PROPOSED USE</b>	professional office

**PETITIONER**

**ADDRESS** 225 W. Center St., Kingsport, TN 37660

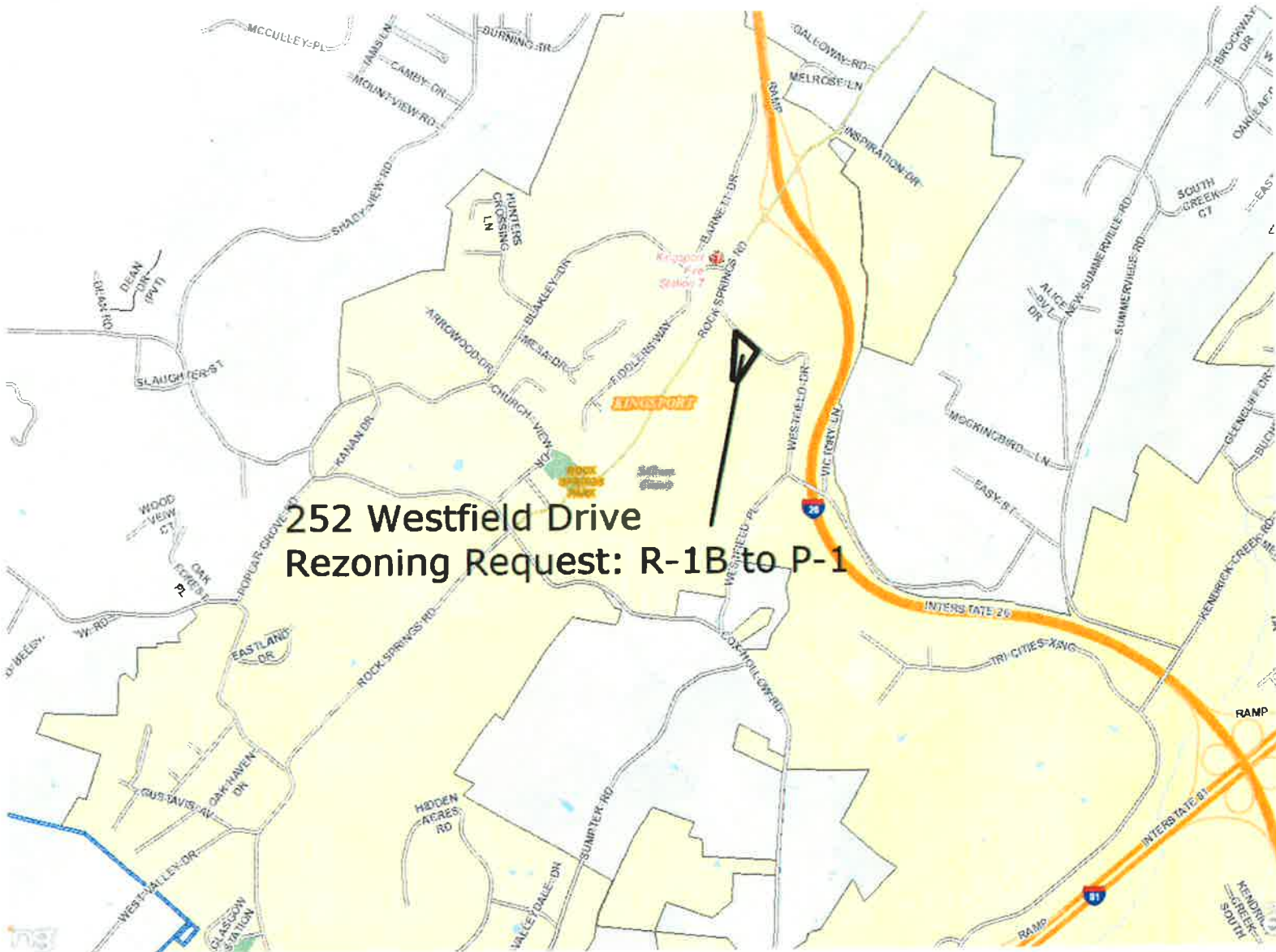
**REPRESENTATIVE**

**PHONE** (423) 229-9485

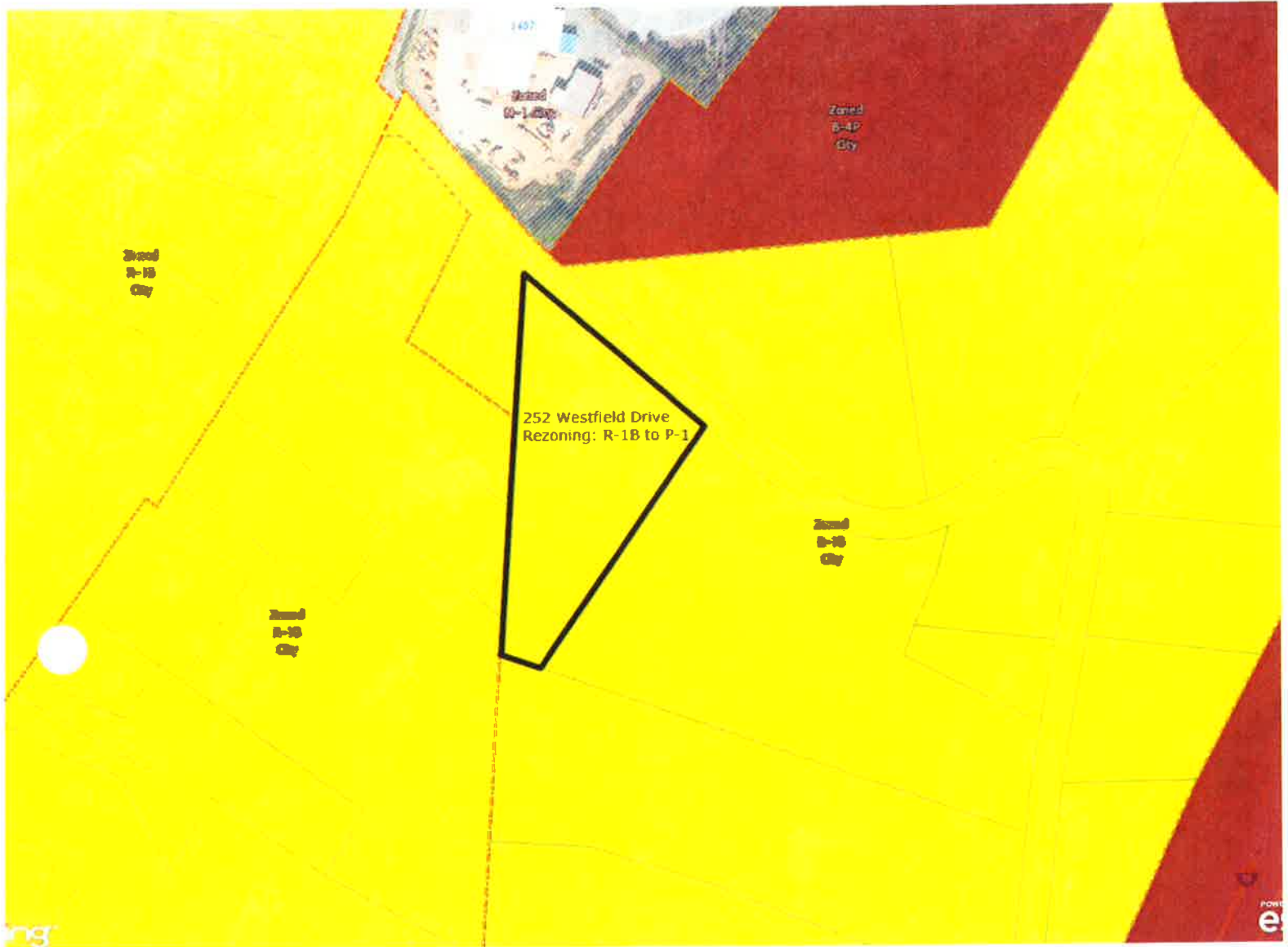
**INTENT**

*To rezone from R-1B (Residential District) to P-1 (Professional Offices District) to accommodate a professional office use in the existing on-site building.*

Vicinity Map



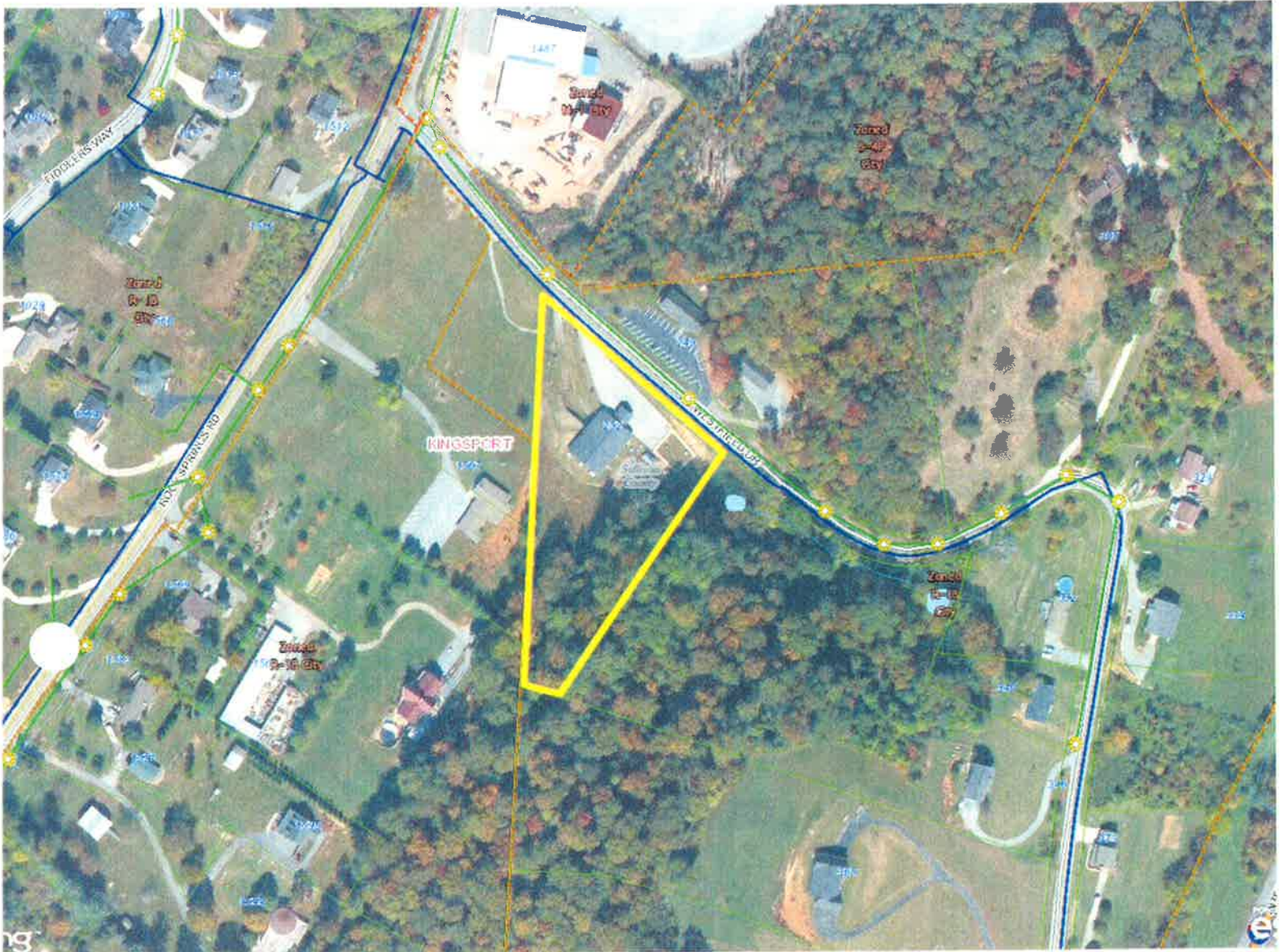
Surrounding Zoning Map



Future Land Use Plan 2030



Aerial



**North View (Toward Westfield Drive)**



**South View**



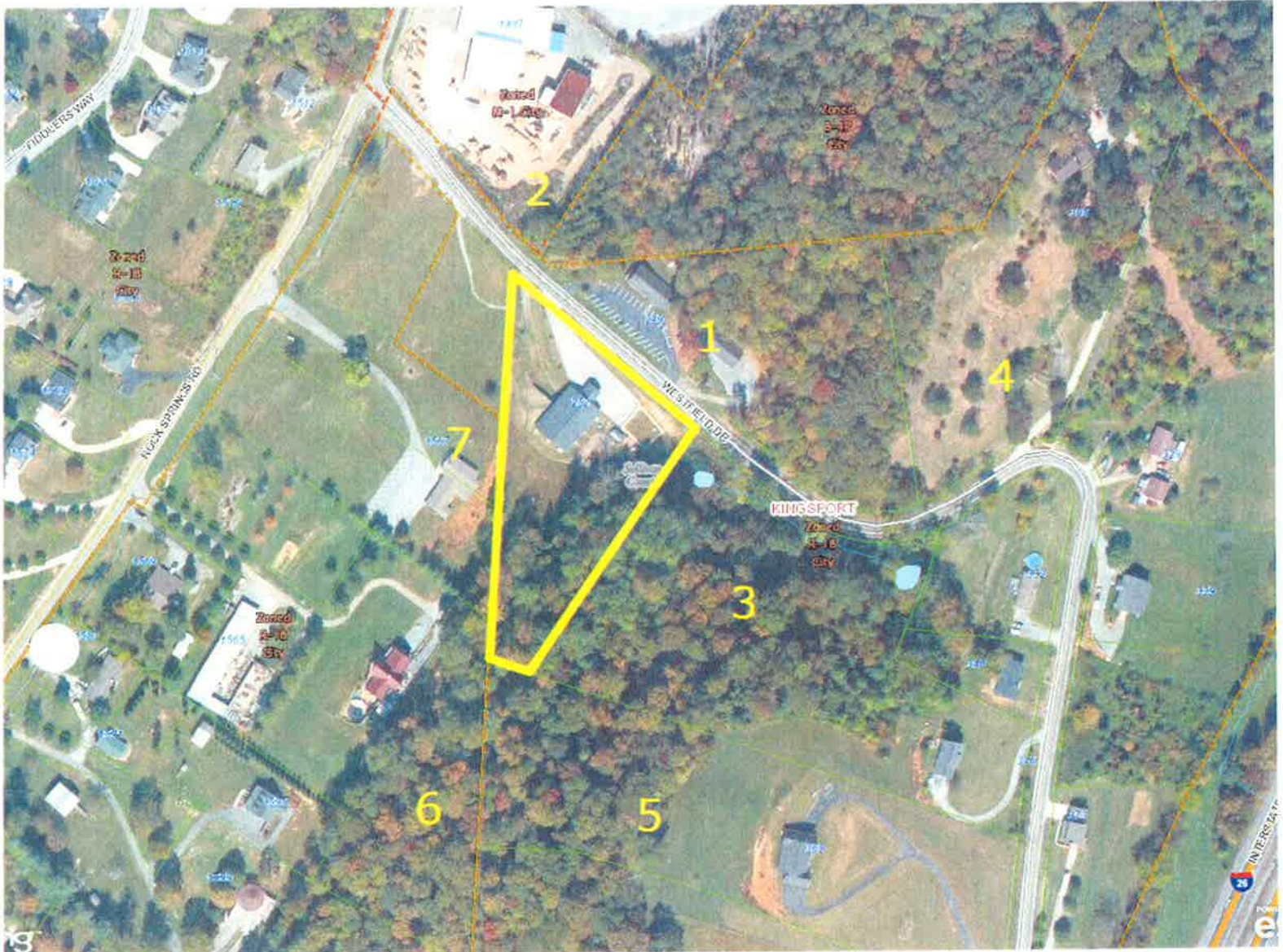
**East View**



**West View (Toward Rock Springs Road)**



Existing Uses Location Map





Existing Uses Information Chart

Location	Parcel / Zoning Petition	Zoning / Name	History Zoning Action Variance Action
North, East, Northwest	1	<u>Zone: City R-1B</u> Use: church	Annexed in 2009 as part of the Rock Springs Area 6 Annexation
Further North and Northwest	2	<u>Zone: City M-1</u> Use: heavy equipment rental	Annexed in 1992 as part of the Rock Springs Annexation
East	3	<u>Zone: City R-1B</u> Use: single family	Annexed in 2009 as part of the Rock Springs Area 6 Annexation
Further East	4	<u>Zone: City R-1B</u> Use: single family	Annexed in 2009 as part of the Rock Springs Area 6 Annexation
Southeast and South	5	<u>Zone: City R-1B</u> Use: single family	Annexed in 2009 as part of the Rock Springs Area 6 Annexation
Further South	6	<u>Zone: City R-1B</u> Use: single family	Annexed in 2009 as part of the Rock Springs Area 1 Annexation
West	7	<u>Zone: City R-1B</u> Use: church	Annexed in 2009 as part of the Rock Springs Area 1 Annexation

**Standards of Review**

Planning Staff shall, with respect to each zoning application, investigate and make a recommendation with respect to factors 1 through 10, below, as well as any other factors it may find relevant.

1. **Whether or not the proposal will permit a use that is suitable in view of the use and development of adjacent and nearby property?** The proposal will permit a use that is suitable with adjacent property. The site contains a building that is designed for commercial use and has been used for commercial use for some time.
2. **Whether or not the proposal will adversely affect the existing use or usability of adjacent or nearby property?** The adjacent and nearby property will not be adversely affected by the proposal. The site is buffered from adjacent residential use by steep topography and existing hardwood forest.
3. **Whether the property to be affected by the proposal has a reasonable economic use as currently zoned?** The property has a reasonable economic use as currently zoned. There is also a reasonable economic use for the proposed zone and future professional office use.
4. **Whether the proposal will result in a use which will or could cause an excessive or burdensome use of existing streets, transportation facilities, utilities or schools?** The proposal will cause no additional impact.
5. **Whether the proposal is in conformity with the policies and intent of the land use plan?**

**Proposed use:** future professional office

**The Future Land Use Plan Map recommends** Retail use

6. **Whether there are other existing or changed conditions affecting the use and development of the property which gives supporting grounds for either approval or disapproval of the proposal?** The existing conditions support approval of the proposed rezoning.
7. **Whether the zoning proposal will permit a use which can be considered environmentally adverse to the natural resources, environment and citizens of the City of Kingsport?** There are no adverse uses proposed. Any future commercial proposals will be evaluated for the potential of adverse environmental issues.

8. **Whether the change will create an isolated district unrelated to similar districts:** The change will be an appropriate transition zone from adjacent industrial and high intensity commercial zone. The proposed P-1 zone will further the Future Land Use Plan as well.
9. **Whether the present district boundaries are illogically drawn in relation to existing conditions?** The present district boundaries are logically drawn.
10. **Whether the change will constitute a grant of special privilege to an individual as contrasted to the general welfare?** The change will not allow a special privilege to an individual as contrasted to the general welfare. The rezoning will permit furtherance of the Future Land Use Plan 2030.

CONCLUSION

Staff recommends APPROVAL to rezone from R-1B to P-1. The proposed P-1 zone is consistent with the future land use plan as a retail use.



**AGENDA ACTION FORM**

**Amend the FY 2016 General Project Fund Budget – Kingsport City Schools**

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

Action Form No.: AF-57-2016  
 Work Session: March 15 2016  
 First Reading: March 15, 2016

Final Adoption: April 5, 2016  
 Staff Work By: David Frye  
 Presentation By: David Frye

**Recommendation:**

Approve the Ordinance.

**Executive Summary:**

The Board of Education approved fiscal year 2016 budget amendment number four at their meeting on March 3, 2016. This amendment transfers funds in the Overlook Road Improvement project to a new Dobyys-Bennett Regional Science and Technology Building project. The amount of the transfer is \$200,000. This will provide funding for the initial architect agreement. It is intended that the funds in the Overlook Road Improvement project be replaced from the proceeds of the Sullivan County bonds.

**Attachments:**

1. Ordinance
2. BOE Budget Amendment Number Four – FY 2016

Funding source appropriate and funds are available: *JF*

	<u>Y</u>	<u>N</u>	<u>O</u>
Duncan	—	—	—
George	—	—	—
McIntire	—	—	—
Mitchell	—	—	—
Olterman	—	—	—
Parham	—	—	—
Clark	—	—	—

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE TO AMEND THE GENERAL PROJECTS FUND BUDGETS FOR THE FISCAL YEAR ENDING JUNE 30, 2016; 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 decreasing the estimated revenue for the Overlook Road Improvement Project (GP1023) – 2012C General Obligation Bonds by \$200,000 and by decreasing the appropriation for Improvements by \$200,000; by creating a new project for construction of the Dobyms-Bennett Regional Science and Technology Center (GP1620) and establishing estimated revenue for 2012C General Obligations Bonds of \$200,000 and an appropriation for Architectural Services of \$200,000.

**Fund 311: General Project Fund**  
**Overlook Road Improvements (GP1023)**

<b><u>Revenues:</u></b>	\$	\$	\$
311-0000-368-1041 Series 2012 C GO PUB IMP	200,000	(200,000)	0
<b>Total:</b>	<b>200,000</b>	<b>(200,000)</b>	<b>0</b>

<b><u>Expenditures:</u></b>			
311-0000-601-9003 Improvements	200,000	(200,000)	0
<b>Total:</b>	<b>200,000</b>	<b>(200,000)</b>	<b>0</b>

**DB Science and Technology Center (GP1620)**

<b><u>Revenues:</u></b>	\$	\$	\$
311-0000-368-1041 Series 2012 C GO PUB IMP	0	200,000	200,000
<b>Total:</b>	<b>0</b>	<b>200,000</b>	<b>200,000</b>

<b><u>Expenditures:</u></b>			
311-0000-601-2023 Arch/Eng/Landscaping Serv	0	200,000	200,000
<b>Total:</b>	<b>0</b>	<b>200,000</b>	<b>200,000</b>

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:

APPROVED AS TO FORM:

\_\_\_\_\_  
JAMES H. DEMMING  
City Recorder

\_\_\_\_\_  
J. MICHAEL BILLINGSLEY, City Attorney

PASSED ON 1ST READING: \_\_\_\_\_

PASSED ON 2ND READING: \_\_\_\_\_

March 3, 2016

KINGSPORT CITY SCHOOLS  
FISCAL YEAR 2015-2016  
BUDGET AMENDMENT NUMBER FOUR

**CAPITAL PROJECTS FUND**

With the approval of the agreement with Perkins+Will for the programming and schematic design phase of the D-B Science and Technology center, it is needed to have funding in place for this phase of work. It is being recommended that the BOE approve an agreement with Will+Perkins in the amount of \$184,874. Ultimately funding for this work will come from the proposed \$140 million Sullivan County Bond Funds. In the interim funds will need to be identified from another source.

There is a project for Overlook Road improvements that has funding in the amount of \$200,000. At the present time there are no specific plans for those improvements. With the approval of the purchase of the last property, we can now start working with the City to develop these improvements. At this time it would be the summer of 2017 before any work could be done.

Since it will be a year from now before the Overlook Road funds are needed, it is recommended that these funds be transferred to a new project for the construction of the Dobyys-Bennett Regional Science and Technology Center. When funds are received from the proposed Sullivan County Bunds, the Overlook Road project will be reimbursed.



**AGENDA ACTION FORM**

**Amending Section 22-96(e) of the Kingsport City Code to Specifically Include Exemption of Townhouse from Sprinkler Requirements and Provide for a Two Hour Fire Resistant Wall**

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

Action Form No.: AF-65-2016  
Work Session: March 15, 2016  
First Reading: March 15, 2016

Final Adoption: April 5, 2016  
Staff Work By: J. Dee Morgan  
Presentation By: M. Billingsley

**Recommendation:**

Approve the Ordinance.

**Executive Summary:**

State law (T.C.A. § 68-120-101) pertaining to statewide building construction safety standards was amended effective January 1, 2016. The state has requested that the city amend section 22-96(e) of the Kingsport City Code to specifically state that townhouses are exempt from fire sprinkler requirements and require a 2 hour fire-resistance rated wall assembly as provided T.C.A. § 68-120-101(a)(8)(C)(i)(a) and (b), in sprinkler requirements do not apply to townhouses. The attached ordinance amends section 22- 96(e) to provide for such.

**Attachments:**

1. Ordinance
2. T.C.A. § 68-120-101(a)(8)(A), (B) and (C)

	<u>Y</u>	<u>N</u>	<u>O</u>
Duncan	—	—	—
George	—	—	—
McIntire	—	—	—
Mitchell	—	—	—
Oltzman	—	—	—
Parham	—	—	—
Clark	—	—	—



ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE AMENDING THE CODE OF ORDINANCES,  
CITY OF KINGSPORT, SECTION 22-96(e) PERTAINING TO THE  
RESIDENTIAL BUILDING CODE AND FIXING THE EFFECTIVE  
DATE OF THIS ORDINANCE

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

SECTION I. That Section 22-96(e) of the Code of Ordinances, City of Kingsport, Tennessee is hereby amended to read as follows:

Sec. 22-96. Code adopted by reference.

- (e) Residential Code. The provisions of the International Residential Code, 2012 edition excluding Chapter 11 (Energy Conservation) and inserting instead Chapter 11 (Energy Conservation) of the 2009 International Residential Code, excluding section R313 & R2904 in accordance with TCA § 68-120-101(a)(8)(A), removing section 3902.12 and using section 3902.13 for all construction and including appendix F, for one and two-family dwellings, published by the International Code Council, is hereby adopted by reference as though copied verbatim in this subsection. Notwithstanding anything contained herein to the contrary, as set forth in TCA § 68-120-101(a)(C)(i)(a), a townhouse shall be considered a separate building with independent exterior walls and shall be separated by a two-hour fire-resistance-rated wall assembly. A townhouse shall be built according to local and statewide adopted building codes; provided, however, a fire sprinkler system shall not be required for a townhouse. Notwithstanding anything contained herein to the contrary and as provided for in T.C.A. § 68-120-101(a)(8)(A), a fire sprinkler system shall not be required for a single family residence. One copy of said code and revisions thereto was on file in the office of the city recorder for a period of 15 days prior to adoption, and that one copy of said code and revisions thereto shall remain on file in the office of the city recorder for public use, inspection and examination.

SECTION II. That this ordinance shall take effect from and after the date of its passage, as the law directs, the public welfare of the citizens 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 1<sup>ST</sup> READING \_\_\_\_\_  
PASSED ON 2<sup>ND</sup> READING \_\_\_\_\_

T.C.A. § 68-120-101(a)(8)(A), (B) and (C)

Statewide building construction safety standards -- Promulgation -- Applicability.

(a) The state fire marshal shall, in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, promulgate rules establishing minimum statewide building construction safety standards. Such standards shall be designed to afford a reasonable degree of safety to life and property from fire and hazards incident to the design, construction, alteration and repair of buildings or structures. The standards:

(1) Shall include, but not be limited to, provisions relative to structural strength and stability; energy efficiency; means of egress; fire resistant ratings and requirements; and fire protection equipment and materials;

(2) May be selected wholly or partially from publications or amended versions of publications of nationally recognized agencies or organizations, such as the International Code Council, Inc., the National Fire Protection Association, Inc., and Underwriters Laboratories, Inc.;

(3) Shall classify buildings according to types of occupancy and construction;

(4) Shall contain appropriate requirements and specifications for both new and existing buildings;

(5) Shall not discriminate against or in favor of particular construction materials or techniques;

(6) Shall, to the extent practicable, be stated in terms of performance objectives without prescribing the use of certain methods, designs, techniques or materials;

(7) Shall be reasonably compatible with building construction safety standards adopted by local governments in this state;

(8) (A) Shall not include mandatory sprinkler requirements for one-family and two-family dwellings; however, notwithstanding this subdivision (a)(8), local governments may adopt more stringent requirements for one-family and two-family dwellings;

(B) (i) If a local government seeks to adopt mandatory sprinkler requirements for one-family and two-family dwellings pursuant to this subdivision (a)(8), then the local government may only adopt such requirements, by either ordinance or resolution, as appropriate, upon an affirmative two-thirds (2/3) vote on final reading; provided, that if passage of such ordinance or resolution requires two (2) readings, then such requirements may only be adopted after reading such ordinance or resolution in open session of the legislative body at meetings specially called on two (2) different days that are no less than two (2) weeks apart; and if passage requires three (3) readings, then the last two (2) readings shall occur on two (2) different days that are no less than two (2) weeks apart. Mandatory sprinkler requirements shall be voted on in an ordinance or resolution separate from any other ordinance or resolution addressing building construction safety standards;

(ii) If a local government seeks to repeal the mandatory sprinkler requirements adopted pursuant to this subdivision (a)(8), then the local government shall repeal such requirements in the same manner as required to adopt such requirements under this subdivision (a)(8); provided, that if a local government adopted mandatory sprinkler requirements prior to April 27,

2012, then the local government may repeal such requirements in the same manner the local government adopted the requirements; and

(C) (i) (a) A townhouse shall be considered a separate building with independent exterior walls and shall be separated by a two-hour fire-resistance-rated wall assembly. A townhouse shall be built according to local and statewide adopted building codes; provided, however, a fire sprinkler system shall not be required for a townhouse;



AGENDA ACTION FORM

**Agreement with TDOT for the Main Street Redevelopment Project and Appropriate Funds**

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

Action Form No.: AF-62-2016  
Work Session: March 15, 2016  
First Reading: March 15, 2016  
Final Adoption: April 5, 2016  
Staff Work By: Michael Thompson  
Presentation By: Ryan McReynolds

**Recommendation:**

Approve the Resolution and Ordinance.

**Executive Summary:**

Main Street redevelopment involves rebuilding Main Street from Sullivan Street to Market Street. This project consists of resurfacing, repairing curbs and sidewalks, additions of bulbouts, ADA enhancements, removal of rail sidings, diamond grinding, and specific areas of subgrade repair and rebuild.


The estimated total cost for all phases of this project is \$1,699,605.00, which will be funded 80% through KMTPO STP funding source (Federal funds); and the local government is responsible for the 20% matching share (estimated amount of \$339,921.00).

Therefore we request to enter into a Local Agency Project Agreement with TDOT for the Redevelopment of Main Street from Sullivan Street to Market Street; Agreement Number: 160028; Federal Project Number: STP-M-9108(48); State Project Number: 82LPLM-F3-071; Project Identification Number: 123325.00.

Funding is available and identified in GP1516.

**Attachments:**

- 1. Resolution / Agreement
- 2. Ordinance
- 2. Location Map

Funding source appropriate and funds are available: 

	Y	N	O
Duncan	—	—	—
George	—	—	—
McIntire	—	—	—
Mitchell	—	—	—
Olterman	—	—	—
Parham	—	—	—
Clark	—	—	—

RESOLUTION NO. \_\_\_\_\_

A RESOLUTION APPROVING AN AGREEMENT WITH THE TENNESSEE DEPARTMENT OF TRANSPORTATION FOR THE MAIN STREET REDEVELOPMENT PROJECT, AND AUTHORIZING THE MAYOR TO EXECUTE THE AGREEMENT AND ALL OTHER DOCUMENTS NECESSARY AND PROPER TO EFFECTUATE THE PURPOSE OF THE AGREEMENT

WHEREAS, the Main Street redevelopment involves rebuilding Main Street from Sullivan Street to Market Street; and

WHEREAS, the city would like to enter into an agreement with the Tennessee Department of Transportation for the Main Street Redevelopment Project; and

WHEREAS, the project consists of resurfacing, repairing curbs, sidewalks, additions of bulbouts, ADA enhancements, removal of rail sidings, diamond grinding, specific areas of subgrade repair and rebuild; and

WHEREAS, the estimated total cost for all phases of this project is \$1,699,605.00, which will be funded 80% through the Kingsport Metropolitan Transportation Planning Organization STP funding source (Federal funds); and

WHEREAS, the city is responsible for the 20% matching share (estimated amount of \$339,921.00); and

WHEREAS, funding is available and identified in GP1516.

Now therefore,

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

SECTION I. That an agreement with the Tennessee Department of Transportation for the Main Street Redevelopment Project 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 Tennessee Department of Transportation for the Main Street Redevelopment Project 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 as follows:

**Agreement Number: 160028**  
**Project Identification Number: 123325.00**  
**Federal Project Number: STP-M-9108(48)**  
**State Project Number: 82LPLM-F3-071**

**State of Tennessee Department of Transportation  
LOCAL AGENCY PROJECT AGREEMENT**

THIS AGREEMENT, made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ by and between the STATE OF TENNESSEE DEPARTMENT OF TRANSPORTATION, an agency of the State of Tennessee (hereinafter called the "Department") and the CITY OF KINGSPORT (hereinafter called the "Agency") for the

purpose of providing an understanding between the parties of their respective obligations related to the management of the project described as:

Main Street from Sullivan Street to Market Street

A. PURPOSE OF AGREEMENT

A.1 Purpose:

a) The purpose of this Agreement is to provide for the Department's participation in the project as further described in Exhibit A attached hereto and by this reference made a part hereof (hereinafter called the "Project") and state the terms and conditions as to the manner in which the Project will be undertaken and completed.

A.2 Modifications and Additions:

a) Exhibit(s) are attached hereto and by this reference made a part hereof.

B. ACCOMPLISHMENT OF PROJECT

B.1 General Requirements:

a)

Environmental Clearance by:	Agency	Project
Preliminary Engineering by:	Agency	Project
Right-of-Way by:	Agency	Project
Utility Coordination by:	Agency	Project
Construction by:	Agency	Project

- b) After receiving authorization for a phase, the Agency shall commence and complete the phases as assigned above of the Project as described in Exhibit A with all practical dispatch, in a sound, economical, and efficient manner, and in accordance with the provisions herein, and all applicable laws. The Project will be performed in accordance with all latest applicable Department procedures, guidelines, manuals, standards, and directives as described in the Department's Local Government Guidelines, available in electronic format, which by this reference is made a part hereof as if fully set forth herein.
- c) A full time employee of the Agency shall supervise the herein described phases of the Project. Said full time employee of the Agency shall be qualified to and shall ensure that the Project will be performed in accordance with the terms of this Agreement and all latest applicable Department procedures, guidelines, manuals, standards, and directives as described in the Department's Local Government Guidelines and this Agreement.

B.2 Completion Date:

a) The Agency agrees to complete the herein assigned phases of the Project on or before April 1, 2021. If the Agency does not complete the herein described phases of the Project within this time period, this Agreement will expire on the last day of scheduled completion as provided in this paragraph unless an extension of the time period is requested by the Agency and granted in writing by the Department prior to the expiration of the Agreement. An extension of the term of this Agreement will be effected through an amendment to the Agreement. Expiration of this Agreement will be considered termination of the Project. The cost of any work performed after the expiration date of the Agreement will not be reimbursed by the Department.

B.3 Environmental Regulations:

- a) The Department will review environmental documents and require any appropriate changes for approval as described in the Department's Local Government Guidelines.
- b) In the event the Agency is made responsible for the Environmental Clearances in Section B.1(a) of this Agreement, the Agency will be solely responsible for compliance with all applicable environmental regulations and for any liability arising from non-compliance with these regulations and will reimburse the Department of any loss incurred in connection therewith to the extent permitted by Tennessee Law. The Agency will be responsible for securing any applicable permits as described in the Department's Local Government Guidelines.
- c) In the event the Agency is made responsible for the Environmental Clearances in section B.1.(a) of this Agreement, then the Agency must complete environmental clearances before it begins final design and understands that a separate Notice to Proceed

will be submitted for final design. Any work on final design performed ahead of this Notice to Proceed will not be reimbursable.

#### B.4 Plans and Specifications

a) In the event that the Agency is made responsible for the Preliminary Engineering in Section B.1.(a) of this Agreement and federal and/or state funding is providing reimbursement, except as otherwise authorized in writing by the Department, the Agency shall not execute an agreement for the Preliminary Engineering phase of the Project without the written approval of the Department. Failure to obtain such written approval shall be sufficient cause for nonpayment by the Department.

b) In the event that this Agreement involves constructing and equipping of facilities on the State Highway System and/or is a Project with Federal participation and the Agency is made responsible for Preliminary Engineering in section B.1.(a) of this Agreement, the Agency shall submit to the Department for approval all appropriate plans and specifications covering the Project. The Department will review all plans and specifications and will issue to the Agency written approval with any approved portions of the Project and comments or recommendations covering any remainder of the Project deemed appropriate.

1) After resolution of these comments and recommendations to the Department's satisfaction, the Department will issue to the Agency written approval and authorization to proceed with the next assigned phase of the Project. Failure to obtain this written approval and authorization to proceed shall be sufficient cause for nonpayment by the Department.

c) In the event that this Agreement involves the use of State Highway Right-of-Way, the Agency shall submit a set of plans to the TDOT Traffic Engineer responsible for the land in question.

These plans shall be sufficient to establish the proposed Project and its impact on the State Highway Right-of-Way.

#### B.5 Right-of-Way

a) The Agency shall, without cost to the Department, provide all land owned by the Agency or by any of its instrumentalities as may be required for the Project right-of-way or easement purposes.

b) The Agency understands that if it is made responsible for the Right-of-Way phase in section B.1(a) hereof and federal and/or state funds are providing the reimbursement, any activities initiated for the appraisal or the acquisition of land prior to authorization from the Department will not be reimbursed and that failure to follow applicable Federal and State law in this regard may make the Project ineligible for federal and/or state funding.

c) The Department will review the processes the Agency used for the acquisition of land and other right-of-way activities. If those processes are found to be in accordance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (Public Law 91-646, 84 Stat. 1894), the Department will certify that the acquisition phase was completed appropriately. The Agency understands that the Project cannot proceed to the Construction phase until this certification of the acquisition phase has been provided. It further understands that if the processes used for acquisition are such that certification is impossible, federal and/or state funds will be withdrawn from the Project. If such withdrawal does occur, the Agency hereby agrees to reimburse the Department for all federal and/or state funds expended at the time of such withdrawal.

d) If the Agency is responsible for the Construction phase, it agrees to correct any damage or disturbance caused by its work within the State Highway Right-of-Way, including but not limited to the replacement of any control access fence removed by the Agency or its Contractor or agent during the Construction phase of the Project.

#### B.6 Approval of the Construction Phase

a) In the event that the Agency is made responsible for the Construction phase in section B.1.(a) of this Agreement, except as otherwise authorized in writing by the Department, the Agency shall not execute an agreement for the Construction phase of the Project without the written approval of the Department. Failure to obtain such approval shall be sufficient cause for nonpayment by the Department.

b) In the event that the Department is made responsible for the Construction phase in section B.1.(a) of this Agreement, when the construction phase begins, the Agency may make such periodic visits to the Project site as necessary to familiarize itself generally with the progress and quality of the work and to determine in general if the work is proceeding in accordance with the Construction Agreement. If there is any perceived failure, the Agency shall give prompt written notification to the Department's Resident Engineer in charge.

c) If the Project includes State Highway Right-of-Way and the Agency is responsible for the Construction phase, the Agency shall follow all requirements imposed by the TDOT

Traffic Engineer.

d) In the event that the Project includes State Highway Right-of-Way and the Agency is performing any construction work on this project, such work shall be performed to the satisfaction of the Department. If the Agency is being compensated for any construction work under this Agreement, any remedial work deemed necessary by the Department shall be done at the Agency's sole expense.

e) The Agency understands that all contractors allowed to bid hereunder must be included on the Department's pre-qualified contractor list. Under Federal law, however, no contractor shall be required by law, regulation, or practice to obtain a license before submitting a bid or before a bid may be considered for an award of a contract; provided, however, that this is not intended to preclude requirements for the licensing of a contractor upon or subsequent to the award of the contract if such requirements are consistent with competitive bidding.

#### B.7 Detours

a) If the Agency deems a detour to be necessary to maintain traffic during a road closure, then the Agency shall select, sign, and maintain the detour route in strict accordance with the Department's Final Construction Plan Notes and the Manual on Uniform Traffic Control Devices.

#### B.8 Utilities

a) In the event that the Department is made responsible for the Construction phase in Section B.1(a) of this Agreement, the Department shall also be responsible for the Utilities phase.

b) In the event that the Agency is made responsible for the Utilities Phase in section B.1.(a) of this Agreement, the following applies:

1) The Agency shall assist and ensure that all utility relocation plans are submitted by the utilities and received by the Regional TDOT Utility Office per TDOT's coordination instructions for approval prior to the Project advertisement for bids.

2) The Agency agrees to provide for and have accomplished all utility connections within the right-of-way and easements prior to the paving stage of the Construction phase.

#### B.9 Railroad

a) In the event that a railroad is involved, Project costs may be increased by federally required improvements. The Agency agrees to provide such services as necessary to realize these improvements. The Agency understands it may have to enter into additional agreements to accomplish these improvements.

### C. PAYMENT TERMS AND CONDITIONS

#### C.1 Total Cost:

In the event that the Agency shall receive reimbursement for Project expenditures with federal and/or state funds for any portion of the herein described Project, this provision shall apply.

a) The Department agrees to reimburse the Agency for eligible and appropriate Project expenditures as detailed in the Department's Local Government Guidelines with federal and/or state funds made available and anticipated to become available to the Agency, provided that the maximum liability of the Department shall be as set forth in Exhibit A.

#### C.2 Eligible Costs:

In the event that the Agency shall receive federal and/or state funds for any portion of the herein described Project, this provision shall apply.

a) Only Project costs incurred after the issuance of the Notice to Proceed for each phase as detailed in the Department's Local Government Guidelines are eligible for Department reimbursement.

#### C.3 Limits on Federal and State Participation:

a) Federal and/or state funds shall not participate in any cost which is not incurred in conformity with applicable federal and state law, the regulations in 23 C.F.R. and 49 C.F.R., and policies and procedures prescribed by the Federal Highway Administration (FHWA). Federal funds shall not be paid on account of any cost incurred prior to authorization by the FHWA to the Department to proceed with the Project or part thereof involving such cost. (23 CFR 1.9 (a)). If FHWA and/or the Department determines that any amount claimed is not eligible, federal and/or state participation may be approved in the amount determined to be adequately supported. The Department shall notify the Agency in writing citing the reasons why items and amounts are not eligible for federal and/or state participation. Where correctable non-compliance with provisions of law or FHWA requirements exists, federal and/or state funds may be withheld until compliance is obtained. Where non-compliance is not correctable, FHWA and/or the Department may deny participation in Project costs in part or in total.



b) For any amounts determined to be ineligible for federal and/or state reimbursement for which the Department has made payment, the Agency shall promptly reimburse the Department for all such amounts within ninety (90) days of written notice.

c) The Agency agrees to pay all costs of any part of this project which are not eligible for federal and/or state funding. These funds shall be provided upon written request therefore by either (a) check, or (b) deposit to the Local Government Investment Pool, whenever requested.

#### C.4 Payment Methodology:

In the event that the Agency shall receive federal and/or state funds for any portion of the herein described Project, this provision shall apply.

a) The Agency shall submit invoices, in a form outlined in the Local Government Guidelines with all necessary supporting documentation, prior to any reimbursement of allowable costs. Such invoices shall be submitted no more often than monthly but at least quarterly and indicate, at a minimum, the amount charged by allowable cost line-item for the period invoiced, the amount charged by line-item to date, the total amounts charged for the period invoiced, and the total amount charged under this agreement to date. Each invoice shall be accompanied by proof of payment in the form of a canceled check or other means acceptable to the Department.

b) The payment of an invoice by the Department shall not prejudice the Department's right to object to or question any invoice or matter in relation thereto. Such payment by the Department shall neither be construed as acceptance of any part of the work or service provided nor as final approval of any of the costs invoiced therein. The Agency's invoice shall be subject to reduction for amounts included in any invoice or payment theretofore made which are determined by the Department not to constitute allowable costs. Any payment may be reduced for overpayments or increased for under-payments on subsequent invoices.

c) Should a dispute arise concerning payments due and owing to the Agency under this Agreement, the Department reserves the right to withhold said disputed amounts pending final resolution of the dispute.

#### C.5 The Department's Obligations:

In the event that the Department is managing all phases of the Project herein described, this provision C.5 does not apply.

a) Subject to other provisions hereof, the Department will honor requests for reimbursement to the Agency in amounts and at times deemed by the Department to be proper to ensure the carrying out of the Project and payment of the eligible costs. However, notwithstanding any other provision of this Agreement, the Department may elect not to make a payment if:

1) Misrepresentation:

The Agency shall have made misrepresentation of a material nature in its application, or any supplement thereto or amendment thereof, or in or with respect to any document or data furnished therewith or pursuant hereto;

2) Litigation:

There is then pending litigation with respect to the performance by the Agency of any of its duties or obligations which may jeopardize or adversely affect the Project, this Agreement or payments to the Project;

3) Approval by Department:

The Agency shall have taken any action pertaining to the Project, which under this Agreement requires the approval of the Department or has made related expenditure or incurred related obligations without having been advised by the Department that same are approved;

4) Conflict of Interests:

There has been any violation of the conflict of interest provisions contained herein in D.16; or

5) Default:

The Agency has been determined by the Department to be in default under any of the provisions of the Agreement.

#### C.6 Final Invoices:

In the event that the Agency shall receive federal and/or state funds for any portion of the herein described Project, this provision shall apply.

a) The Agency must submit the final invoice on the Project to the Department within one hundred twenty (120) days after the completion of the Project. Invoices submitted after the one hundred twenty (120) day time period may not be paid.

C.7 Offset:

In the event that the Agency shall receive federal and/or state funds for any portion of the herein described Project, this provision shall apply.

a) If, after Project completion, any claim is made by the Department resulting from an audit or for work or services performed pursuant to this Agreement, the Department may offset such amount from payments due for work or services done under any agreement which it has with the Agency owing such amount if, upon demand, payment of the amount is not made within sixty (60) days to the Department. Offsetting any amount pursuant to this section shall not be considered a breach of agreement by the Department.

C.8 Travel Compensation

a) If the Project provided for herein includes travel compensation, reimbursement to the Agency 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 subject to the Agreement Budget.

D. STANDARD TERMS AND CONDITIONS

D.1 Governing Law:

a) This Agreement shall be governed by and construed in accordance with the laws of the State of Tennessee. The Agency 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 Agreement. The Agency acknowledges and agrees that any rights or claims against the State of Tennessee or its employees hereunder, and any remedies arising therefrom, shall be subject to and limited to those rights and remedies, if any, available under Tennessee Code Annotated, Sections 9-8-101 through 9-8-407.

D.2 General Compliance with Federal, State, and Local Law:

a) The Agency is assumed to be familiar with and observe and comply with those Federal, State, and local laws, ordinances, and regulations in any manner affecting the conduct of the work and those instructions and prohibitive orders issued by the State and Federal Government regarding fortifications, military and naval establishments and other areas. The Agency shall observe and comply with those laws, ordinances, regulations, instructions, and orders in effect as of the date of this Agreement.

b) The parties hereby agree that failure of the Agency to comply with this provision shall constitute a material breach of this Agreement and subject the Agency to the repayment of all damages suffered by the State and/or the Department as a result of said breach.

D.3 State Law:

a) Nothing in the Agreement shall require the Agency to observe or enforce compliance with any provision thereof, perform any other act or do any other thing in contravention of any applicable state law, provided, that if any of the provisions of the Agreement violate any applicable state law, the Agency will at once notify the Department in writing in order that appropriate changes and modifications may be made by the Department and the Agency to the end that the Agency may proceed as soon as possible with the Project.

D.4 Submission of the Proceedings, Agreements, and Other Documents:

a) The Agency shall submit to the Department such data, reports, records, agreements, and other documents relating to the Project as the Department and the Federal Highway Administration may require.

D.5 Appropriations of Funds:

a) This Agreement is subject to the appropriation and availability of State and/or Federal funds. In the event that the funds are not appropriated or are otherwise unavailable, the Department reserves the right to terminate the Agreement upon thirty (30) days written notice to the Agency. Said termination shall not be deemed a breach of agreement by the Department. Upon receipt of the written notice, the Agency shall cease all work associated with the Agreement. Should such an event occur, the Agency shall be entitled to compensation for all satisfactory and authorized services completed as of the termination date. Upon such termination, the Agency shall have no right to recover from the Department any actual, general, special, incidental, consequential, or any other damages whatsoever of any description or amount.

D.6 Rights and Remedies Not Waived:

a) In no event shall the making by the Department of any payment to the Agency constitute or be construed as a waiver by the Department of any breach of covenant or any default which may then exist on the part of the Agency and the making of such payment by the Department, while any such breach or default shall exist, shall in no way impair or prejudice any right or remedy available to the Department with respect to such breach or default.

b) Nothing in this agreement shall be construed to limit the Department's right at any time

to enter upon its highway right-of-way, including the area occupied by the Project, for the purpose of maintaining or reconstructing its highway facilities.

D.7 Department and Agency Not Obligated to Third Parties:

a) The Department and Agency shall not be obligated hereunder to any party other than the parties to this Agreement.

D.8 Independent Contractor:

a) The parties hereto, in the performance of this Agreement, shall not act as agents, employees, partners, joint ventures, or associates of one another. It is expressly acknowledged by the parties hereto that such parties are independent contracting entities and that nothing in this Agreement 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.

b) The Agency, being a political subdivision of the State, is governed by the provisions of the Tennessee Government Tort Liability Act, Tennessee Code Annotated, Sections 29-20-101, et seq, and all other applicable laws.

D.9 Maintenance:

a) Nothing contained herein shall be construed as changing the maintenance responsibility of either party for any part of the referenced project that lies on its system of highways. If the project funded hereunder results in the installation of any traffic signal, lighting or other electrically operated device(s), then the Agency shall be solely responsible for and pay all costs associated with maintenance and operation of all electrically operated devices together with the related equipment, wiring and other necessary appurtenances, and the Agency shall furnish electrical current to all such devices which may be installed as part of the project. Additionally, the Agency shall be solely responsible for and pay all costs associated with the maintenance and operation of solar-powered devices, including, but not limited to, replacement of solar panels, batteries, lights and lenses.

b) In the event that the Department is made responsible for the Construction phase in section B.1.(a) of this Agreement and to the extent that the Department is responsible for accomplishing the construction of the project, the Department will notify the Agency when Construction phase of the project has been completed; provided however, that failure to notify the Agency shall not relieve the Agency of its maintenance responsibilities.

D.10 Disadvantaged Business Enterprise (DBE) Policy and Obligation:

In the event that the herein-described project is funded with federal funds, the following shall apply:

a) DBE Policy:

It is the policy of the Department that Disadvantaged Business Enterprises, as defined in 49 C.F.R., Part 26, as amended, shall have the opportunity to participate in the performance of agreements financed in whole or in part with Department funds under this Agreement. The DBE requirements of applicable federal and state regulations apply to this Agreement; including but not limited to project goals and good faith effort requirements.

b) DBE Obligation:

The Agency and its Contractors agree to ensure that Disadvantaged Business Enterprises, as defined in applicable federal and state regulations, have the opportunity to participate in the performance of agreements and this Agreement. In this regard, all recipients and Contractors shall take all necessary and reasonable steps in accordance with applicable federal and state regulations, to ensure that the Disadvantaged Business Enterprises have the opportunity to compete for and perform agreements. The Agency shall not discriminate on the basis of race, color, national origin or sex in the award and performance of Department-assisted agreements.

