



## **AGENDA**

### **BOARD OF MAYOR AND ALDERMEN WORK SESSION**

**Tuesday, September 3, 2019, 4:00 p.m.  
City Hall, 225 W. Center St., Council Room, 2<sup>nd</sup> Floor**

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

Mayor Patrick W. Shull, Presiding  
Vice Mayor Colette George  
Alderman Jennifer Adler  
Alderman Betsy Cooper

Alderman Darrell Duncan  
Alderman Tommy Olterman  
Alderman James Phillips

#### **Leadership Team**

Chris McCartt, City Manager  
Ryan McReynolds, Assistant City Manager for Operations  
J. Michael Billingsley, City Attorney  
Sid Cox, City Recorder/Chief Financial Officer  
Scott Boyd, Fire Chief  
David Quillin, Police Chief  
George DeCroes, Human Resources Director  
Heather Cook, Communications Director

1. Call to Order
2. Roll Call
3. Homeless Discussion – Chris McCartt
4. Review of Items on September 3, 2019 Business Meeting Agenda
5. Adjourn

**Next Work Session Sept. 16:** KEDB / Networks, The Inventor Center, Communications

***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.***

# City of Kingsport

## Project Status in Pictures

September 3, 2019



### 1 Greenbelt Extension

Clearing and grubbing are complete. The crew is focused on the elevated wooden walkway.

### 2 Harbor Chapel/Memorial Blvd Paving

The f

### 3 Kingsport Aquatic Center

The crew continues work on the pump house and the pavilion addition foundation has started.

### 4 Bays Mountain Road

Paving and traffic marking is complete. Final thermomarkings are the remainder for this project.

# Status Updates on Active Projects sorted by Cost

Estimated Cost	Project Owner	Project Name	Project Description	Completion Date	CurrentStatus
\$7,500,000.00	Ryan McReynolds	<b>SR 347 (Rock Springs Road) [State &amp; MTPO funded]</b>	TDOT Managed, joint funded reconstruction of the State portion of Rock Springs Road	12/31/2021	TDOT, MTPO and City staff met 8/13/19 to discuss scope. A revised scope and contract are expected.
\$6,000,000.00	Michael Thompson	<b>Main Street Rebuild</b>	The reconstruction of Main Street from Sullivan Street to Clay Street. [City & MTPO Funded]	6/1/2021	MOU was approved by BMA July 2019. Working on obtaining AEP easements.
\$4,400,000.00	Niki Ensor	<b>WWTP Electrical Improvements</b>	Design of wastewater treatment plant improvements. Project includes replacement of the Main Switchgear, Switchgear SB-1 and related equipment at the wastewater treatment plant.	12/31/2020	Plans and specification have been finalized. Target bid date set for January 2020. Following rebid of West Kingsport.
\$3,867,000.00	Chad Austin	<b>Border Regions Sewer Extensions</b>	Sewer extensions to serve the Border Regions Annexations in the vicinity of Tri-Cities Crossing and Fordtown Rd.	2/17/2020	Bid will be opened for Areas 1 and 2 on September 4th.
\$3,750,000.00	Niki Ensor	<b>Chemical Feed Design</b>	Design of WTP Chemical Feed improvements. Project will include new facilities for pre and post chemical feed and implementation of bulk bleach for disinfection.	11/1/2020	Awaiting proposal for final design and construction phase services. Funding included in FY20 CIP.
\$3,740,000.00	Niki Ensor	<b>West Kingsport Forcemain and Pump Station Improvements</b>	Elimination of Pendragon SLS (#120) with gravity. Rehab of West Kingsport SLS (#119) and installation of new forcemain to the WWTP.	6/1/2020	Tentative bid date set for September 9th pending TDEC approval of project changes.
\$3,312,698.00	Ryan McReynolds	<b>City Hall Relocation - Phase 1</b>	Renovations of floors 3 thru 6 for the consolidation of City offices to one location at 415 Broad Street.	6/1/2020	PreConstruction meeting scheduled for 8/29/2019 at 10:00 AM.
\$2,888,300.00	Niki Ensor	<b>Water &amp; Wastewater Facilities SCADA/Telemetry Project</b>	Design and installation of SCADA/Telemetry system that will serve both water and sewer plants, sewer lift stations, water pump stations and boosters, along with monitoring in the distribution and collection systems.	4/1/2020	8/8/19 - Held progress meeting. Sewer SCADA - Finish installing pads and racks for equipment at SLS. Water SCADA - received FCC radio authorization for water sites. Will begin radio pathway study.
\$2,300,000.00	Ryan McReynolds	<b>Justice Center Renovations</b>	Renovations and expansion of Justice Center that will accommodate court space and county offices currently residing in City Hall.	12/31/2020	Cain Rash West has been meeting with KPD to access current and future needs. Continue to work on layouts to best utilize space and maintain functionality.
\$1,074,738.00	Chad Austin	<b>Phase 4 Water Improvements</b>	Waterline replacement in Sullivan Gardens area on Ridge Road, Maplewood Street, Mill Creek Road, Clover Bottom Drive, Clearview Street, Creekmore Drive, and Rosemont Street.	2/16/2020	Paving to be completed today. 96 Ridge Road services to be tied into new line next week.
\$1,044,000.00	Kitty Frazier	<b>Kingsport Greenbelt Extension from Rotherwood Drive to Lewis Lane</b>	This project will build an extension of the Kingsport Greenbelt walking and biking path west from the end of the current Greenbelt at Rotherwood Drive to Lewis Lane on West Stone Drive (State Route 1).	5/31/2024	Awaiting Notice to proceed with the environmental document from TDOT.

Estimated Cost	Project Owner	Project Name	Project Description	Completion Date	CurrentStatus
\$997,475.00	Michael Thompson	<b>Stone Drive - Phase 1 (SR 1, US 11W) Sidewalk Improvements</b>	Construction of sidewalk along Stone Drive from Stonebrook Place Pvt. Dr. to American Way where current sidewalk gaps exist. Includes work to make existing driveways ADA accessible. [95% State Funded 5% City]	8/31/2020	Working to finalize the right of way phase of this project.
\$937,442.00	Kitty Frazier	<b>Kingsport Greenbelt - Eastern Extension - Phase 1 (2019-C6)</b>	New 1 mile long Greenbelt section from the 0.4 mile marker (bottom of the hill from Exchange Place) to Cleek Road. [Fed. Grant & City funded]	11/1/2019	Approximately 50 LFT of Boardwalk Erected
\$661,140.00	Michael Thompson	<b>Stone Drive - Phase 2 (SR 1, US 11W) Sidewalk Improvements</b>	Construction of sidewalk along Stone Drive from Stonebrook Place Pvt. Dr. to Lynn Garden Dr. [95% State Funded 5%]	8/31/2020	Working to finalize right of way phase.
\$577,000.00	Niki Ensor	<b>Tri-County Tank Replacement Project</b>	Replacement of 160,000 gallon steel water storage tank in Tri-County Pressure Zone, located on Big Ridge Rd.	7/1/2019	Per site meeting on 8/26/10. Eastern Tank will replace the defective steel panels. Then will proceed to ground out all welds bottom to top in sections. Then get x-ray of welds. If all pass then proceed to paint the tank. Expected to begin the process earl
\$481,183.00	Ryan McReynolds	<b>Wilcox Bridge (Wilcox Dr. &amp; E. Sullivan St.)</b>	Bridge re-painting and landscaping	11/1/2019	Work is anticipated to start September 16th. This is contingent upon the contractor finalizing the right of entry with CSX.
\$415,000.00	Chad Austin	<b>SR 93- Fall Branch section (TDOT)</b>	TDOT project to improve State Route 93 in the Fall Branch area. Impacted waterlines in this area will be are to be relocated as part of the TDOT project.	7/30/2021	
\$352,000.00	Chad Austin	<b>SR 93- Horse Creek/Derby Drive Section (TDOT)</b>	TDOT project to improve State Route 93 in the Horse Creek/Derby Drive area. Project also includes improvements with the intersection with Derby Drive, along with a new bridge crossing Horse Creek. Impacted waterlines in this area will be are to be reloc	8/31/2022	TDOT "B Date" package due date pushed back to 5/28/2021; anticipated letting December 2021

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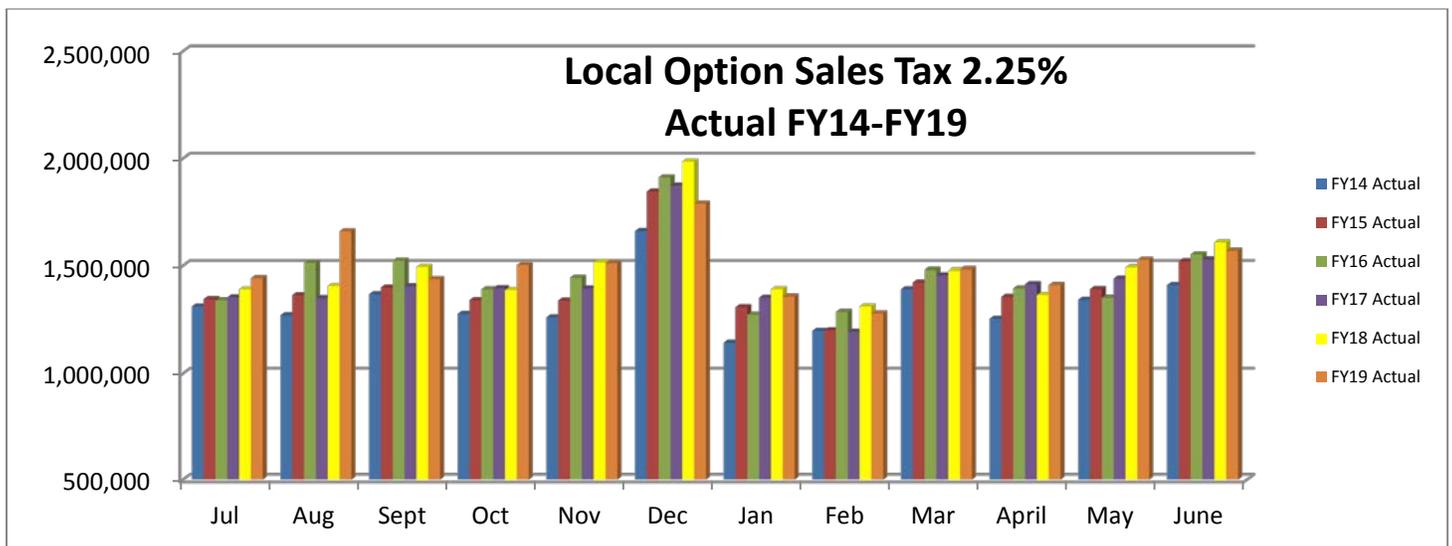
# BMA Report, Sept. 3, 2019



## Financial Comments – Judy Smith

### Local Option Sales Tax 2.25% - Five Year History

FY14 Actual	FY15 Actual	FY16 Actual	FY17 Actual	FY18 Actual	FY19 Actual	Adopted FY19 Budget	FY19 Over/Under Budget	Variance FY19 Over/Under Prev. Year Actual	% of Growth FY19 Over/Under Prev. Year Actual	% of Growth FY19 Over/Under Budget
\$ 1,312,286	\$ 1,346,896	\$ 1,341,027	\$ 1,354,948	\$ 1,392,147	\$ 1,444,727	\$ 1,432,701	\$ 12,026	\$ 52,580	3.78%	0.84%
\$ 1,271,614	\$ 1,365,262	\$ 1,513,366	\$ 1,351,703	\$ 1,408,119	\$ 1,660,189	\$ 1,488,256	\$ 171,933	\$ 252,070	17.90%	11.55%
\$ 1,369,878	\$ 1,401,017	\$ 1,523,474	\$ 1,407,707	\$ 1,493,952	\$ 1,440,056	\$ 1,517,534	\$ (77,478)	\$ (53,896)	-3.61%	-5.11%
\$ 1,278,027	\$ 1,342,308	\$ 1,392,699	\$ 1,397,511	\$ 1,389,451	\$ 1,503,032	\$ 1,449,212	\$ 53,820	\$ 113,581	8.17%	3.71%
\$ 1,261,963	\$ 1,340,457	\$ 1,446,687	\$ 1,396,643	\$ 1,515,210	\$ 1,510,894	\$ 1,495,411	\$ 15,483	\$ (4,316)	-0.28%	1.04%
\$ 1,661,378	\$ 1,845,794	\$ 1,911,650	\$ 1,873,531	\$ 1,985,601	\$ 1,788,766	\$ 1,991,377	\$ (202,611)	\$ (196,835)	-9.91%	-10.17%
\$ 1,143,685	\$ 1,309,305	\$ 1,274,292	\$ 1,353,575	\$ 1,392,917	\$ 1,358,902	\$ 1,377,116	\$ (18,214)	\$ (34,015)	-2.44%	-1.32%
\$ 1,198,993	\$ 1,201,182	\$ 1,287,536	\$ 1,194,890	\$ 1,312,713	\$ 1,280,154	\$ 1,325,780	\$ (45,626)	\$ (32,559)	-2.48%	-3.44%
\$ 1,392,759	\$ 1,424,090	\$ 1,481,645	\$ 1,457,518	\$ 1,477,699	\$ 1,484,980	\$ 1,535,585	\$ (50,605)	\$ 7,281	0.49%	-3.30%
\$ 1,255,243	\$ 1,357,635	\$ 1,396,651	\$ 1,416,452	\$ 1,366,099	\$ 1,412,517	\$ 1,457,999	\$ (45,482)	\$ 46,418	3.40%	-3.12%
\$ 1,343,786	\$ 1,393,582	\$ 1,353,162	\$ 1,442,890	\$ 1,492,028	\$ 1,527,469	\$ 1,496,047	\$ 31,422	\$ 35,441	2.38%	2.10%
\$ 1,411,977	\$ 1,520,599	\$ 1,552,713	\$ 1,529,681	\$ 1,608,149	\$ 1,569,726	\$ 1,567,722	\$ 2,004	\$ (38,423)	-2.39%	0.13%
<b>\$ 15,901,589</b>	<b>\$ 16,848,127</b>	<b>\$ 17,474,902</b>	<b>\$ 17,177,049</b>	<b>\$ 17,834,085</b>	<b>\$ 17,981,413</b>	<b>\$ 18,134,740</b>	<b>\$ (153,327)</b>	<b>\$ 147,328</b>	<b>1.25%</b>	<b>-0.59%</b>





## **AGENDA**

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

### **BUSINESS MEETING**

**Tuesday, September 3, 2019, 7:00 p.m.**  
**City Hall, 225 W. Center St., Courtroom, 2<sup>nd</sup> Floor**

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

Mayor Patrick W. Shull, Presiding  
Vice Mayor Colette George  
Alderman Jennifer Adler  
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Alderman Darrell Duncan  
Alderman Tommy Olterman  
Alderman James Phillips

#### **City Administration**

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J. Michael Billingsley, City Attorney  
Sid Cox, City Recorder/Chief Financial Officer  
David Quillin, Police Chief  
Scott Boyd, Fire Chief  
George DeCroes, Human Resources Director  
Heather Cook, Communications Director

#### **I. CALL TO ORDER**

#### **II.A. PLEDGE OF ALLEGIANCE TO THE FLAG**

#### **II.B. INVOCATION – Mike Beverly, Indian Springs Christian Church**

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

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

1. Cartegraph – High Performance Award (Alderman Duncan)
2. September – Suicide Prevention and Mental Health Awareness Month (Mayor Shull)
3. Homeless Initiatives – Chief Quillin

Addition 9/3/19

#### **IV.B. APPOINTMENTS**

1. Appointment to the Historic Zoning Commission (AF: 198-2019) (Mayor Shull)
  - Appointment

**V. APPROVAL OF MINUTES**

1. Work Session – August 19, 2019
2. Business Meeting – August 20, 2019

**VI. COMMUNITY INTEREST ITEMS**

**A. 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. Appropriate Funding for Phase II Transit Garage A&E (AF: 197-2019) (Chris Campbell)
  - Ordinance – First Reading
2. Budget Adjustment Ordinance for FY20 (AF: 200-2019) (Chris McCartt)
  - Ordinance – First Reading

**C. BUSINESS MATTERS REQUIRING FINAL ADOPTION**

1. Accept the State of Tennessee Department of Environment and Conservation Local Parks and Recreation Fund Grant and Appropriate Funds (AF: 187-2019) (Chris McCartt)
  - Ordinance – Second Reading & Final Adoption
  - Resolution

**D. OTHER BUSINESS**

1. Agreement with Environmental Systems Research Institute (ESRI) for GIS Mapping Software (AF: 199-2019) (Ryan McReynolds)
  - Resolution
2. Approving Amendment Number One to the Ground Lease with the Industrial Development Board of the City of Kingsport, Tennessee (AF: 193-2019) (Chris McCartt)
  - Resolution

Revised 9/3/19

**VII. CONSENT AGENDA**

None

**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**



**AGENDA ACTION FORM**

**Appointment to the Historic Zoning Commission**

To: Board of Mayor and Aldermen  
 From: Chris McCartt, City Manager *CM*

Action Form No.: AF-198-2019  
 Work Session: September 3, 2019  
 First Reading: N/A

Final Adoption: September 3, 2019  
 Staff Work By: Nathan Woods  
 Presentation By: Mayor Shull

**Recommendation:**  
 Approve appointment.

**Executive Summary:**

It is recommended to appoint Dr. Erin Reid to the Historic Zoning Commission replacing Mr. Ted Como whose term has expired. If approved by the Board of Mayor and Aldermen the recommended table reflects term dates.

Terms are five years with no term limits. The commission is composed of seven (7) members; one architect, one Planning Commission representative and five at-large members.

<b>Current Committee:</b>			
Member	Term Expires	No. of Terms	Eligibility
Ted Como	6/30/19	2	At-large
Liza Harmon	6/30/20	2	At-large
Jewell McKinney	6/30/21	3	At-large
James Henderson	6/30/21	5	At-large (Historian)
Dineen West	6/30/22	2	Architect
Beverley Perdue	6/30/23	1	Planning Comm. Rep.
Jason Meredith	6/30/23	1	At-large

<b>Recommended Committee:</b>			
Member	Term Expires	No. of Terms	Eligibility
Dr. Erin Reid	6/30/24	1	At-large
Liza Harmon	6/30/20	2	At-large
Jewell McKinney	6/30/21	3	At-large
James Henderson	6/30/21	5	At-large (Historian)
Dineen West	6/30/22	2	Architect
Beverley Perdue	6/30/23	1	Planning Comm. Rep.
Jason Meredith	6/30/23	1	At-large

**Attachments:**  
 1. Dr. Erin Reid Bio

	<u>Y</u>	<u>N</u>	<u>O</u>
Adler	—	—	—
Cooper	—	—	—
Duncan	—	—	—
George	—	—	—
Olterman	—	—	—
Phillips	—	—	—
Shull	—	—	—

Dr. Erin Reid  
1413 Belmeade Place  
Kingsport, TN 37664

[j.erin.reid@gmail.com](mailto:j.erin.reid@gmail.com)  
859-552-0280

Dr. Erin Reid is a physician at Dermatology Associates and would like to be an active participant in ensuring Kingsport continues to thrive and improve. She has volunteered in after-school programs, served in free medical clinics, reviewed and judged scholarship applications for community organizations, and given health-related presentation to the community.

Dr. Reid has an interest in serving the City on the Historic Zoning Commission.

Minutes of the Regular Work Session of the  
Board of Mayor and Aldermen, City of Kingsport, Tennessee  
Monday, August 19, 2019, 4:30 PM  
Council Room – City Hall

PRESENT: Board of Mayor and Aldermen

Mayor Patrick W. Shull, Presiding

Alderman Jennifer Adler

Alderman Betsy Cooper

Alderman Darrell Duncan

Alderman Colette George

Alderman Tommy Olterman

Alderman James Phillips

City Administration

Chris McCartt, City Manager

J. Michael Billingsley, City Attorney

Sidney H. Cox, City Recorder

1. **CALL TO ORDER:** 4:30 p.m. by Mayor Patrick W. Shull.
2. **ROLL CALL:** By Deputy City Recorder Marshall.
3. **CENSUS COUNT COMMITTEE.** Kevin Flanary presented this item and discussed how the city can make the most of this process. Charlie Nitschke provided the names of those who are serving on the committee.
4. **LIBRARY STRATEGIC PLANNING PROCESS.** Chris Markley gave a presentation on this item and answered questions from the board.
5. **REVIEW OF AGENDA ITEMS ON THE AUGUST 20, 2019 REGULAR BUSINESS MEETING AGENDA.** City Manager Fleming and members of staff gave a summary or presentation for each item on the proposed agenda. The following items were discussed at greater length or received specific questions or concerns.

**VI.D.2 Agreement with Sterling Project Development** (AF: 196-2019). City Manager McCartt presented this item giving details on the history of this project, noting the multipurpose venue was one of the most wanted items resulting from the ONE Kingsport summit process. He noted this item is just a feasibility study for the property after preliminary results regarding the soil were provided. He further stated this would give the city a much better idea of the full potential of this property. There was considerable discussion. Alderman Adler and Alderman Olterman stated they were not prepared to move forward. Mayor Shull also expressed many concerns and asked if this item should be pulled for further input from the public. Vice-Mayor George stated this project has been discussed for years with many opportunities for the public to provide input and delaying this study would not provide any benefit. Alderman Duncan, Alderman Cooper and Alderman Phillips were also in favor of proceeding with study, noting this was not a decision on what to do with the property, but would allow the BMA to make a more informed decision on that very topic. Citizens Ken Marsh and Jeannie Bourne also made comments.

**Minutes of the Regular Work Session of the Board of Mayor and Aldermen of Kingsport, Tennessee, Monday, August 19, 2019**

6. **ADJOURN.** Seeing no other matters presented for discussion at this work session, Mayor Shull adjourned the meeting at 6:47 p.m.

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ANGELA MARSHALL  
Deputy City Recorder

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PATRICK W. SHULL  
Mayor

Minutes of the Regular Business Meeting of the  
Board of Mayor and Aldermen of the City of Kingsport, Tennessee  
Tuesday, August 20, 2019, 7:00 PM  
Large Court Room – City Hall

PRESENT:

Board of Mayor and Aldermen

Mayor Patrick W. Shull, Presiding  
Vice Mayor Colette George      Alderman Darrell Duncan  
Alderman Jennifer Adler      Alderman Tommy Olterman  
Alderman Betsy Cooper      Alderman James Phillips

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Sidney H. Cox, City Recorder/Chief Financial Officer

- I.      **CALL TO ORDER:** 7:00 p.m., by Mayor Patrick W. Shull.
- II.A.   **PLEDGE OF ALLEGIANCE TO THE FLAG:** Led by New Vision Youth.
- II.B.   **INVOCATION:** Pastor Tiger Brooks, Indian Springs Baptist Church, Glenwood Campus.
- III.    **ROLL CALL:** By City Recorder Cox. All Present.
- IV.A.   **RECOGNITIONS AND PRESENTATIONS.**
  - 1.            Keep Kingsport Beautiful Beautification Awards (Alderman Adler).
- IV.B.   **APPOINTMENTS/REAPPOINTMENTS.** None.
- V.      **APPROVAL OF MINUTES.**

Motion/Second: Cooper/Adler, to approve minutes for the following meetings:

- A.      August 5, 2019 Regular Work Session
- B.      August 6, 2019 Regular Business Meeting

Approved: All present voting “aye.”

VI.    **COMMUNITY INTEREST ITEMS.**

- A.      **PUBLIC HEARINGS.** None.

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

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

**Minutes of the Regular Business Meeting of the Board of Mayor and Aldermen of the City of Kingsport, Tennessee, Tuesday, August 20, 2019**

**1. Accept State of Tennessee Department of Environment and Conservation Local Parks and Recreation Fund Grant (AF: 187-2019) (Chris McCartt).**

Motion/Second: George/Adler, to pass:

AN ORDINANCE TO AMEND THE GENERAL PROJECT FUND BUDGET BY APPROPRIATING GRANT FUNDS RECEIVED FROM THE STATE OF TENNESSEE DEPARTMENT OF ENVIRONMENT AND CONSERVATION FOR THE YEAR ENDING JUNE 30, 2020; AND TO FIX THE EFFECTIVE DATE OF THIS ORDINANCE

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

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

**1. Budget Adjustment FY19 (AF: 152-2019) (Chris McCartt).**

Motion/Second: Duncan/Phillips, to pass:

**ORDINANCE NO. 6814**, AN ORDINANCE TO AMEND THE AQUATIC CENTER FUND AND THE GENERAL PROJECT FUND BUDGETS FOR THE YEAR ENDING JUNE 30, 2019; AND TO FIX THE EFFECTIVE DATE OF THIS ORDINANCE

Passed on second reading in a roll call vote: Adler, Cooper, Duncan, George, Olterman, Phillips and Shull voting "aye."

**D. OTHER BUSINESS.**

**1. Agreement with Frontier Health for Counseling Services for Kingsport City Schools (AF: 195-2019) (David Frye).**

Motion/Second: Cooper/George, to pass:

**Resolution No. 2020-037**, A RESOLUTION APPROVING AN AGREEMENT WITH FRONTIER HEALTH FOR COUNSELING SERVICES FOR KINGSFORT CITY SCHOOLS AND AUTHORIZING THE MAYOR TO EXECUTE THE AGREEMENT AND ALL OTHER DOCUMENTS NECESSARY AND PROPER TO EFFECTUATE THE PURPOSE OF THE AGREEMENT

Passed: All present voting "aye."

**2. Agreement with Sterling Project Development (AF: 196-2019) (Chris McCartt),** There was considerable discussion on this item and Mayor Shull requested a roll call vote.

