



AGENDA

BOARD OF MAYOR AND ALDERMEN WORK SESSION

**Monday, April 20, 2020, 4:30 p.m.
City Hall, 225 W. Center St., Courtroom**

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, Deputy City Manager
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
Ken Weems, Planning Manager
Jessica Harmon, Assistant to City Manager

1. Call to Order
2. Roll Call
3. A determination by the board that meeting electronically and prohibiting the physical presence of the public at the meeting is necessary to protect public health, safety, and welfare of all concerned in light of the COVID-19 virus.
4. City Hall Construction Update – Ryan McReynolds
5. Recycling Update – Ryan McReynolds
6. Review of Items on April 21, 2020 Business Meeting Agenda
7. Adjourn

Next Work Session May 4

BMA Report, April 20, 2020



Kingsport Employee Wellness, George DeCroes

	01/01/2020 – 03/31/2020	04/01/2020 – 04/14/2020
Total Utilization	90.6%	80.1%
City – Active Employees	61.4%	68.5%
City – Dependents	33.3%	25.2%
City – Retirees	1.5%	0.0%
Extended-Patient Services/Other	0.0%	1.6%
Work Comp	0.4%	0.0%
No Show	3.4%	4.7%

Worker's Compensation, Terri Evans

For the month of March 2020, the city had four recordable worker's compensation claims that involved lost time or restricted duty. Of the four claims involved, there were no lost time and four restricted duty.

City of Kingsport

April 21, 2020

Project Status in Pictures

1 Area 10 Concrete

Phase 2 concrete placement in Hollywood Hills is roughly 50% complete.

3 Miracle Field

The playing field, dugouts, fencing and playground have all been pushed further toward completion.

2 Lynn View Track

Crews have removed the old asphalt track and are currently working on the stone subgrade for the new track.

4 Border Regions - Mitchell Road

The project is nearing completion with about 10% left to go. Crews are currently working on lateral connections.



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	SR 347 (Rock Springs Road) [State & MTPO funded]	TDOT Managed, joint funded reconstruction of the State portion of Rock Springs Road	12/31/2021	Awaiting a response from TDOT on letter requesting a revised scope & contract sent 2/13/2020.
\$6,000,000.00	Michael Thompson	Main Street Rebuild	The reconstruction of Main Street from Sullivan Street to Clay Street. [City & MTPO Funded]	6/1/2021	City staff working on ROW phase. Notices of proposed acquisition have been mailed and we are in process of hiring appraisal consultants.
\$5,963,000.00	Niki Ensor	West Kingsport Forcemain and Pump Station Improvements	Rehab of West Kingsport SLS (#119) and installation of new forcemain to the WWTP.	12/31/2020	Force main excavation/installation on Keller Street continues. By-pass pump installation and testing in progress. If testing successful, by-pass should be in place week of April 20. Demo of pump station to begin after by-pass system placed in service.
\$3,500,000.00	Michael Thompson	Island Road Improvements from SR-126 to Kingsport City Limits	This project will realign Island Road to the southeast to improve vertical and horizontal roadway geometry for better traffic management and safety. The remaining unused portion of Island Road will be converted into a separated buffered multi-use path co	4/30/2024	Mattern & Craig working in NEPA phase.
\$3,312,698.00	Ryan McReynolds	City Hall Relocation - Phase 1	Renovations of floors 3 thru 6 for the consolidation of City offices to one location at 415 Broad Street.	7/11/2020	Finishes nearing completion on 6th and 3rd floors.
\$2,888,300.00	Niki Ensor	Water & Wastewater Facilities SCADA/Telemetry Project	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.	8/28/2020	Electrician continue to hange cabinets and land wires at remote sites.
\$2,508,812.00	Niki Ensor	WWTP Electrical Improvements	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	Bids were received 3/11/2020. TEC is apparent low bidder at \$2,508,812. Budget ordinance for BMA approval on 3/24/19. TEC contract for BMA approval on 4/7/2020.
\$2,500,000.00	Michael Thompson	2021 Main Road Paving (MTPO Funded)	Paving of functionally classified roadways: Meadowview Pkwy, Moreland Dr, Cooks Valley, Fall Creek and Netherland Inn Road	12/31/2021	LGIP account set up. NTP with NEPA has been issued.
\$2,341,130.00	Kitty Frazier	Miracle Field Complex	Construction of ball field, playground, and amenities.	5/31/2020	Field and playground surface has been placed. Project is nearing completion. Landscaping and fine tuning remain.
\$2,300,000.00	Ryan McReynolds	Justice Center Renovations	Renovations and expansion of Justice Center that will accommodate court space and county offices currently residing in City Hall.	12/31/2020	Architect is working on plans and having discussions with staff.

Estimated Cost	Project Owner	Project Name	Project Description	Completion Date	CurrentStatus
\$2,041,600.00	Chris McCartt	Kingsport Aquatic Center Expansion	New outdoor pool and deck, new construction of administration addition. New shaded pavilion, new walk-in freezer and restroom buildout. Construction of new masonry screen wall.	4/30/2020	Sidewalk work continuies; plastering of pool walls & floor has begun.
\$1,477,741.00	Chad Austin	Phase 5 Water Improvements	Project includes water line replacements in Fort Robinson area, Sherwood Road, Roller Street area, Gibson Mill area, and Waverly Road.	9/3/2021	Low bid to go to BMA for approval starting at first meeting in April.
\$1,157,898.78	Chad Austin	Border Regions - Sanitary Sewer - Area 2 and Mitchell Road	Sanitary Sewer Extension into annexed areas around Tri Cities Crossing	5/9/2020	All sewer lines in place. Contractor to begin testing.
\$1,044,000.00	Kitty Frazier	Kingsport Greenbelt Extension from Rotherwood Drive to Lewis Lane	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	Barge is working on NEPA documents.
\$1,000,000.00	Michael Thompson	Area 11b Asphalt Paving	Paving of asphalt streets in Upper Sevier Terrace (area between Fairview, W. Stone Drive, Lynn Garden Dr)	8/1/2020	City crews will be performing this work in Spring 2020.
\$997,475.00	Michael Thompson	Stone Drive - Phase 1 (SR 1, US 11W) Sidewalk Improvements	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	Right of way has been certified by TDOT. Received NTP with Construction 4/6/2020.
\$937,442.00	Kitty Frazier	Kingsport Greenbelt - Eastern Extension - Phase 1 (2019-C6)	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]	5/29/2020	C.O. Approved by TDOT - project to resume in April 2020
\$873,345.88	Chad Austin	2019 I & I Sewer Rehab/Replacement	Project will include sanitary sewer rehab/replacement in the White Street/Gibson Mill area, Fort Robinson area, Konnarock Road, Brooks Street Alley, and DB Track & Field.	2/12/2021	Contractor to return 3/30 to resume work.
\$699,000.00	Niki Ensor	Hillcrest & Allandale Water Storage Tank Rehabilitation	Will be a partial rehabilitaion Allandale tank and a full rehabilitation of Hillcrest Tank.	9/30/2020	Pre Construction Meeting on Monday April 20th at 1:00PM via Zoom.
\$481,183.00	Ryan McReynolds	Wilcox Bridge (Wilcox Dr. & E. Sullivan St.)	Bridge re-painting and landscaping	6/10/2020	Planning to begin work April 27th
\$464,703.10	Chad Austin	Border Regions Sanitary Sewer Extension - Tri Cities Crossing Area	Sanitary sewer extension in the vicinity of the Tri Cities Crossing proposed development	9/1/2020	Contract has been executed. Waiting to schedule the preconstruction conference.
\$415,000.00	Chad Austin	SR 93- Fall Branch section (TDOT)	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.	7/30/2022	TDOT has moved the letting date to 2021.
\$400,000.00	Michael Thompson	2020 Contracted Paving - E Sullivan Street	Paving of E. Sullivan Street from E. Center Street to Church Circle	10/30/2020	Scope of sewer repairs is undecided at this time. Paving will bid once a path forward is determined.

Estimated Cost	Project Owner	Project Name	Project Description	Completion Date	CurrentStatus
\$376,352.00	Michael Thompson	Area 10-Phase 2 Contracted Concrete	Replacing concrete roadway panels along Hollywood Drive	9/8/2020	Contractor has completed 50% of the job.
\$370,120.00		Commerce Street Bulb Outs	Construct sidewalk bulb outs at Commerce Street & New Street as well as Commerce Street & Market Street to facilitate safer pedestrian crossings. ADA compliant ramps along with storm water infrastructure improvements are also part of this project.	5/11/2020	Project is 90% complete. Lack installing landscaping and punchlist.
\$352,000.00	Chad Austin	SR 93- Horse Creek/Derby Drive Section (TDOT)	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
\$51,150.00		Exhaust Systems Repair and Maintenance Fire Stations 1-8	Repairs, upgrades, and maintenance to Fire Stations 1 - 8 Fume Exhaust Systems.	6/17/2020	Stations 4, 5, & 6 are finished and operational.
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AGENDA

BOARD OF MAYOR AND ALDERMEN

BUSINESS MEETING

**Tuesday, April 21, 2020, 7:00 p.m.
City Hall, 225 W. Center St., Courtroom**

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

City Administration

Chris McCartt, City Manager
Ryan McReynolds, Deputy City Manager
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
Ken Weems, Planning Manager
Jessica Harmon, Assistant to City Manager

I. CALL TO ORDER

II.A. PLEDGE OF ALLEGIANCE TO THE FLAG

II.B. INVOCATION

III.A. ROLL CALL

- III.B.** A determination by the board that meeting electronically and prohibiting the physical presence of the public at the meeting is necessary to protect public health, safety, and welfare of all concerned in light of the COVID-19 virus.

IV.A. RECOGNITIONS & PRESENTATIONS

1. Gary Mayes, Sullivan County Regional Health Department

IV.B. APPOINTMENTS

1. Appointment to the Beverage Board (AF: 99-2020) (Mayor Shull)
 - Appointment
2. Appointment to the Sullivan County Board of Equalization (AF: 101-2020) (Mayor Shull)
 - Appointment

V. APPROVAL OF MINUTES

1. Work Session – April 6, 2020
2. Business Meeting – April 7, 2020

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. Enter into a Materials Agreement with The Edinburgh Group, LLC Related to the Gibson Springs Phase 2 Development and Appropriate the Funds (AF 90-2020) (Ryan McReynolds)
 - Resolution
 - Ordinance – First Reading
2. Budget Adjustment Ordinance for the General Projects-Special Revenue Fund (AF: 102-2020) (Chris McCartt)
 - Ordinance – First Reading

C. BUSINESS MATTERS REQUIRING FINAL ADOPTION

None

D. OTHER BUSINESS

1. Award of Bid to Construction Partners, LLC for City Hall Relocation – Phase 2 and Authorizing the Mayor to Sign all Applicable Documents (AF: 45-2020) (Ryan McReynolds)
 - Resolution
2. Reject Amendment Counteroffer from WestRock Converting Company (AF: 96-2020) (Ryan McReynolds)
 - Resolution

3. Award the Bid for Commodity Chicken Processing to Tyson and Gold Creek Foods for School Nutrition Program for SY 2020-21 (AF: 97-2020) (David Frye, Jennifer Walker)
 - Resolution

VII. CONSENT AGENDA

1. Renewal with Metlife and Dearborn Life Insurance for Long Term Disability Insurance and Life Insurance for City Government and School Employees (AF: 95-2020) (George DeCroes)
 - Resolution
2. Renewal with BlueCross BlueShield of Tennessee, Inc. as Third Party Administrator for the City's Self-Funded Health-Care Program (AF: 66-2020) (George DeCroes)
 - Resolution
3. Execute a Signatory Authority Form Allowing the Chief of Police or His Designee to Complete the Application and Grant Reports for the Coronavirus Emergency Supplemental Funding Program Grant #2020-H1999-TN-VD (AF: 88-2020) (David Quillin)
 - Resolution
4. Extending the Bid Award for Tire Recapping Services for FY21 (AF: 98-2020) (Ryan McReynolds, Steve Hightower)
 - Resolution
5. Renewing the Award for Janitorial & MRO Supplies/Equipment for FY21 (AF: 100-2020) (Ryan McReynolds)
 - Resolution
6. Enter into a Wellness Reimbursement Agreement with American Specialty Health's, Silver and Fit Program (AF: 01-2020) (Shirley Buchanan)
 - Resolution

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 Beverage Board

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

Action Form No.: AF-99-2020
 Work Session: April 20, 2020
 First Reading: N/A

Final Adoption: April 21, 2020
 Staff Work By: Mayor Shull
 Presentation By: Mayor Shull

Recommendation:

Approve appointment.

Executive Summary:

It is recommended to appoint Admiral John McKinley to the Beverage Board to fulfill the unexpired term of Jim Wells who has resigned. If approved by the Board of Mayor and Aldermen the recommended table reflects term dates.

Terms are three years with no term limits. The board is comprised of nine (9) members to include Chief of Police, Director of Planning, City Recorder and six (6) residents of Kingsport with at least one having at least five years of experience in business or administration in ownership or operation of retail enterprise and one licensed to practice law.

Current Committee:			
Member	Term Expires	No. of Terms	Eligibility
Charles Nitschke	9/30/20	4	KPT Resident
Jim Wells	12/31/22	1	KPT Resident
Stephen LaHair	3/31/22	3	Business Owner
Keener Mallicote	9/30/20	4	KPT Resident
Michael Forrester	12/31/22	1	Licensed Attny.
Lonnie Salyer	6/30/21	2	KPT Resident

Recommended Committee:			
Member	Term Expires	No. of Terms	Eligibility
Charles Nitschke	9/30/20	4	KPT Resident
John McKinley	12/31/22		KPT Resident
Stephen LaHair	3/31/22	3	Business Owner
Keener Mallicote	9/30/20	4	KPT Resident
Michael Forrester	12/31/22	1	Licensed Attny.
Lonnie Salyer	6/30/21	2	KPT Resident

Attachments:

1. John McKinley Bio

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

JOHN H. MCKINLEY
Rear Admiral, USNR (Ret.)

Born Harlan, KY, 28 Feb 1939. In 1961, graduated with a BS in Textile Chemistry from GA TECH and commissioned an Ensign in the Naval Reserve via the Naval ROTC program.

Served 2 years active duty aboard the destroyer, USS JONAS INGRAM (DD 938). Served on two additional Destroyers and an Amphibious Cargo Vessel as a Reserve Weapons and Executive Officer totaling 9 years sea duty both active and reserve. As a reserve officer, held 8 commands and was Inspector General, Readiness Command Region 10.

Joined Eastman in late 1963. Retired after 34 years, held management positions in tech service, sales, product resources and business organizations.