D.11 Tennessee Department of Transportation Debarment and Suspension:

a) In accordance with the Tennessee Department of Transportation regulations governing Contractor Debarment and Suspension, Chapter 1680-5-1, the Agency shall not permit any suspended, debarred or excluded business organizations or individual persons appearing on the Tennessee Department of Transportation Excluded Parties List to participate or act as a principal of any participant in any covered transaction related to this Project. Covered transactions include submitting a bid or proposal, entering into an agreement, or participating at any level as a subContractor.

D.12 Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion (applies to federal aid projects):

a) Instructions for Certification - Primary Covered Transactions:

By signing and submitting this Agreement, the Agency is providing the certification set out below.

1) The inability of a person to provide the certification set out below will not necessarily result in denial of participation in this covered transaction. The Agency shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the Department's determination whether to enter into this transaction. However, failure of the Agency to furnish a certification or an explanation shall disqualify such a person from participation in this transaction.

2) The certification in this clause is a material representation of fact upon which reliance was placed when the Department determined to enter into this transaction. If it is later determined that the Agency knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the Department may terminate this transaction for cause or default.

3) The Agency shall provide immediate written notice to the Department if at any time the Agency learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

4) The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the Department for assistance in obtaining a copy of those regulations.

5) The Agency agrees by entering into this Agreement that it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the Department.

6) The Agency further agrees by entering into this Agreement that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Lower Tier Covered Transaction," provided by the Department, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7) An Agency may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Non-procurement portion of the "Lists of Parties Excluded From Federal Procurement or Non-procurement Programs" (Non-procurement List) which is compiled by the General Services Administration.

8) Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9) Except for transactions authorized under these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the Department may terminate this transaction for cause or default.

b) Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Primary Covered Transactions:

The prospective participant in a covered transaction certifies to the best of its knowledge and belief, that it and its principals:

1) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal, State or local department or agency;

2) Have not within a 3-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or agreement 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;

3) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in this certification; and

4) Have not within a 3-year period preceding this application/proposal had one or more

public transactions (Federal, State or local) terminated for cause or default.

5) Where the prospective participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

D.13 Equal Employment Opportunity:

a) In connection with the performance of any Project, the Agency shall not discriminate against any employee or applicant for employment because of race, age, religion, color, sex, national origin, disability or marital status. The Agency will take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, age, religion, color, gender, national origin, disability or marital status. Such action shall include, but not be limited to, the following: employment upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

b) The Agency shall insert the foregoing provision in all agreements modified only to show the particular contractual relationship in all its agreements in connection with the development of operation of the Project, except agreements for the standard commercial supplies or raw materials, and shall require all such Contractors to insert a similar provision in all subcontracts, except subcontracts for standard commercial supplies or raw materials. When the Project involves installation, construction, demolition, removal, site improvement, or similar work, the Agency shall post, in conspicuous places available to employees and applicants for employment for Project work, notices to be provided by the Department setting forth the provisions of the nondiscrimination clause.

D.14 Title VI – Civil Rights Act of 1964:

a) The Agency shall comply with all the requirements imposed by Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d), 49 C.F.R., Part 21, and related statutes and regulations. The Agency shall include provisions in all agreements with third parties that ensure compliance with Title VI of the Civil Rights Act of 1964, 49 C.F.R., Part 21, and related statutes and regulations.

D.15 Americans with Disabilities Act of 1990 (ADA):

a) The Agency will comply with all the requirements as imposed by the ADA and the regulations of the federal government issued thereunder.

D.16 Conflicts of Interest:

a) The Agency warrants that no 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 Agency in connection with any work contemplated or performed relative to this Agreement.

b) The Agency shall insert in all agreements entered into in connection with the Project or any property included or planned to be included in any Project, and shall require its Contractors to insert in each of its subcontracts, the following provision:

1) "No 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 Agency in connection with any work contemplated or performed relative to this Agreement."

D.17 Interest of Members of or Delegates to, Congress (applies to federal aid projects):

a) No member of or delegate to the Congress of the United States shall be admitted to any share or part of the Agreement or any benefit arising therefrom.

D.18 Restrictions on Lobbying (applies to federal aid projects):

The Agency 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 Agency, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress in connection with the awarding of any federal agreement, the making of any federal grant, the making of any federal loan, and entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal agreement, 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 grant, loan, or cooperative agreement, the Agency shall complete and submit Standard Form- LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

c) The Agency shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including sub-grants, subcontracts, and agreements under grants, loans, and cooperative agreements) and that all sub- recipients

of federally appropriated funds shall certify and disclose accordingly.

D.19 Records:

a) The Agency shall maintain documentation for all charges against the Department under this Agreement. All costs charged to the Project, including any approved services contributed by the Agency or others, shall be supported by properly executed payrolls, time records, invoices, agreements or vouchers evidencing in proper detail and in a form acceptable to the Department the nature and propriety of the charges. The books, records, and documents of the Agency, insofar as they relate to work performed or money received under this Agreement, shall be maintained and made available upon request to the Department at all times during the period of this Agreement and for at least three (3) years after final payment is made.

b) Copies of these documents and records shall be furnished to the Department, the Comptroller of the Treasury, or their duly appointed representatives, upon request. Records of costs incurred includes the Agency's general accounting records and the Project records, together with supporting documents and records, of the Agency and all subContractors performing work on the Project and all other records of the Agency and subContractors considered necessary by the Department for a proper audit of costs. If any litigation, claim, or audit is started before the expiration of the three (3) year period, the records shall be retained until all litigation, claims, or audit findings involving the records have been resolved.

c) The aforesaid requirements to make records available to the Department shall be a continuing obligation of the Agency and shall survive a termination of the Agreement.

D.20 Inspection:

a) The Agency shall permit, and shall require its Contractor, subContractor or materials vendor to permit, the Department's authorized representatives and authorized agents of the Federal Highway Administration to inspect all work, workmanship, materials, payrolls, records and to audit the books, records and accounts pertaining to the financing and development of the Project.

b) The Department reserves the right to terminate this Agreement for refusal by the Agency or any Contractor, subContractor or materials vendor to allow public access to all documents, papers, letters or other material made or received in conjunction with this Agreement.

D.21 Annual Report and Audit:

a) In the event that an Agency expends \$500,000 or more in federal awards in its fiscal year, the Agency must have a single or program specific audit conducted in accordance with the United States Office of Management and Budget (OMB) Circular A-133.

b) All books of account and financial records shall be subject to annual audit by the Tennessee Comptroller of the Treasury or the Comptroller's duly appointed representative. When an audit is required, the Agency may, with the prior approval of the Comptroller, engage a licensed independent public accountant to perform the audit. The audit agreement between the Agency and the licensed independent public accountant shall be on an agreement form prescribed by the Tennessee Comptroller of the Treasury. Any such audit shall be performed in accordance with generally accepted government auditing standards, the provisions of OMB Circular A-133, if applicable, and the Audit Manual for Governmental Units and Recipients of Grant Funds published by the Tennessee Comptroller of the Treasury.

c) The Agency shall be responsible for reimbursement of the cost of the audit prepared by the Tennessee Comptroller of the Treasury, and payment of fees for the audit prepared by the licensed independent public accountant. Payment of the audit fees of the licensed independent public accountant by the Agency shall be subject to the provisions relating to such fees contained in the prescribed agreement form noted above. Copies of such audits shall be provided to the designated cognizant state agency, the Department, the Tennessee Comptroller of the Treasury, and the Department of Finance and Administration and shall be made available to the public.

D.22 Termination for Convenience:

a) The Department may terminate this agreement without cause for any reason. Said termination shall not be deemed a breach of agreement by the Department. The Department shall give the Agency at least thirty (30) days written notice before the effective termination date. The Agency shall be entitled to compensation for authorized expenditures and satisfactory services completed as of the termination date, but in no event shall the Department be liable to the Agency for compensation for any service which has not been rendered. The final decision as to the amount for which the Department is liable shall be determined by the Department. Should the Department exercise this provision, the Agency

shall not have any right to any actual general, special, incidental, consequential, or any other damages whatsoever of any description or amount.

D.23 Termination for Cause:

a) If the Agency fails to properly perform its obligations under this Agreement in a timely or proper manner, or if the Agency violates any terms of this Agreement, the Department shall have the right to immediately terminate the Agreement and withhold payments in excess of fair compensation for completed services. Notwithstanding the above, the Agency shall not be relieved of liability to the Department for damages sustained by virtue of any breach of this Agreement by the Agency.

b) In the event that the Project herein described includes Federal funds, the Agency understands that if the Federal Highway Administration (FHWA) determines that some or all of the cost of this project is ineligible for federal funds participation because of failure by the Agency to adhere to federal laws and regulations, the Agency shall be obligated to repay to the Department any federal funds received by the Agency under this agreement for any costs determined by the FHWA to be ineligible.

c) If the Project herein described lies on the state highway system and the Agency fails to perform any obligation under this section of this agreement, the Department shall have the right to cause the Agency, by giving written notice to the Agency, to close the Project to public use and to remove the Project at its own expense and restore the premises to the satisfaction of the Department within ninety (90) days thereafter.

D.24 How Agreement is Affected by Provisions Being Held Invalid:

a) If any provision of this Agreement is held invalid, the remainder of this Agreement shall not be affected. In such an instance the remainder would then continue to conform to the terms and requirements of applicable law.

D.25 Agreement Format:

a) All words used herein in the singular form shall extend to and include the plural. All words used in the plural form shall extend to and include the singular. All words used in any gender shall extend to and include all genders.

D.26 Certification Regarding Third Party Contracts:

a) The Agency certifies by its signature hereunder that it has no understanding or contract with a third party that will conflict with or negate this Agreement in any manner whatsoever.

b) The Agency further certifies by its signature hereunder that it has disclosed and provided to the Department a copy of any and all contracts with any third party that relate to the Project or any work funded under this Agreement.

c) The Agency further certifies by its signature hereunder that it will not enter into any contract with a third party that relates to this project or to any work funded under this Agreement without prior disclosure of such proposed contract to the Department.

d) The Agency hereby agrees that failure to comply with these provisions shall be a material breach of this Agreement and may subject the Agency to the repayment of funds received from or through the Department under this Agreement and to the payment of all damages suffered by the Department as a result of said breach.

D.27 Amendment:

a) This Agreement may be modified only by a written amendment, which has been executed and approved by the appropriate parties as indicated on the signature page of this Agreement.

D.28 State Liability:

a) The Department shall have no liability except as specifically provided in this Agreement.

D.29 Force Majeure:

a) The obligations of the parties to this Agreement are subject to prevention by causes beyond the parties' control that could not be avoided by the exercise of due care including, but not limited to, acts of God, riots, wars, strikes, epidemics or any other similar cause.

D.30 Required Approvals:

a) The Department is not bound by this Agreement until it is approved by the appropriate State officials in accordance with applicable Tennessee State laws and regulations.

D.31 Estimated Cost:

a) The parties recognize that the estimated costs contained herein are provided for planning purposes only. They have not been derived from any data such as actual bids, etc

b) In the event that the Department is made responsible in section B.1.(a) of this Agreement for the management of the herein described Project, the parties understand that more definite cost estimates will be produced during project development. These more reliable estimates will be provided to the Agency by the Department as they become

available.

D.32 Third Party Liability:

a) The Agency shall assume all liability for third-party claims and damages arising from the construction, maintenance, existence and use of the Project to the extent provided by Tennessee Law and subject to the provisions, terms and liability limits of the Governmental Tort Liability Act, T.C.A. Section 29-20-101, et seq, and all applicable laws.

D.33 Deposits:

a) Required deposits and any other costs for which the Agency is liable shall be made available to the Department, whenever requested.

D.34 Department Activities:

a) Where the Agency is managing any phase of the project the Department shall provide various activities necessary for project development. The estimated cost for these activities are included in the funds shown herein.

D.35 Congestion Mitigation and Air Quality Requirement:

a) If the herein described project is funded with Congestion Mitigation Air Quality (CMAQ) funds, this section D.35 shall apply.

1) Whereas the Agency understands and agrees that the funding provided hereunder must be obligated with the Federal Highway Administration within three years from the date of this agreement. It is further agreed that once all requirements have been met for development of the project, the Agency will expend the funds in a manner to insure its expenditure on a continuous basis until the funds are exhausted. Failure to follow this process may result in a loss of funds.

D.36 Investment of Public Funds:

a) The facility on which this project is being developed shall remain open to the public and vehicular traffic for a sufficient time to recoup the public investment therein as shown below:

Amount	Open to Public and Vehicular Traffic
\$1.00 - \$200,000	5 Years
>\$200,000 - \$500,000	10 Years
>\$500,000 - \$1,000,000	20 Years

b) Projects over \$1,000,000 carry a minimum 25 years open to public and vehicular traffic requirement and will be subject to individual review.

D.37 Federal Funding Accountability and Transparency Act:

a) If the Project is funded with federal funds the following shall apply: The Agency shall comply with the Federal Funding Accountability and Transparency Act of 2006 (Pub.L. 109-282), as amended by section 6202 of Public Law 110-252 ("the Transparency Act") and the regulations and requirements of the federal government issued thereunder, including, but not limited to, 2 CFR Part 170. The Agency shall submit the information needed for the Transparency Act in accordance with the forms and processes identified by the Department. IN WITNESS WHEREOF, the parties have caused this instrument to be executed by their respective authorized officials on the date first above written.

[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 15th day of March, 2016.



\_\_\_\_\_  
JOHN CLARK, MAYOR

ATTEST:

\_\_\_\_\_  
JAMES H. DEMMING, CITY RECORDER  
APPROVED AS TO FORM:

\_\_\_\_\_  
J. MICHAEL BILLINGSLEY, CITY ATTORNE

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE TO AMEND THE GENERAL PROJECT FUND BUDGET BY APPROPRIATING FEDERAL FUNDS TO THE MAIN STREET IMPROVEMENTS PROJECT FOR THE YEAR ENDING JUNE 30, 2016; 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 appropriating \$1,359,684 from KMTPO STP funding to the Main Street Improvements project (GP1516). The local match is 20% or \$339,921 and is available in the project.

<u>Account Number/Description:</u>	<u>Budget</u>	<u>Incr/&lt;Decr&gt;</u>	<u>New Budget</u>
<b>Fund 311: General Project Fund</b>			
<b>Main Street Improvements (GP1516)</b>			
<b>Revenues:</b>			
311-0000-337-5210 FHWA/TN FHWA 80%	\$ 0	\$ 1,359,684	\$ 1,359,684
311-0000-368-1047 2014 A GO Bonds	87,239	0	87,239
311-0000-368-1051 2015 A (Oct) GO PI Bonds	398,526	0	398,526
311-0000-368-2101 Premium From Bond Sale	28,060	0	28,060
<b>Totals:</b>	<b>513,825</b>	<b>1,359,684</b>	<b>1,873,509</b>
<b>Expenditures:</b>			
311-0000-601-4041 Bond Expense	13,825	0	13,825
311-0000-601-9003 Improvements	500,000	1,359,684	1,859,684
<b>Totals:</b>	<b>513,825</b>	<b>1,359,684</b>	<b>1,873,509</b>

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:

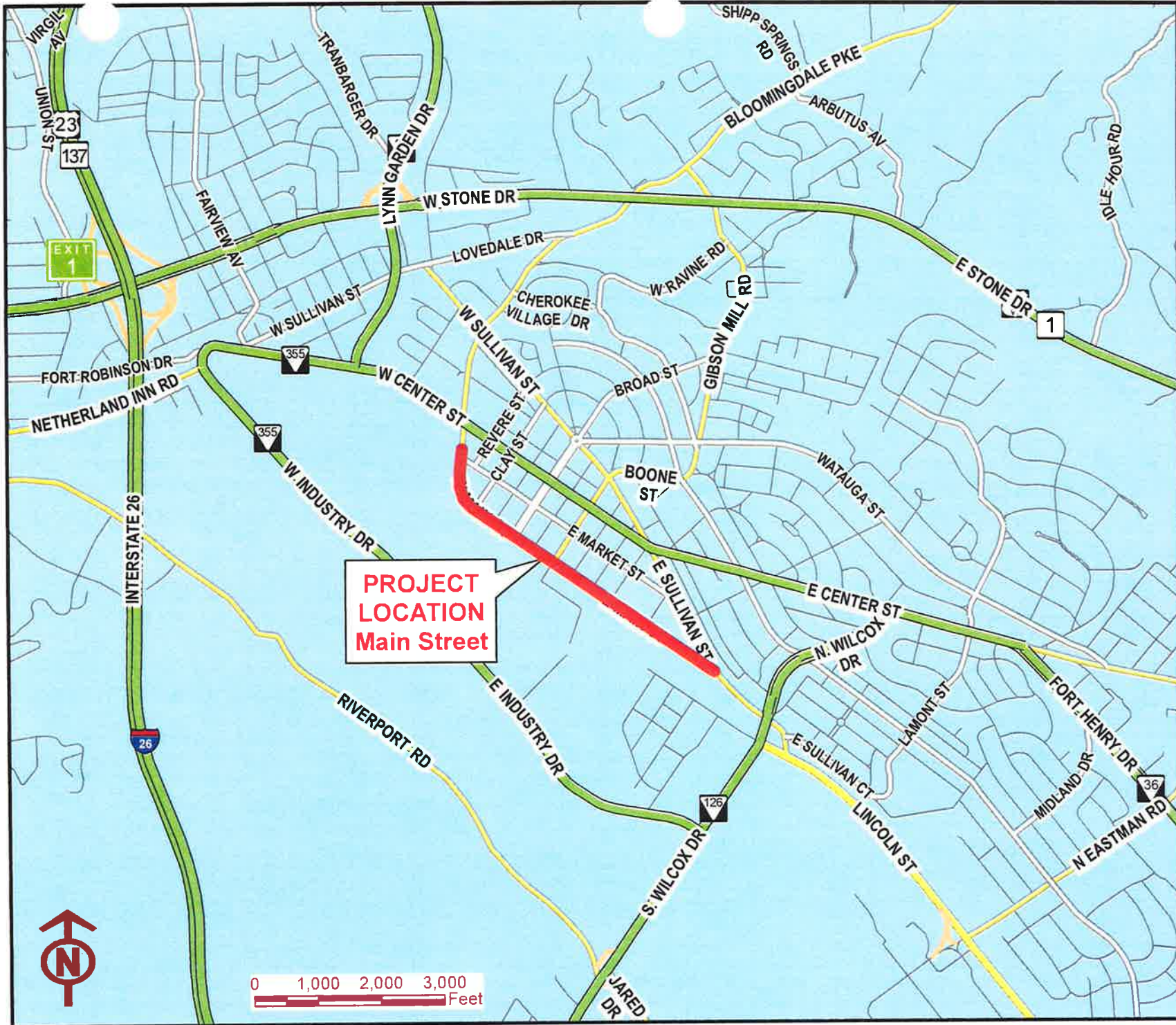
APPROVED AS TO FORM:

\_\_\_\_\_  
ANGELA L. MARSHALL  
Deputy City Recorder

\_\_\_\_\_  
J. MICHAEL BILLINGSLEY, City Attorney

PASSED ON 1ST READING: \_\_\_\_\_

PASSED ON 2ND READING: \_\_\_\_\_



**PROJECT  
LOCATION  
Main Street**

**Legend**

-  State Routes
-  Collector Street
-  Ramp
-  Expressway
-  Interstate
-  Minor Arterial
-  Major Arterial
-  Local Streets

**Project Location Map - Sullivan County, TN**  
**Main Street Kingsport Rebuild**  
 from Sullivan Street to W. Market Street



**AGENDA ACTION FORM**

**Budget Cleanup Ordinance for FY16**

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

Action Form No.: AF-50-2016  
Work Session: March 15, 2016  
First Reading: March 15, 2016

Final Adoption: April 5, 2016  
Staff Work By: Judy Smith  
Presentation By: Jeff Fleming

**Recommendation:**

Approve the Ordinance.

**Executive Summary:**

This ordinance will close some old projects by transferring \$62,808 from the Traffic Equipment project (GP1524) to the Traffic Signal Equipment project (GP1619) and by transferring \$1,256 from the Lynn View Community Center Funfest project (NC1205) to a new Lynn View Community Center Funfest project (NC1607) and close GP1524 and NC1205. The Lynn View Community Center Funfest project is funded by donations. The funds in the amount of \$154,770 will be transferred from the East Stone Greenbelt project (GP0600) to the East Stone Greenbelt project Phase 2 project (GP1621) and close GP0600. Funds in the amount of \$17,618 will be transferred from the Greenbelt Development project (GP0608) to the Greenbelt Development project (GP1617) and close GP0608. Funds in the amount of \$5,681 will be transferred from the Tri City Line Improvements project (GP1209) to the Engineering Building Renovations project (GP1514) and close GP1209.

**Attachments:**

- 1. Ordinance

Funding source appropriate and funds are available:

	Y	N	O
Duncan	—	—	—
George	—	—	—
McIntire	—	—	—
Mitchell	—	—	—
Olterman	—	—	—
Parham	—	—	—
Clark	—	—	—

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE TO AMEND VARIOUS PROJECTS FOR  
THE YEAR ENDING JUNE 30, 2016; 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 and General Project Special Revenue Fund budgets be amended by transferring \$62,808 from the Traffic Equipment project (GP1524) to the Traffic Signal Equipment project (GP1619), by transferring \$1,256 from the Lynn View Community Center Funfest project (NC1205) to the Lynn View Community Center Funfest project (NC1607), by transferring \$154,770 from the East Stone Common Greenbelt project (GP0600) to the East Stone Common Greenbelt project Phase 2 (GP1621), by transferring \$17,618 from the Greenbelt Development project (GP0608) to the Greenbelt Park Development project (GP1617) and by transferring \$5,861 from the Tri City Linen Improvements project (GP1209) to the Engineering Building Renovations project (GP1514).

<u>Account Number/Description:</u>	<u>Budget</u>	<u>Incr/&lt;Decr&gt;</u>	<u>New Budget</u>
<b>Fund 311: General Project Fund</b>			
<b><u>Traffic Equipment (GP1524)</u></b>			
<b><u>Revenues:</u></b>	\$	\$	\$
311-0000-368-1047 Series 2014A GO Bonds	159,471	0	159,471
311-0000-368-2101 Bond Sale Premium	16,699	0	16,699
311-0000-391-0100 From General Fund	67,500	(62,808)	4,692
<b>Totals:</b>	<b>243,670</b>	<b>(62,808)</b>	<b>180,862</b>

<b><u>Expenditures:</u></b>	\$	\$	\$
311-0000-601-2031 Electric Street Lights	112,500	(62,730)	49,770
311-0000-601-2032 Traffic Signals	40,000	27,422	67,422
311-0000-601-4041 Bond Sale Expense	2,170	0	2,170
311-0000-601-9006 Purchases Over \$5,000	89,000	(27,500)	61,500
<b>Totals:</b>	<b>243,670</b>	<b>(62,808)</b>	<b>180,862</b>

<b>Fund 311: General Project Fund</b>			
<b><u>Traffic Signal Equipment (GP1619)</u></b>			
<b><u>Revenues:</u></b>	\$	\$	\$
311-0000-391-0100 From General Fund	0	62,808	62,808
<b>Totals:</b>	<b>0</b>	<b>62,808</b>	<b>62,808</b>

<b><u>Expenditures:</u></b>	\$	\$	\$
311-0000-601-2031 Electric Street Lights	0	62,808	62,808
<b>Totals:</b>	<b>0</b>	<b>62,808</b>	<b>62,808</b>

**Fund 111: General Project-Special Rev. Fund**  
**Lynn View CM CTR Funfest (NC1205)**

<b><u>Revenues:</u></b>	\$	\$	\$
111-0000-364-2000 From Corporations	2,320	(1,256)	1,064
111-0000-364-3000 From Non-Profit Groups	74	0	74
<b>Totals:</b>	<b>2,394</b>	<b>(1,256)</b>	<b>1,138</b>

<b><u>Expenditures:</u></b>	\$	\$	\$
111-0000-601-3020 Operating Supplies & Tools	2,394	(1,256)	1,138
<b>Totals:</b>	<b>2,394</b>	<b>(1,256)</b>	<b>1,138</b>

**Fund 111: General Project-Special Rev. Fund**  
**Lynn View CM CTR Funfest (NC1607)**

<b><u>Revenues:</u></b>	\$	\$	\$
111-0000-364-2000 From Corporations	0	1,256	1,256
<b>Totals:</b>	<b>0</b>	<b>1,256</b>	<b>1,256</b>

<b><u>Expenditures:</u></b>	\$	\$	\$
111-0000-601-3020 Operating Supplies & Tools	0	1,256	1,256
<b>Totals:</b>	<b>0</b>	<b>1,256</b>	<b>1,256</b>

**Fund 311: General Project Fund**  
**East Stone Common Greenbelt (GP0600)**

<b><u>Revenues:</u></b>	\$	\$	\$
311-0000-364-2000 From Corporations	80,000	(39,889)	40,111
311-0000-364-3000 From Non-Profits	114,881	(114,881)	0
<b>Totals:</b>	<b>194,881</b>	<b>(154,770)</b>	<b>40,111</b>

<b><u>Expenditures:</u></b>	\$	\$	\$
311-0000-601-2022 Construction Contracts	167,990	(151,020)	16,970
311-0000-601-2023 Arch/Eng/Landscaping	26,891	(3,750)	23,141
<b>Totals:</b>	<b>194,881</b>	<b>(154,770)</b>	<b>40,111</b>

**Fund 311: General Project Fund**  
**East Stone Common Grnbel Ph 2 (GP1621)**

<b><u>Revenues:</u></b>	\$	\$	\$
311-0000-364-2000 From Corporations	0	39,889	39,889
311-0000-364-3000 From Non-Profits	0	114,881	114,881
<b>Totals:</b>	<b>0</b>	<b>154,770</b>	<b>154,770</b>

<b><u>Expenditures:</u></b>	\$	\$	\$
311-0000-601-2022 Construction Contracts	0	151,020	151,020
311-0000-601-2023 Arch/Eng/Landscaping	0	3,750	3,750
<b>Totals:</b>	<b>0</b>	<b>154,770</b>	<b>154,770</b>

**Fund 311: General Project Fund**  
**Greenbelt Development (GP0608)**

<b><u>Revenues:</u></b>	\$	\$	\$
311-0000-337-4300 Federal Thru State/ISTEA	54,908	(54,908)	0
311-0000-337-5100 Federal Thru State/TEA 21	424,000	54,908	478,908
311-0000-391-0100 From General Fund	171,173	(17,618)	153,555
<b>Totals:</b>	<b>650,081</b>	<b>(17,618)</b>	<b>632,463</b>

<b><u>Expenditures:</u></b>	\$	\$	\$
311-0000-601-2022 Construction Contracts	591,581	(12,137)	579,444
311-0000-601-2023 Arch/Eng/Landscaping	58,500	(5,481)	53,019
<b>Totals:</b>	<b>650,081</b>	<b>(17,618)</b>	<b>632,463</b>

**Fund 311: General Project Fund**  
**Greenbelt Prk Development (GP1617)**

<b><u>Revenues:</u></b>	\$	\$	\$
311-0000-391-0100 From General Fund	249	17,618	17,867
<b>Totals:</b>	<b>249</b>	<b>17,618</b>	<b>17,867</b>

<b><u>Expenditures:</u></b>	\$	\$	\$
311-0000-601-2022 Construction Contracts	0	17,618	17,618
311-0000-601-2023 Arch/Eng/Landscaping	249	0	249
<b>Totals:</b>	<b>249</b>	<b>17,618</b>	<b>17,867</b>

**Fund 311: General Project Fund**  
**Tri City Linen Improvements (GP1209)**

<b><u>Revenues:</u></b>	\$	\$	\$
311-0000-368-1040 Series 2011 GO Bonds	353,048	(5,861)	347,187
311-0000-368-2101 Bond Premium	4,283	0	4,283
<b>Totals:</b>	<b>357,331</b>	<b>(5,861)</b>	<b>351,470</b>

<b><u>Expenditures:</u></b>	\$	\$	\$
311-0000-601-2022 Construction Contracts	35,691	(167)	35,524
311-0000-601-2023 Arch/Eng/Landscaping	36,340	165	36,505
311-0000-601-2036 Natural Gas	1,000	141	1,141
311-0000-601-4041 Bond Sale Exp.	7,332	0	7,332
311-0000-601-9003 Improvements	276,968	(6,000)	270,968
<b>Totals:</b>	<b>357,331</b>	<b>(5,861)</b>	<b>351,470</b>

**Fund 311: General Project Fund**  
**Engineering Bldg Renovations (GP1514)**

<b>Revenues:</b>	\$	\$	\$
311-0000-368-1040 Series 2011GO Pub Imp	0	5,861	5,861
311-0000-368-1047 Series 2014A GO Bonds	458,251	0	458,251
311-0000-368-1051 Series 2015 A (Oct) GO PI	246,117	0	246,117
311-0000-368-2101 Premium From Bond Sale	56,555	0	56,555
<b>Totals:</b>	<b>760,923</b>	<b>5,861</b>	<b>766,784</b>

<b>Expenditures:</b>	\$	\$	\$
311-0000-601-2023 Arch/Eng/Landscaping	25,000	0	25,000
311-0000-601-4041 Bond Sale Expense	10,923	0	10,923
311-0000-601-9003 Improvements	725,000	5,861	730,861
<b>Totals:</b>	<b>760,923</b>	<b>5,861</b>	<b>766,784</b>

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:

APPROVED AS TO FORM:

\_\_\_\_\_  
 JAMES H. DEMMING, City Recorder

\_\_\_\_\_  
 J. MICHAEL BILLINGSLEY, City Attorney

PASSED ON 1ST READING:

PASSED ON 2ND READING:





AGENDA ACTION FORM

**Appropriating Available Funds to GP1615 and Enter into an Agreement with Mattern & Craig, Inc. for the Indian Trail Drive Extension Project**

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

Action Form No.: AF-68-2016  
Work Session: March 15, 2016  
First Reading: March 15, 2016

Final Adoption: April 5, 2016  
Staff Work By: Michael Thompson  
Presentation By: Ryan McReynolds

**Recommendation:**

Approve the Resolution and Ordinance.

**Executive Summary:**

The Indian Trail Drive Extension Project involves the construction of a new roadway from the south end of Indian Trail Drive including a new bridge over Reedy Creek to connect to the existing Reedy Creek Road and would terminate at Eastman Road with a new signalized intersection. The Agreement for this project includes survey, design and final construction documents.

We request entering into an Agreement with Mattern & Craig for engineering services concerning the Indian Trail Drive Extension Project in an amount not to exceed \$304,480.00 without written authorization.

A budget ordinance appropriating available funds from GP1401 in the amount of \$45,000.00 to GP1615 is requested.

Funding is available and identified in GP1615.

**Attachments:**

1. Resolution
2. Ordinance
3. Location Map (2)
4. Proposal (3 pages)

Funding source appropriate and funds are available: *JF* \_\_\_\_\_

	Y	N	O
Duncan	—	—	—
George	—	—	—
McIntire	—	—	—
Mitchell	—	—	—
Olterman	—	—	—
Parham	—	—	—
Clark	—	—	—

RESOLUTION NO. \_\_\_\_\_

A RESOLUTION APPROVING A PROFESSIONAL SERVICES AGREEMENT WITH MATTERN & CRAIG, INC. FOR THE INDIAN TRAIL DRIVE EXTENSION PROJECT, 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 would like to enter into an professional services agreement with Mattern & Craig for the Indian Trail Drive Extension Project; and

WHEREAS, the project consists of construction of a new roadway from the south end of Indian Trail Drive including a new bridge over Reedy Creek to connect to the existing Reedy Creek Road and would terminate at Eastman Road with a new signalized intersection; and

WHEREAS, the agreement for this project includes survey, design and final construction documents; and

WHEREAS, the agreement with Mattern & Craig for engineering services concerning the Indian Trail Drive Extension Project is for an amount not to exceed \$304,480.00, without written authorization.

WHEREAS, funding will be available and identified in GP1615 after the budget ordinance has been passed with the second reading on April 5, 2016.

Now therefore,

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

SECTION I. That a professional services agreement with Mattern & Craig for the Indian Trail Drive Extension Project 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 Mattern & Craig for the Indian Trail Drive Extension Project 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 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 15th day of March, 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 PROJECT FUND BUDGET BY TRANSFERRING FUNDS TO THE INDIAN TRAIL DRIVE EXTENSION PROJECT FOR THE YEAR ENDING JUNE 30, 2016; 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 \$45,000 from the Cooks Valley Road project (GP1401) to the Indian Trail Drive Extension project (GP1615).

<u>Account Number/Description:</u>	<u>Budget</u>	<u>Incr/&lt;Decr&gt;</u>	<u>New Budget</u>
<b>Fund 311: General Project Fund</b>			
<b><u>Cooks Valley Road (GP1401)</u></b>			
<b><u>Revenues:</u></b>			
311-0000-368-1040 Series 2011 GO Pub Imp	\$ 459,694	\$ 0	\$ 459,694
311-0000-368-1046 Series 2013B GO Pub Imp	846,186	(45,000)	801,186
311-0000-368-2101 Premium From Bond Sale	61,414	0	61,414
<b>Totals:</b>	<b>1,367,294</b>	<b>(45,000)</b>	<b>1,322,294</b>

<b><u>Expenditures:</u></b>			
311-0000-601-2023 Arch/Eng/Landscaping	\$ 136,000	\$ (45,000)	\$ 91,000
311-0000-601-2097 State Reviews & Permits	2,000	0	2,000
311-0000-601-4041 Bond Expense	11,762	0	11,762
311-0000-601-9001 Land	6,238	0	6,238
311-0000-601-9003 Improvements	1,211,294	0	1,211,294
<b>Totals:</b>	<b>1,367,294</b>	<b>(45,000)</b>	<b>1,322,294</b>

<b>Fund 311: General Project Fund</b>			
<b><u>Indian Trail Dr. Ext. (GP1615)</u></b>			
<b><u>Revenues:</u></b>			
311-0000-368-1040 Series 2011 GO Pub Imp	\$ 253,635	\$ 0	\$ 253,635
311-0000-368-1046 Series 2013B GO Pub Imp	0	45,000	45,000
311-0000-368-1047 Series 2014 A GO Bonds	6,645	0	6,645
<b>Totals:</b>	<b>260,280</b>	<b>45,000</b>	<b>305,280</b>
<b><u>Expenditures:</u></b>			
311-0000-601-2023 Arch/Eng/Landscaping	\$ 260,280	\$ 45,000	\$ 305,280
<b>Totals:</b>	<b>260,280</b>	<b>45,000</b>	<b>305,280</b>

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:

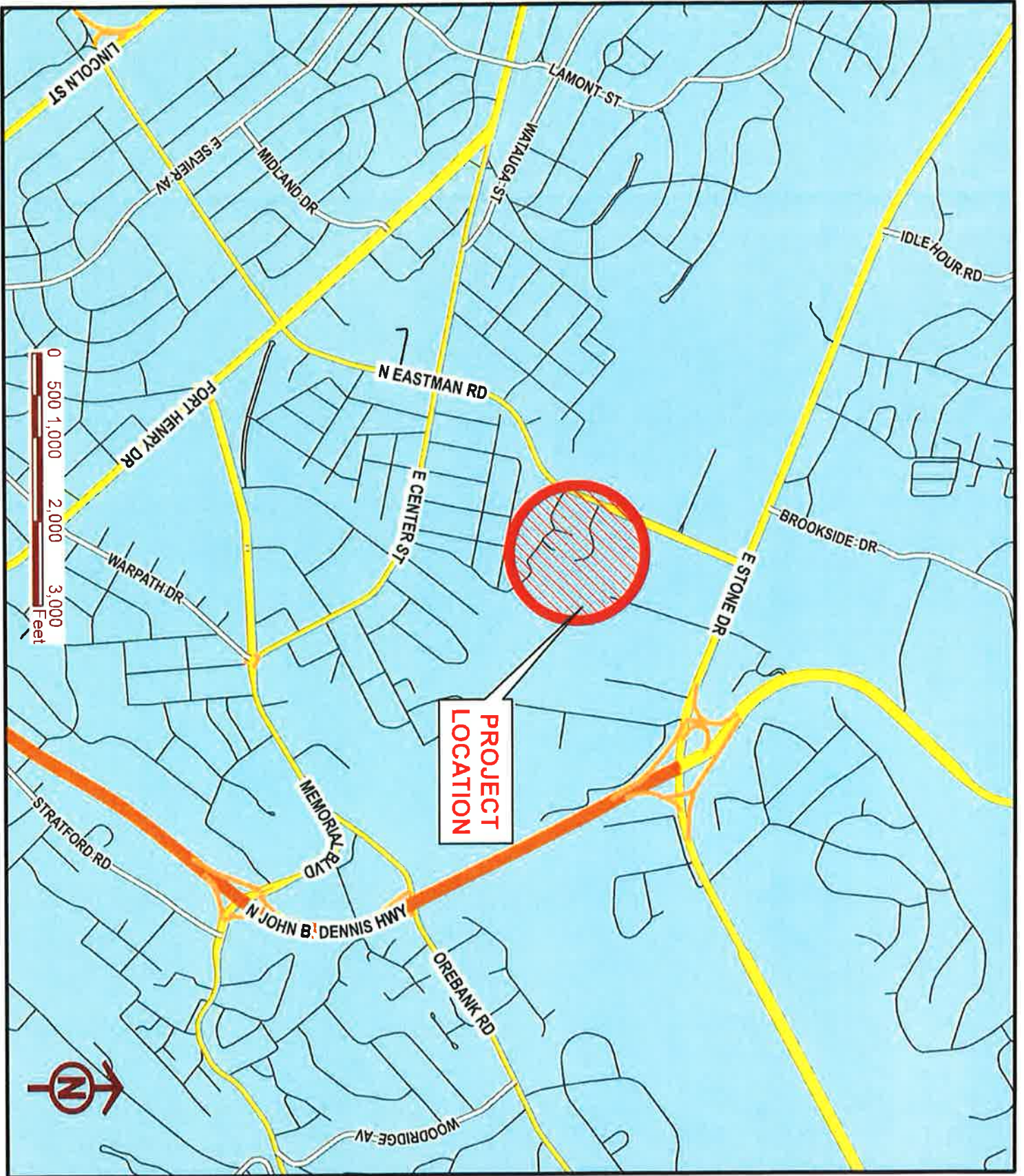
APPROVED AS TO FORM:

\_\_\_\_\_  
ANGIE MARSHALL  
Deputy City Recorder

\_\_\_\_\_  
J. MICHAEL BILLINGSLEY, City Attorney

PASSED ON 1ST READING: \_\_\_\_\_

PASSED ON 2ND READING: \_\_\_\_\_



**Project Location Map**  
**Indian Trail Drive Extension**

**Legend**

- Collector Street
- Ramp
- Expressway
- Interstate
- Local Arterial
- Major Arterial
- Local Streets



ACQUIRED



RIDER CURVE #1  
 P1 50+84.75  
 M 822,022.6279  
 PC 5911.264,0140  
 PT 51+24.07  
 A 54° 56' 41" (RT)  
 D 46° 37' 30"  
 L 135.22  
 SE 62.31  
 S.E. RUNOFF 30 FT  
 DESIGN SPEED 20 MPH

AT-2 CURVE  
 P1 21+01.11  
 M 821,451.842  
 PC 21+00.52 (PT)  
 PT 24+41.32  
 A 101° 33' 11"  
 D 81.000  
 L 1,448.10  
 SE 1,006.93  
 S.E. RUNOFF 30 FT  
 DESIGN SPEED 20 MPH

AT-1 CURVE  
 P1 90+94.90  
 M 821,743,1486  
 PC 2,531,602.80  
 PT 10+93.97  
 A 54° 06' 41" (LT)  
 D 46° 37' 30"  
 L 132.00  
 SE 62.31  
 S.E. RUNOFF 30 FT  
 DESIGN SPEED 20 MPH

LIMITS OF CONSTRUCTION



Michael S. Agee  
Steven A. Campbell  
Randy W. Beckner  
Bradley C. Craig  
Wm. Thomas Austin  
David P. Wilson  
James B. Voso  
Randy L. Dodson  
Chad M. Thomas



Edwin K. Mattern, Jr. (1949-1982)  
Gene R. Cress (1935-2014)  
Sam H. McGhee, III (Retired)  
Stewart W. Hubbell (Retired)  
J. Wayne Craig (Retired)

March 1, 2016

Mr. Michael Thompson  
Asst. Public Works Director  
City of Kingsport  
225 W. Center St.  
Kingsport, TN 37660

Re: Indian Trail Drive Extension – Final Design  
City Project No. GP1208  
Comm. No. 7100-P

Dear Michael:

As you requested, enclosed please find Mattern & Craig's proposal for the above project. Based on our discussions, the following is our understanding of the Project Scope.

**Scope:**

Mattern & Craig proposes to provide survey, design, and final construction documents for the extension of Indian Trail Drive, from behind K-Mart to Eastman Road, based on the conceptual alignment depicted as "Alternate 2", dated December 2015, as we provided to the City. Services shall include the following:

- Provide topographic field survey of the 0.4 mile corridor. Property boundaries shall be based on deed research and limited field investigation; full boundary surveys of properties will not be completed.
- Provide design of approximately 0.5 miles of roadways within the project area, including typical sections, horizontal and vertical alignments, cross-sections, storm sewer, EPSC measures, and maintenance of traffic:
  1. Indian Trail Drive, from behind K-Mart to Eastman Road (approximately 1700').
  2. Approximately 500' of side roads (Autumn Lane, Reedy Creek Road, and Ryder Drive).
  3. Approximately 12 driveways.
- Coordinate subsurface investigation with a geotechnical engineer (to be contracted by City).
- Provide design of a bridge over Reedy Creek. We anticipate the bridge will be approximately 120'-140' in length, and will be a single-span bridge with cast in place abutments and bridge deck. We will evaluate two alternatives for bridge girders; both prestressed concrete girders and steel girders. We will also provide a hydraulic analysis to determine the appropriate span length.



Design of the bridge foundations will be in coordination with the geotechnical investigation. We anticipate there will be at least one mechanically stabilized earth (MSE) wall on the project; this wall will be designed by others.

- Provide design of a new traffic signal at the intersection of Indian Trail Drive and Eastman Road. Signal design will detail installation of all signal poles, conduit and cable, and controller, and will contain basic signal timing data. Updating the coordinated signal timings along Eastman Road is not included, however.
- Determine the need for right-of-way and easement acquisition, and prepare plats and a composite drawing of acquired areas for each affected property.
- Prepare applications for necessary permits from reviewing agencies, including TVA, Corps of Engineers, and TDEC.
- Coordinate with affected utility owners, to determine the need for utility relocations. Design of utility relocations is not included, however.
- Prepare for and attend regular meetings with City staff.
- Prepare and update an Engineer’s Opinion of Probable Cost at the various stages of the project.
- Prepare bid documents and finalize construction plans, for use in construction of the project.
- Assist the City in advertising for and obtaining bids for the project, including maintaining a record of bidders, preparing for and attending a pre-bid conference, answering questions from bidders and issuing addenda as needed, attending the bid opening, tabulating and evaluating bids, and assembling final contract documents.

**Fee:**

The above described services will be billed at the following hourly rates, not to exceed \$304,480.00 without written authorization:

Principal - \$175, Professional Engineer - \$145, Project Engineer - \$80, CADD Technician - \$75, 3-Man Survey Crew - \$200, 2-Man Survey Crew - \$150, Administrative - \$55. Reimbursable expenses will be billed at actual cost times a factor of 1.1. All billings will be on a monthly basis. All permitting, application, and similar fees will be paid directly by the City. The fee is detailed in the following table.

PHASE	MAN-HOURS	COST
Survey & Preliminary Design	1216	\$120,420
ROW Documents & Permits	264	\$31,360
Final Documents	1222	\$144,400
Bidding	66	\$8,300
<b>TOTAL:</b>	<b>2768</b>	<b>\$304,480</b>

**Production Schedule:**

Mattern & Craig will begin the survey immediately following notice to proceed. Preliminary plans will be submitted to the City for review within 120 days of notice to proceed. ROW documents will be submitted within 90 days of approval of preliminary plans. Final documents will be submitted following authorization by the City.

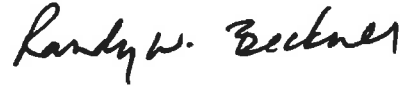
We appreciate the opportunity to work with you on this project, and look forward to starting work. Should the terms of this proposal be acceptable, please forward the City's standard Agreement to us for signature. Should you have any questions or comments regarding this proposal, please do not hesitate to contact me for clarification.

Sincerely,  
MATTERN & CRAIG



Jason A. Carder, P.E.  
Project Manager

Approved:  
MATTERN & CRAIG



Randy W. Beckner, P.E.  
Principal

JAC/lah



**AGENDA ACTION FORM**

**Enter into an Agreement with TDOT for the Fort Robinson Drive Bridge Replacement Project and Appropriate Available Funds to GP1618**

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

Action Form No.: AF-44-2016  
 Work Session: February 29, 2016  
 First Reading: March 1, 2016

Final Adoption: **March 15, 2016**  
 Staff Work By: Michael Thompson  
 Presentation By: Ryan McReynolds

**Recommendation:**

Approve the ~~Resolution~~ and Ordinance.

**Executive Summary:**

In 2015 an inspection, and field review was provided for the Fort Robinson Drive bridge over Dry Hollow. Through the Federal-Aid Off-System Bridge Replacement Program, TDOT is now prepared to move forward with project development for replacing the Fort Robinson Drive bridge. The Off-System Bridge Replacement Program is an 80% federally funded program, and the local government is responsible for the 20% matching share. The estimated total cost for all phases of this project is \$3,541,000.00, and TDOT has committed to set a maximum amount of \$708,200.00 for the city's portion toward all phases of development. However, if the city requests substantial deviations from the recommended improvements as reflected in the Transportation Investment Report (TIR), TDOT will reevaluate the maximum amount set forth as the city's share.

We request to enter into an agreement with TDOT for Fort Robinson Drive Bridge over Dry Hollow, LM 0.39; Federal Project No. BRZ-9108(47); State Project No. 82956-3590-94; PIN 122156.00; transfer \$48,400.00 from GP1401 (Cooks Valley Road) to GP1618 (Ft. Robinson Bridge Replace); and deposit \$48,400.00 into an LGIP account for our 20% matching deposit for the Preliminary Engineering phase.

**Attachments:**

1. Resolution
2. Budget Ordinance
3. Agreement (23 pages)
4. LGIP (3 pages)

Funding source appropriate and funds are available: *JF*

	Y	N	O
Duncan	—	—	—
George	—	—	—
McIntire	—	—	—
Mitchell	—	—	—
Olterman	—	—	—
Parham	—	—	—
Clark	—	—	—



**AGENDA ACTION FORM**

**Enter into an Agreement with TDOT for the Fort Robinson Drive Bridge Replacement Project and Appropriate Available Funds to GP1618**

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

Action Form No.: AF-44-2016  
 Work Session: February 29, 2016  
 First Reading: March 1, 2016  
 Final Adoption: March 15, 2016  
 Staff Work By: Michael Thompson  
 Presentation By: Ryan McReynolds

**Recommendation:**

Approve the Resolution and Ordinance.


**Executive Summary:**

In 2015 an inspection, and field review was provided for the Fort Robinson Drive bridge over Dry Hollow. Through the Federal-Aid Off-System Bridge Replacement Program, TDOT is now prepared to move forward with project development for replacing the Fort Robinson Drive bridge. The Off-System Bridge Replacement Program is an 80% federally funded program, and the local government is responsible for the 20% matching share. The estimated total cost for all phases of this project is \$3,541,000.00, and TDOT has committed to set a maximum amount of \$708,200.00 for the city's portion toward all phases of development. However, if the city requests substantial deviations from the recommended improvements as reflected in the Transportation Investment Report (TIR), TDOT will reevaluate the maximum amount set forth as the city's share.

We request to enter into an agreement with TDOT for Fort Robinson Drive Bridge over Dry Hollow, LM 0.39; Federal Project No. BRZ-9108(47); State Project No. 82956-3590-94; PIN 122156.00; transfer \$48,400.00 from GP1401 (Cooks Valley Road) to GP1618 (Ft. Robinson Bridge Replace); and deposit \$48,400.00 into an LGIP account for our 20% matching deposit for the Preliminary Engineering phase.

**Attachments:**

1. Resolution
2. Budget Ordinance
3. Agreement (23 pages)
4. LGIP (3 pages)

Funding source appropriate and funds are available: 

	Y	N	O
Duncan	—	—	—
George	—	—	—
McIntire	—	—	—
Mitchell	—	—	—
Oltzman	—	—	—
Parham	—	—	—
Clark	—	—	—

RESOLUTION NO. \_\_\_\_\_

A RESOLUTION APPROVING AN AGREEMENT WITH THE TENNESSEE DEPARTMENT OF TRANSPORTATION, AND AUTHORIZING THE MAYOR TO EXECUTE THE AGREEMENT AND ALL OTHER DOCUMENTS NECESSARY AND PROPER TO EFFECTUATE THE PURPOSE OF THE AGREEMENT

WHEREAS, the Tennessee Department of Transportation, through its Federal-Aid Off-System Bridge Replacement Program, would like to move forward with project development to replace the Fort Robinson Drive bridge; and

WHEREAS, the estimated total cost of the project is \$3,541,000.00 with a twenty (20%) percent local match, which should not be more than \$708,200.00, unless there are substantial deviations from the plan improvements at this time; and

WHEREAS, a budget ordinance to appropriate the funds for the match is expected to be approved at the March 15, 2016, BMA meeting.

Now therefore,

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

SECTION I. That an agreement with Tennessee Department of Transportation for the Fort Robinson Drive bridge improvement project, 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 Tennessee Department of Transportation 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 as follows:

Agreement Number: 160012  
Project Identification Number: 122156.00  
Federal Project Number: BRZ-9108(47)  
State Project Number: 82956-3590-94  
State of Tennessee Department of Transportation  
LOCAL AGENCY PROJECT AGREEMENT

THIS AGREEMENT, made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_ by and between the STATE OF TENNESSEE DEPARTMENT OF TRANSPORTATION, an agency of the State of Tennessee (hereinafter called the "Department") and the City of Kingsport, (hereinafter called the "Agency") for the purpose of providing an understanding between the parties of their respective obligations related to the management of the project described as:  
Fort Robinson Drive Bridge over Dry Hollow, LM 0.39

**A. PURPOSE OF AGREEMENT**

**A.1 Purpose:**

a) The purpose of this Agreement is to provide for the Department's participation in the project as further described in Exhibit A attached hereto and by this reference made a part hereof (hereinafter called the "Project") and state the terms and conditions as to the manner in which the Project will be undertaken and completed.

**A.2 Modifications and Additions:**

a) Exhibit(s) are attached hereto and by this reference made a part hereof.

**B. ACCOMPLISHMENT OF PROJECT**

**B.1 General Requirements:**

a)

**Funding Provided by  
Responsible Party**

		<b>Agency or Project.</b>
Environmental Clearance by:	Department	Project
Preliminary Engineering by:	Department	Project
Right-of-Way by:	Department	Project
Utility Coordination by:	Department	Project
Construction by:	Department	Project

b) After receiving authorization for a phase, the Agency shall commence and complete the phases as assigned above of the Project as described in Exhibit A with all practical dispatch, in a sound, economical, and efficient manner, and in accordance with the provisions herein, and all applicable laws. The Project will be performed in accordance with all latest applicable Department procedures, guidelines, manuals, standards, and directives as described in the Department's Local Government Guidelines, available in electronic format, which by this reference is made a part hereof as if fully set forth herein.

c) A full time employee of the Agency shall supervise the herein described phases of the Project. Said full time employee of the Agency shall be qualified to and shall ensure that the Project will be performed in accordance with the terms of this Agreement and all latest applicable Department procedures, guidelines, manuals, standards, and directives as described in the Department's Local Government Guidelines and this Agreement.