Motion/Second: George/Phillips, to pass:

**Resolution No. 2020-038**, A RESOLUTION APPROVING AN AGREEMENT WITH STERLING PROJECT DEVELOPMENT AND AUTHORIZING THE MAYOR TO EXECUTE THE AGREEMENT AND ALL OTHER DOCUMENTS NECESSARY AND PROPER TO EFFECTUATE THE PURPOSE OF THE AGREEMENT

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

**Minutes of the Regular Business Meeting of the Board of Mayor and Aldermen of the City of Kingsport, Tennessee, Tuesday, August 20, 2019**

**VII. CONSENT AGENDA. *(These items are considered under one motion.)***

Motion/Second: Adler/Duncan, to adopt:

**1. Execute a Signatory Authority Form Allowing the Chief of Police or His Designee to Complete the Application and, if Awarded, Grant Reports as Required by the U.S. Department of Justice for the Edward Byrne Memorial Justice Assistance Grant JAG #2019-H4006-TN-DJ (AF: 189-2019) (David Quillin).**

Pass:

**Resolution No. 2020-039**, A RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE A SIGNATURE AUTHORITY CONSENT FORM AND OTHER DOCUMENTS NECESSARY AND PROPER TO THE UNITED STATES DEPARTMENT OF JUSTICE AND TO DESIGNATE THE CHIEF OF POLICE AS THE MAYOR'S DESIGNEE TO EXECUTE GRANT REPORTS AND OTHER DOCUMENTS REQUIRED BY THE GRANTS FROM THE UNITED STATES DEPARTMENT OF JUSTICE

Passed in a roll call vote: Adler, Cooper, Duncan, George, Olterman, Phillips and Shull voting "aye."

**2. Approve Issuance of Compliance for Retail Food Stores to Sell Wine (AF: 190-2019) (Sid Cox).**

Pass:

APPROVE ISSUANCE OF CERTIFICATE OF COMPLIANCE FOR RETAIL FOOD STORES TO SELL WINE

Passed in a roll call vote: Adler, Cooper, Duncan, George, Olterman, Phillips and Shull voting "aye."

**3. Bid Award for Robinson Middle School Roof Replacement to Davis Brothers Roofing, Inc. (AF: 191-2019) (David Frye).**

Pass:

**Resolution No. 2020-040**, A RESOLUTION AWARDED THE BID FOR THE ROSS N. ROBINSON MIDDLE SCHOOL ROOF REPLACEMENT PROJECT TO DAVIS BROTHERS ROOFING AND SHEET METAL FABRICATORS, INC. AND AUTHORIZING THE MAYOR TO SIGN AN AGREEMENT FOR THE SAME AND ALL DOCUMENTS NECESSARY AND PROPER TO EFFECTUATE THE PURPOSE OF THE AGREEMENT

Passed in a roll call vote: Adler, Cooper, Duncan, George, Olterman, Phillips and Shull voting "aye."

**4. Amendment to Contract between City of Kingsport and Advanced Disposal Services (AF: 194-2019) (Ryan McReynolds).**

**Minutes of the Regular Business Meeting of the Board of Mayor and Aldermen of the City of Kingsport, Tennessee, Tuesday, August 20, 2019**

Pass:

**Resolution No. 2020-041**, A RESOLUTION APPROVING A THIRD AMENDMENT TO THE AGREEMENT WITH ADVANCED DISPOSAL SERVICES; AUTHORIZING THE MAYOR TO EXECUTE THE AMENDMENT; AND ALL OTHER DOCUMENTS NECESSARY AND PROPER TO EFFECTUATE THE PURPOSE OF THE AMENDMENT

Passed in a roll call vote: Adler, Cooper, Duncan, George, Olterman, Phillips and Shull voting “aye.”

**5. Proposed Stormwater Annual Compliance Report (AF:192-2019)**  
(Ryan McReynolds).

Pass:

**Resolution No. 2020-042**, A RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE A STORMWATER ANNUAL COMPLIANCE REPORT REQUIRED BY THE TENNESSEE DEPARTMENT OF ENVIRONMENT AND CONSERVATION

Passed in a roll call vote: Adler, Cooper, Duncan, George, Olterman, Phillips and Shull voting “aye.”

**VIII. COMMUNICATIONS.**

**A. CITY MANAGER.** Mr. McCartt commented on the NETWORKS Red Carpet event coming up which promotes economic development in the region and thanking Nathan Woods for his participation with that.

**B. MAYOR AND BOARD MEMBERS.** Alderman Phillips promoted the Keep Kingsport Beautiful Halloween Bash, noting the press conference with further details would be held on 8/29 at 10:00am at the Chamber. He also commented on the rare unification of Miami and UT fans this coming weekend. Alderman Adler stated the IDEA Academy would be returning September 17-18 and also mentioned the ability to donate to the Miracle Field project at Food City. Alderman Olterman encouraged everyone to support their local high school football teams. Alderman Duncan mentioned swim lessons would be available at the Aquatic Center this fall. He also promoted the Kingsport Theatre Guild’s upcoming downtown show about the events of 9/11, noting that first responders could attend for free. Lastly, he commented on the Band Gala fundraiser being held at Meadowview on September 21. Alderman Cooper remarked on the upcoming Fur Ball Gala fundraiser for the PETWORKS animal shelter and also encouraged citizens to fill out the survey on the library website. Vice-Mayor George commented on the Miracle Field, pointing out it was also to benefit Wounded Warriors in addition to the kids in the Pitch It Forward Campaign. She also pointed out you could still donate to the Band Gala, even if you couldn’t attend the event. Lastly, she promoted the Friends of Allandale concert series is still going on Thursday nights in August. Mayor Shull commented on a recent

**Minutes of the Regular Business Meeting of the Board of Mayor and Aldermen  
of the City of Kingsport, Tennessee, Tuesday, August 20, 2019**

radio interview he was involved in, pointing out all of the many wonderful attractions, organizations and people that Kingsport has to offer.

**C. VISITORS.** Tim Sanders commented on the roads.

**IX. ADJOURN.** Seeing no other business for consideration at this meeting, Mayor Shull adjourned the meeting at 8:12 p.m.

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ANGELA MARSHALL  
Deputy City Recorder

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PATRICK W. SHULL  
Mayor



**AGENDA ACTION FORM**

**Appropriate Funding for Phase II Transit Garage A&E**

To: Board of Mayor and Aldermen  
 From: Chris McCartt, City Manager *CM*

Action Form No.: AF-197-2019  
 Work Session: September 3, 2019  
 First Reading: September 3, 2019  
 Final Adoption: September 17, 2019  
 Staff Work By: Chris Campbell  
 Presentation By: Chris Campbell

**Recommendation:**  
 Approve the Ordinance.

**Executive Summary:**  
 The Board of Mayor and Alderman previously approved applying for and receiving State and Federal grant funding for the Architecture and Engineering Phase of the Bus Storage and Maintenance building and associated parking area. This new facility will be collocated adjacent to the new transit center. The grant funding has been secured and this action will appropriate the funding into a project account. The estimated cost for Phase 2 A&E is outlined below. The local match is already budgeted.

Capital Assistance (80%) Federal; (10%) Local; (10%) State	Local	State	Federal	Total
Architecture and Engineering	\$25,300	\$25,300	\$202,400	\$253,000

**Attachments:**  
 1. Budget Ordinance

Funding source appropriate and funds are available: *J*

	Y	N	O
Adler	—	—	—
Cooper	—	—	—
Duncan	—	—	—
George	—	—	—
Olterman	—	—	—
Phillips	—	—	—
Shull	—	—	—

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

AN ORDINANCE TO AMEND THE GENERAL PROJECT FUND BUDGET BY APPROPRIATING STATE AND FEDERAL GRANT FUNDS TO THE TRANSIT CENTER PROJECT FOR THE YEAR ENDING JUNE 30, 2020; AND TO FIX THE EFFECTIVE DATE OF THIS ORDINANCE

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

SECTION I. That the General Project Fund budget be amended by appropriating \$25,300 from the Tennessee Department of Transportation and \$202,400 Federal grant funds to the Transit Center project (GP1718) and by transferring \$25,300 as the local match from the Transit Garage project (GP1727) to the Transit Center project (GP1718).

<u>Account Number/Description:</u>	<u>Budget</u>	<u>Incr/&lt;Decr&gt;</u>	<u>New Budget</u>
<b>Fund 311: General Project Fund</b>			
<b>Transit Center (GP1718)</b>			
<b>Revenues:</b>	\$	\$	\$
311-0000-331-2000 Federal Rev/UMTA Section 9	4,444,000	202,400	4,646,400
311-0000-332-9000 Dept.of Transportation	555,500	25,300	580,800
311-0000-368-1054 Series 2016 GO (Nov 4)	391,188	0	391,188
311-0000-368-2101 Premium From Bond Sale	29,108	0	29,108
311-0000-368-1055 Series 2017A GO Bonds	0	25,300	25,300
311-0000-391-0100 From General Fund	218,561	0	218,561
<b>Totals:</b>	<b>5,638,357</b>	<b>253,000</b>	<b>5,891,357</b>

<b>Expenditures:</b>	\$	\$	\$
311-0000-601-2023 Arch/Eng/Landscaping	461,589	253,000	714,589
311-0000-601-4041 Bond Sale Expense	3,996	0	3,996
311-0000-601-9001 Land	517,342	0	517,342
311-0000-601-9003 Improvements	4,655,430	0	4,655,430
<b>Totals:</b>	<b>5,638,357</b>	<b>253,000</b>	<b>5,891,357</b>

<b>Fund 311: General Project Fund</b>			
<b>Transit Garage (GP1727)</b>			
<b>Revenues:</b>	\$	\$	\$
311-0000-368-1054 Series 2016 GO (Nov 4)	13,530	0	13,530
311-0000-368-1055 Series 2017A GO Bonds	32,980	(25,300)	7,680
311-0000-368-1056 Series 2018 A GO Bonds	86,060	0	86,060
311-0000-368-2101 Premium From Bond Sale	30,332	0	30,332
311-0000-391-0100 From General Fund	23,856	0	23,856
<b>Totals:</b>	<b>186,758</b>	<b>(25,300)</b>	<b>161,458</b>

**Expenditures:**

	\$	\$	\$
311-0000-601-2023 Arch/Eng/Landscaping	23,856	(23,856)	0
311-0000-601-4041 Bond Sale Expense	6,787	0	6,787
311-0000-601-9003 Improvements	156,115	(1,444)	154,671
<b>Totals:</b>	<b>186,758</b>	<b>(25,300)</b>	<b>161,458</b>

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

\_\_\_\_\_  
PATRICK W. SHULL, Mayor

ATTEST:

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

APPROVED AS TO FORM:

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

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

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



**AGENDA ACTION FORM**

**Budget Adjustment Ordinance for FY20**

To: Board of Mayor and Aldermen  
 From: Chris McCartt, City Manager *CM*

Action Form No.: AF-200-2019  
 Work Session: September 3, 2019  
 First Reading: September 3, 2019  
 Final Adoption: September 17, 2019  
 Staff Work By: Judy Smith  
 Presentation By: Chris McCartt

**Recommendation:**  
 Approve the Ordinance.

**Executive Summary:**  
 The General Fund will be amended by appropriating \$150 donation received from William and Helen Lawson in memory of John Derek Bailiff to the Parks and Recreation operating budget.

The Storm Water Fund will be amended to close out old projects by transferring \$223,972 to the Storm Water Buffer Land Purchase/Easement project, \$27,710 to the Urban Forestry Initiative project, \$18,059 to the Miscellaneous Stormwater Rehab project, \$25,000 to the Stormwater System Mapping project and close ST1700, ST1709, ST1800, ST1801, and ST1802.

The Community Development Block Grant Fund will be amended by transferring \$16,268 to the CDBG Administration project and by transferring \$1,257 to the Community Enrichment project. Projects CD1801 and CD1805 will be closed.

**Attachments:**  
 1. Ordinance

Funding source appropriate and funds are available: *js*

	Y	N	O
Adler	—	—	—
Cooper	—	—	—
Duncan	—	—	—
George	—	—	—
Otterman	—	—	—
Phillips	—	—	—
Shull	—	—	—

# PRE-FILED CITY RECORDER

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

AN ORDINANCE TO AMEND VARIOUS PROJECTS FOR  
THE YEAR ENDING JUNE 30, 2020; AND TO FIX THE  
EFFECTIVE DATE OF THIS ORDINANCE

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

SECTION I. That the Storm Water Project Fund budgets be amended by transferring \$179,904 from the Reedy Creek Land/Improvements project (ST1700), \$40,840 from the Equipment/Vehicle Purchase (ST1800), \$2,219 from the Belvedere Drainage Improvement project (ST1709), \$44,068 from the Buffer Land Purchase/Easement project (GP1801), \$27,710 from the Urban Forestry Initiative (ST1802) to the Buffer Land Purchase/Easement (ST2001) in the amount of \$223,972, \$27,710 to the Urban Forestry Initiative project (ST2002) and \$18,059 to the Miscellaneous Stormwater Rehab project (ST2004), \$25,000 to the Stormwater System Mapping project (ST2005).

SECTION II. That the Community Development Fund budgets be amended by transferring \$16,268 from the Community Development Block Grant Administration project (CD1801) to the Community Development Block Grant Administration project (CD1901) and by transferring \$1,257 from the Community Enrichment project (CD1805) to the Community Enrichment project (CD1905).

SECTION III. That the General Fund budget be amended by appropriating \$150 donation received from William and Helen Lawson in memory of John Derek Bailiff to the Parks and Recreation operating budget.

<u>Account Number/Description:</u>	<u>Budget</u>	<u>Incr/&lt;Decr&gt;</u>	<u>New Budget</u>
<b><u>Fund 457 Storm Water Fund</u></b>			
<b><u>Reedy Creek Land/Improvements (ST1700)</u></b>			
<b><u>Revenues:</u></b>			
457-0000-391-9500 From Storm Water Fund	\$ 179,962	\$ (179,904)	\$ 58
<b>Totals:</b>	<b>179,962</b>	<b>(179,904)</b>	<b>58</b>

<b><u>Expenditures:</u></b>			
457-0000-622-2023 Arch/Eng/Landscaping	\$ 8,862	\$ (8,862)	\$ 0
457-0000-622-9001 Land	171,100	(171,042)	58
<b>Totals:</b>	<b>179,962</b>	<b>(179,904)</b>	<b>58</b>

<b><u>Fund 457 Storm Water Fund</u></b>			
<b><u>Equipment/Vehicle Purchase (ST1800)</u></b>			
<b><u>Revenues:</u></b>			
457-0000-391-9500 From Storm Water Fund	\$ 222,884	\$ (40,840)	\$ 182,044

<b>Totals:</b>	<b>222,884</b>	<b>(40,840)</b>	<b>182,044</b>
<hr/>			
<b>Expenditures:</b>	\$	\$	\$
457-0000-622-9006 Purchases \$5,000 & Over	222,884	(40,840)	182,044
<b>Totals:</b>	<b>222,884</b>	<b>(40,840)</b>	<b>182,044</b>
<hr/>			

**Fund 457 Storm Water Fund**  
**Belvedere Drainage Imp. (ST1709)**

<b>Revenues:</b>	\$	\$	\$
457-0000-391-9500 From Storm Water Fund	125,403	(2,219)	123,184
<b>Totals:</b>	<b>125,403</b>	<b>(2,219)</b>	<b>123,184</b>
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<b>Expenditures:</b>	\$	\$	\$
457-0000-622-2022 Construction Contracts	66,894	0	66,894
457-0000-622-2023 Arch/Eng/Landscaping	9,018	0	9,018
457-0000-622-9001 Land	49,491	(2,219)	47,272
<b>Totals:</b>	<b>125,403</b>	<b>(2,219)</b>	<b>123,184</b>
<hr/>			

**Fund 457 Storm Water Fund**  
**Buffer Land Purchase/Easement (GP1801)**

<b>Revenues:</b>	\$	\$	\$
457-0000-391-9500 From Storm Water Fund	55,000	(44,068)	10,932
<b>Totals:</b>	<b>55,000</b>	<b>(44,068)</b>	<b>10,932</b>
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<b>Expenditures:</b>	\$	\$	\$
457-0000-622-9001 Land	55,000	(44,068)	10,932
<b>Totals:</b>	<b>55,000</b>	<b>(44,068)</b>	<b>10,932</b>
<hr/>			

**Fund 457 Storm Water Fund**  
**Urban Forestry Initiative (ST1802)**

<b>Revenues:</b>	\$	\$	\$
457-0000-391-9500 From Storm Water Fund	40,000	(27,710)	12,290
<b>Totals:</b>	<b>40,000</b>	<b>(27,710)</b>	<b>12,290</b>
<hr/>			

<b>Expenditures:</b>	\$	\$	\$
457-0000-622-9003 Improvements	40,000	(27,710)	12,290
<b>Totals:</b>	<b>40,000</b>	<b>(27,710)</b>	<b>12,290</b>
<hr/>			

**Fund 457 Storm Water Fund**  
**Buffer Land Purchase/Easement (ST2001)**

<b>Revenues:</b>	\$	\$	\$
457-0000-391-9500 From Storm Water Fund	20,000	223,972	243,972
<b>Totals:</b>	<b>20,000</b>	<b>223,972</b>	<b>243,972</b>
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<b><u>Expenditures:</u></b>	\$	\$	\$
457-0000-622-9001 Land	20,000	223,972	243,972
<b>Totals:</b>	<b>20,000</b>	<b>223,972</b>	<b>243,972</b>

**Fund 457 Storm Water Fund**  
**Urban Forestry Initiative (ST2002)**

<b><u>Revenues:</u></b>	\$	\$	\$
457-0000-391-9500 From Storm Water Fund	20,000	27,710	47,710
<b>Totals:</b>	<b>20,000</b>	<b>27,710</b>	<b>47,710</b>

<b><u>Expenditures:</u></b>	\$	\$	\$
457-0000-622-9003 Improvements	20,000	27,710	47,710
<b>Totals:</b>	<b>20,000</b>	<b>27,710</b>	<b>47,710</b>

**Fund 457 Storm Water Fund**  
**Misc Stormwater Rehab (ST2004)**

<b><u>Revenues:</u></b>	\$	\$	\$
457-0000-391-9500 From Storm Water Fund	100,000	18,059	118,059
<b>Totals:</b>	<b>100,000</b>	<b>18,059</b>	<b>118,059</b>

<b><u>Expenditures:</u></b>	\$	\$	\$
457-0000-622-9003 Improvements	100,000	18,059	118,059
<b>Totals:</b>	<b>100,000</b>	<b>18,059</b>	<b>118,059</b>

**Fund 457 Storm Water Fund**  
**Stormwater SYS Mapping (ST2005)**

<b><u>Revenues:</u></b>	\$	\$	\$
457-0000-391-9500 From Storm Water Fund	100,000	25,000	125,000
<b>Totals:</b>	<b>100,000</b>	<b>25,000</b>	<b>125,000</b>

<b><u>Expenditures:</u></b>	\$	\$	\$
457-0000-622-9003 Improvements	100,000	25,000	125,000
<b>Totals:</b>	<b>100,000</b>	<b>25,000</b>	<b>125,000</b>

**Fund 124: Community Development Fund**  
**CDBG Administration (CD1801)**

<b><u>Revenues:</u></b>	\$	\$	\$
124-0000-331-1000 Community Development	68,970	(16,268)	52,702
<b>Totals:</b>	<b>68,970</b>	<b>(16,268)</b>	<b>52,702</b>

<b><u>Expenditures:</u></b>	\$	\$	\$
124-0000-603-1010 Salaries And Wages	29,239	(874)	28,365
124-0000-603-1020 Social Security	5,058	(3,066)	1,992
124-0000-603-1030 Health Insurance	12,015	(6,867)	5,148
124-0000-603-1040 Retirement	9,028	(4,365)	4,663

124-0000-603-1050	Life Insurance	209	(154)	55
124-0000-603-1052	Long Term Disability	225	(172)	53
124-0000-603-1060	Workmen's Comp	106	(61)	45
124-0000-603-1061	Unemployment	40	(29)	11
124-0000-603-2010	Advertising & Publication	500	(500)	0
124-0000-603-2021	Accounting & Auditing	1,200	0	1,200
124-0000-603-2034	Telephone	1,000	269	1,269
124-0000-603-2040	Travel	8,478	0	8,478
124-0000-603-2043	Dues & Membership	1,000	(30)	970
124-0000-603-3010	Office Supplies	622	(176)	446
124-0000-603-3011	Postage	250	(243)	7
<b>Totals:</b>		<b>68,970</b>	<b>(16,268)</b>	<b>52,702</b>

**Fund 124: Community Development Fund**  
**CDBG Administration (CD1901)**

<b>Revenues:</b>	\$	\$	\$	
124-0000-331-1000	Community Development	78,410	16,268	94,678
<b>Totals:</b>		<b>78,410</b>	<b>16,268</b>	<b>94,678</b>

<b>Expenditures:</b>	\$	\$	\$	
124-0000-603-1010	Salaries And Wages	38,584	11,297	49,881
124-0000-603-1020	Social Security	5,241	936	6,177
124-0000-603-1030	Health Insurance	13,732	0	13,732
124-0000-603-1040	Retirement	11,000	(11,000)	0
124-0000-603-1041	TCRS Retirement	0	12,946	12,946
124-0000-603-1043	ICMA Retirement	0	54	54
124-0000-603-1050	Life Insurance	129	0	129
124-0000-603-1052	Long Term Disability	124	0	124
124-0000-603-1060	Workmen's Comp	110	0	110
124-0000-603-1061	Unemployment	40	0	40
124-0000-603-2010	Advertising & Publication	500	0	500
124-0000-603-2021	Accounting & Auditing	1,200	0	1,200
124-0000-603-2034	Telephone	1,000	0	1,000
124-0000-603-2040	Travel	5,000	2,035	7,035
124-0000-603-2043	Dues & Membership	1,000	0	1,000
124-0000-603-3010	Office Supplies	500	0	500
124-0000-603-3011	Postage	250	0	250
<b>Totals:</b>		<b>78,410</b>	<b>16,268</b>	<b>94,678</b>

**Fund 124: Community Development Fund**  
**Community Enrichment (CD1805)**

<b>Revenues:</b>	\$	\$	\$	
124-0000-331-1000	Community Development	35,000	(1,257)	33,743
<b>Totals:</b>		<b>35,000</b>	<b>(1,257)</b>	<b>33,743</b>

**Expenditures:**

124-0000-603-4023 Other Expenses/Grants

***Totals:***

\$	\$	\$	
	35,000	(1,257)	33,743
	<b>35,000</b>	<b>(1,257)</b>	<b>33,743</b>

**Fund 124: Community Development Fund  
Community Enrichment (CD1905)**

**Revenues:**

124-0000-331-1000 Community Development

***Totals:***

\$	\$	\$	
	35,000	1,257	36,257
	<b>35,000</b>	<b>1,257</b>	<b>36,257</b>

**Expenditures:**

124-0000-603-4023 Other Expenses/Grants

***Totals:***

\$	\$	\$	
	35,000	1,257	36,257
	<b>35,000</b>	<b>1,257</b>	<b>36,257</b>

**Fund 110: General Fund**

**Revenues:**

110-0000-364-1000 Contributions/Individuals

***Totals:***

\$	\$	\$	
	0	150	150
	<b>0</b>	<b>150</b>	<b>150</b>

**Expenditures:**

110-4534-471-3022 Maintenance Supplies

***Totals:***

\$	\$	\$	
	0	150	150
	<b>0</b>	<b>150</b>	<b>150</b>

SECTION IV. 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.

\_\_\_\_\_  
PATRICK W. SHULL, Mayor

ATTEST:

\_\_\_\_\_  
SIDNEY H. COX, City Recorder

APPROVED AS TO FORM:

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

PASSED ON 1ST READING:

PASSED ON 2ND READING:



**AGENDA ACTION FORM**

**Accept the State of Tennessee Department of Environment and Conservation Local Parks and Recreation Fund Grant and Appropriate Funds**

To: Board of Mayor and Aldermen  
 From: Chris McCartt, City Manager *CM*

Action Form No.: AF-187-2019  
 Work Session: August 19, 2019  
 First Reading: August 20, 2019

Final Adoption: September 3, 2019  
 Staff Work By: Kitty Frazier  
 Presentation By: Chris McCartt

**Recommendation:**

Approve the Ordinance and Resolution.

**Executive Summary:**

The City of Kingsport has been awarded a \$250,000 grant from the State of TN Department of Environment and Conservation. The grant will provide improvements to both Borden Park (new tennis court lights) and Preston Forest Park (new parking lot and walking trail). Each of these improvements will upgrade the neighborhood parks and recreation opportunities for the community. The grant requires a 50/50 match of \$250,000 included as part of the FY20 CIP. The project must be completed within 2 years of the project contract date. The Mayor's signature will be required on various grant documents throughout the term of the project (contract, budget revisions, sub contract documents, bid documents, procurement activity documents, reimbursement requests, project completion certification documents, end of year reports, and other related grant documents). This grant project is recommended and supported by the Kingsport Parks and Recreation Advisory Committee.

**Attachments:**

1. Ordinance
2. Resolution
3. LPRF Contract

Funding source appropriate and funds are available: *js*

	Y	N	O
Adler	—	—	—
Cooper	—	—	—
Duncan	—	—	—
George	—	—	—
Olterman	—	—	—
Phillips	—	—	—
Shull	—	—	—

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

AN ORDINANCE TO AMEND THE GENERAL PROJECT FUND BUDGET BY APPROPRIATING GRANT FUNDS RECEIVED FROM THE STATE OF TENNESSEE DEPARTMENT OF ENVIRONMENT AND CONSERVATION FOR THE YEAR ENDING JUNE 30, 2020; AND TO FIX THE EFFECTIVE DATE OF THIS ORDINANCE

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

SECTION I. That the General Project Fund budget be amended by appropriating grant funds received from the State of Tennessee Department of Environment and Conservation in the amount of \$250,000 to the LPRF Grant (GP2022). The grant will provide improvements to both Borden Park and Preston Forest Park. The grant requires a 50/50 match and is provided for in the FY20 CIP Bond Issue.