Selected for promotion to Rear Admiral (Lower Half) in Nov. 1990 and Rear Admiral (Upper Half) in Jan 1994. He held 4 commands as a flag officer.

Awarded the Defense Superior Service Medal, the Legion of Merit (3 awards), the Meritorious Service Medal (2 awards) and the Navy/Marine Corps Commendation Medal.

In 1998, returned to active duty as Deputy Commander in Chief, US Naval Forces Europe (acting) stationed in London, England. Retired from the Navy in Feb. 1999 at the US Embassy in London after serving 37 ½ years.

Community service: Past board member Kingsport Symphony, vestry and senior warden Saint Paul's Episcopal Church, chairman of Saint Paul's Kindergarten and Day School board, Past President Kiwanis Club of Kingsport, board member of Move to Kingsport (Kingsport Chamber of Commerce).

Attended Naval War College, Army War College and National Defense University.

Married to Winkle whom he met while in the navy in Jacksonville, FL. Married 56 years this August. Their daughter Mary and granddaughter Mia, live in Ashville, NC. Mary is an artist and graphic designer.



AGENDA ACTION FORM

Appointment to the Sullivan County Board of Equalization

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

Action Form No.: AF-101-2020
 Work Session: April 20, 2020
 First Reading: N/A

Final Adoption: April 21, 2020
 Staff Work By: Mayor Shull
 Presentation By: Mayor Shull

Recommendation:

Approve appointment.

Executive Summary:

It is recommended to appoint John Campbell to the Sullivan County Board of Equalization as a representative for the City of Kingsport. If approved by the Board of Mayor and Aldermen the two-year appointment will be effective April 1, 2020.

Attachments:

None

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

Minutes of the Regular Work Session of the
Board of Mayor and Aldermen, City of Kingsport, Tennessee
Monday, April 6, 2020, 4:30 PM
Large Court Room – City Hall

PRESENT: Board of Mayor and Aldermen

Mayor Patrick W. Shull, Presiding
Vice-Mayor Colette George (via zoom call)
Alderman Jennifer Adler (via zoom call)
Alderman Betsy Cooper (via zoom call)
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Angie Marshall, City Clerk/Deputy City Recorder
Ryan McReynolds, Deputy City Manager (via zoom call)
Scott Boyd, Fire Chief (via zoom call)
John Morris, Budget Officer (via zoom call)

1. **CALL TO ORDER:** 4:30 p.m. by Mayor Patrick W. Shull.
2. **ROLL CALL:** By Deputy City Recorder Winkle.
3. A determination by the board that meeting electronically and prohibiting the physical presence of the public at the meeting is necessary to protect public health, safety and welfare of all concerned in light of the COVID-19 virus.
4. **REVIEW OF AGENDA ITEMS ON THE APRIL 7, 2020 REGULAR BUSINESS MEETING AGENDA.** City Manager McCartt gave a summary for each item on the proposed agenda. The following items were discussed at greater length or received specific questions or concerns.

VI.D.4 Phase 5 Water System Improvements Award of Bid to Goins Rash Cain, Inc. (AF: 94-2020). Alderman Duncan stated he was glad to see GRC take on this project. Vice-Mayor George asked about the time line, Deputy City Manager McReynolds replied the project would begin about six weeks after the bid was awarded.

VII.1 Renew Proposal for Concession Food Service Distributor for the Kingsport Aquatic Center to H.T. Hackney Company and B.K.T., Inc. (AF: 80-2020). The city manager confirmed for Vice-mayor George this contract was fulfilled on an as needed basis and would not be affected by any downtime at the Aquatic Center due to the coronavirus.

**Minutes of the Regular Work Session of the Board of Mayor and Aldermen of
Kingsport, Tennessee, Monday, April 6, 2020**

Alderman Phillips stated he was devastated by the news of Domtar shutting down, noting the trickle down effect it would have and the need to build the economy back. Alderman Duncan expressed his appreciation to the city manager and staff to get through this budget cycle. Alderman Adler commented on the economy, job loss and small businesses still rying to operated during this time. Alderman Cooper pointed out the creative and flexible solutions by businesses and city staff. Alderman Olterman agreed with everyone's comments. Mayor Shull stated he was sorry to hear about Domtar.

5. ADJOURN. Seeing no other matters presented for discussion at this work session, Mayor Shull adjourned the meeting at 5:00 p.m.

ANGELA MARSHALL
Deputy City Recorder

PATRICK W. SHULL
Mayor

Minutes of the Regular Business Meeting of the
Board of Mayor and Aldermen of the City of Kingsport, Tennessee
Tuesday, April 7, 2020, 7:00 PM
Large Court Room – City Hall

PRESENT: Board of Mayor and Aldermen

Mayor Patrick W. Shull, Presiding
Vice-Mayor Colette George (via zoom call)
Alderman Jennifer Adler (via zoom call)
Alderman Betsy Cooper (via zoom call)
Alderman Darrell Duncan (via zoom call)
Alderman Tommy Olterman
Alderman James Phillips (via zoom call)

City Administration

Chris McCartt, City Manager
J. Michael Billingsley, City Attorney
Lisa Winkle, Deputy City Recorder/Treasurer
Angie Marshall, City Clerk/Deputy City Recorder

- I. **CALL TO ORDER:** 7:00 p.m., by Mayor Pat Shull.
- II.A. **PLEDGE OF ALLEGIANCE TO THE FLAG:** Alderman Olterman
- II.B. **INVOCATION:** Alderman Adler
- III.A. **ROLL CALL:** By Deputy City Recorder Winkle. All Present.
- III.B. A determination by the board that meeting electronically and prohibiting the physical presence of the public at the meeting is necessary to protect public health, safety and welfare of all concerned in light of the COVID-19 virus.
Mayor Shull made this declaration and each alderman verbally affirmed.
- IV.A. **RECOGNITIONS AND PRESENTATIONS.** None.
- IV.B. **APPOINTMENTS/REAPPOINTMENTS.** None.
- V. **APPROVAL OF MINUTES.**

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

- A. March 23, 2020 Regular Work Session
- B. March 24, 2020 Regular Business Meeting
- C. March 31, 2020 Called Business Meeting

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

**Minutes of the Regular Business Meeting of the Board of Mayor and Aldermen
of the City of Kingsport, Tennessee, Tuesday, April 7, 2020**

VI. COMMUNITY INTEREST ITEMS.

A. PUBLIC HEARINGS. None.

PUBLIC COMMENT. None.

B. BUSINESS MATTERS REQUIRING FIRST READING. None.

C. BUSINESS MATTERS REQUIRING FINAL ADOPTION.

1. Budget Adjustment for Water and Sewer Project Funds in FY20
(AF: 41-2020) (Chris McCartt).

Motion/Second: Adler/Duncan, to pass:

ORDINANCE NO. 6854, AN ORDINANCE TO AMEND WATER PROJECT FUND AND THE SEWER PROJECT FUND BUDGETS FOR THE YEAR ENDING JUNE 30, 2020; 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."

2. Emergency Ordinance Amending Section 2-594 of the Kingsport City Code Temporarily Changing Award of Bid Procedures (AF: 86-2020) (Chris McCartt). City Attorney Billingsley confirmed an emergency ordinance could be passed in one reading but required a unanimous vote.

Motion/Second: George/Phillips, to pass:

ORDINANCE NO. 6855, AN ORDINANCE TEMPORARILY AMENDING THE CODE OF ORDINANCES, CITY OF KINGSPORT, TENNESSEE SECTION 2-594 PERTAINING TO SUBMISSION OF BIDS; AND, TO FIX THE EFFECTIVE DATE OF THIS ORDINANCE

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

D. OTHER BUSINESS.

1. Bid Award for the Purchase of Seven (7) AWD Police Pursuit Package SUV (AF: 82-2020) (David Quillin, Steve Hightower).

Motion/Second: Olterman/Phillips, to pass:

Resolution No. 2020-159, A RESOLUTION AWARDED THE BID FOR THE PURCHASE OF SEVEN AWD POLICE PURSUIT PACKAGE SUV VEHICLES TO FRIENDSHIP CJDR AND AUTHORIZING THE CITY MANAGER TO EXECUTE A PURCHASE ORDER FOR THE SAME

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

**Minutes of the Regular Business Meeting of the Board of Mayor and Aldermen
of the City of Kingsport, Tennessee, Tuesday, April 7, 2020**

2. Bid Award for the Purchase of Three (3) Unmarked Street Appearance Pursuit SUV AWD (AF: 83-2020) (David Quillin, Steve Hightower)

Motion/Second: Duncan/Adler, to pass:

Resolution No. 2020-160, A RESOLUTION AWARDDING THE BID FOR THE PURCHASE OF THREE UNMARKED STREET APPEARANCE PURSUIT SUV AWD VEHICLES TO FRIENDSHIP CJDR AND AUTHORIZING THE CITY MANAGER TO EXECUTE A PURCHASE ORDER FOR THE SAME

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

3. Award Contract to TEC Industrial for the Wastewater Treatment Plant Switchgear Replacement Project (AF: 87-2020) (Ryan McReynolds).

Motion/Second: Olterman/George, to pass:

Resolution No. 2020-161, A RESOLUTION AWARDDING THE BID FOR THE WASTEWATER TREATMENT PLANT SWITCHGEAR REPLACEMENT PROJECT TO TEC INDUSTRIAL 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. Phase 5 Water System Improvements Award of Bid to Goins Rash Cain, Inc. (AF: 94-2020) (Ryan McReynolds).

Motion/Second: Adler/Duncan, to pass:

Resolution No. 2020-162, A RESOLUTION AWARDDING THE BID FOR THE PHASE 5 WATER SYSTEMS IMPROVEMENTS PROJECT TO GOINS RASH CAIN, 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."

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

Motion/Second: George/Cooper, to adopt:

1. Renew Proposal for Concession Food Service Distributor for the Kingsport Aquatic Center to H.T. Hackney Company and B.K.T., Inc. (AF: 80-2020) (Chris McCartt).

**Minutes of the Regular Business Meeting of the Board of Mayor and Aldermen
of the City of Kingsport, Tennessee, Tuesday, April 7, 2020**

Pass:

Resolution No. 2020-163, A RESOLUTION AUTHORIZING THE RENEWAL OF THE KINGSFORT AQUATIC CENTER CONCESSION FOOD SERVICE DISTRIBUTOR CONTRACTS WITH H.T. HACKNEY COMPANY AND B.K.T., INC.

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

2. Coronavirus Emergency Supplemental Funding Program Grant in the Amount of \$75,845 from the U.S. Department of Justice for FY20 (AF: 89-2020) (David Quillin).

Pass:

Resolution No. 2020-164, A RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE ALL DOCUMENTS NECESSARY AND PROPER TO APPLY FOR AND RECEIVE A CORONAVIRUS EMERGENCY SUPPLEMENTAL FUNDING PROGRAM GRANT FROM THE UNITED STATES DEPARTMENT OF JUSTICE

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

3. Renew Bid Award for Unleaded Gasoline & Ultra-Low Sulfur Diesel (AF: 91-2020) (Ryan McReynolds, Steve Hightower).

Pass:

Resolution No. 2020-165, A RESOLUTION RENEWING THE AWARD OF BID FOR PURCHASE OF UNLEADED GASOLINE FOR USE IN CITY EQUIPMENT AND VEHICLES TO MANSFIELD OIL COMPANY OF GAINESVILLE AND AUTHORIZING THE CITY MANAGER TO EXECUTE PURCHASE ORDERS FOR THE SAME

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

Pass:

Resolution No. 2020-166, A RESOLUTION RENEWING THE AWARD OF BID FOR PURCHASE OF ULTRA LOW SULFUR DIESEL FUEL FOR USE IN CITY EQUIPMENT AND VEHICLES TO PETROLEUM TRADERS CORPORATION AND AUTHORIZING THE CITY MANAGER TO EXECUTE PURCHASE ORDERS FOR THE SAME

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

4. Renew Bid Award for Propane & Propane Conversion Kits (AF: 92-2020) (Ryan McReynolds, Steve Hightower).

**Minutes of the Regular Business Meeting of the Board of Mayor and Aldermen
of the City of Kingsport, Tennessee, Tuesday, April 7, 2020**

Pass:

Resolution No. 2020-167, A RESOLUTION RENEWING THE AWARD OF BID FOR PURCHASE OF PROPANE AUTO GAS AND PROPANE CONVERSION KITS FOR USE IN CITY EQUIPMENT FOR FISCAL YEAR 2020 TO BLOSSMAN GAS AND AUTHORIZING THE CITY MANAGER TO EXECUTE PURCHASE ORDERS FOR THE SAME

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

5. Amend ESS Southeast LLC Substitute Staffing Services Contract for Kingsport City Schools (AF: 93-2020) (David Frye, Jennifer Guthrie).

Pass:

Resolution No. 2020-168, A RESOLUTION APPROVING AMENDMENT NUMBER 1 TO THE SUBSTITUTE STAFFING SERVICES AGREEMENT WITH ESS SOUTHEAST, LLC FOR KINGSFORT CITY SCHOOLS; 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."

6. Accept Addendum to Partnership Grant from Tennessee Arts Commission (AF: 84-2020) (Chris McCartt).

Pass:

Resolution No. 2020-169, A RESOLUTION APPROVING AMENDMENT ONE TO GRANT CONTRACT 31625-08158 WITH THE TENNESSEE ARTS COMMISSION AND AUTHORIZING THE MAYOR TO EXECUTE THE AGREEMENT AND ALL OTHER 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."

VIII. COMMUNICATIONS.

A. CITY MANAGER. Mr. McCartt stated thoughts and prayers are with those who are suffering and to those affected by Domtar. He commended the marketing department, noted the payment center would be relocation to the transit center and thanked all city employees in general for doing things differently but with passion, embracing the Kingsport spirit.

B. MAYOR AND BOARD MEMBERS. Alderman Phillips commented on Domtar layoffs and the trickle-down effect it could have, stating we need to do what we can to get the economy going. He also thanked EMS, police and fire personnel.

**Minutes of the Regular Business Meeting of the Board of Mayor and Aldermen
of the City of Kingsport, Tennessee, Tuesday, April 7, 2020**

Alderman Adler pointed out this was her third week of virtual teaching and there is now some disengagement. She promoted encouragement during this time and wished everyone happy holidays. Alderman Olterman stated his appreciation for staff watching the city's finances. He also noted he understands what Domtar is going through as his son just lost his job. Alderman Duncan pointed out that Easter is a season of hope and new beginnings, encouraging everyone to spend time with family and noting many church services would be available online. He also commented on Domtar. Alderman Cooper mentioned how staff, businesses and citizens were dealing with constant changing but continuing to live their lives. She encouraged everyone to enjoy Easter and stay safe. Vice-Mayor George commented on other layoffs and resources that are available. She noted citizens can seek help through the Chamber and banks. She told everyone to have a wonderful Easter and remember what's important. Mayor Shull stated he admired the city manager and staff for being adaptable and finding smart ways to conserve public resources. He commented on the importance of social distancing and stated he appreciated what citizens were doing, noting Kingsport is a strong resilient community.