**B.2 Completion Date:**

a) The Agency agrees to complete the herein assigned phases, of the Project on or before N/A. If the Agency does not complete the herein described phases of the Project within this time period, this Agreement will expire on the last day of scheduled completion as provided in this paragraph unless an extension of the time period is requested by the Agency and granted in writing by the Department prior to the expiration of the Agreement. An extension of the term of this Agreement will be effected through an amendment to the Agreement. Expiration of this Agreement will be considered termination of the Project. The cost of any work performed after the expiration date of the Agreement will not be reimbursed by the Department.

**B.3 Environmental Regulations:**

a) The Department will review environmental documents and require any appropriate changes for approval as described in the Department's Local Government Guidelines.

b) In the event the Agency is made responsible for the Environmental Clearances in Section B.1(a) of this Agreement, the Agency will be solely responsible for compliance with all applicable environmental regulations and for any liability arising from non-compliance with these regulations and will reimburse the Department of any loss incurred in connection therewith to the extent permitted by Tennessee Law. The Agency will be responsible for securing any applicable permits as described in the Department's Local Government Guidelines.

c) In the event the Agency is made responsible for the Environmental Clearances in section B.1.(a) of this Agreement, then the Agency must complete environmental clearances before it begins final design and understands that a separate Notice to Proceed will be submitted for final design. Any work on final design performed ahead of this Notice to Proceed will not be reimbursable.

**B.4 Plans and Specifications**

a) In the event that the Agency is made responsible for the Preliminary Engineering in Section B.1.(a) of this Agreement and federal and/or state funding is providing reimbursement, except as otherwise authorized in writing by the Department, the Agency shall not execute an agreement for the Preliminary Engineering phase of the Project without the written approval of the Department. Failure to obtain such written approval shall be sufficient cause for nonpayment by the Department.

b) In the event that this Agreement involves constructing and equipping of facilities on the State Highway System and/or is a Project with Federal participation and the Agency is made responsible for Preliminary Engineering in section B.1.(a) of this Agreement, the Agency shall submit to the Department for approval all appropriate plans and specifications covering the Project. The Department will review all plans and specifications and will issue to the Agency written approval with any approved portions of the Project and comments or recommendations covering any remainder of the Project deemed appropriate.

1) After resolution of these comments and recommendations to the Department's satisfaction, the Department will issue to the Agency written approval and authorization to proceed with the next assigned phase of the Project. Failure to obtain this written approval and authorization to proceed shall be sufficient cause for nonpayment by the Department.

c) In the event that this Agreement involves the use of State Highway Right-of-Way, the Agency shall submit a set of plans to the TDOT Traffic Engineer responsible for the land in question. These

plans shall be sufficient to establish the proposed Project and its impact on the State Highway Right-of-Way.

#### **B.5 Right-of-Way**

- a) The Agency shall, without cost to the Department, provide all land owned by the Agency or by any of its instrumentalities as may be required for the Project right-of-way or easement purposes.
- b) The Agency understands that if it is made responsible for the Right-of-Way phase in section B.1(a) hereof and federal and/or state funds are providing the reimbursement, any activities initiated for the appraisal or the acquisition of land prior to authorization from the Department will not be reimbursed and that failure to follow applicable Federal and State law in this regard may make the Project ineligible for federal and/or state funding.
- c) The Department will review the processes the Agency used for the acquisition of land and other right-of-way activities. If those processes are found to be in accordance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (Public Law 91-646, 84 Stat. 1894), the Department will certify that the acquisition phase was completed appropriately. The Agency understands that the Project cannot proceed to the Construction phase until this certification of the acquisition phase has been provided. It further understands that if the processes used for acquisition are such that certification is impossible, federal and/or state funds will be withdrawn from the Project. If such withdrawal does occur, the Agency hereby agrees to reimburse the Department for all federal and/or state funds expended at the time of such withdrawal.
- d) If the Agency is responsible for the Construction phase, it agrees to correct any damage or disturbance caused by its work within the State Highway Right-of-Way, including but not limited to the replacement of any control access fence removed by the Agency or its Contractor or agent during the Construction phase of the Project.

#### **B.6 Approval of the Construction Phase**

- a) In the event that the Agency is made responsible for the Construction phase in section B.1.(a) of this Agreement, except as otherwise authorized in writing by the Department, the Agency shall not execute an agreement for the Construction phase of the Project without the written approval of the Department. Failure to obtain such approval shall be sufficient cause for nonpayment by the Department.
- b) In the event that the Department is made responsible for the Construction phase in section B.1.(a) of this Agreement, when the construction phase begins, the Agency may make such periodic visits to the Project site as necessary to familiarize itself generally with the progress and quality of the work and to determine in general if the work is proceeding in accordance with the Construction Agreement. If there is any perceived failure, the Agency shall give prompt written notification to the Department's Resident Engineer in charge.
- c) If the Project includes State Highway Right-of-Way and the Agency is responsible for the Construction phase, the Agency shall follow all requirements imposed by the TDOT Traffic Engineer.
- d) In the event that the Project includes State Highway Right-of-Way and the Agency is performing any construction work on this project, such work shall be performed to the satisfaction of the Department. If the Agency is being compensated for any construction work under this Agreement, any remedial work deemed necessary by the Department shall be done at the Agency's sole expense.
- e) The Agency understands that all contractors allowed to bid hereunder must be included on the Department's pre-qualified contractor list. Under Federal law, however, no contractor shall be required by law, regulation, or practice to obtain a license before submitting a bid or before a bid may be considered for an award of a contract; provided, however, that this is not intended to preclude requirements for the licensing of a contractor upon or subsequent to the award of the contract if such requirements are consistent with competitive bidding.

#### **B.7 Detours**

- a) If the Agency deems a detour to be necessary to maintain traffic during a road closure, then the Agency shall select, sign, and maintain the detour route in strict accordance with the Departments Final Construction Plan Notes and the Manual on Uniform Traffic Control Devices.

#### **B.8 Utilities**

- a) In the event that the Department is made responsible for the Construction phase in Section B.1(a) of this Agreement, the Department shall also be responsible for the Utilities phase.
- b) In the event that the Agency is made responsible for the Utilities Phase in section B.1.(a) of this Agreement, the following applies:
  - 1) The Agency shall assist and ensure that all utility relocation plans are submitted by the utilities and received by the Regional TDOT Utility Office per TDOT's coordination instructions for approval prior to the Project advertisement for bids.
  - 2) The Agency agrees to provide for and have accomplished all utility connections within the right-of-way and easements prior to the paving stage of the Construction phase.

### **B.9 Railroad**

a) In the event that a railroad is involved, Project costs may be increased by federally required improvements. The Agency agrees to provide such services as necessary to realize these improvements. The Agency understands it may have to enter into additional agreements to accomplish these improvements.

### **C. PAYMENT TERMS AND CONDITIONS**

#### **C.1 Total Cost:**

**In the event that the Agency shall receive reimbursement for Project expenditures with federal and/or state funds for any portion of the herein described Project, this provision shall apply.**

a) The Department agrees to reimburse the Agency for eligible and appropriate Project expenditures as detailed in the Department's Local Government Guidelines with federal and/or state funds made available and anticipated to become available to the Agency, provided that the maximum liability of the Department shall be as set forth in Exhibit A.

#### **C.2 Eligible Costs:**

**In the event that the Agency shall receive federal and/or state funds for any portion of the herein described Project, this provision shall apply.**

a) Only Project costs incurred after the issuance of the Notice to Proceed for each phase as detailed in the Department's Local Government Guidelines are eligible for Department reimbursement.

#### **C.3 Limits on Federal and State Participation:**

a) Federal and/or state funds shall not participate in any cost which is not incurred in conformity with applicable federal and state law, the regulations in 23 C.F.R. and 49 C.F.R., and policies and procedures prescribed by the Federal Highway Administration (FHWA). Federal funds shall not be paid on account of any cost incurred prior to authorization by the FHWA to the Department to proceed with the Project or part thereof involving such cost. (23 CFR 1.9 (a)). If FHWA and/or the Department determines that any amount claimed is not eligible, federal and/or state participation may be approved in the amount determined to be adequately supported. The Department shall notify the Agency in writing citing the reasons why items and amounts are not eligible for federal and/or state participation. Where correctable non-compliance with provisions of law or FHWA requirements exists, federal and/or state funds may be withheld until compliance is obtained. Where non-compliance is not correctable, FHWA and/or the Department may deny participation in Project costs in part or in total.

b) For any amounts determined to be ineligible for federal and/or state reimbursement for which the Department has made payment, the Agency shall promptly reimburse the Department for all such amounts within ninety (90) days of written notice.

c) The Agency agrees to pay all costs of any part of this project which are not eligible for federal and/or state funding. These funds shall be provided upon written request therefore by either (a) check, or (b) deposit to the Local Government Investment Pool, whenever requested.

#### **C.4 Payment Methodology:**

**In the event that the Agency shall receive federal and/or state funds for any portion of the herein described Project, this provision shall apply.**

a) The Agency shall submit invoices, in a form outlined in the Local Government Guidelines with all necessary supporting documentation, prior to any reimbursement of allowable costs. Such invoices shall be submitted no more often than monthly but at least quarterly and indicate, at a minimum, the amount charged by allowable cost line-item for the period invoiced, the amount charged by line-item to date, the total amounts charged for the period invoiced, and the total amount charged under this agreement to date. Each invoice shall be accompanied by proof of payment in the form of a canceled check or other means acceptable to the Department.

b) The payment of an invoice by the Department shall not prejudice the Department's right to object to or question any invoice or matter in relation thereto. Such payment by the Department shall neither be construed as acceptance of any part of the work or service provided nor as final approval of any of the costs invoiced therein. The Agency's invoice shall be subject to reduction for amounts included in any invoice or payment theretofore made which are determined by the Department not to constitute allowable costs. Any payment may be reduced for overpayments or increased for under-payments on subsequent invoices.

c) Should a dispute arise concerning payments due and owing to the Agency under this Agreement, the Department reserves the right to withhold said disputed amounts pending final resolution of the dispute.

#### **C.5 The Department's Obligations:**

**In the event that the Department is managing all phases of the Project herein described, this provision C.5 does not apply.**



a) Subject to other provisions hereof, the Department will honor requests for reimbursement to the Agency in amounts and at times deemed by the Department to be proper to ensure the carrying out of the Project and payment of the eligible costs. However, notwithstanding any other provision of this Agreement, the Department may elect not to make a payment if:

1) **Misrepresentation:**

The Agency shall have made misrepresentation of a material nature in its application, or any supplement thereto or amendment thereof, or in or with respect to any document or data furnished therewith or pursuant hereto;

2) **Litigation:**

There is then pending litigation with respect to the performance by the Agency of any of its duties or obligations which may jeopardize or adversely affect the Project, this Agreement or payments to the Project;

3) **Approval by Department:**

The Agency shall have taken any action pertaining to the Project, which under this Agreement requires the approval of the Department or has made related expenditure or incurred related obligations without having been advised by the Department that same are approved;

4) **Conflict of Interests:**

There has been any violation of the conflict of interest provisions contained herein in D.16; or

5) **Default:**

The Agency has been determined by the Department to be in default under any of the provisions of the Agreement.

**C.6 Final Invoices:**

**In the event that the Agency shall receive federal and/or state funds for any portion of the herein described Project, this provision shall apply.**

a) The Agency must submit the final invoice on the Project to the Department within one hundred twenty (120) days after the completion of the Project. Invoices submitted after the one hundred twenty (120) day time period may not be paid.

**C.7 Offset:**

**In the event that the Agency shall receive federal and/or state funds for any portion of the herein described Project, this provision shall apply.**

a) If, after Project completion, any claim is made by the Department resulting from an audit or for work or services performed pursuant to this Agreement, the Department may offset such amount from payments due for work or services done under any agreement which it has with the Agency owing such amount if, upon demand, payment of the amount is not made within sixty (60) days to the Department. Offsetting any amount pursuant to this section shall not be considered a breach of agreement by the Department.

**C.8 Travel Compensation**

a) If the Project provided for herein includes travel compensation, reimbursement to the Agency 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 subject to the Agreement Budget.

**D. STANDARD TERMS AND CONDITIONS**

**D.1 Governing Law:**

a) This Agreement shall be governed by and construed in accordance with the laws of the State of Tennessee. The Agency 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 Agreement. The Agency acknowledges and agrees that any rights or claims against the State of Tennessee or its employees hereunder, and any remedies arising therefrom, shall be subject to and limited to those rights and remedies, if any, available under Tennessee Code Annotated, Sections 9-8-101 through 9-8-407.

**D.2 General Compliance with Federal, State, and Local Law:**

a) The Agency is assumed to be familiar with and observe and comply with those Federal, State, and local laws, ordinances, and regulations in any manner affecting the conduct of the work and those instructions and prohibitive orders issued by the State and Federal Government regarding fortifications, military and naval establishments and other areas. The Agency shall observe and comply with those laws, ordinances, regulations, instructions, and orders in effect as of the date of this Agreement.

b) The parties hereby agree that failure of the Agency to comply with this provision shall constitute a material breach of this Agreement and subject the Agency to the repayment of all damages suffered by the State and/or the Department as a result of said breach.

**D.3 State Law:**

a) Nothing in the Agreement shall require the Agency to observe or enforce compliance with any provision thereof, perform any other act or do any other thing in contravention of any applicable state

law, provided, that if any of the provisions of the Agreement violate any applicable state law, the Agency will at once notify the Department in writing in order that appropriate changes and modifications may be made by the Department and the Agency to the end that the Agency may proceed as soon as possible with the Project.

**D.4 Submission of the Proceedings, Agreements, and Other Documents:**

a) The Agency shall submit to the Department such data, reports, records, agreements, and other documents relating to the Project as the Department and the Federal Highway Administration may require.

**D.5 Appropriations of Funds:**

a) This Agreement is subject to the appropriation and availability of State and/or Federal funds. In the event that the funds are not appropriated or are otherwise unavailable, the Department reserves the right to terminate the Agreement upon thirty (30) days written notice to the Agency. Said termination shall not be deemed a breach of agreement by the Department. Upon receipt of the written notice, the Agency shall cease all work associated with the Agreement. Should such an event occur, the Agency shall be entitled to compensation for all satisfactory and authorized services completed as of the termination date. Upon such termination, the Agency shall have no right to recover from the Department any actual, general, special, incidental, consequential, or any other damages whatsoever of any description or amount.

**D.6 Rights and Remedies Not Waived:**

a) In no event shall the making by the Department of any payment to the Agency constitute or be construed as a waiver by the Department of any breach of covenant or any default which may then exist on the part of the Agency and the making of such payment by the Department, while any such breach or default shall exist, shall in no way impair or prejudice any right or remedy available to the Department with respect to such breach or default.

b) Nothing in this agreement shall be construed to limit the Department's right at any time to enter upon its highway right-of-way, including the area occupied by the Project, for the purpose of maintaining or reconstructing its highway facilities.

**D.7 Department and Agency Not Obligated to Third Parties:**

a) The Department and Agency shall not be obligated hereunder to any party other than the parties to this Agreement.

**D.8 Independent Contractor:**

a) The parties hereto, in the performance of this Agreement, shall not act as agents, employees, partners, joint ventures, or associates of one another. It is expressly acknowledged by the parties hereto that such parties are independent contracting entities and that nothing in this Agreement 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.

b) The Agency, being a political subdivision of the State, is governed by the provisions of the Tennessee Government Tort Liability Act, Tennessee Code Annotated, Sections 29-20-101, et seq, and all other applicable laws.

**D.9 Maintenance:**

a) Nothing contained herein shall be construed as changing the maintenance responsibility of either party for any part of the referenced project that lies on its system of highways. If the project funded hereunder results in the installation of any traffic signal, lighting or other electrically operated device(s), then the Agency shall be solely responsible for and pay all costs associated with maintenance and operation of all electrically operated devices together with the related equipment, wiring and other necessary appurtenances, and the Agency shall furnish electrical current to all such devices which may be installed as part of the project. Additionally, the Agency shall be solely responsible for and pay all costs associated with the maintenance and operation of solar-powered devices, including, but not limited to, replacement of solar panels, batteries, lights and lenses.

b) In the event that the Department is made responsible for the Construction phase in section B.1.(a) of this Agreement and to the extent that the Department is responsible for accomplishing the construction of the project, the Department will notify the Agency when Construction phase of the project has been completed; provided however, that failure to notify the Agency shall not relieve the Agency of its maintenance responsibilities.

**D.10 Disadvantaged Business Enterprise (DBE) Policy and Obligation:**

**In the event that the herein-described project is funded with federal funds, the following shall apply:**

**a) DBE Policy:**

It is the policy of the Department that Disadvantaged Business Enterprises, as defined in 49 C.F.R., Part 26, as amended, shall have the opportunity to participate in the performance of agreements

financed in whole or in part with Department funds under this Agreement. The DBE requirements of applicable federal and state regulations apply to this Agreement; including but not limited to project goals and good faith effort requirements.

**b) DBE Obligation:**

The Agency and its Contractors agree to ensure that Disadvantaged Business Enterprises, as defined in applicable federal and state regulations, have the opportunity to participate in the performance of agreements and this Agreement. In this regard, all recipients and Contractors shall take all necessary and reasonable steps in accordance with applicable federal and state regulations, to ensure that the Disadvantaged Business Enterprises have the opportunity to compete for and perform agreements. The Agency shall not discriminate on the basis of race, color, national origin or sex in the award and performance of Department-assisted agreements.

**D.11 Tennessee Department of Transportation Debarment and Suspension:**

a) In accordance with the Tennessee Department of Transportation regulations governing Contractor Debarment and Suspension, Chapter 1680-5-1, the Agency shall not permit any suspended, debarred or excluded business organizations or individual persons appearing on the Tennessee Department of Transportation Excluded Parties List to participate or act as a principal of any participant in any covered transaction related to this Project. Covered transactions include submitting a bid or proposal, entering into an agreement, or participating at any level as a subContractor.

**D.12 Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion (applies to federal aid projects):**

**a) Instructions for Certification - Primary Covered Transactions:**

**By signing and submitting this Agreement, the Agency is providing the certification set out below.**

- 1) The inability of a person to provide the certification set out below will not necessarily result in denial of participation in this covered transaction. The Agency shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the Department's determination whether to enter into this transaction. However, failure of the Agency to furnish a certification or an explanation shall disqualify such a person from participation in this transaction.
- 2) The certification in this clause is a material representation of fact upon which reliance was placed when the Department determined to enter into this transaction. If it is later determined that the Agency knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the Department may terminate this transaction for cause or default.
- 3) The Agency shall provide immediate written notice to the Department if at any time the Agency learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
- 4) The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the Department for assistance in obtaining a copy of those regulations.
- 5) The Agency agrees by entering into this Agreement that it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the Department.
- 6) The Agency further agrees by entering into this Agreement that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," provided by the Department, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
- 7) An Agency may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Non-procurement portion of the "Lists of Parties Excluded From Federal Procurement or Non-procurement Programs" (Non-procurement List) which is compiled by the General Services Administration.
- 8) Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9) Except for transactions authorized under these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the Department may terminate this transaction for cause or default.

**b) Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-- Primary Covered Transactions:**

**The prospective participant in a covered transaction certifies to the best of its knowledge and belief, that it and its principals:**

- 1) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal, State or local department or agency;
  - 2) Have not within a 3-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or agreement 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;
  - 3) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in this certification; and
  - 4) Have not within a 3-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.
- 5) Where the prospective participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

**D.13 Equal Employment Opportunity:**

a) In connection with the performance of any Project, the Agency shall not discriminate against any employee or applicant for employment because of race, age, religion, color, sex, national origin, disability or marital status. The Agency will take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, age, religion, color, gender, national origin, disability or marital status. Such action shall include, but not be limited to, the following: employment upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

b) The Agency shall insert the foregoing provision in all agreements modified only to show the particular contractual relationship in all its agreements in connection with the development of operation of the Project, except agreements for the standard commercial supplies or raw materials, and shall require all such Contractors to insert a similar provision in all subcontracts, except subcontracts for standard commercial supplies or raw materials. When the Project involves installation, construction, demolition, removal, site improvement, or similar work, the Agency shall post, in conspicuous places available to employees and applicants for employment for Project work, notices to be provided by the Department setting forth the provisions of the nondiscrimination clause.

**D.14 Title VI - Civil Rights Act of 1964:**

a) The Agency shall comply with all the requirements imposed by Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d), 49 C.F.R., Part 21, and related statutes and regulations. The Agency shall include provisions in all agreements with third parties that ensure compliance with Title VI of the Civil Rights Act of 1964, 49 C.F.R., Part 21, and related statutes and regulations.

**D.15 Americans with Disabilities Act of 1990 (ADA):**

a) The Agency will comply with all the requirements as imposed by the ADA and the regulations of the federal government issued thereunder.

**D.16 Conflicts of Interest:**

a) The Agency warrants that no 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 Agency in connection with any work contemplated or performed relative to this Agreement.

b) The Agency shall insert in all agreements entered into in connection with the Project or any property included or planned to be included in any Project, and shall require its Contractors to insert in each of its subcontracts, the following provision:

1) "No 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 Agency in connection with any work contemplated or performed relative to this Agreement."

**D.17 Interest of Members of or Delegates to, Congress (applies to federal aid projects):**

a) No member of or delegate to the Congress of the United States shall be admitted to any share or part of the Agreement or any benefit arising therefrom.

**D.18 Restrictions on Lobbying (applies to federal aid projects):** The Agency 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 Agency, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress in connection with the awarding of any federal agreement, the making of any federal grant, the making of any federal loan, and entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal agreement, 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 grant, loan, or cooperative agreement, the Agency shall complete and submit Standard Form LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

c) The Agency shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including sub-grants, subcontracts, and agreements under grants, loans, and cooperative agreements) and that all sub-recipients of federally appropriated funds shall certify and disclose accordingly.

**D.19 Records:**

a) The Agency shall maintain documentation for all charges against the Department under this Agreement. All costs charged to the Project, including any approved services contributed by the Agency or others, shall be supported by properly executed payrolls, time records, invoices, agreements or vouchers evidencing in proper detail and in a form acceptable to the Department the nature and propriety of the charges. The books, records, and documents of the Agency, insofar as they relate to work performed or money received under this Agreement, shall be maintained and made available upon request to the Department at all times during the period of this Agreement and for at least three (3) years after final payment is made.

b) Copies of these documents and records shall be furnished to the Department, the Comptroller of the Treasury, or their duly appointed representatives, upon request. Records of costs incurred includes the Agency's general accounting records and the Project records, together with supporting documents and records, of the Agency and all subContractors performing work on the Project and all other records of the Agency and subContractors considered necessary by the Department for a proper audit of costs. If any litigation, claim, or audit is started before the expiration of the three (3) year period, the records shall be retained until all litigation, claims, or audit findings involving the records have been resolved.

c) The aforesaid requirements to make records available to the Department shall be a continuing obligation of the Agency and shall survive a termination of the Agreement.

**D.20 Inspection:**

a) The Agency shall permit, and shall require its Contractor, subContractor or materials vendor to permit, the Department's authorized representatives and authorized agents of the Federal Highway Administration to inspect all work, workmanship, materials, payrolls, records and to audit the books, records and accounts pertaining to the financing and development of the Project.

b) The Department reserves the right to terminate this Agreement for refusal by the Agency or any Contractor, subContractor or materials vendor to allow public access to all documents, papers, letters or other material made or received in conjunction with this Agreement.

**D.21 Annual Report and Audit:**

a) In the event that an Agency expends \$500,000 or more in federal awards in its fiscal year, the Agency must have a single or program specific audit conducted in accordance with the United States Office of Management and Budget (OMB) Circular A-133.

b) All books of account and financial records shall be subject to annual audit by the Tennessee Comptroller of the Treasury or the Comptroller's duly appointed representative. When an audit is required, the Agency may, with the prior approval of the Comptroller, engage a licensed independent public accountant to perform the audit. The audit agreement between the Agency and the licensed independent public accountant shall be on an agreement form prescribed by the Tennessee Comptroller of the Treasury. Any such audit shall be performed in accordance with generally accepted government auditing standards, the provisions of OMB Circular A-133, if applicable, and the Audit Manual for Governmental Units and Recipients of Grant Funds published by the Tennessee Comptroller of the Treasury.

c) The Agency shall be responsible for reimbursement of the cost of the audit prepared by the Tennessee Comptroller of the Treasury, and payment of fees for the audit prepared by the licensed independent public accountant. Payment of the audit fees of the licensed independent public

accountant by the Agency shall be subject to the provisions relating to such fees contained in the prescribed agreement form noted above. Copies of such audits shall be provided to the designated cognizant state agency, the Department, the Tennessee Comptroller of the Treasury, and the Department of Finance and Administration and shall be made available to the public.

**D.22 Termination for Convenience:**

a) The Department may terminate this agreement without cause for any reason. Said termination shall not be deemed a breach of agreement by the Department. The Department shall give the Agency at least thirty (30) days written notice before the effective termination date. The Agency shall be entitled to compensation for authorized expenditures and satisfactory services completed as of the termination date, but in no event shall the Department be liable to the Agency for compensation for any service which has not been rendered. The final decision as to the amount for which the Department is liable shall be determined by the Department. Should the Department exercise this provision, the Agency shall not have any right to any actual general, special, incidental, consequential, or any other damages whatsoever of any description or amount.

**D.23 Termination for Cause:**

a) If the Agency fails to properly perform its obligations under this Agreement in a timely or proper manner, or if the Agency violates any terms of this Agreement, the Department shall have the right to immediately terminate the Agreement and withhold payments in excess of fair compensation for completed services. Notwithstanding the above, the Agency shall not be relieved of liability to the Department for damages sustained by virtue of any breach of this Agreement by the Agency.

b) In the event that the Project herein described includes Federal funds, the Agency understands that if the Federal Highway Administration (FHWA) determines that some or all of the cost of this project is ineligible for federal funds participation because of failure by the Agency to adhere to federal laws and regulations, the Agency shall be obligated to repay to the Department any federal funds received by the Agency under this agreement for any costs determined by the FHWA to be ineligible.

c) If the Project herein described lies on the state highway system and the Agency fails to perform any obligation under this section of this agreement, the Department shall have the right to cause the Agency, by giving written notice to the Agency, to close the Project to public use and to remove the Project at its own expense and restore the premises to the satisfaction of the Department within ninety (90) days thereafter.

**D.24 How Agreement is Affected by Provisions Being Held Invalid:**

a) If any provision of this Agreement is held invalid, the remainder of this Agreement shall not be affected. In such an instance the remainder would then continue to conform to the terms and requirements of applicable law.

**D.25 Agreement Format:**

a) All words used herein in the singular form shall extend to and include the plural. All words used in the plural form shall extend to and include the singular. All words used in any gender shall extend to and include all genders.

**D.26 Certification Regarding Third Party Contracts:**

a) The Agency certifies by its signature hereunder that it has no understanding or contract with a third party that will conflict with or negate this Agreement in any manner whatsoever.

b) The Agency further certifies by its signature hereunder that it has disclosed and provided to the Department a copy of any and all contracts with any third party that relate to the Project or any work funded under this Agreement.

c) The Agency further certifies by its signature hereunder that it will not enter into any contract with a third party that relates to this project or to any work funded under this Agreement without prior disclosure of such proposed contract to the Department.

d) The Agency hereby agrees that failure to comply with these provisions shall be a material breach of this Agreement and may subject the Agency to the repayment of funds received from or through the Department under this Agreement and to the payment of all damages suffered by the Department as a result of said breach.

**D.27 Amendment:**

a) This Agreement may be modified only by a written amendment, which has been executed and approved by the appropriate parties as indicated on the signature page of this Agreement.

**D.28 State Liability:**

a) The Department shall have no liability except as specifically provided in this Agreement.

**D.29 Force Majeure:**

a) The obligations of the parties to this Agreement are subject to prevention by causes beyond the parties' control that could not be avoided by the exercise of due care including, but not limited to, acts of God, riots, wars, strikes, epidemics or any other similar cause.

**D.30 Required Approvals:**

a) The Department is not bound by this Agreement until it is approved by the appropriate State officials in accordance with applicable Tennessee State laws and regulations.

**D.31 Estimated Cost:**

a) The parties recognize that the estimated costs contained herein are provided for planning purposes only. They have not been derived from any data such as actual bids, etc

b) In the event that the Department is made responsible in section B.1.(a) of this Agreement for the management of the herein described Project, the parties understand that more definite cost estimates will be produced during project development. These more reliable estimates will be provided to the Agency by the Department as they become available.

**D.32 Third Party Liability:**

a) The Agency shall assume all liability for third-party claims and damages arising from the construction, maintenance, existence and use of the Project to the extent provided by Tennessee Law and subject to the provisions, terms and liability limits of the Governmental Tort Liability Act, T.C.A. Section 29-20-101, et seq, and all applicable laws.

**D.33 Deposits:**

a) Required deposits and any other costs for which the Agency is liable shall be made available to the Department, whenever requested.

**D.34 Department Activities:**

a) Where the Agency is managing any phase of the project the Department shall provide various activities necessary for project development. The estimated cost for these activities are included in the funds shown herein.

**D.35 Congestion Mitigation and Air Quality Requirement:**

a) If the herein described project is funded with Congestion Mitigation Air Quality (CMAQ) funds, this section D.35 shall apply.

1) Whereas the Agency understands and agrees that the funding provided hereunder must be obligated with the Federal Highway Administration within three years from the date of this agreement. It is further agreed that once all requirements have been met for development of the project, the Agency will expend the funds in a manner to insure its expenditure on a continuous basis until the funds are exhausted. Failure to follow this process may result in a loss of funds.

**D.36 Investment of Public Funds:**

a) The facility on which this project is being developed shall remain open to the public and vehicular traffic for a sufficient time to recoup the public investment therein as shown below:

**Amount Open to Public and Vehicular Traffic**

\$1.00 - \$200,000 =	5 Years		
>\$200,000 - \$500,000		=	10 Years
>\$500,000 - \$1,000,000		=	20 Years

b) Projects over \$1,000,000 carry a minimum 25 years open to public and vehicular traffic requirement and will be subject to individual review.

**D.37 Federal Funding Accountability and Transparency Act:**

a) **If the Project is funded with federal funds the following shall apply:** The Agency shall comply with the Federal Funding Accountability and Transparency Act of 2006 (Pub.L. 109-282), as amended by section 6202 of Public Law 110-252 ("the Transparency Act") and the regulations and requirements of the federal government issued thereunder, including, but not limited to, 2 CFR Part 170. The Agency shall submit the information needed for the Transparency Act in accordance with the forms and processes identified by the Department.

**IN WITNESS WHEREOF**, the parties have caused this instrument to be executed by their respective authorized officials on the date first above written.

[Acknowledgements and Indexes 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 1st day of March, 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 PROJECT FUND BUDGET BY TRANSFERRING FUNDS TO THE FORT ROBINSON BRIDGE REPLACEMENT PROJECT FOR THE YEAR ENDING JUNE 30, 2016; 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 \$48,400 from the Cooks Valley Road project (GP1401) to the Fort Robinson Bridge Replacement project (GP1618) for the City's 20% matching deposit for the Preliminary Engineering phase.

<u>Account Number/Description:</u>	<u>Budget</u>	<u>Incr/&lt;Decr&gt;</u>	<u>New Budget</u>
<b>Fund 311: General Project Fund</b>			
<b>Cooks Valley Road (GP1401)</b>			
<b>Revenues:</b>			
311-0000-368-1040 Series 2011 GO Pub Imp	\$ 459,694	\$ 0	\$ 459,694
311-0000-368-1046 Series 2013B GO Pub Imp	894,586	(48,400)	846,186
311-0000-368-2101 Premium From Bond Sale	61,414	0	61,414
<b>Totals:</b>	<b>1,415,694</b>	<b>(48,400)</b>	<b>1,367,294</b>

<b>Expenditures:</b>			
311-0000-601-2023 Arch/Eng/Landscaping	\$ 160,000	\$ (24,000)	\$ 136,000
311-0000-601-2097 State Reviews & Permits	2,000	0	2,000
311-0000-601-4041 Bond Expense	11,762	0	11,762
311-0000-601-9001 Land	6,238	0	6,238
311-0000-601-9003 Improvements	1,235,694	(24,400)	1,211,294
<b>Totals:</b>	<b>1,415,694</b>	<b>(48,400)</b>	<b>1,367,294</b>

<b>Fund 311: General Project Fund</b>			
<b>Ft. Robinson Bridge Replace (GP1618)</b>			
<b>Revenues:</b>			
311-0000-368-1046 Series 2013B GO Pub Imp	\$ 0	\$ 48,400	\$ 48,400
<b>Totals:</b>	<b>0</b>	<b>48,400</b>	<b>48,400</b>

<b>Expenditures:</b>			
311-0000-601-2023 Arch/Eng/Landscaping	\$ 0	\$ 48,400	\$ 48,400
<b>Totals:</b>	<b>0</b>	<b>48,400</b>	<b>48,400</b>

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:

APPROVED AS TO FORM:

\_\_\_\_\_  
ANGIE MARSHALL  
Deputy City Recorder

\_\_\_\_\_  
J. MICHAEL BILLINGSLEY, City Attorney

PASSED ON 1ST READING: \_\_\_\_\_

PASSED ON 2ND READING: \_\_\_\_\_

**Agreement Number: 160012**

**Project Identification Number: 122156.00**

**Federal Project Number: BRZ-9108(47)**

**State Project Number: 82956-3590-94**

**State of Tennessee Department of Transportation**

**LOCAL AGENCY PROJECT AGREEMENT**

THIS AGREEMENT, made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_ by and between the STATE OF TENNESSEE DEPARTMENT OF TRANSPORTATION, an agency of the State of Tennessee (hereinafter called the "Department") and the City of Kingsport, (hereinafter called the "Agency") for the purpose of providing an understanding between the parties of their respective obligations related to the management of the project described as:

Fort Robinson Drive Bridge over Dry Hollow, LM 0.39

**A. PURPOSE OF AGREEMENT**

**A.1 Purpose:**

- a) The purpose of this Agreement is to provide for the Department's participation in the project as further described in Exhibit A attached hereto and by this reference made a part hereof (hereinafter called the "Project") and state the terms and conditions as to the manner in which the Project will be undertaken and completed.

**A.2 Modifications and Additions:**

- a) Exhibit(s) are attached hereto and by this reference made a part hereof.

**B. ACCOMPLISHMENT OF PROJECT**

**B.1 General Requirements:**

- a)

	<b>Responsible Party</b>	<b>Funding Provided by Agency or Project.</b>
Environmental Clearance by:	Department	Project
Preliminary Engineering by:	Department	Project
Right-of-Way by:	Department	Project

Utility Coordination by:	Department	Project
Construction by:	Department	Project

- b) After receiving authorization for a phase, the Agency shall commence and complete the phases as assigned above of the Project as described in Exhibit A with all practical dispatch, in a sound, economical, and efficient manner, and in accordance with the provisions herein, and all applicable laws. The Project will be performed in accordance with all latest applicable Department procedures, guidelines, manuals, standards, and directives as described in the Department's Local Government Guidelines, available in electronic format, which by this reference is made a part hereof as if fully set forth herein.
- c) A full time employee of the Agency shall supervise the herein described phases of the Project. Said full time employee of the Agency shall be qualified to and shall ensure that the Project will be performed in accordance with the terms of this Agreement and all latest applicable Department procedures, guidelines, manuals, standards, and directives as described in the Department's Local Government Guidelines and this Agreement.

**B.2 Completion Date:**

- a) The Agency agrees to complete the herein assigned phases of the Project on or before N/A. If the Agency does not complete the herein described phases of the Project within this time period, this Agreement will expire on the last day of scheduled completion as provided in this paragraph unless an extension of the time period is requested by the Agency and granted in writing by the Department prior to the expiration of the Agreement. An extension of the term of this Agreement will be effected through an amendment to the Agreement. Expiration of this Agreement will be considered termination of the Project. The cost of any work performed after the expiration date of the Agreement will not be reimbursed by the Department.

**B.3 Environmental Regulations:**

- a) The Department will review environmental documents and require any appropriate changes for approval as described in the Department's Local Government Guidelines.
- b) In the event the Agency is made responsible for the Environmental Clearances in Section B.1(a) of this Agreement, the Agency will be solely responsible for compliance with all applicable environmental regulations and for any liability arising from non-compliance with these regulations and will reimburse the Department of any loss incurred in connection therewith to the extent permitted by Tennessee Law. The Agency will be responsible for securing any applicable permits as described in the Department's Local Government Guidelines.

- c) In the event the Agency is made responsible for the Environmental Clearances in section B.1.(a) of this Agreement, then the Agency must complete environmental clearances before it begins final design and understands that a separate Notice to Proceed will be submitted for final design. Any work on final design performed ahead of this Notice to Proceed will not be reimbursable.

#### **B.4 Plans and Specifications**

- a) In the event that the Agency is made responsible for the Preliminary Engineering in Section B.1.(a) of this Agreement and federal and/or state funding is providing reimbursement, except as otherwise authorized in writing by the Department, the Agency shall not execute an agreement for the Preliminary Engineering phase of the Project without the written approval of the Department. Failure to obtain such written approval shall be sufficient cause for nonpayment by the Department.
- b) In the event that this Agreement involves constructing and equipping of facilities on the State Highway System and/or is a Project with Federal participation and the Agency is made responsible for Preliminary Engineering in section B.1.(a) of this Agreement, the Agency shall submit to the Department for approval all appropriate plans and specifications covering the Project. The Department will review all plans and specifications and will issue to the Agency written approval with any approved portions of the Project and comments or recommendations covering any remainder of the Project deemed appropriate.
  - 1) After resolution of these comments and recommendations to the Department's satisfaction, the Department will issue to the Agency written approval and authorization to proceed with the next assigned phase of the Project. Failure to obtain this written approval and authorization to proceed shall be sufficient cause for nonpayment by the Department.
- c) In the event that this Agreement involves the use of State Highway Right-of-Way, the Agency shall submit a set of plans to the TDOT Traffic Engineer responsible for the land in question. These plans shall be sufficient to establish the proposed Project and its impact on the State Highway Right-of-Way.

#### **B.5 Right-of-Way**

- a) The Agency shall, without cost to the Department, provide all land owned by the Agency or by any of its instrumentalities as may be required for the Project right-of-way or easement purposes.
- b) The Agency understands that if it is made responsible for the Right-of-Way phase in section B.1(a) hereof and federal and/or state funds are providing the reimbursement, any activities initiated for the appraisal or the acquisition of land prior to authorization from the Department will not be reimbursed and that failure

to follow applicable Federal and State law in this regard may make the Project ineligible for federal and/or state funding.

- c) The Department will review the processes the Agency used for the acquisition of land and other right-of-way activities. If those processes are found to be in accordance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (Public Law 91-646, 84 Stat. 1894), the Department will certify that the acquisition phase was completed appropriately. The Agency understands that the Project cannot proceed to the Construction phase until this certification of the acquisition phase has been provided. It further understands that if the processes used for acquisition are such that certification is impossible, federal and/or state funds will be withdrawn from the Project. If such withdrawal does occur, the Agency hereby agrees to reimburse the Department for all federal and/or state funds expended at the time of such withdrawal.
- d) If the Agency is responsible for the Construction phase, it agrees to correct any damage or disturbance caused by its work within the State Highway Right-of-Way, including but not limited to the replacement of any control access fence removed by the Agency or its Contractor or agent during the Construction phase of the Project.

#### **B.6 Approval of the Construction Phase**

- a) In the event that the Agency is made responsible for the Construction phase in section B.1.(a) of this Agreement, except as otherwise authorized in writing by the Department, the Agency shall not execute an agreement for the Construction phase of the Project without the written approval of the Department. Failure to obtain such approval shall be sufficient cause for nonpayment by the Department.
- b) In the event that the Department is made responsible for the Construction phase in section B.1.(a) of this Agreement, when the construction phase begins, the Agency may make such periodic visits to the Project site as necessary to familiarize itself generally with the progress and quality of the work and to determine in general if the work is proceeding in accordance with the Construction Agreement. If there is any perceived failure, the Agency shall give prompt written notification to the Department's Resident Engineer in charge.
- c) If the Project includes State Highway Right-of-Way and the Agency is responsible for the Construction phase, the Agency shall follow all requirements imposed by the TDOT Traffic Engineer.
- d) In the event that the Project includes State Highway Right-of-Way and the Agency is performing any construction work on this project, such work shall be performed to the satisfaction of the Department. If the Agency is being compensated for any construction work under this Agreement, any remedial work deemed necessary by the Department shall be done at the Agency's sole expense.

- e) The Agency understands that all contractors allowed to bid hereunder must be included on the Department’s pre-qualified contractor list. Under Federal law, however, no contractor shall be required by law, regulation, or practice to obtain a license before submitting a bid or before a bid may be considered for an award of a contract; provided, however, that this is not intended to preclude requirements for the licensing of a contractor upon or subsequent to the award of the contract if such requirements are consistent with competitive bidding.

**B.7 Detours**

- a) If the Agency deems a detour to be necessary to maintain traffic during a road closure, then the Agency shall select, sign, and maintain the detour route in strict accordance with the Departments Final Construction Plan Notes and the Manual on Uniform Traffic Control Devices.

**B.8 Utilities**

- a) In the event that the Department is made responsible for the Construction phase in Section B.1(a) of this Agreement, the Department shall also be responsible for the Utilities phase.
- b) In the event that the Agency is made responsible for the Utilities Phase in section B.1.(a) of this Agreement, the following applies:
  - 1) The Agency shall assist and ensure that all utility relocation plans are submitted by the utilities and received by the Regional TDOT Utility Office per TDOT's coordination instructions for approval prior to the Project advertisement for bids.
  - 2) The Agency agrees to provide for and have accomplished all utility connections within the right-of-way and easements prior to the paving stage of the Construction phase.

**B.9 Railroad**

- a) In the event that a railroad is involved, Project costs may be increased by federally required improvements. The Agency agrees to provide such services as necessary to realize these improvements. The Agency understands it may have to enter into additional agreements to accomplish these improvements.

## **C. PAYMENT TERMS AND CONDITIONS**

### **C.1 Total Cost:**

**In the event that the Agency shall receive reimbursement for Project expenditures with federal and/or state funds for any portion of the herein described Project, this provision shall apply.**

- a) The Department agrees to reimburse the Agency for eligible and appropriate Project expenditures as detailed in the Department's Local Government Guidelines with federal and/or state funds made available and anticipated to become available to the Agency, provided that the maximum liability of the Department shall be as set forth in Exhibit A.

### **C.2 Eligible Costs:**

**In the event that the Agency shall receive federal and/or state funds for any portion of the herein described Project, this provision shall apply.**

- a) Only Project costs incurred after the issuance of the Notice to Proceed for each phase as detailed in the Department's Local Government Guidelines are eligible for Department reimbursement.

### **C.3 Limits on Federal and State Participation:**

- a) Federal and/or state funds shall not participate in any cost which is not incurred in conformity with applicable federal and state law, the regulations in 23 C.F.R. and 49 C.F.R., and policies and procedures prescribed by the Federal Highway Administration (FHWA). Federal funds shall not be paid on account of any cost incurred prior to authorization by the FHWA to the Department to proceed with the Project or part thereof involving such cost. (23 CFR 1.9 (a)). If FHWA and/or the Department determines that any amount claimed is not eligible, federal and/or state participation may be approved in the amount determined to be adequately supported. The Department shall notify the Agency in writing citing the reasons why items and amounts are not eligible for federal and/or state participation. Where correctable non-compliance with provisions of law or FHWA requirements exists, federal and/or state funds may be withheld until compliance is obtained. Where non-compliance is not correctable, FHWA and/or the Department may deny participation in Project costs in part or in total.
- b) For any amounts determined to be ineligible for federal and/or state reimbursement for which the Department has made payment, the Agency shall promptly reimburse the Department for all such amounts within ninety (90) days of written notice.



- c) The Agency agrees to pay all costs of any part of this project which are not eligible for federal and/or state funding. These funds shall be provided upon written request therefore by either (a) check, or (b) deposit to the Local Government Investment Pool, whenever requested.

#### **C.4 Payment Methodology:**

**In the event that the Agency shall receive federal and/or state funds for any portion of the herein described Project, this provision shall apply.**

- a) The Agency shall submit invoices, in a form outlined in the Local Government Guidelines with all necessary supporting documentation, prior to any reimbursement of allowable costs. Such invoices shall be submitted no more often than monthly but at least quarterly and indicate, at a minimum, the amount charged by allowable cost line-item for the period invoiced, the amount charged by line-item to date, the total amounts charged for the period invoiced, and the total amount charged under this agreement to date. Each invoice shall be accompanied by proof of payment in the form of a canceled check or other means acceptable to the Department.
- b) The payment of an invoice by the Department shall not prejudice the Department's right to object to or question any invoice or matter in relation thereto. Such payment by the Department shall neither be construed as acceptance of any part of the work or service provided nor as final approval of any of the costs invoiced therein. The Agency's invoice shall be subject to reduction for amounts included in any invoice or payment theretofore made which are determined by the Department not to constitute allowable costs. Any payment may be reduced for overpayments or increased for under-payments on subsequent invoices.
- c) Should a dispute arise concerning payments due and owing to the Agency under this Agreement, the Department reserves the right to withhold said disputed amounts pending final resolution of the dispute.

#### **C.5 The Department's Obligations:**

**In the event that the Department is managing all phases of the Project herein described, this provision C.5 does not apply.**

- a) Subject to other provisions hereof, the Department will honor requests for reimbursement to the Agency in amounts and at times deemed by the Department to be proper to ensure the carrying out of the Project and payment of the eligible costs. However, notwithstanding any other provision of this Agreement, the Department may elect not to make a payment if:

- 1) **Misrepresentation:**  
The Agency shall have made misrepresentation of a material nature in its application, or any supplement thereto or amendment thereof, or in or with respect to any document or data furnished therewith or pursuant hereto;
- 2) **Litigation:**  
There is then pending litigation with respect to the performance by the Agency of any of its duties or obligations which may jeopardize or adversely affect the Project, this Agreement or payments to the Project;
- 3) **Approval by Department:**  
The Agency shall have taken any action pertaining to the Project, which under this Agreement requires the approval of the Department or has made related expenditure or incurred related obligations without having been advised by the Department that same are approved;
- 4) **Conflict of Interests:**  
There has been any violation of the conflict of interest provisions contained herein in D.16; or
- 5) **Default:**  
The Agency has been determined by the Department to be in default under any of the provisions of the Agreement.

#### **C.6 Final Invoices:**

**In the event that the Agency shall receive federal and/or state funds for any portion of the herein described Project, this provision shall apply.**

- a) The Agency must submit the final invoice on the Project to the Department within one hundred twenty (120) days after the completion of the Project. Invoices submitted after the one hundred twenty (120) day time period may not be paid.

#### **C.7 Offset:**

**In the event that the Agency shall receive federal and/or state funds for any portion of the herein described Project, this provision shall apply.**

- a) If, after Project completion, any claim is made by the Department resulting from an audit or for work or services performed pursuant to this Agreement, the Department may offset such amount from payments due for work or services done under any agreement which it has with the Agency owing such amount if, upon demand, payment of the amount is not made within sixty (60) days to the

Department. Offsetting any amount pursuant to this section shall not be considered a breach of agreement by the Department.

### **C.8 Travel Compensation**

- a) If the Project provided for herein includes travel compensation, reimbursement to the Agency 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 subject to the Agreement Budget.

## **D. STANDARD TERMS AND CONDITIONS**

### **D.1 Governing Law:**

- a) This Agreement shall be governed by and construed in accordance with the laws of the State of Tennessee. The Agency 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 Agreement. The Agency acknowledges and agrees that any rights or claims against the State of Tennessee or its employees hereunder, and any remedies arising therefrom, shall be subject to and limited to those rights and remedies, if any, available under Tennessee Code Annotated, Sections 9-8-101 through 9-8-407.

### **D.2 General Compliance with Federal, State, and Local Law:**

- a) The Agency is assumed to be familiar with and observe and comply with those Federal, State, and local laws, ordinances, and regulations in any manner affecting the conduct of the work and those instructions and prohibitive orders issued by the State and Federal Government regarding fortifications, military and naval establishments and other areas. The Agency shall observe and comply with those laws, ordinances, regulations, instructions, and orders in effect as of the date of this Agreement.
- b) The parties hereby agree that failure of the Agency to comply with this provision shall constitute a material breach of this Agreement and subject the Agency to the repayment of all damages suffered by the State and/or the Department as a result of said breach.

### **D.3 State Law:**

- a) Nothing in the Agreement shall require the Agency to observe or enforce compliance with any provision thereof, perform any other act or do any other thing in contravention of any applicable state law, provided, that if any of the provisions of the Agreement violate any applicable state law, the Agency will at once notify the Department in writing in order that appropriate changes and modifications may be

made by the Department and the Agency to the end that the Agency may proceed as soon as possible with the Project.

**D.4 Submission of the Proceedings, Agreements, and Other Documents:**

- a) The Agency shall submit to the Department such data, reports, records, agreements, and other documents relating to the Project as the Department and the Federal Highway Administration may require.

**D.5 Appropriations of Funds:**

- a) This Agreement is subject to the appropriation and availability of State and/or Federal funds. In the event that the funds are not appropriated or are otherwise unavailable, the Department reserves the right to terminate the Agreement upon thirty (30) days written notice to the Agency. Said termination shall not be deemed a breach of agreement by the Department. Upon receipt of the written notice, the Agency shall cease all work associated with the Agreement. Should such an event occur, the Agency shall be entitled to compensation for all satisfactory and authorized services completed as of the termination date. Upon such termination, the Agency shall have no right to recover from the Department any actual, general, special, incidental, consequential, or any other damages whatsoever of any description or amount.

**D.6 Rights and Remedies Not Waived:**

- a) In no event shall the making by the Department of any payment to the Agency constitute or be construed as a waiver by the Department of any breach of covenant or any default which may then exist on the part of the Agency and the making of such payment by the Department, while any such breach or default shall exist, shall in no way impair or prejudice any right or remedy available to the Department with respect to such breach or default.
- b) Nothing in this agreement shall be construed to limit the Department's right at any time to enter upon its highway right-of-way, including the area occupied by the Project, for the purpose of maintaining or reconstructing its highway facilities.

**D.7 Department and Agency Not Obligated to Third Parties:**

- a) The Department and Agency shall not be obligated hereunder to any party other than the parties to this Agreement.

**D.8 Independent Contractor:**

- a) The parties hereto, in the performance of this Agreement, shall not act as agents, employees, partners, joint ventures, or associates of one another. It is expressly acknowledged by the parties hereto that such parties are independent contracting

entities and that nothing in this Agreement 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.

- b) The Agency, being a political subdivision of the State, is governed by the provisions of the Tennessee Government Tort Liability Act, Tennessee Code Annotated, Sections 29-20-101, et seq, and all other applicable laws.