<u>Account Number/Description:</u>	<u>Budget</u>	<u>Incr/&lt;Decr&gt;</u>	<u>New Budget</u>
<b>Fund 311: General Project Fund</b>			
<b>LPRF Grant (GP2022)</b>			
<b>Revenues:</b>	\$	\$	\$
311-0000-332-7201 LPRF Grant	0	250,000	250,000
<b>Totals:</b>	<b>0</b>	<b>250,000</b>	<b>250,000</b>
<b>Expenditures:</b>			
311-0000-601-9003 Improvements	0	250,000	250,000
<b>Totals:</b>	<b>0</b>	<b>250,000</b>	<b>250,000</b>

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

\_\_\_\_\_  
PATRICK W. SHULL, Mayor

ATTEST:

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

APPROVED AS TO FORM:

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

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

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

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

A RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE ALL DOCUMENTS NECESSARY AND PROPER RECEIVE A TENNESSEE DEPARTMENT OF ENVIRONMENT AND CONSERVATION LOCAL PARKS AND RECREATION FUND GRANT

WHEREAS, the city, through the parks and recreation department has received a Local Parks and Recreation Fund Grant from the Tennessee Department of Environment and Conservation; and

WHEREAS, the grant will provide improvements to Borden Park (new tennis court lights) and Preston Forest Park (new parking lot and walking trail); and

WHEREAS, the amount of the grant award is \$250,000.00, and the grant requires a 1 to 1 match, which is available in project account GP2022.

Now therefore,

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

SECTION I. That the mayor, or in his absence, incapacity, or failure to act, the vice mayor, is authorized to execute, in a form approved by the city attorney, and subject to the requirements of Article X, Section 10 of the Charter of the City of Kingsport, all documents necessary and proper to receive a Local Parks and Recreation Fund Grant from the Tennessee Department of Environment and Conservation in the amount of \$250,000.00, which will require a 1 to 1 match.

SECTION II. That the mayor is authorized to execute any and all documents including those necessary and proper to demonstrate the city's compliance with the grant requirements or its provisions necessary to effectuate the purpose of the grant or this resolution.

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

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

ADOPTED this the 3rd day of September, 2019

\_\_\_\_\_  
PATRICK W. SHULL, MAYOR

ATTEST:

\_\_\_\_\_  
SIDNEY H. COX, CITY RECORDER

APPROVED AS TO FORM:

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



**AGENDA ACTION FORM**

**Accept the State of Tennessee Department of Environment and Conservation Local Parks and Recreation Fund Grant and Appropriate Funds**

To: Board of Mayor and Aldermen  
From: Chris McCartt, City Manager *CM*

Action Form No.: AF-187-2019  
Work Session: August 19, 2019  
First Reading: August 20, 2019

Final Adoption: September 3, 2019  
Staff Work By: Kitty Frazier  
Presentation By: Chris McCartt

**Recommendation:**

Approve the Ordinance.

**Executive Summary:**

The City of Kingsport has been awarded a \$250,000 grant from the State of TN Department of Environment and Conservation. The grant will provide improvements to both Borden Park (new tennis court lights) and Preston Forest Park (new parking lot and walking trail). Each of these improvements will upgrade the neighborhood parks and recreation opportunities for the community. The grant requires a 50/50 match of \$250,000 included as part of the FY20 CIP. The project must be completed within 2 years of the project contract date. The Mayor's signature will be required on various grant documents throughout the term of the project (contract, budget revisions, sub contract documents, bid documents, procurement activity documents, reimbursement requests, project completion certification documents, end of year reports, and other related grant documents). This grant project is recommended and supported by the Kingsport Parks and Recreation Advisory Committee.

**Attachments:**

- 1. Ordinance
- 2. LPRF Contract

Funding source appropriate and funds are available: *js*

	Y	N	O
Adler	—	—	—
Cooper	—	—	—
Duncan	—	—	—
George	—	—	—
Olterman	—	—	—
Phillips	—	—	—
Shull	—	—	—

 <b>GOVERNMENTAL GRANT CONTRACT</b> (cost reimbursement grant contract with a federal or Tennessee local governmental entity or their agents and instrumentalities)					
<b>Begin Date</b>		<b>End Date</b>		<b>Agency Tracking #</b>	
October 1, 2019		September 30, 2021		32701-03877	
<b>Grantee Legal Entity Name</b>					<b>Edison ID</b>
City of Kingsport					PO _____
<b>Subrecipient or Contractor</b>					<b>Edison Vendor ID</b>
<input checked="" type="checkbox"/> Subrecipient <input type="checkbox"/> Contractor					1562
<b>CFDA #: N/A</b>					
<b>Grantee's fiscal year end – June 30</b>					
<b>Service Caption (one line only)</b>					
Local Park and Recreation Fund grant for 2018 LPRF Kingsport Neighborhood Parks Renovations					
<b>Funding —</b>					
<b>FY</b>	<b>State</b>	<b>Federal</b>	<b>Interdepartmental</b>	<b>Other</b>	<b>TOTAL Grant Contract Amount</b>
2020	\$250,000.00				\$250,000.00
2021					
2022					
<b>TOTAL:</b>	<b>\$250,000.00</b>				<b>\$250,000.00</b>
<b>Grantee Selection Process Summary</b>					
<input checked="" type="checkbox"/> Competitive Selection			Grant applications are competitively scored based on criteria in an Open Project Selection Process (OPSP) found in the Local Park and Recreation Fund Application Manual. Applications receiving the highest scores are awarded grants. The grant amount awarded is based on the amount requested by the grantee, with consideration of eligibility.		
<input type="checkbox"/> Non-competitive Selection					
<b>Budget Officer Confirmation:</b> There is a balance in the appropriation from which obligations hereunder are required to be paid that is not already encumbered to pay other obligations.				<b>CPO USE – GG</b>  <b>Edison ID 60850</b>	
					
<b>Speed Chart (optional)</b>		<b>Account Code (optional)</b>			
EN00016412		71302000 - Cities			

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

This grant contract ("Grant Contract"), by and between the State of Tennessee, Tennessee Department of Environment and Conservation, hereinafter referred to as the "State" or the "Grantor State Agency" and City of Kingsport, hereinafter referred to as the "Grantee," is for the provision of Neighborhood Parks Renovations, as further defined in the "SCOPE OF SERVICES AND DELIVERABLES."

Grantee Edison Vendor ID #: 0000001562

- A.1. The Grantee shall provide the scope of services and deliverables ("Scope") as required, described, and detailed in this Grant Contract.
- A.2. The Grantee shall implement the following activities: (1)  land acquisition for local parks, natural areas, greenways; (2)  land acquisition for recreational facilities; (3)  trail development; and (4)  capital projects in parks, natural areas, and greenways. Further details are provided in Attachment A.
- A.3. The Grantee agrees to comply with the provisions of the Local Park and Recreation Fund Manual.
- A.4. The Grantee has been provided a copy of the Local Park and Recreation Fund Manual.
- A.5. Work completed under this grant is subject to inspection by the Park and Recreation Technical Advisory Service (PARTAS).
- B. TERM OF CONTRACT:**
- B.1. This Grant Contract shall be effective on October 1, 2019 ("Effective Date") and extend for a period of twenty-four (24) months after the Effective Date ("Term"). The State shall have no obligation to the Grantee for fulfillment of the Scope outside the Term.
- B.2. Term Extension. It is understood and agreed that the State may extend the Term an additional period of time, not to exceed one hundred-eighty (180) days beyond the expiration date of this Grant Contract, under the same terms and conditions. In no event, however, shall the maximum Term, including all extensions or renewals, exceed a total of sixty (60) months.
- C. PAYMENT TERMS AND CONDITIONS:**
- C.1. Maximum Liability. In no event shall the maximum liability of the State under this Grant Contract exceed Two-Hundred-Fifty Thousand Dollars (\$250,000.00) ("Maximum Liability"). The Grant Budget, attached and incorporated as Attachment A is the maximum amount due the Grantee under this Grant Contract. The Grant Budget line-items include, but are not limited to, all applicable taxes, fees, overhead, and all other direct and indirect costs incurred or to be incurred by the Grantee.
- C.2. Compensation Firm. The Maximum Liability of the State is not subject to escalation for any reason unless amended. The Grant Budget amounts are firm for the duration of the Grant Contract and are not subject to escalation for any reason unless amended, except as provided in Section C.6.
- C.3. Payment Methodology. The Grantee shall be reimbursed for actual, reasonable, and necessary costs based upon the Grant Budget, not to exceed the Maximum Liability established in Section

- C.1. Upon progress toward the completion of the Scope, as described in Section A of this Grant Contract, the Grantee shall submit invoices prior to any reimbursement of allowable costs.
- C.4. Travel Compensation. Reimbursement to the Grantee for travel, meals, or lodging shall be subject to amounts and limitations specified in the "State Comprehensive Travel Regulations," as they are amended from time to time, and shall be contingent upon and limited by the Grant Budget funding for said reimbursement.
- C.5. Invoice Requirements. The Grantee shall invoice the State no more often than monthly, with all necessary supporting documentation, and present such to:
- Tennessee Department of Environment and Conservation  
 Recreation Educational Services  
 William R. Snodgrass Tennessee Tower  
 312 Rosa L. Parks Avenue, 2nd Floor  
 Nashville, Tennessee 37243
- a. Each invoice shall clearly and accurately detail all of the following required information (calculations must be extended and totaled correctly).
- (1) Invoice/Reference Number (assigned by the Grantee).
  - (2) Invoice Date.
  - (3) Invoice Period (to which the reimbursement request is applicable).
  - (4) Grant Contract Number (assigned by the State).
  - (5) Grantor: Tennessee Department of Environment and Conservation, Recreation Educational Services Division.
  - (6) Grantor Number (assigned by the Grantee to the above-referenced Grantor).
  - (7) Grantee Name.
  - (8) Grantee Tennessee Edison Registration ID Number Referenced in Preamble of this Grant Contract.
  - (9) Grantee Remittance Address.
  - (10) Grantee Contact for Invoice Questions (name, phone, or fax).
  - (11) Itemization of Reimbursement Requested for the Invoice Period— it must detail, at minimum, all of the following:
    - i. The amount requested by Grant Budget line-item (including any travel expenditure reimbursement requested and for which documentation and receipts, as required by "State Comprehensive Travel Regulations," are attached to the invoice).
    - ii. The amount reimbursed by Grant Budget line-item to date.
    - iii. The total amount reimbursed under the Grant Contract to date.
    - iv. The total amount requested (all line-items) for the Invoice Period.
- b. The Grantee understands and agrees to all of the following.
- (1) An invoice under this Grant Contract shall include only reimbursement requests for actual, reasonable, and necessary expenditures required in the delivery of service described by this Grant Contract and shall be subject to the Grant Budget and any other provision of this Grant Contract relating to allowable reimbursements.
  - (2) An invoice under this Grant Contract shall not include any reimbursement request for future expenditures.
  - (3) An invoice under this Grant Contract shall initiate the timeframe for reimbursement only when the State is in receipt of the invoice, and the invoice meets the minimum requirements of this section C.5.
- C.6. Budget Line-item: 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 increase

total Grant Budget 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 increase in the total Grant Budget amount shall require a Grant Contract amendment.

- C.7. Disbursement Reconciliation and Close Out. The Grantee shall submit any final invoice and a grant disbursement reconciliation report within sixty (60) days of the Grant Contract end date and in form and substance acceptable to the State.
- a. The Grant Budget specifies a Grantee Match Requirement and the final grant disbursement reconciliation report shall detail all Grantee expenditures recorded to meet this requirement.
    - i. No Grantee expenditure shall be recorded and reported toward meeting a Grantee Match Requirement of more than one grant contract with the State.
    - ii. The final grant disbursement reconciliation report shall specifically detail the exact amount of any Grantee failure to meet a Match Requirement, and the maximum total amount reimbursable by the State pursuant to this Grant Contract, as detailed by the Grant Budget column "Grant Contract," shall be reduced by the amount that the Grantee failed to contribute to the Total Project as budgeted.
  - b. If total disbursements by the State pursuant to this Grant Contract exceed the amounts permitted by the section C, payment terms and conditions of this Grant Contract (including any adjustment pursuant to subsection a.ii. above), the Grantee shall refund the difference to the State. The Grantee shall submit the refund with the final grant disbursement reconciliation report.
  - c. The State shall not be responsible for the payment of any invoice submitted to the state after the grant disbursement reconciliation report. The State will not deem any Grantee costs submitted for reimbursement after the grant disbursement reconciliation report to be allowable and reimbursable by the State, and such invoices will NOT be paid.
  - d. The Grantee's failure to provide a final grant disbursement reconciliation report to the state as required shall result in the Grantee being deemed ineligible for reimbursement under this Grant Contract, and the Grantee shall be required to refund any and all payments by the state pursuant to this Grant Contract.
  - e. The Grantee must close out its accounting records at the end of the contract period in such a way that reimbursable expenditures and revenue collections are NOT carried forward.
- C.8. Indirect Cost. Should the Grantee request reimbursement for indirect costs, the Grantee must submit to the State a copy of the indirect cost rate approved by the cognizant federal agency or the cognizant state agency, as applicable. The Grantee will be reimbursed for indirect costs in accordance with the approved indirect cost rate and amounts and limitations specified in the attached Grant Budget. Once the Grantee makes an election and treats a given cost as direct or indirect, it must apply that treatment consistently and may not change during the Term. Any changes in the approved indirect cost rate must have prior approval of the cognizant federal agency or the cognizant state agency, as applicable. If the indirect cost rate is provisional during the Term, once the rate becomes final, the Grantee agrees to remit any overpayment of funds to the State, and subject to the availability of funds the State agrees to remit any underpayment to the Grantee.
- C.9. Cost Allocation. If any part of the costs to be reimbursed under this Grant Contract are joint costs involving allocation to more than one program or activity, such costs shall be allocated and reported in accordance with the provisions of Department of Finance and Administration Policy Statement 03 or any amendments or revisions made to this policy statement during the Term.

- C.10. Payment of Invoice. A payment by the State shall not prejudice the State's right to object to or question any reimbursement, invoice, or related matter. A payment by the State shall not be construed as acceptance of any part of the work or service provided or as approval of any amount as an allowable cost.
- C.11. Non-allowable Costs. Any amounts payable to the Grantee shall be subject to reduction for amounts included in any invoice or payment that are determined by the State, on the basis of audits or monitoring conducted in accordance with the terms of this Grant Contract, to constitute unallowable costs.
- C.12. State's Right to Set Off. The State reserves the right to set off or deduct from amounts that are or shall become due and payable to the Grantee under this Grant Contract or under any other agreement between the Grantee and the State of Tennessee under which the Grantee has a right to receive payment from the State.
- C.13. Prerequisite Documentation. The Grantee shall not invoice the State under this Grant Contract until the State has received the following, properly completed documentation.
- a. The Grantee shall complete, sign, and return to the State an "Authorization Agreement for Automatic Deposit (ACH Credits) Form" provided by the State. By doing so, the Grantee acknowledges and agrees that, once this form is received by the State, all payments to the Grantee under this or any other grant contract will be made by automated clearing house ("ACH").
  - b. The Grantee shall complete, sign, and return to the State the State-provided W-9 form. The taxpayer identification number on the W-9 form must be the same as the Grantee's Federal Employer Identification Number or Social Security Number referenced in the Grantee's Edison registration information.

**D. STANDARD TERMS AND CONDITIONS:**

- D.1. Required Approvals. The State is not bound by this Grant Contract until it is signed by the parties and approved by appropriate officials in accordance with applicable Tennessee laws and regulations (depending upon the specifics of this Grant Contract, the officials may include, but are not limited to, the Commissioner of Finance and Administration, the Commissioner of Human Resources, and the Comptroller of the Treasury).
- D.2. Modification and Amendment. This Grant Contract may be modified only by a written amendment signed by all parties and approved by the officials who approved the Grant Contract and, depending upon the specifics of the Grant Contract as amended, any additional officials required by Tennessee laws and regulations (the officials may include, but are not limited to, the Commissioner of Finance and Administration, the Commissioner of Human Resources, and the Comptroller of the Treasury).
- D.3. Termination for Convenience. The State may terminate this Grant Contract without cause for any reason. A termination for convenience shall not be a breach of this Grant Contract by the State. The State shall give the Grantee at least thirty (30) days written notice before the effective termination date. The Grantee shall be entitled to compensation for authorized expenditures and satisfactory services completed as of the termination date, but in no event shall the State be liable to the Grantee for compensation for any service that has not been rendered. The final decision as to the amount for which the State is liable shall be determined by the State. The Grantee shall not have any right to any actual general, special, incidental, consequential, or any other damages whatsoever of any description or amount for the State's exercise of its right to terminate for convenience.
- D.4. Termination for Cause. If the Grantee fails to properly perform its obligations under this Grant Contract, or if the Grantee violates any terms of this Grant Contract, the State shall have the right to immediately terminate this Grant Contract and withhold payments in excess of fair

compensation for completed services. Notwithstanding the exercise of the State's right to terminate this Grant Contract for cause, the Grantee shall not be relieved of liability to the State for damages sustained by virtue of any breach of this Grant Contract by the Grantee.

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

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

- D.8. Communications and Contacts. All instructions, notices, consents, demands, or other communications required or contemplated by this Grant Contract shall be in writing and shall be made by certified, first class mail, return receipt requested and postage prepaid, by overnight courier service with an asset tracking system, or by email or facsimile transmission with recipient confirmation. All communications, regardless of method of transmission, shall be addressed to the respective party as set out below:  
The State:

Gerald F. Parish, Jr., Director  
Recreation Educational Services Division  
Tennessee Department of Environment and Conservation  
William R. Snodgrass Tennessee Tower  
312 Rosa L. Parks Avenue, 2<sup>nd</sup> Floor  
Nashville, Tennessee 37243  
Email Address: [Gerald.Parish@tn.gov](mailto:Gerald.Parish@tn.gov)

Telephone #: (615) 532-0748  
 FAX #: (615) 532-0732

The Grantee:

Honorable John Clark  
 Mayor, City of Kingsport  
 225 West Center Street  
 Kingsport, TN 37660  
 Email Address: johnclark@kingsporttn.gov  
 Telephone #: (423) 229-9400  
 FAX #: (423) 229-9350  
 CC: Kitty Frazier, Parks and Recreation Manager

A change to the above contact information requires written notice to the person designated by the other party to receive notice.

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

- D.9. Subject to Funds Availability. This Grant Contract is subject to the appropriation and availability of State or Federal funds. In the event that the funds are not appropriated or are otherwise unavailable, the State reserves the right to terminate this Grant Contract upon written notice to the Grantee. The State's right to terminate this Grant Contract due to lack of funds is not a breach of this Grant Contract by the State. Upon receipt of the written notice, the Grantee shall cease all work associated with the Grant Contract. Should such an event occur, the Grantee shall be entitled to compensation for all satisfactory and authorized services completed as of the termination date. Upon such termination, the Grantee shall have no right to recover from the State any actual, general, special, incidental, consequential, or any other damages whatsoever of any description or amount.
- D.10. Nondiscrimination. The Grantee hereby agrees, warrants, and assures that no person shall be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination in the performance of this Grant Contract or in the employment practices of the Grantee on the grounds of handicap or disability, age, race, color, religion, sex, national origin, or any other classification protected by federal, Tennessee state constitutional, or statutory law. The Grantee shall, upon request, show proof of nondiscrimination and shall post in conspicuous places, available to all employees and applicants, notices of nondiscrimination.
- D.11. HIPAA Compliance. The State and the Grantee shall comply with obligations under the Health Insurance Portability and Accountability Act of 1996 (HIPAA), Health Information Technology for Economic and Clinical Health Act (HITECH) and any other relevant laws and regulations regarding privacy (collectively the "Privacy Rules"). The obligations set forth in this Section shall survive the termination of this Grant Contract.
- a. The Grantee warrants to the State that it is familiar with the requirements of the Privacy Rules and will comply with all applicable HIPAA requirements in the course of this Grant Contract.
  - b. The Grantee warrants that it will cooperate with the State, including cooperation and coordination with State privacy officials and other compliance officers required by the Privacy Rules, in the course of performance of this Grant Contract so that both parties will be in compliance with the Privacy Rules.
  - c. The State and the Grantee will sign documents, including but not limited to business associate agreements, as required by the Privacy Rules and that are reasonably necessary to keep the State and the Grantee in compliance with the Privacy Rules. This

provision shall not apply if information received by the State under this Grant Contract is NOT "protected health information" as defined by the Privacy Rules, or if the Privacy Rules permit the State to receive such information without entering into a business associate agreement or signing another such document.

- D.12. Public Accountability. If the Grantee is subject to Tenn. Code Ann. § 8-4-401 *et seq.*, or if this Grant Contract involves the provision of services to citizens by the Grantee on behalf of the State, the Grantee agrees to establish a system through which recipients of services may present grievances about the operation of the service program. The Grantee shall also display in a prominent place, located near the passageway through which the public enters in order to receive Grant supported services, a sign at least eleven inches (11") in height and seventeen inches (17") in width stating:

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

The sign shall be on the form prescribed by the Comptroller of the Treasury. The Grantor State Agency shall obtain copies of the sign from the Comptroller of the Treasury, and upon request from the Grantee, provide Grantee with any necessary signs.

- D.13. Public Notice. All notices, informational pamphlets, press releases, research reports, signs, and similar public notices prepared and released by the Grantee in relation to this Grant Contract shall include the statement, "This project is funded under a grant contract with the State of Tennessee." All notices by the Grantee in relation to this Grant Contract shall be approved by the State.
- D.14. Licensure. The Grantee, its employees, and any approved subcontractor shall be licensed pursuant to all applicable federal, state, and local laws, ordinances, rules, and regulations and shall upon request provide proof of all licenses.
- D.15. Records. The Grantee and any approved subcontractor shall maintain documentation for all charges under this Grant Contract. The books, records, and documents of the Grantee and any approved subcontractor, insofar as they relate to work performed or money received under this Grant Contract, shall be maintained in accordance with applicable Tennessee law. In no case shall the records be maintained for a period of less than five (5) full years from the date of the final payment. The Grantee's records shall be subject to audit at any reasonable time and upon reasonable notice by the Grantor State Agency, the Comptroller of the Treasury, or their duly appointed representatives.

The records shall be maintained in accordance with Governmental Accounting Standards Board (GASB) Accounting Standards or the Financial Accounting Standards Board (FASB) Accounting Standards Codification, as applicable, and any related AICPA Industry Audit and Accounting guides.

In addition, documentation of grant applications, budgets, reports, awards, and expenditures will be maintained in accordance with U.S. Office of Management and Budget's *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards*.

Grant expenditures shall be made in accordance with local government purchasing policies and procedures and purchasing procedures for local governments authorized under state law.

The Grantee shall also comply with any recordkeeping and reporting requirements prescribed by the Tennessee Comptroller of the Treasury.

The Grantee shall establish a system of internal controls that utilize the COSO Internal Control - Integrated Framework model as the basic foundation for the internal control system. The Grantee shall incorporate any additional Comptroller of the Treasury directives into its internal control system.

Any other required records or reports which are not contemplated in the above standards shall follow the format designated by the head of the Grantor State Agency, the Central Procurement Office, or the Commissioner of Finance and Administration of the State of Tennessee.

- D.16. Monitoring. The Grantee's activities conducted and records maintained pursuant to this Grant Contract shall be subject to monitoring and evaluation by the State, the Comptroller of the Treasury, or their duly appointed representatives.
- D.17. Progress Reports. The Grantee shall submit brief, periodic, progress reports to the State as requested.
- D.18. Annual and Final Reports. The Grantee shall submit, within three (3) months of the conclusion of each year of the Term, an annual report. For grant contracts with a term of less than one (1) year, the Grantee shall submit a final report within three (3) months of the conclusion of the Term. For grant contracts with multiyear terms, the final report will take the place of the annual report for the final year of the Term. The Grantee shall submit annual and final reports to the Grantor State Agency and the Department of Finance and Administration ("F&A"). Send electronic copies of annual and final reports to F&A at [fa.audit@tn.gov](mailto:fa.audit@tn.gov). At minimum, annual and final reports shall include: (a) the Grantee's name; (b) the Grant Contract's Edison identification number, Term, and total amount; (c) a narrative section that describes the program's goals, outcomes, successes and setbacks, whether the Grantee used benchmarks or indicators to determine progress, and whether any proposed activities were not completed; and (d) other relevant details requested by the Grantor State Agency. Annual and final report documents to be completed by the Grantee shall appear on the Grantor State Agency's website or as an attachment to the Grant Contract.
- D.19. Audit Report. The Grantee shall be audited in accordance with applicable Tennessee law.
- If the Grantee is subject to an audit under this provision, then the Grantee shall complete Attachment B.
- When a federal single audit is required, the audit shall be performed in accordance with U.S. Office of Management and Budget's *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards*.
- A copy of the audit report shall be provided to the Comptroller by the licensed, independent public accountant. Audit reports shall be made available to the public.
- D.20. Procurement. If other terms of this Grant Contract allow reimbursement for the cost of goods, materials, supplies, equipment, 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 is not practical, supporting documentation shall include a written justification for the decision and for use of a non-competitive procurement. If the Grantee is a subrecipient, the Grantee shall comply with 2 C.F.R. §§ 200.317—300.326 when procuring property and services under a federal award.
- The Grantee shall obtain prior approval from the State before purchasing any equipment under this Grant Contract.
- For purposes of this Grant Contract, the term "equipment" shall include any article of nonexpendable, tangible, personal property having a useful life of more than one year and an acquisition cost which equals or exceeds five thousand dollars (\$5,000.00).
- D.21. Strict Performance. Failure by any party to this Grant Contract to insist in any one or more cases upon the strict performance of any of the terms, covenants, conditions, or provisions of this Grant Contract is not a waiver or relinquishment of any term, covenant, condition, or provision. No term or condition of this Grant Contract shall be held to be waived, modified, or deleted except by a written amendment signed by the parties.

