



AGENDA

BOARD OF MAYOR AND ALDERMEN REGULAR WORK SESSION

Monday, November 2, 2009
Council Room — 2nd Floor, City Hall
4:30 p.m.

Board of Mayor and Aldermen

Mayor Dennis R. Phillips, Presiding
Alderman Valerie Joh
Vice Mayor Benjamin K. Mallicote
Alderman C. K. Marsh, Jr.

Alderman Larry Munsey
Alderman Tom C. Parham
Alderman Jantry Shupe

Leadership Team

John G. Campbell, City Manager
J. Michael Billingsley, City Attorney
Jim Demming, City Recorder/CFO
Craig Dye, Fire Chief
Jeff Fleming, Asst. City Manager, Development Services

Chris McCartt, Assistant to the City Manager
Ryan McReynolds, Public Works Director
Gale Osborne, Police Chief
Tim Whaley, Community and Gov't Relations Director

1. Call to Order
2. Roll Call
3. Work Session Tickler
4. Update on King College – Dr. Greg Jordan
5. Proposed Riverport Road Parking – Ryan McReynolds/ Mike Thompson
6. Update on Harbor Chapel – Ryan McReynolds/ Mike Thompson
7. Review of Items on November 3, 2009 Regular Business Agenda
8. Adjourn

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.



Work Session Tickler
November 2, 2009

City Departments

Police Department

PDA/VisionAir Project

Gale Osborne

October 23, 2009

We continue to remain on schedule. Updates will be listed in bold and italics.

1. Hardware and Network Ready by – June 30,2009
Installed.
2. Computer Aided Dispatch Live– August 13-14 (2 Days)
***System Administrator Training complete for CAD
CAD go live successful August 13.***
3. Records Management System Live – November 4 (1 Day)
***Records System Administrator Training Complete
The end user training has started.***
4. JAIL Live – November 5 (1 Day)
***Jail System Administrator Training Complete
End user training set for November 2nd and 3rd***
5. MOBILE Live – November 12 (1 Day)
6. FIRE Live – December 11 (1 Day)
7. Data-Driven Server ordered for Field Reporting Software.
***Super user training complete and live
User Training to start the week of the 26th***
8. PDA/Redfly mobile companion distribution planned to occur in July
Distribution occurred as scheduled.

Included in this timeline are multiple training modules that are web based and classroom based. We continue to have team meetings; Information Services is coordinating with VisionAir and Data-Driven engineers for installation of hardware and software packages. **Hardware and software packages have been installed.**

Fire Department

Fire Station Seven

Craig Dye

October 26, 2009

The station opening is still delayed to around mid November. The driveway is paved, and concrete poured for the steps and sidewalks. Windows are in and the building looks much nicer. The Tower that is to be the public art for the station is due for delivery this week. Most of the furniture and other items are here and will be put into place when the building is completed.

Engineering

Gibson Mill Road Realignment

Hank Clabaugh

October 27, 2009

Thomas has completed the final road grading, subgrade compaction, sidewalk, curb and gutter, and asphalt binder installation on all roads (except binder on the new cul-de-sac).

Continual rain keeps delaying the completion of this project. All dates below are contingent on satisfactory weather.

Final completion of this road project (Contract 1) will coincide with the permanent closing of Ravine Road at Cassel Drive with the construction of a cul-de-sac. This roadway has been renamed Cherokee Village Drive.

Cassel Drive, Cherokee Village Drive, and Ravine Road will all be complete and opened to through traffic by October 31, 2009.

The bridge is part of the hospital's contract (1). It is expected that the bridge will be open by November 23, 2009.

Thomas Construction Co. is the contractor for both contracts (Contract 1 – Wellmont; Contract 2 – City).

Final completion on Contract 2 is expected by October 31.

The next phase of this project was sent out on bid and Thomas was also the low bidder on this project. It is anticipated that construction on this phase will begin within the next 2 months.

Public Works – Water/Sewer

Automated Meter Reading

Chad Austin

October 27, 2009

The project is substantially complete. We are working with Johnson Controls and Vanguard Utilities to finalize numbers in the contract and to develop a punch list for the project. There are still over 1,000 meters that have not been changed out because the original contract numbers were developed in 2007. The remainder of the meters was placed into service since that time and was not included. We are working with JCI to develop a plan to ensure that all meters get changed out. Some of this work will be done in-house in the next few weeks.

Airport Parkway Water Tank Rehab.

Chad Austin

October 27, 2009

The tank is complete! It has been disinfected, and we are currently filling the tank up to put it back into service. The tank will be featured on Tnemec Paints 2010 calendar. We will get copies of the calendar from Tnemec to share.

Development Services

Cook's Point

Rack Cross

October 15, 2009

Cook's Point Developer Erik Fritz met with State Representative Tony Shipley and three Sullivan County Commissioners to discuss issues with the development. Mr. Fritz advised that the discussion included improving the appearance of the large slope with additional vegetation. Mr. Fritz has added some hay, matting and seed the slope. Mr. Fritz has been asked to enhance all areas by adding vegetation to exposed areas and maintaining all planted areas.

Leisure Services

Parks & Recreation

Greenbelt

Kitty Frazier

October 26, 2009

Final paving will be completed as the proper asphalt mix becomes available. Directional signs and park benches are being made.

Kingsport Public Library

Helen Whittaker

October 26, 2009

Approximately 30 people attended a meeting on Monday October 26th to receive an update on the feasibility study, presently underway, and to provide input on the future expansion/renovation or new construction of the Kingsport Library. Architects provided examples of how a renovation/expansion could preserve the original post office building while adding an addition which would extend across the extreme back of Glen Bruce Park and some of the existing parking lot. Additionally, they presented options involving the use of adjacent buildings as well as new construction in a new location. Their presentation also included examples of how 21st century libraries are changing into the "third place" behind homes and work. They presented examples of what they could include in our project, whether it is new construction or renovation - a lot of light and transparency, flexibility of the use of space, quiet reading rooms, colorful, inviting children's areas, creative and active teen areas, coffee shop/area, space for exhibits and programs of all sorts. A question and answer session followed. Several tables were setup with a variety of questions on them which allowed folks to provide written comments as well. A summary of those responses will be provided to the BMA once they are compiled. Additionally, a presentation to the BMA on this subject is planned for November.



AGENDA

BOARD OF MAYOR AND ALDERMEN

REGULAR BUSINESS MEETING
Tuesday, November 3, 2009
Large Court Room – 2nd Floor, City Hall
7:00 p.m.

Board of Mayor and Aldermen

Mayor Dennis R. Phillips, Presiding

Alderman Valerie Joh
Vice Mayor Benjamin K. Mallicote
Alderman C. K. Marsh, Jr.

Alderman Larry A. Munsey
Alderman Tom C. Parham
Alderman Jantry Shupe

City Administration

John G. Campbell, City Manager
J. Michael Billingsley, City Attorney
James Demming, City Recorder

- I. CALL TO ORDER**
- II.A. PLEDGE OF ALLEGIANCE TO THE FLAG**
- II.B. INVOCATION – Thomas Legg – Pastor First Church of the Nazarene**
- III. ROLL CALL**
- IV. RECOGNITIONS AND PRESENTATIONS**
None
- V. APPROVAL OF MINUTES**
 1. October 19, 2009 Regular Work Session
 2. October 20, 2009 Regular Business Meeting

VI. COMMUNITY INTEREST ITEMS

AA. PUBLIC HEARINGS

None

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. Consideration of a Resolution Authorizing the Mayor to Execute and Sign All Documents Necessary to Accept and Receive Funding for Police Patrol Overtime from the South Central Kingsport Weed and Seed Program and Approve the Budget Ordinance (AF:361-2009)
 - Ordinance – First Reading
 - Resolution
2. Consideration of an Ordinance to Amend the General Project Fund by Transferring Funds From the V.O. Dobbins Engineering Project (GP0727) and the V.O. Dobbins Renovations Project (NC0605) to the Current V.O. Dobbins Renovations Project (GP0907) (AF:365-2009)
 - Ordinance – First Reading
3. Consideration of an Ordinance to Amend the FY 2010 General Purpose School Fund and the General Project Fund Budgets (AF: 322 -2009)
 - Ordinance – First Reading
4. Consideration of an Ordinance to Amend the General Project Fund by Transferring Funds from the VO Dobbins Project to the Kingsport City Schools Network Switch Upgrade Project (AF: 369-2009)
 - Ordinance – First Reading

C. BUSINESS MATTERS REQUIRING FINAL ADOPTION

1. Consideration of Ordinances to Amend Zoning of the Airport Parkway Property located on Airport Parkway from TA zoning to B-3 zoning (AF: 319-2009)
 - Ordinance Zoning – Second Reading & Final Adoption
2. Consideration of Ordinances to Annex/ Amend Zoning of the “Stonetree A” Annexation (AF: 333-2009)
 - Ordinance Annexation – Second Reading & Final Adoption
 - Ordinance Zoning – Second Reading & Final Adoption

3. Consideration of Ordinances to Annex/ Amend Zoning of the “Stonetree B” Annexation (AF: 334-2009)
 - Ordinance Annexation – Second Reading & Final Adoption
 - Ordinance Zoning – Second Reading & Final Adoption

4. Consideration of Ordinances to Annex/ Amend Zoning of the “Stonetree C” Annexation (AF: 335- 2009)
 - Ordinance Annexation – Second Reading & Final Adoption
 - Ordinance Zoning – Second Reading & Final Adoption

5. Consideration of Ordinances to Annex/ Amend Zoning of the “Stonetree D” Annexation (AF: 336 -2009)
 - Ordinance Annexation – Second Reading & Final Adoption
 - Ordinance Zoning – Second Reading & Final Adoption

6. Consideration of an Ordinance to amend the zoning code, text and map, to zone property along Peach Orchard Drive to R-3, Multi- Family Residential District (AF: 323-2009)
 - Ordinance Zoning – Second Reading & Final Adoption

D. OTHER BUSINESS

1. Consideration of a Resolution Authorizing the Mayor to Execute a Lease Agreement with Suzuki Talent Education of Kingsport for Space in the Renaissance Center (AF: 351-2009)
 - Resolution

2. Consideration of a Resolution to Enter into a Contractual Agreement with the Tennessee Department of Transportation for Reimbursement of Capital/Planning Expenditures for FY-10 (AF: 343-2009)
 - Resolution

3. Consideration of a Resolution to Enter into an Operating Agreement with the Tennessee Department of Transportation for FY-10 (AF: 355-2009)
 - Resolution

4. Consideration of a Resolution Authorizing the Mayor to Execute and Sign All Documents Necessary to enter into an Agreement with United States Department of Justice, Drug Enforcement Administration to Assign One (1) Police Department Officer to the Upper East Tennessee HIDTA Task Force (AF: 358-2009)
 - Resolution

5. Consideration of a Resolution Authorizing the Mayor to Execute and Sign All Documents Necessary to Accept and Receive Certain Department of Justice Approved Law Enforcement Equipment and Technology in the Form of a Donation From the South Central Kingsport Weed and Seed Program (AF: 362-2009)
 - Resolution
6. Consideration of a Resolution to Ratify the Mayors signature on all Documents Necessary to apply and receive the Assistance to Firefighters Grant (AFG) through the U.S. Fire Administration of the Federal Emergency Management Administration (FEMA) Division of the Department of Homeland Security (DHS) (AF: 360-2009)
 - Resolution
7. Consideration of a Resolution Awarding the bid for Harbor Chapel Road and Cooks Valley Road Improvements – Phase I to Thomas Construction Company, Inc. and Authorize the Mayor to Sign All Applicable Documents (AF: 366-2009)
 - Resolution
8. Consideration of a Resolution to Authorize the Mayor to Execute an Amendment to the Contract for a Guaranteed Maximum Price with J.A. Street & Associates to include the Next Construction Phase of the Meadowview Executive Conference Center (AF:313-2009)
 - Resolution
9. Consideration of a Resolution Authorizing a Net Metering and Interconnection Agreement with AEP Appalachian Power and Authorizing the Mayor to Execute all Documents Necessary for the Agreement (AF: 368-2009)
 - Resolution
10. Consideration of a Resolution Authorizing the Mayor to Execute an Agreement with the Greater Kingsport Area Chamber of Commerce, Inc. for the Kingsport Convention and Visitors Bureau for the Downtown Project (AF: 370-2009)
 - Resolution
11. Consideration of a Resolution Authorizing the Issuance of \$1,200,000 of Qualified School Construction Bonds (AF: 371-2009)
 - Resolution

E. APPOINTMENTS

1. Consideration of an Appointment to the Public Arts Committee (AF: 359-2009)
 - Appointment

VII. CONSENT AGENDA

All matters listed under the Consent Agenda are considered in the ordinary course of business by the Board of Mayor and Aldermen and will be enacted on by one motion in the form listed. If discussion is desired by either the Board or the audience, the item in question will be removed from the Consent Agenda and considered separately.

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, October 19, 2009, 4:30 PM
Council Room – City Hall

PRESENT:

Board of Mayor and Aldermen

Mayor Dennis R. Phillips

Alderman Valerie Joh

Vice-Mayor Benjamin K. Mallicote

Alderman Charles K. Marsh, Jr.

Alderman Larry A. Munsey

Alderman Tom C. Parham

Alderman Jantry Shupe

City Administration

John G. Campbell, City Manager

J. Michael Billingsley, City Attorney

James H. Demming, City Recorder

1. **CALL TO ORDER:** 4:35 p.m., by Mayor Phillips.
2. **ROLL CALL:** By Deputy City Recorder Gilbert.
3. **WORK SESSION TICKLER.** Mayor Phillips mentioned the boat ramp was being used and looks very good. He provided an update on the Cooks Point subdivision meeting which he described as very positive.
4. **GED/KINGSPORT PROGRAM.** Dr. Lowell Biller, Kingsport City Schools (KCS) superintendent of student attendance, spoke about the great need for this program. Dr. Biller provided statistics leading up to implementation and a synopsis of the GED program, which averages around 60 new students each month. A total of approximately 230 GEDs were earned in 2008-2009.

In response to Alderman Marsh's inquiry about whether the City has the fund in its Education and Grow Fund, City Manager Campbell said the BMA will be asked to approve reallocation of Hawkins County revenue and will entail moving funds from one account to another.

5. **RED LIGHT CAMERA UPDATE.** Deputy Police Chief David Quillin said there was a recent meeting in Nashville from areas all over the state currently utilizing cameras for enforcement of red lights and speeding to further ensure public safety. Many wanted to hear how the cameras were working out in Kingsport.

Deputy Chief Quillin said one concern voiced at this meeting was that some camera vendors do not send *all* instances captured to police agencies for review. He said that, thanks to the foresight by City Attorney Billingsley, Kingsport Police Department reviews all instances captured so there is no third party making any decisions on ticket issuance. Another topic discussed was where fines collected are allocated by various

Minutes of the Regular Business Meeting of the
Board of Mayor and Aldermen of the City of Kingsport, Tennessee
Tuesday, October 20, 2009, 7:00 PM
Large Court Room – City Hall

PRESENT:

Board of Mayor and Aldermen

Mayor Dennis R. Phillips, Presiding
Alderman Valerie Joh
Vice-Mayor Benjamin K. Mallicote
Alderman Charles K. Marsh, Jr.

Alderman Larry A. Munsey
Alderman Tom C. Parham
Alderman Jantry Shupe

City Administration

John G. Campbell, City Manager
J. Michael Billingsley, City Attorney
James H. Demming, City Recorder

- I. **CALL TO ORDER:** 7:00 p.m., by Mayor Dennis R. Phillips.
- II.A. **PLEDGE OF ALLEGIANCE TO THE FLAG:** Led by Vice-Mayor Mallicote.
- II.B. **INVOCATION:** by Alderman Munsey.
- III. **ROLL CALL:** By City Recorder Jim Demming.
- IV. **RECOGNITIONS AND PRESENTATIONS.**

A. KEEP KINGSFORT BEAUTIFUL BEAUTIFICATION AWARD. Ms. Carolyn Phillips of Blue Ridge Properties presented and narrated a pictorial slide presentation of landscapes showing several residences, a business, a redevelopment area and a church selected to receive Keep Kingsport Beautiful Award honors sponsored by Blue Ridge Properties for October 2009. Alderman Parham commended the award winners on their contributions to the attractive surroundings of Kingsport and presented award certificates to those honorees in attendance.

V. **APPROVAL OF MINUTES.**

Motion/Second: Munsey/Mallicote, to approve minutes for the following meetings:

- A. October 5, 2009 Regular Work Session
- B. October 6, 2009 Regular Business Meeting

Approved: All present voting “aye.”

VI. **COMMUNITY INTEREST ITEMS.**

AA. **PUBLIC HEARINGS.**

Minutes of the Regular Business Meeting of the Board of Mayor and Aldermen of the City of Kingsport, Tennessee, Tuesday, October 20, 2009

1. Public Hearing and Consideration of Ordinances to Amend Zoning of the Airport Parkway Property Located on Airport Parkway from TA Zoning to B-3 Zoning (AF: 319-2009). City Planner Forrest Koder provided background on this proposed rezoning action.

Motion/Second: Munsey/Shupe, to pass:

AN ORDINANCE TO FURTHER AMEND THE ZONING CODE, TEXT AND MAP, TO ZONE PROPERTY ALONG FT. HENRY DRIVE KNOWN AS THE NORTH AIRPORT PARKWAY REZONING TO B-3, GENERAL BUSINESS DISTRICT, IN THE 7TH CIVIL DISTRICT OF SULLIVAN COUNTY; TO FIX A PENALTY FOR THE VIOLATION OF THIS ORDINANCE; AND TO FIX THE EFFECTIVE DATE OF THIS ORDINANCE

Passed on first reading in a roll call vote: Joh, Mallicote, Marsh, Munsey, Parham, Shupe and Phillips voting "aye."

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

2. Public Hearing and Consideration of Ordinances to Annex/Amend Zoning of the "Stonetree A" Annexation and Consideration of a Resolution Adopting the Plan of Services (AF: 333-2009). City Planner Alan Webb presented information on this and the following three Stonetree annexations.

Motion/Second: Munsey/Joh, to pass:

AN ORDINANCE TO ANNEX THAT CERTAIN TERRITORY ADJOINING THE PRESENT CORPORATE BOUNDARIES OF THE CITY OF KINGSPORT, EMBRACING THAT CERTAIN PART OF THE 13TH CIVIL DISTRICT OF SULLIVAN COUNTY, TENNESSEE, AND KNOWN AS THE STONETREE A ANNEXATION, AS HEREINAFTER DESCRIBED; TO INCORPORATE THE SAME WITHIN THE CORPORATE BOUNDARIES OF THE CITY OF KINGSPORT, TENNESSEE; AND TO FIX THE EFFECTIVE DATE OF THIS ORDINANCE

Passed on first reading in a roll call vote: Joh, Mallicote, Marsh, Munsey, Parham, Shupe and Phillips voting "aye."

Motion/Second: Munsey/Joh, to pass:

AN ORDINANCE TO FURTHER AMEND THE ZONING CODE, TEXT AND MAP, TO ZONE PROPERTY ALONG OAK HAVEN DRIVE TO R-1B, RESIDENTIAL DISTRICT IN THE 13TH CIVIL DISTRICT OF SULLIVAN COUNTY; TO FIX A PENALTY FOR THE VIOLATION OF THIS ORDINANCE; AND TO FIX THE EFFECTIVE DATE OF THIS ORDINANCE

Passed on first reading in a roll call vote: Joh, Mallicote, Marsh, Munsey, Parham, Shupe and Phillips voting "aye."

Motion/Second: Parham/Munsey, to pass:

Resolution No. 2010-083, A RESOLUTION ADOPTING A PLAN OF SERVICES FOR THE STONETREE A ANNEXATION OF THE CITY OF KINGSPORT, TENNESSEE

Passed: All present voting "aye."

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of the City of Kingsport, Tennessee, Tuesday, October 20, 2009**

PUBLIC COMMENT ON ITEM VI.AA.2. None.

3. Public Hearing and Consideration of Ordinances to Annex/Amend Zoning of the “Stonetree B” Annexation and Consideration of a Resolution Adopting the Plan of Services (AF: 334-2009).

Motion/Second: Munsey/Mallicote, to pass:

AN ORDINANCE TO ANNEX THAT CERTAIN TERRITORY ADJOINING THE PRESENT CORPORATE BOUNDARIES OF THE CITY OF KINGSPORT, EMBRACING THAT CERTAIN PART OF THE 13th AND 15th CIVIL DISTRICTS OF SULLIVAN COUNTY, TENNESSEE, AND KNOWN AS THE STONETREE B ANNEXATION, AS HEREINAFTER DESCRIBED; TO INCORPORATE THE SAME WITHIN THE CORPORATE BOUNDARIES OF THE CITY OF KINGSPORT, TENNESSEE; AND TO FIX THE EFFECTIVE DATE OF THIS ORDINANCE

Passed on first reading in a roll call vote: Joh, Mallicote, Marsh, Munsey, Parham, Shupe and Phillips voting “aye.”

Motion/Second: Munsey/Mallicote, to pass:

AN ORDINANCE TO FURTHER AMEND THE ZONING CODE, TEXT AND MAP, TO ZONE PROPERTY ALONG VALLEY DRIVE, GUSTAVIS COURT, AND MONTSWEAG COURT TO R-1B, RESIDENTIAL DISTRICT IN THE 13th AND 15th CIVIL DISTRICTS OF SULLIVAN COUNTY; TO FIX A PENALTY FOR THE VIOLATION OF THIS ORDINANCE; AND TO FIX THE EFFECTIVE DATE OF THIS ORDINANCE

Passed on first reading: All present voting “aye.”

Motion/Second: Parham/Joh, to pass:

Resolution No. 2010-084, A RESOLUTION ADOPTING A PLAN OF SERVICES FOR THE STONETREE B ANNEXATION OF THE CITY OF KINGSPORT, TENNESSEE

Passed: All present voting “aye.”

PUBLIC COMMENT ON ITEM VI.AA.3. None.

4. Public Hearing and Consideration of Ordinances to Annex/Amend Zoning of the “Stonetree C” Annexation and Consideration of a Resolution Adopting the Plan of Services (AF: 335-2009).

Motion/Second: Munsey/Joh, to pass:

AN ORDINANCE TO ANNEX THAT CERTAIN TERRITORY ADJOINING THE PRESENT CORPORATE BOUNDARIES OF THE CITY OF KINGSPORT, EMBRACING THAT CERTAIN PART OF THE 13th AND 15th CIVIL DISTRICTS OF SULLIVAN COUNTY, TENNESSEE, AND KNOWN AS THE STONETREE C ANNEXATION, AS HEREINAFTER DESCRIBED; TO INCORPORATE THE SAME WITHIN THE CORPORATE BOUNDARIES OF THE CITY OF KINGSPORT, TENNESSEE; AND TO FIX THE EFFECTIVE DATE OF THIS ORDINANCE

Passed on first reading in a roll call vote: Joh, Mallicote, Marsh, Munsey, Parham, Shupe and Phillips voting “aye.”

**Minutes of the Regular Business Meeting of the Board of Mayor and Aldermen
of the City of Kingsport, Tennessee, Tuesday, October 20, 2009**

Motion/Second: Parham/Munsey, to pass:

AN ORDINANCE TO FURTHER AMEND THE ZONING CODE, TEXT AND MAP, TO ZONE PROPERTY ALONG SASANOVA COURT TO R-1B, RESIDENTIAL DISTRICT IN THE 13th AND 15th CIVIL DISTRICTS OF SULLIVAN COUNTY; TO FIX A PENALTY FOR THE VIOLATION OF THIS ORDINANCE; AND TO FIX THE EFFECTIVE DATE OF THIS ORDINANCE

Passed on first reading: All present voting “aye.”

Motion/Second: Joh/Shupe, to pass:

Resolution No. 2010-085, A RESOLUTION ADOPTING A PLAN OF SERVICES FOR THE STONETREE C ANNEXATION OF THE CITY OF KINGSPORT, TENNESSEE

Passed: All present voting “aye.”

PUBLIC COMMENT ON ITEM VI.AA.4. None.

5. Public Hearing and Consideration of Ordinances to Annex/Amend Zoning of the “Stonetree D” Annexation and Consideration of a Resolution Adopting the Plan of Services (AF: 336-2009).

Motion/Second: Joh/Parham, to pass:

AN ORDINANCE TO ANNEX THAT CERTAIN TERRITORY ADJOINING THE PRESENT CORPORATE BOUNDARIES OF THE CITY OF KINGSPORT, EMBRACING THAT CERTAIN PART OF THE 13th CIVIL DISTRICT OF SULLIVAN COUNTY, TENNESSEE, AND KNOWN AS THE STONETREE D ANNEXATION, AS HEREINAFTER DESCRIBED; TO INCORPORATE THE SAME WITHIN THE CORPORATE BOUNDARIES OF THE CITY OF KINGSPORT, TENNESSEE; AND TO FIX THE EFFECTIVE DATE OF THIS ORDINANCE

Passed on first reading in a roll call vote: Joh, Mallicote, Marsh, Munsey, Parham, Shupe and Phillips voting “aye.”

Motion/Second: Mallicote/Joh, to pass:

AN ORDINANCE TO FURTHER AMEND THE ZONING CODE, TEXT AND MAP, TO ZONE PROPERTY ALONG ROYAL CIRCLE, ARROW CIRCLE, ROCK VALLEY DRIVE, GUSTAVIS AVENUE, AND GUSTAVIS COURT TO R-1B, RESIDENTIAL DISTRICT IN THE 13th CIVIL DISTRICT OF SULLIVAN COUNTY; TO FIX A PENALTY FOR THE VIOLATION OF THIS ORDINANCE; AND TO FIX THE EFFECTIVE DATE OF THIS ORDINANCE

Passed on first reading: All present voting “aye.”

Motion/Second: Mallicote/Shupe, to pass:

Resolution No. 2010-086, A RESOLUTION ADOPTING A PLAN OF SERVICES FOR THE STONETREE D ANNEXATION OF THE CITY OF KINGSPORT, TENNESSEE

Passed: All present voting “aye.”

PUBLIC COMMENT ON ITEM VI.AA.5. None.

Minutes of the Regular Business Meeting of the Board of Mayor and Aldermen of the City of Kingsport, Tennessee, Tuesday, October 20, 2009

6. Public Hearing and Consideration of an Ordinance to Amend the Zoning Code, Text and Map to Zone Property along Peach Orchard Drive to R-3, Multi-Family Residential District (AF: 323-2009). City Planner Karen Combs explained this rezoning request.

Motion/Second: Joh/Shupe, to pass:

AN ORDINANCE TO FURTHER AMEND THE ZONING CODE, TEXT AND MAP, TO ZONE PROPERTY ALONG PEACH ORCHARD DRIVE TO R-3, MULTI-FAMILY RESIDENTIAL DISTRICT, IN THE 12TH CIVIL DISTRICT OF SULLIVAN COUNTY; TO FIX A PENALTY FOR THE VIOLATION OF THIS ORDINANCE; AND TO FIX THE EFFECTIVE DATE OF THIS ORDINANCE

Passed on first reading in a roll call vote: Joh, Mallicote, Marsh, Munsey, Parham, Shupe and Phillips voting "aye."

PUBLIC COMMENT ON ITEM VI.AA.6. None.

A. PUBLIC COMMENT. Mayor Phillips invited citizens in attendance to speak about any of the remaining agenda items.

Mr. Lewis A. Carson, 2228 Hermitage Drive, Kingsport, has lived in the Greenacres area for 49 years and his real property taxes have increased around \$3.00 per year for the last 12 years. He stated that, given that inflation has increased around 40% over the same period of time, he believes the BMA is doing a good job maintaining the area's cost of living while continuing to improve the quality of life. He encouraged the Board to consider a property tax increase, as well as increasing traffic fines for violators, to fund various projects that citizens desire in the future.

There being no one further coming forward to speak, the Mayor closed the public comment segment at this time.

B. BUSINESS MATTERS REQUIRING FIRST READING. None.

C. BUSINESS MATTERS REQUIRING FINAL ADOPTION.

1. Consideration of Ordinances to Annex/Amend Zoning of the RS7 Annexation (AF: 309-2009).

Motion/Second: Joh/Parham, to pass:

ORDINANCE NO. 5894, AN ORDINANCE TO ANNEX THAT CERTAIN TERRITORY ADJOINING THE PRESENT CORPORATE BOUNDARIES OF THE CITY OF KINGSFORT, EMBRACING THAT CERTAIN PART OF THE 13TH CIVIL DISTRICT OF SULLIVAN COUNTY, TENNESSEE, AND KNOWN AS THE RS7 ANNEXATION, AS HEREINAFTER DESCRIBED; TO INCORPORATE THE SAME WITHIN THE CORPORATE BOUNDARIES OF THE CITY OF KINGSFORT, TENNESSEE; AND TO FIX THE EFFECTIVE DATE OF THIS ORDINANCE

Passed on second reading in a roll call vote: Joh, Mallicote, Marsh, Munsey, Parham, Shupe and Phillips voting "aye."

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of the City of Kingsport, Tennessee, Tuesday, October 20, 2009**

Motion/Second: Parham/Joh, to pass:

ORDINANCE NO. 5895, AN ORDINANCE TO FURTHER AMEND THE ZONING CODE, TEXT AND MAP, TO ZONE PROPERTY ALONG HIDDEN ACRES ROAD TO R-1B, RESIDENTIAL DISTRICT IN THE 13th 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: Joh, Mallicote, Marsh, Munsey, Parham, Shupe and Phillips voting “aye.”

2. Consideration of Ordinances to Annex/Amend Zoning of the RS8 Annexation (AF: 310-2009).

Motion/Second: Joh/Mallicote, to pass:

ORDINANCE NO. 5896, AN ORDINANCE TO ANNEX THAT CERTAIN TERRITORY ADJOINING THE PRESENT CORPORATE BOUNDARIES OF THE CITY OF KINGSPORT, EMBRACING THAT CERTAIN PART OF THE 13th CIVIL DISTRICT OF SULLIVAN COUNTY, TENNESSEE, AND KNOWN AS THE RS8 ANNEXATION, AS HEREINAFTER DESCRIBED; TO INCORPORATE THE SAME WITHIN THE CORPORATE BOUNDARIES OF THE CITY OF KINGSPORT, TENNESSEE; AND TO FIX THE EFFECTIVE DATE OF THIS ORDINANCE

Passed on second reading in a roll call vote: Joh, Mallicote, Marsh, Munsey, Parham, Shupe and Phillips voting “aye.”

Motion/Second: Parham/Joh, to pass:

ORDINANCE NO. 5897, AN ORDINANCE TO FURTHER AMEND THE ZONING CODE, TEXT AND MAP, TO ZONE PROPERTY ALONG MORNINGDALE DRIVE, HIDDEN PINES DRIVE, VALLEYDALE DRIVE, AND SUMPTER ROAD TO R-1B, RESIDENTIAL DISTRICT IN THE 13th 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: Joh, Mallicote, Marsh, Munsey, Parham, Shupe and Phillips voting “aye.”

Alderman Marsh stated that, with these annexation items which he has supported, along with those Stonetree annexations in Items VI.AA.2 through VI.AA.5, the Rock Springs area annexation will be complete. Having invested approximately \$30 million in this annexation area, he would now suggest the BMA take stock and get finances under control before going forward with any additional substantial annexations such as in the Colonial Heights or Cooks Valley areas, as previously discussed.

D. OTHER BUSINESS.

1. Consideration of Resolutions Designating the Authorized Official Signatures Approved to Execute Transactions at the Approved Depositories/Broker Dealer on Behalf of the City of Kingsport (AF: 345-2009).

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Motion/Second: Munsey/Mallicote, to pass the following resolutions (No. 2010-087 through 2010-099) under one motion:

Resolution No. 2010-087, A RESOLUTION AUTHORIZING OFFICIAL SIGNATURES FOR ACCOUNTS ON DEPOSIT WITH REGIONS BANK

Passed: All present voting “aye.”

Resolution No. 2010-088, A RESOLUTION AUTHORIZING OFFICIAL SIGNATURES FOR ACCOUNTS ON DEPOSIT WITH BB&T BANK

Resolution No. 2010-089, A RESOLUTION AUTHORIZING OFFICIAL SIGNATURES FOR ACCOUNTS ON DEPOSIT WITH THE BANK OF TENNESSEE

Resolution No. 2010-090, A RESOLUTION AUTHORIZING OFFICIAL SIGNATURES FOR ACCOUNTS ON DEPOSIT WITH CITIZENS BANK

Resolution No. 2010-091, A RESOLUTION AUTHORIZING OFFICIAL SIGNATURES FOR ACCOUNTS ON DEPOSIT WITH THE STATE OF TENNESSEE LOCAL GOVERNMENT INVESTMENT POOL

Resolution No. 2010-092, A RESOLUTION AUTHORIZING OFFICIAL SIGNATURES FOR ACCOUNTS ON DEPOSIT WITH STATE OF FRANKLIN SAVINGS BANK

Resolution No. 2010-093, A RESOLUTION AUTHORIZING OFFICIAL SIGNATURES FOR ACCOUNTS ON DEPOSIT WITH BANK OF AMERICA

Resolution No. 2010-094, A RESOLUTION AUTHORIZING OFFICIAL SIGNATURES FOR ACCOUNTS ON DEPOSIT WITH FIRST TENNESSEE BANK NATIONAL ASSOCIATION

Resolution No. 2010-095, A RESOLUTION AUTHORIZING OFFICIAL SIGNATURES FOR ACCOUNTS ON DEPOSIT WITH SUNTRUST BANK

Resolution No. 2010-096, A RESOLUTION AUTHORIZING OFFICIAL SIGNATURES FOR ACCOUNTS ON DEPOSIT WITH GREENE BANK

Resolution No. 2010-097, A RESOLUTION AUTHORIZING OFFICIAL SIGNATURES FOR ACCOUNTS ON DEPOSIT WITH FIRST COMMUNITY BANK

Resolution No. 2010-098, A RESOLUTION AUTHORIZING OFFICIAL SIGNATURES FOR ACCOUNTS ON DEPOSIT WITH FIRST TENNESSEE BANK NATIONAL ASSOCIATION

Resolution No. 2010-099, A RESOLUTION AUTHORIZING OFFICIAL SIGNATURES FOR ACCOUNTS ON DEPOSIT WITH TRISUMMIT BANK

Passed Resolutions No. 2010-279 through 2010-099: All present voting “aye.”

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2. Consideration of a Resolution for Annual Renewal of the Public Library Maintenance of Effort Agreement with the Tennessee State Library and Archives for Services Via Watauga Regional Library (AF: 348-2009).

Motion/Second: Joh/Shupe, to pass:

Resolution No. 2010-100, A RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE A PUBLIC LIBRARY MAINTENANCE OF EFFORT AGREEMENT AND A PUBLIC LIBRARY SERVICE AGREEMENT WITH THE TENNESSEE STATE LIBRARY AND ARCHIVES TO RECEIVE FUNDING FOR BOOKS AND TRAINING AND FOR SERVICES THROUGH THE WATAUGA REGIONAL LIBRARY SYSTEM FOR FISCAL YEAR 2009/2010

Passed: All present voting "aye."

3. Consideration of a Resolution to Authorize the Mayor to Sign All Documents Necessary to Apply for and Receive a Tennessee Department of Transportation Enhancement Grant – Greenbelt Pedestrian Bridge Connection Project (AF: 347-2009). MPO staffer, Chris Campbell, provided an illustration and explanation of the scope of this project.