#### **D.9 Maintenance:**

- a) Nothing contained herein shall be construed as changing the maintenance responsibility of either party for any part of the referenced project that lies on its system of highways. If the project funded hereunder results in the installation of any traffic signal, lighting or other electrically operated device(s), then the Agency shall be solely responsible for and pay all costs associated with maintenance and operation of all electrically operated devices together with the related equipment, wiring and other necessary appurtenances, and the Agency shall furnish electrical current to all such devices which may be installed as part of the project. Additionally, the Agency shall be solely responsible for and pay all costs associated with the maintenance and operation of solar-powered devices, including, but not limited to, replacement of solar panels, batteries, lights and lenses.
- b) In the event that the Department is made responsible for the Construction phase in section B.1.(a) of this Agreement and to the extent that the Department is responsible for accomplishing the construction of the project, the Department will notify the Agency when Construction phase of the project has been completed; provided however, that failure to notify the Agency shall not relieve the Agency of its maintenance responsibilities.

#### **D.10 Disadvantaged Business Enterprise (DBE) Policy and Obligation:**

**In the event that the herein-described project is funded with federal funds, the following shall apply:**

- a) **DBE Policy:**  
It is the policy of the Department that Disadvantaged Business Enterprises, as defined in 49 C.F.R., Part 26, as amended, shall have the opportunity to participate in the performance of agreements financed in whole or in part with Department funds under this Agreement. The DBE requirements of applicable federal and state regulations apply to this Agreement; including but not limited to project goals and good faith effort requirements.

b) **DBE Obligation:**

The Agency and its Contractors agree to ensure that Disadvantaged Business Enterprises, as defined in applicable federal and state regulations, have the opportunity to participate in the performance of agreements and this Agreement. In this regard, all recipients and Contractors shall take all necessary and reasonable steps in accordance with applicable federal and state regulations, to ensure that the Disadvantaged Business Enterprises have the opportunity to compete for and perform agreements. The Agency shall not discriminate on the basis of race, color, national origin or sex in the award and performance of Department-assisted agreements.

**D.11 Tennessee Department of Transportation Debarment and Suspension:**

- a) In accordance with the Tennessee Department of Transportation regulations governing Contractor Debarment and Suspension, Chapter 1680-5-1, the Agency shall not permit any suspended, debarred or excluded business organizations or individual persons appearing on the Tennessee Department of Transportation Excluded Parties List to participate or act as a principal of any participant in any covered transaction related to this Project. Covered transactions include submitting a bid or proposal, entering into an agreement, or participating at any level as a subContractor.

**D.12 Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion (applies to federal aid projects):**

a) **Instructions for Certification - Primary Covered Transactions:**

**By signing and submitting this Agreement, the Agency is providing the certification set out below.**

- 1) The inability of a person to provide the certification set out below will not necessarily result in denial of participation in this covered transaction. The Agency shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the Department's determination whether to enter into this transaction. However, failure of the Agency to furnish a certification or an explanation shall disqualify such a person from participation in this transaction.
- 2) The certification in this clause is a material representation of fact upon which reliance was placed when the Department determined to enter into this transaction. If it is later determined that the Agency knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the Department may terminate this transaction for cause or default.

- 3) The Agency shall provide immediate written notice to the Department if at any time the Agency learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
- 4) The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the Department for assistance in obtaining a copy of those regulations.
- 5) The Agency agrees by entering into this Agreement that it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the Department.
- 6) The Agency further agrees by entering into this Agreement that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," provided by the Department, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
- 7) An Agency may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Non-procurement portion of the "Lists of Parties Excluded From Federal Procurement or Non-procurement Programs" (Non-procurement List) which is compiled by the General Services Administration.
- 8) Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
- 9) Except for transactions authorized under these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the Department may terminate this transaction for cause or default.

**b) Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Primary Covered Transactions:**

**The prospective participant in a covered transaction certifies to the best of its knowledge and belief, that it and its principals:**

- 1) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal, State or local department or agency;
- 2) Have not within a 3-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or agreement 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;
- 3) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in this certification; and
- 4) Have not within a 3-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.
- 5) Where the prospective participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

**D.13 Equal Employment Opportunity:**

- a) In connection with the performance of any Project, the Agency shall not discriminate against any employee or applicant for employment because of race, age, religion, color, sex, national origin, disability or marital status. The Agency will take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, age, religion, color, gender, national origin, disability or marital status. Such action shall include, but not be limited to, the following: employment upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.
- b) The Agency shall insert the foregoing provision in all agreements modified only to show the particular contractual relationship in all its agreements in connection with the development of operation of the Project, except agreements for the standard commercial supplies or raw materials, and shall require all such Contractors to



insert a similar provision in all subcontracts, except subcontracts for standard commercial supplies or raw materials. When the Project involves installation, construction, demolition, removal, site improvement, or similar work, the Agency shall post, in conspicuous places available to employees and applicants for employment for Project work, notices to be provided by the Department setting forth the provisions of the nondiscrimination clause.

**D.14 Title VI – Civil Rights Act of 1964:**

- a) The Agency shall comply with all the requirements imposed by Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d), 49 C.F.R., Part 21, and related statutes and regulations. The Agency shall include provisions in all agreements with third parties that ensure compliance with Title VI of the Civil Rights Act of 1964, 49 C.F.R., Part 21, and related statutes and regulations.

**D.15 Americans with Disabilities Act of 1990 (ADA):**

- a) The Agency will comply with all the requirements as imposed by the ADA and the regulations of the federal government issued thereunder.

**D.16 Conflicts of Interest:**

- a) The Agency warrants that no 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 Agency in connection with any work contemplated or performed relative to this Agreement.
- b) The Agency shall insert in all agreements entered into in connection with the Project or any property included or planned to be included in any Project, and shall require its Contractors to insert in each of it's subcontracts, the following provision:
  - 1) "No 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 Agency in connection with any work contemplated or performed relative to this Agreement."

**D.17 Interest of Members of or Delegates to, Congress (applies to federal aid projects):**

- a) No member of or delegate to the Congress of the United States shall be admitted to any share or part of the Agreement or any benefit arising therefrom.

**D.18 Restrictions on Lobbying (applies to federal aid projects):**

**The Agency 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 Agency, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress in connection with the awarding of any federal agreement, the making of any federal grant, the making of any federal loan, and entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal agreement, 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 grant, loan, or cooperative agreement, the Agency shall complete and submit Standard Form-LLL, “Disclosure Form to Report Lobbying,” in accordance with its instructions.
- c) The Agency shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including sub-grants, subcontracts, and agreements under grants, loans, and cooperative agreements) and that all sub-recipients of federally appropriated funds shall certify and disclose accordingly.

**D.19 Records:**

- a) The Agency shall maintain documentation for all charges against the Department under this Agreement. All costs charged to the Project, including any approved services contributed by the Agency or others, shall be supported by properly executed payrolls, time records, invoices, agreements or vouchers evidencing in proper detail and in a form acceptable to the Department the nature and propriety of the charges. The books, records, and documents of the Agency, insofar as they relate to work performed or money received under this Agreement, shall be maintained and made available upon request to the Department at all times during the period of this Agreement and for at least three (3) years after final payment is made.
- b) Copies of these documents and records shall be furnished to the Department, the Comptroller of the Treasury, or their duly appointed representatives, upon request. Records of costs incurred includes the Agency's general accounting records and the Project records, together with supporting documents and records, of the Agency and all subContractors performing work on the Project and all other records of the Agency and subContractors considered necessary by the Department for a proper audit of costs. If any litigation, claim, or audit is started before the expiration of the three (3) year period, the records shall be retained until all litigation, claims, or audit findings involving the records have been resolved.

- c) The aforesaid requirements to make records available to the Department shall be a continuing obligation of the Agency and shall survive a termination of the Agreement.

**D.20 Inspection:**

- a) The Agency shall permit, and shall require its Contractor, subContractor or materials vendor to permit, the Department's authorized representatives and authorized agents of the Federal Highway Administration to inspect all work, workmanship, materials, payrolls, records and to audit the books, records and accounts pertaining to the financing and development of the Project.
- b) The Department reserves the right to terminate this Agreement for refusal by the Agency or any Contractor, subContractor or materials vendor to allow public access to all documents, papers, letters or other material made or received in conjunction with this Agreement.

**D.21 Annual Report and Audit:**

- a) In the event that an Agency expends \$500,000 or more in federal awards in its fiscal year, the Agency must have a single or program specific audit conducted in accordance with the United States Office of Management and Budget (OMB) Circular A-133.
- b) All books of account and financial records shall be subject to annual audit by the Tennessee Comptroller of the Treasury or the Comptroller's duly appointed representative. When an audit is required, the Agency may, with the prior approval of the Comptroller, engage a licensed independent public accountant to perform the audit. The audit agreement between the Agency and the licensed independent public accountant shall be on an agreement form prescribed by the Tennessee Comptroller of the Treasury. Any such audit shall be performed in accordance with generally accepted government auditing standards, the provisions of OMB Circular A-133, if applicable, and the Audit Manual for Governmental Units and Recipients of Grant Funds published by the Tennessee Comptroller of the Treasury.
- c) The Agency shall be responsible for reimbursement of the cost of the audit prepared by the Tennessee Comptroller of the Treasury, and payment of fees for the audit prepared by the licensed independent public accountant. Payment of the audit fees of the licensed independent public accountant by the Agency shall be subject to the provisions relating to such fees contained in the prescribed agreement form noted above. Copies of such audits shall be provided to the designated cognizant state agency, the Department, the Tennessee Comptroller of the Treasury, and the

Department of Finance and Administration and shall be made available to the public.

#### **D.22 Termination for Convenience:**

- a) The Department may terminate this agreement without cause for any reason. Said termination shall not be deemed a breach of agreement by the Department. The Department shall give the Agency at least thirty (30) days written notice before the effective termination date. The Agency shall be entitled to compensation for authorized expenditures and satisfactory services completed as of the termination date, but in no event shall the Department be liable to the Agency for compensation for any service which has not been rendered. The final decision as to the amount for which the Department is liable shall be determined by the Department. Should the Department exercise this provision, the Agency shall not have any right to any actual general, special, incidental, consequential, or any other damages whatsoever of any description or amount.

#### **D.23 Termination for Cause:**

- a) If the Agency fails to properly perform its obligations under this Agreement in a timely or proper manner, or if the Agency violates any terms of this Agreement, the Department shall have the right to immediately terminate the Agreement and withhold payments in excess of fair compensation for completed services. Notwithstanding the above, the Agency shall not be relieved of liability to the Department for damages sustained by virtue of any breach of this Agreement by the Agency.
- b) In the event that the Project herein described includes Federal funds, the Agency understands that if the Federal Highway Administration (FHWA) determines that some or all of the cost of this project is ineligible for federal funds participation because of failure by the Agency to adhere to federal laws and regulations, the Agency shall be obligated to repay to the Department any federal funds received by the Agency under this agreement for any costs determined by the FHWA to be ineligible.
- c) If the Project herein described lies on the state highway system and the Agency fails to perform any obligation under this section of this agreement, the Department shall have the right to cause the Agency, by giving written notice to the Agency, to close the Project to public use and to remove the Project at its own expense and restore the premises to the satisfaction of the Department within ninety (90) days thereafter.

**D.24 How Agreement is Affected by Provisions Being Held Invalid:**

- a) If any provision of this Agreement is held invalid, the remainder of this Agreement shall not be affected. In such an instance the remainder would then continue to conform to the terms and requirements of applicable law.

**D.25 Agreement Format:**

- a) All words used herein in the singular form shall extend to and include the plural. All words used in the plural form shall extend to and include the singular. All words used in any gender shall extend to and include all genders.

**D.26 Certification Regarding Third Party Contracts:**

- a) The Agency certifies by its signature hereunder that it has no understanding or contract with a third party that will conflict with or negate this Agreement in any manner whatsoever.
- b) The Agency further certifies by its signature hereunder that it has disclosed and provided to the Department a copy of any and all contracts with any third party that relate to the Project or any work funded under this Agreement.
- c) The Agency further certifies by its signature hereunder that it will not enter into any contract with a third party that relates to this project or to any work funded under this Agreement without prior disclosure of such proposed contract to the Department.
- d) The Agency hereby agrees that failure to comply with these provisions shall be a material breach of this Agreement and may subject the Agency to the repayment of funds received from or through the Department under this Agreement and to the payment of all damages suffered by the Department as a result of said breach.

**D.27 Amendment:**

- a) This Agreement may be modified only by a written amendment, which has been executed and approved by the appropriate parties as indicated on the signature page of this Agreement.

**D.28 State Liability:**

- a) The Department shall have no liability except as specifically provided in this Agreement.

**D.29 Force Majeure:**

- a) The obligations of the parties to this Agreement are subject to prevention by causes beyond the parties' control that could not be avoided by the exercise of due care including, but not limited to, acts of God, riots, wars, strikes, epidemics or any other similar cause.

**D.30 Required Approvals:**

- a) The Department is not bound by this Agreement until it is approved by the appropriate State officials in accordance with applicable Tennessee State laws and regulations.

**D.31 Estimated Cost:**

- a) The parties recognize that the estimated costs contained herein are provided for planning purposes only. They have not been derived from any data such as actual bids, etc
- b) In the event that the Department is made responsible in section B.1.(a) of this Agreement for the management of the herein described Project, the parties understand that more definite cost estimates will be produced during project development. These more reliable estimates will be provided to the Agency by the Department as they become available.

**D.32 Third Party Liability:**

- a) The Agency shall assume all liability for third-party claims and damages arising from the construction, maintenance, existence and use of the Project to the extent provided by Tennessee Law and subject to the provisions, terms and liability limits of the Governmental Tort Liability Act, T.C.A. Section 29-20-101, et seq, and all applicable laws.

**D.33 Deposits:**

- a) Required deposits and any other costs for which the Agency is liable shall be made available to the Department, whenever requested.

**D.34 Department Activities:**

- a) Where the Agency is managing any phase of the project the Department shall provide various activities necessary for project development. The estimated cost for these activities are included in the funds shown herein.

**D.35 Congestion Mitigation and Air Quality Requirement:**

- a) If the herein described project is funded with Congestion Mitigation Air Quality (CMAQ) funds, this section D.35 shall apply.
  - 1) Whereas the Agency understands and agrees that the funding provided hereunder must be obligated with the Federal Highway Administration within three years from the date of this agreement. It is further agreed that once all requirements have been met for development of the project, the Agency will expend the funds in a manner to insure its expenditure on a continuous basis until the funds are exhausted. Failure to follow this process may result in a loss of funds.

**D.36 Investment of Public Funds:**

- a) The facility on which this project is being developed shall remain open to the public and vehicular traffic for a sufficient time to recoup the public investment therein as shown below:

<b>Amount</b>	<b>=</b>	<b>Open to Public and Vehicular Traffic</b>
\$1.00 - \$200,000	=	5 Years
>\$200,000 - \$500,000	=	10 Years
>\$500,000 - \$1,000,000	=	20 Years

- b) Projects over \$1,000,000 carry a minimum 25 years open to public and vehicular traffic requirement and will be subject to individual review.

**D.37 Federal Funding Accountability and Transparency Act:**

- a) **If the Project is funded with federal funds the following shall apply:** The Agency shall comply with the Federal Funding Accountability and Transparency Act of 2006 (Pub.L. 109-282), as amended by section 6202 of Public Law 110-252 ("the Transparency Act") and the regulations and requirements of the federal government issued thereunder, including, but not limited to, 2 CFR Part 170. The Agency shall submit the information needed for the Transparency Act in accordance with the forms and processes identified by the Department.

IN WITNESS WHEREOF, the parties have caused this instrument to be executed by their respective authorized officials on the date first above written.

**CITY OF KINGSPORT**

**STATE OF TENNESSEE  
DEPARTMENT OF TRANSPORTATION**

By: \_\_\_\_\_ Date \_\_\_\_\_ By: \_\_\_\_\_ Date \_\_\_\_\_  
**John Clark** **John C. Schroer**  
**Mayor** **Commissioner**

**APPROVED AS TO  
FORM AND LEGALITY**

**APPROVED AS TO  
FORM AND LEGALITY**

By: \_\_\_\_\_ Date \_\_\_\_\_ By: \_\_\_\_\_ Date \_\_\_\_\_  
**Mike Billingsley** **John Reinbold**  
**Attorney** **General Counsel**



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**EXHIBIT "A"**


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**CONTRACT No.: 160012**  
**PROJECT IDENTIFICATION No.: 122156.00**  
**Federal Identification No.: BRZ-9108(47)**

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**PROJECT DESCRIPTION: FORT ROBINSON DRIVE BRIDGE OVER DRY HOLLOW, LM 0.39**

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**Change in Cost:** Cost hereunder is controlled by the availability of funding thru the Off-Systems Bridge Replacement Program.

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**TYPE OF WORK: BRIDGE REPLACEMENT**

PHASE	FUNDING SOURCE	FED %	STATE %	LOCAL %	ESTIMATED COST
PE-NEPA	BRR-L	80%	0%	20%	\$100,000.00
PE-DESIGN	BRR-L	80%	0%	20%	\$142,000.00
PHASE	FUNDING SOURCE	FED %	STATE %	LOCAL %	ESTIMATED COST
ROW	BRR-L	80%	0%	20%	\$37,300.00
UTILITY	BRR-L	80%	0%	20%	\$86,300.00
PHASE	FUNDING SOURCE	FED %	STATE %	LOCAL %	ESTIMATED COST
CONST	BRR-L	80%	0%	20%	\$3,175,400.00

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**LIABILITY:** The Agency understands the estimated cost of the Project is \$3,541,000.00, and that the Department will pay, as herein provided, for 80% of the actual cost of the project with the maximum liability of the Agency being \$708,200.00. Any additional costs for the project exceeding the maximum liability shall be the responsibility of the Department. The twenty percent (20%) non-federal share of the Project must be provided by the Agency as a cash match. The Agency shall be responsible for all cost associated with non-participating items as deemed by the Department.

**INELIGIBLE COST:** One hundred percent (100%) of the actual cost will be paid from Agency funds if the use of said state or federal funds is ruled ineligible at any time by the Federal Highway Administration.

**LEGISLATIVE AUTHORITY:** STP: 23 U.S.C.A, Section 133, Surface Transportation Funds (STP).

For federal funds included in this contract, the CFDA Number is 20.205, Highway Planning and Construction funding provided through an allocation from the US Department of Transportation.

**C O N T R A C T**

THIS AGREEMENT, made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between **THE TREASURY DEPARTMENT OF THE STATE OF TENNESSEE**, hereinafter referred to as the "Treasury", and the City of Kingsport, Tennessee, hereinafter referred to as the "Local Agency".

**W I T N E S S E T H:**

**WHEREAS**, the State of Tennessee, acting through the Department of Transportation, entered into a contract with the City of Kingsport hereinafter called "Local Agency", on the \_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, relative to providing for Fort Robinson Drive Bridge over Dry Hollow at Log Mile 0.39 in Kingsport;

**WHEREAS**, said agreement provides that the Local Agency may deposit its pro rata share of the estimated cost of the project with the Treasury for temporary investment as an alternative to furnishing the Department with said share, and the Local Agency has elected to use said alternate; and

**WHEREAS**, the Local Agency has made application to participate in the Local Government Investment Pool which has been accepted by the Treasury and has deposited its pro rata share of the estimated cost of the project by immediate credit transfer and advised the Treasury thereof and identified the account to which said deposit should be credited.

**NOW THEREFORE**, in consideration of the premises, the Treasury and the Local Agency agree as follows:

The Local Agency hereby authorizes Treasury to transfer from its Local Government Investment Pool Account (LGIP Account) relative to the above identified project, to the account of the Department of Transportation, such amounts as said Department may request from time to time by written instructions from its Finance Director, without liability.

The Local Agency understands that no funds in its LGIP account shall be subject to withdrawal until the project is completed and the actual pro rata share of cost is determined. On completion, any surplus will be returned to the Local Agency pursuant to written instructions of said Department with an accounting of transfers made.

The Treasury will credit interest to the account which will be added to the principal and will become part of the surplus, if any, for disposition by said Department at the completion of the project. LGIP account statements will be sent to the Local Agency and said Department monthly. There will be an administrative fee charged to the Local Agency for the LGIP account at the same rate as other LGIP accounts are charged.

It is understood by the parties that the Treasury shall be responsible for the investment of aforesaid sum in accordance with the terms and conditions of the administration of the pool.

**IN WITNESS WHEREOF**, the parties have caused this instrument to be executed by their duly authorized officials as of the date above written.

**STATE OF TENNESSEE  
TREASURY DEPARTMENT**

By: \_\_\_\_\_

City of Kingsport  
NAME OF OFFICIAL WHOSE  
SIGNATURE APPEARS BELOW

\_\_\_\_\_  
(Type or Print)

TITLE: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

\_\_\_\_\_

TELEPHONE NO: \_\_\_\_\_

COUNTY OF: \_\_\_\_\_

SIGNATURE  
OF OFFICIAL: \_\_\_\_\_

**INSTRUCTIONS FOR DEPOSITING FUNDS  
FOR INVESTMENT IN LOCAL GOVERNMENT INVESTMENT POOL**

Enclosed herewith you will find four (4) copies of a contract relative to investing in the Local Government Investment Pool (LGIP) administered by the State Treasury Department. These are for your use in providing evidence that the Local Agency's pro-rata share of funds for the amount set forth in the project agreement relative to the project identified in the contract have been deposited for the use of the Department of Transportation. After completing the information necessary in the body of the contract you should have three (3) copies signed by an authorized official. Due to the sophistication of today's copiers, signatures in ink of a color other than black will clearly mark them as original signatures and prevent possible delays. Mail two (2) copies to , Antonia Tucker, Assistant Cash Manager, Cash Management Dept., P. O. Box 198785, Nashville, TN., 37219-8785, and one (1) copy to Neal Ham, Finance Administrator, Tennessee Department of Transportation, 800 James K. Polk Building, Nashville, TN 37243-0329. The remaining copy is to be retained for your file until a fully executed copy is returned by the Treasury Department. Any questions you have should be directed to Antonio Tucker at 615-532-1163.

**Please note that due to the volume of deposits, the Treasury Department will not confirm to TDOT that your deposit has been made more than once a month. To prevent delays in project development, once you have made the deposit, call the person who signed the letter transmitting this document. Give that person the account number to which you have made your deposit, the amount of your deposit and the date on which you submitted it.**



**AGENDA ACTION FORM**

**Amending the FY 2016 CDBG Budget Ordinance for the Addition of One (1) Position within the Community Development Program**

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

Action Form No.: AF-51-2016  
 Work Session: February 29, 2016  
 First Reading: March 1, 2016

Final Adoption: **March 15, 2016**  
 Staff Work By: Haga, Smith  
 Presentation By: Lynn Tully, AICP

**Recommendation:**

Approve the Ordinance.

**Executive Summary:**

The City of Kingsport is a member government for the Northeast TN/Southwest VA HOME Consortium, established in 2003, which allows the partner members of the Consortium to receive the benefit of HUD HOME Program entitlement funding annually. HOME funds are used by the Consortium to provide housing opportunities, including homeownership assistance and rehabilitation, for low and moderate income households within its jurisdiction. The City of Bristol, TN is the designated Lead Entity for the HOME Consortium and acts as the point jurisdiction with the Department of Housing and Urban Development which grants the funds. The City of Bristol has requested Kingsport to contract for administrative services for the Consortium, providing the necessary administrative funds to carry out required duties. The administrative duties, which would begin with the 2017 fiscal year, are significant enough to warrant the addition of a full-time staff position to the Community Development program. This position would be responsible for implementation of the Consortium's two major programs, homeownership assistance and rehabilitation/reconstruction, and would perform these duties for the whole jurisdiction, consisting of Sullivan and Washington Counties and the all the cities within, plus Bristol, VA. The Community Development budget currently has adequate resources in place to fill the new position within the 2016 fiscal year to provide adequate time for training new staff. From July 1, 2016 forward, the position will be funded through the HOME Consortium contract which is generated through the annual HOME program allocation process. As such, the life of the position depends solely on the availability of grant funding and contracts offered by the HOME Consortium Lead Entity.

**Attachments:**

1. Budget Ordinance
2. Memo


Funding source appropriate and funds are available: js

	Y	N	O
Duncan	—	—	—
George	—	—	—
McIntire	—	—	—
Mitchell	—	—	—
Olterman	—	—	—
Parham	—	—	—
Clark	—	—	—



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- 2. Memo

Funding source appropriate and funds are available: 

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George	—	—	—
McIntire	—	—	—
Mitchell	—	—	—
Oiterman	—	—	—
Parham	—	—	—
Clark	—	—	—

PRE-FILED  
CITY RECORDER

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE TO AMEND THE COMMUNITY DEVELOPMENT BUDGET BY ADDING A COMMUNITY DEVELOPMENT SPECIALIST POSITION FOR THE YEAR ENDING JUNE 30, 2016; AND TO FIX THE EFFECTIVE DATE OF THIS ORDINANCE

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

SECTION I. That the Community Development budget be amended by amending the authorized positions in the Community Development Program by adding a Community Development Specialist position at a pay grade 40 Step 3 for Fiscal Year 2015-2016. The life of the position depends solely on the on the availability of grant funding and contracts offered by the HOME Consortium Lead Entity.

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

\_\_\_\_\_  
JOHN CLARK, Mayor

ATTEST:

APPROVED AS TO FORM:

\_\_\_\_\_  
JAMES H. DEMMING, City Recorder

\_\_\_\_\_  
J. MICHAEL BILLINGSLEY, City Attorney

PASSED ON 1ST READING: \_\_\_\_\_

PASSED ON 2ND READING: \_\_\_\_\_

## **Memorandum**

**To: Jeff Fleming, City Manager**

**From: C. Lynn Tully, AICP, Development Services Director**

**CC: George DeCroes, Human Services Director**

**Date: February 23, 2016**

**Re: Community Development Specialist Position**

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You may recall that we have been in discussions with the City of Bristol, TN concerning the provision of administrative services for the Northeast TN/Southwest VA HOME Consortium for the past few months. After considerable investigation and discussion among staff of both cities, as well as staff of the U. S. Department of Housing and Urban Development, it is apparent that there is an advantage to both entities for the City of Bristol, as the HOME Consortium Lead Entity, to contract with the City of Kingsport for certain administrative and program delivery services for the HOME program. The new administrative and program delivery services the City of Kingsport would provide are significant and would necessitate the addition of one staff position within the Community Development program of the Development Services Department. The contract with the City of Bristol would provide adequate funding for the position, which would be designated "Community Development Specialist", beginning July 1, 2016. We have had a part-time, temporary position funded for over a year completing various planning, code and CDBG functions. The annual cost for this position is anticipated to be approximately \$60,000 for salary and benefits. For the remainder of FY 2016, upon approval of a budget amendment ordinance, we would like to employ a full-time Community Development Specialist. The specialist would undergo training in Community Development for the balance of the fiscal year in anticipation of assuming HOME, and some CDBG, duties in FY 2017. The Community Development budget currently has adequate funding for this position for the remainder of FY 2016.





**AGENDA ACTION FORM**

**Amending the Franchise Fee with Kingsport Power Company (d.b.a. AEP Appalachian Power)**

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

Action Form No.: AF-50-2016  
 Work Session: February 29, 2016  
 First Reading: March 1, 2016

**Final Adoption: March 15, 2016**  
 Staff Work By: Ryan McReynolds  
 Presentation By: Ryan McReynolds

**Recommendation:**

Approve the Ordinance.

**Executive Summary:**

The City of Kingsport approved a franchise agreement with Kingsport Power Company, d.b.a. AEP Appalachian Power, (See AF-20-2016) allowing Kingsport Power the right to utilize the right of ways owned or controlled by the city for electrical distribution, thereby continuing to provide such service the citizens of Kingsport. Since AEP is a privately held company, not a public utility, and since it is serving the citizens with a necessary utility, its relationship with the city is defined through a Franchise Agreement.

The ordinance establishing and approving the franchise agreement authorizes the city to enact a franchise fee. The board approved ordinance no. 6542 establishing the fee with the knowledge that it might be amended. The attached ordinance amends ordinance no. 6542 by providing a franchise fee of 5% per customer per month for sales on the first 0 – 500,000 kilowatt hours (kWh) and 1.5% for all kilowatt hours over 500,000. This is consistent with franchise agreements that have been in place the past few decades throughout the country.

**Attachments:**


- 1. Ordinance – Franchise Fee

	Y	N	O
Duncan	—	—	—
George	—	—	—
McIntire	—	—	—
Mitchell	—	—	—
Olterman	—	—	—
Parham	—	—	—
Clark	—	—	—



**AGENDA ACTION FORM**

**Amending the Franchise Fee with Kingsport Power Company (d.b.a. AEP Appalachian Power)**

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

Action Form No.: AF-50-2016  
Work Session: February 29, 2016  
First Reading: March 1, 2016

Final Adoption: March 15, 2016  
Staff Work By: Ryan McReynolds  
Presentation By: Ryan McReynolds

**Recommendation:**

Approve the Ordinance.

**Executive Summary:**

The City of Kingsport approved a franchise agreement with Kingsport Power Company, d.b.a. AEP Appalachian Power, (See AF-20-2016) allowing Kingsport Power the right to utilize the right of ways owned or controlled by the city for electrical distribution, thereby continuing to provide such service the citizens of Kingsport. Since AEP is a privately held company, not a public utility, and since it is serving the citizens with a necessary utility, its relationship with the city is defined through a Franchise Agreement.

The ordinance establishing and approving the franchise agreement authorizes the city to enact a franchise fee. The board approved ordinance no. 6542 establishing the fee with the knowledge that it might be amended. The attached ordinance amends ordinance no. 6542 by providing a franchise fee of 5% per customer per month for sales on the first 0 – 500,000 kilowatt hours (kWh) and 1.5% for all kilowatt hours over 500,000. This is consistent with franchise agreements that have been in place the past few decades throughout the country.

**Attachments:**

- 1. Ordinance – Franchise Fee

	Y	N	O
Duncan	—	—	—
George	—	—	—
McIntire	—	—	—
Mitchell	—	—	—
Olterman	—	—	—
Parham	—	—	—
Clark	—	—	—

ORDINANCE NO. \_\_\_\_

AN ORDINANCE AMENDING ORDINANCE NUMBER 6542 BY ENACTING A FRANCHISE FEE FOR THE USE BY KINGSPORT POWER COMPANY, D/B/A AEP APPALACHIAN POWER, OF THE PUBLIC STREETS, ALLEYS, OTHER PUBLIC PLACES FOR ITS FRANCHISE FOR A SYSTEM OF ELECTRICITY DISTRIBUTION AND TRANSMISSION LINES AND OTHER NECESSARY EQUIPMENT AND FACILITIES FOR THE PURPOSE OF TRANSMITTING AND DISTRIBUTING ELECTRICITY IN, UPON, ACROSS, ALONG AND UNDER THE HIGHWAYS, STREETS, AVENUES, ROADS, COURTS, ALLEYS, LANES, WAYS, UTILITY EASEMENTS, PARKWAYS AND PUBLIC GROUNDS OF THE CITY OF KINGSPORT, TENNESSEE; AND TO FIX THE EFFECTIVE DATE OF THIS ORDINANCE

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

That Ordinance Number 6542 approved on February 2, 2016, is amended by deleting its contents in its entirety and substituting in its place the following:

WHEREAS, Kingsport Power Company, d/b/a AEP Appalachian Power, hereinafter the Company, is a regulated investor owned utility that provides electric power and energy to the citizens of the city and other surrounding areas;

WHEREAS, providing electrical power and energy requires the Company to install, operate and maintain power poles and other related facilities to be located within the public ways of the city;

WHEREAS, the parties are working to obtain approval of a new franchise to replace the franchise agreement that will expire this year;

WHEREAS, the franchise allows the city to impose a franchise fee; and

WHEREAS, the city and the Company recognize that both parties benefit from economic development in the city.

SECTION I. The board makes the following findings:

1. The Company has a franchise with the city to sell electrical power in the corporate limits of the city.
2. The Company uses the public streets, alleys, other public places and other real property owned or controlled by the city to transmit electrical power for sale and should remit a fee to the city for the use of the public streets, alleys or other public places and for the expenses for the administration of the franchise.
3. The use of large amounts of kilowatt hours (kWh) of electricity in a month does not require any significant additional use of the public streets, alleys, other public places and other real property owned or controlled by the city and a lower

percentage fee should be imposed for all kilowatt hours over 500,000 sold to a customer on a monthly basis.

SECTION II. For its use of the public streets, alleys, other public places and other real property owned or controlled by the city and for the expenses for the administration of the franchise, the Company shall pay to the city a fee equal to the aggregate of the following:

1. Five percent (5%) of the Company's gross receipts derived from retail electrical power and energy sales within the corporate limits of the city for all kilowatt hours per customer per month from 0 to 500,000; and
2. One and one-half percent (1½%) of the Company's gross receipts derived from retail electrical power and energy sales within the corporate limits of the city for all kilowatt hours per customer per month over 500,000.

SECTION III. Such fee shall be paid monthly not later than 30 days after the last day of each month. The fee shall be in addition to any and all taxes which are now or may be required hereafter to be paid pursuant to any federal, state or local law. On a monthly basis the Company shall furnish to the city a report showing the monthly amount of gross revenues, and commodity volumes by rate class, for the Company's sale of electricity in the corporate limits of the city.

SECTION IV. Acceptance of payments of the fee shall not be construed as a release or as an accord and satisfaction of any claim the city may have for further or additional sums payable hereto.

SECTION V. As may be permitted by state law, the Company may show the fees paid to the city hereto as a line item charge on the bills of the Company's customers served by the Company within the corporate limits of the city. The Company shall pay the fee to the city from the gross receipts derived from the retail electrical power and energy sales. The Company shall use its usual collection procedures, including potential cessation of service, to collect the fee from customers who have not paid their bill in full, including the fee imposed herein.

SECTION VI. The city will promptly notify the Company in writing of any geographic areas annexed by the city. Any such notice will be sent to the Company by certified mail, return receipt request, and shall contain the effective date of the annexation, maps showing the annexed area and such other information as the Company may reasonably require in order to ascertain whether there exist any customers of the Company receiving electrical service in the annexed area. To the extent there are customers of the Company therein, the gross revenues of the Company derived from the sale and distribution of electrical power and energy to such customers shall become subject to the fee provisions hereof effective on the first day of the Company's billing cycle immediately following the Company's receipt of the notice.

SECTION VII. That this ordinance shall be effective from and after the date of its passage, as the law directs, including approval by the Tennessee Regulatory Authority, as needed, the public welfare of the citizens of Kingsport requiring it.

---

JOHN CLARK, MAYOR

ATTEST:

\_\_\_\_\_  
JAMES H. DEMMING, CITY RECORDER

APPROVED AS TO FORM:

\_\_\_\_\_  
J. MICHAEL BILLINGSLEY, CITY ATTORNEY

Passed on first reading \_\_\_\_\_

Passed on second reading \_\_\_\_\_



AGENDA ACTION FORM

**Execute a Quitclaim Deed to Bank of Tennessee Conveying Any Interest the City may have in Certain Alleys Previously Declared Surplus**

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

Action Form No.: AF-59-2016  
Work Session: March 15, 2016  
First Reading: N/A

Final Adoption: March 15, 2016  
Staff Work By: Demming, Billingsley  
Presentation By: Billingsley

**Recommendation:**

Approve the Resolution.


**Executive Summary:**

On March 6, 2012, the board approved an ordinance vacating two alleys located at the 301 East Center Street and declaring the property surplus. The alleys are located entirely within property owned by the Bank of Tennessee. The alleys are in the block bounded by East Center Street, Cumberland Street, Cherokee Street and an alley. A copy of a map showing the location of the alleys is attached. The alleys are outlined in red.

The attached resolution authorizes the mayor to execute a quitclaim deed to Bank of Tennessee conveying any interest the city has, if any, in the property where the vacated alleys were located for a nominal consideration. The reason for the conveyance is because the Bank of Tennessee owns all the property surrounding the vacated alleys.

**Attachments:**

- 1. Resolution
- 2. Location Map

Funding source appropriate and funds are available: 

	Y	N	O
Duncan	—	—	—
George	—	—	—
McIntire	—	—	—
Mitchell	—	—	—
Olterman	—	—	—
Parham	—	—	—
Clark	—	—	—

RESOLUTION NO. \_\_\_\_\_

A RESOLUTION APPROVING THE CONVEYANCE TO BANK OF TENNESSEE OF ANY INTEREST THE CITY HAS IN CERTAIN REAL PROPERTY BY QUITCLAIM DEED AND AUTHORIZING THE MAYOR TO EXECUTE THE QUITCLAIM DEED

WHEREAS, by Ordinance Number 6182 the board of mayor and aldermen vacated for public use and declared surplus two alleys situated in Kingsport in the Eleventh Civil District of Sullivan County; and

WHEREAS the vacated alleys are located in the block bounded the by Center Street, Cherokee Street, Commerce Street and an alley on the south, and

WHEREAS, Bank of Tennessee owns the entire block described above; and

WHEREAS, Bank of Tennessee has requested the city execute a quitclaim deed to Bank of Tennessee for its interest, if any, the city has in the vacated alleys; and

WHEREAS, the property is of nominal value.

Now therefore,

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

SECTION I. That conveyance of the interest, if any, in the real property described hereinbelow by quitclaim deed to Bank of Tennessee 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, a Quitclaim Deed, said being generally as follows:

QUITCLAIM DEED

THIS QUITCLAIM DEED made and entered into this the \_\_\_ day of March, 2016, by and between the CITY OF KINGSPORT, TENNESSEE, a municipal corporation, Grantor, and the BANK OF TENNESSEE, Grantee.

WITNESSETH:

FOR AND IN CONSIDERATION of the sum of Ten and No/100 Dollars (\$10.00) and other good and valuable consideration, the receipt and legal sufficiency of which are hereby acknowledged, Grantor does hereby convey, remise, release and quitclaim unto Grantee, Grantee's heirs, successors and assigns all of Grantor's right, title and interest, if any, in and to land in Sullivan County, Tennessee, described as follows, to wit:

Situate, lying and being in the City of Kingsport, Eleventh (11th) Civil District of Sullivan County, Tennessee:

Being that part of a 20 foot alley south of Center Street and laying between Cherokee Street and Cumberland Street as shown in Block 11 of a plat entitled "Survey of Part of Blocks 9, 10, 11, 155 & 156" and recorded in Plat Book 3, page 74 in the Register of Deeds for Sullivan County, Tennessee at Blountville, and being an alley laying perpendicular to and between the ally described above and another alley south of the alley described above as shown in Block 11 of a plat entitled "City of

Kingsport, Tennessee and recorded in Plat Book A, page 25 in the Register of Deeds for Sullivan County, Tennessee at Blountville to which reference is here made.

AND BEING the same property vacated and declared surplus by Ordinance No. 6182 of the City of Kingsport, Tennessee, recorded in Deed Book \_\_\_\_, Page \_\_\_\_ in the Office of the Register of Deeds for Sullivan County, Tennessee, to which reference is here made.

This deed is expressly made subject to all covenants, conditions, restrictions and reservations contained in former deeds and other instruments of record applicable to said property, and any easements apparent from an inspection of said property and is conveyed "as is, where is".

IN WITNESS WHEREOF, the Party of the First Part hereunto signs its name and affixes its seal on the day and year first above written.

[Acknowledgements deleted for inclusion in 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 15th day of March, 2016.

\_\_\_\_\_  
JOHN CLARK, MAYOR

ATTEST:

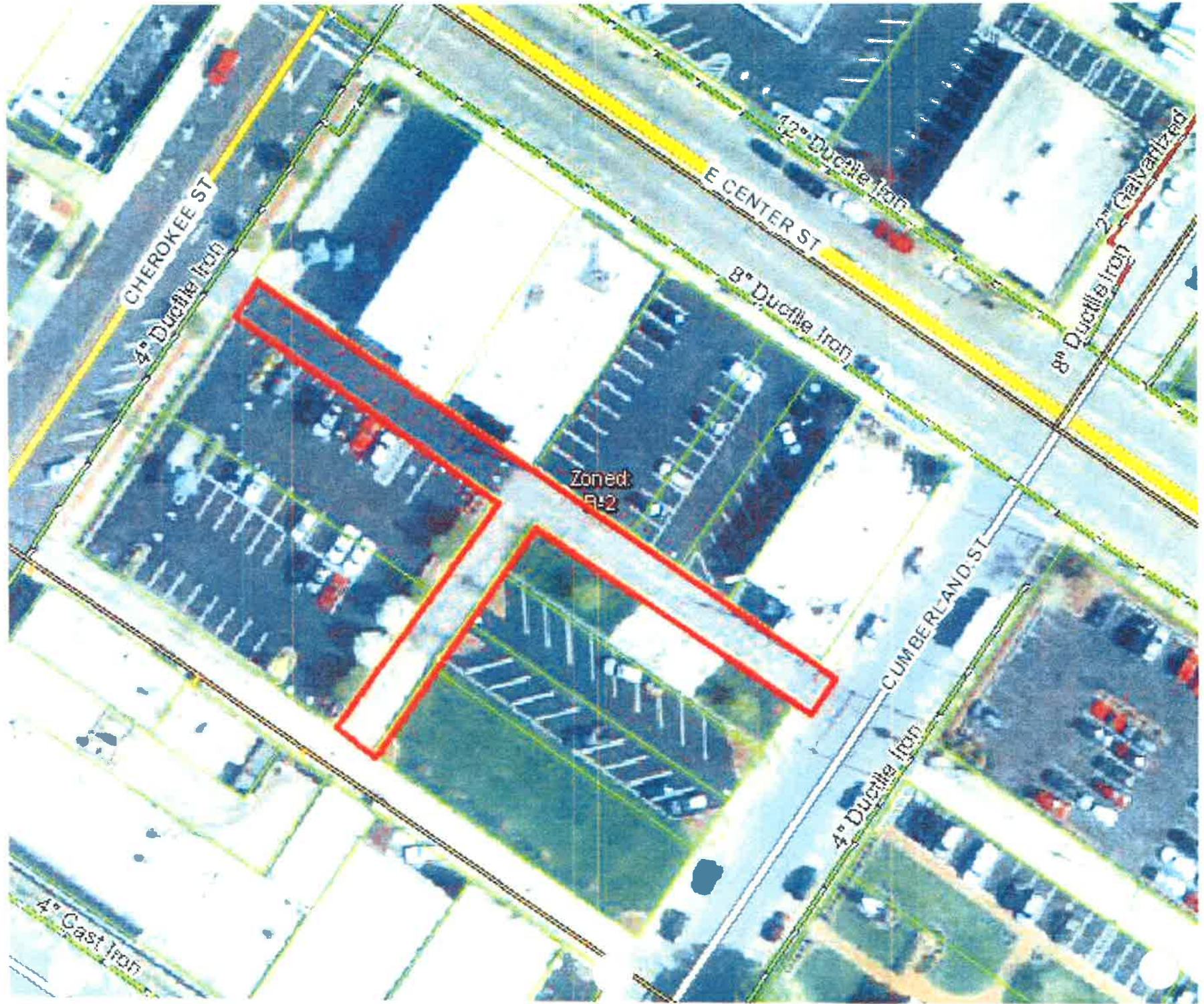
\_\_\_\_\_  
JAMES H. DEMMING, CITY RECORDER

APPROVED AS TO FORM:

\_\_\_\_\_  
J. MICHAEL BILLINGSLEY, CITY ATTORNEY

Passed on first reading \_\_\_\_\_  
Passed on second reading \_\_\_\_\_







**AGENDA ACTION FORM**

**Tennessee Heritage Conservation Trust Fund Grant for the Land Purchase at Bays Mountain Park and for Receipt of Those Funds if Awarded**

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

Action Form No.: AF-66-2016  
Work Session: March 15, 2016  
First Reading: N/A

Final Adoption: March 15, 2016  
Staff Work By: Morris Baker  
Presentation By: Morris Baker

**Recommendation:**

Approve the Resolution.

**Executive Summary:**

The Tennessee Heritage Conservation Trust Fund is accepting application for a grant to assist with acquisition of land for conservation. There is approximately 41.47+/- acres which has been identified as the "Pierce Property" which is contiguous to the park. It is located on the SE portion of the park touching the ridge and the old "Sullivan Baptist Retreat Center" property. This property acquisition will assist with preserving the scenic viewshed. An appraisal was paid for by the Bays Mountain Park Commission on March 30, 2015 and indicated a value of \$87,000. No match is required, but suggested. For this reason the grant amount will be for 75 percent of appraisal cost (\$62,250) with the remaining 25 percent (\$21,750) of purchase coming from the City and Bays Mountain Park Commission. \$10,875 from project GP1509 Bays Mountain Park Improvements and \$10,875 will from the Bays Mountain Park Commission.

**Attachments:**

1. Resolution
2. Appraisal
3. Map

Funding source appropriate and funds are available: 

	Y	N	O
Duncan	—	—	—
George	—	—	—
McIntire	—	—	—
Mitchell	—	—	—
Oltman	—	—	—
Parham	—	—	—
Clark	—	—	—

RESOLUTION NO. \_\_\_\_\_

A RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE ALL DOCUMENTS NECESSARY AND PROPER TO APPLY FOR AND RECEIVE A TENNESSEE HERITAGE CONSERVATION TRUST FUND GRANT FOR LAND PURCHASE AT BAYS MOUNTAIN PARK

WHEREAS, the city, through Bays Mountain Park, would like to apply for a grant through the Tennessee Heritage Conservation Trust Fund, which will provide funds to assist with the acquisition of land for conservation; and

WHEREAS, the funds will assist the city and Bays Mountain Park Commission in the purchase of 41.47 +/- acres identified as the "Pierce Property" which is contiguous to the park, located on the Southeast portion of the park touching the ridge and the old "Sullivan Baptist Retreat Center" property; and

WHEREAS, the maximum amount of the grant funds requested is \$62,250.00, and the grant requires match from the Bays Mountain Park Commission of \$10,875.00, and a match from the city of \$10,875.00 which is available in project account GP1509, Bays Mountain Park Improvements.

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 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 and receive grant funds from the Tennessee Heritage Conservation Trust Fund in the amount of \$62,250.00, which will provide funds to assist with the acquisition of land for conservation for Bays Mountain Park, and requires a local match of \$10,875.00.

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 15th day of March, 2016.

---

JOHN CLARK, MAYOR

ATTEST:

---

JAMES H. DEMMING, CITY RECORDER

APPROVED AS TO FORM:

---

J. MICHAEL BILLINGSLEY, CITY ATTORNEY

Mike Stone, MAI  
Cert. Gen. Appraiser

**REAL-VAL**  
Real Estate Appraisers  
149 Wexler Street  
Kingsport, Tennessee 37660  
(423) 246-3400  
www.real-val.com



March 30, 2015

Bays Mountain Park Commission  
C/O Richard Currie  
P.O. Box 88  
Kingsport, Tennessee 37662

Re: Appraisal – 41.47 Acres  
Off Hood Road  
Kingsport, Tennessee

Dear Mr. Currie:

Attached is an appraisal report of 41.47 acres, more or less, of vacant land located off Hood Road, Kingsport, Sullivan County, Tennessee. The tract consists of four, adjacent parcels under separate ownership and further identified as follows:

<u>Tax Map/Parcel</u>	<u>Land Area</u>	<u>Owner(s)</u>
075/031.01	14.61 Acres	Jack Pierce, Sr. & Betsy Ann Pierce
075/031.02	6.05 Acres	Staralee P. Avery
075/031.03	3.30 Acres	Sherry G. Grimes
075/031.06	<u>17.51 Acres</u>	Jerome G. Pierce & Lizzie L. Pierce
Total Land	41.47 Acres	

The appraisal reflects the market value of the fee simple interest in the subject property as of March 18, 2015, the date of my visual inventory of the premises.

The appraisal indicates a value for the entire real property mentioned above in the amount of...

**EIGHTY SEVEN THOUSAND DOLLARS  
(\$87,000)**

This is equivalent to **\$2,100/Acre** for the entire 41.47 acre tract. I appreciate the opportunity to be of service to you in this matter. If additional information or explanation is necessary, please advise.

Sincerely,

Mike Stone, MAI  
State Certified General  
Real Estate Appraiser  
TN License No. CG-65

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Addendum

Copies of Subject Property Deeds

## IDENTIFICATION OF THE SUBJECT PROPERTY

Subject property consists of 41.47 acres, more or less, of vacant land located off Hood Road, Kingsport, Sullivan County, Tennessee. The tract consists of four, adjacent parcels under separate ownership and further identified as follows:

<u>Tax Map/Parcel</u>	<u>Land Area</u>	<u>Owner(s)</u>
075/031.01	14.61 Acres	Jack Pierce, Sr. & Betsy Ann Pierce
075/031.02	6.05 Acres	Staralee P. Avery
075/031.03	3.30 Acres	Sherry G. Grimes
075/031.06	<u>17.51 Acres</u>	Jerome G. Pierce & Lizzie L. Pierce
Total Land	41.47 Acres	

## PURPOSE OF APPRAISAL

The purpose of this appraisal is to estimate market value of the 41.47 acre tract. Market value is defined by The Dictionary of Real Estate Appraisal, Fifth Edition published by the Appraisal Institute as well as agencies that regulate federal financial institutions in the U.S. as: *The most probable price which a property should bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller each acting prudently and knowledgeably, and assuming the price is not affected by undue stimulus.* Implicit in this definition is the consummation of a sale as of a specified date and the passing of title from seller to buyer under conditions whereby:

- Buyer and seller are typically motivated;
- Both parties are well informed or well advised, and acting in what they consider their own best interest;
- A reasonable time is allowed for exposure in the open market;
- Payment is made in terms of cash in U.S. Dollars or in terms of financial arrangements comparable thereto; and,
- The price represents the normal consideration for the property sold unaffected by special or creative financing or sales concessions granted by anyone associated with the sale.

## FUNCTION/USE OF APPRAISAL

This appraisal report is prepared for the sole and exclusive use of the appraiser's client, Bays Mountain Park Commission, to assist in the acquisition of land for preservation purposes. Use of this report by others for other purposes is not intended by the appraiser.

## **PROPERTY RIGHTS APPRAISED**

Property rights appraised consist of the fee simple interest in the real property. The Dictionary of Real Estate Appraisal, Fifth Edition published by the Appraisal Institute defines Fee Simple as: *Absolute ownership unencumbered by any other interest or estate, subject only to the limitations imposed by the governmental powers of taxation, eminent domain, police power, and escheat.*

## **DATE OF APPRAISAL**

The date to which this appraisal applies is March 18, 2015, the date of appraiser's visual inventory of the premises. This is the date at which the value opinion applies and establishes the market conditions that provide the context for the value opinion.

## **ZONING**

The property is outside the city limits of Kingsport and subject to the Sullivan County Zoning Ordinance of A-1, General Agricultural District. Uses permitted within this district include farming and accessory structures, detached single family residences, mobile homes on single lots, churches and cemeteries, schools both public and private, public utility facilities and recreational facilities. All indications are that the majority of uses to which the property is adaptable would be permitted within this zoning district.

## **UTILITIES**

Neighborhood utilities include electricity, water and telephone service. Sewage disposal is normally by on-site septic tank and drain field. Public services are police and fire protection, life saving service, street maintenance, and snow and refuse removal.