C. VISITORS. None.

IX. ADJOURN. Seeing no other business for consideration at this meeting, Mayor Shull adjourned the meeting at 7:42 p.m.

ANGELA MARSHALL
Deputy City Recorder

PATRICK W. SHULL
Mayor



AGENDA ACTION FORM

Enter into a Materials Agreement with The Edinburgh Group, LLC Related to the Gibson Springs Phase 2 Development and Appropriate the Funds

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

Action Form No.: AF-90-2020
 Work Session: April 20, 2020
 First Reading: April 21, 2020

Final Adoption: May 5, 2020
 Staff Work By: David Harris
 Presentation By: R. McReynolds

Recommendation:

Approve the Resolution and Ordinance.

Executive Summary:

In an effort to promote smart growth and infill development as well as encourage the new housing market within the Kingsport city limits, the City of Kingsport passed the Materials Agreement Policy as set forth in Resolution 2007-084. Developers have the opportunity to enter into an agreement with the City whereas the City furnishes the water and sewer materials for the developers use within the developer's proposed subdivision. The developer would be responsible for posting a cash bond covering the cost of the materials that would be available for refund (minus sales tax) once the project is completed and has been approved by the City Engineer and the Regional Planning Commission.

Pursuant to the policy, The Edinburgh Group, LLC has requested that the proposed Gibson Springs Phase 2 Development, be allowed to participate in the materials agreement program. The total amount of the agreement is proposed at \$28,924.56 for a new twenty four (24) lot development.

To date, including this development, the program has supported 851 new/proposed lots within the City of Kingsport. Of those lots, 558 Building Permits and 478 Certificates of Occupancy have been issued to date.

Attachments:

1. Resolution
2. Ordinance
3. Agreement
4. Cost Table
5. Location Maps
6. Development Chart

Funding source appropriate and funds are available: *jm*

The money required for such contract, agreement, obligation or expenditure is in the treasury or safely assured to be forthcoming and available in time to comply with or meet such contract, agreement, obligation or expenditure: *SK*

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

RESOLUTION NO. _____

A RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE A MATERIALS AGREEMENT WITH THE EDINBURGH GROUP, LLC RELATED TO GIBSON SPRINGS PHASE 2 DEVELOPMENT AND AUTHORIZING THE MAYOR TO SIGN ALL DOCUMENTS NECESSARY AND PROPER TO EFFECTUATE THE PURPOSE OF THE AGREEMENT

WHEREAS, pursuant to the Materials Agreement Policy as set forth in Resolution 2007-084, The Edinburgh Group, LLC would like to enter into a Materials Agreement for the provision of certain water and sewer materials by the city for Gibson Springs Phase 2, a 24 lot development in the city; and

WHEREAS, the total amount of the agreement as proposed is \$28,924.56;

Now, therefore,

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

SECTION I. That the mayor, or in his absence, incapacity, or failure to act, the vice mayor, is authorized and directed to execute, in a form approved by the city attorney, a Materials Agreement with The Edinburgh Group, LLC to provide certain water and sewer materials by the city for Gibson Springs Phase 2, in the amount of \$28,924.56, and the mayor is further authorized and directed to execute all documents necessary and proper to effectuate the purpose of the agreement.

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

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

ADOPTED this the 21st day of April, 2020.

PATRICK W. SHULL, MAYOR

ATTEST:

SIDNEY H. COX, CITY RECORDER

APPROVED AS TO FORM:

J. MICHAEL BILLINGSLEY, CITY ATTORNEY

ORDINANCE NO. _____

AN ORDINANCE TO AMEND THE WATER AND SEWER PROJECT FUNDS BY TRANSFERRING FUNDS TO THE GIBSON SPRINGS PHASE 2 MATERIALS AGREEMENT PROJECTS (WA2053 AND SW2053); AND TO FIX THE EFFECTIVE DATE OF THIS ORDINANCE

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

SECTION I. That the Water Fund project and the Sewer Fund project budgets be amended by decreasing the funds transferred from the Water Fund operating budget by \$9,994 and by decreasing the funds transferred from the Sewer Fund operating budget by \$18,931 to the Gibson Springs Phase 2 projects (WA2053 and SW2053) to fund the materials agreement.

Account Number/Description:

Water Project Fund:451
Gibson Springs Phase 2 (WA2053)
Revenues

451-0000-391-4500 From the Water Fund
Totals:

<u>Budget</u>	<u>Incr/<Decr></u>	<u>New Budget</u>
0	9,994	9,994
0	9,994	9,994

Expenditures:

451-0000-605-9003 Improvements
Totals:

0	9,994	9,994
0	9,994	9,994

Account Number/Description:

Sewer Project Fund:452
Edinburgh Phase 3 (SW2053)
Revenues

452-0000-391-4200 From the Sewer Fund
Totals:

0	18,931	18,931
0	18,931	18,931

Expenditures:

452-0000-606-9003 Improvements
Totals:

0	18,931	18,931
0	18,931	18,931

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:

SIDNEY H. COX
City Recorder

APPROVED AS TO FORM:

J. MICHAEL BILLINGSLEY, City Attorney

PASSED ON 1ST READING: _____

PASSED ON 2ND READING: _____

MATERIALS AGREEMENT

This AGREEMENT made and entered into on this 5th day of May, 2020, by and between the Edinburgh Group, LLC. hereinafter "Developer", and the City of Kingsport, Tennessee, a municipal corporation, hereinafter "City".

WITNESSETH:

1. The Developer has subdivided a tract of land known as Gibson Springs Phase 2, and preliminary approval having been heretofore granted by the Planning Commission.

2. The plans for the proposed water and sewer line improvement of the subdivided property have been submitted to and approved by the City of Kingsport, City Engineer and will require 345 LFT of Waterline and 1,545 LFT of Sanitary Sewer Line to construct.

3. The estimated cost of the materials listed in paragraph 2 above is approximately \$28,924.56. The Developer will purchase this material from the City for use for construction pursuant to this contract only.

4. The Developer will install the lines according to City's specifications, and will pay all costs for installation of all mains, valves, hydrants and other appurtenances, and will furnish the City "as built" drawings showing the cost lists of all pipe fittings, as well as their exact location.

5. The Developer, upon completion of the work and acceptance by the City, will tender to the City an instrument conveying unencumbered ownership of the lines and easement over and under the land where said lines are laid. Once this conveyance has been made and all the permits needed have been issued, all the inspections completed and passed, and all the payments have been made to the City by the Developer, the City will cause the said line to be connected to the main distribution line of the City.

6. The Developer will reimburse the City for any materials or engineering work required not covered by this agreement.

7. Prior to any reimbursement by the City to the Developer, the Developer will cause the property to be completely annexed into the corporate limits of the City.

8. The Developer will save the City harmless from any and all responsibility for laying any lines, etc., on or across any private premises not dedicated to public use.

9. The Developer will pay the City for the materials listed above and supplied by the City, and upon completion of the laying of water and sewer lines according to specification of and the plans approved by the City, and upon the Developer fully performing all the requirements contained in this agreement the City will reimburse the Developer for the amount paid to the City for the pipe purchased and used in the subdivision, less state and local sales tax.

10. The purpose of this agreement is to reimburse the Developer for 100% of cost of the water and sewer material, less state and local sales tax, with said materials being purchased from the City, and reimbursement for the cost of the materials being made to the Developer subject to the satisfactory completion of all terms of this agreement including complete annexation of the property into the corporate limits of the City.

11. It is understood that the Developer will do any and all ditching, laying of the pipelines, and any and all other work that may be necessary to meet the specifications of the City.

12. Any unused materials acquired by the Developer from the City will be returned to the City and the costs of such material, if returned undamaged, will be credited to the Developer.

IN TESTIMONY WHEREOF, the parties hereto have unto set their hands and seal on this the day and year first above written.


Developer

Patrick W. Shull, Mayor

Attest:

Approved as to form:

Sidney H. Cox, City Recorder

J. Michael Billingsley, City Attorney

Materials Agreement

Project: Gibson Springs Phase 2
 Date: April 14, 2020
 Developer: The Edinburgh Group, LLC

File No.: 2020-D7

Water Line		Anticipated		Estimated	
Item #	Item Description	Units	U/M	Price	Total
41864	8" x 18' D.I. Pipe	20.00	Joints	\$337.14	\$6,742.80
42120	4' Bury Hydrant	1.00	each	\$1,639.17	\$1,639.17
42325	6" MJ Gate Valve	1.00	each	\$495.17	\$495.17
43031	8x8x6 Anchor Tee	1.00	each	\$105.31	\$105.31
42845	6" x 18" MJ Anchor Coupling	1.00	each	\$92.00	\$92.00
41794	8" Plug w/ 2" Tap	1.00	each	\$51.95	\$51.95
Building Code					
	Receipt To:				
Subtotal:	451-0000-391-4500				\$9,126.40
Sales Tax:	451-0000-207-0201			9.50%	\$867.01
Project #	WA2053			Water Total:	\$9,993.41
	Expense To:				
Water Acct. #	451-0000-605-9003				



Materials Agreement

Project: Gibson Springs Phase 2
 Date: April 14, 2020
 Developer: The Edinburgh Group, LLC

File No.: 2020-D7

Sanitary Sewer		Anticipated		Estimated	
Item #	Item Description	Units	U/M	Price	Total
45003	8" x 14' SDR-35 gsktd Sewer Pipe	111.00	Joints	\$46.62	\$5,174.82
45057	8" x 6" Tee Wye gsktd Sewer	24.00	each	\$38.90	\$933.60
45112	Manhole Frame & Covers V-1312-44	10.00	each	\$237.23	\$2,372.30
45226	Manhole Base (24") w/ Invert	10.00	each	\$550.00	\$5,500.00
45223	Manhole Concrete 16" Riser (48")	1.00	each	\$135.00	\$135.00
45224	Manhole Concrete 32" Riser (48")	3.00	each	\$240.00	\$720.00
45219	Manhole Concrete 16" Concrete Cone	9.00	each	\$170.00	\$1,530.00
45221	Manhole Concrete 24" Concrete Cone	1.00	each	\$197.00	\$197.00
45229	Manhole Concrete 2" Grade Ring	2.00	each	\$31.00	\$62.00
45230	Manhole Concrete 4" Grade Ring	1.00	each	\$41.00	\$41.00
45231	Manhole Concrete 6" Grade Ring	7.00	each	\$57.00	\$399.00
45203	Extra Boot Charge	4.00	each	\$56.00	\$224.00
Building Code					
Receipt To:					
Subtotal:	452-0000-391-4200				\$17,288.72
Sales Tax:	452-0000-207-0201			9.50%	\$1,642.43
Project #	SW2053			Sewer Total:	\$18,931.15
Expense To:					
Sewer Acct #	452-0000-606-9003				
				Grand Total:	\$28,924.56

The Edinburgh Group, LLC

Gibson Springs

Phases II and III

Resubmitted March 10, 2020
SITE / CIVIL PACKAGE
 Civil Services Project # 19204

INDEX OF DRAWINGS

SITE / CIVIL	
C-00	SITE/CIVIL PACKAGE COVER SHEET
C-01	OVERALL SITE PLAN
C-02	ROADWAY PLAN & PROFILE - PH 3
REV 2 C-03	ROADWAY PLAN & PROFILE - PH 2
C-04	ROADWAY DETAILS
REV 3 C-05	GRADING AND DRAINAGE PLAN
C-06	DRAINAGE PATH - EXISTING
C-07	DRAINAGE PATH - PROPOSED
REV 2 C-08	DRAINAGE / STORMWATER DETAILS
REV 3 C-09	SANITARY SEWER PLAN
C-10	SANITARY SEWER PROFILES
C-11	SANITARY SEWER DETAILS
REV 2 C-11A	LIFT STATION & MOBILITY PATH DETAILS
REV 3 C-12	WATERLINE LAYOUT PLAN
REV 3 C-13	WATERLINE DETAILS
C-14	EROSION CONTROL PLAN - EXISTING
C-15	EROSION CONTROL PLAN - INTERMEDIATE
C-16	EROSION CONTROL PLAN - FINAL
C-17	EROSION CONTROL DETAILS
C-18	EROSION CONTROL DETAILS

VICINITY MAP



LOCATION MAP



CIVIL ENGINEER



Phn (423) 349-7760
 Fax (423) 349-7413
www.grcinc.com

REV	DATE	BY	CHK	APP	DESCRIPTION
1	10/11/20	ED			ADDRESS CITY COMMENTS
2	10/11/20	ED			ADDRESS CITY COMMENTS
3	10/11/20	ED			ADDRESS CITY COMMENTS

The Edinburgh Group, LLC
Gibson Springs Phases II & III
 Kingsport, Tennessee



C-00



Dr. Robert M. Lenz, "The Medical
Director, Garrison"
P.O. Box 141, Oak
Street, New York
City, New York
10011-0141
Phone: (212) 677-1100
Fax: (212) 677-1101

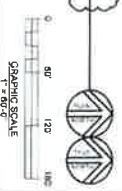
NOTE: PLANNING INFORMATION INCLUDING LOT LAYOUT, ROADWAY LAYOUT AND SITE SURVEY INFORMATION INCLUDING EXISTING TOPOGRAPHY PROVIDED BY ALLI & ASSOCIATES





1. **THEORY OF THE FIRM** (10%)
a. How do firms decide how much to produce?
b. How do firms decide how much to invest?
c. How do firms decide how much to pay for labor and capital?
d. How do firms decide how much to pay for debt and equity?
2. **THEORY OF THE MARKET** (10%)
a. How do firms decide how much to produce?
b. How do firms decide how much to invest?
c. How do firms decide how much to pay for labor and capital?
d. How do firms decide how much to pay for debt and equity?
3. **THEORY OF THE ECONOMY** (10%)
a. How do firms decide how much to produce?
b. How do firms decide how much to invest?
c. How do firms decide how much to pay for labor and capital?
d. How do firms decide how much to pay for debt and equity?
4. **THEORY OF THE FIRM** (10%)
a. How do firms decide how much to produce?
b. How do firms decide how much to invest?
c. How do firms decide how much to pay for labor and capital?
d. How do firms decide how much to pay for debt and equity?
5. **THEORY OF THE MARKET** (10%)
a. How do firms decide how much to produce?
b. How do firms decide how much to invest?
c. How do firms decide how much to pay for labor and capital?
d. How do firms decide how much to pay for debt and equity?
6. **THEORY OF THE ECONOMY** (10%)
a. How do firms decide how much to produce?
b. How do firms decide how much to invest?
c. How do firms decide how much to pay for labor and capital?
d. How do firms decide how much to pay for debt and equity?