Motion/Second: Mallicote/Joh, to pass:

Resolution No. 2010-101, A RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE ALL DOCUMENTS NECESSARY AND PROPER TO APPLY FOR AND RECEIVE A TENNESSEE DEPARTMENT OF TRANSPORTATION ENHANCEMENT GRANT FOR THE GREENBELT PEDESTRIAN BRIDGE CONNECTION PROJECT

Passed: All present voting "aye."

4. Consideration of a Resolution Authorizing the Mayor to Execute a Right-of-Way Easement with Kingsport Power Company (AF: 350-2009).

Motion/Second: Parham/Munsey, to pass:

Resolution No. 2010-102, A RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE A RIGHT-OF-WAY EASEMENT WITH KINGSFORT POWER COMPANY

Passed: All present voting "aye."

5. Consideration of a Resolution Awarding the Bid for the Purchase of One (1) Cab/Chassis Automated Truck Mounted Debris Collection System to Smoky Mountain Truck Center, LLC (AF: 353-2009).

Motion/Second: Joh/Parham, to pass:

Resolution No. 2010-103, A RESOLUTION AWARDED THE BID FOR PURCHASE OF ONE (1) CAB/CHASSIS AUTOMATED TRUCK MOUNTED DEBRIS COLLECTION SYSTEM TO SMOKY MOUNTAIN TRUCK CENTER, LLC

Passed: All present voting "aye."

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6. Consideration of a Resolution Approving Renewal of Recycling Services Agreement with Tri-City Waste Paper, Inc. for a Curbside Collection of Recyclable Materials Program and Authorizing the Mayor to Execute All Documents Necessary (AF: 349-2009).

Motion/Second: Parham/Mallicote, to pass:

Resolution No. 2010-104, A RESOLUTION APPROVING RENEWAL OF THE RECYCLING SERVICES AGREEMENT WITH TRI-CITY WASTE PAPER, INC. FOR A CURBSIDE COLLECTION OF RECYCLABLE MATERIALS PROGRAM AND AUTHORIZING THE MAYOR TO EXECUTE ALL DOCUMENTS NECESSARY AND PROPER TO EFFECTUATE RENEWAL OF THE AGREEMENT

Passed: All present voting "aye."

7. Consideration of a Resolution Authorizing the Mayor to Execute All Documents Necessary to Enter into an Agreement with Camp, Dresser and McKee, Inc. for the Stormwater Master Plan (AF: 354-2009).

Motion/Second: Joh/Munsey, to pass:

Resolution No. 2010-105, A RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE AN AGREEMENT WITH CAMP, DRESSER AND MCKEE, INC. FOR THE STORMWATER MASTER PLAN

Passed: All present voting "aye."

8. Consideration of a Resolution Authorizing the Mayor to Execute a Memorandum of Understanding with the Kingsport City School System for the Kingsport/Sullivan County GED Program for Funding of GED Testing Scholarships for City Residents (AF: 352-2009). Mayor Phillips gave details about the need for this funding and City Attorney Billingsley pointed out that the amount contained in the proposed resolution (\$10,000.00) was not consistent with the recommended amount included on the action form (\$13,000.00) and would need to be amended.

Alderman Shupe made a motion, seconded by Alderman Joh, to amend the proposed resolution to revise the language from "not more than \$10,000.000" to "not more than \$13,000.00."

Motion/Second: Parham/Shupe, to pass, as amended:

Resolution No. 2010-106, A RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE A MEMORANDUM OF UNDERSTANDING WITH THE KINGSFORT CITY SCHOOL SYSTEM FOR THE KINGSFORT/SULLIVAN COUNTY GED PROGRAM TO IMPLEMENT A SCHOLARSHIP PROGRAM FOR KINGSFORT RESIDENTS FOR THE GED EXAMINATION FEE

Passed: All present voting "aye."

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9. Consideration of Initial and Detailed Bond Resolutions Authorizing the Issuance of General Obligation Bonds (Aquatic Center) in an Amount Not to Exceed \$15,000,000 (AF: 338-2009). City Attorney Billingsley explained the need to vote separately on this \$15,000,000 amount of the total bond of \$41,835,000 being considered in the following agenda item because this project includes private activity in the working relationship with the YMCA and BABs (Build American Bonds) cannot be used for anything not defined as public activity. Mr. Billingsley stated that details are still being worked out with bond counsel to determine the amount of this project that can be funded with BABS, which have a lower interest rate, versus private activity bonds.

Alderman Marsh commented that he continues to be opposed to this borrowing because 1) this project competes with local, private enterprise; 2) it will raise costs significantly; and 3) the aquatic center is being built in the wrong place and built for the elite of Kingsport rather than for general citizenry.

Motion/Second: Joh/Munsey, to pass:

Resolution No. 2010-107, INITIAL RESOLUTION AUTHORIZING THE ISSUANCE OF NOT TO EXCEED \$15,000,000 GENERAL OBLIGATION BONDS OF THE CITY OF KINGSPORT, TENNESSEE, TO PROVIDE FUNDING FOR CERTAIN PUBLIC WORKS PROJECTS AND TO FUND THE INCIDENTAL AND NECESSARY EXPENSES RELATED THERETO

Passed: All present voting "aye" except Marsh voting "nay."

Motion/Second: Munsey/Joh, to pass:

Resolution No. 2010-108, RESOLUTION AUTHORIZING THE EXECUTION, TERMS, ISSUANCE, SALE, AND PAYMENT OF NOT TO EXCEED \$15,000,000 GENERAL OBLIGATION BONDS, IN ONE OR MORE SERIES, OF THE CITY OF KINGSPORT, TENNESSEE, AND PROVIDING THE DETAILS THEREOF

Passed: All present voting "aye" except Marsh voting "nay."

10. Consideration of Initial and Detailed Bond Resolutions Authorizing the Issuance of General Obligation Public Improvement Bonds in an Amount Not to Exceed \$41,835,000 (AF: 339-2009). City Manager Campbell provided an updated list of *Projects Funded through Proposed Bond Proceeds* which Board members debated on how to vote, individually, on which to include for funding in this bond issue. City Attorney Billingsley recommended that the Board vote to approve both resolutions, as presented, and then review the specific projects to decide which will be included in this bond sale. The \$41,835,000 amount is a maximum amount allowable and can be reduced as the Board deems appropriate.

Motion/Second: Parham/Joh, to pass:

Resolution No. 2010-109, INITIAL RESOLUTION AUTHORIZING THE ISSUANCE OF NOT TO EXCEED \$41,835,000 GENERAL OBLIGATION PUBLIC IMPROVEMENT BONDS OF THE CITY

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OF KINGSPORT, TENNESSEE, TO PROVIDE FUNDING FOR CERTAIN PUBLIC WORKS PROJECTS AND TO FUND THE INCIDENTAL AND NECESSARY EXPENSES RELATED THERETO

Passed: All present voting “aye” except Marsh voting “nay.”

Motion/Second: Joh/Munsey, to pass:

Resolution No. 2010-110, RESOLUTION AUTHORIZING THE EXECUTION, TERMS, ISSUANCE, SALE, AND PAYMENT OF NOT TO EXCEED \$41,835,000 GENERAL OBLIGATION PUBLIC IMPROVEMENT BONDS, IN ONE OR MORE SERIES, OF THE CITY OF KINGSPORT, TENNESSEE, AND PROVIDING THE DETAILS THEREOF.

Passed: All present voting “aye” except Marsh voting “nay.”

In response to Mayor Phillips asking if any Board members wanted to pull out any projects, other than the Aquatic Center which was voted on in Item No. VI.D.9, to further discuss and vote on separately, Alderman Marsh requested that the *Meadowview Conference Center Expansion* project, the *Wastewater and Water Systems Projects* and the *General Fund Projects Road Improvements* be pulled.

Meadowview Conference Center Expansion. City Manager Campbell provided details of the need for this funding to meet certain issues that have arisen with the overall expansion project and this amount will allow completion of the project.

Alderman Marsh explained that, while he is not opposed to completion of this project, he sees no need to borrow money when this amount can be paid out of the City’s cash flow.

Motion/Second: Joh/Munsey, to include:

FUNDING OF *MEADOWVIEW CONFERENCE CENTER EXPANSION* IN THE AMOUNT OF \$1,000,000

Passed: All present voting “aye” except Marsh voting “nay.”

Wastewater Systems Projects and **Water Systems Projects.** City Manager Campbell provided background information on the need to include these expansions and improvements. Public Works Director Ryan McReynolds explained the timeline for moving ahead with these projects in an efficient and the least disruptive manner to residents. Mayor Phillips said many of these projects are required to be completed within the next five years and, by funding through this bond issue, will allow water and sewer rates to remain reasonable.

Alderman Marsh pointed out that Kingsport has higher rates than comparative cities. He went on to point out that, before this bond issue, 41% of the total Wastewater budget and 22% of the Water budget is debt. These percentages are down from the nearly 75% of debt in these budgets when Aldermen Marsh and Munsey joined this Board. Further, these two services will generate around \$4.25 million in cash this year and,

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given the five-year period in which these projects are required to be completed, there will be ample cash to do so within the next two years.

Mr. McReynolds further clarified that the City of Kingsport has the lowest water bill for in-city service, averaging \$14.85 per month, and the highest sewer bill, but when averaged together—although, historically higher—the trend of rate increases over the last five, increases have only averaged 1% and staff continues to try to keep increases as low as possible. The City Manager added that cash generated by these two services is needed for ongoing maintenance and operating expense.

Alderman Munsey pointed out, and the City Manager confirmed, that borrowing this money will not increase the water and sewer rates for this year. Alderman Parham added that construction rates are currently very low and may not continue to be if these projects are delayed for two years.

Motion/Second: Mallicote/Joh, to include:

FUNDING OF WASTEWATER SYSTEM PROJECTS IN THE TOTAL AMOUNT OF \$6,000,000 AND WATER SYSTEM PROJECTS IN THE TOTAL AMOUNT OF \$4,000,000

Passed: All present voting “aye” except Marsh voting “nay.”

Motion/Second: Joh/Mallicote, to include:

FUNDING OF GENERAL FUND PROJECTS - ROAD IMPROVEMENTS IN THE TOTAL AMOUNT OF \$6,000,000

Passed: All present voting “aye” except Marsh voting “nay.”

General Fund Projects. Alderman Marsh questioned why the *Renaissance Center Roof Repairs* were being included with capital projects and not funded with regular maintenance expense. He further commented that he sees all of these listed projects, except one that will reflect some financial return, as “quality of life” and “operational” items.

Motion/Second: Joh/Parham, to include:

FUNDING OF GENERAL FUND PROJECTS IN THE TOTAL AMOUNT OF \$6,266,000

Passed: All present voting “aye” except Marsh voting “nay.”

E. APPOINTMENTS. None.

VII. CONSENT AGENDA.

Consent Agenda items are considered under one motion.

Motion/Second: Mallicote/Munsey, to adopt:

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1. Consideration of an Ordinance Adopting an Equal Employment Opportunity Statement and a Resolution Establishing a Complaint Procedure (AF: 315-2009).

Adopt:

Ordinance No. 5898, AN ORDINANCE ADOPTING A POLICY OF NON-DISCRIMINATION IN CITY PROGRAMS AND ACTIVITIES; ESTABLISHING A GRIEVANCE PROCEDURE TO RESOLVE COMPLAINTS RELATED THERETO; AND TO FIX THE EFFECTIVE DATE OF THIS ORDINANCE

Passed on first reading in a roll call vote: Joh, Mallicote, Marsh, Munsey, Parham, Shupe and Phillips voting "aye."

2. Consideration of an Ordinance to Appropriate Grant Funds Approved by the Department of Justice, Justice Assistance Grant Program (JAG) (AF: 325-2009).

Adopt:

Ordinance No. 5899, AN ORDINANCE TO AMEND THE JUSTICE ASSISTANCE GRANT FUND BUDGET BY APPROPRIATING GRANT FUNDS RECEIVED FROM THE U.S. DEPARTMENT OF JUSTICE, BUREAU OF JUSTICE ASSISTANCE AND TO ESTABLISH THE JUSTICE ASSISTANCE GRANT PROJECT (JG1002); AND TO FIX THE EFFECTIVE DATE OF THIS ORDINANCE

Passed on first reading in a roll call vote: Joh, Mallicote, Marsh, Munsey, Parham, Shupe and Phillips voting "aye."

3. Consideration of an Ordinance to Amend the Sewer Project Fund by Appropriating Funds Received from Sullivan County through the City-County Sewer Agreement for an Addition to the Bloomingdale Sewer Line Extension (AF: 328-2009).

Adopt:

Ordinance No. 5900, AN ORDINANCE TO AMEND THE SEWER PROJECT FUND BUDGET BY APPROPRIATING ADDITIONAL FUNDS RECEIVED FROM SULLIVAN COUNTY THROUGH THE CITY-COUNTY SEWER AGREEMENT TO THE BLOOMINDALE SEWER LINE EXTENSION PROJECT (SW0900); AND TO FIX THE EFFECTIVE DATE OF THIS ORDINANCE

Passed on first reading in a roll call vote: Joh, Mallicote, Marsh, Munsey, Parham, Shupe and Phillips voting "aye."

4. Consideration of an Ordinance to Establish the Model City Motors Parking Lot Budget by Transferring Funds from the Street Resurfacing Project (AF: 337-2009).

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Adopt:

Ordinance No. 5901, AN ORDINANCE TO AMEND THE GENERAL PROJECT FUND AND GENERAL PROJECT-SPECIAL REVENUE FUND BUDGETS BY TRANSFERRING FUNDS FROM THE STREET RESURFACING PROJECT (NC0706) TO ESTABLISH THE MODEL CITY MOTORS PARKING LOT BUDGET (GP1012); AND TO FIX THE EFFECTIVE DATE OF THIS ORDINANCE

Passed on first reading in a roll call vote: Joh, Mallicote, Marsh, Munsey, Parham, Shupe and Phillips voting "aye."

5. Consideration of an Ordinance to Appropriate Unallocated Water and Sewer Bonds (AF: 329-2009).

Adopt:

Ordinance No. 5902, AN ORDINANCE TO AMEND THE WATER AND SEWER PROJECT FUND BUDGETS BY APPROPRIATING FUNDS FROM THE WATER AND SEWER BOND FUND FOR THE FISCAL YEAR ENDING JUNE 30, 2010; AND TO FIX THE EFFECTIVE DATE OF THIS ORDINANCE

Passed on first reading in a roll call vote: Joh, Mallicote, Marsh, Munsey, Parham, Shupe and Phillips voting "aye."

6. Consideration of Approval of Offers for Additional Easements and Right-of-Ways for Phase I of the Rock Springs Road Project (AF: 330-2009).

Approve:

OFFERS FOR ADDITIONAL EASEMENTS AND RIGHT-OF-WAYS FOR PHASE I OF THE ROCK SPRINGS ROAD PROJECT

Passed on second reading in a roll call vote: Joh, Mallicote, Marsh, Munsey, Parham, Shupe and Phillips voting "aye."

7. Consideration of Approval of Offer for Additional Right-of-Way for the Cleek Road and New Beason Well Road Improvement Project (AF: 344-2009).

Approve:

APPROVAL OF OFFER FOR ADDITIONAL RIGHT-OF-WAY FOR THE CLEEK ROAD AND NEW BEASON WELL ROAD IMPROVEMENT PROJECT

Passed on second reading in a roll call vote: Joh, Mallicote, Marsh, Munsey, Parham, Shupe and Phillips voting "aye."

8. Consideration of Approval of Offer for Easement and Right-of-Way for the Hemlock Park Improvements Project (AF: 346-2009).

Approve:

APPROVAL OF OFFER FOR EASEMENT AND RIGHT-OF-WAY FOR THE HEMLOCK PARK IMPROVEMENTS PROJECT

Passed on second reading in a roll call vote: Joh, Mallicote, Marsh, Munsey, Parham, Shupe and Phillips voting "aye."

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VIII. COMMUNICATIONS.

A. CITY MANAGER. City Manager Campbell shared that, last week, the City received a Tech Star award from Northeast State Technology Council for both the green construction and technology included in the new higher education center.

Mr. Campbell recognized and commended City staff members who have been involved in bringing various conferences to the Kingsport area. He mentioned Parks and Recreation Manager Kitty Frazier for her involvement in attracting the Tennessee Recreation and Parks Conference; Fire Chief Craig Dye and others who work, annually, to bring the Fall Conference of Fire Chiefs; and Streets and Sanitation Manager Ronnie Hammonds, who is not only on the Board for the Tennessee Public Works Association, but was instrumental in bringing this conference to Meadowview, for the first time ever, this weekend.

B. MAYOR AND BOARD MEMBERS. Alderman Shupe thanked and commended City staff for the tremendous amount of time and effort behind each of these agenda items and for making the City of Kingsport a great place.

Alderman Marsh said, in light of actions taken tonight to increase the City's indebtedness to a record level of \$218 million, he will be interested to hear, in the budgeting exercise this coming spring, how the City will cover \$3 million to \$5 million in additional expenses without raising taxes, freezing pay, cutting service, starving the schools or, maybe, some combination of all these actions.

Alderman Parham said he has heard good comments about the newly completed dock on the South Holston River dock. Mr. Parham mentioned his appreciation for the thoroughness of City staff, the diverse Board opinions and the time invested looking at this obligation and debt, along with the Mayor allowing everyone to voice their opinion. He personally sees these bond projects as an opportunity to complete previously planned projects over the next five to ten years and allows the City to take advantage of low interest rates and great construction costs—possibly saving \$6 million to \$7 million by moving ahead in an aggressive manner at this time.

C. VISITORS. *Mr. Bill Testerman*, 2205 Sunningdale Road, Kingsport, spoke on behalf of the Downtown Kingsport Association (DKA) and read a letter regarding the agreement to merge the DKA and the Downtown Business Alliance (DBA). The letter covered the events leading up to and including the October 6, 2009 BMA meeting, at which DKA members felt comments and an amendment made by Vice-Mayor Mallicote derailed and violated the agreement reached at the BMA work session the night before. The letter requested a public apology from Vice-Mayor Mallicote in order to re-establish trust in moving forward to fulfill the charge made by the City to the DKA.

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Alderman Joh stated that meeting policy does not include naming individual Board members and added that discussion taking place at work sessions is not necessarily what the Board will vote upon during its regular meeting.

Alderman Marsh asked the audience if anyone further from DKA or DBA wished to speak and no one came forward.

Vice-Mayor Mallicote responded, for the record and for the public watching, with a summary of his proposed amendment at the last BMA meeting, which amendment was adopted by all Board members. Mr. Mallicote stated that DKA will not get a public apology.

Essentially, after reaching a tentative agreement during the October 5, 2009 BMA work session and reporting that agreement to BMA members, the BMA planned to provide DKA with FY10 funding in the amount of \$48,000 once the changes and conditions agreed upon were met. In order to unify the two organizations, the main criteria involved DKA revising its current bylaws, together with allowing DBA members to be part of the DKA nominating committee and filling six positions on the DKA Board. As soon as these changes were implemented, the City would provide the funding to DKA.

Vice-Mayor Mallicote pointed out that, under DKA's current bylaws, a two-thirds vote of its Board could not only ratify the agreement reached but could also ratify the required bylaws changes and accomplish, immediately, what was agreed upon. He further pointed out that the letter read by Mr. Testerman contained the signatures of 15 DKA Board members, which number is a quorum and could have been put to better use by written ratification of its consent to the agreement and bylaw revisions, allowing the City to issue the monies under the agreement.

Mayor Phillips indicated that, given no indication that this matter has been settled between the two organizations, the BMA has to move ahead to ensure upcoming holiday events are funded and organized. He stated that the BMA will hold a special called meeting next week to discuss disbursement of the available funding.

Mr. John Vachon of 255 Broad Street, Kingsport, spoke on behalf of the DBA and believes everyone has the same goal of promoting and enhancing downtown Kingsport which is vital to downtown merchants during the holiday season, especially in these economic times, to get them through the winter. He said that DBA is willing to move ahead in whatever manner the BMA directs. He mentioned that, as a member of DKA's nominating committee, he submitted DBA names to be appointed to the DKA Board last Tuesday as requested by DKA.

Mr. Mark Freeman, a Kingsport citizen and member of the DKA Board, indicated that DKA has had several key members ill and have been unable to meet. Regarding the bylaw changes, Mr. Freeman indicated that he has already rewritten all necessary

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modifications which have been provided, for review, to the DKA membership so ratification can take place at the November 12, 2009 annual meeting. He added that the confusion regarding the bylaw changes is that these changes must be approved at a board meeting and ratified by the membership during the annual meeting. He stated that DKA members took offense at statements made during the last BMA meeting, interpreting them as issues of mistrust by Vice-Mayor Mallicote, making it difficult for DKA and DBA to move forward positively. He mentioned he has conferred with City Attorney Billingsley regarding the scope of the new language added to the annual agreement with the City and was told Mr. Billingsley had questions about the amendment and was still trying to clarify. Mr. Freeman indicated that DKA was basing what the changes were from Alderman Munsey's resolution document.

Vice-Mayor Mallicote countered by stating that DKA's own bylaws allows them to start the process now but its Board has not done so.

Alderman Parham suggested to DKA Board members in attendance to hold a Board meeting as soon as possible to vote to approve what been agreed upon, followed up by a letter to Mayor Phillips stating the action the Board has taken, subject to ratification by DKA members at the November 12th annual meeting. This action would free up the money to be disbursed to DKA.

Ms. Lesa Phillips of 4818 Silver Court in Kingsport requested that BMA members allow the DKA time to meet with an attorney to further clarify the process for revising its bylaws, hold a meeting with DBA members, possibly tomorrow, to discuss marketing options for the holiday season and report back to the Mayor and Aldermen.

Further Board discussion readdressed the issues discussed above and the need for this funding debate to come to an end. Mayor Phillips expressed regret that this issue has been very divisive among long-time friends and disruptive to the community as a whole and assured the public that the City funding policy will be settled in the near future.

IX. ADJOURN. Seeing no other business for consideration at this meeting, Mayor Phillips adjourned the meeting at 9:40 p.m.

ELIZABETH A. GILBERT
Deputy City Recorder

DENNIS R. PHILLIPS
Mayor



AGENDA ACTION FORM

Consideration of a Resolution Authorizing the Mayor to Execute and Sign All Documents Necessary to Accept and Receive Funding for Police Patrol Overtime from the South Central Kingsport Weed and Seed Program and Approve the Budget Ordinance

To: Board of Mayor and Aldermen
 From:  John G. Campbell, City Manager

Action Form No.:	AF- 361 -2009	Final Adoption:	November 16, 2009
Work Session:	November 2, 2009	Staff Work By:	D/C Dale Phipps
First Reading:	November 3, 2009	Presentation By:	Chief Gale Osborne

Recommendation:

- Approve the resolution.
- Approve the ordinance.

Executive Summary:

This is a renewal of an existing grant which the South Central Kingsport Weed and Seed receives. As a benefactor of the grant, the Police Department receives funding annually in the form of a donation. The total donation amount allocated for overtime is \$35,500.00. No matching monies are required and all necessary data has been and will continue to be provided to the South Central Weed and Seed Program for reporting purposes. The overtime funding must be used exclusively in the Weed and Seed boundaries.

Attachments:

1. Resolution
2. Ordinance

Funding source appropriate and funds are available: _____

	<u>Y</u>	<u>N</u>	<u>O</u>
Joh	—	—	—
Mallicote	—	—	—
Marsh	—	—	—
Munsey	—	—	—
Shull	—	—	—
Shupe	—	—	—
Phillips	—	—	—

RESOLUTION NO. _____

**A RESOLUTION TO ACCEPT A DONATION FROM THE SOUTH
CENTRAL KINGSPORT WEED AND SEED PROGRAM FOR
POLICE PATROL OVERTIME AND AUTHORIZING THE MAYOR
TO EXECUTE AND SIGN ALL APPLICABLE DOCUMENTS**

WHEREAS, the South Central Kingsport Weed and Seed Program has renewed an existing grant from the Community Capacity Development Office of the U.S. Department of Justice to help eliminate the criminal element; and

WHEREAS, the South Central Kingsport Weed and Seed Program desires to donate grant funds to the Kingsport Police Department; and

WHEREAS, the total amount of grant funds donated for police patrol overtime is \$35,500.00; and

WHEREAS, the grant funds must be used exclusively in the Weed and Seed boundaries;

Now therefore,

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

SECTION I. That the donation of \$35,500.00 from the South Central Kingsport Community Development, Inc. Weed and Seed Program to the City of Kingsport for police patrol overtime in the Weed and Seed boundaries is approved.

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, any and all applicable documents to effectuate the donation from the South Central Kingsport Community Development, Inc. Weed and Seed Program to the City of Kingsport for the Kingsport Police Department.

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

ADOPTED this the 3rd day of November, 2009.

DENNIS R. PHILLIPS, MAYOR

ATTEST:

JAMES H. DEMMING, CITY RECORDER

APPROVED AS TO FORM:

J. MICHAEL BILLINGSLEY, CITY ATTORNEY

PRE-FILED CITY RECORDER

ORDINANCE NO. _____

AN ORDINANCE TO AMEND THE GENERAL PROJECT-SPECIAL REVENUE FUND BUDGET BY APPROPRIATING ADDITIONAL FUNDS RECEIVED FROM SOUTH CENTRAL WEED AND SEED; AND, TO FIX THE EFFECTIVE DATE OF THIS ORDINANCE

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

SECTION I. That the General Project – Special Revenue Fund budget be amended by appropriating additional funds received from South Central Kingsport Weed and Seed in the amount of \$35,500 to the Weed and Seed Project (NC01003). The additional funding is designated for overtime and will be used for additional police patrol within the designated Weed and Seed area. A local match is not required.

<u>Account Number/Description:</u>	<u>Budget</u>	<u>Incr/<Decr></u>	<u>New Budget</u>
General Project – Special Revenue Fund 111: Weed and Seed Project (NC1003)			
Revenues:			
111-0000-335-4012 Dept Of Justice/CCDO	\$ 0	\$ 35,500	\$ 35,500
Totals:	0	35,500	35,500
Expenditures:			
111-0000-601-1011 Overtime	0	17,400	17,400
111-0000-601-1020 Social Security	0	3,000	3,000
111-0000-601-1030 Health Insurance	0	8,000	8,000
111-0000-601-1040 Retirement	0	6,000	6,000
111-0000-601-1050 Life Insurance	0	100	100
111-0000-601-1052 Long Term Disability	0	100	100
111-0000-601-1060 Worker's Comp	0	800	800
111-0000-601-1061 Unemployment	0	100	100
Totals:	0	35,500	35,500

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.

DENNIS R. PHILLIPS, 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

Consideration of an Ordinance to Amend the General Project Fund by Transferring Funds From the V.O. Dobbins Engineering Project (GP0727) and the V.O. Dobbins Renovations Project(NC0605) to the Current V.O. Dobbins Renovations Project(GP0907)

To: Board of Mayor and Aldermen
 From: John G. Campbell, City Manager *John G. Campbell*

Action Form No.:	AF-365-2009	Final Adoption:	November 17, 2009
Work Session:	November 02, 2009	Staff Work By:	Judy Smith
First Reading:	November 03, 2009	Presentation By:	John Campbell/J. Smith

Recommendation: Approve the Ordinance.

Executive Summary:

This ordinance is a house-keeping ordinance to combine the remaining funds that are left in the old projects to the current project and close the old projects.

Attachments:

1. Ordinance

Funding source appropriate and funds are available: _____

	<u>Y</u>	<u>N</u>	<u>O</u>
Joh	—	—	—
Mallicote	—	—	—
Marsh	—	—	—
Munsey	—	—	—
Parham	—	—	—
Shupe	—	—	—
Phillips	—	—	—

PRE-FILED CITY RECORDER

ORDINANCE NO. _____

AN ORDINANCE TO AMEND THE GENERAL PROJECT
FUND BUDGETS BY TRANSFERRING FUNDS TO THE
V.O. DOBBINS IMPROVEMENT PROJECT (GP0907); 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 are amended by transferring funds in the amount of \$15,488 from the V.O. Dobbins Engineering project (GP0727) and from the V.O. Dobbins Renovations project (NC605) in the amount of \$138,819 to the V.O. Dobbins Improvement project (GP0907).

<u>Account Number/Description:</u>	<u>Budget</u>	<u>Incr/<Decr></u>	<u>New Budget</u>
 Fund 311: General Project Fund			
<u>V.O. Dobbins Engineering (GP0727)</u>			
<u>Revenues:</u>			
311-0000-368-1031 G.O. Pub Improv Series 2007	\$ 20,000	\$ (15,488)	\$ 4,512
Totals:	20,000	(15,488)	4,512
 <u>Expenditures:</u>			
311-0000-601-2023 Arch/Eng/Landscaping	\$ 15,800	\$ (15,488)	\$ 312
311-0000-601-9001 Land	4,200	0	4,200
Totals:	20,000	(15,488)	4,512
 Fund 311: General Project Fund			
<u>V.O. Dobbins Renovations (NC0605)</u>			
<u>Revenues:</u>			
111-0000-391-0518 G.O. Bond Series 2005	\$ 250,000	\$ (138,819)	\$ 111,181
Totals:	250,000	(138,819)	111,181
 <u>Expenditures:</u>			
111-0000-601-2020 Professional Consultant	\$ 8,000	\$ (1,683)	\$ 6,317
311-0000-601-2022 Construction Contracts	165,800	(127,136)	38,664
311-0000-601-2023 Arch/Eng/Landscaping	76,200	(10,000)	66,200
Totals:	250,000	(138,819)	111,181

Fund 311: General Project Fund
V.O. Dobbins Improv. Project (GP0907)

Revenues:	\$	\$	\$
311-0000-368-1031 G.O. Pub Improv Series 2007	230,000	15,488	245,488
311-0000-391-0518 G.O. Bond Series 2005	0	138,819	138,819
311-0000-368-1034 Bond Proc/Ser 2008- B-G.O.	450,274	0	450,274
311-0000-368-1034 Bond Proc/Ser 2009- B-G.O.	7,100,000	0	7,100,000
311-0000-368-2101 Prem. From Bond Sale	79,642	0	79,642
Totals:	7,859,916	154,307	8,014,223

Expenditures:	\$	\$	\$
311-0000-601-2022 Construction Contracts	398,838	(357,189)	41,649
311-0000-601-2023 Arch/Eng/Landscaping	521,426	59,062	580,488
311-0000-601-4041 Bond Sale Expense	170,000	0	170,000
311-0000-601-9001 Land	300,000	(61,438)	238,562
311-0000-601-9002 Buildings	6,469,152	513,872	6,983,024
311-0000-601-9003 Improvements	500	0	500
Totals:	7,859,916	154,307	8,014,223

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.

DENNIS R. PHILLIPS, 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

Consideration of an Ordinance to Amend the FY 2010 General Purpose School Fund and the General Project Fund Budgets

To: Board of Mayor and Aldermen
From: John G. Campbell, City Manager

Agenda Form No.: AF-322-2009
Work Session: November 2, 2009
First Reading: November 3, 2009
Final Adoption: November 17, 2009
Staff Work: David Frye
Presentation: David Frye

Recommendation:

Approve an Ordinance amending the FY 2010 General Purpose School Fund Budget and the General Project Fund Budgets.

Executive Summary:

On October 1, 2009, the Board of Education approved Budget Amendment Number Two to the FY 2009-2010 General Purpose School Fund budget and the General Project Fund budget. This budget amendment decreases estimated revenues and appropriations in the General Purpose School Fund by \$300,000 and increases estimated revenues and appropriations in the General Project Fund by \$50,000. The decrease of \$300,000 represents the appropriation that the Board of Mayor and Aldermen approved for one-time school capital expenditures. Since this appropriation will be funded by bond funds that were previously allocated to a City capital project the funds will not flow from the City's General Fund to the School Fund, but from one capital project to another. These funds and an additional \$50,000 to be transferred from the School Fund to the General Project Fund will create project funding of \$350,000 for an upgrade of network switches.

Attachments:

- 1. Ordinance

	<u>Y</u>	<u>N</u>	<u>O</u>
Joh	—	—	—
Mallicote	—	—	—
Marsh	—	—	—
Munsey	—	—	—
Shull	—	—	—
Shupe	—	—	—
Phillips	—	—	—

ORDINANCE NO. _____

AN ORDINANCE TO AMEND THE GENERAL PURPOSE SCHOOL FUND AND THE GENERAL PROJECT FUND BUDGETS; AND, TO FIX THE EFFECTIVE DATE OF THIS ORDINANCE

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

SECTION I. That the General Purpose School Fund budget be amended to ratify the Kingsport Board of Education approval of Budget Amendment Number Two to decrease the estimated revenue for Transfers from the City General Fund by \$300,000 and to increase the appropriation for Fund Transfers by \$50,000 and to decrease the appropriations for Other Capital Outlay by \$350,000. In addition the General Project fund budget will be amended by transferring \$50,000 from the General Purpose School Fund to the KCS Network Upgrade project (GP1011).

<u>Account Number/Description:</u>	<u>Budget</u>	<u>Incr/<Decr></u>	<u>New Budget</u>
Fund 141: School Fund			
<u>Revenues:</u>	\$	\$	\$
141-0000-399-9812 Transfer-City General Fund	500,000	(300,000)	200,000
Totals:	500,000	(300,000)	200,000

<u>Account Number/Description:</u>	<u>Budget</u>	<u>Incr/<Decr></u>	<u>New Budget</u>
<u>Expenditures:</u>			
141-7650-871-0790 Capital Outlay-Other	495,000	(350,000)	145,000
141-7950-881-0590 Other Uses-Fund Transfers	519,700	50,000	569,700
Totals:	1,014,700	(300,000)	714,700

Fund 311: General Project Fund			
<u>Revenues:</u>			
GP1011 KSC Network Switch Upgrade			
311-0000-391-2100 Transfer From School Fund	0	50,000	50,000
Totals:	0	50,000	50,000

<u>Expenditures:</u>			
GP1011 KSC Network Switch Upgrade			
311-0000-601-9004 Capital Outlay-Equipment	0	50,000	50,000
Totals:	0	50,000	50,000

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

ATTEST:

DENNIS PHILLIPS, Mayor

JAMES H. DEMMING, City Recorder

APPROVED AS TO FORM:

J. MICHAEL BILLINGSLEY, City Attorney

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



AGENDA ACTION FORM

Consideration of an Ordinance to Amend the General Project Fund by Transferring Funds from the VO Dobbins Project to the Kingsport City Schools Network Switch Upgrade Project

To: Board of Mayor and Aldermen
From: John G. Campbell, City Manager

Action Form No.: AF-369-2009
Work Session: November 2, 2009
First Reading: November 3, 2009
Final Adoption: November 17, 2009
Staff Work By: J. Smith/ C. McCartt
Presentation By: John Campbell

Recommendation: Approve the ordinance.

Executive Summary:

During the budget process, the schools were given \$300,000 from the V.O. Dobbins project to fund capital projects. This funding was available due to the bids coming in lower than expected.

At this time, the schools want to use the funding for upgrading their network switches.

This ordinance will transfer the funding from the V.O. Dobbins project to the KSC Network Switch Upgrade project.

Attachments:

- 1. Ordinance

Funding source appropriate and funds are available: _____

	Y	N	O
Joh	—	—	—
Mallicote	—	—	—
Marsh	—	—	—
Munsey	—	—	—
Parham	—	—	—
Shupe	—	—	—
Phillips	—	—	—

ORDINANCE NO. _____

AN ORDINANCE TO AMEND THE GENERAL PROJECT FUND BUDGETS BY TRANSFERRING FUNDS FROM THE VO DOBBINS IMPROVEMENT PROJECT(GP0907) TO THE KSC NETWORK SWITCH UPGRADE PROJECT; 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 budgets be amended by transferring funds in the amount of \$300,000 from the VO Dobbins Improvement project (GP0907) to the KSC Network Switch Upgrade project (GP1011).