## **TAXES AND ASSESSMENT**

Sullivan County assesses vacant acreage like the subject property at 25% of Tax Assessor's valuation. The tax rate for each \$100.00 of assessed value is \$2.3054. Based on Tax Assessor's appraisal of the four parcels in the 41.47 acre tract, total tax burden is as follows:



<u>Tax Parcel</u>	<u>Tax Appraisal</u>	<u>Ratio</u>	<u>Assessed Value</u>
075/031.01 (14.61 Ac.)	\$31,500	25%	\$7,875
075/031.02 (6.05 Ac.)	\$3,200	25%	\$800
075/031.03 (3.30 Ac.)	\$1,200	25%	\$300
075/031.06 (17.51 Ac.)	<u>\$35,600</u>	25%	<u>\$8,900</u>
Totals	\$71,500		\$17,875

$$\$17,875 \div \$100.00 \times \$2.3054 = \$412.09$$

## LEGAL AND TITLE DATA

Each of the four parcels which make up the entire 41.47 acre tract is under separate ownership. A copy of the most recent deed conveyance located for each parcel is included in the Addendum.

## APPRAISAL REPORTING FORMAT

The Uniform Standards of Professional Appraisal Practice (USPAP) adopted by the Appraisal Standards Board of the Appraisal Foundation, the Appraisal Institute, and Title XI of the Financial Institution's Reform, Recovery and Enforcement Act of 1989 (FIRREA) has two written report options, Appraisal Report and Restricted Appraisal Report.

An Appraisal Report must summarize the appraiser's analysis and the rationale for the conclusions. A Restricted Appraisal Report might not include sufficient information for the client (no other intended users are allowed) to understand either the appraiser's analysis or rationale for the appraiser's conclusions. This report is developed as an Appraisal Report, which is intended to comply with the reporting requirements set forth by USPAP.

## APPRAISER COMPETENCY

The Competency Rule of the Uniform Standards of Professional Appraisal Practice (USPAP) states that "The appraiser must determine, prior to accepting the assignment, that he or she can perform the assignment competently." Competence applies to factors such as, but not limited to, an appraiser's familiarity with a specific property type, a market, a geographic area, an intended use, specific laws and regulations, or an analytical method.

Mike Stone, MAI has extensive expertise in the appraisal of properties similar to the subject in the East Tennessee/Southwest Virginia area. He is deemed qualified by education, training, and experience in the preparation of such reports

to comply with the competency rule as required by USPAP. His professional qualifications are included at the end of this report for specific reference.

## **EXTRAORDINARY ASSUMPTIONS AND HYPOTHETICAL CONDITIONS**

An extraordinary assumption is an assumption, directly related to a specific assignment, which if found to be false, could alter the appraiser's opinions or conclusions. Extraordinary assumptions presume as fact otherwise uncertain information about the property.

A hypothetical condition is a condition which is contrary to what exists, but is supposed for the purpose of analysis. Hypothetical conditions assume conditions contrary to known facts.

For both cases, this information could include physical, legal, or economic characteristics of the subject property or about conditions external to the property, such as market conditions or trends, or the integrity of data used in the analysis.

The following extraordinary assumptions and hypothetical conditions were considered in the appraisal of the subject property.

Extraordinary Assumptions:           None

Hypothetical Conditions:           None

## **OVERVIEW OF THE SCOPE OF WORK**

This appraisal assignment is being performed by the appraiser as a disinterested party; and, the analysis is not intended to be limited in scope. Subject property is 41.47 acres of vacant land. Thus, in processing this appraisal report, market data has been collected relative to sales of the most comparable acreage tracts in the surrounding area over the past several years. The data is used to consider the highest and best use of the subject property and estimate its market value. The source of this data includes courthouse records, appraiser's files, as well as discussions with property owners, local Realtors, and other knowledgeable individuals.

As discussed later in this report under The Appraisal Process, only the Sales Comparison Approach to value has been processed since this is the most appropriate method of valuation for unimproved acreage tracts of this nature. This is an appraisal report which is intended to conform in all respects to the Uniform Standards of Professional Appraisal Practice adopted by the Appraisal Standards Board of the Appraisal Foundation as well as the requirements of the Code of Professional Ethics of the Appraisal Institute. In conclusion, this

assignment is to perform an analysis of the subject property and report the market value.

## NEIGHBORHOOD ANALYSIS

The term neighborhood is defined in The Dictionary of Real Estate Appraisal, Fifth Edition as: *A group of complementary land uses; a congruous grouping of inhabitants, buildings, or business enterprises.*

In any neighborhood, or district, analysis, four basic forces must be considered. These are:

- 1. Environmental, or Physical and Locational Forces;**
- 2. Economic and Financial Forces;**
- 3. Governmental Forces; and**
- 4. Social Forces**

These forces are analyzed for the neighborhood as follows:

### 1. Environmental, or Physical and Locational Forces

The neighborhood is mostly a medium density residential community located along Reservoir Road near Bays Mountain Park and the southwestern edge of the city limits. It is bounded on the north by Bays Mountain Park, to the east by Interstate Highway 26 and on the south by South Wilcox Drive (U.S. Hwy. 93). Reservoir Road intersects with Interstate Highway 26 about two miles east of the subject property and provides relatively good linkage to local employment, educational and commercial facilities.

### Neighborhood Map



## **2. Economic and Financial Forces**

Predominant neighborhood improvements include detached single family residences many of which are situated on small acreage tracts which front on Reservoir Road and secondary connector roads. Most small acreage tracts range in size from 5 to 50 acres and are used for farming and pastureland. Typically, these farms provide supplemental income for owners who have full or part time employment elsewhere. Land values range from a low of \$500 per acre for steep wooded terrain adjacent to Bays Mountain Park to a high of \$6,000 per acre for fertile bottomland. Market data indicates that supply is generally in balance with demand and neighborhood land values have remained relatively stable over the past several years.

There has been some new growth and development over the past decade; however, the pace has been relatively slow when compared to other neighborhoods near the city limits. This is due primarily to the absence of sewer facilities in addition to the fact that Reservoir Road is mostly a relatively narrow winding right of way that is only two lanes wide. Also, a large amount of the available vacant acreage is either above or below grade so that extensive site preparation would be required for practically any type of development. The most notable neighborhood development is Willowbrook, a 15-year old, 100 acre planned unit development with residences in the \$75,000 to \$200,000 price range. Other residential improvements in the neighborhood are generally 5 to 50 year old, one or two story structures in the \$45,000 to \$125,000 price range. Market data indicates relatively stable improved property values since the latter part of 2007 due to a generally static economic climate throughout the region in the wake of the Great Recession of 2007-2009.

## **3. & 4. Governmental and Social Forces**

The neighborhood is zoned primarily for residential and agricultural uses. Portions of the area near Interstate Highway 26 are within the city limits. The remainder, to include the subject, is outside the city limits. For the most part, zoning is adequately enforced. Both the City and County have adequate planning, zoning, and architectural review departments and are receptive to new residential and commercial developments. Fees for municipal services and property taxes are generally consistent with other towns in the Tri-Cities region. The neighborhood is viewed locally as a relatively stable, safe, and secure environment for property ownership.

## **Summary and Conclusions**

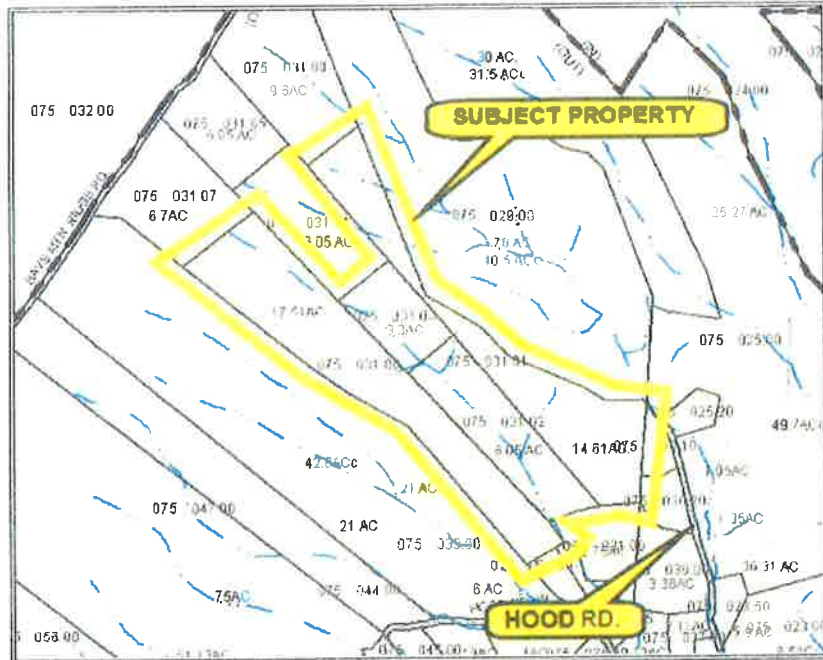
In summary, the neighborhood can be expected to continue as a medium density residential community. Stable to slightly increasing property values can be expected over the next five to ten year time frame; and, there are no apparent, adverse neighborhood influences that would affect the marketability of the subject property.

## DESCRIPTION OF THE SUBJECT PROPERTY

### Off Site Improvements

Available data indicates that access to the subject property is by deeded, 30' wide right of way from Hood Road. Hood Road is a two-lane, dead end, connector street which intersects with Reservoir Road about one mile south of the subject property.

### Subject Property As Depicted By Tax Assessor's Maps



## Land

The tract is irregular in shape with a total land area of **41.47 Acres**, more or less as indicated by Sullivan County Tax Assessor's Map. Generally speaking, the southern half of the tract near Hood Road is gently rolling wooded terrain suitable for residential improvements. The remaining northern portion near the perimeter of Bays Mountain Park is much steeper, wooded terrain with limited utility. Overall, the property is fairly typical of the majority of other small acreage tracts near the perimeter of Bays Mountain Park.

### Photographs Of The Subject Property



## HIGHEST AND BEST USE

Highest and best use is defined as that reasonable and probable use which, at the time of the appraisal, is the most profitable use for which the property is adapted or capable of being used. It may also be defined as that legal use which will produce the highest present value to the property as a whole. The opinion of such use is based on the highest and most profitable continuous use to which the property is adapted and needed, or likely to be in demand in the reasonably near future.

The following tests must be passed in determining the highest and best use: 1. The use must be legal. 2. Demand must exist for such use. 3. The use must be profitable. 4. The use must produce the highest net return to the land as well as the property as a whole.

The southern half of the tract is mostly gently rolling wooded terrain. The narrow winding access right of way from Hood Road in conjunction with the absence of city sewer services tends to preclude any type of large-scale commercial or industrial development. Market data indicates that the greatest demand for tracts of this nature is in the residential sector. Subject's overall terrain characteristics and lack of street frontage on Hood Road tend to suggest the most profitable use to be for one or several single family residences with land for farming or pasturing of livestock. Alternatively, the tract could be subdivided into smaller acreage tracts of 5 to 10 acres and sold separately. These uses are the most feasible and represent that sector of the market for which future demand can be expected to remain relatively good.

The remaining northern portion near the perimeter of Bays Mountain Park is much steeper, wooded terrain with limited utility. Due to these adverse physical characteristics, uses are limited to additional land for expansion of the park or expansion by an adjacent or nearby property owner. Alternatively, the property could be held as vacant land until there is sufficient neighborhood growth to justify other development options.



## THE APPRAISAL PROCESS

There are three recognized approaches to the valuation of real property. These are the Cost, Income, and Sales Comparison Approaches. The use of all three approaches, while desirable, is not appropriate for all appraisal problems.

Since the subject property is undeveloped vacant land, the Sales Comparison Approach is the most appropriate and reliable method of valuation. This approach produces an estimate of value of a property by comparing it with similar properties that have recently been sold in the same or competing location.

A comprehensive investigation of the market area reveals several vacant land sales from which land values can be directly measured. Only those sales that are fairly recent and have the greatest degree of similarity to the subject land are considered. All sales analyzed have been confirmed by deed records and one or more participants in the transaction whenever possible.

Those sales considered to be most pertinent for comparison purposes are outlined on the following four pages. They are analyzed on the basis of Price/Acre of total land area which is the unit of comparison that is most indicative of the local market for undeveloped acreage tracts of this nature. Following the sales, an adjustment grid is presented which allows adjustment of each of the sales to the subject property, with a value reconciliation for the subject.

Since no two properties are exactly alike, adjustments must be made to each comparable sale for its dissimilarities as compared to the subject property. Six major categories of elements of comparison are Property Rights Conveyed, Financing Terms, Conditions of Sale, Date of Sale or Time, Location, and Physical Characteristics. Other elements of comparison may include legal encumbrances, available utilities, zoning, and potential use. Differences are evaluated and then applied to the sales in the form of plus or minus adjustments in order to indicate a value for the subject property.

## COMPARABLE LAND SALE NO. 1

Location: South side of Cox Trail Place, Kingsport, Sullivan County, Tennessee

Tax Map/Parcel: 60/34

Sale Price: \$55,000

Cash Equiv. Price: \$55,000

Date of Sale: June 29, 2011

Zoning: R-1B, Single Family Residential District

Grantor: A.L. Webb

Grantee: Rosemarie Trent

Terms of Sale: Cash to seller

Verification: Deed Affirmation/Tax Assessor's Records

Verified By: Mike Stone, MAI

Recorded: Deed Book 3000, Page 1481

Topography: Steep

Access/Visibility: Average/Average

Utilities: City water and sewer to Cox Trail Place

Land Area: 36 Acres, more or less

Remarks: Tract is located within the city limits adjacent to Bays Run Subdivision with access from Ambleside Road, Cox Trail Place, and Boyd Path Court. It is mostly steep, wooded terrain which extends to the north perimeter of Bays Mountain Park.

**Unit Price: \$1,527/Acre**



## COMPARABLE LAND SALE NO. 2

Location: 2400 Kings Bay Drive, Kingsport, Sullivan & Hawkins County, Tennessee  
Tax Map/Parcel: 60/31 & 31.1 (Sullivan County)/34/1 (Hawkins County)  
Sale Price: \$40,000  
Cash Equiv. Price: \$40,000  
Date of Sale: November 7, 2011  
Zoning: R-1B, Single Family Residential District  
Grantor: Annetee W. Pannell  
Grantee: David S. Light and wife, Janet D. Light  
Terms of Sale: Cash to seller  
Verification: Deed Affirmation/Tax Assessor's Records  
Verified By: Mike Stone, MAI  
Recorded: Deed Book 3013, Page 1844 (Sullivan County)/Deed Book 1037, Page 737 (Hawkins County)  
Topography: Very steep, rocky terrain  
Access/Visibility: Average/Average  
Utilities: City water and sewer to Kings Bay Drive  
Land Area: 38 Acres, more or less  
Remarks: Tract is located at the south end of Kings Bay Drive on the Holston River within the city limits adjacent to Bays Run Subdivision. It is a relatively narrow, steep, wooded tract which extends from the south end of Kings Bay Drive to the north perimeter of Bays Mountain Park. A portion is in Hawkins County. Since date of sale, a single family residence has been constructed with access at the end of Kings Bay Drive.

**Unit Price: \$1,053/Acre**



### COMPARABLE LAND SALE NO. 3

Location: 933 Old Blairs Gap Road, Kingsport, Sullivan County, Tennessee  
Tax Map/Parcel: 117/20  
Sale Price: \$75,000  
Cash Equiv. Price: \$75,000  
Date of Sale: August 6, 2013  
Zoning: A-1, General Agricultural District  
Grantor: Patsy K. Simmons, Julia A Jackson and Erin J. Wallen  
Grantee: Overton L. Ligon, III and Richard Scudiere  
Terms of Sale: Cash to seller  
Verification: Richard Scudiere, Buyer/Deed Affirmation/Tax Records  
Verified By: Mike Stone, MAI  
Recorded: Deed Book 3090, Page 2312  
Topography: Mostly rolling to steep wooded terrain  
Access/Visibility: Average/Average  
Utilities: City water  
Land Area: 51.7 Acres, more or less  
Remarks: Tract is on the south side of Old Blairs Gap Road off Baileyton Road in South Sullivan County near the Washington County line. Since date of sale, a mobile home has been placed on the property.

**Unit Price: \$1,451/Acre**



## COMPARABLE LAND SALE NO. 4

Location: 735 Big Ridge Road, Kingsport, Sullivan County, Tennessee  
Tax Map/Parcel: 117/58.1  
Sale Price: \$52,500  
Cash Equiv. Price: \$52,500  
Date of Sale: November 18, 2013  
Zoning: A-1, General Agricultural District  
Grantor: John Crawford and wife, Alice Crawford  
Grantee: Traci Dolen Taylor and husband, Jason S. Taylor  
Terms of Sale: Cash to seller  
Verification: Kathy Baker, Realtor & seller's agent  
Verified By: Mike Stone, MAI  
Recorded: Deed Book 3102, Page 1402  
Topography: Level to gently rolling  
Access/Visibility: Average/Average  
Utilities: City water  
Land Area: 13.1 Acres, more or less  
Remarks: Tract is on the south side of Big Ridge Road off Baileyton Road in South Sullivan County near the Washington County line. About 25% of the tract is cleared, gently rolling terrain. Remainder is gently rolling and wooded. Property purchased by the adjacent property owner at 735 Big Ridge Road.

**Unit Price: \$4,008/Acre**



## COMPARABLE SALES MAP



### MARKET DATA ANALYSIS

	Subject	Sale No. 1	Sale No. 2	Sale No. 3	Sale No. 4
Sale Price	-	\$55,000	\$40,000	\$75,000	\$52,500
Date of Sale	3/2015	6/2011	11/2011	8/2013	11/2013
Land Area	41.47 Ac.	36.00 Ac.	38.00 Ac.	51.7 Ac.	13.1 Ac.
Price/Acre	-	\$1,527/Ac.	\$1,053/Ac.	\$1,451/Ac.	\$4,008/Ac.
Property Rights	Fee Simple	Fee Simple	Fee Simple	Fee Simple	Fee Simple
Adj. For Property Rights	-	0%	0%	0%	0%
Adjusted Price/Acre	-	\$1,527/Ac.	\$1,053/Ac.	\$1,451/Ac.	\$4,008/Ac.
Market Conditions (Time)	-	3.75 Yrs.	3.33 Yrs.	1.58 Yrs.	1.33 Yrs.
Adj. For Mkt. Conditions	-	0%	0%	0%	0%
Adjusted Price/Acre	-	\$1,527/Ac.	\$1,053/Ac.	\$1,451/Ac.	\$4,008/Ac.
Location	Good	Similar	Similar	Inferior	Inferior
Adj. For Location	-	0%	0%	+25%	+25%
Physical Characteristics	-	Inferior	Inferior	Similar	Superior
Adj. For Physical Char.	-	+25%	+75%	0%	-60%
Net Adj. For Location & Physical Characteristics	-	+25%	+75%	+25%	-35%
Indicated Value Of Subject (\$/Acre)	-	\$1,909/Ac.	\$1,843/Ac.	\$1,814/Ac.	\$2,605/Ac.

Sales 1 and 2 are located adjacent to the north perimeter of Bays Mountain Park. These are the only recent, small acreage, vacant land sales that could be located in the immediate vicinity of the subject property. Two other, recent transactions of small acreage tracts, Sales 3 and 4, were located in a similar residential district of South Sullivan County near the Washington County line. Appraiser is of the opinion that these transactions represent the most recent and most reliable data available for comparison purposes as of the date of this appraisal.

A Market Conditions (Time) adjustment cannot be extracted directly from the sale data due to dissimilarities in physical characteristics. Other available data within the market area, however, tends to suggest relatively stable land values over the past several years for small acreage tracts of this nature. This is due to a generally unfavorable economic climate throughout the region in the wake of the Great Recession of 2007-2009. A Market Conditions (Time) adjustment of 0%, then, is selected as being most reflective of the market

In terms of Location, Sales 1 and 2 are adjacent to Bays Mountain Park like the subject property, and no Location adjustment is warranted. Sales 3 and 4, however, are located about seven miles south of the subject property in an area which is generally inferior in terms of access and exposure. Subject property would sell for more than either sale because of its superior location, and an upward Location adjustment of +25% to Sale 3 and 4 is most representative of the market to account for this factor.

In terms of overall physical characteristics, Sale 1, at \$1,527/Acre, is mostly steep, wooded terrain with limited utility. Subject property has a considerable amount of superior, gently rolling terrain with better utility for residential functions. When compared to this sale, subject property would typically sell for more on a price per acre basis, and an upward Physical Characteristics adjustment of +25% is most indicative of the market.

Sale 2, at \$1,053/Acre, is very steep, rocky terrain with practically no utility except for a small building site at the end of Kings Bay Drive. Thus, it represents the lowest price per acre of the four transactions. Subject property is substantially superior to this sale in terms of overall terrain characteristics and utility for residential functions and would normally sell for more on a price per acre basis. Therefore, an upward Physical Characteristics adjustment of +75% is warranted and most reflective of the actions of buyers and sellers of properties of this nature.

Sale 3, at \$1,451/Acre, is closely comparable to the subject property with respect to overall terrain characteristics and utility for residential purposes. Thus, no adjustment for Physical Characteristics is necessary.

Sale 4, at \$4,008/Acre, represents the highest price per acre of the four transactions. This is due to its relatively small size of 13.1 acres when compared to the other three sales which range from 36 to 51.7 acres. Small tracts usually sell for more on a price per acre basis than similar larger ones. Also, about 25%

of this tract is cleared, gently rolling terrain which is superior to the other three sales as well as the subject property. Subject property, then, would typically sell for less on a price per acre basis, and a downward Physical Characteristics adjustment of -60% is representative of the market.

The four indications of value for the subject property range from a low of \$1,814/Acre to a high of \$2,605/Acre with an average of \$2,043/Acre. They are fairly equal in terms of reliability and are weighted relatively evenly. Appraiser, then, is of the opinion that the market value of the subject property is in the amount of **\$2,100/Acre** of total land area or...

$$41.47 \text{ Acres} \times \$2,100/\text{Acre} = \mathbf{\$87,000} \text{ (Rounded)}$$

### **Exposure Time**

Exposure time is the estimated length of time the property interest being appraised would have been offered on the market prior to the hypothetical consummation of a sale at market value on the effective date of the appraisal; a retrospective estimate based upon an analysis of past events assuming a competitive and open market.

The overall concept of reasonable exposure encompasses not only adequate, sufficient and reasonable time but adequate, sufficient and reasonable effort. A reasonable exposure period is a function of price, time, and use. Exposure time is different for various types of real estate and value ranges and under various market conditions.

In consideration of these factors, the appraiser has analyzed the following:

- Statistical information about days on the market
- Exposure periods for comparable sales
- Knowledgeable real estate professionals
- Surveys of local and national investors

According to local brokers and property managers, typical marketing times for properties similar to the subject are between six and 12 months in the East Tennessee/Southwest Virginia market. Based on the foregoing analysis, an exposure time of nine months is reasonable, defensible, and appropriate; assuming the property is competitively priced and aggressively promoted locally.

### **Marketing Time**

Reasonable marketing time is an estimate of the amount of time it might take to sell an interest in real property at its estimated market value during the period immediately after the effective date of the appraisal; the anticipated time required to expose the property to a pool of prospective purchasers and to allow



appropriate time for negotiation, the exercise of due diligence, and the consummation of a sale at a price supportable by concurrent market conditions.

Marketing time differs from exposure time in that exposure time is always presumed to precede the effective date of the appraisal.

The anticipated marketing time is essentially a measure of the perceived risk associated with the marketability, or liquidity, of the subject property. The marketing time estimate is based on the data used in estimating the reasonable exposure time, in addition to analysis of the anticipated changes in market conditions following the appraisal.

The future price of the subject (at the end of the marketing period) may or may not equal the appraisal estimate. The future price depends on unpredictable changes in the physical real estate, demographic and economic trends, real estate markets, supply/demand characteristics for the type of property, and many other factors.

Based on the premise that present market conditions are the best indicators of future performance, a prudent investor will forecast that, under the conditions described above, the subject will require a marketing time of six to nine months.



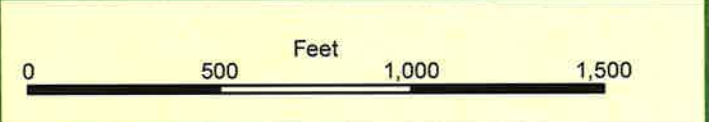
**Legend**

-  Selected Properties
-  City Owned Property
-  Streets
-  Parcels

Source: Esri, DigitalGlobe, GeoEye, i-cubed, USDA, USGS, AEX, Getmapping, Aerogrid, IGN, IGP, swisstopo, and the GIS User Community



Prepared by the City of Kingsport  
 Geographic Information System (G.I.S.)  
 Date: 3-9-16  
 Map File Name: 18227wo10454





**AGENDA ACTION FORM**

**Lease Agreement with Cayenne Rental Properties, GP and the Option to Purchase and Right of Refusal Agreement with The Press Group, LLC**

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

Action Form No.: AF-64-2016  
 Work Session: March 15, 2016  
 First Reading: N/A

Final Adoption: March 15, 2016  
 Staff Work By: Committee  
 Presentation By: David Frye/Shanna Hensley

**Recommendation:**

Approve the Resolution.

**Executive Summary:**

The Board of Education requests the Board of Mayor and Alderman to enter into a Lease Agreement for the purpose of relocating the DB EXCEL program to the Press Building on Clinchfield Street in Kingsport. The Lease Agreement with Cayenne Rental Properties, GP has an annual base rent of \$171,000.00 per year payable in equal monthly installments of \$14,250.00. As referenced in the Lease Agreement, both parties have agreed that the KCS shall have an option to purchase additional space on the third floor of the Press Building, and a right of first refusal to lease additional space on the third floor of the Press Building, during the Term of the Lease Agreement.

Simultaneously with the execution of the Lease Agreement, The Press Group, LLC and KCS will enter into an Option to Purchase and Right of First Refusal Agreement pursuant to which The Press Group, LLC will grant to KCS certain options and rights to purchase and lease additional space contiguous to the leased Premises. KCS recommends that the Lease Agreement with Cayenne Rental Properties, GP and the Purchase Option and Right of Refusal Agreement with The Press Group, LLC, be approved subject to regulatory approvals

Funding for these agreements will be from the General Purpose School Fund.

**Attachments:**

1. Resolution
2. Proposed Lease Agreement
3. Proposed Purchase Option and Right of Refusal Agreement

Funding source appropriate and funds are available: js

	Y	N	O
Duncan	—	—	—
George	—	—	—
McIntire	—	—	—
Mitchell	—	—	—
Olterman	—	—	—
Parham	—	—	—
Clark	—	—	—

RESOLUTION NO. \_\_\_\_\_

A RESOLUTION APPROVING A LEASE AGREEMENT WITH CAYENNE RENTAL PROPERTIES, GP AND AN OPTION TO PURCHASE AND RIGHT OF REFUSAL AGREEMENT WITH THE PRESS GROUP, LLC, AND AUTHORIZING THE MAYOR TO EXECUTE THE AGREEMENTS AND ALL OTHER DOCUMENTS NECESSARY AND PROPER TO EFFECTUATE THE PURPOSE OF THE AGREEMENTS

WHEREAS, the Kingsport City Schools would like to relocate the DB EXCEL program to the third floor of the Press Building at 400 Clinchfield Street; and

WHEREAS, the Press Building on Clinchfield Street is owned by The Press Group, LLC, and Cayenne Rental Properties, GP works as an affiliate for The Press Group, LLC; and

WHEREAS, relocating the DB EXCEL program to the Press Building requires the city to enter into a lease agreement with Cayenne Rental Properties, GP, and the city will pay an annual base rent of \$171,000 per year payable in equal monthly installments of \$14,250.00 for a term of 15 years; and

WHEREAS, the lease agreement includes an option to purchase during years 1, 2, 5 10 and 15 at a specified price;

WHEREAS, The Press Group, LLC, by and with Cayenne Rental Properties, GP is offering an Option to Purchase and Right of First Refusal Agreement providing for the option to purchase or lease additional space on the third floor of the Press Building; and

WHEREAS, these agreements are contingent on regulatory approval; and

WHEREAS, funding is available in the General Purpose School Fund.

Now therefore,

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

SECTION I. That a Lease Agreement with Cayenne Rental Properties, GP, is approved, subject to regulatory approval.

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 Lease Agreement with Cayenne Rental Properties, GP, 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 as follows:

**LEASE AGREEMENT**

**THIS LEASE AGREEMENT** ("Agreement") is made and entered into as of \_\_\_\_\_, 2016, by and between **CAYENNE RENTAL PROPERTIES, GP** a Tennessee general partnership ("Lessor"), and **THE CITY OF KINGSPORT for the use and benefit of its Kingsport City Schools** ("Lessee") (collectively the "Parties"). The Parties agree as follows:

## DEFINITIONS:

"Additional Rent" shall mean Lessee's Pro Rata Share of Limited Use CAM Charges.

"Limited Use CAM Charges" shall mean Lessee's Pro Rata Share of the following items:

- (i) Property and casualty insurance and liability insurance maintained by the Condominium Association for the Office Building and Common Areas (This would not include the construction of the Suite Area In Section 5 stated as Lessor Improvements);
- (ii) Exterior building repair cost (roof, walls, building, and windows);
- (iii) Sewer, drainage, insurance, security, and fire inspection the Common Areas;
- (iv) All foundations, columns, girders, beams, supports bearing walls, main walls, and roofs chases and any common expenses for upkeep, existence and safety of such improvements;
- (v) Exterior walls and panes of glass and foundations;
- (vi) Any stairwell deemed by fire code to be used as common and associated walls, floor, door or materials;
- (vii) Water drainage lines or other common type use for waste from the roof or building removal of common use;
- (viii) All utility installations for which are for such purpose of the area used if put in as a common element.
- (ix) Any labor or any other out-of-pocket expenses and fees that would be needed to provide such splitting services to obtain usage cost would be applied on a prorated usage basis if utilities are established under a common arrangement;
- (x) Such other costs and expenses as are determined by an independent architect or engineer mutually engaged by Lessor and Lessee to be substantially similar to the intended scope and purpose of the expenses listed in subsections (i) through (ix).

"Commencement Date" shall mean the earlier of (a) no more than thirty (30) days after the date on which Lessor completes its work pursuant to the Construction Rider and receives from governmental authorities a temporary or permanent Certificate of Occupancy for the Premises, or (b) the date Lessee takes possession of or commences use of the Premises for any purpose.

"Common Areas" shall mean and include the Office Building lobby, common corridors, public restrooms, access, driveways, parking areas, stairways, elevators, and other areas generally understood to be public or common areas.

"Condominium" means The Press Building Condominium located at 444 Clinchfield Street, Kingsport, Tennessee.

"Condominium Association" means the Press Building Condominium Association.

"Declaration" means the Declaration of The Press Building Condominium dated June 23, 2010, of record in Book 2885C, page 537, Register of Deeds for Sullivan County at Blountville, Tennessee, as amended from time to time.

"Office Building" means the Press Building located at 444 Clinchfield Street, Kingsport, Tennessee.

"Pro Rata Share" shall mean that percentage derived from a fraction, the numerator of which is the total space occupied by Lessee and the denominator of which is the entire space of the Office Building. The Premises shall be deemed to contain 16,596 square feet [However, only 15,636 square feet is subject to the Limited CAM] for this purpose. The Office Building shall be deemed to contain 182,153 square feet for this purpose. For the purpose of this Lease, Lessee's Pro Rata Share at the Commencement Date shall be deemed to be 8.58%.

"Property Taxes" shall mean all real and personal property taxes, charges and assessments which are now or hereafter levied with respect to the Office Building and any improvements, fixtures, equipment and other property of the Office Building.

**NOW, THEREFORE**, in consideration of the foregoing definitions, and in consideration of the mutual covenants, conditions, and understanding set forth herein below, Lessor and Lessee do hereby agree as follows:

**1. Premises.** Lessor hereby leases and rents to Lessee, and Lessee hereby takes as Lessee under Lessor, Suite Number \_\_\_\_\_ (To be determined by Kingsport Board of Education) located at 400 Clinchfield Street (, Kingsport, Sullivan County, Tennessee and the Parking Areas shown in Exhibit BA (Such Suite No. \_\_\_\_\_ and Parking Areas collectively referred to herein as the "Premises") to be used by Lessee solely for the benefit of the Kingsport City Schools.

**2. Lease Term.** This Lease shall have a term of fifteen (15) years which shall begin on the Commencement Date and end on the fifteenth (15th) anniversary date of the Commencement Date (the "Term").

**3. Rent.**

(a) Lessee shall pay to Lessor annual base rent in the amount of \$171,000.00 per year, payable in equal monthly installments of \$14,250.00 each commencing on the first day of the month in which

the Commencement Date occurs and continuing throughout the Term (the "Base Rent"); provided, however, Lessee shall pay to Lessor \$14,250.00 upon the parties' signing of this Lease, which amount shall be held by Lessor as a deposit and credited to the last month's Base Rent unless otherwise applied, at Lessor's option, to unpaid amounts due from Lessee under this Lease.

(b) Lessee shall pay Additional Rent according to the terms of this Lease. Additional Rent shall be due and payable monthly at the same time as Base Rent is due and payable, unless otherwise billed by Lessor to Lessee at other intervals.

(c) All Base Rent and Additional Rent due hereunder shall be due and payable in full in advance, without deduction or set off of any nature whatsoever. All Base Rent and Additional Rent shall be payable to Lessor at Cayenne Rental Properties, GP, Attn: Hiram Rash, 130 Regional Park Drive, Kingsport, Tennessee 37660. It is agreed that the first and last months' rent shall be prorated if the Commencement Date does not fall on the first day of a calendar month.

**4. Use of Premises.** Lessee shall use the Premises for its EXCEL program - "Excellence in a Creative Environment for Learning." Lessee shall not use the Premises or any portion thereof for any other purpose without first obtaining Lessor's prior written consent, which consent Lessor may grant or withhold in its sole discretion.

**5. Lessor's Improvements.** Lessor has entered into, or will enter into, an agreement for with GoinsRashCain, Inc. ("Construction Company") for the construction and improvement of the Premises in accordance with the Construction Rider attached hereto as Exhibit A (the "Construction Rider"). Lessor shall be responsible for all construction and improvements to the Premises as described in the Construction Rider. Lessee agrees to accept the Premises in accordance with the construction and improvements described in the Construction Rider. Lessee agrees that Lessor has made no promise or assurance to construct, improve, finish, or decorate the Premises other than as set forth in the Construction Rider. Lessor shall not materially alter or deviate from the terms of the Construction Rider except with Lessee's prior written consent.

**6. Property Tax Status.** Pursuant to a sale-leaseback transaction with The Industrial Development Board of the City of Kingsport, Tennessee ("KEDB"), KEDB is the owner of the Premises and Lessor is the prime lessee of the Premises. Accordingly, the Premises are exempt from Property Taxes of the City of Kingsport, Tennessee and Sullivan County, Tennessee.

**7. Care and Condition of Premises.**

(a) Lessee is and shall be solely responsible and liable for all repairs, maintenance, janitorial services inside the Premises, for any damage to the Premises, and for any maintenance or repair to the plumbing, electrical, appliances, or structural portions of the Premises. Lessee shall be responsible for all repairs, replacement, maintenance, and to the Premises including but not limited to glass, doors, windows, electrical, HVAC and plumbing in the Premises. These obligations are in addition to Lessee's obligation for its Pro Rata Share of Limited Use CAM Charges.

(b) Lessee shall keep and maintain the Premises in good and clean condition. Lessee shall not cause or permit any waste, damage or damage to the Premises. Lessee shall provide, at Lessee's expense, for the removal of its trash, waste, and other disposable items and shall not permit any accumulation of such materials. Upon expiration or other termination of this Lease, Lessee agrees to return the Premises to Lessor in good condition and repair, reasonable wear and tear expected.

**8. Alteration, Additions and Improvements.** Lessee shall not make any alteration, addition, or improvements to the Premises, including any outdoor signage, without Lessor's prior written consent. Lessee agrees to abide by the Condominium Master Deed and Declaration, the Bylaws and rules and regulations of the Condominium Association, and other governing documents of the Condominium and Condominium Association as adopted from time to time. Any alteration, addition or improvement so made by the Lessee shall, at the Lessor's option, become the property of the Lessor upon the expiration or sooner termination of this Agreement; provided, however, that Lessor shall have the right to require the Lessee to remove such alteration, additions or improvements at Lessee's cost upon such termination of this Agreement and return the Premises to the original condition. Any such permitted alteration, addition or improvement shall be made at Lessee's sole cost and expense and Lessee shall promptly pay all charges and costs incurred in connection therewith and shall not permit the Premises to become encumbered with any lien of any nature whatsoever.

**9. Utilities and Property Taxes.** Lessee shall establish and maintain, in Lessee's name, all accounts for water, sewer, gas, electric, trash collection and other utilities which can be separately metered and/or separately billed to Lessee. If any Property Taxes hereafter applicable to the Premises or Lessee's equipment and personal property, Lessee shall pay all such Property Taxes. To the extent applicable to Lessee's activities, Lessee shall pay all privilege taxes, excise taxes, franchise, taxes, and other taxes.

**10. Compliance with Governmental Regulations.** Lessee shall comply with all rules, laws, and ordinances of (a) the City of Kingsport, Tennessee, (b) Sullivan County, Tennessee, (c) the State of

Tennessee, and (d) any other governmental/municipal body or agency applicable to Lessee and/or the Premises.

**11. Fire and other Casualties.** All Base Rent, Additional Rent and other charges payable by Lessee under this Lease shall remain payable as scheduled notwithstanding any damage by fire or other casualty to the Premises. To the extent Lessor receives insurance proceeds in respect of fire or other casualty which damages the Premises, Lessor shall use such insurance proceeds, to the extent payable in respect of damage to the Premises, toward the repair of such damage but Lessee shall be responsible for any shortfall which may exist between the available insurance funds and the cost of repair.

**12. Insurance.** Lessee is a municipal corporation and is self-insured through the Tennessee Municipal League Risk Pool. Accordingly, Lessee will maintain such coverage during the term of this Agreement at the limits to the extent allowable under the Governmental Tort Liability Act of the State of Tennessee to cover its work under this agreement. Lessee 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. Upon the execution of this Agreement, and at any time thereafter as reasonably requested by Lessor, Lessee shall provide a certificate of each such insurance policy, naming Lessor as additional insured where required. Each insurance policy shall provide that Lessor will receive not less than thirty (30) days written notice prior to such policy being cancelled. Notwithstanding anything contained in this Agreement 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.

**13. Indemnity and Release of Liability.** Lessor shall not be responsible or liable to any agent, employee, independent contractor, guest, licensee, or invitee of Lessee for any personal injury, death, or for loss of or damage to any property occurring within, upon or about the Premises; or resulting from any failure on the part of Lessor to perform construction, maintenance or repairs to the Premises or to the Office Building in which the Premises is located; or resulting from any act or omission of Lessee; or resulting from any bursting, stoppage or leaking of water, gas, sewer or steam pipes; or resulting from theft, burglary, or vandalism. To the extent permitted by applicable law, Lessee hereby agrees to indemnify Lessor against, and to hold Lessor harmless from, any and all claims, suits, demands and/or causes of action and from and against all costs and expenses incurred by Lessor in connection therewith, including, without limitation, reasonable attorney's fees, for claim relating to personal injury, death of any person, or for any damage to or loss of any property of any person, agent, employee, independent contractor, guest, licensee or invitee of Lessee occurring within, upon or about the Premises.

**14. Lessor's Right of Access.** Lessor and its representatives may enter the Premises at any time reasonably convenient with Lessee, for the purpose of inspecting the Premises, to make such repairs and alterations as may be deemed necessary by Lessor for the safety and preservation of the Office Building, or for the purpose of showing the Premises for mortgage financing. For purposes of this paragraph, Lessee agrees to notify Lessor of any anticipated extended absence in excess of 7 days and during said absence, Lessor is specifically authorized to enter the Premises at times reasonably necessary.

**15. Authorized Occupants.** It is agreed that the Premises may be occupied by the Lessee for the conduct of Lessee's EXCEL program. Other than the teachers, staff, students and other person directly involved in the EXCEL program, Lessee shall not permit the Premises to be used for any other purpose or by any other person. At Lessor's option, occupancy of the Premises by any person other than those named shall constitute a default under the terms and conditions of this Agreement.

**16. Parking.** Lessor shall designate sixty (60) parking spaces in and around the Premises to be used by Lessee and Lessee's staff, students and invitees, as shown on Exhibit B.

**17. Events of Default.** The following shall constitute Events of Default under this Agreement: (i) Lessee's failure to pay Base Rent, Additional Rent or any other charges due from Lessee under this Lease when due, and Lessee fails to cure such nonpayment within five (5) business days after written notice from Lessor; (ii) Lessee's breach of any other term, provision, representation, or warranty under this Agreement and Lessee's failure to cure such breach within thirty (30) calendar days after written notice from Lessor; (iii) Lessee vacation or abandonment the Premises for a period of twenty one (21) consecutive days (excepting periods of non-use directly correlated to the school calendar for Kingsport City Schools and non-use related to fire or other casualties); and (iv) Lessee becomes a debtor in a bankruptcy proceeding, is insolvent, is declared insolvent, files an assignment for the benefit of creditors, has a receiver appointed, or is involved in any other debtor relief proceeding. Should an Event of Default occur, (a) Lessor shall have the right to terminate this Lease, without the necessity of demand or notice, which is hereby expressly waived by Lessee, and Lessee agrees to

peaceably surrender and vacate the Premises, leaving the Premises in good condition and repair; (b) Lessor shall be entitled to the full amount of Base Rent, Additional Rent and other charges payable by Lessee for the full remainder of the Term of this Lease, such aggregate amount due and payable to Lessor immediately, and upon such payment Lessor shall convey the Premises to Lessee as set out in paragraph 25(c); and (c) Lessor shall be entitled to such other and additional relief as Lessor may be entitled under law or equity. Lessor's remedies are cumulative and not exclusive.

**18. Binding Effect.** The covenants, terms, conditions, provisions and undertakings in this Agreement or any renewals thereof shall extend to and be binding upon the heirs, executors, administrators, successors and assigns of the respective parties hereto.

**19. Waiver.** The failure of Lessor to insist upon the prompt and strict performance of any term or condition of this Agreement or to exercise any right or remedy available to it upon any breach hereof or default hereunder shall not constitute a waiver of any such breach or default or of any subsequent breach or default, and no acceptance of payments of rent or partial payments of rent during the continuance of any such breach or default shall constitute a waiver thereof. No breach or default by Lessee shall be deemed waived by Lessor unless such waiver shall be in writing, signed by Lessor, and then only to the extent therein specified. No waiver of any such breach or default shall affect or alter any term or condition of this Agreement, and each such term or condition shall continue in full force and effect with respect to any other then-existing or subsequent breach or default hereunder by Lessee.

**20. Sublease and Assignment.** Lessee shall not sublease the Premises or any part thereof, or transfer or assign this Lease, without the prior written consent of the Lessor. Lessee agrees that should the Premises be sold or should title thereto be transferred or conveyed, or should this Agreement be assigned by Lessor, then Lessor shall be released or discharged from all of the covenants and obligations of the Lessor, provided the person to whom the Premises is sold, transferred, conveyed, or assigned acknowledges in writing executed by an authorized person that this Agreement shall continue in full force and effect.

**21. Removal of Personal Property and Lien.** At the expiration of the Term or upon the termination of this Agreement for any reason, Lessee shall remove all of Lessee's personal property from the Premises. Any personal property affixed to the Premises or any part thereof by the use of nails, screws, glue or otherwise shall, at the option of Lessor, be and become a part of the Premises and shall not be removed by Lessee; provided, however that if Lessor shall so desire, Lessee shall remove all such items and shall pay or shall reimburse Lessor for the cost and expense of all repairs to the Premises occasioned thereby.

**22. Severability.** If any provision of this Agreement shall be declared invalid or unenforceable, the remainder of this Agreement shall continue in full force and effect.

**23. Eminent Domain.** If the Premises or any part thereof be taken by eminent domain, this Agreement shall terminate at the option of either party. Upon termination, Lessee shall pay the rent prorated up to the time of termination of this Lease, and thereafter neither party shall have any claim against the other by reason of such termination. Lessee shall have no claims against any awards made to Lessor by reason of any taking by eminent domain.

**24. Time.** Time is of the essence of this Agreement and of all provision herein contained.

**25. Option to Purchase and First Right of Refusal.**

(a) Initial Term. During the Term of this Lease, Lessee shall the option to purchase the Premises in accordance with the following schedule:

<u>Lease Year</u>	<u>Purchase Price</u>
1	\$1,781,200
2	\$1,693,300
5	\$1,403,000
10	\$785,300
15	-0-

Lessee's option to purchase the Premises is exercisable only in the Lease Years designated above and shall be effective only as of the last day of the Lease Year in which the option to purchase is exercised. Lessee may exercise its option to purchase the Premises at the end of the Lease Years designated above by providing written notice to Lessor not less than ninety (90) days prior to the end of the applicable Lease Year.

(b) In the event Lessee exercises its option to purchase, Lessor will claim a charitable donation according to the following schedule:

<u>Year</u>	<u>Purchase Option</u>	<u>Charitable Donation</u>
1	\$1,781,200	\$ 712,800
2	\$1,693,300	\$ 800,700
5	\$1,403,000	\$1,091,700
10	\$ 785,300	\$1,708,700



(c) In the event Lessee exercises its option to purchase, Lessor shall convey the Premises, or cause the Premises to be conveyed, to Lessee by general warranty deed, free from all encumbrances except for any covenants and restrictions provided for under the Master Deed, Declaration, and Bylaws of the Condominium and Condominium Association and any other exceptions which are accepted in writing by Lessee. If and when the Lessee purchases the Premises or the Premises are it is donated to Lessee, only the Limited Use CAM Charges shall remain in effect so long as Lessee does not increase its access to the Common Areas of the Press Building Condominium or undertake activities which are inconsistent with its Limited Use status under this Lease Agreement and the Declaration. be the responsibility of Lessee as Purchaser. Settlement of the purchase and conveyance to Lessee shall be made within forty-five (45) days from the date of Lessee's exercise of its purchase option unless otherwise agreed to by the parties. Base Rent and Additional Rent payable by Lessee shall be adjusted to and as of the date of closing.

(d) In the event Lessee does not exercise its option to purchase the Premises Lessor will donate the Premises to Lessee at a fair market value determined by appraisal at time of contribution.

(e) Simultaneously with the Parties' execution of this Lease Agreement, The Press Group, LLC and Lessee will enter into an Option to Purchase and Right of First Refusal Agreement pursuant to which The Press Group, LLC will grant to Lessee certain options and rights to purchase and lease additional space contiguous to the Premises.

**26. Notice.** Written notices required or permitted hereunder, shall be hand delivered, or sent certified mail, return receipt requested to:

If to Lessor: Cayenne Rental Properties, GP  
Attn: Hiram Rash  
130 Regional Park Drive  
Kingsport, TN 37660

If to Lessee: Kingsport Board of Education  
City of Kingsport

Kingsport, TN 37660

**27. Attorney fees, Law and Venue.** Should Lessor retain an attorney for collection of any sums due hereunder, to enforce or defend any provision of this Agreement, or to collect any sums due under law or equity, Lessee agrees to pay Lessor's reasonable attorney fees, costs of collection, and expenses. The parties agree that this Agreement is entered into and governed by Tennessee law and that any action arising out of this Agreement, or the relationship contemplated by this Agreement, may only be brought in a chancery court of competent jurisdiction in Sullivan County, Tennessee and shall be heard by a chancellor sitting **without a jury.**

**28. Entire Agreement.** This Agreement, together with rules, laws and regulations which are incorporated herein by reference, constitute the Agreement, and contain the entire agreement and understandings between the Parties. There are no oral agreements, terms or conditions, and neither party has relied upon any representation, express or implied, not contained in this Agreement. All prior understandings, terms or conditions are deemed merged in this Agreement. This Agreement cannot be changed or supplemented except by an agreement in writing, signed by the party against whom enforcement of any waiver, change, modification or discharge is sought.

**IN WITNESS WHEREOF,** the undersigned have executed this Agreement, in duplicate the day and year first above written.

Construction Rider – Lease Exhibit “A”

March 1, 2016

Floor Plan Dated March, 2016

Construction Area: Make approximately 15,622 square feet on 3<sup>rd</sup> floor of The Press Building and 810 sq. ft. of additional space within the present BOE building available for the Kingsport Board of Education. (Design and Build out space total would 16,432 sq. ft.)

Purpose: BOE use for its EXCEL program - "EXCELLENCE IN A CREATIVE ENVIRONMENT FOR LEARNING"

Construction Description

The new offices will be constructed within the third floor of the existing building and the present Board of Education Building located along Clinchfield Street, Kingsport, Tennessee.

The present space is available and is currently prepared for interior build out. The project construction time frame is expected to be determined subject to the overall final space plan and a defined scope of construction for building occupancy. The following are expected building design features and systems all subject to completion of design and engineering documents.

**Present Structural System** – Cast in place concrete, structural steel framing, and composite concrete floors with a live load capacity of 250 lbs. per square foot.

**Building Exterior** – Primary finish is a combination of brick and concrete block masonry, and thermally glazed glass curtain wall or store front glass.

**Roof** – The present roof is in compliance with the 2012 IBC energy code and is a TPO single ply membrane roof with a 15 year roof warranty renewable for 10 additional years.

**Elevators** – The present elevator is a traction type elevator with stretcher size capacity for ease of all with disabilities, furniture and equipment installation.

**New Entry** – Ground floor entry from the **WestNorth** side of the present Board of Education/Chamber of Commerce building connected to the present elevator lobby, and stairway. The new entry will be exclusive for the Board of Education and Chamber of Commerce and also serve as an added entry foyer EXCEL.

**Electrical System** – Complete new electrical service with a central main switchgear room and in separate metering of all the present condominiums spaces. Branch feeder panels will be located within the suite for ease of access, wiring and control.

**HVAC** – The air conditioning system will be a central heating/cooling system mounted on the present roof that allows flexible zoned conditioning of all occupants with modern duct work, diffusers and controls.

**Plumbing** – All sanitary and storm water systems are generally in place with new piping throughout the building. The domestic water will be distributed to all spaces with appropriate valves, piping, and design for constant pressure/volume. Hot water will be provided by a central water heater within a primary mechanical room and piping extended to all spaces for continuous hot water.

**Sprinkler System** – The present building is fully sprinkler, and the construction will required added distribution appropriate for the new spaces.

**Site and Parking** – Designated parking along Roller Street for 60 cars with adequate lighting, landscaping, and street entry.

**Construction Materials- General Summary (Subject to final design documents)**

- Interior walls – 3 5/8" metal studs with 5/8" drywall, 3 1/2" sound batt insulation, primed and two finish coats of latex paint.

- Interior doors will be factory finished wood doors, birch veneer wood material with welded steel hollow metal frames. All door hardware is commercial grade, satin chrome finish.

- Ceilings are 2' X 2' X 5/8" thick acoustical lay tile with tegulared edge. Ceiling heights vary thru out with a nominal 9'-0" ceiling height, 12'-0" ceiling within the larger rooms such as waiting areas and assembly spaces. All perimeter offices to be a min. of 10'-0" ceilings. Some ceiling will be exposed structure painted.

- Floor Finishes – All spaces to receive commercial grade carpet or luxury vinyl except the following: Toilet floors, kitchens, lounge areas, storage rooms, pantry and secondary exit corridor to receive vinyl composition tile. A majority of the open floor are could be exposed concrete stained and polished.

- Casework – Custom fabricated laminate plastic finished cabinetry.

- Mechanical HVAC System – Install new zoned systems, supply and return air ducts, and digital control, all can be computer managed.

- Electrical System – New panel boards with feeders, outlets, switches, and required devices. Lighting to be electronic LED fixtures with parabolic light diffusers or lenses. All recess accent lighting to be round recess LED fixtures.