- D.22. Independent Contractor. The parties shall not act as employees, partners, joint venturers, or associates of one another in the performance of this Grant Contract. The parties acknowledge that they are independent contracting entities and that nothing in this Grant Contract shall be construed to create a principal/agent relationship or to allow either to exercise control or direction over the manner or method by which the other transacts its business affairs or provides its usual services. The employees or agents of one party shall not be deemed or construed to be the employees or agents of the other party for any purpose whatsoever.
- D.23. Limitation of State's Liability. The State shall have no liability except as specifically provided in this Grant Contract. In no event will the State be liable to the Grantee or any other party for any lost revenues, lost profits, loss of business, loss of grant funding, decrease in the value of any securities or cash position, time, money, goodwill, or any indirect, special, incidental, punitive, exemplary or consequential damages of any nature, whether based on warranty, contract, statute, regulation, tort (including but not limited to negligence), or any other legal theory that may arise under this Grant Contract or otherwise. The State's total liability under this Grant Contract (including any exhibits, schedules, amendments or other attachments to the Contract) or otherwise shall under no circumstances exceed the Maximum Liability originally established in Section C.1 of this Grant Contract. This limitation of liability is cumulative and not per incident.
- D.24. Force Majeure. "Force Majeure Event" means fire, flood, earthquake, elements of nature or acts of God, wars, riots, civil disorders, rebellions or revolutions, acts of terrorism or any other similar cause beyond the reasonable control of the party except to the extent that the non-performing party is at fault in failing to prevent or causing the default or delay, and provided that the default or delay cannot reasonably be circumvented by the non-performing party through the use of alternate sources, workaround plans or other means. A strike, lockout or labor dispute shall not excuse either party from its obligations under this Grant Contract. Except as set forth in this Section, any failure or delay by a party in the performance of its obligations under this Grant Contract arising from a Force Majeure Event is not a default under this Grant Contract or grounds for termination. The non-performing party will be excused from performing those obligations directly affected by the Force Majeure Event, and only for as long as the Force Majeure Event continues, provided that the party continues to use diligent, good faith efforts to resume performance without delay. The occurrence of a Force Majeure Event affecting Grantee's representatives, suppliers, subcontractors, customers or business apart from this Grant Contract is not a Force Majeure Event under this Grant Contract. Grantee will promptly notify the State of any delay caused by a Force Majeure Event (to be confirmed in a written notice to the State within one (1) day of the inception of the delay) that a Force Majeure Event has occurred, and will describe in reasonable detail the nature of the Force Majeure Event. If any Force Majeure Event results in a delay in Grantee's performance longer than forty-eight (48) hours, the State may, upon notice to Grantee: (a) cease payment of the fees until Grantee resumes performance of the affected obligations; or (b) immediately terminate this Grant Contract or any purchase order, in whole or in part, without further payment except for fees then due and payable. Grantee will not increase its charges under this Grant Contract or charge the State any fees other than those provided for in this Grant Contract as the result of a Force Majeure Event.
- D.25. Tennessee Department of Revenue Registration. The Grantee shall comply with all applicable registration requirements contained in Tenn. Code Ann. §§ 67-6-601 – 608. Compliance with applicable registration requirements is a material requirement of this Grant Contract.
- D.26. **Reserved.**
- D.27. No Acquisition of Equipment or Motor Vehicles. This Grant Contract does not involve the acquisition and disposition of equipment or motor vehicles acquired with funds provided under this Grant Contract.
- D.28. State and Federal Compliance. The Grantee shall comply with all applicable state and federal laws and regulations in the performance of this Grant Contract. The U.S. Office of Management and Budget's Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards is available here: [http://www.ecfr.gov/cgi-bin/text-idx?SID=c6b2f053952359ba94470ad3a7c1a975&tpl=/ecfrbrowse/Title02/2cfr200\\_main\\_02.tpl](http://www.ecfr.gov/cgi-bin/text-idx?SID=c6b2f053952359ba94470ad3a7c1a975&tpl=/ecfrbrowse/Title02/2cfr200_main_02.tpl)

- D.29. Governing Law. This Grant Contract shall be governed by and construed in accordance with the laws of the State of Tennessee. The Grantee agrees that it will be subject to the exclusive jurisdiction of the courts of the State of Tennessee in actions that may arise under this Grant Contract. The Grantee acknowledges and agrees that any rights or claims against the State of Tennessee or its employees hereunder, and any remedies arising there from, shall be subject to and limited to those rights and remedies, if any, available under Tenn. Code Ann. §§ 9-8-101 through 9-8-407.
- D.30. Completeness. This Grant Contract is complete and contains the entire understanding between the parties relating to the subject matter contained herein, including all the terms and conditions agreed to by the parties. This Grant Contract supersedes any and all prior understandings, representations, negotiations, or agreements between the parties, whether written or oral.
- D.31. Severability. If any terms and conditions of this Grant Contract are held to be invalid or unenforceable as a matter of law, the other terms and conditions shall not be affected and shall remain in full force and effect. To this end, the terms and conditions of this Grant Contract are declared severable.
- D.32. Headings. Section headings are for reference purposes only and shall not be construed as part of this Grant Contract.
- D.33. Iran Divestment Act. The requirements of Tenn. Code Ann. § 12-12-101, *et seq.*, addressing contracting with persons as defined at Tenn. Code Ann. §12-12-103(5) that engage in investment activities in Iran, shall be a material provision of this Grant Contract. The Grantee certifies, under penalty of perjury, that to the best of its knowledge and belief that it is not on the list created pursuant to Tenn. Code Ann. § 12-12-106.
- D.34. 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, or presently fall under any of the prohibitions of sections a-d.

**E. SPECIAL TERMS AND CONDITIONS:**

- E.1. Conflicting Terms and Conditions. Should any of these special terms and conditions conflict with any other terms and conditions of this Grant Contract, the special terms and conditions shall be subordinate to the Grant Contract's other terms and conditions.
  
- E.2. Environmental Tobacco Smoke. Pursuant to the provisions of the federal "Pro-Children Act of 1994" and the "Children's Act for Clean Indoor Air of 1995," Tenn. Code Ann. §§ 39-17-1601 through 1606, the Grantee shall prohibit smoking of tobacco products within any indoor premises in which services are provided to individuals under the age of eighteen (18) years. The Grantee shall post "no smoking" signs in appropriate, permanent sites within such premises. This prohibition shall be applicable during all hours, not just the hours in which children are present. Violators of the prohibition may be subject to civil penalties and fines. This prohibition shall apply to and be made part of any subcontract related to this Grant Contract.
  
- E.3. The Grantee shall provide a drug-free workplace pursuant to the "Drug-Free Workplace Act," 41 U.S.C. §§ 8101 through 8106, and its accompanying regulations.

**IN WITNESS WHEREOF,**

**CITY OF KINGSPORT:**

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<b>GRANTEE SIGNATURE</b>	<b>DATE</b>
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**PRINTED NAME AND TITLE OF GRANTEE SIGNATORY (above)**

**TENNESSEE DEPARTMENT OF ENVIRONMENT AND CONSERVATION:**

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<b>DAVID W. SALYERS, P.E., COMMISSIONER</b>	<b>DATE</b>
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**CITY OF KINGSPORT**  
**ATTACHMENT A**  
**Page 2**

**GRANT BUDGET LINE-ITEM DETAIL:**

<b>PROFESSIONAL FEE, GRANT &amp; AWARD</b>	<b>AMOUNT</b>
A/E Fees	\$17,500.00
<b>TOTAL</b>	<b>\$17,500.00</b>

<b>CAPITAL PURCHASE</b>	<b>AMOUNT</b>
Replace tennis court lighting at Bordon Park	\$240,500.00
New Lighting at Parking Lot at Forest Park	\$196,000.00
ADA Compliant Walkway connector approximately 320 lf x 5' wide, Hardsurfaced trail approximately 780 lf x 8' wide at Forest Park	\$26,000.00
Amenities: Benches, Picnic Tables, Water Fountain, and Trash Receptacles at Forest Park	\$15,000.00
Landscaping at Forest Park	\$5,000.00
<b>TOTAL</b>	<b>\$482,500.00</b>

## ATTACHMENT B

## Parent Child Information

***The Grantee should complete this form and submit it with the Grant Contract. The Grantee should submit only one, completed "Parent Child Information" document to the State during the Grantee's fiscal year.***

"Parent" means an entity whose IRS filing contains the information of at least one other entity.

"Child" means an entity whose information is contained in another entity's IRS filing.

Grantee's Edison Vendor ID number:

Is Kingsport a parent? Yes  No

If yes, provide the name and Edison Vendor ID number, if applicable, of any child entities.

Is Kingsport a child? Yes  No

If yes, complete the fields below.

Parent entity's name: \_\_\_\_\_

Parent entity's tax identification number: \_\_\_\_\_

Note: If the parent entity's tax identification number is a social security number, this form must be submitted via US mail to:

Central Procurement Office, Grants Program Manager  
3<sup>rd</sup> Floor, WRS Tennessee Tower  
312 Rosa L Parks Avenue  
Nashville, TN 37243

Parent entity's contact information

Name of primary contact person: \_\_\_\_\_

Address: \_\_\_\_\_

Phone number: \_\_\_\_\_

Email address: \_\_\_\_\_

Parent entity's Edison Vendor ID number, if applicable: \_\_\_\_\_



**AGENDA ACTION FORM**

**Agreement with Environmental Systems Research Institute (ESRI) for GIS Mapping Software**

To: Board of Mayor and Aldermen  
 From: Chris McCartt, City Manager *CM*

Action Form No.: AF-199-2019  
 Work Session: September 3, 2019  
 First Reading: N/A  
 Final Adoption: September 3, 2019  
 Staff Work By: Jake White  
 Presentation By: Ryan McReynolds

**Recommendation:**

Approve the Resolution.

**Executive Summary:**

In 1992 the City of Kingsport began using ESRI geospatial software, purchasing single licenses for individual desktop and server applications. In 2016 our utilization of ESRI's GIS software reached a level reflecting the need for an enterprise license which was more cost effective for the city (AF-262-2016). The Enterprise License Agreement (ELA) was a three (3) year agreement, and expanded the City's GIS offerings and integrations with third party applications such as Cartegraph.

The ELA provides an unlimited quantity of licenses for the most common ESRI software products, plus a limited quantity of other selected licenses; 250 ArcGIS Online seats (necessary for functionality of Cartegraph and other web GIS applications) a cloud-based application for sharing maps, geographic data, and authenticating named users; public access to interactive web maps, published on the City's website; and internal access to mobile field data collection applications, utilizing GPS locations.

It is requested to renew the three (3) year license agreement with ESRI as a continuation of the GIS software for the period of 2019-2022. Funding is available and identified in the GIS line item account number 110 2508 438 9006 to be paid annually in the amount of \$50,000.00 for a total amount of \$150,000.00.

**Attachments:**

1. Resolution w/ ESRI Software License Agreement
2. Sole Source Memo

Funding source appropriate and funds are available: *[Signature]*

	Y	N	O
Adler	—	—	—
Cooper	—	—	—
Duncan	—	—	—
George	—	—	—
Olterman	—	—	—
Phillips	—	—	—
Shull	—	—	—

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

A RESOLUTION APPROVING AN AGREEMENT WITH ENVIRONMENTAL SYSTEMS RESEARCH INSTITUTE FOR GIS MAPPING SOFTWARE AND AUTHORIZING THE MAYOR TO EXECUTE THE AGREEMENT AND ALL OTHER DOCUMENTS NECESSARY AND PROPER TO EFFECTUATE THE PURPOSE OF THE AGREEMENT

WHEREAS, the city has been using Environmental Systems Research Institute (ESRI) geospatial mapping software (GIS) since 1992, and updated the programs in 2016; and

WHEREAS, the city would like to enter into an agreement to continue the services for a three (3) year period of 2019-2022; and

WHEREAS, to ensure continuity, Environmental Systems Research Institute (ESRI) geospatial mapping software has been deemed as a sole source by the city manager; and

WHEREAS, ESRI's GIS software is currently used extensively in public works, public safety, development services, and many other city departments

WHEREAS, the \$50,000.00 annual cost of the services is available in 110-2508-438-9006.

Now therefore,

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

SECTION I. That an agreement with Environmental Systems Research Institute (ESRI) for geospatial mapping software is approved.

SECTION II. That the mayor, or in his absence, incapacity, or failure to act, the vice-mayor, is authorized and directed to execute, in a form approved by the city attorney and subject to the requirements of Article X, Section 10 of the Charter of the City of Kingsport, the agreement with Environmental Systems Research Institute (ESRI) for geospatial mapping software - and all other documents necessary and proper, and to take such acts as necessary, to effectuate the purpose of the agreement or this resolution, said agreement being as follows:

Quotation # Q-393207  
Date: July 26, 2019

Customer# 6975 Contract#

City of Kingsport Development Services 225 W Center St Kingsport, TN 37660  
ATTENTION: Jake White PHONE: (423)224-2465  
EMAIL: jakewhite@kingsporttn.gov

Material	Qty	Term	Unit Price	Total
168179	1	Year 1	\$50,000.00	\$50,000.00
Populations of 50,001 to 100,000 Small Government Term Enterprise License Agreement				
168179	1	Year 2	\$50,000.00	\$50,000.00
Populations of 50,001 to 100,000 Small Government Term Enterprise License Agreement				

168179	1	Year 3	\$50,000.00	\$50,000.00
Populations of 50,001 to 100,000 Small Government Term Enterprise License Agreement				

Subtotal: \$150,000.00  
Sales Tax: \$0.00  
Estimated Shipping and Handling (2 Day Delivery): \$0.00  
Contract Price Adjust: \$0.00  
Total: \$150,000.00

The items on this quotation are subject to and governed by the terms of this quotation, the most current product specific scope of use document found at <https://assets.esri.com/content/dam/esrisites/media/legal/products-specific-terms-of-use/e300.pdf> and eat your applicable signed agreement with Esri. If no such agreement covers any item quoted, then, Esri's standard terms and conditions found at <https://www.esri.com/content/dam/esrisites/media/legal/products-specific-terms-of-use/e300https://go.esri.com/MAPS> applied to your purchase of that item. Federal government entities and government prime contractors authorized under FAR 51.1 may purchase under the terms of Esri's GSA Federal Supply Schedule. Supplemental terms and conditions found at <https://www.esri.com/en-us/legal/terms/state-supplemental/> apply to some state and local government purchases. All terms of this quotation will be incorporated into and become part of any additional agreement regarding Esri's offerings. Acceptance of this quotation is limited to the terms of this quotation. Esri objects to and expressly rejects any different or additional terms contained in any purchase order, offer, or confirmation sent to or to be sent by buyer. Unless prohibited by law, the quotation information is confidential and may not be copied or released other than for the express purpose of system selection and purchase/license. The information may not be given to outside parties or used for any other purpose without consent from Esri. Delivery is FOB Origin. This offer is limited to the terms and conditions incorporated and attached herein.

SMALL ENTERPRISE AGREEMENT  
COUNTY AND MUNICIPALITY GOVERNMENT  
(E214-3)

This Agreement is by and between the organization identified in the Quotation ("Customer") and Environmental Systems Research Institute, Inc. ("Esri").

This Agreement sets forth the terms for Customer's use of Products and incorporates by reference (i) the Quotation and (ii) the Master Agreement. Should there be any conflict between the terms and conditions of the documents that comprise this Agreement, the order of precedence for the documents shall be as follows: (i) the Quotation, (ii) this Agreement, and (iii) the Master Agreement. This Agreement shall be governed by and construed in accordance with the laws of the state in which Customer is located without reference to conflict of laws principles, and the United States of America federal law shall govern in matters of intellectual property. The modifications and additional rights granted in this Agreement apply only to the Products listed in Table A.

Table A  
List of Products

Uncapped Quantities

Desktop Software and Extensions (Single Use) ArcGIS Desktop Advanced  
ArcGIS Desktop Standard ArcGIS Desktop Basic  
ArcGIS Desktop Extensions: ArcGIS 3D Analyst, ArcGIS Spatial Analyst, ArcGIS Geostatistical Analyst, ArcGIS Publisher, ArcGIS Network Analyst, ArcGIS Schematics, ArcGIS Workflow Manager, ArcGIS Data Reviewer  
Enterprise Software and Extensions ArcGIS Enterprise and Workgroup (Advanced and Standard)  
ArcGIS Enterprise Extensions: ArcGIS 3D Analyst, ArcGIS Spatial Analyst, ArcGIS Geostatistical Analyst, ArcGIS Network Analyst, ArcGIS Schematics, ArcGIS Workflow Manager  
Enterprise Additional Capability Servers  
ArcGIS Image Server  
Developer Tools  
ArcGIS Engine

ArcGIS Engine Extensions: ArcGIS 3D Analyst, ArcGIS Spatial Analyst, ArcGIS Engine Geodatabase Update, ArcGIS Network Analyst, ArcGIS Schematics ArcGIS Runtime (Standard) ArcGIS Runtime Analysis Extension

Limited Quantities

One (1) Professional subscription to ArcGIS Developer\*  
 Two (2) Esri CityEngine Advanced Single Use Licenses  
 250 ArcGIS Online Viewers 250 ArcGIS Online Creators  
 37,500 ArcGIS Online Service Credits 250 ArcGIS Enterprise Creators  
 5 Insights for ArcGIS for use with ArcGIS Enterprise 5 Insights for ArcGIS for use with ArcGIS Online

OTHER BENEFITS

Number of Esri User Conference registrations provided annually	<b>4</b>
Number of Tier 1 Help Desk individuals authorized to call Esri	<b>4</b>
Maximum number of sets of backup media, if requested**	<b>2</b>
Self-Paced e-Learning	<b>Uncapped</b>
Five percent (5%) discount on all individual commercially available instructor-led training classes at Esri facilities purchased outside this Agreement (Discount does not apply to Small Enterprise Training Package)	

\* Maintenance is not provided for these items

\*\*Additional sets of backup media may be purchased for a fee

Customer may accept this Agreement by signing and returning the whole Agreement with (i) the Quotation attached, (ii) a purchase order, or (iii) another document that matches the Quotation and references this Agreement ("Ordering Document"). ADDITIONAL OR CONFLICTING TERMS IN CUSTOMER'S PURCHASE ORDER OR OTHER DOCUMENT WILL NOT APPLY, AND THE TERMS OF THIS AGREEMENT WILL GOVERN. This Agreement is effective as of the date of Esri's receipt of an Ordering Document, unless otherwise agreed to by the parties ("Effective Date").

Term of Agreement: Three (3) years

This Agreement supersedes any previous agreements, proposals, presentations, understandings, and arrangements between the parties relating to the licensing of the Products. Except as provided in Article 4- Product Updates, no modifications can be made to this Agreement.

Accepted and Agreed:

[Acknowledgements Deleted for Inclusion in this Resolution]

1.0-ADDITIONAL DEFINITIONS

In addition to the definitions provided in the Master Agreement, the following definitions apply to this Agreement:

"Case" means a failure of the Software or Online Services to operate according to the Documentation where such failure substantially impacts operational or functional performance.

"Deploy", "Deployed" and "Deployment" mean to redistribute and install the Products and related Authorization Codes within Customer's organization(s).

"Fee" means the fee set forth in the Quotation.

"Maintenance" means Tier 2 Support, Product updates, and Product patches provided to Customer during the Term of Agreement.

"Master Agreement" means the applicable master agreement for Esri Products incorporated by this reference that is (i) found at <http://www.esri.com/legal/software-license> and available in the installation process requiring acceptance by electronic acknowledgment or (ii) a signed Esri master agreement or license agreement that supersedes such electronically acknowledged master agreement.

"Product(s)" means the products identified in

Table A-List of Products and any updates to the list Esri provides in writing.

"Quotation" means the offer letter and quotation provided separately to Customer.

"Technical Support" means the technical assistance for attempting resolution of a reported Case through error correction, patches, hot fixes, workarounds, replacement deliveries, or any other type of Product corrections or modifications.

"Tier 1 Help Desk" means Customer's point of contact(s) to provide all Tier 1 Support within Customer's organization(s).

"Tier 1 Support" means the Technical Support provided by the Tier 1 Help Desk.

"Tier 2 Support" means the Esri Technical Support provided to the Tier 1 Help Desk when a Case cannot be resolved through Tier 1 Support.

## 2.0-ADDITIONAL GRANT OF LICENSE

2.1 Grant of License. Subject to the terms and conditions of this Agreement, Esri grants to Customer a personal, nonexclusive, nontransferable license solely to use, copy, and Deploy quantities of the Products listed in Table A-List of Products for the Term of Agreement (i) for the applicable Fee and (ii) in accordance with the Master Agreement.

2.2 Consultant Access. Esri grants Customer the right to permit Customer's consultants or contractors to use the Products exclusively for Customer's benefit. Customer will be solely responsible for compliance by consultants and contractors with this Agreement and will ensure that the consultant or contractor discontinues use of Products upon completion of work for Customer. Access to or use of Products by consultants or contractors not exclusively for Customer's benefit is prohibited. Customer may not permit its consultants or contractors to install Software or Data on consultant, contractor, or third-party computers or remove Software or Data from Customer locations, except for the purpose of hosting the Software or Data on Contractor servers for the benefit of Customer.

## 3.0-TERM, TERMINATION, AND EXPIRATION

3.1 Term. This Agreement and all licenses hereunder will commence on the Effective Date and continue for the duration identified in the Term of Agreement, unless this Agreement is terminated earlier as provided herein. Customer is only authorized to use Products during the Term of Agreement. For an Agreement with a limited term, Esri does not grant Customer an indefinite or a perpetual license to Products.

3.2 No Use upon Agreement Expiration or Termination. All Product licenses, all Maintenance, and Esri User Conference registrations terminate upon expiration or termination of this Agreement.

3.3 Termination for a Material Breach. Either party may terminate this Agreement for a material breach by the other party. The breaching party will have thirty (30) days from the date of written notice to cure any material breach.

3.4 Termination for Lack of Funds. For an Agreement with government or government-owned entities, either party may terminate this Agreement before any subsequent year if Customer is unable to secure funding through the legislative or governing body's approval process.

3.5 Follow-on Term. If the parties enter into another agreement substantially similar to this Agreement for an additional term, the effective date of the follow-on agreement will be the day after the expiration date of this Agreement.

## 4.0-PRODUCT UPDATES

4.1 Future Updates. Esri reserves the right to update the list of Products in Table A-List of Products by providing written notice to Customer. Customer may continue to use all Products that have been Deployed, but support and upgrades for deleted items may not be available. As new Products are incorporated into the standard program, they will be offered to Customer via written notice for incorporation into the Products schedule at no additional charge. Customer's use of new or updated Products requires Customer to adhere to applicable additional or revised terms and conditions in the Master Agreement.

4.2 Product Life Cycle. During the Term of Agreement, some Products may be retired or may no longer be available to Deploy in the identified quantities. Maintenance will be subject to the individual Product Life Cycle Support Status and Product Life Cycle Support Policy, which can be found at <http://support.esri.com/en/content/productlifecycles>. Updates for Products in the mature and retired phases may not be available. Customer may continue to use Products already Deployed, but Customer will not be able to Deploy retired Products.

## 5.0-MAINTENANCE

The Fee includes standard maintenance benefits during the Term of Agreement as specified in the most current applicable Esri Maintenance and Support Program document (found at <http://www.esri.com/legal>). At Esri's sole discretion, Esri may make patches, hot fixes, or updates available for download. No Software other than the defined Products will receive Maintenance.

Customer may acquire maintenance for other Software outside this Agreement.

### a. Tier 1 Support

1. Customer will provide Tier 1 Support through the Tier 1 Help Desk to all Customer's authorized users.

2. The Tier 1 Help Desk will be fully trained in the Products.

3. At a minimum, Tier 1 Support will include those activities that assist the user in resolving how-to and operational questions as well as questions on installation and troubleshooting procedures.

4. The Tier 1 Help Desk will be the initial point of contact for all questions and reporting of a Case. The Tier 1 Help Desk will obtain a full description of each reported Case and the system configuration from the user. This may include obtaining any customizations, code samples, or data

involved in the Case.

5. If the Tier 1 Help Desk cannot resolve the Case, an authorized Tier 1 Help Desk individual may contact Tier 2 Support. The Tier 1 Help Desk will provide support in such a way as to minimize repeat calls and make solutions to problems available to Customer's organization.

6. Tier 1 Help Desk individuals are the only individuals authorized to contact Tier 2 Support. Customer may change the Tier 1 Help Desk individuals by written notice to Esri.

b. Tier 2 Support

1. Tier 2 Support will log the calls received from Tier 1 Help Desk.

2. Tier 2 Support will review all information collected by and received from the Tier 1 Help Desk including preliminary documented troubleshooting provided by the Tier 1 Help Desk when Tier 2 Support is required.

3. Tier 2 Support may request that Tier 1 Help Desk individuals provide verification of information, additional information, or answers to additional questions to supplement any preliminary information gathering or troubleshooting performed by Tier 1 Help Desk.

4. Tier 2 Support will attempt to resolve the Case submitted by Tier 1 Help Desk.

5. When the Case is resolved, Tier 2 Support will communicate the information to Tier 1 Help Desk, and Tier 1 Help Desk will disseminate the resolution to the user(s).

#### 6.0-ENDORSEMENT AND PUBLICITY

This Agreement will not be construed or interpreted as an exclusive dealings agreement or Customer's endorsement of Products. Either party may publicize the existence of this Agreement.