[illegible]

WATER LINE UTILITIES LAYOUT



C-12			Architectural Services	<p>The Edinburgh Group, LLC</p> <p>Gibson Springs Phases II & III</p> <p>Kingsport, Tennessee</p>	
	150 Regional Park Dr Kingsport, TN 37660 P: 423.348.8700 F: 423.348.8710 WWW.CRW-ARCH.COM				
	10/1/2019 DWL BWM BWM 10/1/2019				
	WATER LINE LAYOUT				

City of Kingsport
MATERIALS AGREEMENT

Developer	Development	Proposed Lots/Development	Agreement Amt.	Date	Bldg. Permits	CO's	Status
Butch Rose	Hillcrest Heights	6	\$5,140.09	06/19/07	3	3	Closed
	Windridge Phase IV	40	\$92,202.29	04/15/08	15	15	Closed
Jeff McKee	Settler's Ridge Phase I	41	\$45,344.29	03/20/07	Total of 7	7	Closed
	Settler's Ridge Phase II	7	\$18,822.89	11/06/07			Closed
Edinburgh Group LLC	Edinburgh Phase I, Section 1	32	\$42,867.62	02/19/07	Total of 215	187	Closed
	Edinburgh Phase I, Section 2	15	\$25,205.92	04/17/07			Closed
	Edinburgh Phase 2, Section 1A	6	\$2,852.48	02/02/10			Closed
	Edinburgh Phase 2, Section 2	6	\$11,976.02	11/16/10			Closed
	Edinburgh Phase 2, Section 2B	11	\$9,472.85	10/18/11			Closed
	Edinburgh Phase 2, Section 2C	14	\$20,128.29	04/03/12			Closed
	Edinburgh Phase 2, Section 2E	8	\$25,177.34	10/02/12			Closed
	Edinburgh Phase 2, Section 2F	9	\$19,382.60	05/07/13			Closed
	Edinburgh Phase 4	17	\$65,033.97	07/24/13			Closed
	Edinburgh Phase V	12	\$51,965.42	10/7/2014			Closed
	Edinburgh Phase VII	20	\$27,552.51	6/2/2015			Closed
	Edinburgh Phase 9	6	\$5,917.93	5/5/2016			Open
	Edinburgh Phase 10	10	\$38,265.22	3/1/2017			Open
	Edinburgh South Phase I	23	\$36,694.42	11/1/2016			Open
Jerry Petzoldt	Old Island Phase II	59	\$118,027.86	05/06/08	42	39	Closed
Jim Nottingham	Riverwatch	29	\$47,605.13	04/15/08	22	15	Closed
Harold Slomp & Jack McMurray	Villas at Andover - Polo Fields	104	\$76,522.72	08/07/07	53	36	Closed
George Hunt	Hunts Crossing Phase II	22	\$18,375.20	04/15/08	6	5	Closed
Rob McLean	Anchor Point	80	\$72,552.51	07/15/08	42	37	Closed
	Anchor Point - Topsail Court	Included in Anchor Point	\$3,816.08	08/05/08		0	Closed
	Stapleton Dr Phase I	7	\$8,757.81	08/19/08	4	4	Closed
Ken Bates	Chase Meadows Phase I	15	\$39,418.91	07/15/08	Total of 59	52	Closed
	Chase Meadows Phase II	87	\$68,096.96	08/19/08			Closed
Terry Orth	Autumn Woods Phase I	19	\$30,628.25	10/07/08	19	19	Closed
	Autumn Woods Phase II	51	\$97,091.46	09/01/09	42	41	Closed
Gary Alexander	Riverbend Phase I	15	\$65,938.71	02/03/09	10	0	Closed
	Riverbend - Epcon Phase II	9	\$33,171.54	02/01/11			Closed
Leonard & Cynthia Gerber	St. Andrew's Garth Phase I	40	\$34,049.03	03/16/10	8	8	Closed
Jane Karst	Jane Karst Subdivision	4	\$4,100.78	09/20/11			Closed
M & M Builders	Brookton Park Subdivision	7	\$2,145.88	09/20/11	7	7	Closed
Vic Davis	The Summitt at Preston Park Ph. 3	20	\$79,327.82	12/03/13	4	3	Closed
	TOTAL	851	\$1,343,628.80		558	478	

Revised 04/06/2020



AGENDA ACTION FORM

Budget Adjustment Ordinance for the General Projects-Special Revenue Fund

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

Action Form No.: AF-102-2020
 Work Session: April 20, 2020
 First Reading: April 21, 2020

Final Adoption: May 5, 2020
 Staff Work By: Batara, Morris
 Presentation By: McCartt

Recommendation:

Approve the Ordinance.

Executive Summary:

That the General Projects-Special Revenue Fund budget be amended by appropriating grant funds received from the State of Tennessee Department of Finance and Administration, Office of Criminal Justice Programs in the amount of \$10,000 to the US Census Promo project (NC2019) and by transferring \$10,000 from the Riverwalk Project (NC1804) to the US Census Promo project (NC2019) to match the grant funding for a total of \$20,000.

Attachments:

1. Ordinance

Funding source appropriate and funds are available: *CM*

The money required for such contract, agreement, obligation or expenditure is in the treasury or safely assured to be forthcoming and available in time to comply with or meet such contract, agreement, obligation or expenditure: *SAC*

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

ORDINANCE NO.

PRE-FILED
CITY RECORDER

AN ORDINANCE TO AMEND GENERAL PROJECTS-SPECIAL REVENUE FUND BUDGET 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 Projects-Special Revenue Fund budget be amended by appropriating grant funds received from the State of Tennessee Department of Finance and Administration, Office of Criminal Justice Programs in the amount of \$10,000 to the US Census Promo project (NC2019) and by transferring \$10,000 from the Riverwalk Project project (NC1804) to the US Census Promo project (NC2019).

<u>Account Number/Description:</u>	<u>Budget</u>	<u>Incr/<Decr></u>	<u>New Budget</u>
<u>Fund 111: General Proj-Special Rev Fund</u>			
<u>US Census Promo (NC2019)</u>			
<u>Revenues:</u>	\$	\$	\$
111-0000-332.69-00 Miscellaneous Other State	0	10,000	10,000
111-0000-391.01-00 From General Fund	0	10,000	10,000
<i>Totals:</i>	0	20,000	20,000
<u>Expenditures:</u>	\$	\$	\$
111-0000-601.20-10 Advertising & Publication	0	20,000	20,000
<i>Totals:</i>	0	20,000	20,000
<u>Riverwalk Project (NC1804)</u>			
<u>Revenues:</u>	\$	\$	\$
111-0000-391.01-00 From General Fund	40,000	(10,000)	30,000
<i>Totals:</i>	40,000	(10,000)	30,000
<u>Expenditures:</u>	\$	\$	\$
111-0000-601.20-22 Construction Contracts	40,000	(10,000)	30,000
<i>Totals:</i>	40,000	(10,000)	30,000

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

ATTEST:

PATRICK W. SHULL, Mayor

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

Award of Bid to Construction Partners, LLC for City Hall Relocation – Phase 2 and Authorizing the Mayor to Sign all Applicable Documents

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

Action Form No.: AF-45-2020
 Work Session: April 20, 2020
 First Reading: N/A

Final Adoption: April 21, 2020
 Staff Work By: Tim Elsea
 Presentation By: Ryan McReynolds

Recommendation: Approve the Resolution.

Executive Summary:

On February 20, 2018 the Board of Mayor and Aldermen entered into an agreement with Regions Bank for the purchase of the building located at 415 Broad Street for the relocation of City Hall. Bids were opened on June 26, 2019 for City Hall Relocation Phase 1, and approved to proceed with construction (AF-181-2019).

Bids were opened on March 11, 2020 for Phase 2 of this project which consists of the renovations of floors 1 and 2, emergency generator installation, and parking lot improvements for accessibility. As with Phase 1, Phase 2 will include selective interior demolition and interior renovation, and includes new construction work as may be required to provide a fully functional and habitable space, suitable for the intended use.

City staff reviewed the bids and recommends awarding the contract to Construction Partners, LLC in the base bid amount of \$2,225,522.00. Through Value Engineering \$104,478.00 of extensive exterior cleaning and brick/cornice repainting was removed from the contract. We plan to perform a limited exterior cleaning in-house, and follow up at a later date with the more extensive work.

Base Bid	\$2,225,522.00
Contingency	<u>133,533.12</u>
Total Project Cost	\$2,359,055.12

The architect's estimate for Phase 2 of the referenced project is \$2,124,380.00. Funding is available from Bond proceeds and identified in GP1750 and GP1820.

Attachments:

1. Resolution
2. Bid Minutes
3. Memo – Scope of Work

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

The money required for such contract, agreement, obligation or expenditure is in the treasury or safely assured to be forthcoming and available in time to comply with or meet such contract, agreement, obligation or expenditure: *[Signature]*

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

RESOLUTION NO. _____

A RESOLUTION AWARDDING THE BID FOR THE CITY HALL
RELOCATION PHASE 2 TO CONSTRUCTION PARTNERS, LLC
AND AUTHORIZING THE MAYOR TO SIGN AN AGREEMENT FOR
THE SAME AND ALL DOCUMENTS NECESSARY AND PROPER
TO EFFECTUATE THE PURPOSE OF THE AGREEMENT

WHEREAS, bids were opened March 11, 2020, for the City Hall Relocation Phase 2 project; and

WHEREAS, upon review of the bids, the board finds Construction Partners, LLC is the lowest responsible compliant bidder meeting specifications for the particular grade or class of material, work, or service desired and is in the best interest and advantage to the city, and the City of Kingsport desires to enter into a contract with Construction Partners, LLC for phase 2 consisting of selective interior demolition and interior renovation of floors 1 and 2, and parking lot improvements for accessibility at the building acquired for a new city hall (415 Broad Street, Kingsport), and includes new construction work as may be required to provide a fully functional and habitable space, suitable for the intended use at an estimated construction cost of \$2,225,522.00; and

WHEREAS, funding is identified in project number GP1820.

Now therefore,

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

SECTION I. That the bid for the City Hall Relocation Phase 2 Project, consisting of selective interior demolition and interior renovation of floors 1 and 2, and parking lot improvements at the building acquired for a new city hall (415 Broad Street, Kingsport), and includes new construction work as may be required to provide a fully functional and habitable space, suitable for the intended use at an estimated cost of \$2,225,522.00 is awarded to Construction Partners, LLC, and the mayor is authorized to execute an agreement for same and all documents necessary and proper to effectuate the purpose of the agreement.

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

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

ADOPTED this the 21st day of April, 2020.

PATRICK W. SHULL, MAYOR

ATTEST:

SIDNEY H. COX, CITY RECORDER

APPROVED AS TO FORM:

J. MICHAEL BILLINGSLEY, CITY ATTORNEY

MINUTES
BID OPENING
March 11, 2020
4:00 P.M.

Present: Brent Morelock, Procurement Manager; Nikisha Eichmann, Assistant Procurement Manager; Dawn Melton, Project Manager; Niki Ensor, Water/Wastewater Manager; and Clinton Roberts, Cain Rash West Architects

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

The Procurement Manager opened with the following bids:

CITY HALL RELOCATION - PHASE II							
Vendor:	Base Bid:	Alt. 1:	Alt. 2:	Alt. 3:	Alt. 4:	Completion Time:	Comments:
Construction Partners	\$2,330,000.00	\$30,565.00	\$106,420.00	\$22,450.00	\$52,840.00	240 Calendar Days	White out used on base and alternate.

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



Office of the Deputy City Manager

225 West Center Street • Kingsport, TN 37660 • 423-229-9471

RyanMcReynolds@KingsportTN.gov

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

From: Ryan McReynolds, Deputy City Manager

Date: April 13, 2020

RE: City Hall Relocation – Scope of Work Associated with Phase 2

Bids were opened on March 11, 2020 for Phase 2 of this project which consists of the renovations of floors 1 and 2. As with Phase 1, Phase 2 will include selective interior demolition and interior renovation, and includes new construction work as may be required to provide a fully functional and habitable space, suitable for the intended use.

The following describes / explains the need for the additional items from the original scope –

- upgrade existing generator to meet building requirements
- audio/visual for BMA meeting room
- bullet proof glass in the Finance area
- hot box for water moved from inside to outside of building
- redo finishes in elevators
- site work at main entrance of building to meet ADA compliance



AGENDA ACTION FORM

Reject Amendment Counteroffer from WestRock Converting Company

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

Action Form No.: AF-96-2020
 Work Session: April 20, 2020
 First Reading: N/A

Final Adoption: April 21, 2020
 Staff Work By: Michael Thompson
 Presentation By: Ryan McReynolds

Recommendation:

Approve the Resolution.

Executive Summary:

On January 21, 2020 the BMA approved amending the agreement with WestRock Company for recycling services (AF-14-2020). This amendment extended the date through February 1, 2022. All other terms and conditions of the agreement remained in full force and effect.

On March 13, 2020 the City received a separate request from WestRock to extend the original agreement that expired January 31, 2020. This request included a counteroffer of an additional \$35 / ton tipping fee and exclusion of certain plastics. This represents an additional cost of \$115,000.00 to the Sanitation Budget, and also an impact to the recycling offerings for our residents.

Consideration of budgetary uncertainty related to the COVID-19 pandemic, and review of the current recycle market, it is our recommendation to not execute the proposed amendment counteroffer and pause the Recycling Program until further notice.

Attachments:

1. Resolution
2. Memo – Detailed Explanation and Attachments

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

RESOLUTION NO. _____

A RESOLUTION REJECTING A COUNTEROFFER FROM WESTROCK CONVERTING COMPANY FOR RECYCLING SERVICES; AND AUTHORIZING THE MAYOR TO EXECUTE ALL DOCUMENTS NECESSARY AND PROPER TO REJECT THE COUNTEROFFER OR TO EFFECTUATE THE PURPOSE OF THIS RESOLUTION

WHEREAS, on January 21, 2020, the board approved an amendment renewing the agreement with WestRock Converting Company for curbside recycling services on the same terms and conditions in the then current agreement; and

WHEREAS, the amendment was to extend the agreement through February, 2022; and

WHEREAS, since that time the city received a written request from WestRock Converting Company dated March 13, 2020, that is a counteroffer to the terms approved by the board in January, 2020; and

WHEREAS, it is recommended that the board formally reject the counteroffer.

Now therefore,

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

SECTION I. That the request received from WestRock Converting Company for curbside recycling services, that is a counteroffer to the terms approved by the board in January, 2020, is rejected.