<u>Account Number/Description:</u>	<u>Budget</u>	<u>Incr/<Decr></u>	<u>New Budget</u>
Fund 110: General Fund			
<u>Revenues:</u>			
110-0000-391-3600 From General Proj Fund	\$ 300,000	\$ (300,000)	\$ 0
Totals:	300,000	(300,000)	0
<u>Expenditures:</u>			
110-4804-481-7019 School Fund Capital	\$ 500,000	\$ (300,000)	\$ 200,000
Totals:	500,000	(300,000)	200,000
Fund 311: General Project Fund			
<u>VO Dobbins Improvement Project (GP0907)</u>			
<u>Revenues:</u>			
311-0000-368-1031 G.O. Pub Improv Series 2007	\$ 245,488	\$ 0	\$ 245,488
311-0000-391-0518 G.O. Bond Series 2005	138,819	0	138,819
311-0000-368-1034 Bond Proc/Ser 2008- B-G.O.	450,274	(300,000)	150,274
311-0000-368-1034 Bond Proc/Ser 2009- B-G.O	7,100,000	0	7,100,000
311-0000-368-2101 Prem. From Bond Sale	79,642	0	79,642
Totals:	8,014,223	(300,000)	7,714,223
<u>Expenditures:</u>			
311-0000-601-2022 Construction Contracts	\$ 41,649	\$ 0	\$ 41,649
311-0000-601-2023 Arch/Eng/Landscaping	580,488	0	580,488
311-0000-601-4041 Bond Sale Expense	170,000	0	170,000
311-0000-601-9001 Land	238,562	0	238,562
311-0000-601-9002 Buildings	6,983,024	(300,000)	6,683,024

311-0000-601-9003 Improvements	500	0	500
Totals:	8,014,223	(300,000)	7,714,223

Fund 311: General Project Fund
KSC Network Switch Upgrade(GP1011)

Revenues:	\$	\$	\$
311-0000-391-2100 Transfer from Schools	50,000	0	50,000
311-0000-368-1034 Bond Proc/Ser 2009- B-G.O	0	300,000	300,000
Totals:	50,000	300,000	350,000

Expenditures:	\$	\$	\$
311-0000-601-9004 Equipment	50,000	300,000	350,000
Totals:	50,000	300,000	350,000

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

ATTEST:

 Elizabeth A. Gilbert
 Deputy City Recorder

 DENNIS R. PHILLIPS, Mayor

APPROVED AS TO FORM:

 J. MICHAEL BILLINGSLEY, City Attorney

PASSED ON 1ST READING: _____

PASSED ON 2ND READING: _____



AGENDA ACTION FORM

Consideration of Ordinances to Amend Zoning of the Airport Parkway Property Located on Airport Parkway from TA Zoning to B-3 Zoning

To: Board of Mayor and Aldermen
 From: John G. Campbell, City Manager

A handwritten signature in blue ink, appearing to read "John G. Campbell", is written over the printed name of the City Manager.

Action Form No.: AF-319-2009

Final Adoption: November 3, 2009

Work Session: October 19, 2009

Staff Work By: F. Koder

First Reading: October 20, 2009

Presentation By: F. Koder

Recommendation:

- Approve ordinance amending the zoning ordinance to rezone the area from TA, Tourist Accommodation to B-3, General Business.

Executive Summary:

The request is to rezone approximately 2.32 acres of parcel 98.20 adjacent to Airport Parkway. This is an owner initiated rezoning request from Ms. Rikki Rhoten. The proposed zoning for the area is a City B-3, General Commercial. Adjacent city zoning is B-3 and TA, Tourist Accommodation. The surrounding County zoning in the area is B-3, General Business and A-1, Agricultural. The existing land uses compliment the majority of the current zoning designations and the proposed zoning is compatible with the surrounding zoning in the area. Water and sewer are available to the parcels. At its September 27, 2009 meeting, the Kingsport Regional Planning Commission voted unanimously to send a favorable recommendation for the rezoning of the parcel to the Board of Mayor and Alderman.

Attachments:

1. ~~Public Notice~~
2. Zoning Ordinance
3. Staff Report
4. Map

Funding source appropriate and funds are available: _____

	Y	N	O
Joh	—	—	—
Mallicote	—	—	—
Marsh	—	—	—
Munsey	—	—	—
Parham	—	—	—
Shupe	—	—	—
Phillips	—	—	—



AGENDA ACTION FORM

Consideration of Ordinances to Annex/ Amend Zoning of the "Stonetree A" Annexation

TO: Board of Mayor and Aldermen
 FROM: John G. Campbell, City Manager

Action Form No.: AF-333-2009
 Work Session: October 19, 2009
 First Reading: October 20, 2009
 Final Adoption: November 3, 2009
 Staff Work By: K. Weems
 Presentation By: K. Weems

Recommendation:

- Approve ordinance for the "Stonetree A" annexation
- Approve ordinance amending the zoning ordinance for the "Stonetree A" annexation

Executive Summary:

This is the "Stonetree A" annexation of approximately 17 acres along Oak Haven Drive, with an approximate population of 68 residents (single family use). The current county zoning of the area is R-1 (Single Family Residential). The proposed City zoning for the area is R-1B (Single Family Residential). Both water and sanitary sewer require an upgrade for this annexation. During their September 2009 regular meeting, the Kingsport Regional Planning Commission voted unanimously (9-0) to send a favorable recommendation for the annexation, zoning, and plan of services to the Board of Mayor and Aldermen for this annexation. This item has received general opposition from a few residents in the annexation area.

Attachments:

1. ~~Notice of Public Hearing~~
2. Annexation Ordinance
3. Zoning Ordinance
4. ~~Resolution~~
5. Staff Report
6. Cost Analysis
7. Map

Funding source appropriate and funds are available: _____

	Y	N	O
Joh	—	—	—
Mallicote	—	—	—
Marsh	—	—	—
Munsey	—	—	—
Parham	—	—	—
Shupe	—	—	—
Phillips	—	—	—



AGENDA ACTION FORM

Consideration of Ordinances to Annex/ Amend Zoning of the "Stonetree B" Annexation

TO: Board of Mayor and Aldermen
 FROM: John G. Campbell, City Manager

Action Form No.: AF-334-2009
 Work Session: October 19, 2009
 First Reading: October 20, 2009
 Final Adoption: November 3, 2009
 Staff Work By: K. Weems
 Presentation By: K. Weems

Recommendation:

- Approve ordinance for the "Stonetree B" annexation
- Approve ordinance amending the zoning ordinance for the "Stonetree B" annexation

Executive Summary:

This is the "Stonetree B" annexation of approximately 33 acres along Gustavis Court, Montsweag Court, and Valley Drive, with an approximate population of 90 residents (single family use). The current county zoning of the area is A-1 (Agricultural and Residential zoning). The proposed City zoning for the area is R-1B (Single Family Residential). Both water and sanitary sewer require an upgrade for this annexation. During their September 2009 regular meeting, the Kingsport Regional Planning Commission voted unanimously (9-0) to send a favorable recommendation for the annexation, zoning, and plan of services to the Board of Mayor and Aldermen for this annexation. This item has received general opposition from a few residents in the annexation area.

Attachments:

1. ~~Notice of Public Hearing~~
2. Annexation Ordinance
3. Zoning Ordinance
4. ~~Resolution~~
5. Staff Report
6. Cost Analysis
7. Map

Funding source appropriate and funds are available: _____

	<u>Y</u>	<u>N</u>	<u>O</u>
Joh	—	—	—
Mallicote	—	—	—
Marsh	—	—	—
Munsey	—	—	—
Parham	—	—	—
Shupe	—	—	—
Phillips	—	—	—



AGENDA ACTION FORM

Consideration of Ordinances to Annex/ Amend Zoning of the "Stonetree D" Annexation

TO: Board of Mayor and Aldermen
 FROM: John G. Campbell, City Manager

Action Form No.: AF-336-2009 Final Adoption: November 3, 2009
 Work Session: October 19, 2009 Staff Work By: K. Weems
 First Reading: October 20, 2009 Presentation By: K. Weems

Recommendation:

- Approve ordinance for the "Stonetree D" annexation
- Approve ordinance amending the zoning ordinance for the "Stonetree D" annexation

Executive Summary:

This is the "Stonetree D" annexation of approximately 27 acres along Gustavis Court, Gustavis Avenue, Arrow Circle, Royal Circle, and Rock Valley Drive, with an approximate population of 65 residents (single family use). The current county zoning of the area is R-1 (Single Family Residential). The proposed City zoning for the area is R-1B (Single Family Residential). Both water and sanitary sewer require an upgrade for this annexation. During their September 2009 regular meeting, the Kingsport Regional Planning Commission voted unanimously (9-0) to send a favorable recommendation for the annexation, zoning, and plan of services to the Board of Mayor and Aldermen for this annexation. This item has received general opposition from a few residents in the annexation area.

Attachments:

1. ~~Notice of Public Hearing~~
2. Annexation Ordinance
3. Zoning Ordinance
4. ~~Resolution~~
5. Staff Report
6. Cost Analysis
7. Map

Funding source appropriate and funds are available: _____

	Y	N	O
Joh	—	—	—
Mallicote	—	—	—
Marsh	—	—	—
Munsey	—	—	—
Parham	—	—	—
Shupe	—	—	—
Phillips	—	—	—



AGENDA ACTION FORM

Consideration of an Ordinance to Amend the Zoning Code, Text and Map, to Zone Property along Peach Orchard Drive to R-3, Multi- Family Residential District

To: Board of Mayor and Aldermen
 From: John G. Campbell, City Manager *(Signature)*

Action Form No.:	AF-323-2009	Final Adoption:	November 3, 2009
Work Session:	October 19, 2009	Staff Work By:	Karen Combs
First Reading:	October 20, 2009	Presentation By:	Karen Combs

Recommendation:

- Approve ordinance amending the zoning ordinance to rezone property along Peach Orchard Drive to R-3, Multi-Family Residential District

Executive Summary:

The request is to rezone property along Peach Orchard Drive from R-1B, Single Family Residential District to R-3, Multi- Family Residential District. The rezoning request is made by Mike Hartgrove as part of a project to develop this location. The Kingsport Regional Planning Commission unanimously sent a favorable recommendation for this request during their September 17, 2009 meeting to the Board of Mayor and Alderman. There were no objections to the rezoning.

Attachments:

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

Funding source appropriate and funds are available: _____

	Y	N	O
Joh	—	—	—
Mallicote	—	—	—
Marsh	—	—	—
Munsey	—	—	—
Parham	—	—	—
Shupe	—	—	—
Phillips	—	—	—



AGENDA ACTION FORM

Consideration of a Resolution Authorizing the Mayor to Execute a Lease Agreement with Suzuki Talent Education of Kingsport for Space in the Renaissance Center

To: Board of Mayor and Aldermen
 From: John G. Campbell, City Manager

A handwritten signature in blue ink, appearing to read "John G. Campbell", is written over the printed name of the City Manager.

Action Form No.:	AF-351-2009	Final Adoption:	November 3, 2009
Work Session:	November 2, 2009	Staff Work By:	Martha Beverly
First Reading:	N/A	Presentation By:	Martha Beverly

Recommendation: Approve the Resolution.

Executive Summary:

The City of Kingsport has leased space to various Arts organizations in the Renaissance Center. It is requested that the lease for the Suzuki Talent Education of Kingsport be renewed for a five year period. The rent reflects a 10% increase as was approved in the fee schedule by the BMA on July 1, 2007.

Attachments:

1. Resolution
2. Lease

Funding source appropriate and funds are available: _____

	<u>Y</u>	<u>N</u>	<u>O</u>
Joh	—	—	—
Mallicote	—	—	—
Marsh	—	—	—
Munsey	—	—	—
Parham	—	—	—
Shupe	—	—	—
Phillips	—	—	—

RESOLUTION NO. _____

A RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE A LEASE AGREEMENT BETWEEN THE CITY OF KINGSPORT AND SUZUKI TALENT EDUCATION OF APPALACHIA, INC. FOR CERTAIN SPACE IN THE RENAISSANCE CENTER LOCATED IN THE CITY OF KINGSPORT

WHEREAS, the City of Kingsport desires to enter into a lease agreement with Suzuki Talent Education of Appalachia, Inc. for space in the Renaissance Center located in the city; and

WHEREAS, the new lease agreement includes ten percent (10%) increase in the rent, which was approved in the fee schedule by the Board of Mayor and Aldermen on July 1, 2007;

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, a lease agreement with Suzuki Talent Education of Appalachia, Inc. for space in the building known as the Renaissance Center located in the City of Kingsport, Sullivan County, Tennessee.

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

ADOPTED this the 3rd day of November, 2009.

DENNIS R. PHILLIPS, MAYOR

ATTEST:

JAMES H. DEMMING, CITY RECORDER

APPROVED AS TO FORM:

J. MICHAEL BILLINGSLEY, CITY ATTORNEY

RENAISSANCE CENTER
LEASE AGREEMENT

THIS LEASE, made effective the 1st day of July, 2009, by and between the City of Kingsport, a municipal corporation (herein called "Landlord"), and the Suzuki Talent Education of Appalachia, Inc. (herein called "Tenant").

WITNESSETH:

THAT, in consideration of the premises and the mutual covenants and agreements herein contained and other good and valuable consideration, the Parties do hereby agree as follows:

- 1. Premises.** Landlord does hereby lease to Tenant and Tenant leases from Landlord that certain space in the building known as the Renaissance Center containing approximately (956) square feet of floor area (herein called "Premises"). [Premises consist of Resident Space which is 690 Square Feet X 100% = 690 Square Feet; Periodic Space is 713 Square Feet X 7% = 50 Square Feet; Common Area Use is 10781 Square Feet X 2% = 216 Square Feet; Cost per square foot is \$3.37 X 956 Square Feet = \$3,221.72 per year.]

Said Premises are located in the City of Kingsport, Sullivan County, Tennessee.

This Lease is subject to the terms, covenants and conditions herein set forth and the Tenant covenants as a material part of the consideration for this Lease to keep and perform each and all of said terms, covenants and conditions by it to be kept and performed.

- 2. Term.** The term of this Lease shall be until June 30, 2010, and shall commence to run on the date of this Lease. The Parties shall have the option to renew this Lease for five (5) successive renewal terms of one year each. Each of such renewal terms shall be upon the same terms, covenants and conditions hereof, except (a) there shall be no further renewal right after the expiration of said fifth and last renewal term, and (b) compensation shall be as provided in Section 4. Such options to renew shall be deemed to have been exercised by Tenant by written notice served upon Landlord prior to the termination of this Lease on June 30, 2010, or the termination of any successive renewal term. This Lease shall be extended without any further instrument provided the Lease is not terminated for other reasons as stated herein. For the purpose of clarification, if the Tenant exercises all the renewal options as set out in this paragraph, the final renewal will expire on June 30, 2014. This Lease may be terminated by either party by giving written notice to the other at least 30 days before the effective date of such termination.

3. **Use.** Tenant shall use the Premises for Suzuki Talent group activities including office functions, classes, workshops, receptions, and exhibits and shall not use or permit the Premises to be used for any other purpose without the prior written consent of Landlord.
4. **Rent.** Tenant agrees to pay to Landlord as Rent, without notice or demand, the annual amount of THREE THOUSAND AND TWO HUNDRED TWENTY ONE DOLLARS AND 72/100's (\$3,221.72).
5. **Uses Prohibited.** Tenant shall not do or permit anything to be done in or about the Premises or bring or keep anything therein that is not within the permitted use of the Premises or that will in any way increase the existing rate of or affect any fire or other insurance upon the building in which the Premises are located, or any of its contents, or cause a cancellation of any insurance policy covering said building or any part thereof, or any of its contents. Tenant shall not do or permit anything to be done in or about the Premises that will in any way obstruct or interfere with the rights of other tenants or occupants of the Renaissance Center, or injure or annoy them or use or allow the Premises to be used for any improper, immoral, unlawful or objectionable purpose. Nor shall Tenant cause, maintain or permit any nuisance in, on or about the Premises. Tenant shall not commit waste or allow waste to be committed in or upon the Premises.
6. **Compliance with Law.** Tenant shall not use the Premises, or permit anything to be done in or about the Premises, that will in any way conflict with any law, statute, ordinance or governmental rule or regulation now in force or that shall hereafter be enacted or promulgated. Tenant shall, at its sole cost and expense, promptly comply with all laws, statutes, ordinances and governmental rules, regulations or requirements now in force or that may hereafter be in force relating to or affecting the condition, use or occupancy of the Premises, excluding structural changes not related to or affected by Tenant's improvements or acts. The judgment or any court of competent jurisdiction or the admission of Tenant in any action against Tenant, whether Landlord be a party thereto or not, that Tenant has violated any law, statute, ordinance or governmental rule, regulation or requirement, shall be conclusive of that fact as between the Landlord and Tenant.
7. **Alterations and Additions.** Tenant shall not make or allow to be made any alterations, additions or improvements to or of the Premises or any part thereof without first obtaining the written consent of Landlord and any alterations, additions or improvements to or of said Premises, including, but not limited to, wall coverings, paneling and built-in cabinet work, but excepting movable furniture and trade fixtures, shall at once become a part of the realty and belong to the Landlord and shall be surrendered with the Premises. In the event Landlord consents to the making of any alterations, additions or improvements to the Premises by Tenant, the same shall be made by Tenant at Tenant's sole cost and expense. Upon the expiration or sooner termination of the term hereof, Tenant shall, upon written demand by Landlord, given at least thirty (30) days prior to the end of the term, at Tenant's sole cost and expense, forthwith and with all due diligence, remove any alteration, additions, or improvements made by Tenant, designated by Landlord to be removed, and Tenant shall,

forthwith and with all due diligence, at its sole cost and expense, repair any damage to the Premises caused by such removal.

8. **Repairs.** By entry hereunder, Tenant shall be deemed to have accepted the Premises as being in good, sanitary order, condition and repair. Tenant shall, at Tenant's sole cost and expense, keep the Premises and every part thereof in good condition and repair. Tenant shall, upon the expiration or sooner termination of this Lease, surrender the Premises to the Landlord in good condition, broom clean, ordinary wear and tear excepted. Any damage to adjacent premises caused by Tenant's use of the Premises shall be repaired at the sole cost and expense of Tenant.

Notwithstanding the provisions of this section hereinabove, Landlord shall repair and maintain the exterior walls and roof of the building of which the Premises are a part, unless the necessity for such maintenance and repairs is caused in part or in whole by the act, neglect, fault or omission of the Tenant, its agents, servants, employees or invitees, in which case Tenant shall pay to Landlord the actual cost of such maintenance and repairs. Landlord shall not be liable for any failure to make such repairs or to perform any maintenance unless such failure shall persist for an unreasonable time after written notice of the need of such repairs or maintenance is given to Landlord by Tenant.

9. **Liens.** Tenant shall keep the Premises and the property on which the Premises are situated free from any liens arising out of any work performed, materials furnished or obligations incurred by or on behalf of Tenant.
10. **Assignment and Subletting.** Tenant shall not either voluntarily, or by operation of law, assign, transfer, mortgage, pledge, hypothecate or encumber this Lease or any interest therein, and shall not sublet the said Premises or any part thereof, or any right or privilege appurtenant thereto, or allow any other person (employees, agents, servants and invitees of Tenant excepted) to occupy or use the said Premises, or any portion thereof, without first obtaining the written consent of Landlord, which consent need not be given and shall be at Landlord's sole and absolute discretion. Consent to one assignment, subletting, occupation or use by any other person shall not be deemed to be consent to any subsequent assignment, subletting, occupation or use by another person. Consent to any such assignment or subletting shall in no way relieve Tenant of any liability under this Lease. Any such assignment or subletting without such consent shall be void, and shall, at the option of the Landlord, constitute a default under the terms of this Lease.
11. **Hold Harmless.** Tenant shall indemnify and hold harmless Landlord against and from any and all claims arising from Tenant's use of the Premises or from the conduct of its business and from any activity, work, or other things done, permitted or suffered by Tenant in or about the Premises, and shall further indemnify and hold harmless Landlord against and from any and all claims arising from any breach or default in the performance of any obligation on Tenant's part to be performed under the terms of this Lease, or arising from any act or negligence of the Tenant, or any officer, agent, employee, guest, or invitee of Tenant, and from all costs, attorneys' fees and liabilities incurred in or about the defense of any such claim or any action or proceeding brought thereon. In case any action or

proceeding is brought against Landlord by reason of such claim, Tenant upon notice from Landlord shall defend the same at Tenant's expense by counsel reasonably satisfactory to Landlord. Tenant, as a material part of the consideration to Landlord, hereby assumes all risk of damage to property or injury to persons in, upon or about the Premises, from any cause; and Tenant hereby waives all claims in respect thereof against Landlord. Tenant shall give prompt notice to Landlord in case of casualty or accidents on the Premises.

- 12. Liability Insurance.** Tenant shall, at Tenant's expense, obtain and keep in force during the term of this Lease a policy of comprehensive public liability insurance insuring Landlord and Tenant against any liability arising out of the ownership, use, occupancy or maintenance of the Premises and all areas appurtenant thereto. Such insurance shall be in the amount of not less than FIVE HUNDRED THOUSAND DOLLARS (\$500,000.00) for injury or death of one person in any one accident or occurrence and in the amount of not less than FIVE HUNDRED THOUSAND DOLLARS (\$500,000.00) for injury or death of more than one person in any one accident or occurrence. The Landlord shall be named as an additional insured on the certificate of insurance, and a certified copy of such certificate shall be provided to the Landlord by the Tenant upon the execution of this Lease Agreement. Tenant shall provide Landlord, upon its request, a certified copy of any insurance policy provided pursuant to this Lease Agreement. Any failure or non-coverage by such policy shall not affect the indemnity or hold harmless provisions of this Lease Agreement, and the limit of any such insurance shall not, however, limit the liability of the Tenant hereunder. The policy, or policies, shall contain a provision that such policy or policies may not be cancelled without thirty (30) days prior written notice of such cancellation to the Landlord. Duplicate policies or certificates of all such insurance shall be delivered to the Landlord not less than ten (10) days prior to each effective date. Insurance required hereunder shall be in companies reasonably acceptable to Landlord.
- 13. Rules and Regulations.** Tenant shall faithfully observe and comply with any and all rules and regulations that Landlord shall from time to time promulgate and/or modify regulating use and occupancy of the Premises. The rules and regulations shall be binding upon the Tenant upon delivery of a copy of them to Tenant.
- 14. Holding Over.** If Tenant remains in possession of the Premises or any part thereof after the expiration of the term hereof without the express written consent of Landlord, then Tenant's occupancy subsequent to such expiration shall be deemed that of a tenant at will, and in no event a tenant from month to month.
- 15. Entry by Landlord.** Landlord reserves, and shall at any and all times have, the right to enter the Premises to inspect the same, to repair the Premises and any portion of the building of which the Premises are a part that Landlord may deem necessary or desirable. For each of the aforesaid purposes, Landlord shall at all times have and retain a key with which to unlock all of the doors in, upon and about the Premises, and Landlord shall have the right to use any and all means which Landlord may deem proper to open said doors in an emergency, in order to obtain entry to the Premises without liability to Tenant.

16. **Parking and Common Areas.** All parking and common areas and other common facilities made available by Landlord in or about the Renaissance Center shall be subject to the exclusive control and management of Landlord, expressly reserving to Landlord, without limitation, the right to erect and install within said areas, planters, sculpture, or otherwise. The Tenant, in the use of said common and parking areas, agrees to comply with such reasonable rules, and regulations as the Landlord may adopt from time to time for the orderly and proper operation of said common and parking areas.

IN WITNESS WHEREOF, the Parties hereto have executed this Lease Agreement in two original counterparts, each of which constitutes an original.

**SUZUKI TALENT EDUCATION
OF APPLACHIAN, INC.**

President

CITY OF KINGSPORT

DENNIS R. PHILLIPS
Mayor

ATTEST:

JAMES H. DEMMING, City Recorder

APPROVED AS TO FORM:

J. MICHAEL BILLINGSLEY, City Attorney



AGENDA ACTION FORM

Consideration of a Resolution to Enter into a Contractual Agreement with the Tennessee Department of Transportation for Reimbursement of Capital/Planning Expenditures for FY-10

To: Board of Mayor and Aldermen
 From: John G. Campbell, City Manager

Action Form No.:	AF-343-2009	Final Adoption:	November 3, 2009
Work Session:	November 2, 2009	Staff Work By:	Jack Qualls/Gary Taylor
First Reading:	N/A	Presentation By:	Chris McCartt

Recommendation: Approve the Resolution.

Executive Summary:

Annually the City enters into a contract with the TDOT for reimbursement of Capital/Planning expenditures for operation of transit services. The transit Capital/Planning Budget for FY-10 is \$190,500. Project funding for the project is listed as; Federal Transit Administration, \$152,400, TDOT \$19,050 and local funding is \$19,050.

Attachments:

- 1) Resolution
- 2) Agreement

Funding source appropriate and funds are available: _____

	<u>Y</u>	<u>N</u>	<u>O</u>
Joh	—	—	—
Mallicote	—	—	—
Marsh	—	—	—
Munsey	—	—	—
Parham	—	—	—
Shupe	—	—	—
Phillips	—	—	—

RESOLUTION NO. _____

A RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE A CONTRACT WITH THE TENNESSEE DEPARTMENT OF TRANSPORTATION FOR REIMBURSEMENT OF CITY TRANSIT SYSTEM CAPITAL AND PLANNING EXPENDITURES FOR FISCAL YEAR 2010

WHEREAS, funds, in the amount of \$19,050, are available from Tennessee Department of Transportation for funds reimbursement of city transit system capital purchases and planning services expenditures for fiscal year 2010; and

WHEREAS, a contract must be executed to receive the funds.

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, Chapter 10 of the Charter of the City of Kingsport, a contract with the Tennessee Department of Transportation, in the amount of \$19,050, to be used for funds reimbursement of city transit system capital purchases and planning services expenditures for fiscal year 2009.

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

ADOPTED this the 3rd day of November, 2009.

DENNIS R. PHILLIPS, MAYOR

ATTEST:

JAMES H. DEMMING, CITY RECORDER

APPROVED AS TO FORM:

J. MICHAEL BILLINGSLEY, CITY ATTORNEY



STATE OF TENNESSEE
DEPARTMENT OF TRANSPORTATION
Division of Multimodal Transportation Resources
Suite 1800, James K. Polk Building
NASHVILLE, TENNESSEE 37243-0349
(615) 741-2781

October 13, 2009

Gary Taylor, Transportation Manager
City of Kingsport
225 West Center Street
Kingsport, Tennessee 37660

RE: City of Kingsport
\$19,050.00; TDOT Project No. 825307-S3-007

Dear Gary:

Included with this e-mail is the grant contract for the above-referenced project. Please obtain the appropriate signature, print one (1) copy, and return to LaRosa Collier. Per Finance & Administration (F&A), a contract shall be printed on one side of 8.5 x 11 inch paper. Also, please do not alter contract provided by TDOT. If you have any questions, please let me know.

Thank you for your assistance. If this Office can assist you further, please let us know.

Sincerely,

Karen A. Cooperwood
Transportation Planner
(615) 253-5298
karen.cooperwood@tn.gov

Enclosure
c: Nellie Patton
Bennie Nicholson

**GRANT CONTRACT
BETWEEN THE STATE OF TENNESSEE,
DEPARTMENT OF TRANSPORTATION
AND
CITY OF KINGSPORT**

This Grant Contract, by and between the State of Tennessee, Department of Transportation, hereinafter referred to as the "State" and City of Kingsport, hereinafter referred to as the "Grantee," is for the provision of capital, operating, and planning assistance program, as further defined in the "SCOPE OF SERVICES."

Grantee Federal Employer Identification Number: 626000323

A. SCOPE OF SERVICES:

- A.1. The Grantee shall provide all service and deliverables as required, described, and detailed by this Scope of Services and shall meet all service and delivery timelines specified in the Scope of Services section or elsewhere in this Grant Contract.
- A.2. The Grantee shall abide by the provisions of the Federal Transit Administration (FTA) Section 5307 Program, codified by U.S.C. 5307 to provide funds to urbanized areas for transit operating and capital assistance and for transportation-related planning. Specifically, the funds will be used for fixed route and Americans with Disabilities Act (ADA) services, operating, preventative maintenance, planning, and program administration.
- A.3. Incorporation of Additional Documents. In the event of a discrepancy or ambiguity regarding the Grantee's duties, responsibilities, and performance under this Grant Contract, the following documents, incorporated by reference or attachment, shall govern in order of precedence as detailed below.
- a. this Grant Contract and all of its attachments and exhibits, excluding the documents listed at b. below, by reference;
 - b. the FTA application.

B. GRANT CONTRACT TERM:

- B.1. Contract Term: This Grant Contract shall be effective for the period commencing on October 1, 2009 and ending on September 30, 2012. The State shall have no obligation for services rendered by the Grantee which are not performed within the specified period
- B.2. Term Extension. The State reserves the right to extend this Grant Contract for an additional period or periods of time representing increments of no more than one year and a total contract term of no more than five (5) years, provided that such an extension of the contract term is effected prior to the current, contract expiration date by means of an amendment. If the term extension necessitates additional funding beyond that which was included in the original Grant Contract, such funding will also be effected through an amendment.

C. PAYMENT TERMS AND CONDITIONS:

- C.1. Maximum Liability. In no event shall the maximum liability of the State under this Grant Contract exceed Nineteen Thousand, Fifty Dollars and No cents (\$19,050.00). The Grant Budget, attached and incorporated herein as a part of this Grant Contract as Attachment One, shall constitute the

maximum amount due the Grantee for the service and all of the Grantee's obligations hereunder. The Grant Budget line-items include, but are not limited to, all applicable taxes, fees, overhead, and all other direct and indirect costs incurred or to be incurred by the Grantee.

- C.2. Compensation Firm. The maximum liability of the State is not subject to escalation for any reason unless amended. The Grant Budget amounts are firm for the duration of the Grant Contract and are not subject to escalation for any reason unless amended, except as provided in Section C.6.
- C.3. Payment Methodology. The Grantee shall be compensated for actual, reasonable, and necessary costs based upon the Grant Budget, not to exceed the maximum liability established in Section C.1. Upon progress toward the completion of the work, as described in Section A of this Grant Contract, the Grantee shall submit invoices prior to any reimbursement of allowable costs.
- C.4. Travel Compensation. Reimbursement to the Grantee for travel, meals, or lodging shall be subject to amounts and limitations specified in the "State Comprehensive Travel Regulations," as they are amended from time to time and shall be contingent upon and limited by the Grant Budget funding for said reimbursement.
- C.5. Invoice Requirements. The Grantee shall invoice the State no more often than monthly, with all necessary supporting documentation, to:

Division of Multimodal Transportation Resources
505 Deaderick Street, Suite 1800
Nashville, Tennessee 37243

- a. Each invoice shall clearly and accurately (all calculations must be extended and totaled correctly) detail the following required information.
- (1) Invoice/Reference Number (assigned by the Grantee);
 - (2) Invoice Date;
 - (3) Invoice Period (period to which the reimbursement request is applicable);
 - (4) Grant Contract Number (assigned by the State to this Grant Contract);
 - (5) Account Name: Department of Transportation, Division of Multimodal Transportation Resources;
 - (6) Account/Grantor Number (uniquely assigned by the Grantee to the above-referenced Account Name);
 - (7) Grantee Name;
 - (8) Grantee Federal Employer Identification Number or Social Security Number (as referenced in this Grant Contract);
 - (9) Grantee Remittance Address;
 - (10) Grantee Contact (name, phone, and/or fax for the individual to contact with invoice questions);
 - (11) Complete Itemization of Reimbursement Requested for the Invoice Period, which shall detail, at minimum, the following:
 - i. Reimbursement Amount Requested by Grant Budget Line-Item for the invoice period (including any travel expenditure reimbursement requested in accordance with and attaching to the invoice appropriate documentation and receipts as required by the above-referenced "State Comprehensive Travel Regulations");
 - ii. Amount Reimbursed by Grant Budget Line-Item to Date;
 - iii. Total Amount Reimbursed under the Grant Contract to Date; and

- iv. Total Reimbursement Amount Requested (all line-items) for the invoice period.
 - b. The Grantee understands and agrees that an invoice to the State under this Grant Contract shall:
 - (1) include only reimbursement requests for actual, reasonable, and necessary expenditures required in the delivery of service described in Grant Contract Section A subject to the Grant Budget and any other provision of this Grant Contract relating to allowable reimbursements; and
 - (2) not include any reimbursement requests for future expenditures.
 - c. The Grantee agrees that timeframe for reimbursement begins when the State is in receipt of each invoice meeting the minimum requirements above.
 - d. The Grantee shall complete and sign a "Substitute W-9 Form" provided to the Grantee by the State. The taxpayer identification number contained in the Substitute W-9 submitted to the State shall agree to the Federal Employer Identification Number or Social Security Number referenced in this Grant Contract for the Grantee. The Grantee shall not invoice the State under this Grant Contract until the State has received this completed form.
- C.6. Budget Line-items. Expenditures, reimbursements, and payments under this Grant Contract shall adhere to the Grant Budget. The Grantee may request revisions of Grant Budget line-items by letter, giving full details supporting such request, provided that such revisions do not result in funding for a line-item that was previously funded at zero dollars (\$0.00) and do not increase the total Grant amount. Grant Budget line-item revisions may not be made without prior, written approval of the State in which the terms of the approved revisions are explicitly set forth. Any such approval shall be superseded by a subsequent revision of the Grant Budget by contract amendment, and any increase in the total Grant amount shall require a contract amendment.
- C.7. Disbursement Reconciliation and Close Out. The Grantee shall submit a final invoice and grant disbursement reconciliation report within ninety (90) days of the Grant Contract end date and in form and substance acceptable to the State.
- a. If total disbursements by the State pursuant to this Grant Contract exceed the amounts permitted by the Section C, Payment Terms and Conditions of this Grant Contract, the Grantee shall refund the difference to the State. The Grantee shall submit said refund with the final grant disbursement reconciliation report.
 - b. The State shall not be responsible for the payment of any invoice submitted to the state after the final invoice and grant disbursement reconciliation report. The State will not deem any Grantee costs submitted for reimbursement after the final invoice to be allowable and reimbursable by the State, and such invoices will NOT be paid.
 - c. The Grantee's failure to provide a final grant disbursement reconciliation report to the state as required shall result in the Grantee being deemed ineligible for reimbursement under this Grant Contract, and the Grantee shall be required to refund any and all payments by the state pursuant to this Grant Contract.
 - d. The Grantee must close out its accounting records at the end of the grant period in such a way that reimbursable expenditures and revenue collections are NOT carried forward.
- C.8. Indirect Cost. Should the Grantee request reimbursement for indirect cost, the Grantee must submit to the State a copy of the indirect cost rate approved by the cognizant federal agency and

the State. The Grantee will be reimbursed for indirect cost in accordance with the approved indirect cost rate to amounts and limitations specified in the attached Grant Budget. Once the Grantee makes an election and treats a given cost as direct or indirect, it must apply that treatment consistently and may not change during the grant period. Any changes in the approved indirect cost rate must have prior approval of the cognizant federal agency and the State. If the indirect cost rate is provisional during the term of this agreement, once the rate becomes final, the Grantee agrees to remit any overpayment of funds to the State, and subject to the availability of funds the State agrees to remit any underpayment to the Grantee.