#### 7.0-ADMINISTRATIVE REQUIREMENTS

7.1 OEM Licenses. Under Esri's OEM or Solution OEM programs, OEM partners are authorized to embed or bundle portions of Esri products and services with their application or service. OEM partners' business model, licensing terms and conditions, and pricing are independent of this Agreement. Customer will not seek any discount from the OEM partner or Esri based on the availability of Products under this Agreement. Customer will not decouple Esri products or services from the OEM partners' application or service.

7.2 Annual Report of Deployments. At each anniversary date and ninety (90) calendar days prior to the expiration of this Agreement, Customer will provide Esri with a written report detailing all Deployments. Upon request, Customer will provide records sufficient to verify the accuracy of the annual report.

#### 8.0-ORDERING, ADMINISTRATIVE PROCEDURES, DELIVERY, AND DEPLOYMENT

8.1 Orders, Delivery, and Deployment

a. Upon the Effective Date, Esri will invoice Customer and provide Authorization Codes to activate the nondestructive copy protection program that enables Customer to download, operate, or allow access to the Products. If this is a multi-year Agreement, Esri may invoice the Fee before the annual anniversary date for each year.

b. Undisputed invoices will be due and payable within thirty (30) calendar days from the date of invoice. Esri's federal ID number is 95-2775-732.

c. If requested, Esri will ship backup media to the ship-to address identified on the Ordering Document, FOB Destination, with shipping charges prepaid. Customer acknowledges that should sales or use taxes become due as a result of any shipments of tangible media, Esri has a right to invoice and Customer will pay any such sales or use tax associated with the receipt of tangible media.

8.2 Order Requirements. Esri does not require Customer to issue a purchase order. Customer may submit a purchase order in accordance with its own process requirements, provided that if Customer issues a purchase order, Customer will submit its initial purchase order on the Effective Date. If this is a multi-year Agreement, Customer will submit subsequent purchase orders to Esri at least thirty (30) calendar days before the annual anniversary date for each year.

a. All orders pertaining to this Agreement will be processed through Customer's centralized point of contact.

b. The following information will be included in each Ordering Document:

(1) Customer name; Esri customer number, if known; and bill-to and ship-to addresses

(2) Order number

(3) Applicable annual payment due

#### 9.0-MERGERS, ACQUISITIONS, OR DIVESTITURES

If Customer is a commercial entity, Customer will notify Esri in writing in the event of (i) a consolidation, merger, or reorganization of Customer with or into another corporation or entity; (ii) Customer's acquisition of another entity; or (iii) a transfer or sale of all or part of Customer's organization (subsections i, ii, and iii, collectively referred to as "Ownership Change"). There will be no decrease in Fee as a result of any Ownership Change.

9.1 If an Ownership Change increases the cumulative program count beyond the maximum level for this Agreement, Esri reserves the right to increase the Fee or terminate this Agreement and the

parties will negotiate a new agreement.

9.2 If an Ownership Change results in transfer or sale of a portion of Customer's organization, that portion of Customer's organization will transfer the Products to Customer or uninstall, remove, and destroy all copies of the Products.

9.3 This Agreement may not be assigned to a successor entity as a result of an Ownership Change unless approved by Esri in writing in advance. If the assignment to the new entity is not approved, Customer will require any successor entity to uninstall, remove, and destroy the Products. This Agreement will terminate upon such Ownership Change.

#### Product-Specific Terms of Use

The following list identifies additional terms of use that apply to specific Products. Each Product listing identifies one or more footnotes that apply to that Product. These footnotes supplement the terms of this Agreement. The definitions for each footnote follow the list. Unless otherwise noted in the applicable Ordering Document, extensions to a Product follow the same scope of use as that granted for the corresponding Product.

#### Desktop Products

- ArcGIS Desktop (Advanced, Standard, or Basic) (26)
- ArcGIS Earth (20; 65)
- ArcGIS Explorer Desktop (20)
- ArcGIS for AutoCAD (20)
- ArcPad (13)
- ArcReader (20)
- ArcGIS for Personal Use (3; 26)

#### Server Products

- ArcGIS Enterprise
- Standard or Advanced (17; 21; 23; 31; 87)
- Workgroup Standard or Advanced (21; 23; 28; 29; 30; 87)
- ArcGIS GIS Server (Standard or Advanced) (31)
- ArcGIS GIS Server Basic (31; 39)
- ArcGIS GIS Server Workgroup (Standard or Advanced) (28; 29; 30)
- ArcGIS GIS Server Workgroup Basic (39)
- ArcGIS for Maritime: Server (2)
- ArcGIS Enterprise Optional Capability Servers:
- ArcGIS Image Server, ArcGIS GeoEvent Server, ArcGIS GeoAnalytics Server, and ArcGIS Notebook Server Standard (31)

- ArcGIS Enterprise Workgroup Optional Capability Servers:

- ArcGIS Image Server, ArcGIS GeoEvent Server, ArcGIS GeoAnalytics Server, and ArcGIS Notebook Server Standard (4)

- Esri Business Analyst for Server
- Workgroup (28; 29; 30; 31; 39)
- Enterprise (31; 39)
- World Geocoder for ArcGIS Basic (67)

#### Developer Tools

- AppStudio for ArcGIS Standard (11; 16; 19)
- ArcGIS Runtime SOK for Android, iOS, Java, macOS, .NET, Qt, or WPF (16; 19)
- ArcGIS Runtime for Android, iOS, Java, Mac OS X, .NET, Qt, or WPF
- Lite (15)
- Basic or Standard (1; 15; 18)
- Advanced (15; 18)
- ArcGIS Engine Developer Kit and Extensions (16; 19; 22; 26)
- ArcGIS Engine for Windows/Linux and Extensions (15; 22; 26)
- ArcGIS Web API for JavaScript (16; 64)
- ArcGIS Developer Subscription (24; 26; 77)
- Esri CityEngine SOK and Procedural Runtime (19; 84)
- Esri File Geodatabase API (47)

#### Mobile

- Navigator for ArcGIS (14)Other
- ArcGIS Hub (85)
- ArcGIS Indoors (86)
- ArcGIS Maps for Adobe Creative Cloud Complimentary user (74)
- Insights for ArcGIS (17)

#### Online Services

- ArcGIS Online Developer Deployment Subscription is available through the ArcGIS Developer Subscription:
  - + Free Subscription (66; 68; 75; 76; 79; 81)
  - + Paid Subscription (66; 68; 75; 76; 79)
- Education Programs (Free or Paid Subscriptions) (66; 68; 70; 71; 75; 76; 79; 81)
- NGO/NPO, Press/Media Programs (Free or Paid Subscription) (66; 68; 70; 71; 72; 75; 76; 79; 81)
- ArcGIS Online subscriptions are available through multiple Selling Programs:
  - Commercial Retail, EAs; and Government Programs (66; 68; 69; 70; 77; 78; 82)
  - Education Programs (66; 68; 69; 70; 71; 78; 81; 82)
  - Non-profit Programs (66; 68; 69; 70; 71; 78; 81; 82)
  - Public Plan (66; 68; 74; 75; 76; 80; 81)

Customers under the following categories have these additional rights:

- Commercial Retail (72)
- enterprise agreements (72)
- Government (72)
- NGO/NPO (72)
- Press/Media Programs (72)
- Education Programs (71)
- ArcGIS AEC Project Delivery Subscription (83)

#### Footnotes:

1. May not be used to edit an enterprise geodatabase via Direct Connect.
2. Not for use in navigation.
3. Licensed for personal, noncommercial use only.
4. Limited to 1 four-core server.  
Can be installed on a separate machine.
- 5-10. Reserved.
11. Applications built with AppStudio for ArcGIS Standard are subject to the terms of use for ArcGIS Runtime Standard Level.
12. Reserved.
13. Licensed as a Dual Use License.
14. May be used for navigational purposes.
15. Licensed as a Deployment License.
16. Customer may use the SDKs or APIs to create Value-Added Applications and distribute and license those Value-Added Applications to its end users to use anywhere not prohibited under export regulation.
17. Customer shall not redistribute Oracle JDBC Driver or its documentation that is included with this Product. Oracle is a third-party beneficiary of this Agreement with respect to the Oracle JDBC Driver.
18. The Deployment License is per Value-Added Application per computer for stand-alone applications.
19. License may not be used to develop Internet or server-based Value-Added Applications.
20. Licensed as a Redistribution License.
21. See Master Agreement <http://www.esri.com/legal/software-license> for additional terms of use for Named User Licenses.
22. a. An end user must acquire a license in either ArcGIS Engine for Windows/Linux Software or other ArcGIS Desktop Software (Basic, Standard, or Advanced) to obtain the right to run an ArcGIS Engine application on 1 computer; and  
b. The ArcGIS Engine for Windows/Linux extensions shall not be used in combination with ArcGIS Desktop Software to run ArcGIS Engine Value-Added Applications. A single user can have multiple ArcGIS Engine Value-Added Applications installed on 1 computer for use only by that end user.
23. System to System Communication
  - a. Customer may use a basic service login to enable one-way, read-only, system-to-system communications from ArcGIS Enterprise to other third-party, enterprise business system(s) in the customer's organization. Customer may use a Viewer Named User Credential or Level 1 Named User Credential as a basic service login until Esri implements an actual service login credential. A specific Viewer Named User Credential or Level 1 Named User Credential used as a basic service login credential may only be used for system-to-system integration purposes and may not also be used by a Named User to access the system.
  - b. Customer may use a standard service login to enable two-way, read-write, system-to-system

communications between ArcGIS Enterprise and other third-party, enterprise business system(s) in the customer's organization. Customer may use an Editor (or higher) Named User Credential or Level 2 Named User Credential as a standard service login until Esri implements an actual service login credential. A specific Editor (or higher) Named User Credential or Level 2 Named User Credential used as a standard service login credential may only be used for system-to-system integration purposes and may not also be used by a Named User to access the system.

24. Software may be used only for the purposes of development, testing, and demonstration of a prototype Value-Added Application and creating map caches. Customer may use Value-Added Applications and map caches with ArcGIS Enterprise Staging Server Licenses and Deployment Server Licenses. Software and Data may be installed on multiple computers for use by any ArcGIS Developer Subscribers with Builder or higher plan subscriptions; all other Software is licensed as a Single Use License.

25. Reserved.

26. The geodatabase is restricted to 10 gigabytes of Customer's data.

27. Reserved.

28. Use is limited to 10 concurrent end users of applications other than ArcGIS Enterprise Workgroup or ArcGIS GIS Server Workgroup applications. This restriction includes use of ArcGIS Desktop Software, ArcGIS Engine Software, and third-party applications that connect directly to any ArcGIS Enterprise Workgroup or ArcGIS GIS Server Workgroup geodatabase. There are no limitations on the number of connections from web applications.

29. Software requires a supported version of SQL Server Express. Supported versions are listed with the system requirements for the product on the Esri website.

30. Use is restricted to a maximum of 10 gigabytes of Customer's data. All components must be installed on a single server.

31. Includes a Failover License.

32. Reserved.

33-38. Reserved.

39. Any editing functionality included with ArcGIS GIS Server is not permitted for use with ArcGIS GIS Server Basic and ArcGIS GIS Server Workgroup Basic.

40-46. Reserved.

47. Customer may develop and distribute Value-Added Applications that use Esri File Geodatabase API to Customer's end users.

48-53. Reserved.

54. Reserved.

55-63. Reserved.

64. Value-Added Applications for web deployment must be used in conjunction with other Esri Products. Third-party technologies may also be used in conjunction with Value-Added Applications as long as the Value-Added Applications are always used in conjunction with other Esri Product(s).

65. May only be used in conjunction with other Esri Product(s). Third-party technologies may also be used in conjunction with ArcGIS Earth as long as ArcGIS Earth is always used in conjunction with other Esri Products.

66. Only Customers with an active ArcGIS Online subscription may store geocoded results generated by World Geocoding Service.

67. Limited to 250,000,000 geocodes per annual subscription.

68. Customer may use the data accessible through Infographics Service for display purposes only and may not save any data accessible through this service.

69. May be used for any business purpose of Customer's organization.

70. May be used for development and test purposes for Customer's organization.

71. May be used for teaching purposes in educational organizations.

72. May be used for the internal business purposes of Customer's organization.

73. Reserved.

74. May be used for personal use.

75. Customer may enable third-party use of Value-Added Applications only by publicly sharing the Value- Added Application(s) using Sharing Tools. Customer may not use this subscription to power a Value- Added Application for its own internal business use unless Customer is an educational institution using the Value-Added Application for teaching purposes only, a qualified NGO/NPO organization, or a media or press organization.

76. Customer is not permitted to create private groups or participate in any private groups.

77. Includes a Commercial App Deployment license, which enables Customer to make Value-Added Applications available to third parties for a fee.

78. Customer may use this subscription to create or participate in private groups.

79. Each subscription is limited to 1,000,000 geosearch transactions per month in conjunction

with Customer's subscription. Transactions include both basemap data and geocode search transactions. One basemap data transaction is equivalent to eight 256x256 tile requests. One geocode search transaction is equivalent to one address or place. If the results are stored in any manner such as after batch geocoding, the stored results are not counted toward the transaction limit. However, storage does consume Service Credits.

80. May permit registered students of an education institution to directly access the Online Services and share a single subscription between more than 1 registered student for teaching purposes only.

81. Customer may not make Value-Added Applications available to third parties for a fee.

82. A Named User may embed its Named User Credential in an ArcGIS API for Python script solely for the purpose of automating a workflow to be used exclusively by the Named User whose Named User Credential is embedded in the script.

83. Customer must use a separate AEC Project Delivery Subscription for each Customer client ("Client"). Customer may (i) use the AEC Project delivery Subscription solely to collaborate on project work with its Client; and (ii) provide Client with Named User access to the AEC Project Delivery Subscription to enable Client to access the AEC Project Delivery Subscription to collaborate on project work that Customer performs for Client. Client may not use the Named User License for any other purpose. Customer is solely responsible for Client's compliance with these terms of use and will ensure that Client stops using the AEC Project Delivery Subscription when the project ends.

84. Does not include a Deployment License for commercial use. Does include a Deployment License for non-commercial or educational use.

85. Software licenses and subscriptions included with ArcGIS Hub may only be used to support the community initiatives enabled by ArcGIS Hub. Customer may allow 3rd parties to be Named Users of ArcGIS Hub for the sole purpose of engaging in community activities. Customers may allow employees, agents, consultants, or contractors to be Named Users of ArcGIS Hub for the sole purpose of administering, configuring, maintaining, and supporting community initiatives through ArcGIS Hub. No other use of software licenses and subscriptions included with ArcGIS Hub is permitted.

86. Customer may use the software licenses and subscriptions included with ArcGIS Indoors solely to enable the capabilities of ArcGIS Indoors as defined in the ArcGIS Indoors Documentation. No other use of software licenses and subscriptions included with ArcGIS Indoors is permitted.

87. Accessing Parcel Fabric services provided by ArcGIS Enterprise is prohibited except through ArcGIS Pro Standard and ArcGIS Pro Advanced.

#### Master Agreement Products and Services

Revised 10/12/2018 IMPORTANT-READ CAREFULLY

Unless superseded by a signed license agreement between you and Esri, Esri is willing to provide Esri Offerings and Services to you only if you accept all terms and conditions contained in this Agreement as the sole and final agreement of the parties regarding your acquisition of these Esri Offerings and Services. Please read the terms and conditions carefully. You may not use the Esri Offerings unless you agree to the terms and conditions of the Agreement. Your access and use of Esri Offerings, or Services, constitutes your acceptance of the terms and conditions of this Agreement. If you do not agree, contact your local sales representative prior to making your purchase.

This Master Agreement ("Agreement") is between you ("Customer") and Environmental Systems Research Institute, Inc. ("Esri"), a California corporation with a place of business at 380 New York Street, Redlands, California 92373-8100 USA

Attachment A contains definitions of capitalized terms used throughout this Agreement. Each section of this Agreement may include additional definitions that are used exclusively within that section.

#### 1.0 GENERAL GRANT OF RIGHTS AND RESTRICTIONS

1.1 Grant of Rights. In consideration of Customer's payment of all applicable fees and in accordance with this Agreement, Esri

a. Provides Services as set forth in this Agreement;

b. Grants to Customer a nonexclusive, nontransferable right and license or subscription to access and use Esri Offerings as set forth in the Specifications and applicable Ordering Documents; and

c. Authorizes Customer to copy and make derivative works of the Documentation for Customer's own internal use in conjunction with Customer's authorized use of Esri Offerings. Customer will include the following copyright attribution notice acknowledging the proprietary rights of Esri and its licensors in any derivative work:

"Portions of this document include intellectual property of Esri and its licensors and are used under license. Copyright© [Customer will insert the actual copyright date(s) from the source materials.] Esri and its licensors. All rights reserved."

The grants of rights in this section (i) continue for the duration of the subscription or applicable Term or perpetually if no Term is applicable or identified in the Ordering Documents and (ii) are subject to additional rights and restrictions in this Agreement including [Attachment B](#).

1.2 Consultant or Contractor Access. Customer may authorize its consultants or contractors to (i) host Esri Offerings for Customer's benefit and (ii) use Esri Offerings exclusively for Customer's benefit. Customer will be solely responsible for its consultants' and contractors' compliance with this Agreement and will ensure that each consultant or contractor discontinues use of Esri Offerings upon completion of work for Customer. Access to or use of Esri Offerings by consultants or contractors that is not exclusively for Customer's benefit is prohibited.

1.3 Reservation of Rights. All Esri Offerings are the copyrighted works of Esri or its licensors; all rights not specifically granted in this Agreement are reserved.

## 2.0 SOFTWARE AND ONLINE SERVICES

2.1 Definitions. The following definitions supplement the definitions provided in Attachment A:

a. "Anonymous Users" means all who have public access (i.e., without having to provide a Named User Credential) to any part of Customer Content or Customer's Value-Added Applications.

b. "App Login Credential(s)" means a system-generated application login and associated password, provided when registering a Value-Added Application with ArcGIS Online, which when embedded in a Value-Added Application allows the Value-Added Application to access and use Online Services.

c. "Concurrent Use License" means a license to install and use Software on computer(s) on a network, provided that the number of simultaneous users may not exceed the number of licenses acquired. A Concurrent Use License includes the right to run passive failover instances of Concurrent Use License management software in a separate operating system environment for temporary failover support.

d. "Deployment License" means a license to incorporate ArcGIS Runtime components in Value-Added Applications and distribute Value-Added Applications to Customer's end users.

e. "Deployment Server License" means a license to use Software under a Server License for all uses permitted in this Agreement and as described in the Documentation.

f. "Development Server License" means a license to use Software under a Server License only to build and test Value-Added Applications as described in the Documentation.

g. "Development Use" means the right to install and use Products to build and test Value-Added Applications as described in the Documentation.

h. "Dual Use License" means the right to install Software on a desktop computer and use it simultaneously with either a personal digital assistant (PDA) or handheld mobile computer as long as the Software is only used by a single individual at any time.

i. "Failover License" means a license to install Software on redundant systems for failover operations, but the redundantly installed Software may be operational only during the period the primary site is nonoperational. Except for system maintenance and updating of databases, the redundant Software installation(s) will remain dormant while the primary site (or any other redundant site) is operational.

j. "Named User(s)" is Customer's employee, agent, consultant, or contractor to whom Customer has assigned a unique, secure login credential (identity) enabling access to a Product that requires such identity in order to access identity-managed capabilities within a Product for Customer's exclusive benefit. For educational use, Named Users may include registered students.

k. "Named User Credential(s)" means an individual person's login and associated password enabling that person to access and use Products.

l. "Named User License" means the right for a single Named User to use a specific Esri Offering.

m. "Online Services Subscription" means a limited-term subscription conveying the right for one or more Named Users to access and use Online Services.

n. "Redistribution License" means a license to reproduce and distribute Software provided that

1. Customer reproduces and distributes the Software in its entirety;

2. A license agreement that protects the Software to the same extent as this Agreement accompanies each copy of the Software, and the recipient agrees to the terms and conditions of the license agreement;

3. Customer reproduces all copyright and trademark attributions and notices; and

4. Customer does not charge a fee to others for the use of the Software.

o. "Server License" means a license to install and use Software on a server computer. Server Licenses may be subject to a limited number of server cores or distributed deployment on multiple servers as described in the Ordering Documents or Documentation. If the Software description

includes failover use rights, each Server License includes a Failover License.

p. "Service Credit(s)" means a unit of exchange for consumption of services that can be used with an Online Services Subscription.

q. "Sharing Tools" means publishing capabilities included with Online Services that allow Customer to make Customer Content and Value-Added Applications available to third parties or Anonymous Users.

r. "Single Use License" means a license for a single authorized end user to install and use Software on a single computer. The single authorized end user may also install a second copy for the end user's exclusive use on a second computer as long as only 1 copy of Software is in use at any time. No other end user may use Software under the same license at the same time for any other purpose.

s. "Staging Server License" means a license to use Software under a Server License to build and test Value- Added Applications and map caches; conduct user acceptance, performance, and load testing of other third- party software; stage new commercial data updates; and conduct training activities as described in the Documentation. Customer may use Value-Added Applications and map caches with Development and Deployment Server Licenses.

2.2 License and Subscription Types. Esri provides Software Products under one or more of the license or subscription types identified in the definitions above. The Documentation and Ordering Documents identify which license or subscription type(s) applies to the ordered Products.

### 2.3 Software Terms of Use

a. Customer may

1. Install, access, or store Software and Data on electronic storage device(s);

2. Make archival copies and routine computer backups;

3. Install and use a newer version of Software concurrently with the version to be replaced during a reasonable transition period not to exceed 6 months, provided that the deployment of either version does not exceed Customer's licensed quantity; thereafter, Customer will not use more Software in the aggregate than Customer's total licensed quantity. This concurrent use right does not apply to Software licensed for Development Use.

4. Move Software in the licensed configuration to a replacement computer;

5. Distribute Software and any associated Authorization Codes required for use of a Deployment License to third parties; and

6. Use server Software for Commercial ASP Use only if Customer has procured a Commercial ASP Use license or is a governmental or not-for-profit organization that operates a website or offers an Internet service on a cost-recovery basis and not for profit.

b. Customer may customize Software using any macro or scripting language, APIs, or source or object code libraries but only to the extent that such customization is described in the Documentation.

c. Customer may use all fonts provided with Software for any authorized use of the Software. Customer may also use Esri fonts separately to print any output created by the Software. Any use restrictions for third-party fonts included with the Software are set forth in the font file itself.

d. Esri publishes Product-specific Software terms of use at <http://www.esri.com/legal/scope-of-use>.

### 2.4 Online Services Terms of Use

a. Online Services Descriptions. Esri publishes Online Services Subscription-specific terms of use at <http://www.esri.com/legal/scope-of-use>. Use of Online Services is also subject to the Cloud Services terms found in **Attachment B**.

b. Modifications of Online Services. Esri may change Online Services and associated APIs at any time, subject to 30 days' notice of material changes and 90 days' notice for deprecations. If any modification, discontinuation, or deprecation of Online Services causes a material, adverse impact to Customer's operations, Esri may, at its discretion, attempt to repair, correct, or provide a workaround for Online Services. If a viable solution is not commercially reasonable, Customer may cancel its subscription to Online Services, and Esri will issue a prorated refund.

c. Sharing Customer Content. Sharing Customer Content using Sharing Tools enables third parties to use, store, cache, copy, reproduce, (re)distribute, and (re)transmit Customer Content through Online Services. Esri is not responsible for any loss, deletion, modification, or disclosure of Customer Content resulting from use or misuse of Sharing Tools or Online Services, Customer Content, ArcGIS Website, Documentation, or related materials. Customer's use of Sharing Tools is at Customer's sole risk.

d. Limits on Use of Online Services, Service Credits. Each Online Services Subscription includes Service Credits as described in the applicable Ordering Document. Each Service Credit entitles Customer to consume a set amount of Online Services, the amount varying depending on the Online Services that Customer is using. As Customer consumes Online Services, Service Credits are automatically debited from Customer's subscription, up to the maximum number of Service Credits

available. Customer may purchase additional Service Credits as needed. Esri will notify Customer's subscription account administrator when Customer's Service Credit consumption reaches approximately 75 percent of the Service Credits allocated to Customer through Customer's subscription. Esri reserves the right to suspend Customer's access to Online Services that consume Service Credits when Customer has consumed all its Service Credits. Esri will promptly restore Customer's access to its Online Services once Customer has purchased additional Service Credits.

2.5 Named User Licenses. The following terms apply to Software and Online Services for which Customer acquires Named User Licenses.

a. Named Users

1. Named User login credentials are for designated users only and may not be shared with other individuals.

2. Customer may reassign a Named User License to another user if the former user no longer requires access to the Software or Online Services.

3. Customer may not add third parties as Named Users, other than third parties included within the definition of Named Users.

b. Value-Added Applications

1. Customer is responsible for the development, operation, and technical support of Customer Content and Value-Added Applications.

2. Customer may not embed a Named User Credential into Value-Added Applications. Value-Added Applications that enable access to Customer's private data or content must require individual users to log in to the application(s) with their unique Named User login credentials.

3. Customer may embed an App Login Credential into Value-Added Applications that provide access by Anonymous Users to services, content, or data that has been published for shared access by Anonymous Users through the use of Sharing Tools included with Customer's authorized use of Software or Online Services.

4. Customer may not embed an App Login Credential into Value-Added Applications that enables access to Customer's private data or content. Value-Added Applications that enable access to Customer's private data or content must require individual users to log in to the application(s) with their unique Named User login credentials.

5. Customer may not provide a third party, other than third parties included within the definition of Named Users, with access to Software or Online Services, other than through Customer's Value-Added Application(s).