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

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

ADOPTED this the 21st day of April, 2020.

PATRICK W. SHULL, MAYOR

ATTEST:

SIDNEY H. COX, CITY RECORDER

APPROVED AS TO FORM:

J. MICHAEL BILLINGSLEY, CITY ATTORNEY



Memo

To: Chris McCartt, City Manager
From: Ryan McReynolds PE, Deputy City Manager
Date: April 1, 2020
Re: Kingsport Recycling Program

On December 11, 2019 the City received a request (attachement 1) from WestRock Converting Company to amend the agreement for management of the City's recycle material by extending the date through February 1, 2022. There were no changes to the terms and conditions proposed by WestRock other than the effective date of the agreement. The BMA approved the amendment of the agreement (attachment 2) during the January 21, 2020 board meeting. Additionally, in preparation of this amendment and due to the uncertain climate of the recycling market, multiple conversations occurred throughout the fall of 2019 to ensure the stability of our agreement and the acceptance of the material we were providing.

On March 13, 2020 the City received a separate request from WestRock to extend the original agreement that expired on January 31, 2020 (attachment 3). This request included the addition of a \$35 / ton tipping fee and exclusion of certain plastics. This represents an additional \$115,000 cost to the Sanitation Budget and an impact to the recycling offerings for our residents. Additionally, WestRock informed the City that the additional fee would begin on April 1, 2020. Michael Thompson has requested that the fee be moved to May 1, 2020 in order for our BMA to consider the action.

From its inception, the City of Kingsport has invested into the Recycling Program while trying to balance the financial burden to the citizens. Other than a small amount of state grant funds, the program has received no revenue in the past three (3) years and the cost structure has continued to increase. The net cost of the program has increased from \$452k in fiscal year 2016 to an estimated \$626k in FY 2021.

Kingsport Recycling	FY 16	FY 17	FY 18	FY 19	FY 20	FY 21
Proceeds/Revenues	\$95,567	\$56,280	\$5,503	\$1,418	\$2,635	\$2,500
Expenses						
Collection	\$640,000	\$655,000	\$660,055	\$657,611	\$655,000	\$655,000
Marketing / Westrock	\$88,566	\$88,911	\$154,810	\$153,120	\$160,000	\$275,000
Total	\$728,566	\$743,911	\$814,865	\$810,731	\$815,000	\$930,000
Tons (Recycling) Collected	3,249	3,240	3,276	3,180	3,200	3,200
Cost per Ton (Recycling)	\$224.24	\$229.60	\$248.74	\$254.95	\$254.69	\$290.63
Cost per Ton (Garbage)	\$85.00	\$85.00	\$88.04	\$95.31	\$94.85	\$95.00
Cost Savings (Potential)	\$452,401	\$468,511	\$526,446	\$507,645	\$511,480	\$626,000

The three options available for the BMA to consider are:

1. Approve the Amendment and increase the Recycling Budget by \$113,000
2. Approve the Amendment and add language to opt out with one month notice. This would allow the staff to issue an RFP while maintaining service.
3. Do not execute the Amendment and pause the Recycling Program.

Due to the budgetary uncertainty related to the CV-19 pandemic and the current recycle market, it is our recommendation to not execute the proposed amendment and pause the Recycling Program until further notice. During this time the following actions would occur

- Redeploy two (2) Recycle Operators into Garbage Collection (due to the additional volume new routes would be necessary to manage the total amount of waste)
- Redeploy two (2) Recycle Operations into unfilled positions.
- Develop an RFP for this service
- Explore an alternative service delivery method
- There would be no change to the current residents' carts, the garbage truck would collect from all carts. Additionally, we would freeze providing any new recycling carts to residents.

Attachments:

1. Request to amend agreement between City of Kingsport and WestRock
2. AF-14-2020 Amend Agreement with WestRock Converting Company for Recycling Services
3. WestRock letter Re: The Agreement dated February 1, 2017 between the City of Kingsport and WestRock Converting, LLC – Request to Extend the Agreement

Catron, Sheila

Subject: RE: WestRock Recycle Contract Renewal

From: Michael Niemann [<mailto:michael.niemann@westrock.com>]
Sent: Wednesday, December 11, 2019 10:45 AM
To: Hammonds, Ronnie <RonnieHammonds@KingsportTN.gov>
Cc: Hal Risher <hal.risher@westrock.com>; Derek Senter <derek.senter@westrock.com>
Subject: RE: WestRock Recycle Contract Renewal

CAUTION: This email originated from outside your organization. Exercise caution when opening attachments or clicking links, especially from unknown senders.

Ronnie,

WestRock desires to Amend the Agreement between the City and WestRock for "The Removal of Recyclable Materials Curbside Collection" and extend services through February 1, 2022.

Attached is the First Amendment draft for your review. Please respond with any comments or edits and we'll put the First Amendment in final form for execution.

Thank you,

Michael Niemann

General Manager
Knoxville Recycling



865-399-6343
michael.niemann@westrock.com

Safety Is Our Top Priority

**FIRST AMENDMENT TO THE AGREEMENT FOR REMOVAL OF RECYCLABLE
MATERIALS CURBSIDE COLLECTION**

THIS FIRST AMENDMENT TO THE AGREEMENT FOR REMOVAL OF RECYCLABLE MATERIALS CURBSIDE COLLECTION ("**First Amendment**"), dated February 1, 2020 ("**First Amendment Effective Date**"), is made by and between WESTROCK CONVERTING LLC (f/k/a **WESTROCK CONVERTING COMPANY**), a Georgia limited liability company with offices located at 1000 Abernathy Rd NE, Atlanta Georgia 30328 (hereinafter "**PROCESSOR**") and the **CITY OF KINGSPORT** (hereinafter "**SUPPLIER**").

RECITALS

WHEREAS, SUPPLIER and PROCESSOR entered into an Agreement on February 1, 2017 for services and other adjunct services as may be authorized by SUPPLIER for the removal of recyclable materials curbside collection;

WHEREAS, WestRock Converting Company converted to a limited liability company under Georgia law on or about September 30, 2018 and is now known as WestRock Converting LLC; and

WHEREAS, the parties desire to extend the Agreement through February 1, 2022;

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. In accordance with 6.1 of the Agreement the parties agree to a renewal term effective February 1, 2020 and continuing through February 2, 2022.
2. All other terms and conditions of the Agreement remain in full force and effect.
3. This First Amendment may be executed electronically or by facsimile and in counterparts, each of which shall be construed as an original, and all of which together shall constitute but a single instrument.

IN WITNESS WHEREOF, and intending to be legally bound, the parties have caused their respective duly authorized officers to sign this First Amendment effective as of the day and year first written above.

WESTROCK CONVERTING LLC

CITY OF KINGSFORT

BY: _____

BY: _____

DATE: _____

DATE: _____

WITNESS:

ATTEST:

City Recorder

APPROVED AS TO FORM

City Attorney



AGENDA ACTION FORM

Amend Agreement with WestRock Converting Company for Recycling Services

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

Action Form No.: AF-14-2020
 Work Session: January 21, 2020
 First Reading: N/A

Final Adoption: January 21, 2020
 Staff Work By: Michael Thompson
 Presentation By: Ryan McReynolds

Recommendation:

Approve the Resolution.

Executive Summary:

City staff continuously researches process improvement opportunities that will provide the best services at the lowest cost for the Citizens of Kingsport. On December 5, 2011 the BMA approved an agreement with Rock-Tenn Converting Company (currently d.b.a. WestRock Converting Company) as a material recovery facility (MRF) to receive, sort and market recycling material once delivered to them (AF-325-2011). By going automated single stream at curbside for our recycling program, this allowed more capacity for recyclables in the cart, and quicker stop time per customer. Through the results of these efforts, the City has been able to improve service delivery to their citizens.

November 10, 2016 bids were opened to continue with a MRF for our curbside recycling program, and February 7, 2017 the BMA approved entering into an agreement with WestRock Converting Company for this service (AF-39-2017). The initial terms of the agreement were for three (3) years with an option for additional renewals. Therefore it is recommended to amend the agreement with WestRock Converting Company extending the agreement through February 2, 2022. All other terms and conditions of the agreement remain in full force and effect.

Attachments:

1. Resolution
2. Email from WestRock
3. Amendment One (2 pages)

Funding source appropriate and funds are available. *JM*

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

RESOLUTION NO. _____

A RESOLUTION APPROVING AN AMENDMENT TO THE AGREEMENT WITH WESTROCK CONVERTING COMPANY FOR RECYCLING SERVICES; AUTHORIZING THE MAYOR TO EXECUTE THE AMENDMENT; AND ALL OTHER DOCUMENTS NECESSARY AND PROPER TO EFFECTUATE THE PURPOSE OF THE AMENDMENT

WHEREAS, on February 7, 2017, the board approved an agreement with WestRock Converting Company for curbside recycling services; and

WHEREAS, the initial terms of the agreement were for three years with an option to renew for additional renewals; and

WHEREAS, the city would like to renew the agreement with WestRock Converting Company to extend the agreement through February, 2022.

Now therefore,

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

SECTION I. That an amendment to the agreement with WestRock Converting Company for curbside recycling services 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, an amendment to the agreement with WestRock Converting Company for curbside recycling services 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 THE AGREEMENT FOR REMOVAL OF RECYCLABLE MATERIALS CURBSIDE COLLECTION

THIS FIRST AMENDMENT TO THE AGREEMENT FOR REMOVAL OF RECYCLABLE MATERIALS CURBSIDE COLLECTION ("First Amendment"), dated February 1, 2020 ("First Amendment Effective Date"), is made by and between WESTROCK CONVERTING LLC (f/k/a WESTROCK CONVERTING COMPANY), a Georgia limited liability company with offices located at 1000 Abernathy Rd NE, Atlanta Georgia 30328 (hereinafter "PROCESSOR") and the CITY OF KINGSFORT (hereinafter "SUPPLIER").

RECITALS

WHEREAS, SUPPLIER and PROCESSOR entered into an Agreement on February 1, 2017 for services and other adjunct services as may be authorized by SUPPLIER for the removal of recyclable materials curbside collection;

WHEREAS, WestRock Converting Company converted to a limited liability company under Georgia law on or about September 30, 2018 and is now known as WestRock Converting LLC; and

WHEREAS, the parties desire to extend the Agreement through February 1, 2022;

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. In accordance with 6.1 of the Agreement the parties agree to a renewal term effective February 1, 2020 and continuing through February 2, 2022.
2. All other terms and conditions of the Agreement remain in full force and effect.
3. This First Amendment may be executed electronically or by facsimile and in counterparts, each of which shall be construed as an original, and all of which together shall constitute but a

single instrument.

IN WITNESS WHEREOF, and intending to be legally bound, the parties have caused their respective duly authorized officers to sign this First Amendment effective as of the day and year first written above.

[Acknowledgements Deleted for Inclusion in this Resolution]

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

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

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

ADOPTED this the 21st day of January, 2020.

PATRICK W. SHULL, MAYOR

ATTEST:

SIDNEY H. COX, CITY RECORDER

APPROVED AS TO FORM:

J. MICHAEL BILLINGSLEY, CITY ATTORNEY



March 13, 2020

VIA EMAIL DELIVERY
Attn: Mr. Brent Morelock
City of Kingsport Tennessee
225 West Center Street
Kingsport Tennessee 37660

RE: The Agreement dated February 1, 2017 between The City of Kingsport ("SUPPLIER") and WestRock Converting, LLC ("PROCESSOR") – Request to Extend the Agreement

Mr. Morelock,

As you know the Term of the Agreement expired on January 31, 2020. Under Article VI of the Agreement, the Agreement may be extended upon written agreement of the Parties. WestRock hereby requests that Kingsport agree to an extension for an additional two (2) years.

WestRock would like to extend the Agreement if Kingsport will agree to the following amendments to the Agreement:

1. The City agrees to a flat fixed fee structure to process the City's Residential Single Stream Materials. If agreeable effective April 1, 2020 the processing fee will be \$35.00.
2. Under ARTICLE I, Scope of Services and Schedule, 1.4, Residential Single Stream definition will be changed by removing "recyclable plastics #1-7 and replacing with, "recyclable plastics #1 PET Drink Bottles and #2 HDPE Jugs & Bottles and the same changes apply to the RFP III. Requirements, #2., Definition of Accepted Recyclable Materials including removing "Glass". For clarity we are attaching the WestRock Residential Single Stream Guidelines.

Recycling residential single stream materials has changed dramatically over time. In the most recent ten years we have seen significant changes in value, swings in market demand and dramatic shifts in domestic and export consumption. As recently as February 2020 mixed paper (making up approximately 50% of the volume by weight) has a negative market value. We believe this may be the first time that a fiber-based commodity from this stream of materials has ever gone negative. With softening demand, producing better quality becomes necessary, driving up the cost of processing. A recent report on the state of curbside recycling, written by The Recycling Partnership, states that the average processing fees charged in 2019 was **\$63.69** per ton.

WestRock believes in these single stream recycling programs and intends to support them. In addition to processing fees to help offset operational cost we continue to look

at capital improvements to lower cost and produce a higher quality material to make it attractive and competitive for our own internal paper mill system.

The City of Kingsport and WestRock have had a great business relationship over the last several years. We look forward to continuing that relationship and supporting the City of Kingsport in its recycling efforts.

In the hope that Kingsport will agree to the extension of the term with these changes I have attached an amendment to the Agreement for you and your attorneys to consider. Please provide any comments or edits to this document if you are agreeable to the extension. Please contact Michael Niemann, michael.niemann@westrock.com or # 865-399-6343 with any questions.

Sincerely,

A handwritten signature in dark ink, appearing to read "Michael Niemann", followed by a horizontal line.

WestRock Converting LLC
WestRock Knoxville Recycle

**FIRST AMENDMENT TO THE
AGREEMENT FOR
REMOVAL OF RECYCLABLE MATERIALS CURBSIDE COLLECTION**

This First Amendment is entered into March 1, 2020 between the CITY OF KINGSPORT TN, with offices located at 225 West Center Street Kingsport, TN 37660 ("SUPPLIER") and WestRock Converting LLC (f/k/a WestRock Converting Company), a Georgia limited liability company, with offices located at 1000 Abernathy Road NE, Atlanta, GA 30328 ("PROCESSOR").

WHEREAS, PROCESSOR and SUPPLIER have previously entered into an agreement on February 1, 2017, for SUPPLIER to deliver and PROCESSOR to process from SUPPLIER, Residential Single Stream Recyclable Materials under a Curbside Collection and Drop-off Programs ("Agreement"); and

WHEREAS, PROCESSOR and SUPPLIER desire to amend the Agreement to: (1) extend the term of the Agreement; (2) amend the flat fixed fee structure and (3) amend the types of recyclable materials covered under the Agreement.