- C.9. Cost Allocation. If any part of the costs to be reimbursed under this Grant Contract are joint costs involving allocation to more than one program or activity, such costs shall be allocated and reported in accordance with the provisions of Department of Finance and Administration Policy Statement 03 or any amendments or revisions made to this policy statement during the Grant Contract period.
- C.10. Payment of Invoice. The payment of the invoice by the State shall not prejudice the State's right to object to or question any invoice or matter in relation thereto. Such payment by the State shall neither be construed as acceptance of any part of the work or service provided nor as an approval of any of the costs invoiced therein.
- C.11. Unallowable Costs. The Grantee's invoice shall be subject to reduction for amounts included in any invoice or payment theretofore made which are determined by the State, on the basis of audits or monitoring conducted in accordance with the terms of this Grant Contract, not to constitute allowable costs.
- C.12. Deductions. The State reserves the right to deduct from amounts which are or shall become due and payable to the Grantee under this or any Contract between the Grantee and the State of Tennessee any amounts which are or shall become due and payable to the State of Tennessee by the Grantee.
- C.13. Automatic Deposits. The Grantee shall complete and sign an "Authorization Agreement for Automatic Deposit (ACH Credits) Form." This form shall be provided to the Grantee by the State. Once this form has been completed and submitted to the State by the Grantee all payments to the Grantee, under this or any other contract the Grantee has with the State of Tennessee shall be made by Automated Clearing House (ACH). The Grantee shall not invoice the State for services until the Grantee has completed this form and submitted it to the State.

D. STANDARD TERMS AND CONDITIONS:

- D.1. Required Approvals. The State is not bound by this Grant Contract until it is approved by the appropriate State officials in accordance with applicable Tennessee State laws and regulations.
- D.2. Modification and Amendment. This Grant Contract may be modified only by a written amendment executed by all parties hereto and approved by the appropriate Tennessee State officials in accordance with applicable Tennessee State laws and regulations.
- D.3. Termination for Convenience. The State may terminate this Grant Contract without cause for any reason. Said termination shall not be deemed a Breach of Contract by the State. The State shall give the Grantee at least ninety (90) days written notice before the effective termination date. The Grantee shall be entitled to compensation for authorized expenditures and satisfactory services completed as of the termination date, but in no event shall the State be liable to the Grantee for compensation for any service which has not been rendered. The final decision as to the amount, for which the State is liable, shall be determined by the State. Should the State

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

- D.4. **Termination for Cause.** If the Grantee fails to properly perform its obligations under this Grant Contract in a timely or proper manner, or if the Grantee violates any terms of this Grant Contract, the State shall have the right to immediately terminate the Grant Contract and withhold payments in excess of fair compensation for completed services. Notwithstanding the above, the Grantee shall not be relieved of liability to the State for damages sustained by virtue of any breach of this Grant Contract by the Grantee.
- D.5. **Subcontracting.** The Grantee shall not assign this Grant Contract or enter into a subcontract for any of the services performed under this Grant Contract without obtaining the prior written approval of the State. If such subcontracts are approved by the State, they shall contain, at a minimum, sections of this Grant Contract below pertaining to "Conflicts of Interest," "Lobbying," "Nondiscrimination," "Public Accountability," "Public Notice," and "Records" (as identified by the section headings). Notwithstanding any use of approved subcontractors, the Grantee shall be the prime contractor and shall be responsible for all work performed.
- D.6. **Conflicts of Interest.** The Grantee warrants that no part of the total Grant Amount shall be paid directly or indirectly to an employee or official of the State of Tennessee as wages, compensation, or gifts in exchange for acting as an officer, agent, employee, subcontractor, or consultant to the Grantee in connection with any work contemplated or performed relative to this Grant Contract.
- D.7. **Lobbying.** The Grantee certifies, to the best of its knowledge and belief, that:
- a. No federally appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.
 - b. If any funds other than federally appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this contract, grant, loan, or cooperative agreement, the Grantee shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
 - c. The Grantee shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into and is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, *U. S. Code*.

- D.8. **Nondiscrimination.** The Grantee hereby agrees, warrants, and assures that no person shall be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination in the performance of this Grant Contract or in the employment practices of the Grantee on the

grounds of disability, age, race, color, religion, sex, national origin, or any other classification protected by Federal, Tennessee State constitutional, or statutory law. The Grantee shall, upon request, show proof of such nondiscrimination and shall post in conspicuous places, available to all employees and applicants, notices of nondiscrimination.

- D.9. **Public Accountability.** If the Grantee is subject to *Tennessee Code Annotated*, Title 8, Chapter 4, Part 4 or if this Grant Contract involves the provision of services to citizens by the Grantee on behalf of the State, the Grantee agrees to establish a system through which recipients of services may present grievances about the operation of the service program, and the Grantee shall display in a prominent place, located near the passageway through which the public enters in order to receive Grant supported services, a sign at least twelve inches (12") in height and eighteen inches (18") in width stating:

NOTICE: THIS AGENCY IS A RECIPIENT OF TAXPAYER FUNDING. IF YOU OBSERVE AN AGENCY DIRECTOR OR EMPLOYEE ENGAGING IN ANY ACTIVITY WHICH YOU CONSIDER TO BE ILLEGAL, IMPROPER, OR WASTEFUL, PLEASE CALL THE STATE COMPTROLLER'S TOLL-FREE HOTLINE: 1-800-232-5454

- D.10. **Public Notice.** All notices, informational pamphlets, press releases, research reports, signs, and similar public notices prepared and released by the Grantee shall include the statement, "This project is funded under an agreement with the Department of Transportation." Any such notices by the Grantee shall be approved by the State.
- D.11. **Licensure.** The Grantee and its employees and all sub-grantees shall be licensed pursuant to all applicable federal, state, and local laws, ordinances, rules, and regulations and shall upon request provide proof of all licenses.
- D.12. **Records.** The Grantee (and any approved subcontractor) shall maintain documentation for all charges under this Contract. The books, records, and documents of the Grantee (and any approved subcontractor), insofar as they relate to work performed or money received under this Contract, shall be maintained for a period of three (3) full years from the date of the final payment and shall be subject to audit at any reasonable time and upon reasonable notice by the state agency, the Comptroller of the Treasury, or their duly appointed representatives. The records of not-for-profit entities shall be maintained in accordance with the *Accounting Manual for the Recipients of Grant Funds in the State of Tennessee*, published by the Tennessee Comptroller of the Treasury (available at <http://comptroller.state.tn.us/ma/nonprofit/nonprofit1.pdf>). The financial statements shall be prepared in accordance with generally accepted accounting principles.
- D.13. **Prevailing Wage Rates.** All grants and contracts for construction, erection, or demolition or to install goods or materials that involve the expenditure of any funds derived from the State require compliance with the prevailing wage laws as provided in *Tennessee Code Annotated*, Section 12-4-401 *et seq.*.
- D.14. **Monitoring.** The Grantee's activities conducted and records maintained pursuant to this Grant Contract shall be subject to monitoring and evaluation by the State, the Comptroller of the Treasury, or their duly appointed representatives.
- D.15. **Progress Reports.** The Grantee shall submit brief, periodic, progress reports to the State as requested.
- D.16. **Annual Report and Audit.** The Grantee shall prepare and submit, within nine (9) months after the close of the reporting period, an annual report of its activities funded under this Grant Contract to the commissioner or head of the Granting agency, the Tennessee Comptroller of the Treasury, and the Commissioner of Finance and Administration. The annual report for any Grantee that

receives five hundred thousand dollars (\$500,000) or more in aggregate federal and state funding for all its programs shall include audited financial statements. 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 Grantee may, with the prior approval of the Comptroller, engage a licensed independent public accountant to perform the audit. The audit contract between the Grantee and the licensed independent public accountant shall be on a contract 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. The Grantee 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 Grantee shall be subject to the provisions relating to such fees contained in the prescribed contract form noted above. Copies of such audits shall be provided to the designated cognizant state agency, the State Granting Department, the Tennessee Comptroller of the Treasury, and the Department of Finance and Administration and shall be made available to the public.

- D.17. Procurement. If the other terms of this Grant Contract allow reimbursement for the cost of goods, materials, supplies, equipment, and/or contracted services, such procurement shall be made on a competitive basis, including the use of competitive bidding procedures, where practical. The Grantee shall maintain documentation for the basis of each procurement for which reimbursement is paid pursuant to this Grant Contract. In each instance where it is determined that use of a competitive procurement method was not practical, said documentation shall include a written justification for such decision and non-competitive procurement. Further, if such reimbursement is to be made with funds derived wholly or partially from federal sources, the determination of cost shall be governed by and reimbursement shall be subject to the Grantee's compliance with applicable federal procurement requirements.

The Grantee shall obtain prior approval from the State before purchasing any equipment under this Grant Contract.

- D.18. Strict Performance. Failure by any party to this Grant Contract to insist in any one or more cases upon the strict performance of any of the terms, covenants, conditions, or provisions of this agreement shall not be construed as a waiver or relinquishment of any such term, covenant, condition, or provision. No term or condition of this Grant Contract shall be held to be waived, modified, or deleted except by a written amendment signed by the parties hereto.
- D.19. Independent Contractor. The parties hereto, in the performance of this Grant Contract, shall not act as employees, partners, joint venturers, 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 Grant Contract shall be construed to create a principal/agent relationship or to allow either to exercise control or direction over the manner or method by which the other transacts its business affairs or provides its usual services. The employees or agents of one party shall not be deemed or construed to be the employees or agents of the other party for any purpose whatsoever.

The Grantee, 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.*, for causes of action sounding in tort. Further, no contract provision requiring a Tennessee political entity to indemnify or hold harmless the State beyond the liability imposed by law is enforceable because it appropriates public money and nullifies governmental immunity without the authorization of the General Assembly.

- D.20. State Liability. The State shall have no liability except as specifically provided in this Grant Contract.
- D.21. Force Majeure. The obligations of the parties to this Grant Contract 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, natural disasters, riots, wars, epidemics, or any other similar cause.
- D.22. State and Federal Compliance. The Grantee shall comply with all applicable state and federal laws and regulations in the performance of this Grant Contract.
- D.23. Governing Law. This Grant Contract shall be governed by and construed in accordance with the laws of the State of Tennessee. The Grantee agrees that it will be subject to the exclusive jurisdiction of the courts of the State of Tennessee in actions that may arise under this Grant Contract. The Grantee acknowledges and agrees that any rights or claims against the State of Tennessee or its employees hereunder, and any remedies arising there from, shall be subject to and limited to those rights and remedies, if any, available under *Tennessee Code Annotated*, Sections 9-8-101 through 9-8-407.
- D.24. Completeness. This Grant Contract is complete and contains the entire understanding between the parties relating to the subject matter contained herein, including all the terms and conditions of the parties' agreement. This Grant Contract supersedes any and all prior understandings, representations, negotiations, and agreements between the parties relating hereto, whether written or oral.
- D.25. Severability. If any terms and conditions of this Grant Contract are held to be invalid or unenforceable as a matter of law, the other terms and conditions hereof shall not be affected thereby and shall remain in full force and effect. To this end, the terms and conditions of this Grant Contract are declared severable.
- D.26. Headings. Section headings are for reference purposes only and shall not be construed as part of this Grant Contract.

E. SPECIAL TERMS AND CONDITIONS:

- E.1. Conflicting Terms and Conditions. Should any of these special terms and conditions conflict with any other terms and conditions of this Grant Contract, these special terms and conditions shall control.
- E.2. Communications and Contacts. All instructions, notices, consents, demands, or other communications required or contemplated by this Grant Contract shall be in writing and shall be made by certified, first class mail, return receipt requested and postage prepaid, by overnight courier service with an asset tracking system, or by EMAIL or facsimile transmission with recipient confirmation. Any such communications, regardless of method of transmission, shall be addressed to the respective party at the appropriate mailing address, facsimile number, or EMAIL address as set forth below or to that of such other party or address, as may be hereafter specified by written notice.

The State:

Bennie Nicholson, Transportation Specialist
Department of Transportation
Multimodal Transportation Resources
505 Deaderick Street, Suite 1800

Nashville, TN 37243
bennie.nicholson@state.tn.us
Telephone Number: (615) 253-1044
FAX Number: (615) 253-1482

The Grantee:

Gary Taylor, Transit Manager
City of Kingsport
225 west Center Street
Kingsport, Tennessee 37660
taylor@ci.kingsport.tn.us
Telephone Number: (423) 224-2612
FAX Number: (423) 224-2615

All instructions, notices, consents, demands, or other communications shall be considered effectively given upon receipt or recipient confirmation as may be required.

- E.3. **Subject to Funds Availability.** The Grant Contract 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 State reserves the right to terminate the Grant Contract upon written notice to the Grantee. Said termination shall not be deemed a breach of Contract by the State. Upon receipt of the written notice, the Grantee shall cease all work associated with the Grant Contract. Should such an event occur, the Grantee shall be entitled to compensation for all satisfactory and authorized services completed as of the termination date. Upon such termination, the Grantee shall have no right to recover from the State any actual, general, special, incidental, consequential, or any other damages whatsoever of any description or amount.
- E.4. **Voluntary Buyout Program.** The Grantee acknowledges and understands that, for a period of two years beginning August 16, 2008, restrictions are imposed on former state employees who received a State of Tennessee Voluntary Buyout Program (VBP) severance payment with regard to contracts with state agencies that participated in the VBP.
- a. The State will not contract with either a former state employee who received a VBP severance payment or an entity in which a former state employee who received a VBP severance payment or the spouse of such an individual holds a controlling financial interest.
 - b. The State may contract with an entity with which a former state employee who received a VBP severance payment is an employee or an independent contractor. Notwithstanding the foregoing, the Grantee understands and agrees that there may be unique business circumstances under which a return to work by a former state employee who received a VBP severance payment as an employee or an independent contractor of a State grantee would not be appropriate, and in such cases the State may refuse Grantee personnel. Inasmuch, it shall be the responsibility of the State to review Grantee personnel to identify any such issues.
 - c. With reference to either subsection a. or b. above, a grantee may submit a written request for a waiver of the VBP restrictions regarding a former state employee and a contract with a state agency that participated in the VBP. Any such request must be submitted to the State in the form of the *VBP Contracting Restriction Waiver Request* format available from the State and the Internet at: www.state.tn.us/finance/rds/ocr/waiver.html. The determination on such a request shall be at the sole discretion of the head of the state agency that is a Party to this Grant

Contract, the Commissioner of Finance and Administration, and the Commissioner of Human Resources.

- E. 5. State Interest in Equipment. The Grantee shall take legal title to all equipment and to all motor vehicles, hereinafter referred to as "equipment," purchased totally or in part with funds provided under this Grant Contract, subject to the State's equitable interest therein, to the extent of its *pro rata* share, based upon the State's contribution to the purchase price. "Equipment" shall be defined as an article of nonexpendable, tangible, personal property having a useful life of more than one year and an acquisition cost which equals or exceeds \$5,000.00.

As authorized by the provisions of the terms of the Tennessee Uniform Commercial Code — Secured Transaction, found at Title 47, Chapter 9 of the *Tennessee Code Annotated*, and the provisions of the Tennessee Motor Vehicle Title and Registration Law, found at Title 55, Chapter 1 of the *Tennessee Code Annotated*, an intent of this Grant document and the parties hereto is to create and acknowledge a security interest in favor of the State in the equipment and/or motor vehicles acquired by the Grantee pursuant to the provisions of this Grant document. A further intent of this Grant document is to acknowledge and continue the security interest in favor of the State in the equipment or motor vehicles acquired by the Grantee pursuant to the provisions of this program's prior year Grants between the State and the Grantee.

The Grantee hereto grants the State a security interest in said equipment. This agreement is intended to be a security agreement pursuant to the Uniform Commercial Code for any of the equipment herein specified which, under applicable law, may be subject to a security interest pursuant to the Uniform Commercial Code, and the Grantee hereby grants the State a security interest in said equipment. The Grantee agrees that the State may file this Grant Contract or a reproduction thereof, in any appropriate office, as a financing statement for any of the equipment herein specified. Any reproduction of this or any other security agreement or financing statement shall be sufficient as a financing statement. In addition, the Grantee agrees to execute and deliver to the State, upon the State's request, any financing statements, as well as extensions, renewals, and amendments thereof, and reproduction of this Grant Contract in such form as the State may require to perfect a security interest with respect to said equipment. The Grantee shall pay all costs of filing such financing statements and any extensions, renewals, amendments and releases thereof, and shall pay all reasonable costs and expenses of any record searches for financing statements the State may reasonably require. Without the prior written consent of the State, the Grantee shall not create or suffer to be created pursuant to the Uniform Commercial Code any other security interest in said equipment, including replacements and additions thereto. Upon the Grantee's breach of any covenant or agreement contained in this Grant Contract, including the covenants to pay when due all sums secured by this Grant Contract, the State shall have the remedies of a secured party under the Uniform Commercial Code and, at the State's option, may also invoke the remedies herein provided.

The Grantee agrees to be responsible for the accountability, maintenance, management, and inventory of all property purchased totally or in part with funds provided under this Grant Contract. The Grantee shall maintain a perpetual inventory system for all equipment purchased with funds provided under this Grant Contract and shall submit an inventory control report which must include, at a minimum, the following:

- a. Description of the equipment;
- b. Manufacturer's serial number or other identification number, when applicable;
- c. Consecutive inventory equipment tag identification;
- d. Acquisition date, cost, and check number;
- e. Fund source, State grant number, or other applicable fund source identification;
- f. Percentage of state funds applied to the purchase;
- g. Location within the Grantee's operations where the equipment is used;

- h. Condition of the property or disposition date if Grantee no longer has possession;
- i. Depreciation method, if applicable; and
- j. Monthly depreciation amount, if applicable.

The Grantee shall tag equipment with an identification number which is cross referenced to the equipment item on the inventory control report. The Grantee shall inventory equipment annually. The Grantee must compare the results of the inventory with the inventory control report and investigate any differences. The Grantee must then adjust the inventory control report to reflect the results of the physical inventory and subsequent investigation.

The Grantee shall submit its inventory control report of all equipment purchased with funding through this grant within ninety (90) days of the Grant Contract end date and in form and substance acceptable to the State. This inventory control report shall contain, at a minimum, the requirements specified above for inventory control. The Grantee shall notify the State, in writing, of any equipment loss describing reason(s) for the loss. Should the equipment be destroyed, lost, or stolen, the Grantee shall be responsible to the State for the *pro rata* amount of the residual value at the time of loss based upon the State's original contribution to the purchase price.

Upon termination of the Grant Contract, where a further contractual relationship is not entered into, or at another time during the term of the Grant Contract, the Grantee shall request written approval from the State for any proposed disposition of equipment purchased with Grant funds. All equipment shall be disposed of in such a manner as parties may agree from among alternatives approved by Tennessee Department of General Services as appropriate and in accordance with any applicable federal laws or regulations.

E.6. **Debarment and Suspension.** The Grantee certifies, to the best of its knowledge and belief, that it, its current and future principals, its current and future subcontractors and their principals:

- a. are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal or state department or agency;
- b. have not within a three (3) year period preceding this Grant Contract been convicted of, or had a civil judgment rendered against them from commission of fraud, or a criminal offence in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or grant under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification, or destruction of records, making false statements, or receiving stolen property;
- c. are not presently indicted or otherwise criminally or civilly charged by a government entity (federal, state, or local) with commission of any of the offenses detailed in section b. of this certification; and
- d. have not within a three (3) year period preceding this Grant Contract had one or more public transactions (federal, state, or local) terminated for cause or default.

The Grantee shall provide immediate written notice to the State if at any time it learns that there was an earlier failure to disclose information or that due to changed circumstances, its principals or the principals of its subcontractors are excluded or disqualified.

E.7. **FTA Compliance.** All applicable terms of FTA Master Agreement, dated October 1, 2008 is incorporated herein by reference.

E.8. T.C.A. Section 13-10-107 Compliance.

- 1) Grantee agrees to proceed expeditiously with and complete the project in accordance with plans approved by the Commissioner of TDOT ("Commissioner");
- 2) Grantee agrees to commence and continue operation of the project on completion of the project and not to discontinue operations or dispose of all or part of the project without Commissioner's prior written approval;
- 3) Grantee agrees to apply for and make reasonable efforts to secure federal assistance for the project, subject to any conditions the Commissioner may require in order to maximize the amounts of such assistance received or to be received for all projects in the State; and
- 4) Grantee agrees to provide Grantee's share of the cost of the project and comply with T.C.A. § 13-10-107(c)(4).

IN WITNESS WHEREOF,

CITY OF KINGSPORT:

GRANTEE SIGNATURE	DATE
DENNIS PHILLIPS, MAYOR	
PRINTED NAME AND TITLE OF GRANTEE SIGNATORY (above)	

DEPARTMENT OF TRANSPORTATION:

GERALD F. NICELY, COMMISSIONER	DATE

JOHN REINBOLD, GENERAL COUNSEL	DATE
APPROVED AS TO FORM AND LEGALITY	

Attachment One

UNIVERSAL PUBLIC TRANSPORTATION BUDGET

	FEDERAL SHARE*	STATE SHARE	GRANT CONTRACT	GRANTEE SHARE	TOTAL
SCOPE—BUS CAPITAL					
11.1x.xx Revenue Rolling Stock					
11.2x.xx Transitways / Line					
11.3x.xx Station Stops & Terminals					
11.4x.xx Support Equip / Facilities	\$60,000.00	\$7,500.00	\$7,500.00	\$7,500.00	\$75,000.00
11.5x.xx Electrification / Power Dist.					
11.6x.xx Signal & Communication Equip					
11.7x.xx Other Capital Items	\$65,600.00	\$8,200.00	\$8,200.00	\$8,200.00	\$82,000.00
11.8x.xx State / Programs Administration					
11.9x.xx Transit Enhancements					
12.xx.xx Fixed Guideway					
14.xx.xx New Start					
SCOPE—OPERATING					
30.00.00 Operating Assistance –TDOT					
30.09.01 Operating Assistance -50% Federal Share	\$613,500.00	\$0.00	\$0.00	\$306,750.00	\$920,250.00
30.09.02 Operating Assistance - Sliding Scale					
30.80.01 Operating Assistance - 80% CMAQ					
SCOPE—RURAL TRANSIT ASST PROGRAM					
43.5x.xx Rural Transit Assistance Program					
SCOPE—PLANNING					
44.00.00 Commuter Trans. Asst Program					
44.1x.xx State Planning & Research					
44.2x.xx Metropolitan Planning	\$26,800.00	\$3,350.00	\$3,350.00	\$3,350.00	\$33,500.00
44.3x.00 Consolidated Planning Grants					
SCOPE—MANAGEMENT TRAINING					
50.xx.xx Management Training					
SCOPE—OVERSIGHT REVIEWS					
51.xx.xx Oversight Review					
SCOPE—RESEARCH PROJECTS					
55.xx.xx Research Projects					
SCOPE—SAFETY & SECURITY					
57.xx.xx Safety and Security					
SCOPE—UNIVERSITY RESEARCH					
70.xx.xx					
SCOPE—Non-Add Scope Codes					
99x-xx					
SCOPE—OTHER					
xx.xx.xx					
GRAND TOTAL	\$765,900.00	\$19,050.00	\$19,050.00	\$325,800.00	\$1,110,750.00

*Federal share not distributed in this Grant Contract.

GRANT BUDGET LINE-ITEM DETAIL INFORMATION

Line Item Detail For: BUS CAPITAL	Federal	State	Grant Contract	Grantee	Total Project
11.42.20 Acquire miscellaneous support equipment	\$60,000.00	\$7,500.00	\$7,500.00	\$7,500.00	\$75,000.00
11.7A.00 Preventative maintenance	\$65,600.00	\$8,200.00	\$8,200.00	\$8,200.00	\$82,000.00
TOTAL	\$125,600.00	\$15,700.00	\$15,700.00	\$15,700.00	\$157,000.00

GRANT BUDGET LINE-ITEM DETAIL INFORMATION

Line Item Detail For: PLANNING	Federal	State	Grant Contract	Grantee	Total Project
44.21.00 Program support administration – marketing/professional services, audit fees, and travel/registration.	\$26,800.00	\$3,350.00	\$3,350.00	\$3,350.00	\$33,500.00
TOTAL	\$26,800.00	\$3,350.00	\$3,350.00	\$3,350.00	\$33,500.00



STATE OF TENNESSEE
DEPARTMENT OF TRANSPORTATION
Division of Multimodal Transportation Resources
Suite 1800, James K. Polk Building
NASHVILLE, TENNESSEE 37243-0349
(615) 741-2781

October 13, 2009

Gary Taylor, Transportation Manager
City of Kingsport
225 West Center Street
Kingsport, Tennessee 37660

RE: City of Kingsport
\$19,050.00; TDOT Project No. 825307-S3-007

Dear Gary:

Included with this e-mail is the grant contract for the above-referenced project. Please obtain the appropriate signature, print one (1) copy, and return to LaRosa Collier. Per Finance & Administration (F&A), a contract shall be printed on one side of 8.5 x 11 inch paper. Also, please do not alter contract provided by TDOT. If you have any questions, please let me know.

Thank you for your assistance. If this Office can assist you further, please let us know.

Sincerely,

Karen A. Cooperwood
Transportation Planner
(615) 253-5298
karen.cooperwood@tn.gov

Enclosure
c: Nellie Patton
Bennie Nicholson



AGENDA ACTION FORM

Consideration of a Resolution to Enter into an Operating Agreement with the Tennessee Department of Transportation for Fiscal Year 2010

To: Board of Mayor and Aldermen
 From: John G. Campbell, City Manager

Action Form No.:	AF- 355-2009	Final Adoption:	November 3, 2009
Work Session:	November 2, 2009	Staff Work By:	Jack Qualls/Gary Taylor
First Reading:	N/A	Presentation By:	Chris McCartt

Recommendation: Approve the resolution.

Executive Summary:

Annually the City enters into a reimbursement contract with the Tennessee Department of Transportation (TDOT) for operation of transit service operations. The City's total allocation for fiscal year 2009-2010 is \$365,096. Projected State operation reimbursements for the fiscal year are \$306,750, which is appropriated through the City's FY-10 approved budget.

Attachments:

- 1) Resolution
- 2) Agreement

Funding source appropriate and funds are available: _____

	<u>Y</u>	<u>N</u>	<u>O</u>
Joh	—	—	—
Mallicote	—	—	—
Marsh	—	—	—
Munsey	—	—	—
Parham	—	—	—
Shupe	—	—	—
Phillips	—	—	—

RESOLUTION NO. _____

A RESOLUTION AUTHORIZING THE MAYOR TO ENTER INTO AN AGREEMENT WITH THE TENNESSEE DEPARTMENT OF TRANSPORTATION FOR REIMBURSEMENT OF CITY TRANSIT SYSTEM OPERATING EXPENDITURES FOR FISCAL YEAR 2009-2010

WHEREAS, annually the city enters into a reimbursement contract with the Tennessee Department of Transportation (TDOT) for operation of transit services; and

WHEREAS, the city's total allocation from TDOT for fiscal year 2009-2010 is \$365,096; and

WHEREAS, a reimbursement contract with TDOT for must be executed to receive the funds;

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, a contract with the Tennessee Department of Transportation (TDOT) funds, in the amount of \$365,096, for reimbursement of operating expenses for the city transit system services in fiscal year 2009-2010.

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

ADOPTED this the 3rd day of November, 2009.

DENNIS R. PHILLIPS, MAYOR

ATTEST:

JAMES H. DEMMING, CITY RECORDER

APPROVED AS TO FORM:

J. MICHAEL BILLINGSLEY, CITY ATTORNEY



STATE OF TENNESSEE
DEPARTMENT OF TRANSPORTATION
Division of Multimodal Transportation Resources
Suite 1800, James K. Polk Building
NASHVILLE, TENNESSEE 37243-0349
(615) 741-2781

October 6, 2009

Gary Taylor, Transit Manager
City of Kingsport
225 West Center Street
Kingsport, Tennessee 37660

RE: City of Kingsport
\$365,096.00; TDOT Project No.: 82UROP-S3-011; TN-900-X296-00

Dear Gary:

Attached is the contract in the above-referenced matter. Please obtain the appropriate signature, make one copy, and return to LaRosa Collier.

Per Finance & Administration (F&A), a contract shall be printed on one side of 8.5 x 11 inch paper. Also, please do not alter contract provided by TDOT. If you have any questions, please let me know.

Thank you for your assistance. If this Office can assist you further, please let us know.

Sincerely,

Karen A. Cooperwood
Transportation Planner
(615) 253-5298

karen.cooperwood@dot.gov

Enclosure

c: Nellie Patton
Bennie Nicholson

**GRANT CONTRACT
BETWEEN THE STATE OF TENNESSEE,
DEPARTMENT OF TRANSPORTATION
AND
CITY OF KINGSPORT**

This Grant Contract, by and between the State of Tennessee, Department of Transportation, hereinafter referred to as the "State" and City of Kingsport, hereinafter referred to as the "Grantee," is for the provision of operating assistance, as further defined in the "SCOPE OF SERVICES."

Grantee Federal Employer Identification Number: 62600323

A. SCOPE OF SERVICES:

- A.1. The Grantee shall provide all service and deliverables as required, described, and detailed by this Scope of Services and shall meet all service and delivery timelines specified in the Scope of Services section or elsewhere in this Grant Contract.
- A.2. The Grantee shall utilize these funds for operating assistance to meet transit needs in urban areas.
- A.3. Incorporation of Additional Documents. In the event of a discrepancy or ambiguity regarding the Grantee's duties, responsibilities, and performance under this Grant Contract, the following documents, incorporated by reference or attachment, shall govern in order of precedence as detailed below.
- a. this Grant Contract and all of its attachments and exhibits, excluding the documents listed at b. below, by reference;
 - b. the FTA application.

B. GRANT CONTRACT TERM:

This Grant Contract shall be effective for the period commencing on July 1, 2009 and ending on June 30, 2010. The State shall have no obligation for services rendered by the Grantee which are not performed within the specified period.

C. PAYMENT TERMS AND CONDITIONS:

- C.1. Maximum Liability. In no event shall the maximum liability of the State under this Grant Contract exceed Three Hundred Sixty-five Thousand Ninety-six Dollars and No Cents (\$365,096.00). The Grant Budget, attached and incorporated herein as a part of this Grant Contract as Attachment One, shall constitute the maximum amount due the Grantee for the service and all of the Grantee's obligations hereunder. The Grant Budget line-items include, but are not limited to, all applicable taxes, fees, overhead, and all other direct and indirect costs incurred or to be incurred by the Grantee.
- C.2. Compensation Firm. The maximum liability of the State is not subject to escalation for any reason unless amended. The Grant Budget amounts are firm for the duration of the Grant Contract and are not subject to escalation for any reason unless amended, except as provided in Section C.6.
- C.3. Payment Methodology. The Grantee shall be compensated for actual, reasonable, and necessary costs based upon the Grant Budget, not to exceed the maximum liability established in

Section C.1. Upon progress toward the completion of the work, as described in Section A of this Grant Contract, the Grantee shall submit invoices prior to any reimbursement of allowable costs.

- C.4. **Travel Compensation.** Reimbursement to the Grantee for travel, meals, or lodging shall be subject to amounts and limitations specified in the "State Comprehensive Travel Regulations," as they are amended from time to time and shall be contingent upon and limited by the Grant Budget funding for said reimbursement.
- C.5. **Invoice Requirements.** The Grantee shall invoice the State no more often than monthly, with all necessary supporting documentation, to:

Division of Multimodal Transportation Resources
505 Deaderick Street, Suite 1800
Nashville, Tennessee 37243

- a. Each invoice shall clearly and accurately (all calculations must be extended and totaled correctly) detail the following required information.
- (1) Invoice/Reference Number (assigned by the Grantee);
 - (2) Invoice Date;
 - (3) Invoice Period (period to which the reimbursement request is applicable);
 - (4) Grant Contract Number (assigned by the State to this Grant Contract);
 - (5) Account Name: Department of Transportation, Division of Multimodal Transportation Resources;
 - (6) Account/Grantor Number (uniquely assigned by the Grantee to the above-referenced Account Name);
 - (7) Grantee Name;
 - (8) Grantee Federal Employer Identification Number or Social Security Number (as referenced in this Grant Contract);
 - (9) Grantee Remittance Address;
 - (10) Grantee Contact (name, phone, and/or fax for the individual to contact with invoice questions);
 - (11) Complete Itemization of Reimbursement Requested for the Invoice Period, which shall detail, at minimum, the following:
 - i. Reimbursement Amount Requested by Grant Budget Line-Item for the invoice period (including any travel expenditure reimbursement requested in accordance with and attaching to the invoice appropriate documentation and receipts as required by the above-referenced "State Comprehensive Travel Regulations");
 - ii. Amount Reimbursed by Grant Budget Line-Item to Date;
 - iii. Total Amount Reimbursed under the Grant Contract to Date; and
 - iv. Total Reimbursement Amount Requested (all line-items) for the invoice period.
- b. The Grantee understands and agrees that an invoice to the State under this Grant Contract shall:
- (1) include only reimbursement requests for actual, reasonable, and necessary expenditures required in the delivery of service described in Grant Contract Section A subject to the Grant Budget and any other provision of this Grant Contract relating to allowable reimbursements; and
 - (2) not include any reimbursement requests for future expenditures.

- c. The Grantee agrees that timeframe for reimbursement begins when the State is in receipt of each invoice meeting the minimum requirements above.
 - d. The Grantee shall complete and sign a "Substitute W-9 Form" provided to the Grantee by the State. The taxpayer identification number contained in the Substitute W-9 submitted to the State shall agree to the Federal Employer Identification Number or Social Security Number referenced in this Grant Contract for the Grantee. The Grantee shall not invoice the State under this Grant Contract until the State has received this completed form.
- C.6. **Budget Line-items.** Expenditures, reimbursements, and payments under this Grant Contract shall adhere to the Grant Budget. The Grantee may request revisions of Grant Budget line-items by letter, giving full details supporting such request, provided that such revisions do not result in funding for a line-item that was previously funded at zero dollars (\$0.00) and do not increase the total Grant amount. Grant Budget line-item revisions may not be made without prior, written approval of the State in which the terms of the approved revisions are explicitly set forth. Any such approval shall be superseded by a subsequent revision of the Grant Budget by contract amendment, and any increase in the total Grant amount shall require a contract amendment.
- C.7. **Disbursement Reconciliation and Close Out.** The Grantee shall submit a final invoice and grant disbursement reconciliation report within ninety (90) days of the Grant Contract end date and in form and substance acceptable to the State.
- a. If total disbursements by the State pursuant to this Grant Contract exceed the amounts permitted by the Section C, Payment Terms and Conditions of this Grant Contract, the Grantee shall refund the difference to the State. The Grantee shall submit said refund with the final grant disbursement reconciliation report.
 - b. The State shall not be responsible for the payment of any invoice submitted to the state after the final invoice and grant disbursement reconciliation report. The State will not deem any Grantee costs submitted for reimbursement after the final invoice to be allowable and reimbursable by the State, and such invoices will NOT be paid.
 - c. The Grantee's failure to provide a final grant disbursement reconciliation report to the state as required shall result in the Grantee being deemed ineligible for reimbursement under this Grant Contract, and the Grantee shall be required to refund any and all payments by the state pursuant to this Grant Contract.
 - d. The Grantee must close out its accounting records at the end of the grant period in such a way that reimbursable expenditures and revenue collections are NOT carried forward.
- C.8. **Indirect Cost.** Should the Grantee request reimbursement for indirect cost, the Grantee must submit to the State a copy of the indirect cost rate approved by the cognizant federal agency and the State. The Grantee will be reimbursed for indirect cost in accordance with the approved indirect cost rate to amounts and limitations specified in the attached Grant Budget. Once the Grantee makes an election and treats a given cost as direct or indirect, it must apply that treatment consistently and may not change during the grant period. Any changes in the approved indirect cost rate must have prior approval of the cognizant federal agency and the State. If the indirect cost rate is provisional during the term of this agreement, once the rate becomes final, the Grantee agrees to remit any overpayment of funds to the State, and subject to the availability of funds the State agrees to remit any underpayment to the Grantee.
- C.9. **Cost Allocation.** If any part of the costs to be reimbursed under this Grant Contract are joint costs involving allocation to more than one program or activity, such costs shall be allocated and reported in accordance with the provisions of Department of Finance and Administration Policy

Statement 03 or any amendments or revisions made to this policy statement during the Grant Contract period.