6. Customer may transfer Value-Added Applications to any third party for use in conjunction with the third party's own Software license or Online Services Subscription.

c. Anonymous Users. Anonymous Users may only access Software or Online Services through Value-Added Applications that provide access to services, content, or data that has been published for shared access through the use of Sharing Tools included with Customer's authorized use of Software or Online Services.

2.6 Limited-Use Programs

a. Trial, Evaluation, and Beta Programs. Products acquired under a trial, evaluation, or Beta program are licensed for evaluation and testing purposes only and not for commercial use. Any such use is at Customer's own risk, and the Products do not qualify for Maintenance. If Customer does not convert to a purchased license or subscription prior to the expiration of the trial, evaluation, or Beta license, Customer may lose any Customer Content and customizations made during the license term. If Customer does not wish to purchase a license or subscription, Customer should export such Customer Content before the license expires.

b. Educational Programs. Customer agrees to use Products provided under an educational program solely for educational purposes during the educational use Term. Customer shall not use Products for any Administrative Use unless Customer has acquired an Administrative Use license. "Administrative Use" means administrative activities that are not directly related to instruction or education, such as asset mapping, facilities management, demographic analysis, routing, campus safety, and accessibility analysis. Customer shall not use Products for revenue-generating or for-profit purposes.

c. Grant Programs. Customer may use Products provided under a grant program for noncommercial purposes only. Except for cost recovery of using and operating the Products, Customer shall not use Products for revenue-generating or for-profit purposes.

d. Other Esri Limited-Use Programs. If Customer acquires Products under any limited-use program not listed above, Customer's use of the Products may be subject to the terms set forth in the applicable launching page or enrollment form or as described on Esri's website in addition to the nonconflicting terms of this Agreement.

3.0 DATA

3.1 Definitions. The following definitions supplement the definitions provided in [Attachment A](#):

- a. "Business Listing Data" means any dataset that includes a list of businesses and may include other associated business attributes.
- b. "Esri Content Package(s)" means a digital file containing ArcGIS Online basemap content (e.g., raster map tiles, images, vector data) extracted from the ArcGIS Online basemap services.
- c. "Street Data" means Data that includes or depicts information about roads, streets, and related features.

### 3.2 Permitted Uses

- a. Unless otherwise authorized in writing, Customer may only use Data with the Products for which Esri has provided the Data.
- b. Customer may include representations of Data in hard-copy or static, electronic format (e.g., PDF, GIF, JPEG, HTML); in ArcGIS Web Maps; or in Esri Story Maps apps for the purposes of visualizing Data (including basic interactions such as panning, zooming, and identifying map features with simple pop-ups) for use in presentation packages, marketing studies, or other reports or documents containing map images or data summaries derived from the use of Esri Products to third parties subject to restrictions set forth in this Agreement, provided that Customer affixes an attribution statement to the Data representations acknowledging Esri or its applicable licensor(s) as the source of the portion(s) of the Data used for the Data representation.
- c. Customer may take ArcGIS Online basemaps offline through Esri Content Packages and subsequently deliver (transfer) them to any device for use with licensed ArcGIS Runtime applications and ArcGIS Desktop. Customer may not otherwise scrape, -download, or store Data.
- d. Esri does not acquire any rights in Customer Content under this Agreement.

### 3.3 Use Restrictions

- a. Customer may not act directly or authorize its customers to cobrand Data, use Data in any unauthorized service or product, or offer Data through or on behalf of any third party.
- b. Customer may not use or allow third parties to use Data, for the purpose of compiling, enhancing, verifying, supplementing, adding to, or deleting from compilation of information that is sold, rented, published, furnished, or in any manner provided to a third party.
- c. Business Listing Data. Unless authorized in writing, Customer may not use Business Listing Data for any direct marketing purposes, resale publication, or distribution to any third party as part of any mailing list, directory, classified advertising, or other compilation of information.
- d. Street Data. Customer may use Street Data for mapping, geocoding, routing, and transportation network analysis purposes. Unless otherwise authorized in writing, Customer may not use Street Data for

1. Real-time navigational guidance, including alerting a user about upcoming maneuvers, such as warning of an upcoming turn or calculating an alternate route if a turn is missed;
2. Synchronized multivehicle routing; or
3. Synchronized route optimization.

- e. Business Analyst Data. Customer may cache Data provided with ArcGIS Business Analyst Mobile App on a mobile device for use in conjunction with its use of ArcGIS Business Analyst Server. Customer may not otherwise cache or download such Data.
- f. Partial Dataset Licenses: If Customer orders a subset of a dataset (e.g., a country, region, state, or local portion of a global database), Customer may use only the licensed subset, not any other portion of the full dataset.
- g. Esri MapStudio Data. Customer may create, publicly display, and distribute maps in hard-copy or static electronic format for news-reporting purposes only.
- h. Michael Bauer Research International Boundaries Data ("MBR Data"). Customer's right to use data downloaded to Customer's premises (e.g., MBR Data stored in ArcGIS Enterprise, ArcGIS Desktop) terminates 2 years after download.

3.4 Supplemental Terms and Conditions for Data. Certain Data licensors require Esri to flow down additional attribution requirements and terms of use to Customer. These terms supplement and amend the terms of this Agreement and are available at [www.esri.com/legal/third-party-data](http://www.esri.com/legal/third-party-data).

### 4.0 MAINTENANCE

4.1 US Customers. Esri will provide Maintenance for Software and Online Services in accordance with the Esri Maintenance and Support Program and this Agreement if Customer is in the United States.

4.2 Customers outside the United States. Customer may obtain maintenance services from their local Esri distributor under the distributor's own standard support policy.

### 5.0 PROFESSIONAL SERVICES

5.1 Definitions. The following definitions supplement the definitions provided in [Attachment A](#):

- a. "Invention(s)" means a patentable invention, discovery, innovation, or improvement, excluding Deliverables, relating to the subject matter of a Task Order.
- b. "Inventor(s)" means a party's principal, employee, consultant, or independent contractor that

solely or jointly develops Inventions during Esri's performance under a Task Order.

c. "Professional Service Package(s)" means a predefined unit of Professional Services, including travel-related expenses, provided at a firm fixed price.

5.2 Permitted Uses. Customer may use, copy, and modify Deliverables solely in conjunction with Customer's authorized use of Products.

5.3 Task Orders and Project Schedule

a. Esri will provide Professional Services and Deliverables as specified in the Task Order.

b. Each Task Order will reference this Agreement and specify the commencement date and, if known, the period of performance.

c. Task Orders may have the format shown in Attachment C or any other agreed-upon format.

d. Each party will identify, in writing, the project manager who is responsible for Professional Services and Deliverables described in Task Orders. By written notice to the other party's technical administrator, either party may replace the project manager at any time with a similarly qualified person.

e. Other than pricing and descriptions of Professional Services to be performed, terms and conditions in a Task Order are not binding unless both parties have signed the Task Order. The terms of a signed Task Order take precedence over conflicting terms in this Agreement.

5.4 Ownership of Deliverables and Inventions

a. Esri or its licensors own and retain ownership of Deliverables.

b. Each party will retain title to any Inventions made or conceived solely by its Inventors during the term of this Agreement, including, but not limited to, such Inventions that Esri's Inventors solely make or conceive while providing technical assistance pursuant to this Agreement. The parties will jointly own any Inventions made or conceived jointly by Inventors from both parties.

c. The parties will negotiate in good faith and cooperate reasonably in (i) deciding whether or not to seek or maintain, or to continue to seek or maintain, patent protection in any country on any Invention and the extent and scope of such protection and (ii) protecting and enforcing any patents issued on such Invention.

5.5 Acceptance

a. For Firm Fixed Price Task Orders. Customer will complete its acceptance review within 10 working days of receiving each Deliverable and classify the Deliverables as follows:

1. "DELIVERABLE ACCEPTED" means a Deliverable conforming to the applicable Task Order with no more than minor nonconformities.

2. "DELIVERABLE ACCEPTED WITH REWORK" means a Deliverable substantially conforming to the applicable Task Order but having a significant number of identified nonconformities and accepted subject to rework by Esri. Esri will rework the Deliverable for the identified nonconformities and resubmit it within 30 days. Customer will rerun its acceptance review for the nonconformities detected in the initial review within 10 working days of such resubmission and will reclassify the Deliverable as either DELIVERABLE ACCEPTED or DELIVERABLE REJECTED.

3. "DELIVERABLE REJECTED" means a Deliverable that fails to substantially conform to applicable Task Order(s). Esri will rework the Deliverable and resubmit it to Customer within 30 days, at which time Customer will have 10 working days to rerun its acceptance review and reclassify the deliverable as either DELIVERABLE ACCEPTED or DELIVERABLE REJECTED.

Customer may not use any Deliverable in its business operations before acceptance as described in a.1 or

a.2. If Customer does not notify Esri in writing within 10 working days after delivery that it has classified the Deliverable as ACCEPTED WITH REWORK or REJECTED in accordance with a.2 or a.3, or if Customer uses the Deliverable in its business operations, the Deliverable will be deemed, as of the first of either of these events to occur, to have been accepted.

b. For Task Orders with Professional Service Packages. Professional Services that Esri performs under Professional Service Packages will be deemed accepted unless Customer notifies Esri within 10 days after performance. Customer may purchase additional Professional Service Packages as needed to complete Customer's work requirements.

c. For Time and Materials Task Orders. Professional Services are provided strictly on a time and materials basis subject to the Task Order not-to-exceed funding limit. The Professional Services provided will be deemed accepted and in compliance with the professional and technical standards of the software industry unless Customer notifies Esri within 10 days after performance. Deliverables produced under a time and materials Task Order will not be subject to acceptance testing.

5.6 Warranty for Deliverables. Esri warrants to Customer that firm fixed price Deliverables materially comply with Specifications for a period of 90 days from acceptance, subject to the limitations and disclaimers of liability set forth in the "Limited Warranties and Disclaimers" section of Attachment B.

5.7 Changes. The parties may make changes within the general scope of a Task Order by mutual

agreement. To document any agreed-to scope changes within the general scope of the Task Order that affects the cost or time required to provide a Deliverable, the parties will jointly sign a written amendment to the Task Order that includes an equitable adjustment in the price, schedule, or both.

5.8 Customer Termination for Convenience. Customer may terminate any Task Order at any time upon 30 days' written notice to Esri and upon payment to Esri of all amounts due to date pursuant to this Agreement, including reasonable expenses incurred as a direct result of the termination and the pro rata contract price for the Task Orders affected.

5.9 Payment; Invoices

a. For Firm Fixed Price Task Orders. Unless otherwise specified in a Task Order, Esri will prepare and submit monthly invoices based on the percentage of completion for each Deliverable as of the end of the preceding month. Upon acceptance of all Deliverables under a Task Order, the unpaid balance of the total Task Order value is due.

b. For Professional Service Packages. Esri will submit an invoice for Professional Service Packages on receipt of an agreed-upon Task Order. Esri may, at its sole discretion, stop work to avoid exceeding the total labor hours or number of days allotted in the applicable Professional Service Package description set forth in the applicable scope of work. Professional Service Packages expire if not used within 12 months of the Esri invoice date.

c. For Time and Materials Task Orders

1. Esri will submit to Customer written monthly invoices to the Customer address provided in the Task Order. The invoices will include the payment due for work performed, including travel time, and any other direct costs (ODCs) incurred as authorized under a Task Order. The amount invoiced for labor will be equal to the number of hours expended during the previous month, multiplied by the applicable labor rates. Esri will invoice meals on a per diem basis in accordance with the full daily limits specified on the government General Services Administration (GSA) website at <https://www.gsa.gov/>. Esri and Customer may include hourly labor rates in this Agreement; if the parties elect to do so, Attachment D will identify the hourly labor rates for each labor category. Esri may change hourly labor rates for Services; any increase in the first 5 years will not exceed 5 percent per year. Esri will invoice ODCs, including travel-related expenses incurred, plus a 15 percent burden.

2. Esri may reallocate the budget between activities, labor categories, and ODCs as necessary to facilitate the work effort, provided the overall price is not exceeded. If Esri reaches the funded not-to-exceed Task Order value and the activities are not completed, Customer may increase the order funding to allow additional work to be performed, or Esri may stop work without further obligation or liability.

5.10 System and Data Access. Each Task Order will specify any requirement for Customer to give Esri personnel access to Customer's systems or data.

6.0 ESRI MANAGED CLOUD SERVICES

6.1 Definitions. The following definitions supplement the definitions provided in Attachment A:

a. "EMCS Environment" means the hardware, Software, Data, and network platform that Esri or its third-party supplier provides as part of Esri Managed Cloud Services (EMCS).

b. "Hosting" means the business of housing and making accessible Customer Content via the Internet.

6.2 Provision of EMCS

a. General Terms. Use of EMCS is subject to the Cloud Services terms found in Attachment B of this Agreement.

b. Requirements Planning. It is Customer's responsibility to plan for and address with Esri changes to Customer's requirements, such as the need for additional capacity, the update of an application or dataset, or increased level of system availability.

c. Compensation and Expenses. Esri will invoice Customer for the one-time setup fee upon Task Order execution. Thereafter, Esri will invoice Customer monthly for the EMCS to be provided the following month. Customer will pay invoices within 30 days of receipt. Customer is responsible for any shipping or temporary storage costs incurred during the delivery of Customer Content to Esri or removal of Customer Content from the EMCS Environment. This paragraph does not apply to EMCS provided under the Advantage Program (see the section entitled "Advantage Program" in this Agreement).

d. Risk of Loss. Risk of loss for all Customer Content shall at all times remain with Customer, and it is Customer's sole responsibility to maintain regular backups of Customer Content. Risk of loss for the EMCS Environment shall at all times remain with Esri.

e. Personally Identifiable Information. Prior to providing any Customer Content under this Agreement, Customer shall notify Esri if Customer Content includes personally identifiable information.

f. Public Software. Customer may not use, and may not authorize its end users or contractors

to combine or use any Esri Offerings with any software (including any underlying dependencies), documentation, or other material distributed under an open source or other similar licensing or distribution model that requires as a condition of such model that any component of the Esri Offering to be (1) disclosed or distributed in source code form, (2) made available free of charge to third parties, or (3) modifiable without restriction by third parties.

g. Monitoring. Customer will provide information and other materials related to its Customer Content as reasonably requested by Esri or its Hosting partner to verify Esri's or Customer's compliance with this Agreement. Esri or its Hosting partner, as applicable, may browse, index, or otherwise monitor the external interfaces of any Customer Content solely for the purpose of verifying compliance with this Agreement.

## 7.0 TRAINING

7.1 Definitions. The following definitions supplement the definitions provided in [Attachment A](#):

a. "Customer-Supplied Training Data" means any digital dataset(s) including, but not limited to, geographic vector data, coordinates, raster data reports, or associated tabular attributes supplied by Customer for use in training.

b. "Esri Mobile Lab" means a service in which Esri will deliver and set up a training environment at the Customer's site for use in conjunction with scheduled Esri Training Events only. The Esri Mobile Lab will include certain hardware, software, power cords, and network switches necessary for the instructor to set up the environment.

c. "Esri Training Event(s)" means an Esri site class, Esri instructor-led online class, a Customer site/private class, workshop, or coaching services.

d. "Esri Training Event Assistant" means Customer's primary Esri liaison in organizing private Esri Training Events.

e. "Student(s)" means a Customer employee or agent who is a registered participant in a specific Esri Training Event or Training-related services. If Customer is an individual, then Student means Customer.

f. "Training Pass" means a nonrefundable, nontransferable block of prepaid training days with a fixed price per day training price throughout the Term of the Training Pass.

## 7.2 Permitted and Prohibited Uses

a. Esri provides Training Materials for Training purposes only and for the exclusive use of the Student who attends the Training course for which the Training Materials are provided.

b. Customer may reproduce copies of Training Materials for registered Students.

c. Customer may not and may not permit any Student to (i) separate the component parts of Training Materials for any use or (ii) use audio or video recording equipment during an Esri Training Event.

d. Esri may issue temporary Product authorizations if Customer has an insufficient number of Products available for Training. Customer may use such Products as Training Materials under the terms of this Agreement. Customer will uninstall all deployed Products and return any media provided by Esri upon conclusion of the Esri Training Event.

e. Customer will retain ownership of any Customer-Supplied Training Data.

## 7.3 Esri's Responsibilities

Esri will

a. Provide an instructor qualified to conduct Training;

b. Provide all necessary Training Materials for Student; and

c. Confirm Esri Training Events approximately 10 business days prior to the scheduled start date.

Esri will only confirm Student registrations that include a payment method. Registrations without a confirmed payment method are placed on the reservation waiting list. All reservations on the waiting list are subject to availability. Customer site/Private class and coaching services confirmation is also dependent on receipt of the completed Customer site training request form.

## 7.4 Customer's Responsibilities

Customer will

a. Ensure that all Students have received confirmation from Esri to participate in an Esri Training Event. Esri reserves the right to disconnect any Student who permits unregistered student access to an online classroom Esri Training Event. In such case, the full Esri Training Event fee will be invoiced and payable;

b. Ensure that all Students meet the minimum prerequisites for the applicable Esri Training Event as listed on Esri's training website;

c. Submit Student registrations in Esri site classes with payment method information at least 15 business days before the scheduled start date;

d. Provide the Esri Training Event Assistant with a list of names and email addresses of any Students who are to attend an Esri Training Event at least 3 business days before the scheduled start date, for compliance with the US embargoed country lists and the various US Government Lists

of Parties of Concern or Specially Designated Nationals lists;

e. For classes held at the Customer-designated facility, complete a client-site training request form; consult with Esri personnel to determine classroom, computer, and network requirements; and provide all such required classrooms, computers, and network access;

f. Ensure that Student use of Training Materials provided by Esri complies with the terms of this Agreement; and

g. Assume full liability and responsibility for Student attending Training course(s) under this Agreement.

h. If the Esri Mobile Lab is used, Customer will

1. Take delivery of the Esri Mobile Lab from the shipping agent, and keep it in a secure, locked area at all times;

2. Immediately report any previously damaged Esri Mobile Lab equipment to the Esri Training Event Assistant upon receipt of the shipment; and

3. Be financially responsible for loss of, damage to, or theft of Esri Mobile Lab equipment while in Customer's possession.

#### 7.5 Student Registration and Training Event Change Policy

a. Customer will provide advance written notice to Esri Customer Service at [service@esri.com](mailto:service@esri.com) to reschedule or cancel any Esri Training Event or to substitute a student in a scheduled Esri Training Event.

b. A replacement Student must be from the same Customer organization as the Student being replaced.

c. If Customer reschedules an Esri Training Event three or fewer days before the scheduled start date, Esri will charge Customer 50 percent of the fee plus the cost of the rescheduled Esri Training Event.

d. If Customer (i) cancels an Esri Training Event 3 or fewer days before the scheduled start date without concurrently rescheduling or (ii) is absent without notice from the Esri Training Event, Customer will be liable for the full Esri Training Event fee.

e. If cancellation of an Esri Training Event is necessary due to causes beyond the party's reasonable control, the affected party may reschedule or cancel the Esri Training Event without incurring any liability.

f. Termination of Agreement. Students who are currently registered for an Esri Training Event as of the date of termination of this Agreement may attend the scheduled Esri Training Event, subject to the terms and conditions of this Agreement.

#### 7.6 Invoicing; Prepaid Fees

a. Esri will invoice Customer upon completion of the Esri Training Event or on purchase of a Training Pass. On Customer request, Esri will invoice in advance for an Esri Training Event.

b. If Customer is invoiced and pays that invoice prior to the scheduled Esri Training Event, then Customer has 1 year from the date of the invoice to consume Training days. For a multiyear order, Training days must be consumed by the end date specified on the Esri quotation. Thereafter, all prepaid fees are forfeited.

c. Training Pass redemption rates are described at <https://www.esri.com/training/training-for-organizations/>.

This paragraph does not apply to Training provided under the Advantage Program.

#### 8.0 ADVANTAGE PROGRAM

8.1 Definitions. The following definitions supplement the definitions provided in [Attachment A](#):

a. "Activity Description" means a mutually agreed upon written statement that confirms the number of Learning and Services Credits that Esri estimates is required to perform an activity and authorizes Esri to begin work based on such estimate. The Activity Description serves as the Task Order for Services provided under the Advantage Program.

b. "Advantage Program" means either the BPAP or the EEAP.

c. "Authorized Contact" means Customer's point of contact for the Advantage Program identified below.

d. "BPAP" means the Business Partner Advantage Program as described at [www.esri.com/partners/bpap/components](http://www.esri.com/partners/bpap/components).

e. "EEAP" means the Esri Enterprise Advantage Program as described at [www.esri.com/services/eeap/components](http://www.esri.com/services/eeap/components).

f. "Learning and Services Credits" means a contracted unit of exchange that Customer may use to acquire Professional Services, Training, PSS, EMCS, or related travel expenses as described below.

g. "Premium Support Services" or "PSS" means a prioritized incident management and technical support program further described at <http://support.esri.com/cn/support/premium>.

h. "Technical Advisor" means an Esri consultant assigned to work with Customer to provide

Professional Services comprising advising Customer on GIS strategies, facilitating annual account planning, and developing and coordinating a collaborative technical work plan under the Advantage Program.

8.2 Advantage Program Description. The Advantage Program is provided on an order-by-order, annual subscription basis allowing access to Professional Services, Training, PSS, and EMCS offerings that provide Customer with the flexibility to select the offerings that best meet its needs with guidance from Technical Advisor. The Advantage Program may change from time to time. The Advantage Program includes the following:

- a. Technical Advisor. Customer will receive up to the number of Technical Advisor hours ordered. Customer may elect to retain additional Technical Advisor hours for a supplemental price.
- b. Annual Account Planning Session. A 1-day annual account planning and review meeting is included.
- c. Technical Work Plan. A collaboratively developed document is designed to drive the program's implementation through definition of Customer's GIS vision, goals, and objectives.
- d. Learning and Services Credits. Customer will receive the number of Learning and Services Credits ordered. Customer may use the credits toward any combination of Professional Services, Training, PSS, EMCS, or related travel expenses. Customer may order, for an additional price, additional Learning and Services Credits. Learning and Services Credits may be exchanged as described at the BPAP or EEAP website. Esri will provide a monthly report outlining usage of Learning and Services Credits to date to the Authorized Contact.
- e. Quarterly Technology Webcast. Esri will provide an email invitation to the Authorized Contact for a quarterly webcast presenting business and technical information related to enterprise GIS.
- f. No Project Services. The Advantage Program is not designed for Esri to provide project-specific Professional Services such as custom application or database development for solutions or applications. Esri will not provide these types of Professional Services under the Advantage Program and does not warrant that Deliverables provided under an Advantage Program will comply with Specifications.

8.3 Authorized Contact Information. Customer identifies the following person as its initial Authorized Contact.

(to be completed by Customer):

Contact Name \_\_\_\_\_  
Telephone \_\_\_\_\_  
Address : \_\_\_\_\_  
City, State, ZIP: - \_\_\_\_\_  
Email : \_\_\_\_\_  
Fax \_\_\_\_\_

8.4 Current on Maintenance. Customer must remain current on standard Software Maintenance during the Advantage Program term.

8.5 Authorization of Learning and Services Credits Use. Customer will contact its account manager or Technical Advisor to consume Learning and Services Credits for a particular request. Esri will submit an Activity Description by email to Customer for confirmation and authorization to use Learning and Services Credits. Customer may authorize the consumption of Learning and Services Credits by submitting an email. Esri will begin work and deduct the estimated credit amount stated in the Activity Description from the unused Learning and Services Credits available.

8.6 Activity Descriptions for EMCS. The Activity Description for EMCS orders must include the following:

- a. The EMCS Term-The time period in which Esri provides the EMCS to Customer. The EMCS term does not begin until setup and deployment of the data and application are complete.
- b. Targeted System Availability-The minimum percentage of time that Customer has external access to the application and associated Customer Content through the Internet. Examples of supported levels of system availability are 95 percent, 99 percent, and 99.9 percent. Not all EMCS offerings include a Targeted System Availability.
- c. Number of Anticipated Requests-A The number of requests made by an end user through a client (e.g., desktop computer, web application, mobile device) and sent to a server(s) that is set up in the EMCS Environment by Esri and performs computational tasks on behalf of the end user. An example of a common request used in a GIS is a map request. A map request is made every time a user pans, zooms, or queries a map service.
- d. Amount of Data Storage-The storage capacity required to retain digital data, which is to be used and consumed in Customer GIS applications or Cloud Services.
- e. Learning and Services Credits Consumption-The price for the EMCS in Learning and Services Credits. The Data storage location may be defined in the Activity Description.

8.7 Travel and Per Diem Expenses. Any Esri travel and per diem expenses will be quoted

separately. Travel expenses will include a 15 percent burden, and per diem will be determined in accordance with the full daily limits specified on the government General Services Administration (GSA) website at <https://www.qsa.gov/>. Customer will use Learning and Services Credits for travel and per diem expenses.

8.8 Notification of Consumed Credits. Esri will notify Customer if the authorized Learning and Services Credits are consumed prior to completion of the requested work. Customer may elect to direct the use of additional Learning and Services Credits, if available; procure additional Learning and Services Credits; or notify Esri to stop work on such requested work. Esri reserves the right to stop work if Customer has consumed all its Learning and Services Credits.

8.9 Review of Proposed Activities. Any activities proposed to be completed under the Advantage Program will be subject to Esri's review and approval to ensure alignment with the intent of the program.

#### 8.10 Invoicing

a. Esri shall invoice Customer as quoted for the Advantage Program subscription, additional Learning and Services Credits, or Technical Advisor services upon receipt of Customer's order. Subsequently, Esri will invoice annually at least 30 days in advance of the Advantage Program subscription expiration date. Esri will extend the Advantage Program subscription for a subsequent annual term upon receipt of Customer's payment of the renewal invoice. Esri will invoice fees for additional Learning and Services Credits or Technical Advisor services upon receipt of Customer's order.

b. Pricing for program renewals and new or additional Services will be in accordance with Esri's standard pricing at the time of purchase or renewal.