NOW, THEREFORE, the Agreement is amended as follows:

- I. Article VI. of the Agreement is amended as of the Effective Date of this First Amendment, to read as follows:

Article VI The initial term of the Agreement will be awarded for a period of five (5) years from the Effective Date of this Agreement. The parties may extend the term upon written agreement.

- II. Article IV Compensation is struck and the following inserted in lieu thereof;

4.1 The Parties agree to a flat fixed fee structure to process the City's Residential Single Stream Materials. Effective April 1, 2020 the processing fee will be \$35.00.

The remainder of Article IV shall remain unchanged.

- III. ARTICLE I, SCOPE OF SERVICES AND SCHEDULE, subparagraph 1.4, Residential Single Stream definition is changed by removing "recyclable plastics #1-7 and replacing with, "recyclable plastics #1 PET Drink Bottles and #2 HDPE Jugs & Bottles

Furthermore the same changes apply to the RFP III. Requirements, #2.,

The Definition of City Designated Recyclables Include shall be modified by removing
"Glass": includes household lass containers, bottles and jars of all colors, including brown or amber, blue green, mixed and broken glass

For clarity the parties attach the "WestRock Residential Single Stream Guidelines" for a complete definition of the acceptable recyclable materials subject to this Agreement

V. **REAFFIRMATION**

In all other respects, the Agreement, as amended, and any attachments, remains in full force and effect.

VI. **ENTIRE AGREEMENT**

The Agreement, as amended, and any attachments, constitute the entire understanding between Buyer and Seller.

[VI] **EFFECTIVE DATE**

This First Amendment shall be deemed effective as of March 1, 2020 .

IN WITNESS WHEREOF, Seller and Buyer hereto have executed this First Amendment to the Agreement. By their signatures below, each signatory represents that he/she has the authority to execute this First Amendment and to bind the Party on whose behalf his/her execution is made.

WESTROCK CONVERTING LLC

CITY OF KINGSPORT

By: _____

By: _____

Date: _____

Date: _____



AGENDA ACTION FORM

Award the Bid for Commodity Chicken Processing to Tyson and Gold Creek Foods for School Nutrition Program for SY 2020-21

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

Action Form No.: AF-97-2020
 Work Session: April 20, 2020
 First Reading: N/A

Final Adoption: April 21, 2020
 Staff Work By: Committee
 Presentation By: David Frye, Jennifer Walker

Recommendation:

Approve the Resolution.

Executive Summary:

The City of Kingsport opened bids for Commodity Chicken Processing on March 18, 2020. The intent of this bid is to execute agreements to establish a continuous supply of Chicken items for use by the City of Kingsport School Nutrition Program. Three vendors submitted bids for consideration: Tyson, Pilgrim's Pride, and Gold Creek Foods. School Nutrition will process 60,000 pounds of commodity chicken from entitlement funds with a processing fee amount not to exceed \$158,000.00. School Nutrition Services is requesting approval to award the bid for Chicken Commodity Processing for the 2020-2021 school year to Tyson and Gold Creek Foods for the not to exceed contract amounts as follows:

Tyson - \$92,000.00

Gold Creek Foods - \$66,000.00

These contracts will cover the period of July 1, 2020 thru June 30, 2021. The bid documents include a renewal option on an annual basis in one-year increments for up to three additional years providing all terms, conditions and cost are acceptable to both parties.

Funding will be provided by Kingsport City Schools Nutrition Program and USDA reimbursements.

Attachments:

1. Resolution
2. Bid Minutes
3. Recommendation Memo

Funding source appropriate and funds are available: *Jim*

The money required for such contract, agreement, obligation or expenditure is in the treasury or safely assured to be forthcoming and available in time to comply with or meet such contract, agreement, obligation or expenditure: *[Signature]*

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

RESOLUTION NO. _____

A RESOLUTION AWARDDING THE BID FOR SCHOOL NUTRITION
COMMODITY CHICKEN PROCESSING TO TYSON AND GOLD
CREEK FOODS AND AUTHORIZING THE MAYOR TO SIGN
AGREEMENTS FOR THE SAME AND ALL DOCUMENTS
NECESSARY AND PROPER TO EFFECTUATE THE PURPOSE
OF THE AGREEMENTS

WHEREAS, bids were opened on March 18, 2020, for commodity chicken processed items for the Kingsport City School Nutrition Services for the period of July 1, 2020, to June 30, 2021; and

WHEREAS, upon review of the bids, the board finds Tyson meets the specifications for the particular grade or class of material, work or service desired and is in the best interest and advantage to the city, and the City of Kingsport desires to enter into agreements for the purchase of commodity chicken items from Tyson for the estimated total amount not to exceed \$92,000.00, for the period of July 1, 2020 thru June 30, 2021, with the option to renew the agreement for an additional three years, in one year increments; and

WHEREAS, upon review of the bids, the board finds Gold Creek Foods meets the specifications for the particular grade or class of material, work or service desired and is in the best interest and advantage to the city, and the City of Kingsport desires to enter into agreements for the purchase of commodity chicken items from Gold Creek Foods for the estimated total amount not to exceed \$66,000.00, for the period of July 1, 2020 thru June 30, 2021, with the option to renew the agreement for an additional three years, in one year increments; and

WHEREAS, the Board of Education reviewed the bids and approved the recommendation of staff; and

WHEREAS, funding will be provided by Kingsport City Schools Nutrition Program and USDA reimbursements.

Now therefore,

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

SECTION I. That an agreement with Tyson for commodity chicken items for the Kingsport City School Nutrition Services for the period of July 1, 2020 to June 30, 2021, in an estimated total amount not to exceed \$92,000.00 with the option to renew the agreement for an additional three years, in one year increments, is approved.

SECTION II. That the mayor, or in his absence, incapacity, or failure to act, the vice-mayor, is authorized and directed to execute, in a form approved by the city attorney, and subject to the requirements of Article X, Section 10 of the Charter of the City of Kingsport, an agreement with Tyson for commodity chicken items for the Kingsport City School Nutrition Services for the period of July 1, 2020, to June 30, 2021, in an estimated total amount not to exceed \$92,000.00, and all other documents necessary and proper to effectuate the purpose of the agreements or this resolution.

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

SECTION IV. That an agreement with Gold Creek Foods for commodity chicken items for the Kingsport City School Nutrition Services for the period of July 1, 2020 to June 30, 2021, in an estimated total amount not to exceed \$66,000.00, with the option to renew the agreement for an additional three years, in one year increments, is approved.

SECTION V. That the mayor, or in his absence, incapacity, or failure to act, the vice-mayor, is authorized and directed to execute, in a form approved by the city attorney, and subject to the requirements of Article X, Section 10 of the Charter of the City of Kingsport, an agreement with Gold Creek Foods for commodity chicken items for the Kingsport City School Nutrition Services for the period of July 1, 2020, to June 30, 2021, in an estimated total amount not to exceed \$66,000.00, and all other documents necessary and proper to effectuate the purpose of the agreements or this resolution.

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

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

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

ADOPTED this the 21st day of April, 2020

PATRICK W. SHULL, MAYOR

ATTEST:

SIDNEY H. COX, CITY RECORDER

APPROVED AS TO FORM:

J. MICHAEL BILLINGSLEY, CITY ATTORNEY

MINUTES
BID OPENING
March 18, 2020
4:00 P.M.

Present: Michelle Ramey, Assistant Procurement Manager, Schools; and Nikisha Eichmann, Assistant Procurement Manager

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

The Assistant Procurement Manager opened with the following bids:

SCHOOL NUTRITION SERVICES COMMODITY PROCESSING OF CHICKEN & CHEESE				
Item No.:	VENDORS:			
	Cold Creek Foods	Land O Lakes, Inc.	Pilgrams Pride Corp.	Tyson:
1	\$39.52	N/A	\$44.71	\$38.39
2	\$49.60	N/A	\$60.65	\$94.83
3	N/A	N/A	N/A	\$66.86
4	N/A	N/A	N/A	\$22.13
5	\$56.16	N/A	\$54.94	\$57.00
6	\$60.48	N/A	\$70.54	\$53.36
7	\$59.84	N/A	\$68.28	\$75.00
8	\$43.20	N/A	\$40.06	N/A
9	\$61.60	N/A	\$67.58	\$44.36
10	\$45.12	N/A	N/A	N/A
11	\$63.84	N/A	N/A	\$78.75
12	N/A	N/A	N/A	\$71.34
13	\$49.60	N/A	\$59.84	\$66.74
14	N/A	N/A	\$61.71	\$72.22
15	N/A	N/A	N/A	\$79.50
16	N/A	N/A	\$76.23	\$75.00
17	N/A	N/A	N/A	\$45.60
18	N/A	N/A	N/A	\$37.80
19	\$61.28	N/A	\$56.36	\$49.20
20	N/A	\$46.16	N/A	N/A
21	N/A	\$15.10	N/A	N/A
22	N/A	\$28.22	N/A	N/A
23	N/A	\$24.75	N/A	N/A
24	N/A	\$14.70	N/A	N/A

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



Jennifer Walker
Supervisor of School Nutrition Services

400 Clinchfield Street, Ste. 200
Kingsport, TN 37660

p: (423) 378.2106
f: (423) 378.2109

jwalker@k12k.com
www.k12k.com

MEMORANDUM

TO: Board of Education/
Board of Mayor and Aldermen

FROM: Jennifer Walker

DATE: 04/09/2020

RE: Chicken Commodity Bid for School Nutrition Services

Recommendation: Approval to Award the Bid for Commodity Chicken Processing to Tyson and Gold Creek Foods for the 2020-2021 School Year.

The City of Kingsport opened bid for Commodity Chicken Process on March 18, 2020. The intent of this bid is to execute agreements to establish a continuous supply of Chicken items for use by the City of Kingsport School Nutrition Program. Three vendors submitted bids for consideration: Tyson, Pilgrim's Pride, and Gold Creek Foods. Upon evaluation of the (3) bids that were submitted, Tyson and Gold Creek Foods were selected by the School Nutrition Program to provide chicken products processed from 60,000lbs of commodity chicken purchased with entitlement funds. The contract agreements will be for a term of one year and include an option to renew the contract for up to three additional years in one year increments, providing pricing and quality of services are acceptable to the City of Kingsport. School Nutrition Services is requesting approval to award the bid for Chicken Commodity Processing for the 2020-2021 school year to Tyson and Gold Creek Foods for the not to exceed contract amounts as follows:

Tyson Prepared Foods (Chicken Commodity Processing) - \$92,000.00
Gold Creek Foods (Chicken Commodity Processing) - \$66,000.00

Funding will be provided by Kingsport City Schools Nutrition Program.



AGENDA ACTION FORM

Renewal with Metlife and Dearborn Life Insurance for Long Term Disability Insurance and Life Insurance for City Government and School Employees

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

Action Form No.: AF-95-2020
 Work Session: April 20, 2020
 First Reading: N/A

Final Adoption: April 21, 2020
 Staff Work By: DeCroes/Denton
 Presentation By: George DeCroes

Recommendation:

Approve the Resolution.

Executive Summary:

Long Term Disability Insurance – our current rate with MetLife is \$.362 per \$100 covered payroll for city government and school employees. MetLife has guaranteed the renewal at the same rate and plan structure through 6/30/2021. It is our recommendation to renew with MetLife at the current rate of \$.362 per \$100 of covered payroll. This benefit is paid 50% by the City and 50% by the employee.

Life Insurance – the city has a current agreement with Dearborn Life Insurance Company for the city government and school employees' life insurance benefits. The base benefit is fully paid by the city, with the employee having options to purchase and pay 100% of the cost of supplemental life and dependent life insurance. Their current rates are \$.135 per \$1000 and Dearborn has guaranteed these rates for two more years through June 30, 2022. It is our recommendation to renew with Dearborn Life Insurance Company due to no increase in current rates.

Attachments:

1. Resolution

Funding source appropriate and funds are available: *CM*

The money required for such contract, agreement, obligation or expenditure is in the treasury or safely assured to be forthcoming and available in time to comply with or meet such contract, agreement, obligation or expenditure: *CM*

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

RESOLUTION NO. _____

A RESOLUTION RENEWING AN AGREEMENT WITH THE METLIFE INSURANCE COMPANY FOR LONG TERM DISABILITY INSURANCE; RENEWING AN AGREEMENT WITH DEARBORN NATIONAL LIFE FOR LIFE INSURANCE; AND AUTHORIZING THE MAYOR TO EXECUTE ANY AND ALL DOCUMENTS NECESSARY AND PROPER TO RENEW THE LONG TERM DISABILITY INSURANCE AND LIFE INSURANCE WITH THE NAMED CARRIERS

WHEREAS, MetLife Insurance Company is the insurance carrier for long term disability for regular full time general governmental and school employees and has agreed to maintain the proposed premium rates through June 30, 2021; and

WHEREAS, Dearborn National Life is the insurance carrier for life insurance and has agreed to renew through June 30, 2022.

Now therefore,

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

SECTION I. That renewal of the agreement with MetLife Insurance Company for long term disability insurance, at the current rate of \$.362 per \$100 covered payroll for regular full time general governmental and school employees through June 30, 2021, 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, an agreement with MetLife insurance Company and all other documents necessary and proper, and to take such acts as necessary, to effectuate the purpose of the agreement or this resolution.

SECTION III. That renewal of the agreement with Dearborn National Life for life insurance at the current rate of \$.135 per \$1,000 for all regular full time general governmental and school employees through June 30, 2022, is approved.

SECTION IV. That the mayor, or in his absence, incapacity, or failure to act, the vice-mayor, is authorized to execute, in a form approved by the city attorney and subject to the requirements of Article X, Section 10 of the Charter of the City of Kingsport, an agreement with Dearborn National Life and all other documents necessary and proper, and to take such acts as necessary, to effectuate the purpose of the agreement or this resolution.

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

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

ADOPTED this the 21st day of April, 2020.

PATRICK W. SHULL, MAYOR

ATTEST:

SIDNEY H. COX, CITY RECORDER

APPROVED AS TO FORM:

J. MICHAEL BILLINGSLEY, CITY ATTORNEY



AGENDA ACTION FORM

Renewal with BlueCross BlueShield of Tennessee, Inc. as Third Party Administrator for the City's Self-Funded Health-Care Program

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

Action Form No.: AF-66-2020
 Work Session: April 20, 2020
 First Reading: N/A

Final Adoption: April 21, 2020
 Staff Work By: DeCroes/Baumgardner
 Presentation By: DeCroes

Recommendation: Approve the Resolution.