- C.10. Payment of Invoice. The payment of the invoice by the State shall not prejudice the State's right to object to or question any invoice or matter in relation thereto. Such payment by the State shall neither be construed as acceptance of any part of the work or service provided nor as an approval of any of the costs invoiced therein.
- C.11. Unallowable Costs. The Grantee's invoice shall be subject to reduction for amounts included in any invoice or payment theretofore made which are determined by the State, on the basis of audits or monitoring conducted in accordance with the terms of this Grant Contract, not to constitute allowable costs.
- C.12. Deductions. The State reserves the right to deduct from amounts which are or shall become due and payable to the Grantee under this or any Contract between the Grantee and the State of Tennessee any amounts which are or shall become due and payable to the State of Tennessee by the Grantee.
- C.13. Automatic Deposits. The Grantee shall complete and sign an "Authorization Agreement for Automatic Deposit (ACH Credits) Form." This form shall be provided to the Grantee by the State. Once this form has been completed and submitted to the State by the Grantee all payments to the Grantee, under this or any other contract the Grantee has with the State of Tennessee shall be made by Automated Clearing House (ACH). The Grantee shall not invoice the State for services until the Grantee has completed this form and submitted it to the State.

D. STANDARD TERMS AND CONDITIONS:

- D.1. Required Approvals. The State is not bound by this Grant Contract until it is approved by the appropriate State officials in accordance with applicable Tennessee State laws and regulations.
- D.2. Modification and Amendment. This Grant Contract may be modified only by a written amendment executed by all parties hereto and approved by the appropriate Tennessee State officials in accordance with applicable Tennessee State laws and regulations.
- D.3. Termination for Convenience. The State may terminate this Grant Contract without cause for any reason. Said termination shall not be deemed a Breach of Contract by the State. The State shall give the Grantee at least ninety (90) days written notice before the effective termination date. The Grantee shall be entitled to compensation for authorized expenditures and satisfactory services completed as of the termination date, but in no event shall the State be liable to the Grantee for compensation for any service which has not been rendered. The final decision as to the amount, for which the State is liable, shall be determined by the State. Should the State exercise this provision, the Grantee shall not have any right to any actual general, special, incidental, consequential, or any other damages whatsoever of any description or amount.
- D.4. Termination for Cause. If the Grantee fails to properly perform its obligations under this Grant Contract in a timely or proper manner, or if the Grantee violates any terms of this Grant Contract, the State shall have the right to immediately terminate the Grant Contract and withhold payments in excess of fair compensation for completed services. Notwithstanding the above, the Grantee shall not be relieved of liability to the State for damages sustained by virtue of any breach of this Grant Contract by the Grantee.
- D.5. Subcontracting. The Grantee shall not assign this Grant Contract or enter into a subcontract for any of the services performed under this Grant Contract without obtaining the prior written approval of the State. If such subcontracts are approved by the State, they shall contain, at a

minimum, sections of this Grant Contract below pertaining to "Conflicts of Interest," "Lobbying," "Nondiscrimination," "Public Accountability," "Public Notice," and "Records" (as identified by the section headings). Notwithstanding any use of approved subcontractors, the Grantee shall be the prime contractor and shall be responsible for all work performed.

- D.6. **Conflicts of Interest.** The Grantee warrants that no part of the total Grant Amount shall be paid directly or indirectly to an employee or official of the State of Tennessee as wages, compensation, or gifts in exchange for acting as an officer, agent, employee, subcontractor, or consultant to the Grantee in connection with any work contemplated or performed relative to this Grant Contract.
- D.7. **Lobbying.** The Grantee certifies, to the best of its knowledge and belief, that:
- a. No federally appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.
 - b. If any funds other than federally appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this contract, grant, loan, or cooperative agreement, the Grantee shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
 - c. The Grantee shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into and is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, *U.S. Code*.

- D.8. **Nondiscrimination.** The Grantee hereby agrees, warrants, and assures that no person shall be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination in the performance of this Grant Contract or in the employment practices of the Grantee on the grounds of disability, age, race, color, religion, sex, national origin, or any other classification protected by Federal, Tennessee State constitutional, or statutory law. The Grantee shall, upon request, show proof of such nondiscrimination and shall post in conspicuous places, available to all employees and applicants, notices of nondiscrimination.
- D.9. **Public Accountability.** If the Grantee is subject to *Tennessee Code Annotated*, Title 8, Chapter 4, Part 4 or if this Grant Contract involves the provision of services to citizens by the Grantee on behalf of the State, the Grantee agrees to establish a system through which recipients of services may present grievances about the operation of the service program, and the Grantee shall display in a prominent place, located near the passageway through which the public enters in order to receive Grant supported services, a sign at least twelve inches (12") in height and eighteen inches (18") in width stating:

NOTICE: THIS AGENCY IS A RECIPIENT OF TAXPAYER FUNDING. IF YOU OBSERVE AN AGENCY DIRECTOR OR EMPLOYEE ENGAGING IN ANY ACTIVITY WHICH YOU CONSIDER TO BE ILLEGAL, IMPROPER, OR WASTEFUL, PLEASE CALL THE STATE COMPTROLLER'S TOLL-FREE HOTLINE: 1-800-232-5454

- D.10. Public Notice. All notices, informational pamphlets, press releases, research reports, signs, and similar public notices prepared and released by the Grantee shall include the statement, "This project is funded under an agreement with the Department of Transportation." Any such notices by the Grantee shall be approved by the State.
- D.11. Licensure. The Grantee and its employees and all sub-grantees shall be licensed pursuant to all applicable federal, state, and local laws, ordinances, rules, and regulations and shall upon request provide proof of all licenses.
- D.12. Records. The Grantee (and any approved subcontractor) shall maintain documentation for all charges under this Contract. The books, records, and documents of the Grantee (and any approved subcontractor), insofar as they relate to work performed or money received under this Contract, shall be maintained for a period of three (3) full years from the date of the final payment and shall be subject to audit at any reasonable time and upon reasonable notice by the state agency, the Comptroller of the Treasury, or their duly appointed representatives. The records of not-for-profit entities shall be maintained in accordance with the *Accounting Manual for the Recipients of Grant Funds in the State of Tennessee*, published by the Tennessee Comptroller of the Treasury (available at <http://comptroller.state.tn.us/ma/nonprofit/nonprofit1.pdf>). The financial statements shall be prepared in accordance with generally accepted accounting principles.
- D.13. Prevailing Wage Rates. All grants and contracts for construction, erection, or demolition or to install goods or materials that involve the expenditure of any funds derived from the State require compliance with the prevailing wage laws as provided in *Tennessee Code Annotated*, Section 12-4-401 *et seq.*
- D.14. Monitoring. The Grantee's activities conducted and records maintained pursuant to this Grant Contract shall be subject to monitoring and evaluation by the State, the Comptroller of the Treasury, or their duly appointed representatives.
- D.15. Progress Reports. The Grantee shall submit brief, periodic, progress reports to the State as requested.
- D.16. Annual Report and Audit. The Grantee shall prepare and submit, within nine (9) months after the close of the reporting period, an annual report of its activities funded under this Grant Contract to the commissioner or head of the Granting agency, the Tennessee Comptroller of the Treasury, and the Commissioner of Finance and Administration. The annual report for any Grantee that receives five hundred thousand dollars (\$500,000) or more in aggregate federal and state funding for all its programs shall include audited financial statements. 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 Grantee may, with the prior approval of the Comptroller, engage a licensed independent public accountant to perform the audit. The audit contract between the Grantee and the licensed independent public accountant shall be on a contract 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. The Grantee 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 Grantee shall be subject to the provisions relating to such fees contained in the prescribed contract form noted above. Copies of such audits shall be provided to the designated cognizant state agency, the State Granting Department, the Tennessee Comptroller of the Treasury, and the Department of Finance and Administration and shall be made available to the public.

- D.17. **Procurement.** If the other terms of this Grant Contract allow reimbursement for the cost of goods, materials, supplies, equipment, and/or contracted services, such procurement shall be made on a competitive basis, including the use of competitive bidding procedures, where practical. The Grantee shall maintain documentation for the basis of each procurement for which reimbursement is paid pursuant to this Grant Contract. In each instance where it is determined that use of a competitive procurement method was not practical, said documentation shall include a written justification for such decision and non-competitive procurement. Further, if such reimbursement is to be made with funds derived wholly or partially from federal sources, the determination of cost shall be governed by and reimbursement shall be subject to the Grantee's compliance with applicable federal procurement requirements.

The Grantee shall obtain prior approval from the State before purchasing any equipment under this Grant Contract.

- D.18. **Strict Performance.** Failure by any party to this Grant Contract to insist in any one or more cases upon the strict performance of any of the terms, covenants, conditions, or provisions of this agreement shall not be construed as a waiver or relinquishment of any such term, covenant, condition, or provision. No term or condition of this Grant Contract shall be held to be waived, modified, or deleted except by a written amendment signed by the parties hereto.
- D.19. **Independent Contractor.** The parties hereto, in the performance of this Grant Contract, shall not act as employees, partners, joint venturers, 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 Grant Contract shall be construed to create a principal/agent relationship or to allow either to exercise control or direction over the manner or method by which the other transacts its business affairs or provides its usual services. The employees or agents of one party shall not be deemed or construed to be the employees or agents of the other party for any purpose whatsoever.

The Grantee, 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.*, for causes of action sounding in tort. Further, no contract provision requiring a Tennessee political entity to indemnify or hold harmless the State beyond the liability imposed by law is enforceable because it appropriates public money and nullifies governmental immunity without the authorization of the General Assembly.

- D.20. **State Liability.** The State shall have no liability except as specifically provided in this Grant Contract.
- D.21. **Force Majeure.** The obligations of the parties to this Grant Contract 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, natural disasters, riots, wars, epidemics, or any other similar cause.
- D.22. **State and Federal Compliance.** The Grantee shall comply with all applicable state and federal laws and regulations in the performance of this Grant Contract.
- D.23. **Governing Law.** This Grant Contract shall be governed by and construed in accordance with the laws of the State of Tennessee. The Grantee agrees that it will be subject to the exclusive

jurisdiction of the courts of the State of Tennessee in actions that may arise under this Grant Contract. The Grantee acknowledges and agrees that any rights or claims against the State of Tennessee or its employees hereunder, and any remedies arising there from, shall be subject to and limited to those rights and remedies, if any, available under *Tennessee Code Annotated*, Sections 9-8-101 through 9-8-407.

- D.24. **Completeness.** This Grant Contract is complete and contains the entire understanding between the parties relating to the subject matter contained herein, including all the terms and conditions of the parties' agreement. This Grant Contract supersedes any and all prior understandings, representations, negotiations, and agreements between the parties relating hereto, whether written or oral.
- D.25. **Severability.** If any terms and conditions of this Grant Contract are held to be invalid or unenforceable as a matter of law, the other terms and conditions hereof shall not be affected thereby and shall remain in full force and effect. To this end, the terms and conditions of this Grant Contract are declared severable.
- D.26. **Headings.** Section headings are for reference purposes only and shall not be construed as part of this Grant Contract.

E. SPECIAL TERMS AND CONDITIONS:

- E.1. **Conflicting Terms and Conditions.** Should any of these special terms and conditions conflict with any other terms and conditions of this Grant Contract, these special terms and conditions shall control.
- E.2. **Communications and Contacts.** All instructions, notices, consents, demands, or other communications required or contemplated by this Grant Contract shall be in writing and shall be made by certified, first class mail, return receipt requested and postage prepaid, by overnight courier service with an asset tracking system, or by EMAIL or facsimile transmission with recipient confirmation. Any such communications, regardless of method of transmission, shall be addressed to the respective party at the appropriate mailing address, facsimile number, or EMAIL address as set forth below or to that of such other party or address, as may be hereafter specified by written notice.

The State:

Bennie Nicholson, Transportation Specialist
Department of Transportation
Multimodal Transportation Resources
505 Deaderick Street, Suite 1800
Nashville, Tennessee 37243
bennie.nicholson@tn.gov
Telephone Number: (615) 253-1044
FAX Number: (615) 253-1482

The Grantee:

Gary Taylor, Transit Manager
City of Kingsport
225 West Center Street
Kingsport, Tennessee 37660
Taylor@ci.kingsport.tn.us

Telephone Number: (423) 224-2612
FAX Number: (423) 224-2615

All instructions, notices, consents, demands, or other communications shall be considered effectively given upon receipt or recipient confirmation as may be required.

- E.3. **Subject to Funds Availability.** The Grant Contract 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 State reserves the right to terminate the Grant Contract upon written notice to the Grantee. Said termination shall not be deemed a breach of Contract by the State. Upon receipt of the written notice, the Grantee shall cease all work associated with the Grant Contract. Should such an event occur, the Grantee shall be entitled to compensation for all satisfactory and authorized services completed as of the termination date. Upon such termination, the Grantee shall have no right to recover from the State any actual, general, special, incidental, consequential, or any other damages whatsoever of any description or amount.
- E.4. **Voluntary Buyout Program.** The Grantee acknowledges and understands that, for a period of two years beginning August 16, 2008, restrictions are imposed on former state employees who received a State of Tennessee Voluntary Buyout Program (VBP) severance payment with regard to contracts with state agencies that participated in the VBP.
- a. The State will not contract with either a former state employee who received a VBP severance payment or an entity in which a former state employee who received a VBP severance payment or the spouse of such an individual holds a controlling financial interest.
 - b. The State may contract with an entity with which a former state employee who received a VBP severance payment is an employee or an independent contractor. Notwithstanding the foregoing, the Grantee understands and agrees that there may be unique business circumstances under which a return to work by a former state employee who received a VBP severance payment as an employee or an independent contractor of a State grantee would not be appropriate, and in such cases the State may refuse Grantee personnel. Inasmuch, it shall be the responsibility of the State to review Grantee personnel to identify any such issues.
 - c. With reference to either subsection a. or b. above, a grantee may submit a written request for a waiver of the VBP restrictions regarding a former state employee and a contract with a state agency that participated in the VBP. Any such request must be submitted to the State in the form of the *VBP Contracting Restriction Waiver Request* format available from the State and the Internet at: www.state.tn.us/finance/rds/ocr/waiver.html. The determination on such a request shall be at the sole discretion of the head of the state agency that is a Party to this Grant Contract, the Commissioner of Finance and Administration, and the Commissioner of Human Resources.
- E. 5. **No Equipment Acquisition.** This Grant Contract does not involve the acquisition and disposition of equipment acquired with funds provided under this Grant Contract.
- E.6. **Debarment and Suspension.** The Grantee certifies, to the best of its knowledge and belief, that it, its current and future principals, its current and future subcontractors and their principals:
- a. are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal or state department or agency;

- b. have not within a three (3) year period preceding this Grant Contract been convicted of, or had a civil judgment rendered against them from commission of fraud, or a criminal offence in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or grant under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification, or destruction of records, making false statements, or receiving stolen property;
- c. are not presently indicted or otherwise criminally or civilly charged by a government entity (federal, state, or local) with commission of any of the offenses detailed in section b. of this certification; and
- d. have not within a three (3) year period preceding this Grant Contract had one or more public transactions (federal, state, or local) terminated for cause or default.

The Grantee shall provide immediate written notice to the State if at any time it learns that there was an earlier failure to disclose information or that due to changed circumstances, its principals or the principals of its subcontractors are excluded or disqualified.

E.7. FTA Compliance. All applicable terms of FTA Master Agreement, dated October 1, 2008 is incorporated herein by reference.

E.8. T.C.A. Section 13-10-107 Compliance.

- 1) Grantee agrees to proceed expeditiously with and complete the project in accordance with plans approved by the Commissioner of TDOT ("Commissioner");
- 2) Grantee agrees to commence and continue operation of the project on completion of the project and not to discontinue operations or dispose of all or part of the project without Commissioner's prior written approval;
- 3) Grantee agrees to apply for and make reasonable efforts to secure federal assistance for the project, subject to any conditions the Commissioner may require in order to maximize the amounts of such assistance received or to be received for all projects in the State; and
- 4) Grantee agrees to provide Grantee's share of the cost of the project and comply with T.C.A. § 13-10-107(c)(4).

IN WITNESS WHEREOF,

CITY OF KINGSPORT:

GRANTEE SIGNATURE

DATE

DENNIS PHILLIPS, MAYOR

PRINTED NAME AND TITLE OF GRANTEE SIGNATORY (above)

DEPARTMENT OF TRANSPORTATION:

GERALD F. NICELY, COMMISSIONER

DATE

**JOHN REINBOLD, GENERAL COUNSEL
APPROVED AS TO FORM AND LEGALITY**

DATE

Attachment One

UNIVERSAL PUBLIC TRANSPORTATION BUDGET

	FEDERAL SHARE	STATE SHARE*	GRANT CONTRACT	GRANTEE SHARE	TOTAL
SCOPE—BUS CAPITAL					
11.1x.xx Revenue Rolling Stock					
11.2x.xx Transitways / Line					
11.3x.xx Station Stops & Terminals					
11.4x.xx Support Equip / Facilities					
11.5x.xx Electrification / Power Dist.					
11.6x.xx Signal & Communication Equip					
11.7x.xx Other Capital Items					
11.8x.xx State / Programs Administration					
11.9x.xx Transit Enhancements					
12.xx.xx Fixed Guideway					
14.xx.xx New Start					
SCOPE—OPERATING					
30.00.00 Operating Assistance -TDOT					
30.09.01 Operating Assistance -50% Federal Share	\$0.00	\$365,096.00	\$365,096.00	\$0.00	\$365,096.00
30.09.02 Operating Assistance - Sliding Scale					
30.80.01 Operating Assistance - 80% CMAQ					
SCOPE—RURAL TRANSIT ASST PROGRAM					
43.5x.xx Rural Transit Assistance Program					
SCOPE—PLANNING					
44.00.00 Commuter Trans. Asst Program					
44.1x.xx State Planning & Research					
44.2x.xx Metropolitan Planning					
44.3x.00 Consolidated Planning Grants					
SCOPE—MANAGEMENT TRAINING					
50.xx.xx Management Training					
SCOPE—OVERSIGHT REVIEWS					
51.xx.xx Oversight Review					
SCOPE—RESEARCH PROJECTS					
55.xx.xx Research Projects					
SCOPE—SAFETY & SECURITY					
57.xx.xx Safety and Security					
SCOPE—UNIVERSITY RESEARCH					
70.xx.xx					
SCOPE—Non-Add Scope Codes					
99x-nn					
SCOPE—OTHER					
xx.xx.xx					
GRAND TOTAL	\$0.00	\$365,096.00	\$365,096.00	\$0.00	\$365,096.00

*100% State share



AGENDA ACTION FORM

Consideration of a Resolution Authorizing the Mayor to Execute and Sign All Documents Necessary to enter into an Agreement with United States Department of Justice, Drug Enforcement Administration to Assign One (1) Police Department Officer to the Upper East Tennessee HIDTA Task Force

To: Board of Mayor and Aldermen
 From: *John G. Campbell*
 John G. Campbell, City Manager

Action Form No.:	AF-358-2009	Final Adoption:	November 3, 2009
Work Session:	November 2, 2009	Staff Work By:	D/C Dale Phipps
First Reading:	N/A	Presentation By:	Chief Gale Osborne

Recommendation: Approve the Resolution.

Executive Summary:

The Upper East Tennessee HIDTA (High Intensity Drug Trafficking Area) Task Force is a joint effort operated by the Drug Enforcement Administration (DEA) out of the Johnson City, TN home office. The agreement allows KPD to detail one (1) experienced police officer to the Task Force operating under the direct supervision of the DEA supervisory personnel. The officer will be deputized as a Task Force officer of the DEA pursuant to 21 USC section 878. The duties of the officer will include disrupting the illicit drug traffic in the Upper East Tennessee area by immobilizing targeted violators and trafficking organizations, as well as, gather and report intelligence data related to trafficking. In addition, the officer will conduct undercover operations where appropriate and engage in other traditional methods of investigation.

Attachments:

- 1. Resolution

Funding source appropriate and funds are available: _____

	<u>Y</u>	<u>N</u>	<u>O</u>
Joh	—	—	—
Mallicote	—	—	—
Marsh	—	—	—
Munsey	—	—	—
Parham	—	—	—
Shupe	—	—	—
Phillips	—	—	—

RESOLUTION NO. _____

A RESOLUTION APPROVING AN AGREEMENT WITH THE UNITED STATES DEPARTMENT OF JUSTICE, DRUG ENFORCEMENT ADMINISTRATION TO ASSIGN ONE POLICE OFFICER TO THE UPPER EAST TENNESSEE HIGH INTENSITY DRUG TRAFFICKING AREA TASK FORCE AND AUTHORIZING THE MAYOR TO EXECUTE AND SIGN ALL APPLICABLE DOCUMENTS TO EFFECTUATE THE AGREEMENT

WHEREAS, the city wishes to enter into an agreement with the United States Department of Justice, Drug Enforcement Administration (DEA) to allow one (1) experienced Kingsport Police Officer to be assigned to the Upper East Tennessee High Intensity Drug Trafficking Area (HIDTA) Task Force; and

WHEREAS, the officer will be deputized as a Task Force Officer of the DEA pursuant to 21 USC section 878;

Now therefore,

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

SECTION I. That the agreement with the United States Department of Justice, Drug Enforcement Administration (DEA) is approved.

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, any and all applicable documents to effectuate the agreement with the United States Department of Justice, Drug Enforcement Administration (DEA) to allow one (1) Kingsport Police Officer to be assigned to the Upper East Tennessee High Intensity Drug Trafficking Area (HIDTA) Task Force.

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

ADOPTED this the 3rd day of November, 2009.

DENNIS R. PHILLIPS, MAYOR

ATTEST:

JAMES H. DEMMING, CITY RECORDER

APPROVED AS TO FORM:

J. MICHAEL BILLINGSLEY, CITY ATTORNEY



AGENDA ACTION FORM

Consideration of a Resolution Authorizing the Mayor to Execute and Sign All Documents Necessary to Accept and Receive Certain Department of Justice Approved Law Enforcement Equipment and Technology in the Form of a Donation From the South Central Kingsport Weed and Seed Program

To: Board of Mayor and Aldermen
 From: John G. Campbell, City Manager *John G. Campbell*

Action Form No: AF-362-2009 Final Adoption: November 3, 2009
 Work Session: November 2, 2009 Staff Work By: D/C Dale Phipps
 First Reading: N/A Presentation By: Chief Gale Osborne

Recommendation: Approve the Resolution.

Executive Summary:

The South Central Kingsport Weed and Seed Program has renewed an existing grant from the Community Capacity Development Office (CCDO) of the U.S. Department of Justice which requires a portion of the funding to be allocated toward the equipping of officers in the Weed and Seed target area to help eliminate the criminal element. The amount of funding allocated is \$35,500.00. In keeping with the conditions of the grant, South Central Kingsport Weed and Seed will purchase equipment, technology, and programming supplies and donate said items to the Kingsport Police Department to help achieve the department's mission and goals.

Attachments:

- 1. Resolution

Funding source appropriate and funds are available: _____

	<u>Y</u>	<u>N</u>	<u>O</u>
Joh	—	—	—
Mallicote	—	—	—
Marsh	—	—	—
Munsey	—	—	—
Parham	—	—	—
Shupe	—	—	—
Phillips	—	—	—

RESOLUTION NO. _____

A RESOLUTION APPROVING A DONATION OF CERTAIN DEPARTMENT OF JUSTICE APPROVED LAW ENFORCEMENT EQUIPMENT AND TECHNOLOGY FROM THE SOUTH CENTRAL KINGSPORT WEED AND SEED PROGRAM AND AUTHORIZING THE MAYOR TO EXECUTE AND SIGN ALL APPLICABLE DOCUMENTS

WHEREAS, South Central Kingsport Weed and Seed Program has renewed an existing grant from the Community Capacity Development Office of the U.S. Department of Justice help eliminate the criminal element; and

WHEREAS, the amount of funding allocated is \$35,500.00; and

WHEREAS, South Central Kingsport Weed and Seed Program desires to purchase equipment, technology and programming supplies and donate said items to the Kingsport Police Department;

Now therefore,

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

SECTION I. That the donation of equipment, technology and programming supplies in the amount of \$35,500.00 from the South Central Kingsport Community Development, Inc. Weed and Seed Program is approved.

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, any and all applicable documents to effectuate the donation from the South Central Kingsport Community Development, Inc. Weed and Seed Program to the Kingsport Police Department.

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

ADOPTED this the 3rd day of November, 2009.

DENNIS R. PHILLIPS, MAYOR

ATTEST:

JAMES H. DEMMING, CITY RECORDER

APPROVED AS TO FORM:

J. MICHAEL BILLINGSLEY, CITY ATTORNEY

RESOLUTION NO. _____

A RESOLUTION TO RATIFY THE MAYOR'S SIGNATURE ON ALL DOCUMENTS NECESSARY AND PROPER TO APPLY FOR AND RECEIVE ASSISTANCE TO FIREFIGHTERS GRANT THROUGH THE U.S. FIRE ADMINISTRATION OF THE FEDERAL EMERGENCY MANAGEMENT ADMINISTRATION DIVISION OF THE DEPARTMENT OF HOMELAND SECURITY

WHEREAS, the city applied for an Assistance to Firefighters Grant through the U.S. Fire Administration of the Federal Emergency Management Administration Division of the Department of Homeland Security, in an amount up to \$66,850.00 with a ten percent (10%) matching requirement of \$6,685.00; and

WHEREAS, if awarded the grant funds will be used to purchase two thousand smoke detectors with dual sensor alarms and ten-year lithium batteries, an additional 500 ten-year batteries, and fifty dual smoke detectors for the hearing impaired;

WHEREAS, the matching funds will be provided from Fire Department Project GP1001;

Now therefore,

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

SECTION I. That the application submitted on October 23, 2009, for an Assistance to Firefighters Grant through the U.S. Fire Administration of the Federal Emergency Management Administration Division of the Department of Homeland Security, in an amount up to \$66,850.00 with a ten percent (10%) matching requirement of \$6,685.00, is ratified, including the execution of the same by Mayor Dennis R. Phillips.

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, Chapter 10 of the Charter of the City of Kingsport, all documents necessary and proper to receive an Assistance to Firefighters Grant through the U.S. Fire Administration of the Federal Emergency Management Administration Division of the Department of Homeland Security, in an amount up to \$66,850.00 with a ten percent (10%) matching requirement of \$6,685.00 for acquisition of smoke detectors and associated items.

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

ADOPTED this the 3rd day of November, 2009.

DENNIS R. PHILLIPS, MAYOR

ATTEST:

JAMES H. DEMMING, CITY RECORDER

APPROVED AS TO FORM:

J. MICHAEL BILLINGSLEY, CITY ATTORNEY



AGENDA ACTION FORM

Consideration of a Resolution Awarding the bid for Harbor Chapel Road and Cooks Valley Road Improvements – Phase I to Thomas Construction Company, Inc. and Authorize the Mayor to Sign All Applicable Documents

To: Board of Mayor and Aldermen
 From: John G. Campbell, City Manager *John G. Campbell*

Action Form No.: AF-366-2009
 Work Session: November 2, 2009
 First Reading: N/A
 Final Adoption: November 3, 2009
 Staff Work By: H. Clabaugh/M. Thompson
 Presentation By: R. McReynolds

Recommendation: Approve the resolution.

Executive Summary: Bids were opened on October 14, 2009 for the Harbor Chapel Road and Cooks Valley Road Improvements – Phase I. It is recommended to accept the bid from Thomas Construction Company, Inc. as follows:

Base Bid	\$671,372.50
6% Engineering Fee	\$ 40,282.00
6% Contingency	\$ <u>42,699.00</u>
Total Project Cost	\$754,353.50

This project consists of approximately 2,425 LF of road improvements, including road widening, storm water collection infrastructure, mobility path, guard rail, asphalt paving and other associated work. The allotted time for construction will be 180 calendar days.

Funding is identified in Project Number GP0917.

- Attachments:**
1. Resolution
 2. Bid Minutes
 3. Location Map

Funding source appropriate and funds are available: _____

	<u>Y</u>	<u>N</u>	<u>O</u>
Joh	—	—	—
Mallicote	—	—	—
Marsh	—	—	—
Munsey	—	—	—
Parham	—	—	—
Shupe	—	—	—
Phillips	—	—	—

RESOLUTION NO. _____

A RESOLUTION AWARDDING THE BID FOR HARBOR CHAPEL ROAD AND COOKS VALLEY ROAD IMPROVEMENTS- PHASE ONE TO THOMAS CONSTRUCTION COMPANY, INC. AND AUTHORIZE THE MAYOR TO EXECUTE AN AGREEMENT AND ALL OTHER DOCUMENTS NECESSARY AND PROPER TO EFFECTUATE THE PURPOSE OF THE AGREEMENT

WHEREAS, bids were opened October 14, 2009 for the Harbor Chapel Road and Cooks Valley Road Improvements, Phase One; and

WHEREAS, the project consists of approximately Two Thousand Four Hundred Twenty Five (2,425) linear feet of road improvements, including road widening, storm water collection infrastructure, mobility paths, guard rails, asphalt paving, and other associated work; and

WHEREAS, upon review of the bids, the board finds Thomas Construction Company, 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 desires to accept the bid at a total cost of \$754,353.50; and

WHEREAS, funding is identified in Project Number GP0917;

Now therefore,

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

SECTION I. That the bid for Harbor Chapel Road and Cooks Valley Road Improvements, Phase One, at a total cost of \$754,353.50 is awarded to Thomas Construction Company, Inc.

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, an agreement, and all other documents necessary and proper to effectuate the purpose of the agreement with Thomas Construction Company, Inc. for the Harbor Chapel Road and Cooks Valley Road Improvements, Phase One.

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

ADOPTED this the 3rd day of November, 2009.

DENNIS R. PHILLIPS, MAYOR

ATTEST:

JAMES H. DEMMING, CITY RECORDER

APPROVED AS TO FORM:

J. MICHAEL BILLINGSLEY, CITY ATTORNEY

**MINUTES
BID OPENING
October 14, 2009
4:00 P.M.**

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

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

The Procurement Manager opened with the following bids:

HARBOR CHAPEL ROAD AND COOKS VALLEY ROAD IMPROVEMENTS – PHASE I		
Vendor:	Unit Cost:	Comments
Thomas Construction Co., Inc.	\$671,372.50	Correction on bid sheet and initialed.
Summers-Taylor, Inc.	\$894,829.00	N/A
Bakers Construction and Excavation	\$859,284.25	N/A
Vic Davis Construction, Inc.	\$769,728.00	N/A
Bakers Construction Services, Inc.	\$724,146.28	N/A

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



PROJECT LOCATION



PHASE I
HARBOR CHAPEL ROAD
COOKS VALLEY ROAD
IMPROVEMENTS



AGENDA ACTION FORM

Consideration of a Resolution to Authorize the Mayor to Execute an Amendment to the Contract for a Guaranteed Maximum Price with J.A. Street & Associates to include the Next Construction Phase of the Meadowview Executive Conference Center

To: Board of Mayor and Aldermen
 From: John G. Campbell, City Manager

A handwritten signature in black ink that reads "John G. Campbell".

Action Form No.: AF-313-2009
 Work Session: November 2, 2009
 First Reading: November 3, 2009

Final Adoption: November 3, 2009
 Staff Work By: D. Mason
 Presentation By: John Campbell

Recommendation: Approve the resolution.

Executive Summary:

The BMA previously approved the execution of a Guaranteed Maximum Price Contract with J.A. Street & Associates for the Early Construction Phase of the Meadowview Executive Conference Center (AF 130-2009). Bids for the remaining portions of the project were received on September 11, 2009 and J.A. Street has presented a revised Guaranteed Maximum Price for the next phase of the project.

This phase of the project consists of the complete Executive Conference Center, Site Work, and Golf Maintenance Facilities. The Guaranteed Maximum Price for the remaining phase of the project, consisting of the Parking Structure, will be established and added to the contract after its design is complete.

The attached resolution authorizes the Mayor to execute an Amendment to the Guaranteed Maximum Price contract that will encompass the next phase of the project.

Attachments:

1. Resolution
2. Amendment A to the Guaranteed Maximum Price Contract

Funding for this project has been identified under Project No. MV0901 – Meadowview Executive Conference Center

Funding source appropriate and funds are available: _____

	Y	N	O
Joh	—	—	—
Mallicote	—	—	—
Marsh	—	—	—
Munsey	—	—	—
Parham	—	—	—
Shupe	—	—	—
Phillips	—	—	—

RESOLUTION NO. _____

A RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE AN AMENDMENT TO THE CONTRACT FOR A GUARANTEED MAXIMUM PRICE WITH J.A.STREET & ASSOCIATES FOR THE CONSTRUCTION OF THE MEADOWVIEW EXECUTIVE CONFERENCE CENTER.

WHEREAS, the City awarded a contract to J.A. Street & Associates on a guaranteed maximum price basis for the construction of the Meadowview Executive Conference Center, subject to final approval of the Board of Mayor and Aldermen; and

WHEREAS, a contract was executed with J.A. Street & Associates to begin the early construction phase of the project;

WHEREAS, the City of Kingsport desires to amend the contract with J.A. Street & Associates to include the next construction phase of the project for a total guaranteed maximum price of \$12,192,434.00 to include the complete Executive Conference Center, Site Work, and Golf Maintenance Facilities with a Contingency fund in the amount of \$200,000.00;

Now therefore,

BE IT RESOLVED BY THE BOARD OF MAYOR AND ALDERMEN as follows:

SECTION I. That the mayor, or in his absence, incapacity, or failure to act, the vice-mayor, is authorized to execute, in a form approved by the city attorney and subject to the requirements of Article X, Chapter 10 of the Charter of the City of Kingsport, an Amendment to the Guaranteed Maximum Price contract with J.A. Street & Associates for the Construction of the Meadowview Executive Conference Center by establishing the Guaranteed Maximum Price at an amount not to exceed Twelve Million One Hundred Ninety Two Thousand Four Hundred Thirty Four Dollars and NO/100 (\$12,192,434.00) subject to additions and deduction by Modifications as provided in the Contract Documents.

SECTION II. That this resolution shall take effect immediately upon its adoption, the public welfare requiring it.

ADOPTED this the 3rd day of November, 2009.

DENNIS R. PHILLIPS, MAYOR

ATTEST:

JAMES H. DEMMING, CITY RECORDER

APPROVED AS TO FORM:

J. MICHAEL BILLINGSLEY, CITY ATTORNEY

CONSTRUCTION SERVICES AGREEMENT – AMENDMENT A

BETWEEN OWNER and
CONSTRUCTION MANAGER/GENERAL CONTRACTOR (CM/GC)

WHERE THE BASIS IS A
GUARANTEED MAXIMUM PRICE

ORIGINAL AGREEMENT DATED:

The 19th Day of May in the year of 2009.