8.11 Termination and Expiration. Upon termination or expiration of an Advantage Program subscription:

a. Services will end as of the expiration or termination date stated; and

b. Unless either party terminates the Advantage Program subscription for cause, Customer may apply any unused Learning and Services Credits toward any Professional Services, Training, PSS, or related travel expenses that are scheduled as of the termination or expiration date, provided that the Learning and Services Credits are used within 3 months after the termination or expiration date. Any other unused Learning and Services Credits will expire 30 days after the expiration or termination date; if Customer renews the Advantage Program subscription within this time period, any unused Learning and Services Credits will remain valid for up to 2 years from the purchase date or termination of this Agreement, whichever comes first.

### ATTACHMENT A GLOSSARY OF TERMS

The following glossary of terms applies to all Esri Offerings and Services that Esri may provide to its customers. Certain Esri Offerings or Services may not be within the scope of this Agreement. Please disregard any terms that are not applicable to Esri Offerings or Services offered under this Agreement.

"Affiliate" means any entity that directly or indirectly (i) Controls; (ii) is Controlled by; or (iii) is under common Control with a party, where "Control" means having more than 50 percent of the voting stock or other voting interest in the Controlled entity.

"API" means application programming interface.

"ArcGIS Website" means [www.arcgis.com](http://www.arcgis.com) and any related or successor websites.

"Authorization Code(s)" means any key, authorization number, enablement code, login credential, activation code, token, user name and password, or other mechanism required for use of Esri Offerings.

"Beta" means any alpha, beta, or other prerelease version of a Product.

"Cloud Services" means Online Services and EMCS.

"Commercial ASP Use" means use as a commercial application service provider, that is, to generate revenue by providing access to Software or Online Services through a Value-Added Application, for example, by charging a subscription fee, service fee, or any other form of transaction fee or by generating more than incidental advertising revenue.

"Content" means data, images, photographs, animations, video, audio, text, maps, databases, data models, spreadsheets, user interfaces, graphics components, icons, software, and other resources.

"Control" means having more than 50 percent of the voting stock or other voting interest in the Controlled entity.

"Customer Content" means any Content that Customer provides, uses, or develops in connection with Customer's use of Esri Offerings or Services, including Value-Added Applications. Customer Content excludes any feedback, suggestions, or requests for improvements that Customer provides to Esri.

"Data" means any commercially available digital dataset(s) including, but not limited to, geographic vector data, raster data reports, or associated tabular attributes that Esri bundles with other Esri Offerings or delivers independently.

"Deliverables" means anything that Esri delivers to Customer as a result of performance of Professional Services.

"Documentation" means all user reference documentation that Esri provides with a Deliverable or an Esri Offering.

"Esri Managed Cloud Services" or "EMCS" means a Customer-specific cloud infrastructure, Software, Data, and network platform that Esri hosts, manages, and makes available to Customer or Customer's end users via the Internet.

"Esri Offering(s)" means any Product or Documentation. If Esri provides Training or Professional Services directly to Customer, then Esri Offerings also include Deliverables and Training Materials. Esri Offerings exclude Services and Third-Party Content.

"GIS" means geographic information system.

"Maintenance" means a subscription program that Esri provides and that entitles Customer to Product updates and other benefits such as access to technical support and self-paced, web-based learning resources.

"Malicious Code" means software viruses; worms; time bombs; Trojan horses; or any other computer code, files, denial of service, or programs designed to interrupt, destroy, or limit the functionality of any computer software, hardware, or telecommunications equipment.

"Online Services" means any commercially available, Internet-based geospatial system that Esri provides, including applications and associated APIs for storing, managing, publishing, and using maps, data, and other information. Online Services exclude Data and Content.

"Ordering Document(s)" means a sales quotation, Maintenance renewal quote, purchase order, proposal, Task Order, or other document identifying Esri Offerings, updates, or Services that Customer orders.

"Perpetual License" means a license to use a version of the Esri Offering for which applicable license fees have been paid, indefinitely, unless terminated by Esri or Customer as authorized under this Agreement.

"Product(s)" means Software, Data, and Online Services.

"Professional Services" means any development or consulting services that Esri provides to Customer.

"Sample(s)" means sample code, sample applications, add-ons, or sample extensions of Products.

"Service(s)" means Maintenance. If Esri provides EMCS, Training, or Professional Services directly to Customer, then Services also include EMCS, Training, and Professional Services.

"Software" means any proprietary commercial off-the-shelf software, excluding Data, accessed or downloaded from an Esri-authorized website or that Esri delivers on any media in any format including backups, updates, service packs, patches, hot fixes, or permitted merged copies.

"Specification(s)" means (i) the Documentation for Software and Online Services, (ii) the scope of work set forth in any Task Order, or (iii) Esri's published course descriptions for Training.

"Task Order(s)" means an Ordering Document for Services.

"Term License" means a license for use of an Esri Offering for a limited time period ("Term").

"Third-Party Content" means any Content that Customer may obtain from a third-party website or that persons other than Esri employees, suppliers, or contractors may directly contribute to Esri's website.

"Training" means (i) Product training or (ii) related training that Esri provides under this Agreement.

"Training Materials" means digital or printed content required to complete Training, which may include, but is not limited to, workbooks, data, concepts, exercises, assessments, and exams.

"Value-Added Application(s)" means an application developed by Customer for use in conjunction with the authorized use of any Software, Data, or Online Services.

#### ATTACHMENT B GENERAL TERMS AND CONDITIONS

The following general terms and conditions apply to all Esri Offerings and Services that Esri may offer to its customers. Certain Esri Offerings or Services may not be available under this Agreement. Please disregard any terms that are not applicable to Esri Offerings or Services offered under this Agreement.

#### ARTICLE 1-GENERAL USE RESTRICTIONS

Except as expressly permitted in this Agreement, Customer will not

- a. Sell, rent, lease, sublicense, distribute, lend, time-share, or assign Services or Esri Offerings;
- b. Distribute or provide direct access to Services or Esri Offerings to third parties, in whole or in part, including, but not limited to, extensions, components, or DLLs;
- c. Distribute Authorization Codes to third parties;

- d. Reverse engineer, decompile, or disassemble any Product or Deliverable delivered in compiled form;
- e. Make any attempt to circumvent the technological measure(s) that controls access to or use of Esri Offerings;
- f. Store, cache, use, upload, distribute, or sublicense Content or otherwise use Esri Offerings in violation of Esri's or a third-party's rights, including intellectual property rights, privacy rights, nondiscrimination laws, export laws, or any other applicable law or regulation;
- g. Remove or obscure any Esri or its licensors' patent, copyright, trademark, proprietary rights notices, or legends contained in or affixed to any Esri Offerings, output, metadata file, or online or hard-copy attribution page of any Data or Documentation;
- h. Unbundle or independently use individual or component parts of Esri Offerings;
- i. Incorporate any portion of Esri Offerings into a product or service for third-party use that competes with the Esri Offerings;
- j. Publish or in any other way communicate the results of benchmark tests run on Beta Products without the prior written permission of Esri and its licensors; or
- k. Use, incorporate, modify, distribute, provide access to, or combine any Esri Offerings in a manner that would subject any Esri Offering to open-source or open-database license terms that require any part of the Esri Offering to be
  - 1. Disclosed in source code form to third parties;
  - 2. Licensed to third parties for the purpose of making derivative works; or
  - 3. Redistributable to third parties at no charge.

These restrictions will not apply to the extent that they conflict with applicable law or regulation.

#### ARTICLE 2-TERM AND TERMINATION

2.1 Customer may terminate this Agreement or any Esri Offerings license or subscription at any time upon written notice to Esri. Termination without cause does not entitle Customer to receive any refund of fees paid. Any right to terminate pending Services engagements for convenience is set forth in the applicable section in the body of this Agreement. Either party may terminate this Agreement or any license or subscription for a material breach that is not cured within 30 days of written notice to the breaching party. Upon any termination of this Agreement for breach, Esri will stop providing Services. Any licenses in Esri Offerings that survive termination of this Agreement continue under the terms of this Agreement.

2.2 If Esri terminates this Agreement following Customer's breach, then Esri may also, at its election, terminate Customer's licenses or subscriptions to Esri Offerings. If Customer terminates this Agreement for cause or convenience, then Customer may, at its election, also terminate Customer's licenses or subscriptions to Esri Offerings.

2.3 Upon any termination or expiration of a license or subscription, Customer will

- a. Stop accessing and using the terminated or expired Esri Offerings;
- b. Clear any client-side data cache derived from the terminated or expired Cloud Services; and
- c. Stop using and uninstall, remove, and destroy all copies of the terminated or expired Esri Offerings in Customer's possession or control, including any modified or merged portions thereof, in any form, and execute and deliver evidence of such actions to Esri or its authorized distributor.

Esri may stop performing Services immediately upon written notice to Customer if a bankruptcy or insolvency proceeding is commenced by or against Customer until the trustee cures any existing defaults and provides adequate assurance of future performance under this Agreement. This Agreement terminates upon the insolvency, liquidation, or dissolution of either party.

#### ARTICLE 3-LIMITED WARRANTIES AND DISCLAIMERS

3.1 Limited Warranties. Except as disclaimed below, Esri warrants to Customer that (i) Products and Training will substantially comply with the applicable Specifications and (ii) Services will substantially conform to the professional and technical standards of the industry. The warranty period for Esri Offerings offered under a Perpetual License and for Services runs for 90 days from the date of delivery or from the date of acceptance if this Agreement provides an acceptance period. The warranty period for Esri Offerings offered under a subscription or Term License basis runs for the lesser of (i) the duration of the subscription or term or (ii) 90 days from delivery or acceptance if this Agreement provides an acceptance period.

3.2 Special Disclaimer. Third-Party Content; Data; Samples; hot fixes; patches; updates; Online Services provided at no charge; and trial, evaluation, and Beta Products are delivered "as is" and without warranty of any kind.

3.3 General Disclaimer. Except for the express limited warranties set forth in this Agreement, Esri disclaims all other warranties or conditions of any kind, whether express or implied, including, but not limited to, warranties or conditions of merchantability, fitness for a particular purpose, and noninfringement of intellectual property rights. Esri is not responsible for any nonconformities caused by Customer's modification of any Esri Offering other than as specified in the Documentation. Esri

does not warrant that Esri Offerings, or Customer's operation of the same, will be uninterrupted, error free, fault tolerant, or fail-safe or that all nonconformities can or will be corrected. Esri Offerings are not designed, manufactured, or intended for use in environments or applications that may lead to death, personal injury, or physical property or environmental damage. Customer should not follow any navigational route suggestions that appear to be hazardous, unsafe, or illegal. Any such uses will be at Customer's own risk and cost.

#### 3.4 Disclaimers

a. Internet Disclaimer. Neither party will be liable for damages under any theory of law related to the performance or discontinuance of operation of the Internet or to regulation of the Internet that might restrict or prohibit the operation of Cloud Services.

b. Third-Party Websites; Third-Party Content. Esri is not responsible for any third-party website or Third-Party Content that appears in or is referenced by Esri Offerings or Esri websites, including [www.esri.com](http://www.esri.com) and [www.arcgis.com](http://www.arcgis.com). Providing links to third-party websites and resources does not imply an endorsement, affiliation, or sponsorship of any kind.

3.5 Exclusive Remedy. Customer's exclusive remedy and Esri's entire liability for breach of the limited warranties in this section will be to replace any defective media and to (i) repair, correct, or provide a workaround for the applicable Esri Offering or Services or (ii) at Esri's election, terminate Customer's right to use and refund the fees paid for Esri Offerings or Services that do not meet Esri's limited warranties.

### ARTICLE 4-LIMITATION OF LIABILITY

4.1 Disclaimer of Liability. Neither Customer, Esri, nor any Esri distributor or licensor will be liable for any indirect, special, incidental, or consequential damages; lost profits; lost sales; loss of goodwill; costs of procurement of substitute goods or services; or damages exceeding the applicable license fees, or current subscription fees, or Services fees paid or owed to Esri for the Esri Offerings or Services giving rise to the cause of action.

4.2 The limitations and exclusions of liability in the preceding paragraph do not apply to Customer's infringement, misuse, or misappropriation of Esri's or Esri's licensors' intellectual property rights, either party's indemnification obligations, gross negligence, willful misconduct, or violations of the Export Compliance clause of this Agreement or any applicable law or regulation.

4.3 Applicability of Disclaimers and Limitations. Esri or its authorized distributor has set its fees and entered into this Agreement in reliance on the disclaimers and limitations in this Agreement; the fees reflect an allocation of risk that is an essential basis of the bargain between the parties. These limitations will apply whether or not a party is aware of the possibility of any damage and notwithstanding any failure of essential purpose of any exclusive, limited remedy.

4.4 The foregoing disclaimers, limitations, and exclusions may be invalid in some jurisdictions and apply only to the extent permitted by applicable law or regulation in Customer's jurisdiction. Customer may have additional rights that may not be waived or disclaimed. Esri does not seek to limit Customer's warranty or remedies to any extent not permitted by law.

### ARTICLE 5-INDEMNIFICATIONS

5.1 Definitions. The following definitions supplement the definitions provided in [Attachment A](#):

a. "Claim" means any claim, action, or demand by a third party.

b. "Indemnitees" means Customer and its directors, officers, and employees.

c. "Infringement Claim(s)" means any Claim alleging that Customer's use of or access to any Esri Offering or Service infringes a patent, copyright, trademark, or trade secret.

d. "Loss(es)" means expenditure, damage award, settlement amount, cost, or expense, including awarded attorneys' fees.

#### 5.2 Infringement Indemnity

a. Esri will defend, hold all Indemnitees harmless from, and indemnify any Loss arising out of an Infringement Claim.

b. If Esri determines that an Infringement Claim is valid, Esri may, at its expense, either (i) obtain rights for Customer to continue using the Esri Offerings or Services or (ii) modify the Esri Offerings or Services while maintaining substantially similar functionality. If neither alternative is commercially reasonable, Esri may terminate Customer's right to use the Esri Offerings or Services and will refund any (a) license fees that Customer paid for the infringing Esri Offerings or Services acquired under a Perpetual License, prorated on a 5-year, straight-line depreciation basis beginning from the initial date of delivery or (b) unused portion of fees paid for Term Licenses, Subscriptions, and Maintenance.

c. Esri has no obligation to defend an Infringement Claim or to indemnify Customer to the extent the Infringement Claim arises out of (i) the combination or integration of Esri Offerings or Services with a product, process, system, or element that Esri has not supplied or specified in the Specification; (ii) alteration of Esri Offerings or Services by anyone other than Esri or its subcontractors; (iii) compliance with Customer's specifications; or (iv) use of Esri Offerings or

Services after Esri either provides a modified version to avoid infringement or terminates Customer's right to use the Esri Offerings or Services.

5.3 General Indemnity. Esri will defend and hold all Indemnitees harmless from, and indemnify any Loss arising out of, any Claim for bodily injury, death, or tangible or real property damage brought against any of the Indemnitees to the extent arising from any negligent act or omission or willful misconduct by Esri or its directors, officers, employees, or agents performing Services while on Customer's site.

5.4 Conditions for Indemnification. As conditions for indemnification, Indemnitee will (i) promptly notify Esri in writing of the Claim, (ii) provide all available documents describing the Claim, (iii) give Esri sole control of the defense of any action and negotiation related to the defense or settlement of any Infringement Claim, and

(iv) reasonably cooperate in the defense of the Infringement Claim at Esri's request and expense.

5.5 This section sets forth the entire obligation of Esri, its authorized distributor, and its licensors regarding any Claim for which Esri must indemnify Customer.

#### ARTICLE 6-INSURANCE

If Esri is providing Services, Esri will carry, at a minimum, the following coverage:

a. Comprehensive general liability or commercial general liability with a minimum coverage of \$1,000,000.00 combined single limit per occurrence for bodily injury, including death, and property damage liability to include the following:

1. Premises and operations;
2. Blanket contractual liability;
3. Broad form property damage;
4. Independent contractors;
5. Personal injury, with employee exclusion deleted; and
6. Completed operations.

b. Workers' compensation insurance, with waiver of subrogation, in an amount that complies with statutory limits.

#### ARTICLE 7-SECURITY AND COMPLIANCE

7.1 Security. Esri publishes its security capabilities at <http://trust.arcgis.com>. Customer may give Esri personnel access to Customer systems or to Customer or third-party personal information, controlled information, or sensitive data if access is essential for Esri's performance of Services and if Esri expressly agrees to such access. Esri will use reasonable administrative, technical, and physical safeguards to protect such data and guard against unauthorized access. Customer bears responsibility to (i) confirm that Esri's published security and privacy controls meet all applicable legal requirements for protection of Customer Content and (ii) upload or share Customer Content through Cloud Services only when it is legal to do so. Esri is not responsible to review Customer Content to ensure compliance with applicable laws and regulations. Customer must contact Esri at [securesupport@esri.com](mailto:securesupport@esri.com) for further instruction before providing any Customer Content that requires security measures other than Esri's published security capabilities.

7.2 Malicious Code. Esri will use commercially reasonable efforts to ensure that Esri Offerings will not transmit any Malicious Code to Customer. Esri is not responsible for Malicious Code that Customer introduces to Esri Offerings or that is introduced through Third-Party Content.

7.3 Export Compliance. Each party will comply with all applicable export laws and regulations, including the US Department of Commerce's Export Administration Regulations (EAR), the US Department of State's International Traffic in Arms Regulations (ITAR), and other applicable export laws. Customer will not export, reexport, transfer, release, or otherwise dispose of, in whole or in part, or permit access to or transfer or use of Services or Esri Offerings to any United States embargoed countries or denied entities or persons except in accordance with all then-current applicable US government export laws and regulations. Customer will not export, reexport, transfer, or use Services or Esri Offerings for certain missile, nuclear, chemical, or biological activities or end uses without proper authorization from the US government. Customer shall immediately notify Esri in writing if any US government entity or agency denies, suspends, or revokes Customer's export privileges. Customer will not upload, store, or process in Cloud Services any Customer Content that (i) has an Export Control Classification Number (ECCN) other than EAR99 or (ii) is controlled for export from the United States under ITAR. Customer will notify Esri in advance if Esri's performance of any Services or provision of any Esri Offerings is related to any defense article, defense service, or technical data, as defined under the ITAR Sections 120.6, 120.9, and 120.10, respectively; Esri will not perform any such Services or provide any such Esri Offerings until Esri obtains any necessary export license from the US government. Customer will reasonably assist Esri in applying for and obtaining an export license if needed.

7.4 Privacy. Esri will process personal data according to the terms of the Data Processing Addendum available at <https://www.esri.com/en-us/privacy/privacy-qdpr>

## ARTICLE 8-CLOUD SERVICES

8.1 Prohibited Uses. Customer shall not provide Customer Content or otherwise access or use Cloud Services in a manner that

- a. Spams, spoofs, or phishes email; transmits junk email or offensive or defamatory material; or stalks or makes threats of physical harm;
- b. Stores or transmits any Malicious Code;
- c. Violates any law or regulation;
- d. Infringes or misappropriates the rights of any third party;
- e. Probes, scans, or tests the vulnerability of Cloud Services or breach any security or authentication measures used by Cloud Services without written approval from Esri's product security officer; or
- f. Benchmarks the availability, performance, or functionality of Cloud Services for competitive purposes.

8.2 Service Interruption. System failures or other events beyond Esri's reasonable control may interrupt Customer's access to Cloud Services. Esri may not be able to provide advance notice of such interruptions.

### 8.3 Customer Content

a. Customer grants Esri and its subcontractors a nonexclusive, nontransferable, worldwide right to host, run, modify, and reproduce Customer Content as needed to provide Cloud Services to Customer. Esri will not access, use, or disclose Customer Content without Customer's written permission except as reasonably necessary to support Customer's use of Cloud Services. Except for the limited rights granted to Esri under this Agreement, Customer retains all its rights, title, and interest in the Customer Content.

b. If Customer accesses Cloud Services with an application provided by a third party, Esri may disclose Customer Content to such third party as necessary to enable interoperation between the application, Cloud Services, and Customer Content.

c. Esri may disclose Customer Content if required to do so by law or regulation or by order of a court or other government body, in which case Esri will reasonably attempt to limit the scope of disclosure.

d. When Customer's use of Cloud Services ends, Esri will either

(i) Make Customer Content available to Customer for download for a period of 30 days unless Customer requests a shorter window of availability or Esri is legally prohibited from doing so; or

(ii) Download all Customer Content in Esri's possession to a medium of Customer's choosing and deliver such Customer Content to Customer.

Esri will have no further obligations to store or return Customer Content at the conclusion of the Cloud Services.

8.4 Removal of Customer Content. Esri may remove or delete Customer Content if there is reason to believe that uploading Customer Content to or using it with Cloud Services materially violates this Agreement. If reasonable under these circumstances, Esri will notify Customer before removing Customer Content. Esri will respond to any Digital Millennium Copyright Act takedown notices in accordance with Esri's copyright policy, available at [www.esri.com/legal/dmca\\_policy](http://www.esri.com/legal/dmca_policy).

8.5 Service Suspension. Esri may suspend access to Cloud Services (i) if Customer materially breaches this Agreement and fails to timely cure the breach; (ii) if Esri reasonably believes that Customer's use of Cloud Services will subject Esri to immediate liability or adversely affect the integrity, functionality, or usability of the Cloud Services; (iii) for scheduled maintenance; (iv) to enjoin a threat or attack on Cloud Services; or (v) if Cloud Services become prohibited by law or regulated to a degree that continuing to provide them would impose a commercial hardship. When feasible, Esri will notify Customer of any Cloud Services suspension beforehand and give Customer reasonable opportunity to take remedial action.

Esri is not responsible for any damages, liabilities, or losses that may result from any interruption or suspension of Cloud Services or removal of Customer's content as described above. Notice to Esri. Customer will promptly notify Esri if Customer becomes aware of any unauthorized use of Customer's subscription or any other breach of security regarding Cloud Services.

## ARTICLE 9-GENERAL PROVISIONS

9.1 Payment. Customer will pay each correct invoice no later than 30 days after receipt and will remit payment to the address stated on the invoice. Customers outside the United States will pay the distributor's invoices in accordance with the distributor's payment terms.

9.2 Feedback. Esri may freely use any feedback, suggestions, or requests for Product improvement that Customer provides to Esri.

9.3 Patents. Customer may not seek, and may not permit any other user to seek, a patent or similar right worldwide that is based on or incorporates any Products. This express prohibition on patenting will not apply to Customer's software and technology except to the extent that Products, or

any portion thereof, are part of any claim or preferred embodiment in a patent application or a similar application.

9.4 Restrictions on Solicitation. Neither party will solicit for hire any employee of the other party who is associated with the performance of Services during the performance of the Services and for a period of 1 year thereafter. This does not restrict either party from publicly advertising positions for hire in newspapers, professional magazines, or Internet postings.

9.5 Taxes and Fees; Shipping Charges. Pricing of Esri Offerings and Services that Esri quotes to Customer is exclusive of any and all applicable taxes or fees including, but not limited to, sales tax, use tax, or value-added tax (VAT); customs, duties, or tariffs; shipping and handling charges; and vendor enrollment fees. Esri will add any fees that it is required to pay to the total amount of its invoice to Customer. Esri may include estimated taxes and shipping and handling charges in its quotations but may adjust these fees on invoicing. For Customers outside the United States, the distributor may quote taxes or fees in accordance with its own policies.

9.6 Compliance Review. Customer will keep accurate and complete records and accounts pertaining to its compliance with its obligations under this Agreement. Esri or its authorized distributor may conduct a compliance review of these records and accounts with no less than 14 business days' written notice or may appoint an independent third party to conduct such a compliance review on its behalf. Customer will promptly correct any noncompliance identified during the compliance review. Neither Esri nor Esri's distributor may conduct a compliance review of Customer within 12 months after the conclusion of any prior compliance review that does not reveal any material Customer noncompliance.

9.7 No Implied Waivers. The failure of either party to enforce any provision of this Agreement is not a waiver of the provisions or of the right of such party thereafter to enforce that or any other provision.

9.8 Severability. If any provision of this Agreement is held to be unenforceable for any reason, (i) such provision will be reformed only to the extent necessary to make the intent of the language enforceable, and (ii) all other provisions of this Agreement will remain in effect.

9.9 Successor and Assigns. Customer will not assign, sublicense, or transfer Customer's rights or delegate Customer's obligations under this Agreement without Esri's and its authorized distributor's prior written consent, and any attempt to do so without consent will be void. This Agreement will be binding on the respective successors and assigns of the parties to this Agreement. Notwithstanding, a contractor under contract to the government to deliver Products may assign this Agreement and Products acquired for delivery to its government customer upon written notice to Esri, provided the government customer assents to the terms of this Agreement. Upon mutual agreement, Esri's Affiliates may provide Services under the terms of this Agreement; in such cases, the Ordering Documents will identify the Affiliate as the party that provides the Services. Esri's distributors are not Affiliates of Esri.

9.10 Survival of Terms. The Glossary of Terms and provisions of the following Articles of these General Terms and Conditions will survive the expiration or termination of this Agreement: "Limited Warranties and Disclaimers," "Limitation of Liability," "Indemnifications," and "General Provisions."