- Special Construction: Building is equipped for internet, telephone, and television cable connections at a central location. The present building is monitored by a close circuit television system that allows video storage for up to three months of building activity. Any CCTVS or the extension of the existing system is not in included in this scope.

**The following are not included:**

- Computer system, computer wiring, and terminal connections.

- Telephone system, telephone wiring.

- Window treatments

- Furniture or Furnishings

- Security System

- Special Lighting

- The construction cost does not include furniture, fixtures, equipment, data systems, communication systems, locking egress system, or operable walls.

- The above cost includes building allowances for the following:

- Built-in Casework: \$30,000.00

- Flooring: \$94,000.00

The parties will coordinate the installation, during construction, of the above listed "not included" items by Lessee

### **CODE COMPLIANCE AND LIFE SAFETY**

#### **Occupancy – IBC Chapter 3**

- 302.1 Group E, Educational

#### **Building Height and Area – Construction Type 5B (non-combustible)**

- Present Building is a three story building with grade level entry and egress.

- Building Area: Section 502.1 = 198,000 Square Feet

#### **Construction Type**

- Section 602.5 – Type 2B, unprotected, non-combustible construction. No rating required.
- Table 602 Separation: All building sides are vehicle accessible and the distance to the property lines exceed 30'-0".

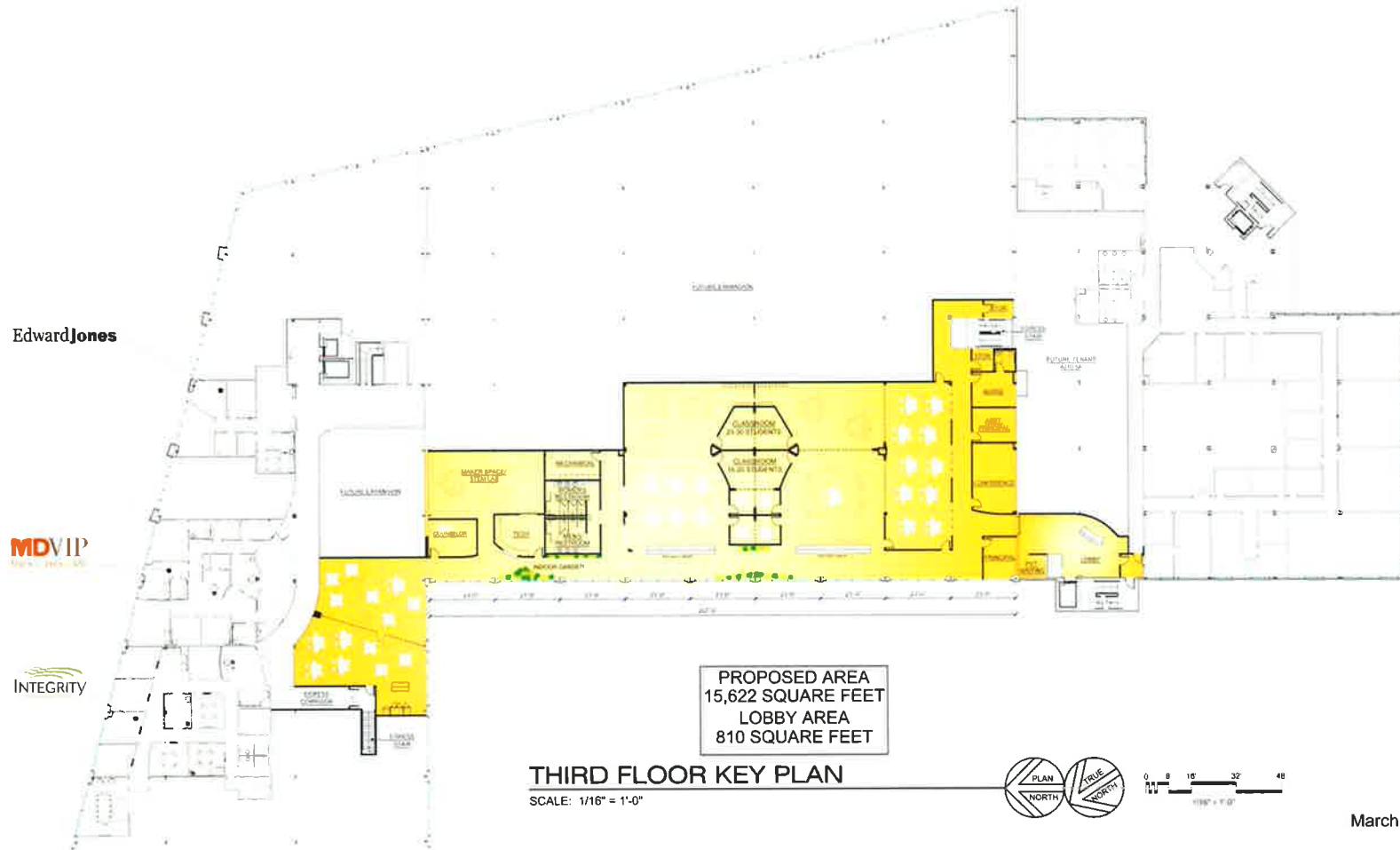
#### **Interior Finishes (New)**

- Walls: Painted gyp board
- Ceilings: 2'x2' acoustical lay in tile, Class B
- Floors: Carpet and Vinyl Composition Tile, Class II
- Doors: Hollow metal steel frames and solid core wood doors. All hardware to be commercial grade.

#### **Fire Protection System**

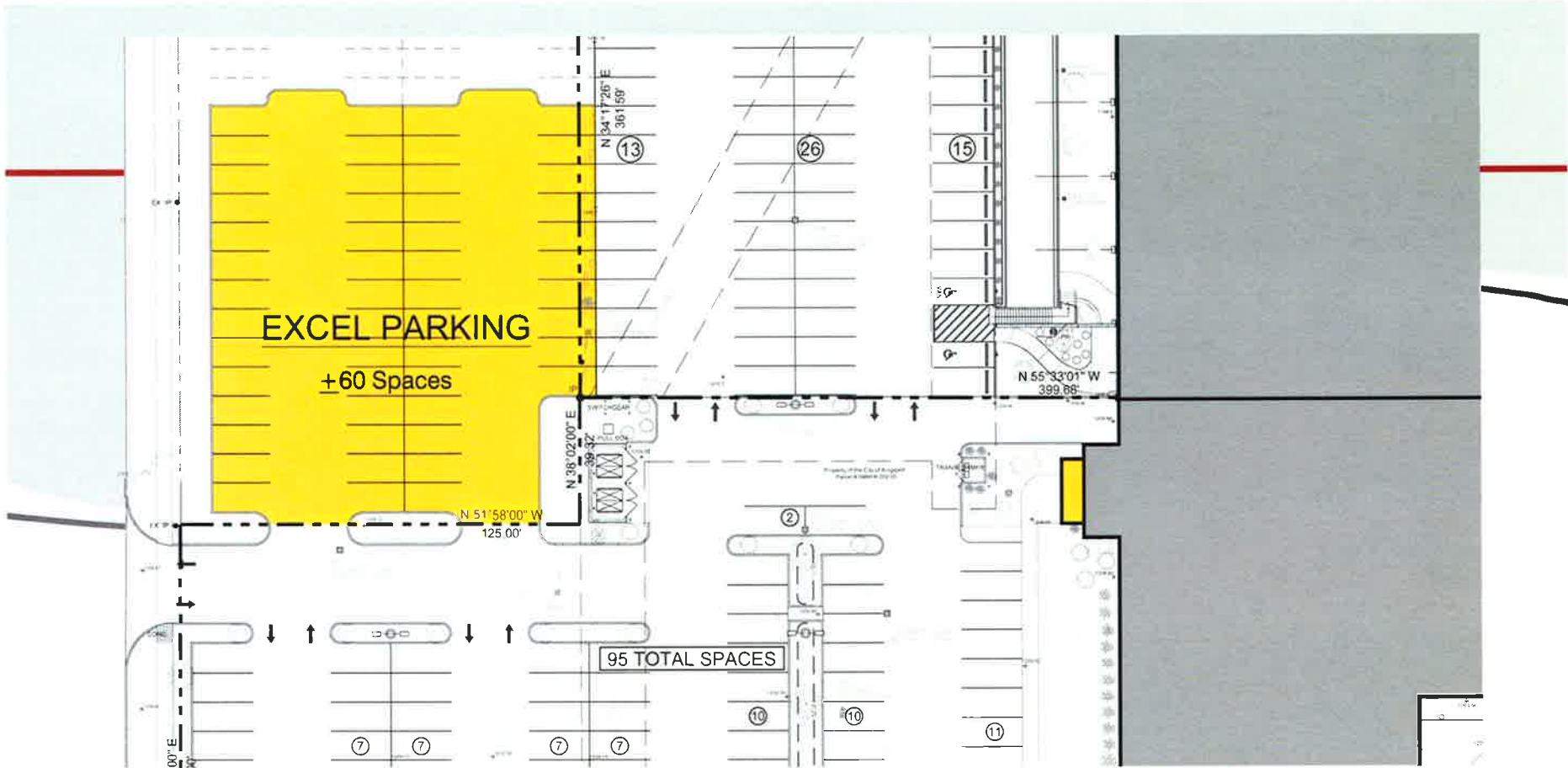
- Section 901.6.1 – A monitored Automatic Sprinkler System
- Section 907.2.2 – Fire Alarm System throughout all common areas and suites

Additions and Alterations For  
**The Press Building**  
 Kingsport, Tennessee



March 2016

## EXHIBIT B



SITE PLAN

LEASE EXHIBIT "B" PARKING--MARCH 2016



[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 Lease 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 an Option to Purchase and Right of First Refusal Agreement with The Press Group, LLC, is approved, subject to regulatory approval and execution of the Lease Agreement with Cayenne Rental Properties GP.

SECTION V. 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 Option to Purchase and Right of First Refusal Agreement with The Press Group, LLC, 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 as follows:

#### OPTION TO PURCHASE AND RIGHT OF FIRST REFUSAL AGREEMENT

**THIS OPTION TO PURCHASE AND RIGHT OF FIRST REFUSAL AGREEMENT** (the "Agreement") is made and entered into as of \_\_\_\_\_, 2016, by and between **THE PRESS GROUP, LLC**, a Tennessee limited liability company ("Grantor") and **THE CITY OF KINGSPORT** for the use and benefit of its Kingsport City Schools ("Lessee") (collectively the "Parties").

#### **RECITALS:**

A. Cayenne Properties, GP, a Tennessee general partnership and an affiliate of Grantor (herein "Lessor") and Lessee have entered into a Lease Agreement dated \_\_\_\_\_, 2016 (the "Lease Agreement"), pursuant to which Lessor has leased to Lessee a portion of the third floor of The Press Building Condominium located at 400 Clinchfield Street, Kingsport, Sullivan County, Tennessee (the "Press Building").

B. As referenced in the Lease Agreement, Lessor and Lessee have agreed that Lessee shall have an option to purchase additional space on the third floor of the Press Building, and a right of first refusal to lease additional space on the third floor of the Press Building, during the Term of the Lease Agreement, and Grantor and Lessee enter into this Agreement to set forth the terms and conditions of such option to purchase.

**NOW, THEREFORE**, in consideration of the foregoing premises and in consideration of the parties' mutual covenants and undertakings under the Lease Agreement, Grantor and Lessee do hereby agree as follows:

1. Option to Purchase. During the first five years of the Term of the Lease Agreement, Lessee shall have an option to purchase any undeveloped portion of the third floor of the Press Building which is contiguous to the Premises leased by Lessee under the Lease Agreement (herein the "Contiguous Expansion Space"). In the event Lessee exercises this purchase option, the purchase price shall be \$50.00 per square foot, with such space to be delivered by Grantor AS IS, WHERE IS, with no improvements to be made by Grantor.

2. Option to Lease Additional Space. During the Term of the Lease Agreement, Lessee shall have the option to lease any portion of the Contiguous Expansion Space. In the event Lessee exercises this option, the lease of such additional space shall be on the same terms and conditions as set forth in the Lease Agreement, and for the same period of time then remaining under the Term of the Lease Agreement, except that the Base Rent and Additional Rent shall be adjusted as necessary to account for the economic terms of such additional lease space using the same methodology as was used for the Base Rent and Additional Rent under the Lease Agreement. Base Rent for the additional lease space shall be calculated using the sum of (i) \$50.00 per square foot plus (ii) any attorney fees and closing costs incurred by Grantor or Lessor to provide such lease of additional space, amortized over the period of time remaining under the Term of the Lease Agreement at an imputed interest rate equal to 1.50% plus the Prime Rate as published from time to time in *The Wall Street Journal*. Unless otherwise agreed by Grantor or Lessor, neither Grantor nor Lessor shall have any obligation to furnish

any improvements, finishes, or build-outs for such additional lease space. At their option, Grantor and Lessor may condition the delivery of any improvements, finishes, or build-outs upon adjustments to the purchase option prices, charitable donation figures, original option prices, and charitable donation figures contained in the Lease Agreement using the same methodology as was used for such items in the Lease Agreement.

3. Right of First Refusal to Lease Additional Space. During the Term of the Lease Agreement, Lessee shall have a right of first refusal to lease any portion of the Contiguous Expansion Space. Grantor shall give Lessee written notice of Grantor's intention to lease any portion of the Contiguous Expansion Space to a third party and the terms of such lease. Lessee shall have (30) days after receipt of Grantor's written notice of such lease to exercise such right of first refusal by written notice delivered to Grantor within thirty. If Lessee exercises such right of first refusal, Lessee shall lease such space on the same terms and conditions as are offered by the third party. Lessee's failure to timely exercise its right of first refusal shall cause such right of first refusal to terminate automatically as to all space covered by the Grantor's written notice; provided, however, Lessee shall continue to have such right of first refusal as to any portion of the Contiguous Expansion Space which may remain after such third party lease becomes effective.

4. Purchase and Lease Conditions. Lessee's purchase or lease of Contiguous Expansion Space shall be subject to the following conditions and requirements:

(a) The Contiguous Expansion Space purchased or leased by Lessee, and Lessee's improvements to and use of such space, shall not block or interfere with the use and development of any of space on the third floor not purchased by Lessee or any Common Areas.

(b) The Contiguous Expansion Space purchased or leased by Lessee shall have a fire wall constructed in same manner as Lessee's original lease Premises under the Lease Agreement.

(c) The Contiguous Expansion Space purchased or leased by Lessee will not have a general access to the Press Building. The only permitted exit or access to the Press Building would be such exit as may be required by local fire code.

(d) The Contiguous Expansion Space purchased or leased by Lessee, and any permitted or required access to the Press Building, would be subject to the same conditions of Limited Use CAM Charges as provided for in the Lease Agreement.

5. General Provisions.

(a) Amendment; Waiver. This Agreement may be amended only by a written instrument signed by, or on behalf of, all parties hereto. At any time prior to the Closing Date, the parties hereto may (a) extend the time for the performance of any of the obligations or other acts of the other parties hereto, (b) waive any inaccuracies in the representations and warranties contained herein or in any document delivered pursuant hereto and (c) waive compliance with any of the agreements or conditions contained herein. A party's agreement to any extension or waiver shall be valid only if set forth in a writing signed by such party. Waiver of any provision of this Agreement, or of any breach thereof, shall be a waiver of only said specific provision or breach and shall not be deemed a waiver of any other provision or any future breach thereof.

(b) Any notices and other documents delivered under this Agreement shall be deemed received (i) if personally delivered, when delivery is tendered (ii) if mailed certified mail, return receipt requested, three (3) days after it is postmarked, or (iii) if sent for overnight delivery by a national overnight delivery company or the United States Postal Service, on the third business day after delivery to the carrier. Notices sent by other methods shall be deemed received when actually received by the addressee or its authorized agent.

(c) Governing Law. This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of Tennessee.

(d) Entire Agreement. This Agreement constitutes the entire agreement and understanding of the parties with respect to the ROFR and supersedes any and all prior agreements and understandings relating to the subject matter hereof, whether oral or written.

(e) Binding Effect. This Agreement shall be binding upon and inure to the benefit of the parties, their successors and assigns, to the extent allowed hereby.

(f) Assignment. No assignment of any rights or delegation of any obligations provided for in this Agreement shall be made by or be binding upon any party without the prior written consent of all parties to this Agreement.

(g) Counterparts. This Agreement may be executed in any number of separate counterparts, each of which shall be deemed to be an original, but which together shall constitute one and the same instrument.

**IN WITNESS WHEREOF**, the undersigned have executed this Agreement, in duplicate the day and year first above written.

[Acknowledgements Deleted for Inclusion in this Resolution]



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

ADOPTED this the 15<sup>th</sup> day of March, 2016.

\_\_\_\_\_  
JOHN CLARK, MAYOR

ATTEST:

\_\_\_\_\_  
JAMES H. DEMMING, CITY RECORDER

APPROVED AS TO FORM:

\_\_\_\_\_  
J. MICHAEL BILLINGSLEY, CITY ATTORNEY

**LEASE AGREEMENT**

**THIS LEASE AGREEMENT** (“Agreement”) is made and entered into as of \_\_\_\_\_, 2016, by and between **CAYENNE RENTAL PROPERTIES, GP** a Tennessee general partnership (“Lessor”), and **THE CITY OF KINGSPORT for the use and benefit of its Kingsport City Schools** (“Lessee”) (collectively the “Parties”). The Parties agree as follows:

**DEFINITIONS:**

“Additional Rent” shall mean Lessee’s Pro Rata Share of Limited Use CAM Charges.

“Limited Use CAM Charges” shall mean Lessee’s Pro Rata Share of the following items:

- (i) Property and casualty insurance and liability insurance maintained by the Condominium Association for the Office Building and Common Areas (This would not include the construction of the Suite Area In Section 5 stated as Lessor Improvements);
- (ii) Exterior building repair cost (roof, walls, building, and windows);
- (iii) Sewer, drainage, insurance, security, and fire inspection the Common Areas;
- (iv) All foundations, columns, girders, beams, supports bearing walls, main walls, and roofs chases and any common expenses for upkeep, existence and safety of such improvements;
- (v) Exterior walls and panes of glass and foundations;
- (vi) Any stairwell deemed by fire code to be used as common and associated walls, floor, door or materials;
- (vii) Water drainage lines or other common type use for waste from the roof or building removal of common use;
- (viii) All utility installations for which are for such purpose of the area used if put in as a common element.
- (ix) Any labor or any other out-of-pocket expenses and fees that would be needed to provide such splitting services to obtain usage cost would be applied on a prorated usage basis if utilities are established under a common arrangement;
- (x) Such other costs and expenses as are determined by an independent architect or engineer mutually engaged by Lessor and Lessee to be substantially similar to the

intended scope and purpose of the expenses listed in subsections (i) through (ix).

“Commencement Date” shall mean the earlier of (a) no more than thirty (30) days after the date on which Lessor completes its work pursuant to the Construction Rider and receives from governmental authorities a temporary or permanent Certificate of Occupancy for the Premises, or (b) the date Lessee takes possession of or commences use of the Premises for any purpose.

“Common Areas” shall mean and include the Office Building lobby, common corridors, public restrooms, access, driveways, parking areas, stairways, elevators, and other areas generally understood to be public or common areas.

“Condominium” means The Press Building Condominium located at 444 Clinchfield Street, Kingsport, Tennessee.

“Condominium Association” means the Press Building Condominium Association.

“Declaration” means the Declaration of The Press Building Condominium dated June 23, 2010, of record in Book 2885C, page 537, Register of Deeds for Sullivan County at Blountville, Tennessee, as amended from time to time.

“Office Building” means the Press Building located at 444 Clinchfield Street, Kingsport, Tennessee.

“Pro Rata Share” shall mean that percentage derived from a fraction, the numerator of which is the total space occupied by Lessee and the denominator of which is the entire space of the Office Building. The Premises shall be deemed to contain 16,596 square feet [However, only 15,636 square feet is subject to the Limited CAM] for this purpose. The Office Building shall be deemed to contain 182,153 square feet for this purpose. For the purpose of this Lease, Lessee’s Pro Rata Share at the Commencement Date shall be deemed to be 8.58%.

“Property Taxes” shall mean all real and personal property taxes, charges and assessments which are now or hereafter levied with respect to the Office Building and any improvements, fixtures, equipment and other property of the Office Building.

**NOW, THEREFORE**, in consideration of the foregoing definitions, and in consideration of the mutual covenants, conditions, and understanding set forth hereinbelow, Lessor and Lessee do hereby agree as follows:

1. **Premises.** Lessor hereby leases and rents to Lessee, and Lessee hereby takes as Lessee under Lessor, Suite Number \_\_\_\_\_ (To be determined by Kingsport Board of Education) located at 400 Clinchfield Street (, Kingsport, Sullivan County, Tennessee and the Parking Areas shown in Exhibit B (Such Suite No. \_\_\_\_\_ and Parking Areas collectively

referred to herein as the “Premises”) to be used by Lessee solely for the benefit of the Kingsport City Schools.

**2. Lease Term.** This Lease shall have a term of fifteen (15) years which shall begin on the Commencement Date and end on the fifteenth (15th) anniversary date of the Commencement Date (the “Term”).

**3. Rent.**

(a) Lessee shall pay to Lessor annual base rent in the amount of \$171,000.00 per year, payable in equal monthly installments of \$14,250.00 each commencing on the first day of the month in which the Commencement Date occurs and continuing throughout the Term (the “Base Rent”); provided, however, Lessee shall pay to Lessor \$14,250.00 upon the parties’ signing of this Lease, which amount shall be held by Lessor as a deposit and credited to the last month’s Base Rent unless otherwise applied, at Lessor’s option, to unpaid amounts due from Lessee under this Lease.

(b) Lessee shall pay Additional Rent according to the terms of this Lease. Additional Rent shall be due and payable monthly at the same time as Base Rent is due and payable, unless otherwise billed by Lessor to Lessee at other intervals.

(c) All Base Rent and Additional Rent due hereunder shall be due and payable in full in advance, without deduction or set off of any nature whatsoever. All Base Rent and Additional Rent shall be payable to Lessor at Cayenne Rental Properties, GP, Attn: Hiram Rash, 130 Regional Park Drive, Kingsport, Tennessee 37660. It is agreed that the first and last months’ rent shall be prorated if the Commencement Date does not fall on the first day of a calendar month.

**4. Use of Premises.** Lessee shall use the Premises for its EXCEL program - "Excellence in a Creative Environment for Learning." Lessee shall not use the Premises or any portion thereof for any other purpose without first obtaining Lessor’s prior written consent, which consent Lessor may grant or withhold in its sole discretion.

**5. Lessor’s Improvements.** Lessor has entered into, or will enter into, an agreement for with GoinsRashCain, Inc. (“Construction Company”) for the construction and improvement of the Premises in accordance with the Construction Rider attached hereto as Exhibit A (the “Construction Rider”). Lessor shall be responsible for all construction and improvements to the Premises as described in the Construction Rider. Lessee agrees to accept the Premises in accordance with the construction and improvements described in the Construction Rider. Lessee agrees that Lessor has made no promise or assurance to construct, improve, finish, or decorate the Premises other than as set forth in the Construction Rider. Lessor shall not materially alter or deviate from the terms of the Construction Rider except with Lessee’s prior written consent.

**6. Property Tax Status.** Pursuant to a sale-leaseback transaction with The Industrial Development Board of the City of Kingsport, Tennessee (“KEDB”), KEDB is the owner of the

Premises and Lessor is the prime lessee of the Premises. Accordingly, the Premises are exempt from Property Taxes of the City of Kingsport, Tennessee and Sullivan County, Tennessee.

**7. Care and Condition of Premises.**

(a) Lessee is and shall be solely responsible and liable for all repairs, maintenance, janitorial services inside the Premises, for any damage to the Premises, and for any maintenance or repair to the plumbing, electrical, appliances, or structural portions of the Premises. Lessee shall be responsible for all repairs, replacement, maintenance, and to the Premises including but not limited to glass, doors, windows, electrical, HVAC and plumbing in the Premises. These obligations are in addition to Lessee's obligation for its Pro Rata Share of Limited Use CAM Charges.

(b) Lessee shall keep and maintain the Premises in good and clean condition. Lessee shall not cause or permit any waste, damage or damage to the Premises. Lessee shall provide, at Lessee's expense, for the removal of its trash, waste, and other disposable items and shall not permit any accumulation of such materials. Upon expiration or other termination of this Lease, Lessee agrees to return the Premises to Lessor in good condition and repair, reasonable wear and tear expected.

**8. Alteration, Additions and Improvements.** Lessee shall not make any alteration, addition, or improvements to the Premises, including any outdoor signage, without Lessor's prior written consent. Lessee agrees to abide by the Condominium Master Deed and Declaration, the Bylaws and rules and regulations of the Condominium Association, and other governing documents of the Condominium and Condominium Association as adopted from time to time. Any alteration, addition or improvement so made by the Lessee shall, at the Lessor's option, become the property of the Lessor upon the expiration or sooner termination of this Agreement; provided, however, that Lessor shall have the right to require the Lessee to remove such alteration, additions or improvements at Lessee's cost upon such termination of this Agreement and return the Premises to the original condition. Any such permitted alteration, addition or improvement shall be made at Lessee's sole cost and expense and Lessee shall promptly pay all charges and costs incurred in connection therewith and shall not permit the Premises to become encumbered with any lien of any nature whatsoever.

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**9. Utilities and Property Taxes.** Lessee shall establish and maintain, in Lessee's name, all accounts for water, sewer, gas, electric, trash collection and other utilities which can be separately metered and/or separately billed to Lessee. If any Property Taxes hereafter applicable to the Premises or Lessee's equipment and personal property, Lessee shall pay all such Property Taxes. To the extent applicable to Lessee's activities, Lessee shall pay all privilege taxes, excise taxes, franchise, taxes, and other taxes.

**10. Compliance with Governmental Regulations.** Lessee shall comply with all rules, laws, and ordinances of (a) the City of Kingsport, Tennessee, (b) Sullivan County, Tennessee, (c) the State of Tennessee, and (d) any other governmental/municipal body or agency applicable to Lessee and/or the Premises.

**11. Fire and other Casualties.** All Base Rent, Additional Rent and other charges payable by Lessee under this Lease shall remain payable as scheduled notwithstanding any damage by fire or other casualty to the Premises. To the extent Lessor receives insurance proceeds in respect of fire or other casualty which damages the Premises, Lessor shall use such insurance proceeds, to the extent payable in respect of damage to the Premises, toward the repair of such -damage but Lessee shall be responsible for any shortfall which may exist between the available insurance funds and the cost of repair.

**12. Insurance.** Lessee is a municipal corporation and is self-insured through the Tennessee Municipal League Risk Pool. Accordingly, Lessee will maintain such coverage during the term of this Agreement at the limits to the extent allowable under the Governmental Tort Liability Act of the State of Tennessee to cover its work under this agreement. Lessee 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. Upon the execution of this Agreement, and at any time thereafter as reasonably requested by Lessor, Lessee shall provide a certificate of each such insurance policy, naming Lessor as additional insured where required. Each insurance policy shall provide that Lessor will receive not less than thirty (30) days written notice prior to such policy being cancelled. Notwithstanding anything contained this Agreement 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.

**13. Indemnity and Release of Liability.** Lessor shall not be responsible or liable to any agent, employee, independent contractor, guest, licensee, or invitee of Lessee for any personal injury, death, or for loss of or damage to any property occurring within, upon or about the Premises; or resulting from any failure on the part of Lessor to perform construction, maintenance or repairs to the Premises or to the Office Building in which the Premises is located; or resulting from any act or omission of Lessee; or resulting from any bursting, stoppage or leaking of water, gas, sewer or steam pipes; or resulting from theft, burglary, or vandalism. To the extent permitted by applicable law, Lessee hereby agrees to indemnify Lessor against, and to hold Lessor harmless from, any and all claims, suits, demands and/or causes of action and from and against all costs and expenses incurred by Lessor in connection therewith, including, without limitation, reasonable attorney's fees, for claim relating to personal injury, death of any person, or for any damage to or loss of any property of any person, agent, employee, independent contractor, guest, licensee or invitee of Lessee occurring within, upon or about the Premises.

**14. Lessor's Right of Access.** Lessor and its representatives may enter the Premises at any time reasonably convenient with Lessee, for the purpose of inspecting the Premises, to make such repairs and alterations as may be deemed necessary by Lessor for the safety and preservation of the Office Building, or for the purpose of showing the Premises for mortgage financing. For purposes of this paragraph, Lessee agrees to notify Lessor of any anticipated extended absence in excess of 7 days and during said absence, Lessor is specifically authorized to enter the Premises at times reasonably necessary.

**15. Authorized Occupants.** It is agreed that the Premises may be occupied by the Lessee for the conduct of Lessee's EXCEL program. Other than the teachers, staff, students and other person directly involved in the EXCEL program, Lessee shall not permit the Premises to be used for any other purpose or by any other person. At Lessor's option, occupancy of the Premises by any person other than those named shall constitute a default under the terms and conditions of this Agreement.

**16. Parking.** Lessor shall designate sixty (60) parking spaces in and around the Premises to be used by Lessee and Lessee's staff, students and invitees, as shown on Exhibit BA.

**17. Events of Default.** The following shall constitute Events of Default under this Agreement: (i) Lessee's failure to pay Base Rent, Additional Rent or any other charges due from Lessee under this Lease when due, and lessee fails to cure such nonpayment within five (5) business days after written notice from Lessor; (ii) Lessee's breach of any other term, provision, representation, or warranty under this Agreement and Lessee's failure to cure such breach within thirty (30) calendar days after written notice from Lessor; (iii) Lessee vacation or abandonment the Premises for a period of twenty one (21) consecutive days (excepting periods of non-use directly correlated to the school calendar for Kingsport City Schools and non-use related to fire or other casualties); and (iv) Lessee becomes a debtor in a bankruptcy proceeding, is insolvent, is declared insolvent, files an assignment for the benefit of creditors, has a receiver appointed, or is involved in any other debtor relief proceeding.

Should an Event of Default occur, (a) Lessor shall have the right to terminate this Lease, without the necessity of demand or notice, which is hereby expressly waived by Lessee, and Lessee agrees to peaceably surrender and vacate the Premises, leaving the Premises in good condition and repair; (b) Lessor shall be entitled to the full amount of Base Rent, Additional Rent and other charges payable by Lessee for the full remainder of the Term of this Lease, such aggregate amount due and payable to Lessor immediately, and upon such payment Lessor shall convey the Premises to Lessee as set out in paragraph 25(c); and (c) Lessor shall be entitled to such other and additional relief as Lessor may be entitled under law or equity. Lessor's remedies are cumulative and not exclusive.

**18. Binding Effect.** The covenants, terms, conditions, provisions and undertakings in this Agreement or any renewals thereof shall extend to and be binding upon the heirs, executors, administrators, successors and assigns of the respective parties hereto.

**19. Waiver.** The failure of Lessor to insist upon the prompt and strict performance of any term or condition of this Agreement or to exercise any right or remedy available to it upon any breach hereof or default hereunder shall not constitute a waiver of any such breach or default or of any subsequent breach or default, and no acceptance of payments of rent or partial payments of rent during the continuance of any such breach or default shall constitute a waiver thereof. No breach or default by Lessee shall be deemed waived by Lessor unless such waiver shall be in writing, signed by Lessor, and then only to the extent therein specified. No waiver of any such breach or default shall affect or alter any term or condition of this Agreement, and each such term

or condition shall continue in full force and effect with respect to any other then-existing or subsequent breach or default hereunder by Lessee.

**20. Sublease and Assignment.** Lessee shall not sublease the Premises or any part thereof, or transfer or assign this Lease, without the prior written consent of the Lessor. Lessee agrees that should the Premises be sold or should title thereto be transferred or conveyed, or should this Agreement be assigned by Lessor, then Lessor shall be released or discharged from all of the covenants and obligations of the Lessor, provided the person to whom the Premises is sold, transferred, conveyed, or assigned acknowledges in writing executed by an authorized person that this Agreement shall continue in full force and effect.

**21. Removal of Personal Property and Lien.** At the expiration of the Term or upon the termination of this Agreement for any reason, Lessee shall remove all of Lessee’s personal property from the Premises. Any personal property affixed to the Premises or any part thereof by the use of nails, screws, glue or otherwise shall, at the option of Lessor, be and become a part of the Premises and shall not be removed by Lessee; provided, however that if Lessor shall so desire, Lessee shall remove all such items and shall pay or shall reimburse Lessor for the cost and expense of all repairs to the Premises occasioned thereby.

**22. Severability.** If any provision of this Agreement shall be declared invalid or unenforceable, the remainder of this Agreement shall continue in full force and effect.

**23. Eminent Domain.** If the Premises or any part thereof be taken by eminent domain, this Agreement shall terminate at the option of either party. Upon termination, Lessee shall pay the rent prorated up to the time of termination of this Lease, and thereafter neither party shall have any claim against the other by reason of such termination. Lessee shall have no claims against any awards made to Lessor by reason of any taking by eminent domain.

**24. Time.** Time is of the essence of this Agreement and of all provision herein contained.

**25. Option to Purchase and First Right of Refusal.**

(a) Initial Term. During the Term of this Lease, Lessee shall the option to purchase the Premises in accordance with the following schedule:

<u>Lease Year</u>	<u>Purchase Price</u>
1	\$1,781,200
2	\$1,693,300
5	\$1,403,000
10	\$785,300
15	-0-

Lessee’s option to purchase the Premises is exercisable only in the Lease Years designated above and shall be effective only as of the last day of the Lease Year in which the option to purchase is



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exercised. Lessee may exercise its option to purchase the Premises at the end of the Lease Years designated above by providing written notice to Lessor not less than ninety (90) days prior to the end of the applicable Lease Year.

(b) In the event Lessee exercises its option to purchase, Lessor will claim a charitable donation according to the following schedule:

<u>Year</u>	<u>Purchase Option</u>	<u>Charitable Donation</u>
1	\$1,781,200	\$ 712,800
2	\$1,693,300	\$ 800,700
5	\$1,403,000	\$1,091,700
10	\$ 785,300	\$1,708,700
15	\$ - 0 -	\$2,494,000

(c) In the event Lessee exercises its option to purchase, Lessor shall convey the Premises, or cause the Premises to be conveyed, to Lessee by general warranty deed, free from all encumbrances except for any covenants and restrictions provided for under the Master Deed, Declaration, and Bylaws of the Condominium and Condominium Association and any other exceptions which are accepted in writing by Lessee. If and when Lessee purchases the Premises or the Premises are donated to Lessee, the Limited Use CAM Charges shall remain in effect so long as Lessee does not increase its access to the Common Areas of the Press Building Condominium or undertake activities which are inconsistent with its Limited Use status under this Lease Agreement and the Declaration. Settlement of the purchase and conveyance to Lessee shall be made within forty-five (45) days from the date of Lessee's exercise of its purchase option unless otherwise agreed to by the parties. Base Rent and Additional Rent payable by Lessee shall be adjusted to and as of the date of closing.

(d) In the event Lessee does not exercise its option to purchase the Premises Lessor will donate the Premises to Lessee at a fair market value determined by appraisal at time of contribution.

(e) Simultaneously with the Parties' execution of this Lease Agreement, The Press Group, LLC and Lessee will enter into an Option to Purchase and Right of First Refusal Agreement pursuant to which The Press Group, LLC will grant to Lessee certain options and rights to purchase and lease additional space contiguous to the Premises.

**26. Notice.** Written notices required or permitted hereunder, shall be hand delivered, or sent certified mail, return receipt requested to:

If to Lessor: Cayenne Rental Properties, GP  
Attn: Hiram Rash  
130 Regional Park Drive  
Kingsport, TN 37660

If to Lessee: Kingsport Board of Education  
City of Kingsport

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Kingsport, TN 37660

**27. Attorney fees, Law and Venue.** Should Lessor retain an attorney for collection of any sums due hereunder, to enforce or defend any provision of this Agreement, or to collect any sums due under law or equity, Lessee agrees to pay Lessor's reasonable attorney fees, costs of collection, and expenses. The parties agree that this Agreement is entered into and governed by Tennessee law and that any action arising out of this Agreement, or the relationship contemplated by this Agreement, may only be brought in a chancery court of competent jurisdiction in Sullivan County, Tennessee and shall be heard by a chancellor sitting **without a jury**.

**28. Entire Agreement.** This Agreement, together with rules, laws and regulations which are incorporated herein by reference, constitute the Agreement, and contain the entire agreement and understandings between the Parties. There are no oral agreements, terms or conditions, and neither party has relied upon any representation, express or implied, not contained in this Agreement. All prior understandings, terms or conditions are deemed merged in this Agreement. This Agreement cannot be changed or supplemented except by an agreement in writing, signed by the party against whom enforcement of any waiver, change, modification or discharge is sought.

**[Signatures on Following Page]**

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IN WITNESS WHEREOF, the undersigned have executed this Agreement, in duplicate the day and year first above written.

Lessor:

**CAYENNE RENTAL  
PROPERTIES, GP**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Lessee:

**THE CITY OF KINGSPORT,  
TENNESSEE**

By: \_\_\_\_\_  
John Clark  
Mayor

**ATTEST:**

\_\_\_\_\_  
City Recorder

**APPROVED AS TO FORM:**

\_\_\_\_\_  
J. Michael Billingsley  
City Attorney

STATE OF TENNESSEE

COUNTY OF SULLIVAN

Before me, the undersigned authority, a Notary Public in and for the State and County aforesaid, personally appeared \_\_\_\_\_, with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence), and who, upon oath, acknowledged himself/herself to be the \_\_\_\_\_ of, **CAYENNE RENTAL PROPERTIES, GP**, the within named bargainer, a Tennessee general partnership, and that he as such \_\_\_\_\_ executed the foregoing instrument for the purposes therein contained, by signing the name of the partnership by himself as \_\_\_\_\_.

WITNESS my hand and official seal this \_\_\_\_ day of \_\_\_\_\_, 2016.

\_\_\_\_\_  
NOTARY PUBLIC

My commission expires:

\_\_\_\_\_  
STATE OF TENNESSEE

COUNTY OF SULLIVAN

Before me, the undersigned authority, a Notary Public in and for the State and County aforesaid, personally appeared **John Clark**, with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence), and who, upon oath, acknowledged himself to be the Mayor of **THE CITY OF KINGSPORT, TENNESSEE**, the within named bargainer, a Tennessee municipal corporation, and that he as such Mayor executed the foregoing instrument for the purposes therein contained, by signing the name of the municipal corporation by himself as Mayor.

WITNESS my hand and official seal this \_\_\_\_ day of \_\_\_\_\_, 2016.

\_\_\_\_\_  
NOTARY PUBLIC

My commission expires:

\_\_\_\_\_

DRAFT – March 2, 2016

**Construction Rider – Lease Exhibit “A”**  
March 1, 2016  
Floor Plan Dated March, 2016

**Construction Area:** Make approximately 15,622 square feet on 3<sup>rd</sup> floor of The Press Building and 810 sq. ft. of additional space within the present BOE building available for the Kingsport Board of Education. (Design and Build out space total would 16,432 sq. ft.)

**Purpose:** BOE use for its EXCEL program - "EXCELLENCE IN A CREATIVE ENVIRONMENT FOR LEARNING"

**Construction Description**

The new offices will be constructed within the third floor of the existing building and the present Board of Education Building located along Clinchfield Street, Kingsport, Tennessee.

The present space is available and is currently prepared for interior build out. The project construction time frame is expected to be determined subject to the overall final space plan and a defined scope of construction for building occupancy. The following are expected building design features and systems all subject to completion of design and engineering documents.

**Present Structural System** – Cast in place concrete, structural steel framing, and composite concrete floors with a live load capacity of 250 lbs. per square foot.

**Building Exterior** – Primary finish is a combination of brick and concrete block masonry, and thermally glazed glass curtain wall or store front glass.

**Roof** – The present roof is in compliance with the 2012 IBC energy code and is a TPO single ply membrane roof with a 15 year roof warranty renewable for 10 additional years.

**Elevators** – The present elevator is a traction type elevator with stretcher size capacity for ease of all with utilities, furniture and equipment installation.

**New Entry** – Ground floor entry from the North side of the present Board of Education/Chamber of Commerce building connected to the present elevator lobby, and stairway. The new entry will be exclusive for the Board of Education and Chamber of Commerce and also serve as an added entry foyer EXCEL.

**Electrical System** – Complete new electrical service with a central main switchgear room and in separate metering of all the present condominiums spaces. Branch feeder panels will be located within the suite for ease of access, wiring and control.

**HVAC** – The air conditioning system will be a central heating/cooling system mounted on the present roof that allows flexible zoned conditioning of all occupants with modern duct work, diffusers and controls.

**Plumbing** – All sanitary and storm water systems are generally in place with new piping throughout the building. The domestic water will be distributed to all spaces with appropriate valves, piping, and design for constant pressure/volume. Hot water will be provided by a central water heater within a primary mechanical room and piping extended to all spaces for continuous hot water.

**Sprinkler System** – The present building is fully sprinkler, and the construction will required added distribution appropriate for the new spaces.

**Site and Parking** – Designated parking along Roller Street for 60 cars with adequate lighting, landscaping, and street entry.

**Construction Materials- General Summary (Subject to final design documents)**

- Interior walls – 3 5/8" metal studs with 5/8" drywall, 3 1/2" sound batt insulation, primed and two finish coats of latex paint.
- Interior doors will be factory finished wood doors, birch veneer wood material with welded steel hollow metal frames. All door hardware is commercial grade, satin chrome finish.

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- Ceilings are 2' X 2' X 5/8" thick acoustical lay tile with tegulared edge. Ceiling heights vary thru out with a nominal 9'-0" ceiling height, 12'-0" ceiling within the larger rooms such as waiting areas and assembly spaces. All perimeter offices to be a min. of 10'-0" ceilings. Some ceiling will be exposed structure painted.
- Floor Finishes – All spaces to receive commercial grade carpet or luxury vinyl except the following: Toilet floors, kitchens, lounge areas, storage rooms, pantry and secondary exit corridor to receive vinyl composition tile. A majority of the open floor are could be exposed concrete stained and polished.
- Casework – Custom fabricated laminate plastic finished cabinetry.
- Mechanical HVAC System – Install new zoned systems, supply and return air ducts, and digital control, all can be computer managed.
- Electrical System – New panel boards with feeders, outlets, switches, and required devices. Lighting to be electronic LED fixtures with parabolic light diffusers or lenses. All recess accent lighting to be round recess LED fixtures.
- Special Construction: Building is equipped for internet, telephone, and television cable connections at a central location. The present building is monitored by a close circuit television system that allows video storage for up to three months of building activity. Any CCTVS or the extension of the existing system is not in included in this scope.

**The following are not included:**

- Computer system, computer wiring, and terminal connections.
- Telephone system, telephone wiring.
- Window treatments
- Furniture or Furnishings
- Security System
- Special Lighting
- The construction cost does not include furniture, fixtures, equipment, data systems, communication systems, locking egress system, or operable walls.
- The above cost includes building allowances for the following:
  - Built-in Casework: \$30,000.00
  - Flooring: \$94,000.00

**CODE COMPLIANCE AND LIFE SAFETY**

**Occupancy – IBC Chapter 3**

- 302.1 Group E, Educational

**Building Height and Area – Construction Type 5B (non-combustible)**

- Present Building is a three story building with grade level entry and egress.
- Building Area: Section 502.1 = 198,000 Square Feet

**Construction Type**

- Section 602.5 – Type 2B, unprotected, non-combustible construction. No rating required.
- Table 602 Separation: All building sides are vehicle accessible and the distance to the property lines exceed 30'-0".

**Interior Finishes (New)**

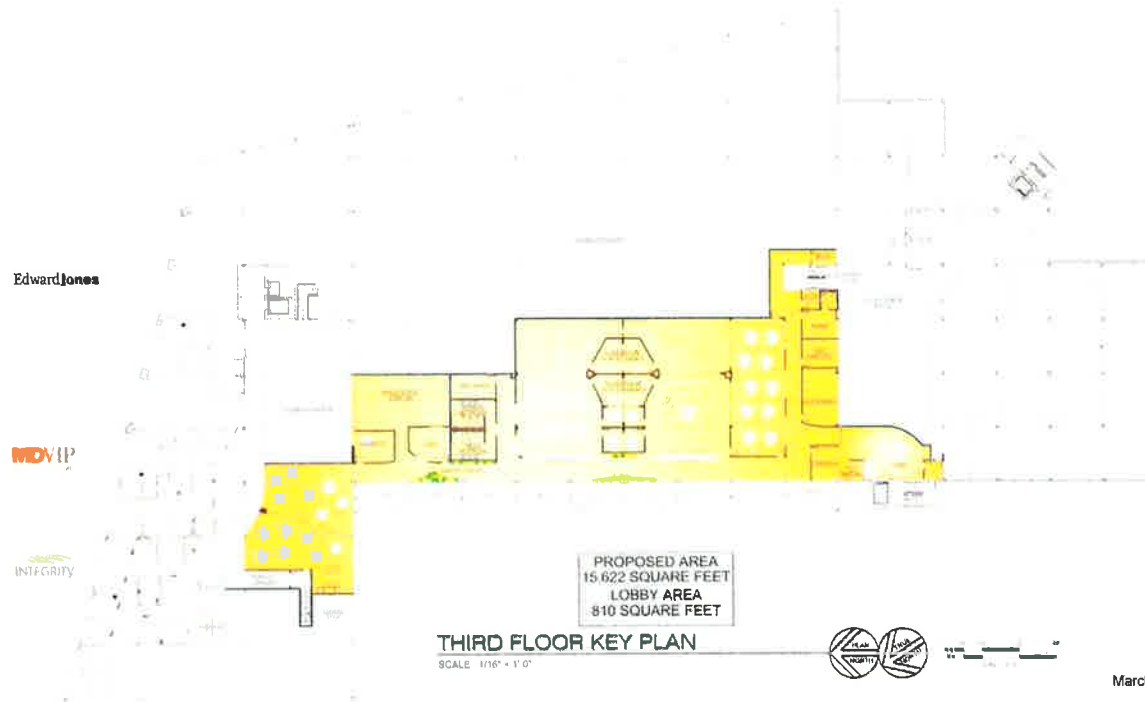
- Walls: Painted gyp board
- Ceilings: 2'x2' acoustical lay in tile, Class B
- Floors: Carpet and Vinyl Composition Tile, Class II

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- Doors: Hollow metal steel frames and solid core wood doors. All hardware to be commercial grade.

**Fire Protection System**

- Section 901.6.1 – A monitored Automatic Sprinkler System
- Section 907.2.2 – Fire Alarm System throughout all common areas and suites



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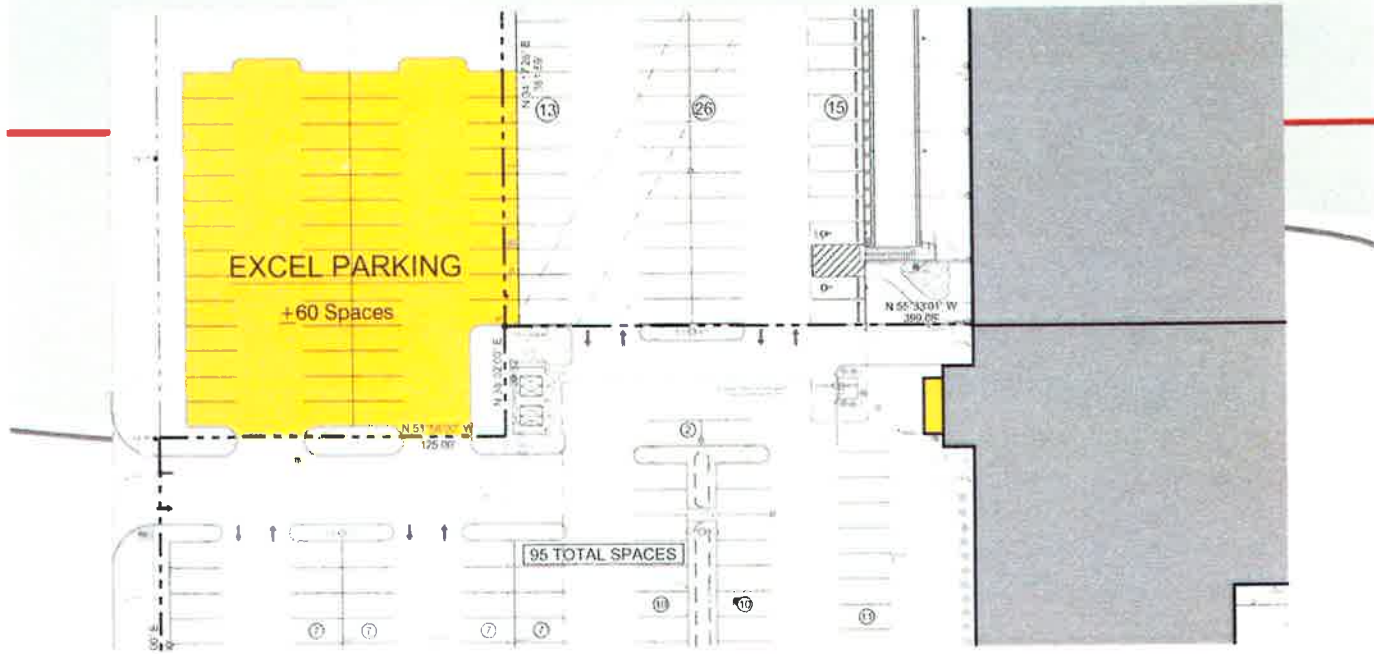


**DRAFT – March 2, 2016**

**EXHIBIT B**

**DRAFT – March 2, 2016**

DRAFT - March 2, 2016



SITE PLAN

LEASE EXHIBIT "B" PARKING--MARCH 2016



## OPTION TO PURCHASE AND RIGHT OF FIRST REFUSAL AGREEMENT

**THIS OPTION TO PURCHASE AND RIGHT OF FIRST REFUSAL AGREEMENT** (the "Agreement") is made and entered into as of \_\_\_\_\_, 2016, by and between **THE PRESS GROUP, LLC**, a Tennessee limited liability company ("Grantor") and **THE CITY OF KINGSPORT for the use and benefit of its Kingsport City Schools** ("Lessee") (collectively the "Parties").

### RECITALS:

A. Cayenne Properties, GP, a Tennessee general partnership and an affiliate of Grantor (herein "Lessor") and Lessee have entered into a Lease Agreement dated \_\_\_\_\_, 2016 (the "Lease Agreement"), pursuant to which Lessor has leased to Lessee a portion of the third floor of The Press Building Condominium located at 400 Clinchfield Street, Kingsport, Sullivan County, Tennessee (the "Press Building").

B. As referenced in the Lease Agreement, Lessor and Lessee have agreed that Lessee shall have an option to purchase additional space on the third floor of the Press Building, and a right of first refusal to lease additional space on the third floor of the Press Building, during the Term of the Lease Agreement, and Grantor and Lessee enter into this Agreement to set forth the terms and conditions of such option to purchase.

**NOW, THEREFORE**, in consideration of the foregoing premises and in consideration of the parties' mutual covenants and undertakings under the Lease Agreement, Grantor and Lessee do hereby agree as follows:

1. Option to Purchase. During the first five years of the Term of the Lease Agreement, Lessee shall have an option to purchase any undeveloped portion of the third floor of the Press Building which is contiguous to the Premises leased by Lessee under the Lease Agreement (herein the "Contiguous Expansion Space"). In the event Lessee exercises this purchase option, the purchase price shall be \$50.00 per square foot, with such space to be delivered by Grantor AS IS, WHERE IS, with no improvements to be made by Grantor.