BETWEEN THE OWNER:

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

AND THE CONSTRUCTION MANAGER/GENERAL CONTRACTOR, HEREIN AFTER “CM/GC”:

J.A. Street & Associates, Inc.
P.O. Box 725
Blountville, TN 37617

THE PROJECT:

Meadowview Executive Conference Center Addition (MECC)
Kingsport, Tennessee 37660

THE DESIGNER:

Chapman Griffin Lanier Sussenbach Architects, Inc.
2500 Cumberland Parkway Suite 350
Atlanta, Georgia 30339

THE AGREEMENT IS HEREBY MODIFIED AS FOLLOWS:

DELETE “ARTICLE 3, CONTRACT SUM” IN ITS ENTIRETY AND REPLACE WITH THE FOLLOWING:

3.1 The Owner shall pay the CM/GC in current funds for the performance of the Work an amount not to exceed the Guaranteed Maximum Price, also referred to as the “Contract Sum”, of,

Twelve Million One Hundred Ninety Two Thousand Four Hundred Thirty Four dollars and NO/100 (\$12,192,434.00)

subject to additions and deductions by Modifications as provided in the Contract Documents.

3.2 The Guaranteed Maximum Price (GMP) is determined as follows:

Subcontracts	\$ 10,009,264.00
General Conditions Budget	\$ 470,510.00
CM/GC Contingency	\$ 318,501.00
CM/GC Construction Services Fixed Fee	\$ 468,480.00
Project Related Cost	\$ 925,679.00
Guaranteed Maximum Price	\$ 12,192,434.00

3.3 Unit Prices will be used as detailed in Exhibit A dated May 4, 2009.

3.4 **It is understood by both the City and J. A. Street & Associates that the work included in this agreement only constitutes a portion of the total project, and excludes the proposed Parking Structure to be added to the Guaranteed Maximum Price at a later date.**

This Amendment made as of the _____ day of _____ in the year of _____:

**BY CONSTRUCTION
MANAGER/GENERAL
CONTRACTOR:**

J.A. STREET ASSOCIATES, INC.

Signature:

Name/Title

AND BY OWNER:

THE CITY OF KINGSPORT

Signature:

Name/Title

APPROVED AS TO FORM

City Attorney

ATTESTED

City Recorder

END OF AGREEMENT

3.3 Unit Prices will be used as detailed in Exhibit A dated May 4, 2009.

3.4 **It is understood by both the City and J. A. Street & Associates that the work included in this agreement only constitutes a portion of the total project, and excludes the proposed Parking Structure to be added to the Guaranteed Maximum Price at a later date.**

This Amendment made as of the _____ day of _____ in the year of _____:

**BY CONSTRUCTION
MANAGER/GENERAL
CONTRACTOR:**

J.A. STREET ASSOCIATES, INC.

Signature:

Name/Title

AND BY OWNER:

THE CITY OF KINGSPORT

Signature:

Name/Title

APPROVED AS TO FORM

City Attorney

ATTESTED

City Recorder

END OF AGREEMENT



AGENDA ACTION FORM

Consideration of a Resolution Authorizing a Net Metering and Interconnection Agreement with AEP Appalachian Power and Authorizing the Mayor to Execute all Documents Necessary for the Agreement

To: Board of Mayor and Aldermen
 From: John G. Campbell, City Manager

Action Form No.:	AF-368-2009	Final Adoption:	November 3, 2009
Work Session:	November 2, 2009	Staff Work By:	D. Mason
First Reading:	November 3, 2009	Presentation By:	John Campbell

Recommendation: Approve the resolution.

Executive Summary:

The construction of the Kingsport Higher Education Center included the installation of a 30 KW photovoltaic array. This solar power system operates in parallel with the power company's electric grid and is connected to the power grid through a Net Metering Facility that can measure the flow of electricity in both directions.

The Net Metering and Interconnection Agreement defines the responsibilities of both parties concerning the generating facilities and is required by Appalachian Power in order to connect generating facility to the power grid.

Attachments:

1. Resolution
2. Net Metering and Interconnection Agreement

Funding source appropriate and funds are available: _____

	<u>Y</u>	<u>N</u>	<u>O</u>
Joh	—	—	—
Mallicote	—	—	—
Marsh	—	—	—
Munsey	—	—	—
Parham	—	—	—
Shupe	—	—	—
Phillips	—	—	—

RESOLUTION NO. _____

A RESOLUTION APPROVING A NET METERING AND INTERCONNECTION AGREEMENT WITH APPALACHIAN POWER FOR THE SOLAR POWER SYSTEM LOCATED AT THE KINGSPORT CENTER FOR HIGHER EDUCATION AND AUTHORIZING THE MAYOR TO EXECUTE ALL DOCUMENTS NECESSARY AND PROPER TO EFFECTUATE THE AGREEMENT

WHEREAS, the construction of the Kingsport Center for Higher Education (KCHE) included the installation of a 30KW photovoltaic array; and

WHEREAS, the photovoltaic system connects to the Appalachian Power grid through a net metering facility; and

WHEREAS, the City of Kingsport desires to enter a Net Metering and Interconnection Agreement with Appalachian Power in order to offset the City's electricity requirements for the KCHE;

Now therefore,

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

SECTION I. That the Net Metering and Interconnection Agreement for the Kingsport Center for Higher Education (KCHE) is approved.

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, all documents necessary and proper to effectuate the Net Metering and Interconnection Agreement for the Kingsport Center for Higher Education (KCHE).

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

ADOPTED this the 3rd day of November, 2009.

DENNIS R. PHILLIPS, MAYOR

ATTEST:

JAMES H. DEMMING, CITY RECORDER

APPROVED AS TO FORM:

J. MICHAEL BILLINGSLEY, CITY ATTORNEY

NET METERING and INTERCONNECTION AGREEMENT

This Net Metering and Interconnection Agreement ("Agreement") is made and entered into this ____ day of September, 2009 by Kingsport Power Company ("Company") and the City of Kingsport ("Customer"), each hereinafter sometimes referred to individually as "Party" or collectively as the "Parties". In consideration of mutual covenants set forth herein, the Parties agree as follows:

Section 1. The Net Metering Facility

The Customer has recently completed a new Higher Education Building on Center Street in Kingsport, Tennessee. As part of this Higher Education Building the Customer plans on installing a Net Metering Facility ("Facility") consisting of a Renewable Fuel Generator ("RF Generator"), 30 kW Photovoltaic array. The Customer maintains this Facility is designed and constructed to operate in parallel with the Company's electric transmission/distribution system ("System") without adversely affecting the operation of the equipment or service of the Company and its customers, and without presenting safety hazards to the Company or the Customer personnel, and is intended primarily to offset all or part of the Customer's own electricity requirements.

Section 2. Governing Provisions

The terms of this agreement shall be interpreted under and subject to Tennessee Law. The Parties shall be subject to the Tennessee Regulatory Authority's Regulations for Electric Companies, the terms and conditions set forth in this Agreement, and the Company's applicable tariffs.

Section 3. Interruption or Reduction of Deliveries

The Company shall not be obligated to accept energy from the Customers and may require Customer to interrupt or reduce delivery of energy, when necessary, in order to construct, install, repair, replace, remove, investigate, or inspect any of the Company's equipment or part of its System; or if it reasonably determines that curtailment, interruption, or reduction is necessary because of emergencies, forced outages, force majeure, or compliance with prudent electrical practices. Whenever possible, the Company shall give the Customer reasonable notice of the possibility that interruption or reduction of deliveries may be required. Notwithstanding any other provision of this Agreement, if at any time the Company reasonably determines that either the Facility may endanger the Company's personnel or other persons or property, or the continued operation of the Facility may endanger the integrity or safety of the Company's System, the Company shall have the right to disconnect and lock out the Facility from the Company's System. The Facility shall remain disconnected until such time as the Company is reasonably satisfied that the conditions referenced in this Section have been corrected.

Section 4. Interconnection

Customer shall deliver the as-available energy to the Company at the Company's meter.

Company shall furnish and install a combination kilowatt demand and kilowatt-hour meter that can measure the flow of electricity in both directions. Customer shall provide and install a meter socket for the Company's meter and any related interconnection equipment per the Company's technical requirements, including safety and performance standards. Customer shall be responsible for all costs associated with installation of the standard kilowatt-hour meter and testing in conformity.

The RF Generator equipment and installations shall comply with the manufacturer's specifications, all applicable safety and performance standards of the National Electrical Code, the Institute of Electrical and Electronic Engineers Standard 1547 (Standard for Interconnecting Distributed Resources with Electric Power Systems), safety and performance standards established by local and national electrical codes including, the Institute of Electrical and Electronics Engineers, the National Electrical Safety Code, and Underwriters Laboratories. Customer's RF Generator equipment and installations shall also comply with the Company's Interconnection Guidelines. The Company shall provide a copy of its Interconnection Guidelines to the customer upon request.

The grounding scheme of the Customer's Facility shall comply with IEEE 1547, Standard for Interconnecting Distributed Resources with Electric Power Systems, July 2003, and shall be consistent with the grounding scheme used by the Company. If requested by the Customer, the Company shall assist the customer in selecting a grounding scheme that coordinates with the Company's System.

NET METERING and INTERCONNECTION AGREEMENT

The Customer shall submit a completed Interconnection Form to the Company at least sixty (60) days prior to the date the Customer intends to interconnect the Facility to the Company's facilities. The Company shall provide a copy of the Interconnection Form to the Customer upon request. Following notification by the Customer, the Company shall review the plans of the Facility and provide the results of its review to the Customer within 60 calendar days. Any items that would prevent parallel operation, due to violation of applicable safety standards and/or power generation limits, shall be explained along with a description of the modifications necessary to remedy the violations. Following a notification of disconnection of the Facility, the Customer must complete the notification process prior to any subsequent reconnection.

The Company shall have the right to inspect and test the Facility equipment and installation prior to interconnection. The nature and extent of these tests shall be determined solely by the Company. The Customer shall not commence parallel operation of the Facility until the Facility has been approved by the Company. Such approval shall not be unreasonably withheld or delayed. The Company reserves the right to conduct additional tests and inspections and to install additional equipment or meters at any time following interconnection of the Facility. Notwithstanding the foregoing, the Company's approval to operate the Customer's Facility in parallel with the Company's System should not be construed as an endorsement, confirmation, warranty, guarantee, or representation concerning the safety, operating characteristics, durability, or reliability of the Customer's Facility.

The Customer shall not be permitted to interconnect its Facility to the Company's System, if the interconnection would reasonably lead to damage of the Company's System or would reasonably lead to voltage regulation or power quality problems at other customer revenue meters, due to the incremental effect of the generator on the performance of the Company's System, unless the Customer reimburses the Company for its cost to modify any facilities needed to accommodate the interconnection.

If connection of the Customer's Facility would reasonably create an overload of the Company's transformer, or any transformer winding, beyond manufacturer or nameplate ratings, the Customer shall reimburse the Company the cost to modify any facilities needed to accommodate the interconnection.

To prevent a Customer from back-feeding a de-energized line, the Customer shall install a manual disconnect switch with lockout capability that is accessible to Company personnel at all hours.

Section 5. Modifications

The Customer shall notify the Company at least fourteen (14) days prior to making any material changes to the Facility, including, but not necessarily limited to, any modification to the equipment or protective equipment settings or disconnection of the Facility from the Company's System, excluding temporary disconnects for routine maintenance. Modifications or changes made to the Facility shall be evaluated by the Company prior to being made. The Customer shall provide detailed information describing the modifications or changes to the Company in writing prior to making the modifications to the Facility. The Company shall review the proposed changes to the Facility and provide the results of its evaluation to the Customer within sixty (60) calendar days of receipt of the Customer's proposal. Any items that would prevent parallel operation due to violation of applicable safety standards and/or power generation limits shall be explained along with a description of the modifications necessary to remedy the violations.

The Customer shall notify the Company immediately regarding either any damage to the Facility or any safety-related emergency disconnections.

Section 6. Maintenance and Permits

The Customer shall obtain any governmental authorizations and permits required for the construction and operation of the Facility and interconnection facilities.

The Customer shall periodically maintain and test the RF Generator in accordance with the manufacturer's specifications and all applicable safety and performance standards.

Section 7. Access to Premises

The Company may enter the Customer's premises to inspect the Customer's protective devices and read or test the meter. The Company may disconnect the interconnection facilities without notice if the Company reasonably believes a hazardous

Net Metering and Interconnection Agreement

conditions exists and such immediate action is necessary to protect persons, or the Company's facilities, or property of others from damage or interference caused by the Customer's facilities, or lack of properly operating protective devices.

Section 8. Limitation on Consequential, Incidental and Indirect Damages

To the fullest extent permitted by law, neither customer nor company, nor their respective officers, directors, agents, employees, members, parents or affiliates, successors or assigns, or their respective officers, directors, agents, nor employees successors or assigns, shall be liable to the other party or their respective members, parents, subsidiaries, affiliates, officers, directors, agents, employees, successors or assigns for claims, suits, actions or causes of action for incidental, indirect, special, punitive, multiple or consequential damages connected with or resulting from performance or non-performance of this agreement, or any actions undertaken in connection with or related to this agreement, including without limitation, any such damages which are based upon causes of action for breach of contract, tort (including negligence and misrepresentation), breach of warranty, strict liability, statute, operation of law, under any indemnity provision or any other theory of recover. The obligor's liability shall be limited to direct damages only, and such direct damages shall be the sole and exclusive measure of damages and all other judicial remedies or damages are waived. The provisions of this section shall apply regardless of fault and shall survive termination, cancellation, suspension, completion or expiration of this agreement. Notwithstanding anything in this section to the contrary, any provision or provisions of this section will not apply to the extent it is finally determined by a court of competent jurisdiction, including appellate review if pursued, to violate the laws or Constitution of the State of Tennessee.

Section 9. Facilities Charges

The Customer is responsible for all equipment and installation costs of the Facility.

The Company shall inspect the inverter settings of the RF Generator. The customer shall pay \$50 to the Company for each inspection.

The Customer shall pay to the Company any additional charges, as determined by the Company, for equipment, labor, metering, testing or inspections requested by the Customer.

Section 10. Monthly Charges

All monthly charges shall be in accordance with the tariff schedule under which the Customer takes service. Such charges shall be based on the Customer's net energy for the billing period, to the extent that the net energy exceeds zero. The Customer's net energy shall be calculated by subtracting the energy, if any, delivered by the Customer to the Company from the energy delivered by the Company to the Customer. To the extent that the Customer's net energy is zero or negative during the billing period, the Customer shall pay only the non-usage sensitive charges of the standard schedule. The Customer shall receive no compensation from the Company for negative net energy during the billing period. The negative energy during the billing period shall be carried forward and credited against positive energy usage in subsequent billing periods.

Net Metering and Interconnection Agreement

The Net Metering Period shall be defined as each successive 12-month period beginning with the first meter reading date following the date of interconnection of the renewable fuel generator with the Company's facilities. Any negative net energy at the end of a Net Metering Period shall be carried forward to the next Net Metering Period only to the extent that the negative net energy does not exceed the positive net consumption for the current Net Metering Period.

Negative net energy is not transferable, and the Customer shall receive no compensation from the Company for any negative net energy upon termination of service from the Company.

Section 11. Term of Agreement

The term of this Agreement shall be the same as the term of the otherwise applicable standard rate schedule. This Agreement shall remain in effect until modified or terminated in accordance with its terms or applicable regulations or laws.

Section 12. Assignment

This Agreement and all provisions hereof shall inure to and be binding upon the respective parties hereto, their personal representatives, heirs, successors, and assigns. The Customer shall not assign this Agreement or any part hereof without the prior written consent of the Company, and such unauthorized assignment may result in termination of this Agreement.

Section 13. Notices

All written notices shall be directed as follows:

For the Company:

Appalachian Power Company
Customer Services
P.O. Box 2021
Roanoke, VA 24022-2121

For the Customer:

Name: _____

Attention: _____

Address: _____

City: _____ State: _____ Zip Code: _____

Customer notices to Company shall refer to the Customer's electric service account number.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized representatives.

Dated this _____ day of _____, 20__.

Kingsport Power Company:

City of Kingsport:

By: _____

By: _____

Title: _____

Title: _____



AGENDA ACTION FORM

Consideration of a Resolution Repealing Resolution 2010-082 and Authorizing the Mayor to Execute an Agreement with the Greater Kingsport Area Chamber of Commerce, Inc. for the Kingsport Convention and Visitors Bureau for the Downtown Project

To: Board of Mayor and Aldermen
From: John G. Campbell, City Manager

Action Form No.: AF-370-2009
Work Session: November 2, 2009
First Reading: N/A
Final Adoption: November 3, 2009
Staff Work By: Mayor Phillips/Billingsley
Presentation By: Mayor Phillips

Recommendation: Approve the resolution.

Executive Summary:

At the special called work session on October 29, 2009 the mayor, with the general assent of the members, requested that the city attorney prepare an agreement with the Chamber of Commerce to provide funding of up to \$46,000 to be used solely for the promotion of downtown Kingsport. The program, which is designated in the agreement as the Downtown Promotion Program, will be administered through the Convention and Visitors Bureau. Attached is a draft of the agreement, along with a resolution approving the agreement. This is the standard funding agreement, except it provides that one-half of the funding will be made available immediately rather than quarterly, since it is already the second quarter of the fiscal year. The other one-half of the funding will be split evenly and will be available in the third and fourth quarters, like it is in other funding agreements the city has with the Chamber and other community organizations. This resolution also repeals Resolution No. 2010-082, which authorized the mayor to execute an agreement with the Downtown Kingsport Association under certain conditions.

Attachments:

- 1. Agreement
2. Resolution

Funding source appropriate and funds are available: _____

Table with 3 columns (Y, N, O) and 7 rows (Joh, Mallicote, Marsh, Munsey, Parham, Shupe, Phillips)

AGREEMENT
BETWEEN
THE CITY OF KINGSPORT, TENNESSEE
AND
THE GREATER KINGSPORT AREA CHAMBER OF COMMERCE, INC.
“DOWNTOWN PROMOTION PROGRAM

THIS AGREEMENT made and entered into as of this ____ day of November, 2009, by and between the City of Kingsport, hereinafter called "CITY", and the Greater Kingsport Area Chamber of Commerce, Inc. for its Kingsport Convention and Visitors Bureau, hereinafter called "KCVB".

WITNESSETH:

WHEREAS, the KCVB is a not-for-profit agency as defined by Tennessee Code Annotated §§6-54-111 and 48-51-101 et seq., and is eligible to receive funds for this purpose; and

WHEREAS, CITY is authorized by Tennessee Code Annotated §6-54-111 et seq. to provide financial assistance to nonprofit organizations and not-for-profit corporations; and

WHEREAS, KCVB has requested financial assistance pursuant to said state law which CITY has approved; and

WHEREAS, the CITY agrees to provide funding to be used solely in the promotion of downtown Kingsport, and the KCVB, is agreeable to administer the program; and

WHEREAS, the parties desire to set forth the terms and conditions with respect to the use of funds to be provided.

NOW THEREFORE, in consideration of the premises, the parties agree as follows:

1. **PURPOSE OF THE AGREEMENT.** The purpose of this Agreement is to provide a program to promote the central business district of the CITY, hereinafter “downtown”, and to state the terms and conditions upon which financial assistance will be provided by CITY, the manner in which the project will be carried out by KCVB, and responsibilities of each party.
2. **DESCRIPTION OF THE PROJECT.** KCVB agrees to operate a program known as the Downtown Promotion Program with the sole purpose of promoting downtown Kingsport through advertisement, activities, and other way in which KCVB determines will promote downtown Kingsport as a destination for tourism, commerce, and residential.

3. **MAXIMUM PAYMENT.** It is expressly understood and agreed that the total amount to be paid by CITY to KCVB under this Agreement will not exceed FORTY-SIX THOUSAND DOLLARS (\$46,000).
4. **REQUEST FOR REIMBURSEMENT.** KCVB will bill CITY for the actual net operating costs incurred on a quarterly basis using forms and procedures specified by CITY. However, due to the fact that the fiscal year is already in the second quarter and the Christmas season is less than two months away, and promotion of downtown Kingsport needs to begin immediately, the City Recorder is authorized to release up to TWENTY-THREE THOUSAND DOLLARS (\$23,000) immediately upon the proper execution of this Agreement to KCVB. KCVB will be responsible for submitting actual operating costs of the Downtown Promotion Program incurred using forms and procedures specified by CITY showing the proper expenditure of such funds released immediately upon the execution of this Agreement, although such documentation need not be presented prior to the release of these funds.
5. **REIMBURSEMENT BY CITY.** CITY will honor all requests for reimbursement up to amount as stated in paragraph 3 provided that KCVB is complying with its obligations provided herein. However, reimbursement of any cost pursuant to this Section will not constitute a final determination by CITY of the allowability of such costs and will not constitute a waiver of any violation of the terms of the Agreement.
6. **AUDITS.** The final determination of the amount subject to reimbursement under the terms of this Agreement will be based on an audit conducted by or acceptable to CITY. KCVB will permit CITY or its representatives to inspect all work, materials, payrolls, and other records with regard to the project, and to audit the books, records, and accounts of KCVB with regard to the project. Such records will be retained for this purpose for a period of not less than three years. Subsequent to the close of KCVB fiscal year for which operating assistance is provided, KCVB will furnish a final audit report prepared by a governmental audit agency, or an independent public accountant, which will include at minimum a balance sheet, statement of cash flows, statement of activity and all necessary related footnotes for KCVB fiscal year.
7. **ACCOUNTING, RECORD KEEPING AND REPORTING REQUIREMENTS.** KCVB will establish and maintain an accounting, record-keeping and reporting system consistent with generally accepted accounting principles and no less than those recommended in the Accounting Manual for Recipients of Grant Funds in Tennessee, published by the Comptroller of the Treasury, State of Tennessee. KCVB further agrees to submit to CITY a copy of its most recent audited report at the same time said report is submitted to the State government.
8. **CHANGES.** Any changes in this Agreement will require a written amendment executed by all parties hereto.
9. **ASSIGNMENT AND SUBLETTING.** KCVB will not assign any rights to funds without prior written authorization from CITY.

10. **TERMINATION.** This Agreement may be terminated by either party by giving written notice to the other at least 30 days before the effective date of such termination. In the event of such termination, KCVB will be entitled to receive just and equitable compensation for any eligible operating expenses paid or incurred as of the termination date, but in no event will this amount exceed FORTY-SIX THOUSAND DOLLARS (\$46,000).
11. **CHANGED CONDITIONS AFFECTING PERFORMANCE.** KCVB will immediately notify CITY of any change in conditions or of any other event which may significantly affect its ability to perform the project in accordance with the provisions of this Agreement.
12. **ASSURANCES.** KCVB hereby assures CITY that KCVB is legally entitled to funds from CITY.
13. **OPERATING INFORMATION.** KCVB will provide any relevant information requested by CITY concerning KCVB's program including, but not limited to, contracts for third party financial arrangements, annual financial statements and audit reports, schedules and fees.
14. **PROJECT TERM.** CITY and KCVB have previously agreed that the project term for this contract is from the date first written above to June 30, 2010. Accordingly, funds allocated by CITY to KCVB can be used to reimburse KCVB for eligible project expenses beginning on the date first written above. In no event will CITY participate in project expenses incurred after June 30, 2010.
15. **REPORTING.** KCVB will submit to the Board of Mayor and Aldermen a bi-annual report setting out how funds allocated by CITY to KCVB assist in carrying out the purpose of the project as described under the terms of this Agreement.
16. **INDEPENDENT CONTRACTOR.** KCVB'S relationship with CITY is that of an independent contractor and nothing in this Agreement should be construed to create a partnership, joint venture or employer-employee relationship. KCVB is not the agent of the CITY and is not authorized to make any representation, contract or commitment on behalf of CITY. Neither KCVB nor its employees will, under any circumstances, be considered servants, agents, partners or a joint venture of CITY, and CITY will at no time be legally responsible for any negligence or other wrong doing by KCVB, or its employees or agents.
17. **INDEMNIFICATION FOR DAMAGES, TAXES AND CONTRIBUTIONS.** KCVB will indemnify, defend, and hold harmless CITY, including without limitation, its officers, agents, employees and volunteers from and against:
 - A. Any and all claims, demands, losses, damages, defense costs, or liability of any kind or nature which CITY may sustain or incur or which may be imposed upon it for injury to or death of persons, or damage to property as a result of, arising out of, or in any manner

connected with KCVB'S performance under the terms of this Agreement, excepting any liability arising out of the sole negligence of the CITY. Such indemnification includes any damage to the person(s), or property(ies) of KCVB and third persons.

B. Any and all Federal, State and Local taxes, charges, fees, or contributions required to be paid with respect to KCVB and its officers, employees and agents engaged in the performance of this Agreement (including, without limitation, unemployment insurance, social security and payroll tax withholding).

IN WITNESS WHEREOF, the signatures of the parties hereto as of the date and year first written in duplicate original form.

**GREATER KINGSPORT AREA CHAMBER OF
COMMERCE, INC.**

MILES BURDINE, President and CEO

**KINGSPORT CONVENTION & VISITORS
BUREAU**

JUD TEAGUE, Executive Director

CITY OF KINGSPORT

DENNIS R. PHILLIPS, Mayor

ATTEST:

JAMES H. DEMMING, City Recorder

APPROVED AS TO FORM:

J. MICHAEL BILLINGSLEY, City Attorney

RESOLUTION NO. _____

A RESOLUTION REPEALING RESOLUTION NO. 2010-082 AND AUTHORIZING THE MAYOR TO EXECUTE AN AGREEMENT WITH THE GREATER KINGSPORT AREA CHAMBER OF COMMERCE, INC. FOR THE DOWNTOWN PROMOTION PROGRAM THROUGH THE KINGSPORT CONVENTION AND VISITORS BUREAU

WHEREAS, the Greater Kingsport Area Chamber of Commerce, Inc. is agreeable through the Kingsport Convention and Visitors Bureau to provide a program promoting downtown Kingsport; and

WHEREAS, the board of mayor and alderman finds that such program will benefit the welfare of the citizens of the city and is in the public interest and for a public purpose;

Now therefore,

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

SECTION I. That Resolution No. 2010-082 approved by the board on October 6, 2009 is hereby repealed.

SECTION II. That the findings of the Board stated above are incorporated in the section and 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, an agreement with the Greater Kingsport Area Chamber of Commerce, Inc. in the amount of up to \$46,0000 to be used solely for the Downtown Promotion Program administered through the Kingsport Convention and Visitors Bureau for the remainder of fiscal year 2009-2010.

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

ADOPTED this the 3rd day of November, 2009.

DENNIS R. PHILLIPS, MAYOR

ATTEST:

JAMES H. DEMMING, CITY RECORDER

APPROVED AS TO FORM:

J. MICHAEL BILLINGSLEY, CITY ATTORNEY



AGENDA ACTION FORM

Consideration of a Resolution Authorizing the Issuance of \$1,200,000 of Qualified School Construction Bonds

To: Board of Mayor and Aldermen
 From: John G. Campbell, City Manager

Action Form No.:	AF-371-2009	Final Adoption:	November 3, 2009
Work Session:	November 2, 2009	Staff Work By:	David Frye
First Reading:	N/A	Presentation By:	David Frye

Recommendation: Approve a Resolution

Executive Summary:

On August 20, 2009, the Board of Education approved the application for \$4,934,220 for Qualified School Construction Bonds. This application was one of 28 that totaled \$368,115,455 and there were 15 projects approved that totaled \$118,863,782. None of the Kingsport City School's project were approved. On October 28th a call was received from the Tennessee State School Bond Authority. They informed us that one of the applicants that had been approved had withdrawn their application and that they had now approved the project for the renovations to Dobyys-Bennett High School. This project totals \$1,211,504 and included the renovation to two CTE classrooms (\$250,000), renovations to the current central office space (\$585,034), renovations to the Legion Center (\$315,470), and the purchase of an emergency backup generator (\$61,000). The projects for the renovations of the CTE classrooms and the Legion Center were also included in the Build America Bonds and may be removed from that bond issue with the approval of the Qualified School Construction Bonds.

The Qualified School Construction Bonds are interest free term bonds. These bonds mature in 15 years. The scheduled annual debt service will be \$80,000 (\$1,200,000/15). The actual payments will be less than \$80,000 due to interest earned on the sinking fund that will be created to pay the principal amount at maturity.

Attachments:

- Resolution

Funding source appropriate and funds are available: _____

	<u>Y</u>	<u>N</u>	<u>O</u>
Joh	—	—	—
Mallicote	—	—	—
Marsh	—	—	—
Munsey	—	—	—
Parham	—	—	—
Shupe	—	—	—
Phillips	—	—	—

**LOAN AGREEMENT
(\$1,250,000 SERIES 2009)**

DATED AS OF _____, 2009

BETWEEN

TENNESSEE STATE SCHOOL BOND AUTHORITY

AND

CITY OF KINGSPORT, TENNESSEE

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LOAN AGREEMENT

This Loan Agreement is made and entered into as of the ____ day of _____, 2009, by and between the TENNESSEE STATE SCHOOL BOND AUTHORITY (the "Authority"), and CITY OF KINGSPORT, TENNESSEE (the "Borrower").

WITNESSETH:

WHEREAS, the Authority is a corporate governmental agency and an instrumentality of the State of Tennessee (the "State"), organized and existing pursuant to the Tennessee State School Bond Authority Act, Sections 49-3-1201 et seq., Tennessee Code Annotated, as amended (the "Act"), and is authorized to issue its bonds or notes to make loans to any county, metropolitan government, incorporated city or town in the State (each a "Local Government") for qualified school credit bond projects as defined in the Act, including buildings, structures, improvements, and equipment for schools and land to be acquired on which any projects are to be constructed with part of the proceeds of such bonds; and

WHEREAS, it has heretofore been determined by the governing body of the Borrower to be in the best interest of the Borrower to finance the acquisition of any land on which a public school facility is to be constructed with a portion of the loan proceeds if any land is to be acquired and to finance the construction, repair, rehabilitation, improvement and equipping of Dobyns-Bennett High School (as more fully defined hereinafter, the "Project"); and

WHEREAS, under Tennessee law, the Borrower is authorized to enter into a loan agreement with the Authority to finance the Projects; and

WHEREAS, the Borrower has determined that it is necessary and desirable to borrow sufficient funds to accomplish the purposes set forth above; and

WHEREAS, the Authority has determined to lend money to the Borrower for the purposes set forth above on the terms and conditions set forth herein; and

WHEREAS, to obtain funds for such purposes the Authority will issue and sell its Qualified School Construction Bonds, Series 2009 (the "Series 2009 Bonds"), to be secured by and to contain such terms and provisions as are set forth in that certain resolution adopted by the Authority on _____, 2009, as supplemented by the First Supplemental Resolution adopted by the Authority on _____, 2009 including as a part thereof the 2009 Series Certificate and Tax Credits Separation Certificate authorized thereby, and as from time to time amended or supplemented (the "Resolution"), and deposit the proceeds from the sale of the Series 2009 Bonds with the Authority to be disbursed in the manner and for the purposes set forth in the Resolution, all as more fully provided therein.

NOW, THEREFORE, in consideration of the respective representations and agreements hereinafter contained, the Authority and the Borrower agree as follows:

ARTICLE I

Definitions

Section 1.01. Defined Terms. In addition to the words, terms and phrases elsewhere defined in this Loan Agreement or in the Resolution, the following words, terms and phrases as used in this Loan Agreement shall have the following respective meanings:

“Accountable Event of Loss of Qualified School Construction Bond Status” means (a) any act or any failure to act on the part of the Authority, the Borrower or other borrowers receiving proceeds from the sale of the Series 2009 Bonds, constituting a breach of a covenant or agreement of the Authority, the Borrower or such other borrowers, as the case may be, contained in the Resolution, the Tax Certificate, this Loan Agreement or the similar loan agreements of such other borrowers, or the Series 2009 Bonds, as applicable which causes the Series 2009 Bonds to lose their status, or fail to qualify, as “qualified school construction bonds” within the meaning of Section 54F of the Code, or (b) the making by the Authority, the Borrower or such other borrowers of any representation contained in the Resolution, the Tax Certificate, this Loan Agreement or the similar loan agreements of such other borrowers, or the Series 2009 Bonds, as applicable which was untrue when made and the untruth of which representation at such time causes any Series 2009 Bonds to lose their status, or fail to qualify, as “qualified school construction bonds” within the meaning of Section 54F of the Code.

“Act” means the Tennessee State School Bond Authority Act, Sections 49-3-1201 et seq., Tennessee Code Annotated, as amended from time to time.

“Additional Payment” means the amounts described in Section 3.04(b)(ii) through Section 3.04(b)(vi) hereof.

“Administrative Expenses” means the Authority’s fees and expenses of carrying out and administering its powers, duties and functions in connection with the Loan Agreement, the Projects and the Resolution, and shall include without limiting the generality of the foregoing: administrative costs and expenses with respect to the Loan, construction monitoring, legal, accounting and consultant’s services and expenses, the fees and expenses of the State Treasurer, the Trustee, the Paying Agent and the Registrar, payments to the United States Treasury to satisfy any arbitrage rebate requirements under the Code and any other expenses required or permitted to be paid by the Authority under the provisions of the Act, the Loan Agreement and the Resolution or otherwise required to be made by the Borrower pursuant to Section 3.04 hereof.

“Administrative Expenses Account” means the Administrative Expenses Account of the Series 2009 Bond Account of the Bond Fund.

“Authority” means the Tennessee State School Bond Authority, the corporate governmental agency and instrumentality created by the Act, or any body, agency or instrumentality of the State which shall hereafter succeed to the powers, duties and functions of the Authority.

“Authorized Authority Representative” means any member of the Authority, any Assistant Secretary of the Authority and any other officer or employee of the Authority authorized by law, by resolution of the Authority or by a certificate of the Secretary of the Authority to perform the act or sign the document in question.

“Authorized Borrower Representative” means the Mayor, the Budget or Finance Director of the Borrower or his designee as evidenced by a certificate of the Budget or Finance Director, and any such other Person from time to time authorized to act in behalf of a Borrower pursuant to the Charter, or ordinance or resolution of the governing body of such Borrower, a copy of which is filed with the Secretary of the Authority, to perform such act or execute such document on behalf of the Borrower pursuant to a certificate signed by any of the above and giving the name and specimen signature of the Person or Persons so designated.

“Available Project Proceeds” means (A) the excess of (i) the proceeds from the sale of the Series 2009 Bonds allocable to the Project, over (ii) the issuance costs of the Series 2009 Bonds allocable to the Loan financed by the issue (to the extent that such costs do not exceed 2% of such proceeds), and (B) the proceeds from any investment of the excess described in subparagraph (A).

“Bond Fund” means the fund established under Section 6.02 of the Resolution.

“Bonds” means the Authority’s Qualified School Construction Bonds issued pursuant to the Resolution, as supplemented by any Supplemental Resolution.

“Borrower” means City of Kingsport, Tennessee.

“Borrower Account” means the account in the Loan Fund designated for the Borrower pursuant to Section 6.03 of the Resolution in which the proceeds of the Loan to the Borrower are deposited.

“Borrower Interest Sub-Account” means that portion of the Loan Repayment Account created for interest payments within the Series 2009 Bond Account for the Borrower in accordance with Section 3.04(a) hereof.

“Borrower Loan Repayment Sub-Account” means that portion of the Loan Repayment Account created within the Series 2009 Bond Account for the Borrower in accordance with the Resolution as described in Section 3.04(b) hereof.

“Borrower Request”, “Borrower Order” and “Borrower Consent” means, respectively, a written request, order or consent signed by an Authorized Borrower Representative and delivered to the Authority.