Executive Summary:

In September 2016, the board approved the proposal of BlueCross/BlueShield of Tennessee, Inc. (BCBST) as the third party administrator for the city's self-funded health insurance program. Contract terms stated that the agreement may be modified, amended renewed or extended only upon mutual agreement, in writing signed by the duly authorized officer of the Employer and BCBST.

BCBST has proposed a three year agreement with the same administration fees for 2020 and slight increases for 2021 and 2022.

Our healthcare consultant, Mark III, has reviewed the proposal and recommended we accept it. In summary:

- BCBST offered a three year rate guarantee on the administrative service fees for 2017-2019 when taking over the plan from Humana
- The city has been paying \$42.01 per subscriber per month from 2017-2019
- Based on utilization, pricing and efficiency, the City removed optional programs (maternity management fee and transparent Rx Network fees) to reduce the fee to \$40.15 per subscriber per month for 2020.
- BCBST offered another three-year rate guarantee on the medical administrative services fees for 2020-2022
- The fees in the third year of the agreement, 2022, will still be less than the fees paid in 2017-2019
- BCBST added a new exhibit (Exhibit P) highlighting the pharmacy definitions, services, discounts and rebate guarantee.

Attachments:

1. Resolution

Funding source appropriate and funds are available: *JM*

The money required for such contract, agreement, obligation or expenditure is in the treasury or safely assured to be forthcoming and available in time to comply with or meet such contract, agreement, obligation or expenditure: *SK*

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

RESOLUTION NO. _____

A RESOLUTION APPROVING RENEWAL OF AN AGREEMENT
WITH BLUECROSS BLUESHIELD OF TENNESSEE, INC. AND
AUTHORIZING THE MAYOR TO EXECUTE THE AGREEMENT
AND ALL OTHER DOCUMENTS NECESSARY AND PROPER TO
EFFECTUATE THE PURPOSE OF THE AGREEMENT

WHEREAS, in September 2016, the board approved the proposal of BlueCross/BlueShield of Tennessee, Inc. (BCBST) as the third party administrator for the city's self-funded health insurance program, and the terms stated that the agreement may be modified, amended renewed or extended only upon mutual agreement by both parties; and

WHEREAS, BCBST has agreed to the renewal of the agreement for three years with the same administration fees for 2020 as the fees in the previous agreement and slight increases for 2021 and 2022.

Now therefore,

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

SECTION I. That the Administrative Services Agreement with BlueCross BlueShield of Tennessee, Inc. is approved.

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

ADMINISTRATIVE SERVICES AGREEMENT

Between

BLUECROSS BLUESHIELD OF TENNESSEE, INC.

and

CITY OF KINGSFORT, TN

This Administrative Services Agreement, including all Exhibits and Attachments hereto (the "Agreement"), is entered into by and between City of Kingsport, TN ("Employer") and BlueCross BlueShield of Tennessee, Inc. ("BlueCross"), and is effective as stated in paragraph 3.1 of this Agreement. Employer and BlueCross are collectively referred to in this Agreement as the "parties." Employer has established a self-funded Employee Welfare Benefit Plan; however, this Employee Welfare Benefit Plan ("Plan") is not subject to the Employee Retirement Income Security Act of 1974 ("ERISA.") Employer's benefit documents, which summarize the benefits of the Employee Welfare Benefit Plan, are attached as Exhibit A ("Benefit Documents"). The eligible Employees and their eligible Dependents are collectively referred to as "Members", and that term is further defined in the Benefit Documents. In consideration of the parties' mutual promises, the sufficiency of which are hereby acknowledged, the parties agree as follows:

ARTICLE I – RESPONSIBILITIES OF THE PARTIES

1.1. **BlueCross.** BlueCross is responsible for providing ministerial administrative claims payment services in accordance with the terms of the Benefit Documents, and other duties specifically assumed by it pursuant to this Agreement. BlueCross does not assume any financial risk or obligation with respect to Plan claims. BlueCross will use its reasonable business judgment in performing its duties under this Agreement, and will administer the benefits in accordance with BlueCross' customary administrative standards and practices. BlueCross shall perform its duties in accordance with the terms of this Agreement and generally accepted standards applicable to claims administration, including other Blue Cross and Blue Shield Association (the "Association") licensees.

1.2. **Employer.** Employer is responsible for providing BlueCross with a current, detailed copy of the Benefit Documents, any changes to the Plan, and the necessary information to determine employee and dependent eligibility under the Plan, and other duties and services described elsewhere in this Agreement. Employer shall fund all Approved Claims, as described in Article II, and shall pay BlueCross an administrative services fee for providing its services under this Agreement. Employer may designate a third party to perform any of its duties under this Agreement; however,

such designation shall not release Employer from its obligations pursuant to this Agreement. Any reference to "Employer" in this Agreement shall also include third party(ies) designated by Employer to perform any of its duties or obligations under this Agreement.

1.3. Fiduciary Responsibility. Employer is solely responsible for the fiduciary responsibilities of administering its Plan and maintaining adequate funding to support the Plan. Employer is also responsible for, among other things, preparing and providing its covered employees with copies of Benefit Documents. Although Employer's Plan is not subject to ERISA, Employer acknowledges that BlueCross is acting in a ministerial capacity and is not the "Administrator," the "Claims Fiduciary," nor the "Named Fiduciary" of Employer's Plan, as that term is defined in ERISA. The "Plan Administrator," as that term is defined in ERISA, is Employer.

1.4. Confidentiality. The parties acknowledge that this Agreement and information provided to the other party that is identified as confidential information, including, but not limited to, reimbursement information, group membership lists, marketing information and information obtained from and/or about the Blue Cross and Blue Shield Association and its programs ("Confidential Information") shall be treated as confidential, proprietary or trade secret information. A party may release Confidential Information to providers or its affiliates, or their respective directors, partners, officers, employees, advisors and other representatives (its "Representatives") who: have a need to know such Confidential Information, for purposes of their participation in or oversight of matters within the scope of this Agreement; and are under a duty or obligation of confidentiality at least as restrictive as those set forth in this Agreement. Each party shall advise its Representatives of their obligation to maintain the confidentiality of such information. Each party is responsible if its Representative breaches this Section. Neither party shall otherwise release nor disclose such Confidential Information to third parties without the other party's prior written consent, except as required by law. If legally compelled to release this Agreement or information included herein, Employer shall make every attempt to keep BlueCross proprietary information confidential, and shall provide written notice to BlueCross before releasing information. This paragraph shall survive the termination of this Agreement.

Notwithstanding anything herein to the contrary, the following shall not constitute Confidential Information for the purposes of this Agreement: (a) Confidential Information that is or becomes generally available to the public other than as a result of a disclosure by a party or its Representatives; (b) Confidential Information that was available to the parties on a non-confidential basis prior to its disclosure by a party or its Representatives; or (c) Confidential Information that becomes available to the parties on a non-confidential basis from a third party, provided that third party is not known to be subject to any prohibition against transmitting that information.

The parties have entered into a Business Associate Agreement, the terms of which control the release and use of Protected Health Information.

BlueCross reserves the right to refuse to release Confidential Information if BlueCross determines, in its sole discretion, that such release has the potential to damage BlueCross' competitive position in the market.

The Agreement and any documents or material obtained by the City may be subject to disclosure in whole or in part pursuant to the Tennessee Open Records Act, set out in *Tennessee Code Annotated* §10-7-503 *et seq.*, without regard to any provision contained in the Agreement declaring information confidential. The City must, upon proper request, release public documents and records as defined by *Tennessee Code Annotated* §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 BlueCross or providing BlueCross with the time to obtain a protective order.

ARTICLE II – PAYMENT OF APPROVED CLAIMS AND ADMINISTRATIVE SERVICES FEES

2.1. Claims Funding. Employer shall pay the invoiced amount for claims processed and approved for payment by BlueCross in accordance with this Agreement ("Approved Claims.") Greater detail regarding this process is contained in Exhibit B. Nothing in this Agreement shall obligate or shall be deemed to obligate BlueCross to use its funds to satisfy any of Employer's obligations pursuant to this Agreement or Plan benefits. Employer's assets and amounts contributed by Members, if applicable, are the only source or sources of payment of Approved Claims or any other benefit provided under the Plan.

2.2. Administrative Services Fees ("ASF(s)"). Employer shall pay ASFs in accordance with the Agreement, including but not limited to Exhibit B.

2.2.1 The initial ASF shall be due and payable on the effective date of this Agreement. The ASF is due on the first of each month thereafter.

2.3. Approved Claims. BlueCross will notify Employer weekly of the estimated amounts necessary to fund the Approved Claims. Employer will then follow the methodology established in Exhibit B to appropriately fund the Approved Claims.

ARTICLE III – TERM AND TERMINATION

3.1. Term. This Agreement becomes effective at 12:01 A.M. January 1, 2020 (the "Effective Date") and shall remain in effect until the earliest of the following events:

3.1.1 Until December 31, 2020, unless Employer and BlueCross agree to extend the term prior to December 31, 2020;

3.1.1.1 After the first year of the Agreement, either party may terminate the Agreement without cause by providing 60 days advance written notice to the other party;

3.1.2 Any other date mutually agreed upon by the parties; or

3.1.3 Any of the events specified in Section 3.2.

3.2. Termination by BlueCross. Notwithstanding the provisions of Section 3.1 above, this Agreement will automatically terminate upon the occurrence of any of the following events, as determined by BlueCross:

3.2.1 Employer's failure to provide adequate funds, as set forth in Exhibit B, as necessary for the payment of Claims;

3.2.2 Employer's failure to pay any ASF or late payment penalty as set forth in Exhibit B;

3.2.3 Employer ceases to maintain the Plan;

3.2.4 At any time BlueCross reasonably believes that Employer does not have the financial ability to adequately fund claims, and Employer has failed to immediately provide adequate assurances of such ability to BlueCross; or

3.2.5 At any time Employer otherwise materially breaches this Agreement.

3.3. Termination for Invalid use of Information. Employer will use any information BlueCross makes available solely for the purpose of administering Employer's Plan under this Agreement and in accordance with applicable law. Employer agrees to hold BlueCross harmless for any claim, action or loss that may arise at any time in the future out of Employer's unauthorized or unlawful use of any such information. Furthermore, if Employer uses the information for another purpose, BlueCross will consider that action a material breach. This Agreement will then be subject to immediate termination.

3.4. BlueCross' Right to Reinstate. BlueCross has the sole discretion to decide to reinstate this Agreement if it was terminated pursuant to Subsections 3.2 or 3.3. If BlueCross elects to reinstate this Agreement, Employer shall be responsible for reinstatement fees, which shall be \$1,000.00.

3.5. Termination by Employer. Employer may terminate this Agreement upon giving BlueCross Thirty (30) days advance written notice if the following occurs:

3.5.1 If BlueCross has been declared insolvent by the State of Tennessee, and its assets and obligations have been turned over to a receiver appointed by the State; or

3.5.2 If BlueCross materially breaches its duties under this Agreement.

3.6. Material Breach Defined. A material breach is the failure by one party (the breaching party) to perform or carry out a function or duty required by the terms of this Agreement, where the failure to perform that function or duty seriously impairs the ability to perform of the other party (the non-breaching party). If the non-breaching party determines that a material breach has occurred, it must notify the breaching party in writing of the breach as soon as it is practicable to so notify, and must allow the breaching party Thirty (30) days to cure or correct the breach. If the breach is not cured or corrected in that Thirty (30) day period, the non-breaching party may provide Thirty (30) days notice of termination.

3.6.1 If either party disputes a claimed material breach or that a material breach has been cured or corrected, it may immediately request dispute resolution, pursuant to the terms of Article IV of this Agreement.

3.6.2 BlueCross' termination of this Agreement in accordance with Subsection 3.2.1, 3.2.2, 3.2.3, shall not be subject to the notice provisions of this Subsection, nor entitle Employer to submit the dispute for resolution pursuant to Article IV, below.

3.7. Effect of Termination. The terms and conditions set forth herein shall be of no further force or effect if this Agreement is terminated, except as follows:

3.7.1. The parties' rights and obligations intended to survive termination of this Agreement, including Sections 1.4, 5.1, and 6.13 of this Agreement shall continue in effect notwithstanding its termination.

3.7.2. Termination of this Agreement, except as provided to the contrary herein, shall not affect the rights, obligations and liabilities of the parties arising out of transactions occurring prior to termination.

3.7.3. The termination of this Agreement does not excuse Employer from forwarding to BlueCross any and all fees, monies, reimbursements or claim payments accrued through the date of termination. If termination occurs retroactively, any and all fees, monies, reimbursements or claim payments accrued through the date that actual written notice of termination is received by BlueCross shall be payable to BlueCross by Employer.

3.8. Administration After Termination. Employer and BlueCross may agree on a method by

which BlueCross will continue to process claims incurred during, but received after, the term of this Agreement. The administration of the processing of run out claims by BlueCross following termination of this Agreement will be subject to Employer's continued funding of claims payment. "Run out claims" refers to those claims incurred for Covered Services performed prior to the termination of this Agreement, but not yet paid and/or not submitted for payment to BlueCross prior to the termination of this Agreement. For purposes of this Agreement, the date a claim is "incurred" is the date the particular service was rendered or the supply was furnished. There is a separate and distinct administrative fee for BlueCross providing administrative services to pay run out claims. This is set out in Exhibit B.

3.9. Final Settlement. Any Services performed on Employer's behalf will cease 18 months after termination ("Process Conclusion Date"). BlueCross will then complete a final calculation that reconciles any and all claims payments, fund transfers, recoveries received, etc. to determine the amount necessary to finalize both parties' obligations under this Agreement ("Final Settlement"). BlueCross will send Employer a settlement agreement no later than two years post termination. Employer will have 30 days from the date on the letter attached to the settlement agreement to dispute. If Employer has not disputed the settlement agreement, or returned a signed settlement agreement to BlueCross within the provided time period, Employer shall be deemed to have approved and executed the settlement agreement.

ARTICLE IV – DISPUTE RESOLUTION

4.1. Arbitration. 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 the parties shall endeavor to resolve claims, disputes and other matters in question between them by mediation which shall be administered in accordance with Rule 31 of the Tennessee Rules of the Supreme Court, unless the parties mutually agree otherwise. If the dispute is not resolved 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.

ARTICLE V – LIABILITY AND INDEMNIFICATION

5.1. BlueCross. BlueCross neither insures nor underwrites any of Employer's obligations or liabilities under the Plan. Employer will indemnify BlueCross for actions taken at Employer's direction. BlueCross is responsible solely for its acts and for the acts of its agents and employees acting within the scope of their duties under this Agreement. BlueCross is not responsible for any acts or omissions of any outside vendors associated with or contracted by Employer.