9.11 US Government Customer. The Products are commercial items, developed at private expense, provided to Customer under this Agreement. If Customer is a US government entity or US government contractor, Esri licenses or provides subscriptions to Customer in accordance with this Agreement under FAR Subparts 12.211/12.212 or DFARS Subpart 227.7202. Esri Data and Online Services are licensed or subscribed under the same DFARS Subpart 227.7202 policy as commercial computer software for acquisitions made under DFARS. Products are subject to restrictions, and this Agreement strictly governs Customer's use, modification, performance, reproduction, release, display, or disclosure of Products. Agreement provisions that are inconsistent with federal law regulation will not apply. A US government Customer may transfer Software to any of its facilities to which it transfers the computer(s) on which it has installed such Software. If any court, arbitrator, or board holds that a US government Customer has greater rights to any portion of Products under applicable public procurement law, such rights will extend only to the portions affected. ArcGIS Online has been granted FedRAMP tailored low authorization but does not meet higher security requirements including those found in DFARS 252.239-7010.

9.12 Governing Law. This Agreement is not subject to the United Nations Convention on Contracts for the International Sale of Goods.

a. Government Entities. If Customer is a government entity, the applicable laws of Customer's jurisdiction govern this Agreement.

b. Nongovernment Entities. US federal law and the law of the State of California exclusively govern this Agreement, excluding their respective choice of law principles.

9.13 Dispute Resolution. The parties will use the following dispute resolution processes:

a. Equitable Relief. Either party will have the right to seek an injunction, specific performance, or

other equitable relief in any court of competent jurisdiction without the requirement of posting a bond or proving injury as a condition for relief.

b. US Government Agencies. This Agreement is subject to the Contract Disputes Act of 1978, as amended (41 USC 601-6 13).

c. Other Government Entities. Esri will comply with mandatory dispute resolutions under applicable law.

d. Arbitration. Except as noted above, the parties will submit to binding arbitration to resolve any dispute arising out of or relating to this Agreement that cannot be settled through negotiation. If Customer is in the United States or one of its territories or outlying areas, the Commercial Arbitration Rules of the American Arbitration Association will govern the arbitration proceedings. If Customer is outside the United States, the Rules of Arbitration of the International Chamber of Commerce will govern the proceedings. The parties will select a single arbitrator in accordance with the applicable arbitration rules. The language of the arbitration will be English. Arbitration will be at an agreed-upon location. Either party will, at the request of the other, make available documents or witnesses relevant to the major aspects of the dispute.

9.14 Force Majeure. A party will not be liable for any failure of or delay in the performance of this Agreement for the period that such failure or delay is due to causes beyond the party's reasonable control. Such causes may include, but are not limited to, acts of God, war, strikes, labor disputes, cyber attacks, laws, regulations, government orders, or any other force majeure event.

9.15 Independent Contractor. Esri is and at all times will be an independent contractor. Nothing in this Agreement creates an employer/employee, principal/agent, or joint venture relationship between Esri or its authorized distributor and Customer. No party has any authority to enter into contracts on behalf of another party or otherwise act on behalf of another party.

9.16 Notice. Customer may send notices required under this Agreement to Esri at the following address:

Environmental Systems Research Institute, Inc. Attn.: Contracts and Legal Department  
380 New York Street Redlands, CA 92373-8100 USA  
Tel.: 909-793-2853  
Email: LegalNotices@esri.com

#### ATTACHMENT C SAMPLE TASK ORDER

Esri Agreement No. \_\_\_\_

Task Order No. \_\_\_\_\_

In accordance with the terms and conditions of the above-referenced Agreement between Environmental Systems Research Institute, Inc. ("Esri"), and ("Customer"), ("Customer Address"), this Task Order authorizes preparation and provision of the Deliverables described and in accordance with the terms, schedule, and start/end date(s) specified below.

1. Scope of Work: [As applicable, specifically identify and describe Deliverables including custom code, map data, technical data (including technical assistance), and the resources to be provided by Customer (including Customer-supplied personnel, software, hardware, and digital or hard-copy data) and place of delivery and location where technical assistance will be provided.]

In addition to the foregoing, Customer agrees that its employees, representatives, and subcontractors will cooperate and communicate with Esri during performance of this Task Order. Without cost to Esri, Customer shall provide, allow access to, or assist Esri in obtaining all data Esri requests for performance of this Task Order, including, but not limited to, (1) copies of previously prepared reports, maps, plans, surveys, records, and other documents in the control or possession of Customer and (2) copies of ordinances, codes, regulations, or other governmental documents.

2. Contract Type: [Firm Fixed Price (FFP) or Time and Materials (T&M)]:

3. Total Task Order Value (if FFP) or Not-to-Exceed Value (if T&M):

4. Customer Address for the Receipt of Esri Invoices:

5. Delivery Schedule or Start/End Date(s) for Each Deliverable:

6. Special Considerations:

7. Esri Project Manager: [insert name, telephone, fax, and email address]

Esri Senior Contract Administrator: [insert name, telephone, fax, and email address]

Customer Project Manager: [insert name, telephone, fax, and email address]

Customer Senior Contract Administrator: [insert name, telephone, fax, and email address]

Customer Accounts Payable Contact: [insert name, telephone, fax, and email address]

[Acknowledgements Deleted for Inclusion in this Resolution]

#### ADDENDUM TO THE MASTER LICENSE AGREEMENT WITH ENVIRONMENTAL SYSTEMS RESEARCH INSTITUTE, INC.

This Addendum (hereinafter "Addendum") amends the Master License Agreement between Environmental Systems Research Institute, Inc. (hereinafter "ESRI") and City of Kingsport,

Tennessee (hereinafter "City"), and the Quotation, the Standard Terms and Conditions at [www.esri.com/legal](http://www.esri.com/legal) and any other documents or terms incorporated therein in any of those documents or terms by reference ("hereinafter Agreement" ). Notwithstanding any provision in the Agreement, the language in this Addendum takes precedence over all other terms, conditions or language to the contrary in the Agreement, and the Agreement and this Addendum shall not be construed to create any ambiguity, it being the intent of the parties that this Addendum shall control. Accordingly, the Agreement is amended as follows:

1. Indemnity, Limitation of Liability and Disclaimer of Warranty. Article II, Section 29 of the Tennessee Constitution prohibits cities from lending their credit to private entities and, therefore, prohibits an agreement by City to indemnify a third party or agree to a limitation of liability provision. Any indemnity or hold harmless provision contained in the Agreement requiring City to indemnify or hold harmless ESRI or any other person or entity is enforceable only to the extent permitted by Tennessee law, provided City's monetary limits of liability under any such provision is limited to the monetary limits of liability as provided for in the Tennessee Governmental Tort Liability Act, T.C.A. § 29-20-101 *et seq.* Any limitation of liability provision contained in the Agreement is enforceable only to the extent permitted by Tennessee law. No provision of the Agreement shall act or be deemed a waiver by City of any immunity, its rights or privileges as a sovereign entity, or of any provision of the Tennessee Governmental Tort Liability Act, T.C.A. § 29-20-101 *et seq.* Because Tennessee law may not allow City to agree to the disclaimer of warranties such exclusion may not be applicable to City, and such disclaimer of warranties shall be enforceable only to the extent permitted by Tennessee law. City reserves all rights afforded to local government under law for all general and implied warranties. City does not waive any rights it may have to all remedies provided by law.

2. Non-appropriation. ESRI acknowledges that City is a governmental entity, and the validity of the Agreement is based upon the availability of public funding under its authority. In the event City fails to appropriate funds or make monies available for any fiscal year covered by the term of the Agreement for the services to be provided, the Agreement shall be terminated on the last day of the fiscal year for which funds were appropriated or monies made available for such purposes without liability to City, and such termination shall not be a breach of the Agreement, and any unused payment made to ESRI shall be returned to City.

3. Damages. The Agreement does not create an obligation by City to pay any damages in excess of those amounts legally available to satisfy City's obligations under the Agreement.

4. Confidentiality. The Agreement and any documents or material obtained by City is subject to disclosure in whole or in part pursuant to the Tennessee Open Records Act, set out in T.C.A. § 10-7-503 *et seq.*, without regard to any provision contained in the Agreement declaring information confidential. City must, upon proper request, release public documents and records as defined by T.C.A. § 10-7-503 *et seq.*, including this Agreement and all records created and maintained related to the Agreement without the requirement to disclose such request to ESRI or providing ESRI with the time to obtain a protective order.

5. Governing Law. The Agreement and the rights and obligations of the parties are governed by the laws of the State of Tennessee, without regard to its conflict of laws principles.

6. No Arbitration, Jurisdiction, Waiver of Jury Trial, Venue. Notwithstanding any other provision in the Agreement to the contrary, arbitration is not permitted and if a dispute arises between the parties concerning any aspect of the Agreement, and it cannot be resolved by mutual agreement, any party may resort to resolution of the dispute by litigation in the state or federal courts for Kingsport, Sullivan County, Tennessee. The parties waive their right to a jury trial. The parties agree that mandatory and exclusive venue and jurisdiction for any disputes shall be in state or federal courts for Kingsport, Sullivan County, Tennessee, and the parties consent to such venue and jurisdiction.

7. No Taxes, No Interest Payments. As a tax-exempt entity, City shall not be responsible for sales or use taxes incurred for products or services City shall supply ESRI with its Sales and Use Tax Exemption Certificate upon ESRI's request. ESRI shall bear the burden of providing its suppliers with a copy of City's tax exemption certificate and ESRI shall assume all liability for such taxes, if any, should such be incurred. City does not agree to pay any interest for late payments, having agreed to pay in a timely manner.

8. Intentionally Omitted

9. Intentionally Omitted

10. Intentionally Omitted

11. Binding Effect. No employee of City or any other person, without authorization of the board of mayor and aldermen of City can bind City to any contract or agreement and anything contrary contained in the Agreement or the Terms of Service to the contrary is void as it applies to City.

12. No Liability of City Officials and Employees. No member, official, or employee of City shall be personally liable to ESRI or any other person or entity, including a third party beneficiary, in the event any provision of the Agreement is unenforceable; there is any default or breach by City; for any

amount which may become due under the Agreement; or on any obligations under the terms of the Agreement.

13Survival. This Addendum shall survive the completion of or any termination of the Agreement or other document which may accompany the Agreement or be incorporated by reference  
[Acknowledgements Deleted for Inclusion in this Resolution]

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

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

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

ADOPTED this the 3rd day of September, 2019.

\_\_\_\_\_  
PATRICK W. SHULL, MAYOR

ATTEST:

\_\_\_\_\_  
SIDNEY H. COX, CITY RECORDER

APPROVED AS TO FORM:

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



Geographic Information Systems Division

TO: Chris McCartt, City Manager  
FROM: Jake White, GIS Manager  
DATE: August 29, 2019  
RE: Local Government Enterprise License Agreement with  
Environmental Systems Research Institute (ESRI)

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The City of Kingsport's GIS Division started using ESRI's geographic information system software in 1992, and have continued our yearly software maintenance agreement since that time. Our utilization of this software recently reached a level that it is more cost effective to license the software through a Local Government Enterprise License Agreement (ELA)

City Code Section 2-599 permits the City Manager to enter into a one source contract when it is determined to be in the best interest of the City of Kingsport. It is my opinion the ELA agreement with ESRI warrants such as ESRI is the sole source provider of our current GIS software.

If you are in agreement with this recommendation your signature of approval is needed for file documentation. Please feel free to contact me should you have any questions.

Approved:  Date: 8-30-19



**SOLE SOURCE LETTER**  
**Environmental Systems Research Institute, Inc. (Esri)**  
**380 New York Street**  
**Redlands, CA 92373**  
**E-mail: jricks@esri.com**

**DATE:** August 30, 2019

**TO:** To Whom It May Concern

**FROM:** Jackie Ricks, Esri Contract Coordinator/Contracts & Legal Department

**RE:** Esri Sole Source Justification for Geographic Information System Software

This letter confirms that Esri, as owner and manufacturer, is the sole-source provider of **software maintenance** (technical support plus Esri software updates/upgrades) for Esri products in the United States.

Esri is the sole-source provider of the following Esri products in the U.S. commercial, state, and local government marketplace:

- AppStudio for ArcGIS
- ArcGIS Desktop & Extensions Subscription (Basic, Advanced, Standard)
- ArcGIS Desktop Advanced
- ArcGIS Desktop Standard
- ArcGIS Developer Subscription
- ArcGIS Enterprise
- ArcGIS for Aviation Bundle
- ArcGIS for Maritime Bundle
- ArcGIS for Server and extensions
- ArcGIS GeoAnalytics Server
- ArcGIS GeoEvent Server
- ArcGIS GIS Server and extensions
- ArcGIS Hub
- ArcGIS Image Server
- ArcGIS Monitor
- ArcGIS Online (excluding data owned by 3<sup>rd</sup> party providers)
- ArcGIS Runtime and Extensions
- Drone2Map for ArcGIS
- Esri Business Analyst Online
- Esri Business Analyst Server
- Esri Community Analyst
- Esri Defense Mapping Bundle
- Esri MapStudio
- Esri Maps Products
- Esri Services Packages
- Insights for ArcGIS
- Navigator for ArcGIS
- Portal & Hosted Portal for ArcGIS

Esri has authorized certain resellers to resell sole source products to State of California (State Agencies) only under the California Software License Program (SLP).

Also, in an effort to support diversity in federal contracting, Esri has authorized certain businesses (see GSA Advantage! for details) as resellers of perpetual licenses for the following Esri products to eligible entities purchasing under a GSA Schedule. Esri GSA resellers cannot sell Esri software to state or local entities:

- ArcGIS Desktop Advanced
- ArcGIS Desktop Standard

Esri also distributes certain software licenses in combination with non-Esri software or services through open-market value-added resellers and OEMs. If you have further questions, please contact me at jricks@esri.com.

  
Jackie Ricks



**AGENDA ACTION FORM**

**Approving Amendment Number One to the Ground Lease with the Industrial Development Board of the City of Kingsport, Tennessee**

To: Board of Mayor and Aldermen  
From: Chris McCartt, City Manager *CM*

Action Form No.: AF-193-2019  
Work Session: September 3, 2019  
First Reading: N/A

Final Adoption: September 3, 2019  
Staff Work By: Chris McCartt  
Presentation By: Chris McCartt

**Recommendation:**

Approve the Resolution.

**Executive Summary:**

On April 29, 2014 the city entered into a ground lease for a portion of the former General Shale property from the Industrial Development Board of the City Kingsport Tennessee (KEDB) for the development of Brickyard Park. The annual rental of the property is to be adjusted to provide for the development of the fully accessible ball field and playground. Accordingly, an amendment to the ground lease is needed to reflect an annual lease payment, which will vary up to a maximum of \$214,223 per year for 10 years to KEDB, beginning in July of the City's fiscal year 2020-2021. The amendment will also provide the City with the right to purchase the property described in the ground lease, anytime for the remaining annual lease payments due for the next 10 years.

Estimated private contributions, already pledged, for the project are expected to reduce the City's average annual lease payment to approximately \$135,000 for 10 years. Additional pledges are anticipated which would further reduce the City's lease payments.

The attached resolution authorizes the amendment and mayor to sign the same.

**Attachments:**

- 1. Resolution

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

	Y	N	O
Adler	—	—	—
Cooper	—	—	—
Duncan	—	—	—
George	—	—	—
Olterman	—	—	—
Phillips	—	—	—
Shull	—	—	—

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

A RESOLUTION APPROVING AN AMENDMENT TO THE GROUND LEASE WITH THE INDUSTRIAL DEVELOPMENT BOARD OF THE CITY OF KINGSPORT; AUTHORIZING THE MAYOR TO EXECUTE THE AMENDMENT; AND ALL OTHER DOCUMENTS NECESSARY AND PROPER TO EFFECTUATE THE PURPOSE OF THE AMENDMENT

WHEREAS, on April 29, 2014, the city entered into a ground lease leasing a portion of the former General Shale property from the Industrial Development Board of the City Kingsport Tennessee (KEDB) for the development of Brickyard Park; and

WHEREAS, the annual rental payment of the property needs to be adjusted to account for the development of the fully accessible ball field and playground; and

WHEREAS, an amendment to the ground lease is needed to reflect an annual lease payment of up to a maximum of \$214,222.93 per year beginning in fiscal year 2020-2021 for 10 years to KEDB, along with an amendment to the right of the city to purchase the property described in the ground lease anytime for the amount in the Ground Lease and the remaining annual lease payments due for the ten year period mentioned above.

Now therefore,

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

SECTION I. That a First Amendment to Ground Lease with Industrial Development Board of the City Kingsport Tennessee (KEDB) for the development of Brickyard Park 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, and subject to the requirements of Article X, Section 10 of the Charter of the City of Kingsport, a First Amendment to Ground Lease with Industrial Development Board of the City Kingsport Tennessee (KEDB) for the development of Brickyard Park and all other documents necessary and proper to effectuate the purpose of the agreement or this resolution, said amendment being generally as follows:

**FIRST AMENDMENT TO GROUND LEASE**

**THIS FIRST AMENDMENT TO GROUND LEASE** (herein "Amendment") is entered into as of September \_\_, 2019, by and between The Industrial Development Board of the City of Kingsport, Tennessee ("herein Landlord") and City of Kingsport, Tennessee ("herein Tenant")

**WITNESSETH**

In consideration of the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Landlord and Tenant hereby agree to amend the Ground Lease between the parties dated April 29, 2014, as follows:

1. Section 3 RENT of the Ground Lease is amended to read as follows:  
  
3. RENT. The rent payable hereunder shall be the net sum of One Dollar (\$1.00) per year payable on the commencement date and annually thereafter on the same

day and month, unless it falls on the weekend, at which time it will be due Monday following the weekend, provided however, beginning in July, 2020, the annual rent payable by the Tenant to the Landlord shall be as follows:

July, 2020 - a maximum payment of no more than \$214,222.93  
July, 2021 - a maximum payment of no more than \$214,222.93  
July, 2022 - a maximum payment of no more than \$214,222.93  
July, 2023 - a maximum payment of no more than \$214,222.93  
July, 2024 - a maximum payment of no more than \$214,222.93  
July, 2025 - a maximum payment of no more than \$214,222.93  
July, 2026 - a maximum payment of no more than \$214,222.93  
July, 2027 - a maximum payment of no more than \$214,222.93  
July, 2028 - a maximum payment of no more than \$214,222.93  
July, 2029 - a maximum payment of no more than \$214,222.93

Such rental payments shall be reduced dollar for dollar by any amount received by the Landlord as donations or contributions from any source for the fully accessible ballfield and playground on the Premises. Landlord shall apply all such amounts to the cost of construction of the fully accessible ballfield and playground, including any indebtedness related thereto. At the end of the ten years the annual rent shall revert to One Dollar (\$1.00) per year for the remainder of the term of the Ground Lease.

2. Section 4 RIGHT OF PURCHASE of the Ground Lease is amended to read as follows:

4. RIGHT OF PURCHASE. At any time during the term of this Lease or upon of this Lease, Tenant shall have the right to purchase Premises from Landlord, or its successors or assigns, for Ten Thousand Dollars (\$10,000.00) per acre consideration less a credit to Tenant for any amount paid by Tenant to Landlord as a contribution for economic or industrial development used to amortize or pay any indebtedness for the purchase of the entire tract of property, generally known as the General Shale property consisting of the property described herein and approximately 63 additional acres, and Tenant shall also pay Landlord the remaining rent due and payable by Tenant to Landlord for the 10 year period beginning July, 2020, as set out above in Section 3. Landlord shall not encumber or otherwise convey Premises in any manner. Upon exercise of Tenant's, right to purchase or termination of this Lease for any reason, Landlord shall convey good and marketable title to the Premises to Tenant, along with instruments evidencing transfer of ownership to Tenant or any fixtures, furnishings and equipment located on the Premises owned by Landlord.

3. Section 5 TERMINATION FOR CONVENIENCE of the Ground Lease is amended to read as follows:

5. TERMINATION FOR CONVENIENCE. Tenant shall have the right to terminate this Lease by giving written notice to Landlord, at least thirty (30) days before the effective date of termination. On or before the effective date of the termination Tenant shall purchase the Premises from Landlord as set forth in Section 4. Such termination shall not be deemed a breach of contract by either party. Upon such termination, neither party shall have any right to any actual general, special, incidental, consequential, or any other damages whatsoever of any description or amount.

4. Section 8 TENANT'S IMPROVEMENTS of the Ground Lease is amended to read as follows:

8. TENANT'S IMPROVEMENTS.

(a) The parties hereby acknowledge that there shall be constructed initially on the Premises by Tenant, at Tenant's sole cost and expense, athletic and recreation and supporting facilities. Landlord agrees to provide to Tenant for the construction of the facilities the amount remaining from the proceeds it has from a loan after the purchase of the General Shale property, not to exceed One Million Three Hundred Thousand dollars when requested by the city. All construction and all additions and alterations shall be constructed in a good

and workmanlike manner and shall comply with all laws, rules, orders, zoning ordinances, regulations and requirements of all governmental authorities or departments having jurisdiction of the Premises. Buildings and improvements, furniture, machinery, equipment, furnishings, fixtures and appurtenances erected, installed, placed or located therein (herein "buildings and improvements") are, subject to any provisions herein contained to the contrary, the sole property of Tenant so long as this Lease shall continue in force and effect, and Landlord agrees that Tenant or any subtenant while not in default shall have the right at any time and from time to time to remove any and all trade fixtures, furniture, furnishings, equipment and other property which it may have stored or installed in or on the Premises.

(b) Upon the expiration of the term of this Lease or the exercise of Tenant's right to purchase, whichever occurs first, Landlord shall convey by good and marketable title the Premises to Tenant, upon payment of the amount set forth in Section 4, which conveyance also include all improvements, fixtures, furniture, furnishings and equipment.

(c) Tenant may at any time or from time to time during the Term of this Lease, at its own cost and expense, make any alterations, demolitions, rebuilding, replacements, changes and additions to the Premises and to the buildings and improvements thereon, whether structural or non-structural. Landlord agrees to execute such applications or consents in respect thereto as may be required by governmental authorities having jurisdiction thereof.

5. Section 10 MORTGAGES, DEEDS OF TRUST AND LIENS of the Ground Lease is amended to read as follows:

10. MORTGAGES, DEEDS OF TRUST AND LIENS. Landlord covenants, warrants and agrees that throughout the Term of this Lease, including all extensions thereof, Landlord shall not execute any mortgage, deed of trust or create or suffer any lien affecting the Premises. Notwithstanding the preceding sentence Landlord may assign the rents due hereunder. In the event Landlord violates the foregoing covenant, rent and all other sums payable to Landlord hereunder shall abate until such time as such mortgage or lien is released of record.

6. Section 14 USE OF PREMISES of the Ground Lease is amended to read as follows:

14. USE OF PREMISES. The Premises may be used for athletic facilities, recreation facilities, and supporting facilities and for any other municipal purpose.

7. Section 15 LANDLORD'S TITLE of the Ground Lease is amended to read as follows:

15. LANDLORD'S TITLE.

(a) Landlord covenants and warrants that Landlord has full right and lawful authority to enter into this Lease for the full term aforesaid, and that subject to the terms of this Lease, Tenant shall peaceably and quietly have, hold and enjoy the Premises throughout the Term and all extensions thereof, free from hindrance or molestation by anyone claiming through Landlord, its predecessors, assigns or heirs.

(b) Landlord further warrants and represents to Tenant that Landlord has fee simple title to the Premises; that the same is not subject to any encumbrances, liens or defects in title, or leases or tenancies or agreements affecting the rights granted to Tenant in this Lease other than those, if any, specifically set forth in EXHIBIT "A" incorporated herein by reference. Landlord further warrants and represents to Tenant that at the time of the commencement of the Term physical possession of the Premises shall be delivered to Tenant free and clear of all liens, encumbrances, tenancies and violations of law, ordinances and regulations relating to the use, occupancy and construction of or on the Premises, except such as may be specified in said EXHIBIT "A" and as contained elsewhere in this Lease.

8. Section 18 ASSIGNMENT AND SUBLETTING BY TENANT of the Ground Lease is amended to read as follows:

18. ASSIGNMENT AND SUBLETTING BY TENANT. So long as this Lease shall be in full force and Tenant is not in default in the payment of rental, Tenant may assign or sublet any

portion of the Premises without the Landlord's consent, and Tenant shall have no liability for any obligation occurring hereunder after the effective date of an assignment by Tenant of its entire interest in this Lease. Any assignment of the Lease shall only be made upon the following terms and conditions:

(a) The assignee shall specifically assume in writing and agree to perform all the terms, covenants and conditions agreed to by Tenant under this Lease.

(b) A duplicate original of such assignment and assumption, duly executed and acknowledged by Tenant and by the assignee, shall be delivered to Landlord.

(c) Landlord agrees that, in the event of termination of this Lease because of any breach or default by Tenant, it shall not terminate any sublease(s) of the Premises, or a portion or portions thereof, or disturb the possession or leasehold rights of said sublessee(s), except for a default by such sublessee of the provisions of such sublease, and Landlord further agrees, subject to the aforesaid, to continue such sublease(s) in full force and effect and, if requested by such sublessee(s), to enter into a direct lease between Landlord and such sublessee(s). In such event Landlord agrees to assume and perform all obligations of the sublessor under such sublease(s). Landlord agrees that, upon Tenant's request, it shall execute and deliver, in recordable form, written agreements between Landlord, Tenant and said sublessee(s), excluding monetary terms, in such form as may reasonably be requested by any sublessee(s).

9. Except as specifically modified pursuant to this Amendment, all of the provisions of the Ground Lease remain unchanged and continue in full force and effect. In the event of any inconsistency between the Ground Lease and this Amendment, this Amendment shall control. This Amendment may be executed in any number of counterparts, each of which shall be deemed to be an original, and all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have executed this First Amendment to Ground Lease as of the day and year first written above.

[Acknowledgements Deleted for Inclusion in this Resolution]

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

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

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

ADOPTED this the 3<sup>rd</sup> day of September, 2019.

\_\_\_\_\_  
PATRICK W. SHULL, MAYOR

ATTEST:

\_\_\_\_\_  
SIDNEY H. COX, CITY RECORDER

APPROVED AS TO FORM:

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