“Borrower Principal Sub-Account” means that portion of the Loan Repayment Account created for principal payments within the Series 2009 Bond Account for the Borrower in accordance with Section 3.04(a) hereof.

“Business Day” means any day other than (a) a Saturday or Sunday, (b) a day on which banking institutions located in the State or in any of the cities in which the principal United

States office of the Trustee, any Paying Agent or the Registrar is located are required or authorized by law or executive order to close, or (c) a day on which the New York Stock Exchange is closed.

“Closing Date” means the date of issuance and delivery of the Series 2009 Bonds.

“Code” means the Internal Revenue Code of 1986, as amended, including applicable regulations and revenue rulings thereunder. Reference herein to sections of the Code are to the sections thereof as they exist on the date of execution of this Loan Agreement, but include any successor provisions thereof to the extent applicable to the Series 2009 Bonds.

“Conversion Coupon” means the interest borne by the Series 2009 Bonds from and after the Tax Credit Conversion Date, if any, in addition to the Supplemental Coupon, if any.

“Conversion Coupon Rate” means the rate of interest to be borne on the Loan equal to the Tax Credit Rate which shall become payable if the Series 2009 Bonds are converted to Interest Bearing Bonds (without consideration of any Supplemental Coupon) pursuant to Article VII hereof.

“Cost” or “Cost of the Projects” means the following to the extent for Qualified Purposes:

(a) The cost of improving, equipping, and repairing the Projects, or any combination of such purposes, demolishing structures on the Project sites, and acquiring the site upon which any of the Projects is to be constructed and easements necessary or convenient for the Projects;

(b) The cost of labor, materials, machinery and equipment as payable to contractors, builders and materialmen in connection with the Projects;

(c) Governmental charges levied or assessed during equipping of the Projects or upon any property acquired therefor, and premiums on insurance in connection with the Projects during construction;

(d) Fees and expenses of architects and engineers for estimates, surveys and other preliminary investigations, environmental tests, soil borings, appraisals, preparation of plans, drawings and specifications and supervision of the Projects properly chargeable to the Projects, as well as for the performance of all other duties of architects and engineers in relation to the construction and installation of the Projects;

(e) Expenses of administration, supervision and inspection properly chargeable to the acquisition and construction of Projects, including the fees of the Borrower relating to the design, construction and equipping of the Projects and all other items of expense, not elsewhere specified herein, incident to the construction, installation and placing in operation of the Projects;

(f) Fees and expenses incurred in connection with the issuance, sale, execution and delivery of the Series 2009 Bonds and this Loan Agreement, including but not

limited to, fees and expenses of the Authority and its counsel, Bond Counsel, the Trustee, Paying Agent and Registrar and its counsel, printing costs, rating fees and discount; and

(g) Any other cost of the Projects permitted to be financed pursuant to the Act and the Code.

“Date of Loss of Qualified School Construction Bond Status” means the date specified in a Determination of Loss of Qualified School Construction Bond Status as the date from and after which the Series 2009 Bonds lost their status, or failed to qualify, as “qualified school construction bonds” as defined in Section 54F of the Code as a result of an Accountable Event of Loss of Qualified School Construction Bond Status, which date could be as early as the date of initial issuance and delivery of the Series 2009 Bonds.

“Default Share” means, for purposes hereof, a fraction, the numerator of which shall be the original principal amount of the Loan, less the aggregate amount from the Borrower’s Principal Sub-Account applied to the principal payment or redemption of the Series 2009 Bonds, and the denominator of which shall be the outstanding principal amount of the Series 2009 Bonds on the date of determination.

“Determination of Loss of Qualified School Construction Bond Status” means (a) a final determination by the IRS (after the Authority has exhausted or waived all administrative appeal remedies) determining that an Accountable Event of Loss of Qualified School Construction Bond Status has occurred and specifying the Date of Loss of Qualified School Construction Bond Status and the amount of Series 2009 Bonds that are subject to Accountable Event of Loss of Qualified School Construction Bond Status, or (b) a non-appealable holding by a court of competent jurisdiction holding that an Accountable Event of Loss of Qualified School Construction Bond Status has occurred and specifying the Date of Loss of Qualified School Construction Bond Status and the amount of Qualified School Construction Bonds that are subject to the Accountable Event of Loss of Qualified School Construction Bond Status.

“Event of Default” means any event defined in Section 5.01 hereof.

“Interest Bearing Bonds” means the Series 2009 Bonds from and after the Tax Credit Conversion Date, if any.

“Investment Income” means, with respect to the applicable period of determination, all amounts received by the Authority during such period in connection with the Authority’s investment of amounts in the applicable Fund or Account subject to such determination, established for the Borrower under the Resolution in connection with the Series 2009 Bonds, excluding the principal portion of any such investments.

“Investment Losses” means, with respect to the applicable period of determination, all losses of principal incurred during such period in connection with the Authority’s investment of amounts in the applicable Fund or Account subject to such determination, established for the Borrower under the Resolution in connection with the Series 2009 Bonds.

“Investment Obligations” means and includes any instruments, securities, certificates, obligations and the like if and to the extent the same are at the time permitted and legal for

investment of the Authority's funds pursuant to the Act or in accordance with any other law, regulation, guideline or policy, in effect from time to time, applicable to the Authority with respect to investments; provided, however, that an investment in the State's Pooled Investment Fund and/or Local Government Investment Fund shall be deemed to be an investment in Investment Obligations.

"IRS" means the Internal Revenue Service.

"Loan" means the loan made by the Authority to the Borrower pursuant to this Loan Agreement as described in Section 2.02 hereof.

"Loan Agreement" means this Loan Agreement as it now exists and as it may thereafter be amended.

"Loan Fund" means the fund established under Section 6.03 of the Resolution.

"Loan Repayments" means the payments on account of principal of and interest on the Loan, Administrative Expenses and any and all other amounts payable by the Borrower hereunder, including amounts attributable to any Supplemental Coupon, Conversion Coupon, Additional Payments, Investment Losses and Redemption Price or Borrower's Proportionate Share of the foregoing, when applicable.

"Loan Repayment Dates" means: (i) with respect to that portion of Loan Repayments attributable to principal on the Series 2009 Bonds to be paid at the maturity date of such Series 2009 Bonds, the ____ day of each month commencing with _____ and continuing on the same day of each month thereafter until maturity, or if such day is not a Business Day, then on the next preceding Business Day, any date on which payment is demanded by the Authority, and to the extent not paid, then at Maturity; (ii) with respect to that portion of Loan Repayments consisting of Administrative Expenses, the ____ day of _____, 200__ through 20__, inclusive, or if such day is not a Business Day, then on the next preceding Business Day, at any time on demand of the Authority, and at Maturity; (iii) with respect to that portion of Loan Repayments attributable to interest being paid on the Series 2009 Bonds on account of any Supplemental Coupon or the Conversion Coupon, if any (in each case Borrower's Proportionate Share), monthly as agreed upon by the Authority and Borrower in a schedule executed at the time of entering into this Loan Agreement and in any event providing for payment not later than the Business Day immediately preceding the date any such interest is due to be paid on the Series 2009 Bonds; and (iv) with respect to all other Loan Repayments, at any time on demand by the Authority.

"Local Government" means any county, metropolitan government, incorporated city or town in the State.

"Mandatory Prepayment Date" means the date selected by the Authority, with written notice thereof provided to the Borrower, as the date on which the Loan shall be mandatorily prepaid in whole or in part.

“Mandatory Prepayment Price” means the amount determined pursuant to the provisions of Section 6.02 hereof required to be paid by the Borrower in prepayment of its Loan pursuant to Sections 2.05, 3.04 and 6.01 hereof.

“Maturity” means _____, 2024, the maturity date of the Series 2009 Bonds.

“Outstanding”, when used with respect to the Series 2009 Bonds or any Series of Bonds issued pursuant to the Resolution, means as of any date, all Series 2009 Bonds or other Series of Bonds, respectively, theretofore authenticated and delivered under the Resolution, except:

- (a) any Bonds cancelled at or prior to such date;
- (b) any Bonds (or portions of Bonds) the principal of, Supplemental Coupon, Conversion Coupon or Redemption Price, if any, which shall have been paid in accordance with the terms hereof;
- (c) any Bonds in lieu or in substitution for which other Bonds shall have been authenticated and delivered pursuant to the Resolution; and
- (d) Bonds deemed to have been paid as provided in the Resolution.

“Outstanding Loan Principal Amount” means that amount necessary to repay the original principal amount of the Loan at the time of determination.

“Paying Agent” means any Paying Agent for the Series 2009 Bonds, its successors and any other Person which may at the time be substituted in its place, pursuant to the Resolution.

“Person” means any individual, corporation, partnership, limited partnership, joint venture, association, joint-stock company, trust, unincorporated association, limited liability corporation or partnership, or government or any agency or subdivision thereof, or other legal entity or group of entities.

“Pledged Revenues” means with respect to the Series 2009 Bonds (i) all payments made or required to be made by the Borrower pursuant to this Loan Agreement; (ii) funds held under the Resolution with respect to the Series 2009 Bonds and the earnings thereon (subject to the application thereof to the purposes and on the conditions set forth in the Resolution); and (iii) Unobligated State-Shared Taxes at such time as such taxes have been withheld pursuant to law and the Loan Agreement and which have become property of the Authority.

“Prepayment Date” means the date on which the Borrower is required to deposit the Mandatory Prepayment Price with the Paying Agent or Trustee pursuant to Section 6.01 hereof, which day may be any Business Day.

“Prior Lien Obligations” means the following: _____, between the _____ and the Borrower.

“Project” or “Projects” means the construction, rehabilitation or repair of public school facilities, acquisition of land for construction of public school facilities, if any, and equipment

for public school facilities as described in Exhibit C hereto. Exhibit C shall be amended automatically and without further action required by the Borrower to conform Exhibit C to any additional project that is approved pursuant to Section 2.05 hereof. Where more than one Project is being financed, Project applies to each Project individually or collectively, as the context requires.

“Proportionate Share” means, (x) with respect to interest on the Series 2009 Bonds, a fraction the numerator of which is the principal amount of the Loan made under this Agreement and the denominator of which is the principal amount of the Series 2009 Bonds, and (y) with respect to the allocation of Administrative Expenses and any Redemption Price on the Series 2009 Bonds, (1) if such payment is directly attributable to the actions of the Borrower (including the Borrower’s action or failure to act when otherwise required to act hereunder), one hundred percent (100%) of such expense, and (2) if such payment is attributable to the general administration of the Series 2009 Bonds and the Authority’s Obligations in connection therewith, and (3) if such payment is attributable to the general administration of all Series of Bonds and the Authority’s obligations in connection therewith, a fraction the numerator of which is the Outstanding Loan Principal Amount and the denominator or which is an amount equal to all Series of Bonds which are Outstanding.

“Qualified Purposes” shall include only costs properly allocable to (i) the construction, rehabilitation or repair of a public school facility, (ii) the acquisition of land on which such a facility is to be constructed with part of the proceeds of the Series 2009 Bonds, and (iii) the acquisition of equipment to be used in such portion or portions of the public school facility that is being constructed, rehabilitated or repaired with the proceeds of the Series 2009 Bonds.

“Redeemed Amount” means the principal portion of Series 2009 Bonds redeemed from the Mandatory Prepayment Price.

“Redemption Date” means that date any portion of the Series 2009 Bonds are required to be redeemed.

“Redemption Price” means the amount required to be paid to the holders of the Series 2009 Bonds upon early redemption of the Series 2009 Bonds as described in the Resolution, as supplemented by the 2009 Series Certificate and as described in Section 6.02 hereof.

“Registrar” means the registrar for the Series 2009 Bonds and its successor or successors and any other Person which may at any time be substituted in its place pursuant to the Resolution.

“Resolution” means the Qualified School Construction Bonds General Bond Resolution adopted by the Authority on _____, 2009, as supplemented by the First Supplemental Resolution adopted by the Authority on _____, 2009, including as a part thereof the 2009 Series Certificate and the Tax Credits Separation Certificate authorized thereby, as from time to time amended or supplemented in accordance with the terms and provisions thereof.

“Series” or “Series of Bonds” or “Bonds of a Series” means all Bonds authorized by Supplemental Resolution designated as being of the same series initially delivered as part of a simultaneous transaction evidencing a borrowing authorized by the Resolution to fund one or

more Loans made under one or more related Loan Agreements under the Resolution, and any Bonds thereafter authenticated and delivered in lieu thereof or in exchange therefor.

“Series 2009 Bonds” means the Qualified School Construction Bonds, Series 2009, of Authority from time to time Outstanding under the Resolution.

“State” means the State of Tennessee.

“State-Shared Taxes” means taxes imposed and collected by the State pursuant to law and appropriated and allocated by law to a Local Government, whether appropriated or allocated for a particular purpose or for the general use of such Local Government, as identified by resolution of the Tennessee Local Development Authority and as established by Section 4-31-102, Tennessee Code Annotated, as amended from time to time.

“Supplemental Coupon” means the interest, if any, which the Series 2009 Bonds bear at the time of issuance.

“Supplemental Coupon Rate” means the rate of interest to be borne by the Series 2009 Bonds at the time of issuance which rate is determined to be required by the Authority in order to complete successfully the sale of the Series 2009 Bonds.

“Tax Credit Conversion Date” means the date that the Paying Agent receives written notice from the Authority of its election to convert the Series 2009 Bonds to Interest Bearing Bonds as provided in Section 6 of the Tax Credits Separation Certificate.

“Tax Credit Rate” means the “applicable credit rate” within the meaning of Section 54A(b)(3) of the Code set by the United States Department of Treasury for the sale date of the Series 2009 Bonds.

“Tax Credits Separation Certificate” means the Principal, Interest and Tax Credits Separation Certificate delivered by the Authority in connection with the issuance of the Series 2009 Bonds to permit, under certain circumstances, the principal component and the tax credit component to be separated or stripped from the Series 2009 Bonds and, under certain circumstances, to be recombined into unstripped tax credit bonds, and to permit similar activities to be performed if the Series 2009 Bonds bear interest at a Conversion Coupon Rate.

“Trustee” means the bank, trust company or national banking association appointed pursuant to Section 13.01 of the Resolution to act as trustee under the Resolution, if any, and its successor or successors and any other bank, trust company or national banking association at any time substituted in its place pursuant to the Resolution.

“Unobligated State-Shared Taxes” means State-Shared Taxes which have not been pledged or applied to any other prior indebtedness.

Section 1.02. Interpretation. Words of the masculine gender shall be deemed and construed to include correlative words of the feminine and neuter genders. The words “Bond”, “holder”, and “person” shall include the plural as well as the singular number unless the context

shall otherwise indicate. The word “person” shall include corporations, associations, natural persons and public bodies unless the context shall otherwise indicate.

Any certificate or opinion made or given by an Authorized Authority Representative or an Authorized Borrower Representative may be based, insofar as it relates to legal matters, upon a certificate or opinion of or representations by counsel, unless such officer knows that the certificate or opinion or representations with respect to the matters upon which his certificate or opinion may be based as aforesaid are erroneous, or in the exercise of reasonable care should have known that the same were erroneous. Any certificate or opinion made or given by counsel may be based (insofar as it relates to factual matters, information with respect to which is in the possession of the Authority or a Borrower), upon the certificate or opinion of or representations by an officer or officers or officials of the Authority or the Borrower, unless such counsel knows that the certificate or opinion or representations with respect to the matters upon which his certificate or opinion may be based as aforesaid are erroneous, or in the exercise of reasonable care should have known that the same were erroneous.

ARTICLE II

The Series 2009 Bonds and the Loan

Section 2.01. Issuance of the Series 2009 Bonds. In order to obtain funds to lend to the Borrower to assist in financing the Projects and pay costs of issuance in connection with the Series 2009 Bonds and the Loan Agreement as provided in Section 2.02 hereof, the Authority agrees to issue and deliver its Series 2009 Bonds. The Series 2009 Bonds shall not bear interest, except for any Supplemental Coupon, any interest required to be paid pursuant to Section 6.02(e) hereof and any Conversion Coupon required to be paid pursuant to Article VII hereof pursuant to a conversion of the Series 2009 Bonds to Interest Bearing Bonds. The portion of the proceeds received from the sale of the Series 2009 Bonds in an amount equal to the costs of issuance of the Series 2009 Bonds allocable to the Loan shall be deposited by the Authority in the Administrative Expenses Account of the Series 2009 Bond Account and the portion of the balance of the proceeds of the Series 2009 Bonds allocable to the Loan shall be deposited by the Authority in the Borrower Account of the Loan Fund pursuant to Section 6.03 of the Resolution.

Section 2.02. Loan. The Authority hereby agrees to lend and advance to the Borrower and the Borrower hereby agrees to borrow and accept from the Authority, the Loan in the principal amount of \$1,250,000. The Authority shall disburse the proceeds of the Loan to the Borrower from amounts on deposit in the Borrower Account of the Loan Fund derived from proceeds of the Series 2009 Bonds, upon receipt of a requisition as set forth in Section 2.04 hereof.

Section 2.03. Use of Proceeds by the Borrower. The Borrower will use the funds loaned to it by the Authority pursuant to Section 2.02 hereof solely to pay the Costs of the Projects.

Section 2.04. Disbursements of Loan Proceeds. Pursuant to Section 6.03 of the Resolution, the Authority shall use the moneys in the Borrower Account of the Loan Fund solely to pay the Costs of the Projects, including the reimbursement of the Borrower for advances and payments made or costs incurred by the Borrower for or in connection with the Projects to the

extent permitted by Section 2.07(k) hereof. The Authority shall disburse funds from the Borrower Account of the Loan Fund only upon receipt of a requisition, appropriately completed and signed by an Authorized Borrower Representative in the form attached hereto as **Exhibit A**.

Section 2.05. Completion of the Projects. When requesting final payment from the Borrower Account of the Loan Fund, the Borrower shall cause to be submitted the requisition required by Section 2.04 hereof and a certificate signed by an Authorized Borrower Representative in the form attached hereto as **Exhibit B**. Said certificate shall state that no further funds will be withdrawn from the Borrower Account of the Loan Fund to pay the Cost of the Projects. Notwithstanding the foregoing, such certificate shall state that it is given without prejudice to any rights against third parties which exist at the date of such certificate or which may subsequently come into being. All moneys shall be expended from the Borrower Account of the Loan Fund within two and one-half (2½) years of the date of the issuance of the Series 2009 Bonds unless otherwise approved by the Authority. All moneys remaining in the Borrower Account of the Loan Fund, including investment earnings thereon, may be used for other Qualified Purposes of the Borrower or for other borrower(s) as may be approved in the opinion of such bond counsel (with appropriate adjustment being made to the amounts to be repaid by Borrower) upon receipt of an opinion of nationally recognized bond counsel that the additional projects or additional borrower(s), as the case may be, do not adversely affect the qualification of the Series 2009 Bonds as “qualified school construction bonds” within the meaning of Section 54F of the Code or shall be used to redeem Series 2009 Bonds on a Redemption Date as set forth in the Resolution. Any premium required to redeem Series 2009 Bonds shall be paid from Borrower’s funds other than any derived from the proceeds of the sale of the Series 2009 Bonds. The Authority does not make any warranty, either express or implied, that the moneys which will be paid into the Borrower Account of the Loan Fund and which, under the provisions of this Loan Agreement, will be available for payment of the Costs of the Projects, will be sufficient to pay all of the Costs of the Projects.

Section 2.06. Investment of Funds; Application of Investment Earnings. Any moneys held by the Authority in the Borrower Account of the Loan Fund shall be invested or reinvested by the Authority in Investment Obligations and shall be retained in the Loan Fund to be used for Costs of the Projects or for partial redemption of the Series 2009 Bonds as set forth in the Resolution and as contemplated by Sections 2.05 and 2.07(k) hereof.

Section 2.07. Tax Status of the Series 2009 Bonds. It is the intention of the parties hereto that the Series 2009 Bonds be and remain “qualified school construction bonds” within the meaning of Section 54F of the Code, and to that end the Borrower hereby represents, warrants and agrees as follows:

(a) It shall not take any action or fail to take any action, or permit such action to be taken on its behalf, or use or permit the use of any proceeds of the Series 2009 Bonds, or cause or permit any circumstances within its control to arise or continue, if the same would adversely affect either the status of the Series 2009 Bonds as “qualified school construction bonds” under Section 54F of the Code or the tax credit allowed under Section 54A of the Code with respect thereto.

(b) All Available Project Proceeds will be spent on Qualified Purposes and costs of issuance of the Series 2009 Bonds not to exceed 2% of such proceeds. The description of the Projects to be financed with the proceeds of the Series 2009 Bonds is included as **Exhibit C** attached hereto. The Borrower may finance additional Qualified Purposes from proceeds of the Series 2009 Bonds only with the express approval by the Authority upon receipt of opinion of nationally recognized bond counsel as provided in Section 2.05 hereof.

(c) Subject to Sections 2.05 and 6.02(a) and (c), 100% of the Available Project Proceeds shall be used for Qualified Purposes within the 3-year period beginning on the date of issuance of the Series 2009 Bonds. A binding commitment with a third party to spend at least 10% of the Available Project Proceeds will be incurred within the 6-month period beginning on the date of issuance of the Series 2009 Bonds;

(d) All applicable State and local law requirements governing conflicts of interest are satisfied with respect to the Series 2009 Bonds.

(e) If the Secretary of the Treasury prescribes additional conflicts of interest rules governing appropriate Members of Congress, Federal, State and local officials and their spouses, such additional rules are satisfied with respect to the Series 2009 Bonds.

(f) The Borrower designates the Series 2009 Bonds as Qualified School Construction Bonds within the meaning of Section 54F of the Code.

(g) The Borrower will not take or omit to take any action, which action or omission will in any way cause the proceeds from the Loan to be applied in a manner other than as provided in this Loan Agreement or which would cause the holders of the Series 2009 Bonds or the tax credits association therewith to forfeit the tax credit allowed to such holder under the Code.

(h) Without limiting the generality of subsection (g) above, the Borrower (i) has complied with and will comply with all requirements of the Davis-Bacon Act (40 U.S.C. § 3141 *et seq.*), (ii) has caused and will cause all contractors and subcontractors who are employed at the actual work sites to comply with all requirements of the Davis-Bacon Act, (iii) will monitor such compliance by contractors and subcontractors, and (iv) upon request of the Authority, will confirm compliance with this subsection (h), all in connection with the acquisition, construction, rehabilitation, repair and equipping of the Projects. The Borrower acknowledges that such compliance includes but is not limited to causing contractors and subcontractors employed at the Qualified Projects to pay workers who are employed on the actual work sites to pay no less than the prevailing wage locally, as established by the Wage and Hour Division of the US Department of Labor, plus fringe benefits normally paid on similar projects in conformity with the Davis-Bacon Act, the inclusion in contracts of required contractual language and the posting of job-site notices as required by the Davis-Bacon Act.

(i) The Borrower agrees not to change the ownership, use or nature of any property financed with the proceeds of the Loan or take any deliberate action that will adversely affect the qualification of the Series 2009 Bonds as a Qualified School Construction Bond under Section 54F of the Code as long as any portion of the Series 2009 Bond remains outstanding

(whether or not defeased), and shall notify the Authority in writing in advance of any proposed changes as aforesaid.

(j) The Borrower acknowledges and understands that (i) to the extent that less than 100% of the Available Project Proceeds are expended for Qualified Purposes by the close of the 3 year period beginning on the date of issuance of the Series 2009 Bonds, or any longer period permitted by the Secretary of the Treasury pursuant to Section 54A(d)(2)(B)(iii) of the Code, the unspent Available Project Proceeds may be required to be used to redeem Series 2009 Bonds within 90 days after the end of such period, and (ii) the Authority may be required to call any or all of the Series 2009 Bonds for redemption prior to maturity and/or convert the Series 2009 Bonds to pay cash interest in the event the Borrower (or other borrowers under similar loan agreements) defaults in its obligations hereunder (or such other borrowers default in their obligations under such other loan agreements), any or all of which may result in increased costs hereunder including costs incidental to redeeming Series 2009 Bonds in authorized denominations.

(k) No costs of the Projects to be paid from Available Project Proceeds have been expended to date, or if they have been expended, such costs have been expended not more than 60 days prior to the date the resolution approving this Loan Agreement was approved by the governing body of the Borrower.

ARTICLE III

Payment Obligations of Borrower

Section 3.01. Loan Repayments. The Borrower agrees to pay to the Authority all Loan Repayments on each Loan Repayment Date, in the amounts and in the manner hereinafter provided, to be deposited by the Authority to the Series 2009 Bond Account in the Bond Fund to be applied to the payment of principal on the Series 2009 Bonds, whether at Maturity or upon redemption, interest thereon (if there is a Supplemental Coupon and/or Conversion Coupon payable with respect to the Series 2009 Bonds), Administrative Expenses, Additional Payments and Investment Losses.

Section 3.02. Return of Excess Payments. Upon payment in full of all Loan Repayments due under the Loan Agreement, any funds remaining in the Borrower's Loan Repayment Account, including any Sub-Account thereof, shall be returned to the Borrower.

Section 3.03. Time and Manner of Payment. Except as provided in Section 3.05 hereof, the Borrower agrees to make each Loan Repayment directly to the Authority on or before each Loan Repayment Date in lawful money of the United States of America by wire transfer of immediately available funds. The Authority shall send a statement to the Borrower setting forth the amount of the Borrower's Loan Repayment with respect to each Loan Repayment Date.

Section 3.04. Amount, Allocation and Deposit of Loan Repayments. The amount of each of the Loan Repayments to be made on each Loan Repayment Date shall be determined, allocated and deposited as set forth below:

(a) *Borrower Principal Sub-Account and Interest Sub-Account.* There shall be established the Borrower Principal Sub-Account and Interest Sub-Account within the Borrower Account within the Loan Repayment Account created within the Series 2009 Bond Account. The following amounts shall be deposited to and retained in the Borrower's Principal Sub-Account and Interest Sub-Account for use as hereinafter provided:

(i) On each of the dates set forth on **Exhibit D**, the Borrower shall pay to the Authority the related "Principal" amount set forth on **Exhibit D**, as such amount may be adjusted at the time of determination plus interest in the amount necessary to pay the Borrower's Proportionate Share of the Supplemental Coupon, if any, and Conversion Coupon, if any, borne with respect to the Series 2009 Bonds and with such payments to be made as near as possible in equal monthly amounts (prior to any adjustment as hereafter provided) as shall be sufficient to pay any such Supplemental Coupon or Conversion Coupon, if any, on the Interest Payment Date (as defined in the Series 2009 Bonds) that immediately follows the next sequentially occurring Interest Payment Date and continuing thereafter in such order until the Series 2009 Bonds are paid in full, as follows:

(A) decreased by an amount equal to the Borrower's Investment Income in the Borrower's Principal Sub-Account and Interest Sub-Account, applied as directed by an Authorized Authority Representative toward the particular Loan Repayment as the same shall become due;

(B) decreased by an amount equal to the Borrower's Proportionate Share of any Investment Income in the Administrative Expenses Account of the Series 2009 Bond Account applied as directed by an Authorized Authority Representative toward Administrative Expenses as the same shall become due;

(C) decreased by the Redeemed Amount in inverse order of the Loan Repayment Date;

(D) increased by an amount equal to the Borrower's Investment Losses in Borrower's Loan Repayment Sub-Account; and

(E) increased by an amount equal to the Borrower's Investment Losses in Borrower's Principal Sub-Account and Interest Sub-Account.

(ii) earnings on the Loan Repayment while on deposit in the Borrower's Principal Sub-Account and Interest Sub-Account;

(iii) the Mandatory Prepayment Price, if any, and earnings thereon;

(iv) the Borrower's Proportionate Share of Investment Income reduced by the Borrower's Investment Losses, if any, from amounts on deposit in the Borrower's Principal Sub-Account and Interest Sub-Account; and

(v) The Borrower's Proportionate Share of any Investment Income in the Administrative Expenses Account of the Series 2009 Bond Account.

(b) *Borrower Loan Repayments.* (i) the amounts deposited to the Borrower's Principal Sub-Account and Interest Sub-Account as heretofore or hereafter provided shall be used by the Authority to pay principal of and interest on the Series 2009 Bonds as the same shall become due and no additional transfer to any other fund herein established shall be required.

(ii) In the event a principal amount of the Series 2009 Bonds equal to the Borrower's Default Share of the Series 2009 Bonds outstanding the day after the maturity date of the Series 2009 Bonds is not paid on such day from payments under this Loan Agreement by the Borrower or from the Borrower's Unobligated State-Shared Taxes, the Borrower shall pay to the Authority an Additional Payment with respect to such Default Share of the then outstanding Series 2009 Bonds, such Additional Payment to be in an amount sufficient for the Authority to pay to the holders of the Series 2009 Bonds such Default Share of the then Outstanding Series 2009 Bonds, together with an amount equal to such Default Share multiplied by the Tax Credit Rate on the Series 2009 Bonds divided by 360 multiplied by the number of days from the date of Maturity through the date of payment of the Borrower's Default Share of such Outstanding Series 2009 Bonds, which amount shall be deposited to the Borrower's Interest Sub-Account. The Authority shall pay to the holders of the Series 2009 Bonds such Additional Payment paid by the Borrower.

(iii) The Borrower shall also pay to the Authority upon demand by the Authority (but in all events prior to the Maturity of the Series 2009 Bonds) the Borrower's Investment Losses resulting in insufficient funds to pay the Series 2009 Bonds when due, and any such payment by the Borrower shall be deposited by the Authority to the Borrower's Principal or Interest Sub-Account, as the case may be, to be applied to the payment of the Series 2009 Bonds, whether at Maturity or on the Redemption Date.

(iv) Upon demand by the Authority (but in all events prior to the Redemption Date), the Borrower shall also pay to the Authority an amount equal to (a) the Borrower's Proportionate Share of any Redemption Price required to be paid to the holders of the Series 2009 Bonds upon partial redemption of the Series 2009 Bonds from funds on deposit in the Borrower Account of the Loan Fund which will not be used to pay Costs of the Projects plus (b) such additional amount, if any, as shall be determined to be required by the Authority to effect the contemplated redemption of the Series 2009 Bonds in authorized denominations, and any such payment by the Borrower shall be deposited by the Authority to the Borrower's Principal and Interest Sub-Accounts to be applied to the payment of any such Redemption Price on the Series 2009 Bonds upon redemption.

(v) Upon demand by the Authority, the Borrower shall pay to the Authority the Mandatory Prepayment Price and the Mandatory Prepayment Price shall be used to redeem the Series 2009 Bonds, in whole or in part, in accordance with the Resolution and to pay any redemption premium thereon.

(vi) On each Loan Repayment Date, the Borrower shall also pay an amount equal to Borrower's Proportionate Share of the Supplemental Coupon or Conversion

Coupon, if any, required to be paid by the Authority pursuant to the Resolution or Tax Credits Separation Certificate.

(c) *Administrative Expense Account of the Series 2009 Bond Account.* The Administrative Expenses portion of each of the Loan Repayments shall be paid by the Borrower in an amount equal to the Borrower's Proportionate Share of Administrative Expenses for any period commencing on the Closing Date, or the Business Day on which Administrative Expenses were last paid to and ending on the day next preceding the Loan Repayment Date and shall be deposited to the Administrative Expenses Account.

Section 3.05. Payments Assigned. It is understood and agreed that the rights of the Authority under this Loan Agreement (except its rights to indemnification, payment of expenses and receive notices), are assigned to the Trustee, if any, pursuant to the Resolution. The Borrower consents to such assignment. The Borrower agrees to pay to the Authority or at the direction of the Authority, the State Treasurer, or a separate custodian, all amounts payable by the Borrower that are so assigned unless the Borrower shall have been notified in writing that an Event of Default exists hereunder which is continuing, in which event all amounts payable hereunder shall be paid to the Trustee. All such assigned payments shall be deposited as provided in the Resolution.

Section 3.06. Payments; Obligation of Borrower Unconditional. The obligation of the Borrower to make payments hereunder and to perform and observe all other covenants, conditions and agreements hereunder shall be absolute and unconditional until payment of all Borrower obligations hereunder, irrespective of any defense or any rights of setoff, recoupment or counterclaim which the Borrower might otherwise have against the Authority or the Trustee, if any. Until payment of all Borrower obligations hereunder, the Borrower shall not suspend or discontinue any such payment hereunder or fail to observe and perform any of their other covenants, conditions and agreements hereunder for any cause, including without limitation failure of consideration, failure of title to any part of all of the Projects, or commercial frustration of purpose, or any damages to or destruction or condemnation of all or any part of the Projects, or any change in the tax or other laws of the United States of America, the State of Tennessee or any political subdivision of either, or any failure of the Authority, or the Trustee, if any, to observe and perform any covenant, condition or agreement, whether express or implied, or any duty, liability or obligation arising out of or in connection with any document in connection with the financing of the Projects. Nothing contained in this Section, however, shall be construed to release the Authority or the Trustee, if any, from the performance of any of their respective obligations hereunder or under any documents related hereto.

Section 3.07. Pledge of Taxing Power. The Borrower covenants that it shall provide for the annual levy and collection of a tax sufficient to pay when due the Loan Repayments payable under the Loan Agreement if and when they become due and payable. The Borrower hereby pledges its full faith and credit to such payments. The tax to be levied pursuant to this Section shall be assessed, levied, collected and paid in like manner as other taxes of the Borrower. Such tax shall not be included within any statutory or other limitation of rate or amount for the Borrower but shall be excluded therefrom and be in addition thereto and in excess thereof, notwithstanding and without regard to the prohibitions, restrictions or requirements of any other law. To the extent other moneys are not available therefor, there shall be set aside by the

Borrower from the tax to be levied pursuant to this Section and the Act in a special fund an amount sufficient for the payment of the amounts under this Loan Agreement, and such fund shall be used exclusively for such purpose and shall not be used for any other purpose until the amounts payable hereunder have been paid in full. Notwithstanding the foregoing, the tax hereinabove described will not be required to be levied by the Borrower or, if levied, may be proportionately reduced to the extent of payments made from other funds of the Borrower appropriated by the governing body of the Borrower to the payment of the amounts described above from other revenues of the Borrower.

Section 3.08. Pledge of Unobligated State-Shared Taxes. The Borrower has not previously pledged any portion of its State-Shared Taxes to other obligations. As security for the Loan Repayments the Borrower hereby pledges its Unobligated State-Shared Taxes in an amount equal to the maximum annual principal portions of the Loan Repayments, plus the Supplemental Coupon, if any, and Conversion Coupon, if any, due under this Loan Agreement, plus such additional amount, not to exceed 2% per annum, as shall be sufficient to pay when due any additional payments due from Borrower under this Loan Agreement as and when they become due and payable.

The Borrower hereby authorizes the Authority without further recourse to direct that any Unobligated State-Shared Taxes due to the Borrower be withheld and paid over to the Authority for credit to the Borrower's Loan Repayments at any time a Loan Repayment becomes delinquent in an amount necessary to liquidate the amount of the delinquent payment and/or to pay an amount equal to the Borrower's Default Share of the Series 2009 Bonds outstanding the day after the maturity date of the Series 2009 Bonds.

So long as this Loan Agreement remains outstanding, the Borrower agrees that it will not create, assume or incur any pledge, encumbrance, lien or charge on a parity with or prior to the lien created under this Loan Agreement on the Borrower's Unobligated State-Shared Taxes.

ARTICLE IV

Representations and Covenants

Section 4.01. Representations and Covenants of the Authority. The Authority makes the following representations and covenants as the basis for the undertakings on the part of the Borrower contained herein:

(a) The Authority is a corporate governmental agency and instrumentality of the State of Tennessee, organized and existing pursuant to the Act. The Authority is authorized to issue the Series 2009 Bonds in accordance with the Act and to use the proceeds thereof to provide funds for making the Loan.