2. Option to Lease Additional Space. During the Term of the Lease Agreement, Lessee shall have the option to lease any portion of the Contiguous Expansion Space. In the event Lessee exercises this option, the lease of such additional space shall be on the same terms and conditions as set forth in the Lease Agreement, and for the same period of time then remaining under the Term of the Lease Agreement, except that the Base Rent and Additional Rent shall be adjusted as necessary to account for the economic terms of such additional lease space using the same methodology as was used for the Base Rent and Additional Rent under the Lease Agreement. Base Rent for the additional lease space shall be calculated using the sum of

(i) \$50.00 per square foot plus (ii) any attorney fees and closing costs incurred by Grantor or Lessor to provide such lease of additional space, amortized over the period of time remaining under the Term of the Lease Agreement at an imputed interest rate equal to 1.50% plus the Prime Rate as published from time to time in *The Wall Street Journal*. Unless otherwise agreed by Grantor or Lessor, neither Grantor nor Lessor shall have any obligation to furnish any improvements, finishes, or build-outs for such additional lease space. At their option, Grantor and Lessor may condition the delivery of any improvements, finishes, or build-outs upon adjustments to the purchase option prices, charitable donation figures, original option prices, and charitable donation figures contained in the Lease Agreement using the same methodology as was used for such items in the Lease Agreement.

3. Right of First Refusal to Lease Additional Space. During the Term of the Lease Agreement, Lessee shall have a right of first refusal to lease any portion of the Contiguous Expansion Space. Grantor shall give Lessee written notice of Grantor's intention to lease any portion of the Contiguous Expansion Space to a third party and the terms of such lease. Lessee shall have (30) days after receipt of Grantor's written notice of such lease to exercise such right of first refusal by written notice delivered to Grantor within thirty. If Lessee exercises such right of first refusal, Lessee shall lease such space on the same terms and conditions as are offered by the third party. Lessee's failure to timely exercise its right of first refusal shall cause such right of first refusal to terminate automatically as to all space covered by the Grantor's written notice; provided, however, Lessee shall continue to have such right of first refusal as to any portion of the Contiguous Expansion Space which may remain after such third party lease becomes effective.

4. Purchase and Lease Conditions. Lessee's purchase or lease of Contiguous Expansion Space shall be subject to the following conditions and requirements:

(a) The Contiguous Expansion Space purchased or leased by Lessee, and Lessee's improvements to and use of such space, shall not block or interfere with the use and development of any of space on the third floor not purchased by Lessee or any Common Areas.

(b) The Contiguous Expansion Space purchased or leased by Lessee shall have a fire wall constructed in same manner as Lessee's original lease Premises under the Lease Agreement.

(c) The Contiguous Expansion Space purchased or leased by Lessee will not have a general access to the Press Building. The only permitted exit or access to the Press Building would be such exit as may be required by local fire code.

(d) The Contiguous Expansion Space purchased or leased by Lessee, and any permitted or required access to the Press Building, would be subject to the same conditions of Limited Use CAM Charges as provided for in the Lease Agreement.

5. General Provisions.

(a) Amendment; Waiver. This Agreement may be amended only by a written instrument signed by, or on behalf of, all parties hereto. At any time prior to the Closing Date, the parties hereto may (a) extend the time for the performance of any of the obligations or other acts of the other parties hereto, (b) waive any inaccuracies in the representations and warranties contained herein or in any document delivered pursuant hereto and (c) waive compliance with any of the agreements or conditions contained herein. A party's agreement to any extension or waiver shall be valid only if set forth in a writing signed by such party. Waiver of any provision of this Agreement, or of any breach thereof, shall be a waiver of only said specific provision or breach and shall not be deemed a waiver of any other provision or any future breach thereof.

(b) Any notices and other documents delivered under this Agreement shall be deemed received (i) if personally delivered, when delivery is tendered (ii) if mailed certified mail, return receipt requested, three (3) days after it is postmarked, or (iii) if sent for overnight delivery by a national overnight delivery company or the United States Postal Service, on the third business day after delivery to the carrier. Notices sent by other methods shall be deemed received when actually received by the addressee or its authorized agent.

(c) Governing Law. This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of Tennessee.

(d) Entire Agreement. This Agreement constitutes the entire agreement and understanding of the parties with respect to the ROFR and supersedes any and all prior agreements and understandings relating to the subject matter hereof, whether oral or written.

(e) Binding Effect. This Agreement shall be binding upon and inure to the benefit of the parties, their successors and assigns, to the extent allowed hereby.

(f) Assignment. No assignment of any rights or delegation of any obligations provided for in this Agreement shall be made by or be binding upon any party without the prior written consent of all parties to this Agreement.

(g) Counterparts. This Agreement may be executed in any number of separate counterparts, each of which shall be deemed to be an original, but which together shall constitute one and the same instrument.

**[Signatures on Following Page]**

**IN WITNESS WHEREOF**, the undersigned have executed this Agreement, in duplicate the day and year first above written.

Lessor:

**THE PRESS GROUP, LLC**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Lessee:

**THE CITY OF KINGSPORT,  
TENNESSEE**

By: \_\_\_\_\_

John Clark

Mayor

**ATTEST:**

\_\_\_\_\_  
City Recorder

**APPROVED AS TO FORM:**

\_\_\_\_\_  
J. Michael Billingsley  
City Attorney

STATE OF TENNESSEE

COUNTY OF SULLIVAN

Before me, the undersigned authority, a Notary Public in and for the State and County aforesaid, personally appeared \_\_\_\_\_, with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence), and who, upon oath, acknowledged himself/herself to be the \_\_\_\_\_ of, **CAYENNE RENTAL PROPERTIES, GP**, the within named bargainor, a Tennessee general partnership, and that he as such \_\_\_\_\_ executed the foregoing instrument for the purposes therein contained, by signing the name of the partnership by himself as \_\_\_\_\_.

WITNESS my hand and official seal this \_\_\_\_ day of \_\_\_\_\_, 2016.

\_\_\_\_\_  
NOTARY PUBLIC

My commission expires:

\_\_\_\_\_

STATE OF TENNESSEE

COUNTY OF SULLIVAN

Before me, the undersigned authority, a Notary Public in and for the State and County aforesaid, personally appeared **John Clark**, with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence), and who, upon oath, acknowledged himself to be the Mayor of **THE CITY OF KINGSPORT, TENNESSEE**, the within named bargainor, a Tennessee municipal corporation, and that he as such Mayor executed the foregoing instrument for the purposes therein contained, by signing the name of the municipal corporation by himself as Mayor.

WITNESS my hand and official seal this \_\_\_\_ day of \_\_\_\_\_, 2016.

\_\_\_\_\_  
NOTARY PUBLIC

My commission expires:

\_\_\_\_\_





**AGENDA ACTION FORM**

**Appointment to the Kingsport Housing and Redevelopment Authority**

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

Action Form No.: AF-67-2016  
 Work Session: March 15, 2016  
 First Reading: N/A

Final Adoption: March 15, 2016  
 Staff Work By: R. McBryar  
 Presentation By: Mayor Clark

**Recommendation:**  
 Approve appointment.

**Executive Summary:**

This commissioner appointment must be filled by a program participant or recipient of services. Kingsport Housing and Redevelopment Authority recommends Ms. Esther Rodolphe for appointment to this position. As a KHRA housing program participant since 2008, Ms. Rodolphe is currently enrolled as a participant in KHRA's Family Self Sufficiency Program. In December 2015, she received her bachelor degree in Criminal Justice and Psychology.

In addition to working at Cheddars, Ms. Rodolphe works on behalf of the Tennessee Supreme Court as a Peer Advocate for the Foster Care Review Board. KHRA believes Ms. Rodolphe will be an excellent advocate as she is committed to partnering with the staff of KHRA, the city of Kingsport, and community partners to ensure quality housing and program services are available to the residents and participants of KHRA programs.

Ms. Esther Rodolphe has agreed to be appointed to the Kingsport Housing and Redevelopment Authority if approved by the Board of Mayor and Aldermen. This reappointment will be for a five-year term effective immediately and will expire March 31, 2021.


**Attachments:**  
 None

	Y	N	O
Duncan	—	—	—
George	—	—	—
McIntire	—	—	—
Mitchell	—	—	—
Olterman	—	—	—
Parham	—	—	—
Clark	—	—	—



**AGENDA ACTION FORM**

**Awarding the Bid for the Purchase of Rental Uniforms, Mats & Mops Services**

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

Action Form No.: AF-54-2016  
 Work Session: March 15, 2016  
 First Reading: N/A  
 Final Adoption: March 15, 2016  
 Staff Work By: Committee  
 Presentation By: C. McCartt, R. McReynolds

**Recommendation:**  
 Approve the Resolution.


**Executive Summary:**  
 Bids were opened on February 24, 2016 for the purchase of Rental Uniforms, Mats & Mops Services for use by various departments throughout the City.

The bid invitation was publicly advertised on February 7, 2016 in the Kingsport Times News and downloadable bid documents were posted on the Purchasing Department's website for a time period of 18 calendar days. Bids were received from five potential vendors. The estimated annual cost for these services is \$55,000.

The committee recommends awarding the bid to the apparent low bidder G&K Services. Recognizing that the vendor will be obligated to a make substantial investment in merchandise to fulfill our requirements the term of the award is for a period of 24 months with renewal options in one year increments for up to three additional years providing all terms, conditions and cost are acceptable to both parties.

Funding is identified in various department accounts.

- Attachments:**  
 1. Resolution  
 2. Bid Opening Minutes

Funding source appropriate and funds are available: 

	Y	N	O
Duncan	—	—	—
George	—	—	—
McIntire	—	—	—
Mitchell	—	—	—
Olterman	—	—	—
Parham	—	—	—
Clark	—	—	—

RESOLUTION NO. \_\_\_\_\_

A RESOLUTION AWARDING THE BID FOR THE PURCHASE OF RENTAL UNIFORMS, MATS & MOPS SERVICE TO G & K SERVICES AND AUTHORIZING THE CITY MANAGER TO EXECUTE A PURCHASE ORDER FOR THE SAME

WHEREAS, bids were opened February 24, 2016, for the purchase of rental uniforms, mats and mops service for use by various departments throughout the city; and

WHEREAS, upon review of the bids, the board finds G & K Services 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 purchase rental uniforms, mats and mop services from G & K Services, at an estimated annual cost of \$55,000.00; and

WHEREAS, the agreement is for a period of 24 months, with renewal options in one year increments up to three additional years providing all terms, conditions and cost are acceptable to both parties; and

WHEREAS, funding is identified in various department accounts.

Now therefore,

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

SECTION I. That the bid for the purchase of rental uniforms, mats and mop services, at an estimated annual cost of \$55,000.00, is awarded to G & K Services, and the city manager is authorized to execute a purchase order for same.

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 15th day of March, 2016.

\_\_\_\_\_  
JOHN CLARK, MAYOR

ATTEST:

\_\_\_\_\_  
JAMES H. DEMMING, CITY RECORDER

APPROVED AS TO FORM:

\_\_\_\_\_  
J. MICHAEL BILLINGSLEY, CITY ATTORNEY

MINUTES  
 BID OPENING  
 February 24, 2016  
 4:00 P.M.

Present: Sandy Crawford, Procurement Manager; Brent Morelock, Assistant Procurement Manager; and  
 Tim Elsea, Traffic Engineer

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

The Procurement Manager opened with the following bids:

RENTAL UNIFORMS, MATS & MOPS					
Item #	G & K Services	Aramark Uniform Services	Unifirst Corp.	Tri-City Janitorial Supply	Cintas
	Unit Price	Unit Price	Unit Price	Unit Price	Unit Price/Weekly
1	.26	.29	.358	No Bid	4.30
2	.12	.13	.139	No Bid	2.00
3	.14	.16	.219	No Bid	2.30
4	.20	.24	.423	No Bid	.84
5	.70	.77	.751	No Bid	8.55
6	.45	.90	1.02	No Bid	2.00
	No Bid	.54	.46	2.09	*1.23
8	.48	.54	.61	2.29	1.23
9	.53	.72	.92	2.79	*1.46
10	.78	.78	1.22	2.99	*1.46
11	.95	.91	1.53	3.29	*1.92
12	1.20	1.07	No Bid	No Bid	*1.92
13	1.40	1.98	No Bid	3.89	*3.06
14	1.40	1.98	2.30	3.89	3.06
15	2.40	3.88	3.67	4.57	3.78
16	7.25	5.20	4.59	28.98	*4.50
17	.03	.08	.082	.32	*.07
18	.05	.19	.102	3.89/lb.	*.12
19	.05	.19	.112	69.89/25 lb.	*.12

\*Cintas – See Bid.

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



**AGENDA ACTION FORM**

**Approval of Easements for Citywide Water Line System Improvements Phase II Project**

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

Action Form No.: AF-56-2016  
Work Session: March 15, 2016  
First Reading: N/A


Final Adoption: March 15, 2016  
Staff Work By: R. Trent; P. Gilmer  
Presentation By: R. McReynolds

**Recommendation:**  
Approve the offers.

**Executive Summary:**  
In order to update existing water lines in the Anco Place area, the Public Works Department has requested easements and right-of-way across affected properties. Appraisals have been prepared in accordance with the City of Kingsport's Real Property Acquisition Policies & Procedures and indicate the fair market values as per the attached property owners.

This project will be funded under # WA1401

- Attachments:**
- 1. Project Offers
  - 2. Easement Location Map

Funding source appropriate and funds are available: 

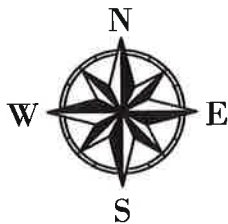
	Y	N	O
Duncan	—	—	—
George	—	—	—
McIntire	—	—	—
Mitchell	—	—	—
Oiterman	—	—	—
Parham	—	—	—
Clark	—	—	—

<u>Tax Map &amp; Parcel</u>	<u>Property Owner/s</u>	<u>Easement Area</u>	<u>Appraised Value</u>
#76; 053.00	Johnny R. & Sabra L. Morelock 146 Anco Place Kingsport, TN 37664	Perm. 2,086 sq. ft. Temp. 2,139 sq. ft.	\$434.00 \$334.00
#76; 053.05	Johnny R. & Sabra L. Morelock 146 Anco Place Kingsport, TN 37664	Perm. 2,061 sq. ft. Temp. 2,065 sq. ft.	\$717.00 \$540.00
#76; 053.10	Richard & Gerrell Lequieu 124 Anco Place Kingsport, TN 37664	Perm. 2,035 sq. ft. Temp. 1,988 sq. ft.	\$342.00 \$251.00
#76; 054.10	Johnny R. & Sabra L. Morelock 146 Anco Place Kingsport, TN 37664	Perm. 2,060 sq. ft. Temp. 2,060 sq. ft.	\$544.00 \$408.00



**WATERLINE  
EASEMENT**

ALL BEARINGS KGRN  
(KINGSPORT GEODETIC  
REFERENCE NETWORK)



**FIGURE I - MAP LOCATION  
WATERLINE SYSTEM IMPROVEMENTS -  
PHASE II  
ANCO PLACE EASEMENTS  
CITY OF KINGSPORT, TENNESSEE**

NOT TO SCALE

4 MARCH 2016



**AGENDA ACTION FORM**

**Property Acquisition for the Kingsport City School System**

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

Action Form No.: AF-53-2016  
Work Session: March 15, 2016  
First Reading: N/A

Final Adoption: March 15, 2016  
Staff Work By: R. Trent; D. Frye  
Presentation By: D. Frye

**Recommendation:**

Approve the Resolution.


**Executive Summary:**

In order to fulfill the Kingsport Board of Education's long range facilities plans, it has requested that the Superintendent of Schools, Dr. Lyle Ailshie, take the steps necessary to purchase the property located at 2304 Overlook Road. An appraisal of the acquisition was prepared in accordance with the City of Kingsport's Real Property Acquisition Policies & Procedures and the property appraised for \$69,000.00. The owners of the property, Larry R. Easley and wife, Orinda L. Easley, are willing to sell the property to the city for the amount of \$72,500.00. This is the last remaining property that is not currently owned by the city on the portion of Overlook Road that borders Jefferson Elementary School. A copy of the Purchase Agreement is contained in the attached resolution.

This project will be funded under #GP1612.

**Attachment:**

- 1. Resolution
- 2. Property Location Map

Funding source appropriate and funds are available: 

	Y	N	O
Duncan	—	—	—
George	—	—	—
McIntire	—	—	—
Mitchell	—	—	—
Oiterman	—	—	—
Parham	—	—	—
Clark	—	—	—



RESOLUTION NO. \_\_\_\_\_

A RESOLUTION APPROVING AN OFFER FOR THE PURCHASE OF REAL PROPERTY LOCATED AT 2304 OVERLOOK ROAD; AUTHORIZING THE MAYOR TO MAKE CERTAIN CHANGES TO THE AGREEMENT, IF NECESSARY; AND AUTHORIZING THE MAYOR TO EXECUTE AN AGREEMENT AND ALL OTHER DOCUMENTS NECESSARY AND PROPER TO EFFECTUATE THE PURPOSE OF THIS RESOLUTION

WHEREAS, the city has the opportunity to purchase the real property located at 2304 Overlook Road to fulfill the Kingsport Board of Education's long range facility plans; and

WHEREAS, such acquisition would be in accordance with the city's acquisition policy.

Now therefore,

BE IT RESOLVED BY THE BOARD OF MAYOR AND ALDERMEN as follows:

SECTION I. That pursuant to the appraisal of property indicating the fair market value, an offer of \$72,500.00 is approved for the purchase of the property located at 2304 Overlook Road, subject to such conditions as set out in the Purchase Agreement below for use by the city school system.

SECTION II. That the mayor, or in his absence, incapacity, or failure to act, the vice-mayor, is authorized 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 Purchase Agreement for 2304 Overlook Road, 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 draft of the agreement being as follows:

**AGREEMENT**

**THIS PURCHASE AGREEMENT** (herein "Agreement") made and entered into on the date of the notary acknowledgment of the Seller's signature between **LARRY R. EASLEY and wife, ORLINDA L. EASLEY**, (hereinafter referred to as the "Sellers"), and **THE CITY OF KINGSFORT, TENNESSEE**, a municipality organized under the laws of the State of Tennessee (hereinafter referred to as the "Buyer").

**WITNESSETH:**

**FOR AND IN CONSIDERATION** of the sum of Ten Dollars (\$10.00) and other good and valuable consideration, including specifically, without limitation, the receipt and sufficiency of which are hereby acknowledged, and in consideration of the mutual covenants contained herein, the parties hereby agree as follows:

**1. SALE.** Sellers agree to sell, convey, assign, transfer and deliver to Buyer, and Buyer agrees to purchase, acquire and take from Sellers, subject to the terms and conditions of this Agreement all that real property situate, lying and located at 2304 Overlook Road, Kingsport, Sullivan County, Tennessee, known as Tax Map 047P; Group C; Parcel 025.00, more particularly described on Exhibit A attached hereto and hereby made a part hereof, together with all improvements and fixtures situated thereon, if any, and also together with all hereditments and appurtenances thereunto belonging or in any way appertaining (the "Real Property").

**2. PURCHASE PRICE.**

(a) Amount. The purchase price to be paid by Buyer to Sellers for the Real Property shall be Seventy Two Thousand Five Hundred and No/100 Dollars (\$72,500.00) (the "Purchase Price").

(b) Terms of Payment. Subject to the adjustment provided for herein the Purchase Price, less the prorated property taxes as of the date of closing, shall be paid by Buyer to Sellers in cash or certified funds payable to Sellers on the Closing Date.

**3. CLOSING.** The closing shall occur on or before June 1, 2016, (the "Closing Date"), at a time and location mutually agreed upon by the parties or, upon failure of the parties to agree, at a time and place specified by the Buyer (the "Closing"). Buyer and Sellers agree to deliver and execute such other documents as may be reasonable and necessary in the opinion of counsel for Sellers and Buyer to consummate and close the purchase and sale contemplated herein pursuant to the terms and provisions hereof.

**4. SURVEY.** Immediately upon the execution of this Agreement, Buyer shall, at Buyer's cost, cause a survey and surveyor's certificate, in form sufficient to remove the survey exception from the title insurance binder as more specifically provided in Section 5 hereof, to be prepared on the Real Property by a licensed surveyor acceptable to Buyer. The survey shall be made in accordance with the Minimum Standard Detail Requirements for ALTA/ACSM Land Title surveys for a Class A survey. Such survey shall show the total area of the Real Property in square feet, easements, if any, location of adjoining streets and rights of way, building setback lines, and such other details as may be required by Buyer. Once prepared, the survey description will replace Exhibit A and will become a part of this Agreement identified as Exhibit A-1, and such survey description shall be insurable (and shall be insured) by the title insurance company. If the survey (i) is for good cause not acceptable to Buyer's title insurance company; or (ii) shows the dimensions of the Real Property to be other than as set forth on Exhibit A; or (iii) shows any materially adverse conditions or matters affecting the Real Property which are not approved by Buyer, then Buyer, within twenty (20) days from receipt of such survey, shall notify Sellers in writing of Buyer's objections to the survey and Sellers shall thereupon have twenty (20) days to remove or cure such objections to the satisfaction of the Buyer and the title company. If Sellers fail to satisfy such objections with the time specified, Buyer shall have the right to (i) terminate this Agreement; (ii) extend the time period for removing or curing any objectionable item by written notice to Sellers; or (iii) close this purchase and sale without reduction in the Purchase Price.

**5. TITLE INSURANCE.** Buyer, at its expense, shall secure an owner's title insurance commitment to issue a title insurance policy insuring Buyer's fee simple interest in the Real Property to the extent of the Purchase Price. The title insurance commitment will be issued by a reputable title insurance company chosen by Buyer and will contain exceptions only for real estate taxes and assessments for the current year which are not yet due and payable, and any other exceptions Buyer may approve in writing. If the commitment contains other exceptions, not acceptable to Buyer, then Buyer shall so notify Sellers of such exceptions within twenty (20) days of Buyer's receipt of the commitment, and Sellers shall have twenty (20) days from receipt of the Buyer's objections, to resolve such exceptions to the satisfaction of the Buyer. If Sellers are unable to cure or resolve such exceptions to Buyer's satisfaction within the time specified, Buyer shall have the right to terminate this Agreement, extend the cure period, or proceed to close this Agreement. In the event Buyer elects to terminate this Agreement pursuant to this Section 5, then this Agreement shall be cancelled and thereafter neither Sellers nor Buyer shall have any continuing obligation to each other under this Agreement.

**6. DEED AND TITLE.**

(a) Sellers hereby agree to convey to Buyer a good and marketable fee simple title to the Real Property, without exceptions, except as expressly provided herein, by a good and valid general warranty deed, in statutory form, suitable for recordation. Title to the Real Property shall not be subject to any easements, encumbrances or other exceptions which Buyer, in its sole discretion, deems unacceptable.

(b) In the event, as of the Closing Date, Sellers are unable to convey marketable title to the Real Property due to defects in Seller's title, or Sellers are unable to convey title due to exceptions Buyer finds unacceptable, then Closing shall be postponed for a reasonable period of time not to exceed 30 days until Sellers shall remove said title defects or exceptions. If Sellers are unable to cure such title defects or exceptions within said 30 days, this Agreement shall be null and void and there shall be no further obligations between the parties. If Buyer shall waive such title defects or exceptions by so notifying the Sellers in writing, or if Sellers shall have cured such defects or exceptions, as provided herein, the obligations of the parties hereunder shall not be affected by

reason thereof, there shall be no abatement or reduction of the Purchase Price, and this transaction shall be consummated in accordance with the terms and provisions of this Agreement, except that such title defects or exceptions that are waived by Buyer, if any, shall be set forth as exceptions in the deed.

**7. CONDITION OF PROPERTY.** There has been no storage, disposal, treatment or release of hazardous substances during the period of Seller's ownership, and to the best of Seller's knowledge, the Real Property has not been used, and is not presently being used, and will not through the Closing Date, be used for the storage or disposal of hazardous substances. (The term "hazardous substances" shall have the broadest meaning given under applicable state and federal law, including without limitation that given in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. section 9601 et seq.) Sellers are not aware of any facts, conditions or circumstances indicating any form of environmental contamination affecting any properties which are adjacent to the Real Property. There are no encumbrances, liens, or charges of any kind upon the Real Property that will not be satisfied and discharges in full by Sellers and released at or before Closing in a form satisfactory to Buyer. There are no contracts, agreements, or arrangements relating to the use and operation of the Real Property not disclosed herein. Sellers represent that there is no pending or threatened litigation that does or will materially and adversely affect the Real Property or its value.

**8. CONDITIONS PRECEDENT.**

Buyer's obligations pursuant to this Agreement are contingent upon and subject to the satisfaction, as of Closing, of each of the following conditions (any of which may be waived in whole or in part in writing by the Buyer at, or prior to Closing):

(1) The results of the title examination report and title insurance commitment described in Section 5 shall be acceptable to Buyer in its sole discretion as of Closing. There shall be no change in the matters reflected in the title insurance commitment described in Section 5 hereof, and there shall not exist any encumbrances or title defects affecting the Real Property not described in such title insurance commitment.

(2) All of the representations, warranties and conditions of Sellers set forth in this Agreement shall be true and correct as of the date hereof, and as of the Closing Date, and Sellers shall not, on or prior to Closing, have failed to meet, comply with or perform any conditions or obligations on Seller's part required by the terms of this Agreement.

(3) There shall be no change in the matters reflected in the survey described in Section 4 hereof, and there shall not exist any easement, right of way, encroachment, waterway, pond, flood plain, conflict, or a protrusion with respect to the Real Property not shown on the survey.

If any condition specified in this Section 8 is not fully satisfied by Closing, or any extension thereof pursuant to this Agreement, Buyer may, at its option, waive such unsatisfactory condition precedent and consummate this Agreement, or may terminate this Agreement by written notice to Sellers, this Agreement shall be cancelled and thereafter neither Sellers nor Buyer shall have any continuing obligation to each other under this Agreement. It shall be the right of the Buyer at its sole discretion and upon written notice to the Sellers to terminate this Agreement at any time prior to the closing of the property if it shall deem the property not suitable for its needs, and upon such termination, this Agreement shall be cancelled and thereafter neither Sellers nor Buyer shall have any continuing obligation to each other under this Agreement.

**9. NOTICE.** Any notice or demand on either party hereunder shall be deemed to have been given when mailed to the other party by Certified Mail, Return Receipt Requested, postage prepaid at the addresses set forth below:

SELLERS:	Larry & Orinda Easley 2304 Overlook Road Kingsport, Tennessee 37660
BUYER:	City of Kingsport, Tennessee 225 West Center Street Kingsport, Tennessee 37660 Attention: J. Michael Billingsley

**10. PRORATIONS.** All real estate taxes and assessments shall be prorated as of the Closing Date, using for such purpose the rate and valuation shown on the latest available tax notice.

**11. EXPENSES OF SELLERS.** In closing this transaction, Sellers shall be charged with the following:

(a) The cost of preparation of the warranty deed;

- (b) The fees and expenses of any attorney or other advisor engaged by Sellers in connection with this transaction;
- (c) The commission or fees charged by any real estate broker or agent retained or used by the Sellers in connection with this transaction; and
- (d) All expenses incurred in connection with the release of any prior existing indebtedness, including without limitation any prepayment penalties; and
- (e) Prorated taxes.

**12. EXPENSES OF BUYER.** In closing this transaction, Buyer shall be charged with the following:

- (a) The cost of any title search and title insurance policy;
- (b) The cost of recording the deed and any transfer tax associated with such deed;
- (c) Any fees charged in connection with any attorney or other advisor engaged by Buyer in connection with this transaction; and
- (d) The cost of the survey provided pursuant to Section 4.

**13. RISK OF LOSS.** The risk of loss or damage to any of the Real Property described above by fire, vandalism, or other casualty shall remain with the Sellers until Closing. In the event of such loss before Closing, this Agreement shall be voidable at the option of Buyer. Should Buyer elect to continue with the purchase following such loss or damage before Closing, Buyer shall have the option to (a) negotiate an equitable reduction in the Purchase Price or (b) close this Agreement at the stated Purchase Price and accept all insurance funds and other monies payable to Sellers regarding such loss or damage. If action is necessary to recover under any casualty policy, Sellers shall cooperate with Buyer in bringing such action in Seller's name and Sellers shall reimburse Buyer for the attorney's fees and other expenses incurred by Buyer to pursue such claim.

**14. TIME IS OF THE ESSENCE.** Time is of the essence to the performance of this Agreement.

**15. MERGER CLAUSE.** All understandings and agreements heretofore had between the parties are merged in this Agreement, which alone fully and completely expresses their agreement, and the same is entered into after full investigation, neither party relying upon any statement, representation, express or implied warranties, guarantees, promises, statements, "setups", representation, or information, not embodied in this Agreement, made by the other, or by any agent, employee, servant, or other person representing or purporting to represent the Sellers. This Agreement contains the full agreement between the parties and there are no other contracts, express or implied, which are not stated herein.

**16. POSSESSION.** Delivery of possession of the Real Property shall occur at Closing.

**17. CAPTIONS.** The section headings or captions appearing in this Agreement are for convenience only, are not a part of this Agreement and are not to be considered in interpreting this Agreement.

**18. ENTIRE AGREEMENT; MODIFICATIONS.** This written Agreement constitutes the entire and complete agreement between the parties hereto and supersedes any prior oral or written agreements between the parties with respect to the Real Property. It is expressly agreed that there are no verbal understandings or agreements which in any way change the terms, covenants and conditions herein set forth, and that no modification of this Agreement and no waiver of any of its terms and conditions shall be effective unless in writing and duly executed by the parties hereto.

**19. CONTROLLING LAW; VENUE.** This Agreement has been made and entered into under the laws of the State of Tennessee, and said laws shall control the interpretation thereof. Venue for any litigation concerning this Agreement shall be filed in the state or federal courts for Sullivan County, Tennessee.

**20. BINDING EFFECT.** All covenants, agreements, warranties and provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

**21. FURTHER ACTS.** Each party hereto agrees to do, execute, acknowledge and deliver all such further acts, assignments, transfers, assurances and instruments that may reasonably be required to fully effectuate the transactions contemplated in this Agreement.

**IN WITNESS WHEREOF,** the parties have hereunto set their hands in duplicate originals the day and year first written above.

[Acknowledgements Deleted for Inclusion in this Resolution]

#### EXHIBIT A

Description of Real Property

Situate, lying and being in the 11<sup>th</sup> Civil District of Sullivan County, Tennessee, and more

particularly described as follows:

BEGINNING at a point in the northeasterly line of Overlook Road, corner to Lots 15 and 16; thence with said side of Overlook Road S. 74° 45' E. 43 feet to a point; thence a new line crossing Lot 15 N. 15° 15' E. 250 feet to a point; thence a new line crossing Lot 15 N. 74° 45' W. 43 feet to a point in the divisional line of Lots 15 and 16; thence with the divisional line of Lots 15 and 16 S. 15° 15' W. 250 feet to the point of BEGINNING, and being part of Lot 15, in Block 18, Kingsport Heights, as shown on a plat of record in the Register's Office for Sullivan County, at Blountville, Tennessee, in Deed Book 165-A, page 500; and being the same property conveyed to the Parties of the First Part by Deed dated February 25, 1976, from Judy K. Burton, Divorced, who is the same person as Judy Faye Burton, Divorced, recorded in the Register's Office for Sullivan County at Blountville, Tennessee, in Deed Book 78-C at Page 398, to all of which reference is hereby expressly made. Tax Map 047P; Group C; Parcel 025.00

SECTION III. That the Mayor is further authorized to make such changes, approved by the mayor and 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 VI. 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 VII. That this resolution shall take effect immediately upon its adoption, the public welfare requiring it.

ADOPTED this the 15<sup>th</sup> day of March, 2016.

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JOHN CLARK, MAYOR

ATTEST:

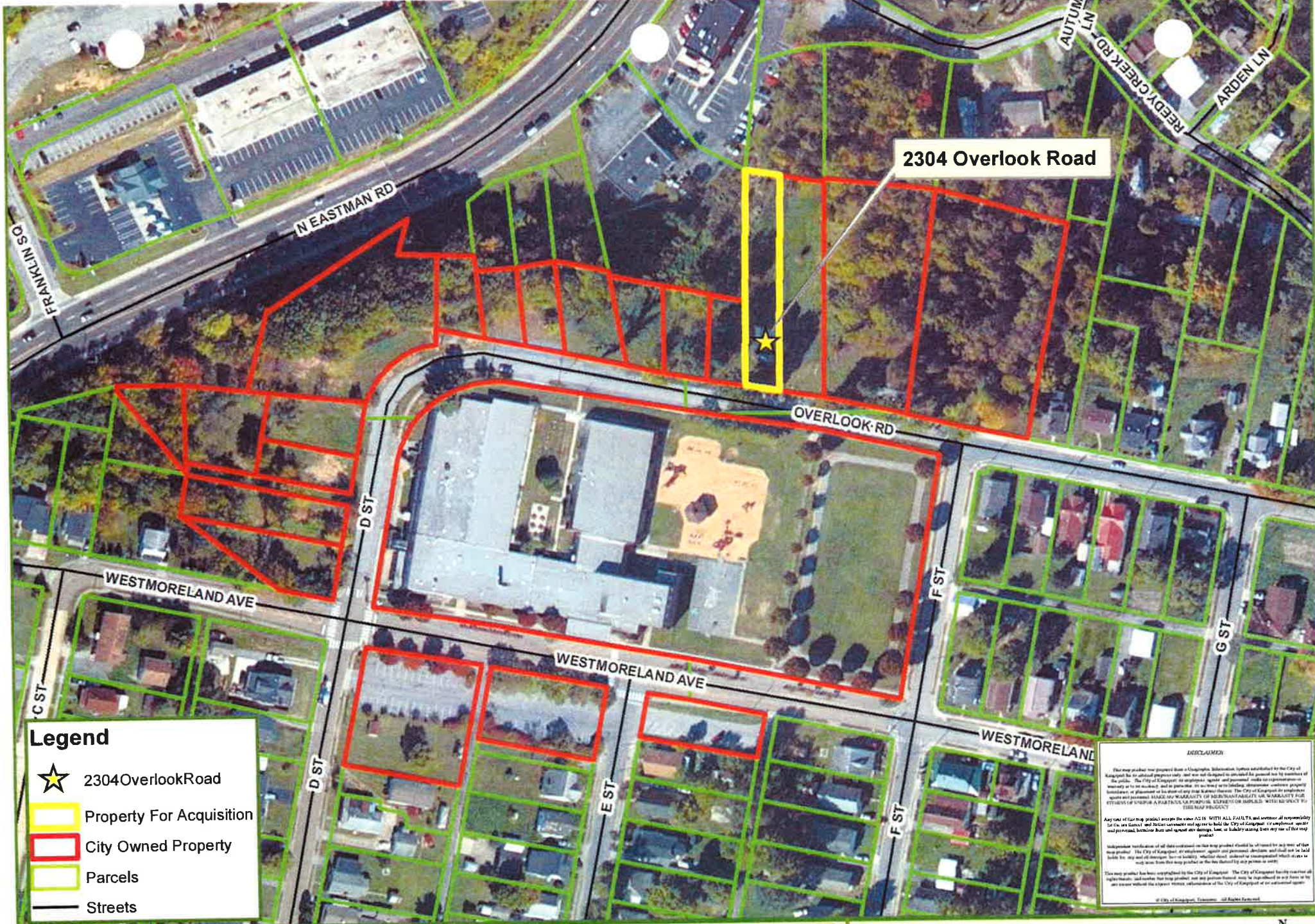
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JAMES H. DEMMING, CITY RECORDER

APPROVED AS TO FORM:

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J. MICHAEL BILLINGSLEY, CITY ATTORNEY



**Legend**

- ★ 2304 Overlook Road
- Property For Acquisition
- City Owned Property
- Parcels
- Streets

**DISCLAIMER:**

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Prepared by the City of Kingsport  
 Geographic Information System (G.I.S)  
 Date: 02-17-16  
 Map File Name: 18193wo10410





**AGENDA ACTION FORM**

**Renewing the Award of the Bid for the Purchase of Water & Wastewater Chemicals**

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

Action Form No.: AF-55-2016  
 Work Session: March 15, 2016  
 First Reading: N/A  
 Final Adoption: March 15, 2016  
 Staff Work By: Committee  
 Presentation By: R. McReynolds, C. McCartt

**Recommendation:** Approve the Resolution.

**Executive Summary:**

Bids were opened on March 25, 2014 for the purchase of various chemicals for use by the Filter Plant and Wastewater Treatment Plant. The City's Invitation to Bid included a renewal option clause which allows the city to renew the award for an additional 12 month period if costs are acceptable to both parties with BMA approval. It is the recommendation of the Water/WW Facilities Manager to extend the following chemical purchases for an additional 12 month period as follows:

Chlorine to Brenntag Mid-South, Inc. @ a cost of \$.154 per pound or \$308.00 per Ton. The estimated annual cost for chlorine is \$50,000.00. There is no increase over previous year's cost.

Zinc Orthophosphate to Carus Corporation @ a cost of \$.376 per pound. The estimated annual cost for Zinc Orthophosphate is \$36,000.00. There is no increase over previous year's cost.

Coagulant to Gulbrandsen Mfg. Inc., @ a cost of \$.324 per pound for 45,000 pounds delivered or \$.356 per pound for 20,000 pounds delivered. The estimated annual cost for coagulant is \$90,000.00. There is no increase over previous year's cost.

Polymer to Coastal Water Technology, LLC @ a cost of \$1.14 per pound. The estimated annual cost for Polymer is \$70,000.00. There is no increase over previous year's cost.

The time frame for these renewals is May 1, 2016 through April 30, 2016.

Funding is identified in water and sewer fund operating expense accounts.

**Attachments:**

1. Resolution
2. Bid Opening Minutes
3. Recommendation Memo & Renewal Letters

Funding source appropriate and funds are available: *JF*

	<u>Y</u>	<u>N</u>	<u>O</u>
Duncan	—	—	—
George	—	—	—
McIntire	—	—	—
Mitchell	—	—	—
Olterman	—	—	—
Parham	—	—	—
Clark	—	—	—

RESOLUTION NO. \_\_\_\_\_

A RESOLUTION RENEWING THE AWARD OF THE BID FOR PURCHASE OF CHLORINE TO BRENNTAG MID-SOUTH, INC.; FOR ZINC ORTHOPHOSPHATE TO CARUS CORPORATION; FOR COAGULANT TO GULBRANDSEN MANUFACTURING, INC.; AND FOR POLYMER TO COASTAL WATER TECHNOLOGY, LLC AND AUTHORIZING THE CITY MANAGER TO EXECUTE PURCHASE ORDERS FOR THE SAME

WHEREAS, on March 25, 2014, bids were opened for the purchase of various chemicals for use by the Filter Plant and Wastewater Treatment Plant; and

WHEREAS, the invitation to bid included a renewal option clause that allows the city to renew the award for an additional 12 month period if costs are acceptable to both parties with board approval; and

WHEREAS, there is no change in the pricing; and

WHEREAS, the city would like to renew the award of bid for the purchase of various chemicals for use by the Filter Plant and Wastewater Treatment Plant for the time frame of May 1, 2016, through April 30, 2016, as set out below; and

WHEREAS, upon review of the bids, the board finds Brenntag Mid-South, 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 purchase Chlorine at a cost of \$.154 per pound or \$308.00 per ton, with an estimated annual cost of \$50,000.00 from Brenntag Mid-South, Inc; and

WHEREAS, upon review of the bids, the board finds Carus Corporation 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 purchase zinc orthophosphate at a cost of \$.376 per pound with an estimated annual cost of \$36,000.00 from Carus Corporation; and

WHEREAS, upon review of the bids, the board finds Gulbrandsen Manufacturing, 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 purchase Gulbrandsen Coagulant at a cost of \$.324 per pound for 45,000 gallons delivered and \$.356 per pound for 20,000 pounds delivered, with an estimated annual cost of \$90,000.00 from Gulbrandsen Manufacturing, Inc.; and

WHEREAS, upon review of the bids, the board finds Coastal Water Technology, LLC 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 purchase polymer at a cost of \$1.14 per pound, with an estimated annual cost of \$70,000.00 from Coastal Water Technology, LLC; and

WHEREAS, funding is identified in water and sewer fund operating expense accounts;



Now therefore,

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

SECTION I. That the renewal of the award for the bid for the purchase of various chemicals for use by the Filter Plant and Wastewater Treatment Plant for the time frame of May 1, 2016, through April 30, 2016, is approved.

SECTION II. That the bid for chlorine is awarded to Brenntag Mid-South, Inc. at a cost of \$.154 per pound or \$308.00 per ton, with an estimated annual cost of \$50,000.00 for use by the Filter Plant and the city manager is authorized to execute purchase orders up to \$50,000.00 for the same, as needed.

SECTION III. That the bid for zinc orthophosphate is awarded to Carus Corporation at a cost of \$.376 per pound, with an estimated annual cost of \$36,000.00 for use by the Filter Plant and the city manager is authorized to execute purchase orders up to \$36,000.00 for the same, as needed.

SECTION IV. That the bid for coagulant is awarded to Gulbrandsen Manufacturing, Inc. for Gulbrandsen Coagulant at a cost of \$.324 per pound for 45,000 gallons delivered and \$.356 per pound for 20,000 pounds delivered, with an estimated annual cost of \$90,000.00 for use by the Filter Plant and the city manager is authorized to execute purchase orders up to \$90,000.00 for the same, as needed.

SECTION V. That the bid for polymer is awarded to Coastal Water Technology, LLC at a cost of \$1.14 per pound, with an estimated annual cost of \$70,000.00 for use by the Filter Plant and the city manager is authorized to execute purchase orders up to \$70,000.00 for the same, as needed.

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

ADOPTED this the 15th day of March, 2016.

\_\_\_\_\_  
JOHN CLARK, MAYOR

ATTEST:

\_\_\_\_\_  
JAMES H. DEMMING, CITY RECORDER

APPROVED AS TO FORM:

\_\_\_\_\_  
J. MICHAEL BILLINGSLEY, CITY ATTORNEY

MILLS  
 BID OPENING  
 March 25, 2014 - 4:00 P.M.

Present: Brent Morelock, Assistant Procurement Manager; and Lisa Range, Assistant Procurement Manager, Schools

The Bid Opening was held in the Council Room, City Hall. The Assistant Procurement Manager opened with the following bids:

WATER AND WASTEWATER CHEMICALS							
Vendor:	Liquid Chlorine:	Zinc Orthophosphate:	Hydrofluorosilicic Acid 23%:	Gulbrandsen 6801 2,000 Gal.:	Gulbrandsen 6801 4,000 Gal.:	CWT ST-600 Coastal Polymer:	Period of Time Prices Firm For:
*Hercules, Inc.	No Bid	No Bid	No Bid	No Bid	No Bid	\$1.20	1 Year
Brenntag Mid-South, Inc.	\$308.00/Ton	\$.405/Lb. Aquapure ZOP 737	No Bid	\$.47/Lb.	\$.43/Lb. Brennfloc CC2358	No Bid	05/01/14 – 04/30/15
DPC Enterprises	\$404.00/Ton	No Bid	No Bid	No Bid	No Bid	No Bid	1 Year – 04/30/15
Greenway Products, Inc.	No Bid	\$1.15	No Bid	No Bid	No Bid	No Bid	1 Year
Univar USA, Inc.	No Bid	No Bid	\$.255/Lb.	No Bid	No Bid	No Bid	1 Year
Gulbrandsen Technologies, Inc.	No Bid	No Bid	No Bid	\$.356/Lb.	\$.324/Lb.	No Bid	05/01/14 – 04/30/15
Carus Corporation	No Bid	\$.365	No Bid	No Bid	No Bid	No Bid	1 Year
Mosaic Crop Nutrition, LLC	No Bid	No Bid	\$.263/Lb.	No Bid	No Bid	No Bid	Orders Shipped through 04/30/15
Polydyne, Inc.	No Bid	No Bid	No Bid	No Bid	No Bid	No Bid	N/A
Pencoco, Inc.	No Bid	No Bid	\$.196	No Bid	No Bid	No Bid	1 Year
SAL Chemical	No Bid	\$.728/Lb.	No Bid	No Bid	No Bid	No Bid	1 Year
American Development Corp.	No Bid	No Bid	No Bid	No Bid	No Bid	No Bid	N/A
Shannon Chemical Corp.	No Bid	\$.463/Lb.	No Bid	No Bid	No Bid	No Bid	1 Year
JCI Jones Chemicals	\$420.00/Ea.	No Bid	No Bid	No Bid	No Bid	No Bid	1 Year
Key Chemical, Inc.	No Bid	No Bid	\$.199/Lb.	No Bid	No Bid	No Bid	1 Year
GEO Specialty Chemicals	No Bid	No Bid	No Bid	No Bid	No Bid	No Bid	N/A
Coastal Water Technology, LLC	No Bid	No Bid	No Bid	No Bid	No Bid	\$1.14/Lb.	12 Months

\*Adam Karakas ran trials on March 20, 2014 and Praestol K260FL is pre-qualified.

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



## WATER/WASTEWATER FACILITIES

City of Kingsport, Tennessee

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### Memo

**To:** Brent Morelock, Assistant Procurement Manager  
**From:** Niki Ensor, W/WW Facilities Manager  
**Date:** March 2, 2016  
**Re:** 2016 Chemical Renewal

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It is the recommendation of the water treatment plant staff to renew the City's contract with the following vendors:

Brenntag (chlorine) – No change in pricing at \$0.154 / Lb.

Carus (zinc orthophosphate) – No Change in pricing at \$0.376 / Lb.

Gulbrandsen Inc (6801 coagulant) – No change in pricing at \$0.324 / Lb.

Polymer –No change in pricing at \$1.14 / Lb.



January 8, 2016

Mr. Brent Morelock  
Assistant Procurement Manager  
City of Kingsport  
Kingsport, TN

Sent via E-mail: [brentmorelock@kingsporttn.gov](mailto:brentmorelock@kingsporttn.gov)

Subject: Re: Contract Extension for the purchase of GPAC 6801

Dear Mr. Morelock;

Thank you for your time on the phone call. As discussed we would like to accept your offer of extending the Gulbrandsen GPAC 6801 contract for another year at the existing price.

The pricing will remain unchanged i.e.:

- Product **Gulbrandsen GPAC 6801**  
Packaging: Bulk (45,000/lbs./Delivered)  
Annual Qty: 250,000 lbs. **\$0.324 per pound**  
Delivery Location: Kingsport, TN  
Contract Period May 1st 2015 to April 30<sup>th</sup> 2016
- Product **Gulbrandsen GPAC 6801**  
Packaging: Bulk (20,000/lbs./Delivered)  
Annual Qty: 250,000 lbs. **\$0.356 per pound**  
Delivery Location: Kingsport, TN  
Contract Period May 1st 2015 to April 30<sup>th</sup> 2016

We will look forward to an acceptance acknowledgement for our records.

Please feel free to contact me if you have any questions. We appreciate your business and look forward to continuing to serve the needs of City of Kingsport, TN.

Regards,

**Jim Kane** | Business Manager, Core Business  
Gulbrandsen Technologies | 1 Riverside Way | Phillipsburg, NJ 08865  
Ph.: [724-940-2448](tel:724-940-2448) | Cell: [908-329-4846](tel:908-329-4846) | Email: [jkane@gulbrandsen.com](mailto:jkane@gulbrandsen.com)  
[www.gulbrandsen.com](http://www.gulbrandsen.com)



Gulbrandsen Technologies | 2 Main Street | Clinton, New Jersey 08809  
[www.gulbrandsen.com](http://www.gulbrandsen.com)

## Morelock, Brent

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**From:** Tiffany Snodgrass/Mid-South/Brenntag <TSNODGRASS@brenntag.com>  
**Sent:** Tuesday, February 16, 2016 9:22 AM  
**To:** Morelock, Brent  
**Subject:** FW: City of Kingsport

Brent,

We are pleased to advise you that we will be able to extend your Chlorine ton quote price of \$.154/# (\$308.00/Ton) until 3/31/17.

Please let me know if you need anything further. I will be happy to help in any way.

Thank you,

Tiffany Snodgrass  
Customer Service Manager  
Brenntag Mid-South, Inc.  
Chattanooga, TN and Greeneville, TN Branches  
800-759-1535 or 423-821-1535  
Fax: 423-821-2234  
[tsnodgrass@brenntag.com](mailto:tsnodgrass@brenntag.com)

**NOTICE OF CONFIDENTIAL COMMUNICATION** This communication and any subsequent electronic communication relating to this matter, including any attachments, constitute an "electronic communication" within the meaning of the Electronic Communications Privacy Act, 18 U.S.C.A. §2510 or any similar law of any other jurisdiction. In addition, this and any subsequent electronic communication, and any attachments, may be subject to the attorney-client privilege or be considered attorney work product.

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Please note that any views or opinions presented in this communication or any subsequent communication, including any attachments, are solely those of the author or sender and do not necessarily represent those of Brenntag or its affiliated companies. Neither Brenntag nor any of its affiliated companies accepts any liability for any damage caused by any virus transmitted by any email or its attachments.



# Coastal Water Technology, LLC

February 15, 2016

Brent Morehouse  
Procurement Manager  
City of Kingsport  
620 Industry Dr  
Kingsport, TN 37660

**Re: Proposal to Extend Polymer Contract Fiscal Year 2016-2017**

Thank you, on behalf of Coastal Water Technology and myself for the opportunity to supply your facility with our CWT ST 600 line of cationic emulsion flocculent. Our goal is to provide the highest quality and most cost effective product in the industry. In appreciation for your loyalty, and with the significant treatment advantage from the last polymer performance trials, Coastal Water Technology would like to extend to the City of Kingsport the current tract pricing of \$1.14/LB.

Thank you for the opportunity and below is a recap of the original proposal.

<b>Application:</b>	<b>Centrifuge</b>
<b>Product:</b>	<b>CWT ST 600</b>
<b>Price:</b>	<b>\$1.14/ LB</b>
<b>Packaging:</b>	<b>Tote Bin 2300lbs net weight</b>
<b>FOB:</b>	<b>Kingsport, TN</b>
<b>Terms:</b>	<b>Net 30 days from delivery</b>
<b>Period:</b>	<b>March 1, 2016 – February 28, 2017</b>
<b>Delivery:</b>	<b>7-10 working days from order</b>

In conclusion, feel free to phone 1-843-222-9114 for any concerns.

Sincerely,

W. Patrick Matthews  
Product Manager

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PO Box 789 • 854 Knoll Drive • Little River • South Carolina • 29566  
Phone 843-222-9114 • email: cwt.matthews52@gmail.com

## Morelock, Brent

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**From:** Pumo, Samantha <Samantha.Pumo@caruscorporation.com>  
**Sent:** Monday, February 15, 2016 5:03 PM  
**To:** Morelock, Brent  
**Subject:** Zinc Orthophosphate Contract

Good Afternoon,

Per your conversation with Jose in regards to the Zinc Orthophosphate Contract.  
Carus would like to extend the current contract pricing for Zinc Orthophosphate with Kingsport, TN for the fiscal year beginning April 2016 through March 2017.  
What procedure do I need to follow to extend the contract?