(b) The Authority has complied with the provisions of the Act and has full power and authority to execute and deliver this Loan Agreement and to consummate the transactions contemplated hereby and to perform its obligations hereunder.

(c) The Authority is not in violation of any of the laws of the State of Tennessee which would affect its existence or its powers referred to in the preceding subsection (b).

(d) By Resolution duly adopted by the Authority and in full force and effect on the date hereof, the Authority has authorized the execution and delivery of this Loan Agreement and the Series 2009 Bonds, the due performance of all obligations of the Authority hereunder, under the Resolution and under the Series 2009 Bonds, and the taking of any and all actions as may be required on the part of the Authority to carry out, give effect to and consummate the transactions contemplated by each of the foregoing, and the Authority will take all actions within its reasonable control to obtain all approvals necessary in connection with the foregoing that have not been obtained as of the date hereof.

(e) This Loan Agreement has been duly authorized, executed and delivered by the Authority, and upon due authorization, execution and delivery by the Borrower, will constitute a valid contractual obligation of the Authority. The Series 2009 Bonds will constitute valid and binding limited special obligations of the Authority and will be payable solely from the Pledged Revenues and any amounts otherwise available under the Resolution, and will be entitled to the benefit of the Resolution. None of the Authority (except to the foregoing extent), the State of Tennessee, or any political subdivision thereof shall be obligated, directly or (except as a Borrower from the Authority) indirectly, to pay the principal of, interest on, if any, or Redemption Price on the Series 2009 Bonds. The Authority has no taxing power.

(f) The execution and delivery by the Authority of this Loan Agreement, the Series 2009 Bonds, and the Resolution and the consummation of the transactions contemplated in each of the foregoing will not violate any resolution, mortgage, deed of trust, note, loan agreement or other contract or instrument to which the Authority is a party or by which it is bound or, to the best of the Authority's knowledge, any judgment, decree, order, statute, rule or regulation applicable to the Authority, and the Authority will take all actions within its reasonable control to obtain all consents, approvals, authorizations and orders of governmental or regulatory authorities which are required for the consummation of the transactions contemplated thereby that have not been obtained as of the date hereof

(g) The Authority will apply or cause to be applied the proceeds of the Series 2009 Bonds in accordance with the Resolution and this Loan Agreement.

(h) There is no action, suit, proceeding or investigation at law or in equity before or by any court, public board or body pending or threatened against or affecting the Authority or, to the best knowledge of the Authority, any basis therefor, wherein an unfavorable decision, ruling, or finding would adversely affect the transactions contemplated hereby or by the Resolution or the Series 2009 Bonds or which, in any way, would adversely affect the validity of this Loan Agreement, the Series 2009 Bonds, the Resolution or any agreement or instrument to which the Authority is a party and which is used or contemplated for use in consummation of the transactions contemplated by each of the foregoing.

(i) The Authority covenants that it will not pledge the amounts derived from this Loan Agreement other than to secure the Series 2009 Bonds.

(j) The Authority will designate the Series 2009 Bonds as “qualified school construction bonds” pursuant to Section 54F of the Code and will take all actions that can reasonably be expected of the Authority to preserve the status of the Series 2009 Bonds as “qualified school construction bonds.”

Section 4.02. Representations and Covenants of the Borrower. The Borrower makes the following representations and covenants, in addition to those elsewhere set forth herein, as the basis for the undertakings on the part of the Authority contained herein:

(a) The Borrower is a municipal corporation or political subdivision, as appropriate, within the meaning of the Act, duly created and existing under the laws of the State of Tennessee and possessing general powers of taxation, including the power to levy ad valorem taxes, and has full legal right, power and authority (i) to conduct its business and own its properties, (ii) to enter into this Loan Agreement, and (iii) to carry out and consummate all other transactions contemplated by this Loan Agreement.

(b) With respect to the authorization, execution and delivery of this Loan Agreement, the Borrower has complied and will comply with all applicable laws of the State of Tennessee.

(c) The Borrower has duly approved the execution and delivery of this Loan Agreement and has authorized the taking of any and all action as may be required on the part of the Borrower to carry out, give effect to and consummate the transactions contemplated by this Loan Agreement and the Resolution.

(d) This Loan Agreement has been duly authorized, executed and delivered by the Borrower and, assuming due authorization, execution and delivery by the Authority, will constitute a legal, valid and binding obligation of the Borrower enforceable in accordance with its terms.

(e) There is no action, suit, proceedings, inquiry on investigation, at law or in equity, before or by any court, public board or body, pending or, to the knowledge of the Borrower, threatened against the Borrower, nor is there any basis therefor, (i) affecting the creation, organization or existence of the Borrower or the title of its officers to their respective offices, (ii) seeking to prohibit, restrain or enjoin the execution or delivery of this Loan Agreement or (iii) in any way contesting or affecting the validity or enforceability of this Loan Agreement or any agreement or instrument relating to any of the foregoing or used or contemplated for use in the consummation of the transactions contemplated by any of the foregoing.

(f) The Borrower is not in any material respect in breach of or in default under any applicable law or administrative regulation of the State or the United States of America or any applicable judgment or decree or any agreement or other instrument to which the Borrower is a party or by which it or any of its properties is bound, and no event has occurred which with the passage of time, the giving of notice or both would constitute such a breach or default; and the execution and delivery of this Loan Agreement and compliance with the respective provisions thereof will not conflict with or constitute a breach of or default under any

applicable law or administrative regulation of the State or of the United States of America or any applicable judgment or decree or any agreement or other instrument to which the Borrower is a party or by which it or any of its property is bound.

(g) The Borrower will not take or omit to take any action which action or omission will in any way cause the proceeds of the Series 2009 Bonds advanced to it to be applied in a manner contrary to that provided in the Resolution and this Loan Agreement.

(h) The Borrower has not taken or omitted to take, and will not take or omit to take, any action, and knows of no action that any other person, firm or corporation has taken or intends to take, which adversely affect the tax credit allowed under Section 54A of the Code with respect to the Series 2009 Bonds.

(i) The Borrower is not in default under any loan agreement, note, bond, mortgage or other instrument evidencing or securing indebtedness.

(j) The Borrower approves the issuance of the Series 2009 Bonds and, as of the date hereof, is not in default in the performance or observance of any of the covenants, conditions, agreements or provisions of this Loan Agreement and all warranties and representations of Borrower herein are true and correct on the date hereof.

(k) The Borrower covenants and agrees to provide annual audited financial statements to the Authority as soon as reasonably practical upon their becoming available and if not made available within one year of the end of the fiscal year, then the Borrower shall provide unaudited annual financial statements for such fiscal year within one year of the end of the fiscal year and audited financial statements for such fiscal year when they become available and, upon request, such other financial information as shall be reasonably requested to the Authority.

(l) The Borrower covenants and agrees to comply with the terms and requirements applicable to Borrower in the Resolution.

(m) All information provided to the Authority in this Loan Agreement or in any other document or instrument with respect to the Loan, this Loan Agreement or the Projects, was at the time provided, and is now, true, correct and complete, and such information does not omit to state any material fact necessary to make the statements therein, in light of the circumstances under which they were made, not misleading.

ARTICLE V

Events of Default

Section 5.01. Events of Default. An Event of Default shall occur hereunder if any one or more of the following events shall happen:

(a) the payments required by Sections 3.01 through 3.08 are not paid punctually when due;

(b) default shall be made by the Borrower in the due performance of or compliance with any of the terms hereof, other than those referred to in the foregoing subdivision (a), and such default shall continue for sixty (60) days after the Authority or the Trustee shall have given the Borrower written notice of such default (or in the case of any such default which cannot with due diligence be cured within such 60-day period, if the Borrower shall fail to proceed promptly to commence curing the same and thereafter prosecute the curing of such default with due diligence, it being intended in connection with any such default not susceptible of being cured with due diligence within the 60 days that the time to cure the same shall be extended for such period as may be reasonably necessary to complete the curing of the same with all due diligence);

(c) the Borrower shall file a voluntary petition in bankruptcy, or shall be adjudicated a bankrupt or insolvent, or shall file any petition or answer seeking any reorganization, composition, readjustment, liquidation or similar relief for itself under any present or future statute, law or regulation, or shall seek or consent to or acquiesce in the appointment of any trustee, receiver or liquidator of the Borrower or of all or any substantial part of its properties or of the Projects or shall make any general assignment for the benefit of creditors, or shall admit in writing its inability to pay its debts generally as they become due; or

(d) a petition shall be filed against the Borrower seeking any reorganization, composition, readjustment, liquidation or similar relief under any present or future statute, law or regulation and shall remain undismissed or unstayed for an aggregate of 90 days (whether or not consecutive), or if any trustee, receiver or liquidator of the Borrower or of all or any substantial part of its properties or of the Projects shall be appointed without the consent or acquiescence of the Borrower and such appointment shall remain unvacated or unstayed for an aggregate of 90 days (whether or not consecutive).

Section 5.02. Remedies. (a) In the event the Borrower shall fail to remit the Loan Repayments when and as required under this Loan Agreement, the Commissioner of Finance and Administration of the State, upon notification by the Authority, shall without further authorization, withhold the Loan Repayment due from the Borrower's Unobligated State-Shared Taxes. The Authority shall deliver notice of the foregoing to the Borrower as required by the Act.

(b) Upon the continuing occurrence of an Event of Default not cured pursuant to subsection (a) above, (regardless of the pendency of any proceeding which has or might have the effect of preventing the Borrower from complying with the terms of this Loan Agreement), the Authority, the Trustee, as assignee of the Authority, or any other Person who has succeeded to the rights of the Authority hereunder, at any time thereafter and while such Event of Default shall continue, may, at its option, and subject to the provisions of the Resolution, take any action at law or in equity to collect amounts then due and thereafter to become due hereunder, or to enforce performance and observance of any obligation, agreement or covenant of the Borrower under this Loan Agreement. Any amounts collected pursuant to action taken under this Article shall be applied in accordance with the Resolution.

ARTICLE VI

Prepayment

Section 6.01. Prepayment. The Borrower shall not have the right to optionally prepay its Loan. The Borrower shall be required to prepay a portion of its Loan from excess amounts in the Borrower Account of the Loan Fund as set forth in Section 2.05 hereof and Section 6.02(a) hereof. Notwithstanding the above, Borrower may defease the Loan in whole in the event of a Determination of Loss of Qualified School Construction Bond Status if the Authority has converted the Series 2009 Bonds to Interest Bearing Bonds.

Section 6.02. Mandatory Prepayment Price or Defeasance Price.

(a) The Loan shall be subject to mandatory prepayment in such amount as shall be determined under Section 6.02(d) if the Borrower fails to expend all proceeds in Borrower's Account of the Loan Fund within three years of the issuance of the Series 2009 Bonds and no extension of the period for expenditures has been granted by the Internal Revenue Service.

(b) The Loan shall be subject to defeasance by the Borrower upon a Determination of Loss of Qualified School Construction Bond Status if the Borrower so elects and pays the amount required to defease its Loan obligations as provided in Section 6.02(e) hereof.

(c) Following the occurrence of the event specified in Section 6.02(a), the Borrower shall prepay the Loan on the Mandatory Prepayment Date at the Mandatory Prepayment Price.

(d) The Mandatory Prepayment Price with respect to a Section 6.02(a) event shall be that amount that the Borrower shall be required to prepay as of the designated Mandatory Prepayment Date, which shall be equal to unspent amounts in the Borrower's Account of the Loan Fund (which shall be used, to the extent possible, to redeem Series 2009 Bonds), plus the Borrower's Proportionate Share of any Redemption Price for the Series 2009 Bonds that will be redeemed (which shall be paid by Borrower from sources other than any proceeds derived from the sale of the Series 2009 Bonds and investment earnings thereon), if any, plus such additional amount as shall be determined to be required by the Authority to permit the contemplated redemption of the Series 2009 Bonds in authorized denominations.

(e) To defease the Loan obligations, the Borrower shall be required to pay as of the designated defeasance date (which shall be agreed upon with the Authority) an amount which shall be equal to the sum of (i) the Outstanding Loan Principal Amount (less the aggregate amount from Borrower's Principal or Interest Sub-Accounts available to be applied to the defeasance of the Loan obligations) together with (ii) interest at the Conversion Coupon Rate on the amount described in (e)(i) above from the date on which the Determination of Loss of Qualified School Construction Bond Status occurs until the Maturity date of the Series 2009 Bonds.

Section 6.03. Partial Prepayment. Any principal prepayment amount shall be applied in reduction of payment obligations set forth on **Exhibit D** as Borrower shall elect by written notice to the Authority with the consent of the Authority.

Section 6.04. Deposit of Prepayment Amount. The prepayment amount shall be deposited with the Treasurer, its custodian or the Trustee in immediately available funds not later than 10:00 a.m., Nashville time, on the Prepayment Date.

Section 6.05. Discharge of Other Obligations. Notwithstanding any other provisions hereof, this Loan Agreement shall not terminate on the date on which the Borrower shall be obligated to prepay (whether or not any delay in the completion of such prepayment shall be the fault of Authority), nor shall the Borrower's obligations hereunder cease when the Borrower shall have paid all amounts payable hereunder (including all amounts due under Article III hereof) without set-off, counterclaim, abatement, suspension, deduction, diminution, or defense for any reason whatsoever, so long as the Series 2009 Bonds are Outstanding and unpaid, and until the Borrower shall have discharged or provision satisfactory to Authority shall have been made for the discharge of, all of its obligations under this Loan Agreement, which obligations have arisen on or after the date for prepayment, including the obligation to pay amounts due and payable on the date of the prepayment.

ARTICLE VII

Conversion and Defeasance Option

Section 7.01 Conditions to Conversion and Defeasance Option. Following a Determination of Loss of Qualified School Construction Bond Status and provided that the Authority and the Trustee shall have taken appropriate steps, if necessary, to terminate the prospective availability of tax credits payments under the Series 2009 Bonds, the Loan shall be converted into a Loan bearing interest at the Conversion Coupon Rate. In the event that a Determination of Loss of Qualified School Construction Bonds status has occurred and the Loan has been converted, Borrower at its option may defease its Loan obligation by paying the amount specified in Section 6.02(e) hereof.

Section 7.02 Interest Payments. Following any conversion provided for under Section 7.01 hereof, the Borrower shall pay interest on the Loan at the Conversion Coupon Rate. Interest payments shall be made on the Loan Repayment Dates or on such other dates as shall be agreed to by the Authority and the Borrower. Borrower agrees to pay on such other dates as shall be demanded by the Authority in order to enable the Authority to make its required payments in a timely manner under the Resolution and the Tax Credits Separation Certificate.

ARTICLE VIII

Indemnification

Section 8.01. Indemnification of Trustee and Authority. The Borrower covenants and agrees, to the extent it is authorized by applicable law, to indemnify the Trustee, if any, and the Authority and each successor trustee and the officers, directors, employees and agents of the

Trustee or any such successor trustee and the Authority (the Trustee, each successor trustee, the Authority, and such officers, directors, employees and agents being hereinafter referred to in this Section collectively as the “Indemnified Parties” and individually as an “Indemnified Party”) for, and to hold each Indemnified Party harmless against, any loss, liability, tax, assessment or other governmental charge (other than taxes applicable to their compensation hereunder) or expenses incurred without negligence, willful misconduct or bad faith on the part of such Indemnified Party, arising out of or in connection with the acceptance or administration of the Resolution or the trusts thereunder and the duties of the Trustee and the Authority thereunder (but only to the extent the Resolution, its administration, required duties and trusts thereunder are applicable to Borrower, this Loan Agreement or the Series 2009 Bonds), including enforcement of this Loan Agreement and this Section thereof and also including any liability which may be incurred as a result of failure to withhold, pay or report any tax, assessment or other governmental charge, and the costs and expenses incurred by such indemnified Party in the course of defending itself against or investigating any claim of liability in the premises. The obligations of the Borrower under this Section to compensate and indemnify the indemnified Parties and to pay or reimburse each Indemnified Party for expenses, disbursements and advances shall constitute an additional obligation hereunder and shall survive the satisfaction and discharge of this Loan Agreement.

ARTICLE IX

Miscellaneous

Section 9.01. Waiver of Statutory Rights. The rights and remedies of the Authority and the Borrower under this Loan Agreement shall not be adversely affected by any laws, ordinances, or regulations, whether federal, state, county, city, municipal or otherwise, which may be enacted or become effective from and after the date of this Loan Agreement affecting or regulating or attempting to affect or regulate any amounts payable hereunder.

Section 9.02. Non-Waiver by Authority. No failure by Authority or by any assignee to insist upon the strict performance of any term hereof or to exercise any right, power or remedy consequent upon a breach thereof, and no acceptance of any payment hereunder, in full or in part, during the continuance of such breach, shall constitute waiver of such breach or of such term. No waiver of any breach shall affect or alter this Loan Agreement or constitute a waiver of a then existing or subsequent breach.

Section 9.03. Remedies Cumulative. Each right, power and remedy of Authority provided for in this Loan Agreement shall be cumulative and concurrent and shall be in addition to every other right, power or remedy provided for in this Loan Agreement, or now or hereafter existing at law or in equity or by statute or otherwise, in any jurisdiction where such rights, powers or remedies are sought to be enforced, and the exercise or beginning of the exercise by the Authority or the Trustee, if any, of any one or more of the rights, powers or remedies provided for in this Loan Agreement or now or hereafter existing at law or in equity or by statute, or otherwise shall not preclude the simultaneous or later exercise by the Authority or Trustee of any or all such other rights, powers or remedies.

Section 9.04. Amendments, Changes and Modification. Except as otherwise provided in this Loan Agreement or in the Resolution, subsequent to the issuance of the Series 2009

Bonds and prior to the payment in full of the Series 2009 Bonds, this Loan Agreement may not be effectively amended, changed, modified, altered or terminated without the concurring written consent of the Trustee, if any, and the holders of the Series 2009 Bonds.

Section 9.05. Applicable Law - Entire Understanding. This Loan Agreement shall be governed exclusively by the applicable laws of the State of Tennessee. This Loan Agreement expresses the entire understanding and all agreements of the parties hereto with each other and neither party hereto has made or shall be bound by any agreement or any representation to the other party which is not expressly set forth in this Loan Agreement.

Section 9.06. Severability. In the event that any clause or provision of this Loan Agreement shall be held to be invalid by any court of competent jurisdiction, the invalidity of such clause or provisions shall not affect any of the remaining provisions of such instrument.

Section 9.07. Notices and Demands. All notices, certificates, demands, requests, consents, approvals and other similar instruments under this Loan Agreement shall be in writing, and shall be deemed to have been properly given and received if sent by United States certified or registered mail, postage prepaid, (a) if to the Borrower, addressed to the Borrower, at _____, (b) if to the Authority, addressed to the Authority, Attention: Director of Bond Finance, 1600 James K. Polk Office Building, Nashville, Tennessee 37243-0273, (c) if to the Trustee, addressed to the Trustee at _____, Attention: corporate Trust Department, or at such other addresses as any addressee from time to time may have designated by written notice to the other addressees named above. The Authority shall promptly forward to the Borrower copies of any notice received by it from the Trustee under the Resolution

Section 9.08. Headings and References. The headings in this Loan Agreement are for the convenience of reference only and shall not define or limit the provisions thereof. All references in this Loan Agreement to particular Articles or Sections are references to Articles or Sections of this Loan Agreement, unless otherwise indicated.

Section 9.09. Successors and Assigns. The terms and provisions of this Loan Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns.

Section 9.10. Multiple Counterparts. This Loan Agreement may be executed in multiple counterparts, each of which shall be an original but all of which together shall constitute but one and the same instrument.

Section 9.11. Amendments, Chances and Modifications of Resolution. The Authority covenants and agrees that it will not, without the prior written consent of the Borrower, enter into or consent to any amendment, change or modification of the Resolution which would adversely affect the Borrower's rights under this Loan Agreement.

Section 9.12. No Liability of Authority's and Borrower's Officers. No recourse under or upon any obligation, covenant or agreement contained in this Loan Agreement shall be had against any incorporator, member, director or officer, as such, past, present or future, of the

Authority or the Borrower, either directly or through the Authority or the Borrower. Any and all personal liability of every nature, whether at common law or in equity, or by statute or by constitution or otherwise, of any such incorporator, member, director or officer is hereby expressly waived and released by the Borrower and the Authority against the other's incorporators, members, directors or officers as a condition of and consideration for the execution of this Loan Agreement.

Section 9.13. Continuing Disclosure. Borrower agrees to furnish any and all financial information and operating data pertaining to it which is required to be disclosed by the Authority annually pursuant to Rule 15c2-12 of the Securities and Exchange Commission, at the times required by the Authority to comply with its secondary market disclosure obligations under Rule 15c2-12 obligations. The Authority agrees to provide to Borrower a list of the information and data required to be furnished by Borrower and the time frame within which the same is to be furnished to the Authority.

Signatures on Following Page

IN WITNESS WHEREOF, THE TENNESSEE STATE SCHOOL BOND AUTHORITY has executed this Loan Agreement by causing its name to be hereunto subscribed by two of its Authorized Officers; and CITY OF KINGSPORT, TENNESSEE has executed this Loan Agreement by causing its name to be hereunto subscribed by its Mayor and City Recorder, all being done as of the day and year first above written.

TENNESSEE STATE SCHOOL BOND AUTHORITY

(SEAL)

By: _____
Authorized Officer

ATTEST:

Authorized Officer

CITY OF KINGSPORT, TENNESSEE

(SEAL)

By: _____
Mayor

ATTEST:

City Recorder

EXHIBIT A
REQUISITION
Series 2009 Bonds

REQUISITION NO. _____

Tennessee State School Bond Authority

The undersigned, being an Authorized Borrower Representative within the meaning of that term as set forth in a loan agreement (the "Loan Agreement"), dated _____, 2009, by and between the Tennessee State School Bond Authority and City of Kingsport, Tennessee (the "Borrower"), submits this Requisition on behalf of the Borrower pursuant to Section 2.04 of the Loan Agreement, as follows:

1. Borrower hereby requests disbursement to the Borrower pursuant to the Loan Agreement of \$_____.

2. All amounts advanced hereunder will be used to pay Cost of the Projects, as defined in the Loan Agreement.

3. The amounts requested hereunder have not been the subject of a previous request for disbursement of funds.

4. The subject of this request is a proper Costs of the Projects, as described in the Loan Agreement.

5. The amount requested should be wired to:

Bank: _____
ABA Number: _____
Account Name: _____
Account Number: _____

It is understood that your duties will be discharged with respect to the disbursement requested hereunder if payment is made as provided herein.

IN WITNESS WHEREOF, the undersigned has hereunto set his (her) hand, this _____ day of _____, ____.

CITY OF KINGSPORT, TENNESSEE

Name:

Title: _____

Funding Date: _____, _____, ____.

After execution, fax the Requisition as follows.

Attn: _____
(615) _____ (Office Confirm)
(615) _____ (FAX)

EXHIBIT B

**COMPLETION CERTIFICATE
Series 2009 Bonds**

The undersigned, being an Authorized Borrower Representative within the meaning of that Loan Agreement (“Loan Agreement”), dated _____, 2009, by and between the Tennessee State School Bond Authority and City of Kingsport, Tennessee (the “Borrower”), submits this Completion Certificate on behalf of the Borrower pursuant to Section 2.05 of the Loan Agreement, as follows:

1. No additional advances of funds under the Loan Agreement will be requested from the Trustee, and no additional Requisitions for disbursement of funds will be presented to the Trustee;

2. The Project or Projects to be financed with the proceeds of the Loan under the Loan Agreement have been completed or sufficient funds are available to complete the Project or Projects to the satisfaction of the Borrower; and

3. The Authority and the Trustee are directed to apply any excess funds remaining in the Borrower Account of the Loan Fund under the Loan Agreement in accordance with the provisions of Section 2.05 of the Loan Agreement.

Notwithstanding the foregoing, this Certificate is given without prejudice to any rights against third parties which exist as of the date hereof or which may subsequently come into being.

IN WITNESS WHEREOF, the undersigned has hereunto set his (her) hand this _____ day of _____.

CITY OF KINGSPORT, TENNESSEE

Name: _____

Title: _____

EXHIBIT C
DESCRIPTION OF PROJECTS

EXHIBIT D
LOAN REPAYMENT SCHEDULE

Loan Repayment Date

Principal

The Board of Mayor and Aldermen of the City of Kingsport, Tennessee, met in regular session on November 3, 2009, at 7:00 p.m. at City Hall, Kingsport, Tennessee, with _____ presiding.

The following Aldermen were present:

_____.

The following Aldermen were absent:

_____.

There were also present: _____

After the meeting was duly called to order, the following resolution was introduced by _____, seconded by _____ and after due deliberation, was adopted by the following vote:

AYE: _____.

NAY: _____.

A RESOLUTION AUTHORIZING A LOAN UNDER A LOAN AGREEMENT BETWEEN THE CITY OF KINGSPORT, TENNESSEE, AND THE TENNESSEE STATE SCHOOL BOND AUTHORITY IN AN AGGREGATE PRINCIPAL AMOUNT OF NOT TO EXCEED ONE MILLION TWO HUNDRED FIFTY THOUSAND DOLLARS (\$1,250,000) AND THE EXECUTION AND DELIVERY OF THE LOAN AGREEMENT AND OTHER DOCUMENTS RELATING TO SAID BORROWING; AND PROVIDING FOR THE APPLICATION OF THE PROCEEDS OF SAID BORROWING AND THE PAYMENT OF THE CITY'S OBLIGATIONS UNDER THE LOAN AGREEMENT.

WHEREAS, pursuant to the Tennessee State School Bond Authority Act, Sections 49-3-1201, et seq., Tennessee Code Annotated, as amended (the "Act"), the Tennessee State School Bond Authority (the "Authority") is authorized to issue its bonds or notes ("Qualified School Construction Bonds") to make loans to any county, metropolitan government or incorporated city or town, in the State to provide funds to acquire land for and to construct, repair, rehabilitate, improve or equip schools for such local governments, if the same qualifies to be financed through the issuance of "qualified school construction bonds" as defined in Section 54F of the Internal Revenue Code of 1986, as amended (the "Code") ("Qualified School Construction Bond Projects"); and

WHEREAS, the Authority has determined that it will issue its Qualified School Construction Bonds, Series 2009 (the "Bonds") pursuant to the Act and a resolution of the Authority (the "Authority Resolution"), for the purpose of making loans to the City of Kingsport, Tennessee (the "City"), in addition to other cities and counties in the State, to fund Qualified School Construction Bond Projects; and

WHEREAS, the City has applied for a loan from the Authority and the City's application has been approved by the Authority for the purpose of receiving funds to acquire any land, if applicable, and to construct, repair, rehabilitate, improve and equip public school facilities in the

City, including projects relating to Dobyons-Bennett High School, all as more particularly identified in the Loan Agreement (as hereinafter defined) (collectively, the “Projects”) which are each a Qualified School Construction Bond Project; and

WHEREAS, under the Act, the City is authorized to enter into a loan agreement with the Authority to finance the Projects; and

WHEREAS, it is hereby determined to be in the best interests of the City to finance the Projects through a loan from the Authority to the City (the “Loan Agreement”) whereby the City will pledge its full faith and credit and unlimited taxing power to the payment of its obligations thereunder, including payment of amounts sufficient to pay its allocable share of the principal of and interest, if any, on the Bonds, costs of issuance of the Bonds, and certain administrative expenses; and

WHEREAS, the Loan Agreement shall be additionally secured by a pledge by the City of taxes imposed and collected by the State pursuant to law and appropriated and allocated to the City as identified by resolution of the Tennessee Local Development Authority and as established by Section 4-31-102, Tennessee Code Annotated, as amended from time to time (“State-Shared Taxes”), which have not been pledged or applied to any other indebtedness (“Unobligated State-Shared Taxes”) in an amount equal to the maximum annual principal payments to be made under the Loan Agreement plus the amount of the Supplemental Coupon, if any, plus the amount of the Conversion Coupon, if any (as those terms are defined in the Loan Agreement), plus an additional amount not to exceed .75% per annum; and

WHEREAS, the City has Unobligated State-Shared Taxes available to be pledged, and such Unobligated State-Shared Taxes in the preceding fiscal year are in an amount greater than

100% of the maximum annual principal payments to be made under the Loan Agreement plus the amount of the Supplemental Coupon, if any, plus the amount of the Conversion Coupon, if any, calculated at rates not to exceed 2.5% and 8%, respectively, per annum plus any additional payment to be made under the Loan Agreement if calculated at the rate of not to exceed .75% per annum; and

WHEREAS, there has been presented to this meeting the form of the Loan Agreement which appears to be in appropriate form and is an appropriate instrument to be executed and delivered for the purposes intended; and

WHEREAS, for the purposes of authorizing the loan from the Authority, the execution and delivery of the Loan Agreement by the City, the pledging of the City's full faith and credit and a portion of its Unobligated State-Shared Taxes for the payment of its obligations under the Loan Agreement, approving the assignment of such pledge to secure the Bonds, and authorizing the execution of such documents and certificates as shall be necessary to consummate the sale and delivery of the Bonds and of the Loan Agreement, the Board of Mayor and Aldermen (the "Governing Body") of the City adopts this Resolution.

NOW THEREFORE, BE IT RESOLVED by the Board of Mayor and Aldermen of Kingsport, Tennessee, as follows:

Section 1. Approval of Loan. For the purpose of providing funds to finance the costs of the Projects, including the payment of legal and fiscal costs incident to the issuance and sale of the Bonds and the Loan Agreement and making and receiving the loan herein authorized, there is hereby authorized a loan ("Loan") from the Authority in a principal amount not to exceed \$1,250,000. The City shall make payments of principal and interest in a manner consistent with

Section 54A of the Code until the final maturity date of the Bonds, which shall be established pursuant to the requirements of Section 54A, all in accordance with the terms of this Resolution and the Loan Agreement but in any event repayment of the Loan shall occur by the end of calendar year 2029. The Loan shall not bear interest except for any Supplemental Coupon (not to exceed 2.5% per annum) or any Conversion Coupon (not to exceed 8% per annum), but only if and to the extent the same are required to be paid under the Loan Agreement and as the same are approved by the Authority in connection with the sale of the Bonds.

Section 2. Approval of Loan Agreement. The form, terms and provisions of the Loan Agreement which have been presented at this meeting are hereby approved and the Mayor is hereby authorized, empowered and directed to execute and deliver and the City Recorder to attest the Loan Agreement in the name and on behalf of the City. The Loan Agreement is to be in substantially the form now before this meeting and hereby approved, or with such changes therein as shall be approved by the Mayor, the execution by such Mayor to constitute conclusive evidence of approval of any and all changes or revisions therein. From and after the execution and delivery of the Loan Agreement, the Mayor and the City Recorder are hereby authorized, empowered and directed to do all such acts and things and to execute all such documents as may be necessary to carry out and comply with the provisions of the Loan Agreement as executed.

Section 3. Pledge of Taxes. (a) The City hereby covenants and agrees, through the Governing Body, to annually levy and collect a tax upon all taxable property within the City, in addition to all other taxes authorized by law, sufficient to pay when due the amounts payable by the City under the Loan Agreement as and when they become due and payable and, for such purposes, the City hereby pledges such tax and the full faith and credit of the City to such payments, provided, however, that the tax hereinabove described will not be required to be

levied or, if levied, may be proportionately reduced to the extent of funds appropriated by the Governing Body of the City to the payment of the amounts described above from other revenues of the City. Such tax, to the extent levied, shall be assessed, levied, collected and paid in like manner as other taxes of the City. Such tax shall not be included within any statutory or other limitation of rate or amount for the City but shall be excluded therefrom and be in addition thereto and in excess thereof, notwithstanding and without regard to the prohibitions, restrictions or requirements of any other law, whether public or private. Any amounts payable under the Loan Agreement falling due at any time when there are insufficient funds from the tax levy shall be paid from current funds of the City out of the taxes hereby provided to be levied when the same shall have been collected.

(b) The City additionally pledges its Unobligated State-Shared Taxes in an amount equal to the maximum annual principal payments under the Loan Agreement plus the Supplemental Coupon, if any, in an amount not to exceed 2.5% per annum and the Conversion Coupon, if any, in an amount not to exceed 8% per annum plus such additional amount, not to exceed .75% per annum, as shall be sufficient to pay when due any additional payments due from City under the Loan Agreement as and when they become due and payable. The City hereby authorizes the Authority, without further recourse, to direct that Unobligated State-Shared Taxes pledged hereunder and due to the City be withheld and paid over to the Authority for credit to the City's payments due under the Loan Agreement at any time that such payments become delinquent and in an amount necessary to liquidate the amount of the delinquent payment.

Section 4. Consent to Assignment. The City hereby consents to the assignment pursuant to the Authority Resolution of all the Authority's right, title and interest under the Loan Agreement as security for the Bonds.

Section 5. Additional Authorizations. All acts and doings of the Mayor, the City Recorder and the Director of Schools of the City and any other officer of the City which are in conformity with the purposes and intent of this Resolution and in furtherance of the issuance and sale of the Bonds and the execution and delivery of the Loan Agreement as set forth herein shall be and the same hereby are in all respects, approved and confirmed.

Section 6. Separability. If any section, paragraph or provision of this Resolution shall be held to be invalid or unenforceable for any reason, the invalidity or unenforceability of such section, paragraph or provision shall not affect any of the remaining provisions of this Resolution.

Section 7. Repeal of Conflicting Resolutions and Effective Date. All other resolutions and orders, or parts thereof, in conflict with the provisions of this Resolution, are to be extent of such conflict hereby repealed and this Resolution shall be in immediate effect from and after its adoption.

Adopted and approved this ___ day of _____, 2009.

Sponsor _____

Recorder _____

Approved _____

ATTEST

City Recorder



AGENDA ACTION FORM

Consideration of an Appointment to the Public Arts Committee

To: Board of Mayor and Aldermen
 From: John G. Campbell, City Manager

Action Form No.:	AF-359-2009	Final Adoption:	November 3, 2009
Work Session:	November 2, 2009	Staff Work By:	Melissa Callahan
First Reading:	N/A	Presentation By:	Mayor Phillips

Recommendation: Approve the appointment.

Executive Summary:

Denise DePriest has agreed to serve on the Public Arts Committee, if approved by the Board of Mayor and Aldermen. The appointment will be effective immediately. Denise will fill an unexpired term that ends 6/30/10.

Attachments:

- Bio

Funding source appropriate and funds are available: _____

	<u>Y</u>	<u>N</u>	<u>O</u>
Joh	—	—	—
Mallicote	—	—	—
Marsh	—	—	—
Munsey	—	—	—
Parham	—	—	—
Shupe	—	—	—
Phillips	—	—	—

Denise DePriest

Denise DePriest has more than twenty year's expertise in the professional world. Denise has a B.S in Business Administration from Milligan College, graduating with honors and is currently pursuing her Masters in Financial Services with the Institute of Business and Finance. Prior to coming on board with GAAM, Denise served as the Executive Director of Family Ministries at Christ Fellowship where her insightful leadership, organizational structured strategies, and her high integrity help build the church to being one of the most influential organizations in the Tri-cities region. She has an affinity for building relationships, dynamic structures and high functioning systems. Because of her love of the Tri-cities area, Denise has served in many capacities as a community volunteer: Greater Kingsport Arts Council board member, Leadership Kingsport, State of Tennessee's Families First Program for Sullivan County are among some of her affiliations.

Denise enjoys spending time with her family and remains committed to personal growth. Some of her favorite hobbies are outdoor activities, yoga, movies and reading.