Thank you,

Samantha Pumo | Bid Specialist  
Office: +1 815 224-6503 | [samantha.pumo@caruscorporation.com](mailto:samantha.pumo@caruscorporation.com)

Carus Corporation  
Office: +1 800 435-6856 | +1 815 223-1500 | Fax: +1 815 224-6697  
315 Fifth St | Peru, Illinois, USA 61354  
<http://www.caruscorporation.com>



**CARUS CORPORATION**  
WATER • REMEDIATION • INDUSTRIAL • AIR





**AGENDA ACTION FORM**

**Agreements with the Lynn Garden Optimist Club and the Lynn View Pee Wee Football Organization**

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

Action Form No.: AF-58-2016  
Work Session: March 15, 2016  
First Reading: N/A

Final Adoption: March 15, 2016  
Staff Work By: Baker, Frazier, Lawson  
Presentation By: Morris Baker

**Recommendation:**

Approve the Resolution.

**Executive Summary:**

The Board of Mayor and Alderman have passed an agreement the past 4 years with the Lynn Garden Optimist Club and the Lynn View Pee Wee Football League outlining the use of the Athletic Fields and Concessions at Lynn View for youth football and baseball. City Parks and Recreation Staff worked with both groups to come to understandings pertaining to facility use and cooperation. The Optimist Club will continue to conduct the baseball and softball programs, while the Pee Wee Football group will conduct the youth football and cheerleading programs. The Agreements allow the groups to utilize the Lynn View athletic fields during their seasons and continue to provide quality services to the citizens of Kingsport.

**Attachments:**

1. Resolution for the Lease and Concession Agreement for Lynn Garden Optimist Club
2. Resolution for the Lease and Concession Agreement for the Lynn View Pee Wee Football

	<u>Y</u>	<u>N</u>	<u>O</u>
Duncan	—	—	—
George	—	—	—
McIntire	—	—	—
Mitchell	—	—	—
Olterman	—	—	—
Parham	—	—	—
Clark	—	—	—



RESOLUTION NO. \_\_\_\_\_

A RESOLUTION AUTHORIZING THE MAYOR EXECUTE TWO AGREEMENTS WITH THE LYNN GARDEN OPTIMIST CLUB RELATED TO THE USE OF THE ATHLETIC FIELDS AND CONCESSION STAND OPERATIONS AT THE LYNN VIEW COMMUNITY CENTER

WHEREAS, the City of Kingsport purchased the Lynn View Community Center and Athletic Fields from Sullivan County in 2009; and

WHEREAS, on July 6, 2010, the board approved an agreement between the city and the Lynn Garden Optimist Club for the use of the athletic fields by the club for its youth football and softball programs and a concession lease agreement for the youth of the community; and

WHEREAS, the Optimist Club will provide baseball and softball programs for the youth of the community; and

WHEREAS, the football program and concession for that program will be operated by Lynn View Pee Wee Football by a separate agreement with the city;

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, an agreement, substantially in the form as hereinafter set out, along with all other documents necessary and proper to effectuate the purpose of the agreement, for the use of the Lynn Garden Community Center and athletic fields located at 257 Walker Street by the Lynn Garden Optimist Club for the purpose of youth baseball programs, the agreement being as follows:

AGREEMENT  
BETWEEN  
CITY OF KINGSPORT, TENNESSEE  
AND  
LYNN GARDEN OPTIMIST CLUB

THIS AGREEMENT made by and entered into as of this 23rd day of February, 2016 by and between the CITY OF KINGSPORT, hereinafter called "CITY", and the LYNN GARDEN OPTIMIST CLUB, (LGOC), hereinafter called "LGOC".

WITNESSETH

WHEREAS, the CITY does not provide a recreational youth SPORTS program at the Lynn View Athletic Fields for the citizens of KINGSPORT; and

WHEREAS, LGOC is a non-profit organization organized to promote youth sports activities through the operation in the Lynn Garden community; and

WHEREAS, LGOC has provided for several years a youth sports program including baseball and softball; and

WHEREAS, the CITY and LGOC wish to formalize an agreement for the utilization of CITY facilities for the purpose of providing a recreational youth sports program; and

WHEREAS, the CITY is the owner of the public park amenities located at 257 Walker Street, and hereafter referred to as the "Facilities"; and

WHEREAS, LGOC and the CITY desire to enter this Agreement for the purpose of evidencing the Agreement of the parties with regard to the use of the Facilities by LGOC and respective obligations contained herein;

NOW, THEREFORE, the premises considered, the parties agree as follows:

**I. Term**

This Agreement shall be for a term of four (4) months beginning on the date of the execution hereof. Note that there are multiple users of the facilities, and refer to Section III on Use of Facilities for priorities set during term. This agreement may be terminated with or without cause by either party by giving sixty (60) days written notice to the other party.

**II. Option to Renew**

This Agreement may be renewed at the option but not the obligation of the parties for an additional term, conditioned upon the following:

1. If not in violation of any obligation hereunder, LGOC shall be given the option to renew the Agreement for a like term upon conditions set forth by the City. If LGOC should desire to renew this agreement, it shall do so by giving written notice to City prior to December 1 for the following year.

2. That LGOC shall provide the following information at least 30 days prior to the start of the Spring season:

- Current by-laws for organization
- Proposed budget for upcoming year
- List of current officers and board members with addresses, phone numbers and e-mail (if applicable). CITY is to be notified of changes within two weeks of appointment
- List of officers, recreation program personnel, field coordinators, competitive coaches and Board of Directors members
- List of designated personnel who have facility keys & access.
- Annual calendar including all events

3. LGOC shall provide financial reports of all expenditures and revenues within 90 days after the completion of each playing season.

4. LGOC must comply with the new Tennessee State Law regarding concussions. The new legislation, [Public Chapter 148](#) has three key components:

- To inform and educate coaches, youth athletes and their parents and require them to sign a concussion information form before competing.
- To require removal of a youth athlete who appears to have suffered a concussion from play or practice at the time of the suspected concussion.
- To require a youth athlete to be cleared by a licensed health care professional before returning to play or practice.

5. LGOC must comply with new state law on Cardiac arrest training. Adopt guidelines and other pertinent information and forms as approved by the department of health to inform and educate coaches, school Administrators, young athletes, and their parents or guardians of the active, risk, and symptoms of sudden cardiac arrest including the risks associated with continuing to play or practice when experiencing any of the following symptoms. The new legislation, [Public Chapter 325](#) has 5 symptoms to watch for:

- (v). Fainting or Seizures
- (ii). Unexplained shortness of breath
- (iii). Chest Pains
- (iv). Dizziness
- (v). Racing Heart

The City of Kingsport has developed policies and procedures to insure compliance.

In the event the above information is not timely furnished, this Agreement and/or any extension thereof shall be automatically cancelled without further notice.

**III. Use of Facilities**

1. LGOC will be the primary youth baseball and softball provider in the Lynn Garden community for the City of Kingsport during the period of March 1, 2016 to June 30, 2016. LGOC shall have the primary right to use the CITY'S Sports Facilities in the Lynn Garden community, as assigned by CITY, during LGOC'S regular Spring recreational seasons, league playoffs and make-up games, and one tournament, without assignment of any associated facility rental fees. At any time the facilities are not being used by LGOC, City may use the facilities for its Parks and Recreation program.

Special Note: There is a 2 week overlap between the end of the baseball/softball season and the beginning of the Pee Wee Football season. Both groups are to work cooperatively to make the transition as smooth as possible. The football cheerleaders are to practice at the Community center during this 2 week overlap or at the upper baseball field.

In addition, the LGOC agrees to work cooperatively with the City on scheduling Special Events such as the Funfest Block Party, Alumni Reunions, and others deemed appropriate for the benefit of the community.

2. LGOC may use a meeting room located at the CITY's Lynn View Community Center for official LGOC monthly board meetings during the term of this Agreement. Scheduling these meetings are to be done through the CITY'S Parks and Recreation Program Coordinator. The CITY will provide space at Lynn View for one end of the year banquet. The reservation of these dates must be made two months in advance and are subject to availability.
3. LGOC may not make any additions and/or alterations to the facility buildings, equipment, grounds, and/or furnishing without written consent from the city of Kingsport.
4. LGOC understands and agrees that at times weather, electrical storms, scheduled maintenance and/or field conditions may result in City denying the use of certain fields on dates for which approval has been granted. LGOC shall use appropriate judgment in insuring the safety of the participants.
5. CITY shall at all times have the right to inspect its Facilities being used by LGOC and all LGOC sponsored activities related to the use of such facilities.
6. If LGOC should desire to use CITY facilities for additional tournaments or special events or programs, LGOC shall make a request to the CITY in accordance with the guidelines established for assigning and scheduling of activities at City sports facilities. Any and all additions, tournaments or special programs shall not be included in this Agreement, but shall require a separate written agreement between the parties.
7. Lynn Garden Optimist Baseball/Softball group will have 5 volunteers designated for the Lynn View Block Party to be held on July, 14 2016 from 4-8pm.

#### **IV. Obligation of the City**

CITY agrees to:

1. Provide the following maintenance and oversight for the Sports Fields at Lynn View.
  - Perform general maintenance and repairs to the facilities.
  - Work with LGOC on maintenance items that could improve operations. At the end of every year the Parks and Recreation Program Coordinator will sit down with each group to discuss future possibilities and maintenance issues for the next year.
  - Provide LGOC with contact information for after-hour and everyday needs.
  - Determine all rental fees and rules for usage of facility.
  - Establish all rules to include facility safety, signage as appropriate, emergency notification process, traffic control, and environmental regulations.
  - Establish policy for field lighting usage.
  - Provide a plan for and approve all capital improvements with input from LGOC.
  - Provide for insurance on buildings.
  - Line fields as needed for events and activities assigned to user groups other than LGOC.
  - Provide equipment (mower & trimmer) to mow field space within the perimeter fence of the baseball fields. The City will provide an annual maintenance check on the equipment. LGOC is to provide ongoing maintenance to the equipment between March 1 and June 30 of current contract year.
  - The City will continue to pay the utilities for the 2016 season. This will be reviewed again after the year and a determination from year to year will be made on what best suits the City and the LGOC.
2. Reserve the right to utilize the Facilities when LGOC league activities are not scheduled. If Facilities are abandoned, the Agreement is terminated. "Abandonment" shall be defined as no competitive play taking place on allocated field(s) during the entire term of the Agreement.
3. Assist LGOC with distribution of information and refer interested parties to LGOC when necessary.

It is understood and agreed the CITY'S obligations under this Agreement will be performed as soon as, and to the extent that, budgeted funds are available for performance of its obligations. If City is unable to fulfill its obligations due to budget restraints, it will not be obligated to LGOC for any monetary damages.

The City and LGOC agree to work together to identify possible revenue sources that will help pay for utilities and maintenance costs.

#### **V. Obligations of LGOC**

Through their oversight of the Lynn Garden Baseball and Softball Boards, LGOC agrees to:

1. Provide to the citizens of Greater Kingsport a quality recreational youth sports program that operates with reasonable participant fees and associated services.
2. Background checks must be done on all coaches who are in a leadership role and are left alone with children. The City of Kingsport will provide the Background service that they use for Athletic programs, however the funds to pay for this service must be provided by the LGOC.
3. At no expense to the CITY, provide the following maintenance and repair:

- Maintain all baseball and softball equipment.
  - LGOC shall be responsible for daily game day policing of all litter on their field(s) to include playing areas, bleachers, concession stands, offices, maintenance buildings, and adjacent grounds.
  - Line all fields for LGOC league and tournament play. The LGOC is also responsible for the provision of the necessary materials to maintain the field and the field markings on a daily basis.
  - Mow and trim field space within the perimeter fence of the baseball fields between March 1 and June 30 of current contract year. All mowing and trim after June 30 of current contract year will be responsibility of CITY and Pee Wee football.
  - Monitor and clean restroom facility; stock supplies.
  - Adhere to City rules that pertain to field usage and provide input on overuse.
4. Furnish to the Kingsport Parks and Recreation Department calendar of events annually by April 1 for baseball/softball. The schedule may be updated and adjusted as the season progresses and will serve as a guide for maintenance of the Facilities. Any adjustments must be relayed to the Kingsport Parks and Recreation Department.
  5. Schedule and meet with the Kingsport Parks and Recreation Department prior to the season to discuss schedules, field playability and department guidelines and maintain regular communication with CITY staff.
  6. Provide the CITY with specified accident and Incident reports. The City of Kingsport will provide the appropriate forms to use.
  7. Sign a usage agreement annually with the City of Kingsport, Tennessee.
  8. Report any facility maintenance problems to City of Kingsport designated personnel. This must be done in writing by the baseball group and the LGOC. In order to correct those issues it must be made before November for the following year in order to make arrangements with the upcoming budget.
  9. Sign a lease agreement for concession rights and request approval by the CITY for any and all additional concession trailers and follow City, County, and State Health Codes.
  10. Signage or promotional items are to be done in conjunction with the Kingsport Parks and Recreation Manager. Any funds derived would go towards maintenance of the park area as determined by the Parks and Recreation Manager.
  11. Provide the City of Kingsport an agreed upon in-kind match per season for each registered player in the leagues that is a Non-Resident of the City of Kingsport. The in-kind match will be a value mutually agreed upon by the City and LGOC. The City and LGOC will agree on facility upgrade and/or facility improvements for the in-kind match.
  12. Maintain at least a 50% or greater number of City of Kingsport residents as registered participants. Verification of residency percentages shall be made annually to the City of Kingsport. The CITY and LGOC will utilize annual data to determine future percentage goals.
  13. Provide a responsible adult to be on-site at each and every activity scheduled on City facilities.
  14. Agree not to make any permanent changes to facilities or fields without the expressed prior written permission of the Kingsport Parks and Recreation Department.
  15. Adhere to facility rules and regulations which includes proper use and care of lights, grounds, keys, facilities, and amenities.
  16. Follow all Park rules that have been established in the City of Kingsport per code and ordinance as related to the facilities, general operating guidelines, etc.
  17. Assist the City of Kingsport in moving and relocating equipment within the park as necessary.
  18. Allow Ex-Officio representation by Kingsport Parks and Recreation on LGOC Board of Directors.
  19. Conduct only LGOC sanctioned and organized events and activities under the terms of this usage agreement. Personal use of the facility by LGOC members is outside the scope of this agreement.
  20. Not hold the City responsible for damage or loss to LGOC equipment located at the facility unless specifically caused by negligence on the part of the City.
  21. Provide Kingsport Parks and Recreation statistical data pertaining to participation and attendance at the CITY facility on a monthly basis.

#### **VI. Assignment and Exclusivity**

This Agreement is a privilege for the benefit of LGOC only and may not be assigned in whole or part by LGOC to any other person or entity. Both parties understand that LGOC'S use of the facility is nonexclusive.

#### **VII. Insurance and Indemnification**

LGOC shall at all times during the term of this Agreement maintain in effect general public liability insurance covering the LGOC program at the Facilities against claims for personal injury,

death or damage to property to the limit of not less than one-million dollars (\$1,000,000.00). The CITY shall be named as an additional insured on such policy and shall be entitled to thirty (30) days notice of cancellation or changes of any kind regarding such insurance, and certificates of insurance shall be provided by LGOC to the CITY.

LGOC shall indemnify, defend and hold harmless the City of Kingsport, its officers, employees and agents from any and against any and all suits, actions, or claims of every kind or nature whatsoever, foreseen or unforeseen, known or unknown that arises out of, or is any way related to the acts or the failure to act of LGOC or its agents, volunteers, or employees in the use of the Facilities arising out of obligations of LGOC as set forth in this Agreement.

**VIII. Miscellaneous Provisions:**

1. No modification of this Agreement shall be effective unless it is made in writing and is signed by the authorized representatives of the parties hereto.
2. This Agreement shall be construed under and in accordance with the laws of the State of Tennessee, and all obligations of the LGOC and the CITY created hereunder are performable in Sullivan County, Tennessee.
3. Nothing in this Agreement shall be construed to make the CITY or its respective agents or representatives liable in situations it is otherwise immune from liability.
4. In case any one or more of the provisions contained in this Agreement shall for any reason be held invalid, illegal or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision thereof and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.
5. Each party represents to the other that the individual signing this Agreement below has been duly authorized to do so by its respective governing body, and that this Agreement is binding and enforceable as to each party.

IN WITNESS WHEREOF, the parties have executed this Agreement on the day and year set forth below:

[Acknowledgements Deleted for Inclusion in this Resolution]

SECTION II. That the mayor is further authorized and directed 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 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, a concession lease agreement, substantially in the form as hereinafter set out, along with all other documents necessary and proper to effectuate the purpose of the agreement, to provide concessions at the Lynn Garden Community Center and athletic fields located at 257 Walker Street by the Lynn Garden Optimist Club. The proposed agreement is as follows:

**CONCESSION LEASE AGREEMENT**

This Agreement made and entered into this 1st day of March, 2016, by and between the City of Kingsport, a municipal corporation of the State of Tennessee, party of the first part, hereinafter called the LESSOR, AND Lynn Garden Optimist Club, hereinafter called the CONCESSIONAIRE.

**W-I-T-N-E-S-S-E-T-H**

That for and in consideration of its maintenance assistance and league operations, the LESSOR does hereby lease unto the CONCESSIONAIRE for the period of March 1, 2016, through June 30, 2016 the concession rights for the sale of food, refreshments, confectionery and beverages at the fields at 257 Walker Street.

The CONCESSIONAIRE agrees to and shall abide by the following conditions:  
The CONCESSIONAIRE will be responsible for furnishing all the equipment, food supplies or other items offered for sale, and any other incidentals necessary for the operation of the concession. He shall be responsible for the maintenance of his equipment to insure that it is in a safe and usable condition at all times. He shall provide at his own cost a sufficient number of employees to serve the public promptly and in a manner satisfactory to the Parks and Recreation Manager. The CONCESSIONAIRE agrees not to sublet or sublease in any form the concession rights as approved by the City. The LGOC has the rights to baseball concessions.

The Parks and Recreation Manager shall approve all items offered under this concession and shall approve all prices charged to the public. Any agreement of pouring rights must receive the approval of the Parks and Recreation Manager.

The CONCESSIONAIRE shall pay 0% of sales to the City of Kingsport.

The CONCESSIONAIRE shall agree to comply with and abide by all rules regulating the operation of the park and the hours of operation of the concession shall coincide with the hours of the park in agreement with the Parks and Recreation Manager.

The CONCESSIONAIRE shall furnish all labor and other materials necessary to maintain the concession in a clean, orderly and inviting condition that shall be satisfactory to the Parks and Recreation Manager; and this shall include the area immediately surrounding the concession area. In addition, at the end of each day, the CONCESSIONAIRE shall be responsible for keeping the designated eating and shelter area free of all trash and litter by placing it in a trash container.

The City will furnish lights, power, and water in such locations where these utilities now exist. All additional installations which require the use of these utilities shall be made and maintained at the expense of the CONCESSIONAIRE and upon the approval of the Parks and Recreation Manager.

Any alterations, repairs, or additions to the building area occupied by the CONCESSIONAIRE must be approved in advance by the Parks and Recreation Manager. The City shall make all ordinary and reasonable repairs to preserve the building occupied by the CONCESSIONAIRE. It shall be the obligation of the CONCESSIONAIRE to secure or obtain all permits and licenses required by law for the operation of the concession and the sale of approved merchandise. The CONCESSIONAIRE shall comply with all ordinances of the City of Kingsport, Sullivan County, and the State of Tennessee, and shall comply with all applicable State and Federal rules and regulations concerning the serving of food, hours of work, pay and equal employment of personnel without discrimination as to race, color, age or sex.

The City shall have the right of inspection and audit at all times during regular business hours. A violation of any provisions of this contract shall work a forfeiture of this contract, and the City may take possession on a twenty-four (24) hour notice. The CONCESSIONAIRE may voluntarily terminate the contract upon five (5) days written notice to the City.

The CONCESSIONAIRE shall furnish all owners liability insurance, specifically naming the City of Kingsport as co-insured, to defend, indemnify and save harmless the City of Kingsport from any and all claims and suits for injury to persons or property arising out of the performance of this contract caused in any way by the acts or omissions of the CONCESSIONAIRE or the CONCESSIONAIRE'S agents, employees, or representatives during or in connection with this contract excepting bodily injury or death or property damage caused by the sole negligence of the City of Kingsport with the requisite certificate(s) of insurance in compliance herewith.

[Acknowledgements Deleted for Inclusion in this Resolution]

SECTION IV. That the mayor is further authorized and directed 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 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 15<sup>th</sup> day of March 2016

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JOHN CLARK, MAYOR

ATTEST:

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JAMES H. DEMMING, CITY RECORDER  
APPROVED AS TO FORM:

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J. MICHAEL BILLINGSLEY, CITY ATTORNEY

RESOLUTION NO. \_\_\_\_\_

A RESOLUTION AUTHORIZING THE MAYOR EXECUTE TWO AGREEMENTS WITH LYNN VIEW PEE WEE FOOTBALL RELATED TO THE USE OF THE ATHLETIC FIELDS AND CONCESSION STAND OPERATIONS AT THE LYNN VIEW COMMUNITY CENTER

WHEREAS, the City of Kingsport purchased the Lynn View Community Center and Athletic Fields from Sullivan County in 2009; and

WHEREAS, on July 6, 2010 the board approved an agreement between the city and the Optimist Club for the use of the club by the youth football program to allow the Lynn View Pee Wee Football to conduct football programs and a concession lease agreement for the youth of the community;

WHEREAS, the agreement with the Lynn Garden Optimist Club previously included the Lynn View Pee Wee Football; and

WHEREAS, by agreement of both the Lynn Garden Optimist Club and Lynn View Pee Wee Football, Lynn View Pee Wee Football will have a separate lease agreement and concession agreement with the city for the use of the Lynn view Athletic fields.

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, an Agreement, substantially in the form as hereinafter set out, along with all other documents necessary and proper to effectuate the purpose of the agreement, for the use of the Lynn Garden Community Center and athletic fields located at 257 Walker Street by the Lynn View Pee Wee Football for the purpose of youth football programs. The proposed agreement is as follows:

AGREEMENT  
BETWEEN  
CITY OF KINGSPORT, TENNESSEE  
AND  
LYNN VIEW PEE WEE FOOTBALL LEAGUE

THIS AGREEMENT made by and entered into as of this 23rd day of February, 2016, by and between the CITY OF KINGSPORT, hereinafter called "CITY", and the LYNN VIEW PEE WEE FOOTBALL LEAGUE, (LVPWFL), hereinafter called "LVPWFL".

WITNESSETH

WHEREAS, the CITY does not provide a recreational youth SPORTS program at the Lynn View Athletic Fields for the citizens of KINGSPORT; and

WHEREAS, LVPWFL is a non-profit organization organized to promote youth sports activities through the operation in the Lynn Garden community; and

WHEREAS, LVPWFL has provided for several years a youth sports program including baseball and softball; and

WHEREAS, the CITY and LVPWFL wish to formalize an agreement for the utilization of CITY facilities for the purpose of providing a recreational youth sports program; and



WHEREAS, the CITY is the owner of the public park amenities located at 257 Walker Street, and hereafter referred to as the "Facilities"; and

WHEREAS, LVPWFL and the CITY desire to enter this Agreement for the purpose of evidencing the Agreement of the parties with regard to the use of the Facilities by LVPWFL and respective obligations contained herein;

NOW, THEREFORE, the premises considered, the parties agree as follows:

**I. Term**

This Agreement shall be for a term of twelve (12) months beginning on the date of the execution hereof. Note that there are multiple users of the facilities, and refer to Section III on Use of Facilities for priorities set during term. This agreement may be terminated with or without cause by either party by giving sixty (60) days written notice to the other party.

**II. Option to Renew**

This Agreement may be renewed at the option but not the obligation of the parties for an additional term, conditioned upon the following:

1. If not in violation of any obligation hereunder, LVPWFL shall be given the option to renew the Agreement for a like term upon conditions set forth by the City. If LVPWFL should desire to renew this agreement, it shall do so by giving written notice to City prior to December 1 for the following year.

2. That LGOC shall provide the following information at least 30 days prior to the start of the Spring season:

- Current by-laws for organization
- Proposed budget for upcoming year
- List of current officers and board members with addresses, phone numbers and e-mail (if applicable). CITY is to be notified of changes within two weeks of appointment
- List of officers, recreation program personnel, field coordinators, competitive coaches and Board of Directors members
- List of designated personnel who have facility keys & access.
- Annual calendar including all events

3. LVPWFL shall provide financial reports of all expenditures and revenues within 90 days after the completion of each playing season.

4. LVPWFL must comply with the new Tennessee State Law regarding concussions. The new legislation, Public Chapter 148 has three key components:

1. To inform and educate coaches, youth athletes and their parents and require them to sign a concussion information form before competing.
2. To require removal of a youth athlete who appears to have suffered a concussion from play or practice at the time of the suspected concussion.
3. To require a youth athlete to be cleared by a licensed health care professional before returning to play or practice.

5. LGOC must comply with new state law on Cardiac arrest training. Adopt guidelines and other pertinent information and forms as approved by the department of health to inform and educate coaches, school Administrators, young athletes, and their parents or guardians of the active, risk, and symptoms of sudden cardiac arrest including the risks associated with continuing to play or practice when experiencing any of the following symptoms. The new legislation, Public Chapter 325 has 5 symptoms to watch for:

- (v). Fainting or Seizures
- (ii). Unexplained shortness of breath
- (iii). Chest Pains
- (iv). Dizziness
- (v). Racing Heart

The City of Kingsport has developed policies and procedures to insure compliance.

In the event the above information is not timely furnished, this Agreement and/or any extension thereof shall be automatically cancelled without further notice.

**III. Use of Facilities**

1. LVPWFL will be the primary youth football provider in the Lynn Garden community for the City of Kingsport during the period of June 16, 2015 to Dec.1, 2015. LVPWFL shall have the primary right to use the CITY'S Sports Facilities in the Lynn Garden community, as assigned by CITY, during LVPWFL regular Spring recreational seasons, league playoffs and make-up games, and one tournament, without assignment of any associated facility rental fees. At any time the facilities are not being used by LVPWFL, City may use the facilities for its Parks and Recreation program.

Special Note: There is a 2 week overlap between the end of the baseball/softball season and the beginning of the Pee Wee Football season. Both groups are to work cooperatively to

make the transition as smooth as possible. The football cheerleaders are to practice at the Community center during this 2 week overlap or at the upper baseball field. In addition, the LVPWFL agrees to work cooperatively with the City on scheduling Special Events such as the Funfest Block Party, Alumni Reunions, and others deemed appropriate for the benefit of the community.

2. LVPWFL may use a meeting room located at the CITY's Lynn View Community Center for official LVPWFL monthly board meetings during the term of this Agreement. Scheduling these meetings are to be done through the CITY'S Parks and Recreation Program Coordinator. The CITY will provide space at Lynn View for one end of the year banquet. The reservation of these dates must be made two months in advance and are subject to availability.

3. LVPWFL may not make any additions and/or alterations to the facility buildings, equipment, grounds, and/or furnishing without written consent from the city of Kingsport.

4. LVPWFL understands and agrees that at times weather, electrical storms, scheduled maintenance and/or field conditions may result in City denying the use of certain fields on dates for which approval has been granted. LVPWFL shall use appropriate judgment in insuring the safety of the participants.

5. CITY shall at all times have the right to inspect its Facilities being used by LVPWFL and all LVPWFL sponsored activities related to the use of such facilities.

6. If LVPWFL should desire to use CITY facilities for additional tournaments or special events or programs, LVPWFL shall make a request to the CITY in accordance with the guidelines established for assigning and scheduling of activities at City sports facilities. Any and all additions, tournaments or special programs shall not be included in this Agreement, but shall require a separate written agreement between the parties.

7. LVPWFL will have 5 volunteers designated for the Lynn View Block Party to be held on July, 14 2016 from 4-8pm.

#### **IV. Obligation of the City**

CITY agrees to:

1. Provide the following maintenance and oversight for the Sports Fields at Lynn View.
  - Perform general maintenance and repairs to the facilities.
  - Work with LVPWFL on maintenance items that could improve operations. At the end of every year the Parks and Recreation Program Coordinator will sit down with each group to discuss future possibilities and maintenance issues for the next year.
  - Provide LVPWFL with contact information for after-hour and everyday needs.
  - Determine all rental fees and rules for usage of facility.
  - Establish all rules to include facility safety, signage as appropriate, emergency notification process, traffic control, and environmental regulations.
  - Provide 1 username/password for the Musco lights at the football stadium for use during extended hours of need.
  - Establish policy for field lighting usage.
  - Provide a plan for and approve all capital improvements with input from LVPWFL.
  - Provide for insurance on buildings.
  - Line fields as needed for events and activities assigned to user groups other than LVPWFL.
  - Provide equipment (mower & trimmer) to mow field space within the perimeter fence of the baseball fields. The City will provide an annual maintenance check on the equipment. LVPWFL is to provide ongoing maintenance to the equipment between June 15 and Dec 1 of current contract year.
  - The City will continue to pay the utilities for the 2015 season. This will be reviewed again after the year and a determination from year to year will be made on what best suits the City and the LVPWFL.
2. Reserve the right to utilize the Facilities when LVPWFL league activities are not scheduled. If Facilities are abandoned, the Agreement is terminated. "Abandonment" shall be defined as no competitive play taking place on allocated field(s) during the entire term of the Agreement.
3. Assist LVPWFL with distribution of information and refer interested parties to LVPWFL when necessary.

It is understood and agreed the CITY'S obligations under this Agreement will be performed as soon as, and to the extent that, budgeted funds are available for performance of its obligations. If City is unable to fulfill its obligations due to budget restraints, it will not be obligated to LVPWFL for any monetary damages.

The City and LVPWFL agree to work together to identify possible revenue sources that will help pay for utilities and maintenance costs.

## V. Obligations of LVPWFL

Through their oversight of the Lynn View Pee Wee Football Board, LVPWFL agrees to:

1. Provide to the citizens of Greater Kingsport a quality recreational youth sports program that operates with reasonable participant fees and associated services.
2. Background checks must be done on all coaches who are in a leadership role and are left alone with children. The City of Kingsport will provide the Background service that they use for Athletic programs, however the funds to pay for this service must be provided by the LVPWFL.
3. At no expense to the CITY, provide the following maintenance and repair:
  - Maintain all Football equipment.
  - LVPWFL shall be responsible for daily game day policing of all litter on their field(s) to include playing areas, bleachers, concession stands, offices, maintenance buildings, and adjacent grounds.
  - Line all fields for LVPWFL league and tournament play. The LVPWFL is also responsible for the provision of the necessary materials to maintain the field and the field markings on a daily basis.
  - Mow and trim field space within the perimeter fence of the football field and baseball lower field between June 15 and Dec.1 of current contract year. Monitor and clean restroom facility; stock supplies.
  - Adhere to City rules that pertain to field usage and provide input on overuse.
4. Furnish to the Kingsport Parks and Recreation Department calendar of events annually by May 1 for baseball/softball. The schedule may be updated and adjusted as the season progresses and will serve as a guide for maintenance of the Facilities. Any adjustments must be relayed to the Kingsport Parks and Recreation Department.
5. Schedule and meet with the Kingsport Parks and Recreation Department prior to the season to discuss schedules, field playability and department guidelines and maintain regular communication with CITY staff.
6. Provide the CITY with specified accident and Incident reports. The City of Kingsport will provide the appropriate forms to use.
7. Sign a usage agreement annually with the City of Kingsport, Tennessee.
8. Report any facility maintenance problems to City of Kingsport designated personnel. This must be done in writing by the baseball group and the LVPWFL. In order to correct those issues it must be made before November for the following year in order to make arrangements with the upcoming budget.
9. Sign a lease agreement for concession rights and request approval by the CITY for any and all additional concession trailers and follow City, County, and State Health Codes.
10. Signage or promotional items are to be done in conjunction with the Kingsport Parks and Recreation Manager. Any funds derived would go towards maintenance of the park area as determined by the Parks and Recreation Manager.
11. Provide the City of Kingsport an agreed upon in-kind match per season for each registered player in the leagues that is a Non-Resident of the City of Kingsport. The in-kind match will be a value mutually agreed upon by the City and LVPWFL. The mowing of the facility has been used for the in kind match.
12. Maintain at least a 50% or greater number of City of Kingsport residents as registered participants. Verification of residency percentages shall be made annually to the City of Kingsport. The CITY and LVPWFL will utilize annual data to determine future percentage goals.
13. Provide a responsible adult to be on-site at each and every activity scheduled on City facilities.
14. Agree not to make any permanent changes to facilities or fields without the expressed prior written permission of the Kingsport Parks and Recreation Department.
15. Adhere to facility rules and regulations which includes proper use and care of lights, grounds, keys, facilities, and amenities.
16. Follow all Park rules that have been established in the City of Kingsport per code and ordinance as related to the facilities, general operating guidelines, etc.
17. Assist the City of Kingsport in moving and relocating equipment within the park as necessary.
18. Allow Ex-Officio representation by Kingsport Parks and Recreation on LVPWFL Board of Directors.
19. Conduct only LVPWFL sanctioned and organized events and activities under the terms of this usage agreement. Personal use of the facility by LVPWFL members is outside the scope of this agreement.
20. Not hold the City responsible for damage or loss to LVPWFL equipment located at the facility unless specifically caused by negligence on the part of the City.

21. Provide Kingsport Parks and Recreation statistical data pertaining to participation and attendance at the CITY facility on a monthly basis.

**VI. Assignment and Exclusivity**

This Agreement is a privilege for the benefit of LVPWFL only and may not be assigned in whole or part by LVPWFL to any other person or entity. Both parties understand that LVPWFL use of the facility is nonexclusive.

**VII. Insurance and Indemnification**

LVPWFL shall at all times during the term of this Agreement maintain in effect general public liability insurance covering the LVPWFL program at the Facilities against claims for personal injury, death or damage to property to the limit of not less than one-million dollars (\$1,000,000.00). The CITY shall be named as an additional insured on such policy and shall be entitled to thirty (30) days notice of cancellation or changes of any kind regarding such insurance, and certificates of insurance shall be provided by LVPWFL to the CITY.

LVPWFL shall indemnify, defend and hold harmless the City of Kingsport, its officers, employees and agents from any and against any and all suits, actions, or claims of every kind or nature whatsoever, foreseen or unforeseen, known or unknown that arises out of, or is any way related to the acts or the failure to act of LVPWFL or its agents, volunteers, or employees in the use of the Facilities arising out of obligations of LVPWFL as set forth in this Agreement.

**VIII. Miscellaneous Provisions:**

1. No modification of this Agreement shall be effective unless it is made in writing and is signed by the authorized representatives of the parties hereto.
2. This Agreement shall be construed under and in accordance with the laws of the State of Tennessee, and all obligations of the LVPWFL and the CITY created hereunder are performable in Sullivan County, Tennessee.
3. Nothing in this Agreement shall be construed to make the CITY or its respective agents or representatives liable in situations it is otherwise immune from liability.
4. In case any one or more of the provisions contained in this Agreement shall for any reason be held invalid, illegal or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision thereof and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.
5. Each party represents to the other that the individual signing this Agreement below has been duly authorized to do so by its respective governing body, and that this Agreement is binding and enforceable as to each party.

IN WITNESS WHEREOF, the parties have executed this Agreement on the day and year set forth below:

[Acknowledgements Deleted for Inclusion in this Resolution]

SECTION II. That the mayor is further authorized and directed 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 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, a concession lease agreement, substantially in the form as hereinafter set out, along with all other documents necessary and proper to effectuate the purpose of the agreement, to provide concessions at the Lynn Garden Community Center and athletic fields located at 257 Walker Street by the Lynn View Pee Wee Football. The proposed agreement is as follows:

**CONCESSION LEASE AGREEMENT**

This Agreement made and entered into this 24th day of January, 2016, by and between the City of Kingsport, a municipal corporation of the State of Tennessee, party of the first part, hereinafter called the LESSOR, AND Lynn View Pee Wee Football League, hereinafter called the CONCESSIONAIRE.

**W-I-T-N-E-S-S-E-T-H**

That for and in consideration of its maintenance assistance and league operations, the LESSOR does hereby lease unto the CONCESSIONAIRE for the period of June 15, 2016,

through Dec.1, 2016, the concession rights for the sale of food, refreshments, confectionery and beverages at the fields at 257 Walker Street.

The CONCESSIONAIRE agrees to and shall abide by the following conditions:

The CONCESSIONAIRE will be responsible for furnishing all the equipment, food supplies or other items offered for sale, and any other incidentals necessary for the operation of the concession. He shall be responsible for the maintenance of his equipment to insure that it is in a safe and usable condition at all times. He shall provide at his own cost a sufficient number of employees to serve the public promptly and in a manner satisfactory to the Parks and Recreation Manager. The CONCESSIONAIRE agrees not to sublet or sublease in any form the concession rights as approved by the City. The LVPWFL has the rights to football concessions.

The Parks and Recreation Manager shall approve all items offered under this concession and shall approve all prices charged to the public. Any agreement of pouring rights must receive the approval of the Parks and Recreation Manager.

The CONCESSIONAIRE shall pay 0% of sales to the City of Kingsport.

The CONCESSIONAIRE shall agree to comply with and abide by all rules regulating the operation of the park and the hours of operation of the concession shall coincide with the hours of the park in agreement with the Parks and Recreation Manager.

The CONCESSIONAIRE shall furnish all labor and other materials necessary to maintain the concession in a clean, orderly and inviting condition that shall be satisfactory to the Parks and Recreation Manager; and this shall include the area immediately surrounding the concession area. In addition, at the end of each day, the CONCESSIONAIRE shall be responsible for keeping the designated eating and shelter area free of all trash and litter by placing it in a trash container.

The City will furnish lights, power, and water in such locations where these utilities now exist. All additional installations which require the use of these utilities shall be made and maintained at the expense of the CONCESSIONAIRE and upon the approval of the Parks and Recreation Manager.

Any alterations, repairs, or additions to the building area occupied by the CONCESSIONAIRE must be approved in advance by the Parks and Recreation Manager. The City shall make all ordinary and reasonable repairs to preserve the building occupied by the CONCESSIONAIRE.

It shall be the obligation of the CONCESSIONAIRE to secure or obtain all permits and licenses required by law for the operation of the concession and the sale of approved merchandise. The CONCESSIONAIRE shall comply with all ordinances of the City of Kingsport, Sullivan County, and the State of Tennessee, and shall comply with all applicable State and Federal rules and regulations concerning the serving of food, hours of work, pay and equal employment of personnel without discrimination as to race, color, age or sex.

The City shall have the right of inspection and audit at all times during regular business hours. A violation of any provisions of this contract shall work a forfeiture of this contract, and the City may take possession on a twenty-four (24) hour notice. The CONCESSIONAIRE may voluntarily terminate the contract upon five (5) days written notice to the City.

The CONCESSIONAIRE shall furnish all owners liability insurance, specifically naming the City of Kingsport as co-insured, to defend, indemnify and save harmless the City of Kingsport from any and all claims and suits for injury to persons or property arising out of the performance of this contract caused in any way by the acts or omissions of the CONCESSIONAIRE or the CONCESSIONAIRE'S agents, employees, or representatives during or in connection with this contract excepting bodily injury or death or property damage caused by the sole negligence of the City of Kingsport with the requisite certificate(s) of insurance in compliance herewith.

[Acknowledgements Deleted for Inclusion in this Resolution]

SECTION IV. That the mayor is further authorized and directed 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 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 15th day of March, 2016.

\_\_\_\_\_  
JOHN CLARK, MAYOR

ATTEST:

\_\_\_\_\_  
JAMES H. DEMMING, CITY RECORDER

APPROVED AS TO FORM:

\_\_\_\_\_  
J. MICHAEL BILLINGSLEY, CITY ATTORNEY



**AGENDA ACTION FORM**

**Agreement with Dick's Sporting Goods for 2016 Parks and Recreation Baseball/Softball Programs**

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

Action Form No.: AF-52-2016  
 Work Session: March 15, 2016  
 First Reading: N/A

Final Adoption: March 15, 2016  
 Staff Work By: Andy Sigwalt, Kitty Frazier  
 Presentation By: Morris Baker

**Recommendation:**

Approve the Resolution.

**Executive Summary:**

The Parks and Recreation Department is seeking to renew the agreement with Dick's Sporting Goods and the City of Kingsport. The sponsorship with Dick's Sporting Goods would involve the City receiving new equipment and supplies for the programs, such as scorebooks, batting tees, hitting nets, baseballs and softball to be used during the season. In exchange the Parks & Recreation Department will provide the participants in our leagues promotional information and discount coupons for sporting good supplies at the store. The sponsorship agreement term would last for a period of one year, starting with the 2016 Spring Youth Baseball/Softball season.

**Attachments:**

1. Resolution / Kingsport P&R Sponsorship Agreement 2016

	<u>Y</u>	<u>N</u>	<u>O</u>
George	—	—	—
McIntire	—	—	—
Mitchell	—	—	—
Olterman	—	—	—
Parham	—	—	—
Clark	—	—	—

RESOLUTION NO. \_\_\_\_\_

A RESOLUTION APPROVING AN AGREEMENT WITH DICK'S SPORTING GOODS, INC., AND AUTHORIZING THE MAYOR TO EXECUTE THE AGREEMENT AND ALL OTHER DOCUMENTS NECESSARY AND PROPER TO EFFECTUATE THE PURPOSE OF THE AGREEMENT

WHEREAS, in 2015 the city entered into a sponsorship agreement with Dick's Sporting Goods, Inc. for the Parks and Recreation Department; and

WHEREAS, the city would like to enter into another sponsorship agreement with Dick's Sporting Goods, Inc. for the period of April, 1, 2016, through April 1, 2017; and

WHEREAS, the sponsorship with Dick's Sporting Goods, Inc. would involve the city receiving new equipment and supplies for the programs, such as scorebooks, batting tees, hitting nets, baseballs and softball to be used during the season; and

WHEREAS, in exchange the Parks and Recreation Department will be providing the participants in our leagues promotional information and discount coupons for sporting good supplies at the store.

Now therefore,

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

SECTION I. That a sponsorship agreement with Dick's Sporting Goods, Inc. 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 sponsorship agreement with Dick's Sporting Goods, Inc., 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 as follows:

**SPONSORSHIP AGREEMENT**

Kingsport Parks & Recreation  
Andy Sigwalt  
1550 Fort Henry Dr. Kingsport, Tennessee 37664  
423-229-9460

March 8, 2016

Dear Andy Sigwalt,

Thank you for taking the time to discuss the opportunity for sponsorship. Based on our conversations and what you stated was important to you, we are pleased to enter into this Sponsorship Agreement ("Agreement") between Dick's Sporting Goods, Inc. ("DSG" or "Sponsor") and the City of Kingsport, Tennessee (the "City") for its Kingsport Parks & Recreation baseball, tee ball and softball programs ("Organization"). With the intention of being legally bound, we agree as follows:

DSG shall provide the organization with the following:		Value
<b>Cash</b>		\$550
<b>Community Youth Sports Kits</b>		\$1,154.85
<b>Quantity Value</b>		
15	2016 Baseball (\$76.99/each)	
<b>Accessories</b>		
<b>Quantity Value</b>		\$499.93



10		Adidas Baseball helmets (\$19.99)	
6	Bat Bags (\$25.00)		
6	Batting Tees (\$24.99)		
<b>Total Sponsorship Value</b>			<b>\$2,204.78</b>

**Organization to provide DSG with the following:**

1. DSG Team Packet distribution to all Organization's participants during a mutually agreed time
2. DSG Banner with DSG Logo placed in a mutually agreed space during the Term
3. Logo with link to electronic team packet coupons on Organization's website (directions on how to link to the website are provided on Exhibit C)
4. Distribution of DSG electronic coupon in Organization's email communications at least **6 times** during the Term
5. Promotion of Organization's In-Store 20% off Shop Day at DSG through Organization's email blasts, website and flyer distribution
6. Designated DSG email blasts to include DSG e-coupon

## Term

The term of this Agreement shall begin on **4/1/2016** and remain in effect until **4/1/2017** ("Term").

## Acceptance and Additional Terms and Conditions

The complete terms and conditions applicable to this sponsorship are set forth on the next page and form an integral part of this Agreement. If during the Term, Sponsor and Organization agree to add new sponsorship elements or Organization responsibilities or change the sponsorship elements or Organization responsibilities contemplated by this Agreement, the parties agree that they must do so in writing, with e-mail acceptable, and that these same terms and conditions shall govern all such new or changed sponsorship elements or Organization responsibilities.

We look forward to working with you and appreciate your commitment to youth sports and your service to the community!

[Acknowledgements Deleted for Inclusion in this Resolution]

## Terms and Conditions of Sponsorship Agreement

1. During the Term of this Agreement, Sponsor shall be the sole sporting goods retail sponsor of the Organization. Organization will not pursue sponsorships with direct competitors of Sponsor, including but not limited to, The Sports Authority, Modell's and Academy Sports and Outdoors. If Organization is approached by any direct competitor or sporting goods retailer, Organization will notify Sponsor before making any future commitments.
2. Sponsor and Organization may by mutual agreement continue the sponsorship set forth in this Agreement for a total of two additional years. Sponsor and Organization shall confirm in writing whether they mutually agree to continue the sponsorship prior to the end of the current Term.
3. During the Term, Sponsor grants Organization the limited, non-exclusive, non-transferrable, non- sublicensable right to use Sponsor's name, brand and logo solely to advertise the Sponsor's sponsorship rights as set forth above, subject to Sponsor's prior written approval of any and all use of Sponsor's name, brand and logo. Organization agrees that any use of Sponsor's name, brand or logo shall be in accordance with the sample provided on **Exhibit A** and Sponsor's Brand Use Guidelines provided from time to time. Except for this limited license granted to Organization, Sponsor retains all right, title and interest in and to the Sponsor's name, brand and logo. Organization retains all right, title and interest in and to the Organization's name, brand and logo.
4. Organization gives Sponsor the right to take photographs of Organization's events and participants and use those photographs in any media. Sponsor agrees to obtain the required consent from Organization's participants or event participants or such participant's parent or guardian, as applicable before using such photographs. Organization agrees to provide Sponsor, at Sponsor's request, with photos of the Organization's events and participants for Sponsor's use in any media, provided Organization is able to obtain the required consent and releases from the participants or event participants or such participant's parent or guardian, as applicable.
5. Neither party may assign any of its rights and obligations under this Agreement without the prior written consent of the other.
6. To the extent permitted by Tennessee law, the liability of either party for any breach of this Agreement, or arising in any other way out of the subject matter of this Agreement, will not extend to any loss of business or profit, or to any indirect, punitive or consequential damages or losses.
7. To the extent permitted by Tennessee law, Organization hereby releases and forever discharges Sponsor, and its affiliates, and their respective officers, directors, employees, agents, shareholders, successors and assigns (collectively the "Sponsor's Entities"), from and against any and all causes of action, damages, claims, demands, obligations, losses, costs, expenses, including reasonable attorneys' fees, and liabilities of any nature whatsoever, whether known or unknown (collectively "Losses"), which Organization has or may have in the future, that arise out of, directly or indirectly, or are related to the performance of this Agreement by the Sponsor. This release is intended to cover all claims or possible claims arising out of or related to those matters referenced or impliedly referenced above, whether the same are known, unknown or hereafter discovered or ascertained.
8. To the extent permitted by Tennessee law and to the extent arising from or relating to, directly or indirectly, the subject matter of this agreement, Organization shall defend, indemnify and hold harmless the Sponsor's Entities from and against any and all Losses arising from or relating to, directly or indirectly, (i) any Organization event; (ii) any negligent act or omission or misconduct of Organization, its employees, members or agents; (iii) the violation of any intellectual property rights of third parties by Organization or its affiliates; (iv) the violation by Organization of any governmental laws, rules, or regulations; or (v) a breach of this Agreement or any representations or warranties in this Agreement by Organization.
9. Except as required by the Tennessee Open Records Act, Organization shall treat as confidential any information, whether disclosed in oral, written, visual, electronic or other form, which Sponsor or any of its affiliates or agents discloses to Organization or Organization observes in connection with

this Agreement. Sponsor's confidential information includes, but is not limited to, the terms and conditions of this Agreement, the value of the sponsorship, marketing plans, new store locations, strategies, forecasts, analyses, projects, and employee, customer or vendor information. Organization's obligations under this paragraph shall survive the termination or other expiration of this Agreement.

10. If any term or provision of this Agreement shall be determined to be illegal or unenforceable, all other terms and provisions of this Agreement shall remain effective and shall be enforced to the fullest extent permitted by applicable law. This Agreement and the rights and obligations of the parties shall be governed under the laws of the State of Tennessee, without regard to its conflicts of law provisions.

11. No member, official, or employee of the City shall be personally liable to Sponsor or any other party, including a third party beneficiary, in the event any provision of the Agreement is unenforceable; there is any default or breach by the City; for any amount which may become due under the Agreement; or on any obligations under the terms of the Agreement.

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 15th day of March, 2016.

\_\_\_\_\_  
JOHN CLARK, MAYOR

ATTEST:


\_\_\_\_\_  
JAMES H. DEMMING, CITY RECORDER  
APPROVED AS TO FORM:

\_\_\_\_\_  
J. MICHAEL BILLINGSLEY, CITY ATTORNEY



**AGENDA ACTION FORM**

**Issuance of Certificates of Compliance for Retail Food Stores to Sell Wine**

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

Action Form No.: AF-63-2016  
Work Session: March 15, 2016  
First Reading: N/A  
Final Adoption: March 15, 2016  
Staff Work By: Angie Marshall  
Presentation By: Jim Demming

**Recommendation:**

Approve the issuance of Certificates of Compliance to the following retail food stores to sell wine.

- 1. Ingles #72, 4335 Fort Henry Drive
- 2. Kroger #328, 1664 East Stone Drive
- 3. Sanders Produce Market, 1209 Bloomingdale Pike

**Executive Summary:**

Attached is a summary of the applications for retail food stores who have filed with the City Recorder for their Certificate of Compliance to sell wine. This Certificate, which must be issued and signed by the mayor if the business is within a municipality, is a required attachment to the application these businesses will submit to the Tennessee Alcoholic Beverage Commission to obtain a license to sell wine in a retail food store.

Tennessee Code Annotated, Section 57-3-806 directs municipalities the Certificate must state:

- 1. The applicant in charge of the business has not been convicted of a felony within the past ten years; and
- 2. The applicant's business location complies with local zoning laws.

These applications have met the requirements of TCA 57-3-806. Police background checks have been conducted on each of the applicants with nothing found that would prevent any from receiving these certificates. Planning has also verified the businesses are properly zoned.

**Attachments:**

- 1. Summary Spreadsheet

	Y	N	O
Duncan	—	—	—
George	—	—	—
McIntire	—	—	—
Mitchell	—	—	—
Olterman	—	—	—
Parham	—	—	—
Clark	—	—	—

**CERTIFICATE OF COMPLIANCE APPLICANTS FOR WINE IN RETAIL STORES**

<b><u>Store Name</u></b>	<b><u>Address</u></b>	<b><u>Applicant(s)</u></b>	<b><u>Approved by Police</u></b>	<b><u>Approved by Planning</u></b>
Ingles #72	4335 Fort Henry Drive	Dewayne Travis Rhoton	YES	YES
Kroger #328	1664 East Stone Drive	Timothy Micheal Burton	YES	YES
Sanders Produce Market	1209 Bloomingdale Pike	Timothy M. Sanders	YES	YES