5.1.1. BlueCross hereby agrees to indemnify and hold harmless Employer, its directors, officers, employees and agents against any and all vicarious liability, actions, claims, lawsuits, settlements, judgments, costs, interest, penalties, expenses and taxes, including but not limited to, attorneys' fees and court costs, resulting from or arising directly or indirectly out of, or in connection with, actions or decisions arising directly from the negligence, gross negligence or wanton and reckless acts or failure to act by BlueCross, or its employees or agents ("the standard of care"), unless the cause of such liability was the result of the fault, criminal conduct or fraudulent acts of Employer or any of its directors, officers, employees or agents, or resulted from the direction given by Employer or its directors, officers, employees or agents in the administration of the Plan.

5.1.2. BlueCross' liability to Employer pursuant to Subsection 5.1.1 of this Agreement shall be limited to the value of the ASF received by BlueCross prior to the occurrence of the act, action, or failure to act that forms the basis of BlueCross' liability.

5.1.3. Notwithstanding the foregoing, BlueCross' duty to indemnify and hold Employer harmless shall not extend to acts or omissions of Employer, its officers, directors, or employees or to acts or omissions of any non-employee network providers who provide services to participants in Employer's Plan.

5.1.4. No official, employee or volunteer, whether disclosed or undisclosed, of the Employer shall be personally liable to the BlueCross 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 the Employer; for any amount which may become due under the Agreement; or on any obligations under the terms of the Agreement and the BlueCross and any other person or entity, including a third party beneficiary, shall look solely to the Employer for the satisfaction of any liability of the Employer hereunder.

5.2. Employer. Employer is responsible for making eligibility and benefit determinations in connection with the Plan, paying all claims for covered services and paying any other expenses related to or arising in connection with the Plan. The parties acknowledge that a governmental entity, as the same is defined in the Tennessee Code Annotated Section 29-20-102, may be protected by the limitation of liability imposed by the Tennessee Governmental Tort Liability Act, as defined in Tennessee Code Annotated Section 29-20- 101 et seq. Article II, Section 29 of the Tennessee Constitution prohibits cities from lending their credit to private

entities and, therefore, prohibits an agreement by the Employer to indemnify a third party or agree to a limitation of liability provision. Any indemnity or hold harmless provision contained in the Agreement requiring the Employer to indemnify or hold harmless BlueCross or any other person or entity is enforceable only to the extent permitted by Tennessee law

ARTICLE VI – MISCELLANEOUS PROVISIONS

6.1. Acceptance by Payment of Fees. BlueCross expects that Employer will demonstrate its acceptance of the terms of this Agreement by signing below. In the event that Employer has not signed the Agreement by the Effective Date, this Agreement will be considered accepted by and binding upon both parties if and when Employer makes a payment to BlueCross in order to receive the services described in this Agreement.

6.2. Amendment. This Agreement may be modified, amended, renewed or extended only upon mutual agreement, in writing, signed by the duly authorized officers of Employer and BlueCross. The parties specifically agree that this Agreement may be amended by BlueCross if:

6.2.1 A program or service is added or removed;

6.2.2 A change is required by law, or by the BlueCross and BlueShield Association; or

6.2.3 BlueCross makes an across-the-board program, service, or process change that impacts the terms of this Agreement.

Employer shall notify BlueCross of any planned changes Employer intends to make to the terms and/or conditions of the Benefit Documents. Notification shall be made sufficiently in advance of any such changes so as to permit BlueCross reasonable time to review and/or implement such changes.

6.3. Assignment. This Agreement may be assigned to a subsidiary or affiliate of Employer upon Ninety (90) days prior written notice to, and with the express written consent of, BlueCross. BlueCross shall not unreasonably withhold its consent to any such assignment by Employer.

6.4. Binding Effect of Agreement. The Agreement shall be binding upon and inure to the benefit of the parties, their agents, servants, employees, successors, and assigns unless otherwise set forth herein or agreed to by the parties hereto.

6.5. Impossibility of Performance. If an act or omission by a third party, including governmental entities, Network Providers or vendors, renders the performance of this Agreement illegal, impossible or impractical, the affected party shall notify the other of the nature of that act or omission (the "Adverse Event.") The parties shall meet and, in good faith, attempt to negotiate a modification to this Agreement that minimizes the Adverse Event. Notwithstanding any other provision of this Agreement, if the parties fail to reach a negotiated modification concerning the Adverse Event, then the affected party may immediately terminate this Agreement upon giving written notice to the other party.

6.6. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and such counterparts shall constitute one and the same instrument.

6.7. Entire Agreement. This Agreement, including the Exhibits and any Attachments hereto, contains the entire agreement between BlueCross and Employer with respect to the specific subject matter hereof. Any prior agreements, promises, negotiations or representations, either verbal or written, relating to the subject matter of this Agreement and not expressly set forth in this Agreement are of no force and effect. The Exhibits and Attachments to this Agreement include the following:

6.7.1. Exhibit A – Benefit Documents.

6.7.2. Exhibit B – Administrative Services Fees.

6.7.3. Exhibit C – Duties of and Services Provided by BlueCross.

6.7.4. Exhibit D – Medical Management Program.

6.7.5. Exhibit E – Duties of Employer.

6.7.6. Exhibit F – Automated Clearinghouse (ACH) Authorization Agreement.

6.7.7. Exhibit G – Inter-Plan Arrangements.

6.7.8. Exhibit H – COBRA Administration Provided by Employer or a Third Party.

6.7.9. Exhibit I – Health and Wellness Services.

6.7.10. Exhibit J – Reserved.

6.7.11. Exhibit K – Reserved.

6.7.12. Exhibit L – Reserved.

6.7.13. Exhibit M – Online Enrollment Specifications through BlueCross Secured Website.

6.7.14. Exhibit N – Grievance Services.

6.7.15. Exhibit O – RESERVED.

6.7.16. Exhibit P – Pharmacy Services.

6.7.17. Exhibit Q – Business Associate Agreement.

6.7.18. Exhibit R – Reserved.

6.7.19. Exhibit S – Reserved.

6.7.20. Exhibit T – Reserved.

6.7.21. Exhibit U – Reserved.

- 6.7.22. Exhibit V –Reserved.
- 6.7.23. Exhibit W – Shared Savings.
- 6.8. Governing Law. This Agreement is subject to and shall be governed by the laws of the United States and State of Tennessee, without regard to conflict of laws provisions.
- 6.9. Inconsistencies.
- 6.9.1. If the provisions of this Agreement are in any way inconsistent with the provisions of the Benefit Documents, then the provisions of this Agreement shall prevail and the other provisions shall be deemed modified to the extent necessary to give effect to such provisions.
- 6.9.2. If the provisions of this Agreement are in any way inconsistent with the provisions of the Exhibits and Attachments hereto, then the provisions of Exhibits and Attachments shall prevail and the inconsistent provisions of this Agreement shall be deemed modified to the extent necessary to give effect to such provisions.
- 6.10. Independent Contractors.
- 6.10.1. This Agreement is not intended to create nor deemed or construed to create any relationship between Employer and BlueCross other than that of independent entities contracting with each other solely for the purpose of effecting the provisions of this Agreement. Neither the parties nor their respective directors, officers, employees or representatives shall be construed to be the partner, joint venturer, agent, employer, or representatives of the other party.
- 6.10.2. On behalf of itself and its participants, Employer hereby acknowledges its understanding that this Agreement constitutes a contract solely between Employer and BlueCross which is an independent corporation operating under a license from the BlueCross and BlueShield Association, an association of independent BlueCross and BlueShield Plans (the "Association") permitting BlueCross to use the BlueCross and BlueShield Service Marks in the State of Tennessee, and that BlueCross is not contracting as the agent of the Association.
- 6.10.3. Employer acknowledges that BlueCross is independent from any provider rendering services to Members, and that BlueCross is not responsible for any acts or omissions by a provider in rendering care or services to a Member.
- 6.10.4. Employer further acknowledges and agrees that it has not entered into this Agreement based upon representations by any person other than BlueCross and that no person, entity, or organization other than BlueCross shall be held accountable or liable to Employer for any of BlueCross' obligations created under this Agreement. This paragraph shall not create any additional obligations whatsoever on the part of BlueCross other than those obligations created under other provisions of this Agreement.
- 6.11. Legal Action. All actions are subject to Article IV, Dispute Resolution.
- 6.12. Notices. Any notice required to be given pursuant to this Agreement shall be in writing, sent by certified or registered mail, return receipt requested, or by Federal Express or other overnight mail delivery for which evidence of delivery is obtained by the sender, to BlueCross or Employer at the addresses indicated herein, or such other addresses that the parties may hereafter designate. The notice shall be effective on the date the notice was posted.
- 6.13. No Third Party Rights. Except as specifically provided herein, none of the provisions of this Agreement is intended to create third party rights or status in any person or entity.
- 6.14. Benefit Documents. It is Employer's obligation to ensure all Benefit Documents, whether produced by BlueCross or Employer, meet the requirements of applicable laws. Employer agrees that all BlueCross and BlueShield Association mandated language shall be included in its Benefit Documents. BlueCross shall not be responsible for administering any Benefit Document that has not been reviewed and approved by BlueCross.
- 6.15. Severability. If any provision of this Agreement is declared illegal, void or unenforceable, the remaining provisions shall remain in force and effect, unless the severance of that provision substantially deprives a party of the benefit of its bargain or increases the cost of performing its duties pursuant to this Agreement.
- 6.16. Subsidiaries and Affiliates. Any of the functions to be performed by BlueCross under this Agreement may be performed by BlueCross or any of its subsidiaries, affiliates or designees.
- 6.17. Survival. The rights and obligations of the parties as set forth herein shall survive the termination of this Agreement to the extent necessary to effectuate the intent of the parties as expressed herein.
- 6.18. Venue. All actions or proceedings instituted by Employer or BlueCross against the other hereunder shall be brought in a court of competent jurisdiction located in Sullivan County, Tennessee.
- 6.19. Waiver of Breach. Waiver of a breach of any provision of this Agreement shall not be deemed a waiver of any other breach of the same or a different provision.
- 6.20. Other Acceptable Forms of this Document. The following shall have the same legal effect as an original: facsimile copy, imaged copy, scanned copy, and/or an electronic version.
- 6.21. Stop Loss Coverage. Employer has entered into a stop loss arrangement with a Stop Loss

Vendor. BlueCross' duties with regard to this stop loss arrangement are in Exhibit C.

6.22. Required Information. Employer shall provide to BlueCross any information BlueCross requests that is necessary for BlueCross to comply with the terms of this Agreement or State or Federal Law. For example, BlueCross may need to know the number of Employees in order to comply with PPACA and Mental Health requirements.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized representatives. The undersigned persons hereby warrant that they are duly authorized to bind each of their represented parties to the terms of this Agreement

[Acknowledgements Deleted for Inclusion in this Resolution]

SECTION III. That the mayor is further authorized to make such changes approved by the mayor and the city attorney to the 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 21st day of April, 2020.

PATRICK W. SHULL, MAYOR

ATTEST:

SIDNEY H. COX, CITY RECORDER

APPROVED AS TO FORM:

J. MICHAEL BILLINGSLEY, CITY ATTORNEY



AGENDA ACTION FORM

Execute a Signatory Authority Form Allowing the Chief of Police or His Designee to Complete the Application and Grant Reports for the Coronavirus Emergency Supplemental Funding Program Grant #2020-H1999-TN-VD

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

Action Form No.: AF-88-2020
 Work Session: April 20, 2020
 First Reading: N/A

Final Adoption: April 21, 2020
 Staff Work By: Capt. Gore
 Presentation By: Chief Quillin

Recommendation:

Approve the Resolution.

Executive Summary:

The U.S. Department of Justice requires that the signing authority or their formal designee complete an application as well as, if awarded, annual/semi-annual and/or quarterly documents for grant reporting purposes. Information regarding the formal delegation of such authority must be placed in a file and available on-site for immediate review if requested. While the Department of Justice recognizes that the Mayor as the signing authority may not complete the documents himself, they do require that the individual completing them be "formally" recognized or approved by his office.

Attachments:

1. Resolution

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

RESOLUTION NO. _____

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 DESIGNATING THE CHIEF OF POLICE OR HIS DESIGNEE TO EXECUTE GRANT REPORTS AND OTHER DOCUMENTS REQUIRED BY THE CORONAVIRUS EMERGENCY SUPPLEMENTAL FUNDING PROGRAM GRANT #2020-H1999-TN-VD

WHEREAS, the board approved the application and receipt of the United States Department of Justice, Coronavirus Emergency Supplemental Funding Program Grant #2020-H1999-TN-VD in early April, 2020; and

WHEREAS, the United States Department of Justice, requires a new Signature Authority Consent Form for contracts, invoices, and other documents involved with the grants; and

WHEREAS, the Signature Authority Consent Form authorizes the mayor to execute formal documents, and to designate an individual as signatory authority "to sign grant documents required for reporting as contracted on behalf" of the city for a specific grant.

Now therefore,

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

SECTION I. That the mayor, or in his absence, incapacity, or failure to act, the vice-mayor, is authorized and directed to execute, in a form approved by the city attorney, and subject to the requirements of Article X, Section 10 of the Charter of the City of Kingsport, a Signature Authority Consent Form for the documents required for reports for the United States Department of Justice, Bureau of Justice Assistance as set out below in the Signatory Authority Consent Form, said form being generally as follows:

Signatory Authority Consent Form

I, **Patrick Shull** as **the Mayor**
Name of Person Granting Signature Authority (Printed) Title of Person Granting Authority

of **City of Kingsport TN** hereby grant the position(s) below or their
Name of Organization Receiving Grant

designee, signatory authority for the application and, if awarded, the required reports for the US Dept. of Justice, Bureau of Justice Assistance
Coronavirus Emergency Supplemental Funding Program Grant #2020-H1999-TN-VD.
Grant Name & Number

Individuals or positions listed are entitled to sign only grant documents required for reporting as contracted on behalf of my organization for the above listed grant.

Capt. Randall Gore
Title and Name (printed)

Signature

Title and Name (printed)

Signature

The above signatory authority granted to the above individuals may be revoked by me or by my organization at any time.

Signature of Person Granting Authority

Date

[Acknowledgements Deleted for Inclusion in this Resolution]

SECTION II. That the mayor is authorized to designate the chief of police, or the designee of the chief of police, to complete and execute the documents required for reports for the United States Department of Justice, Bureau of Justice Assistance for the Coronavirus Emergency Supplemental Funding Program Grant #2020-H1999-TN-VD.

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

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

ADOPTED this the 21st day of April, 2020.

PATRICK W. SHULL, MAYOR

ATTEST:

SIDNEY H. COX, CITY RECORDER

APPROVED AS TO FORM:

J. MIKE BILLINGSLEY, CITY ATTORNEY



AGENDA ACTION FORM

Extending the Bid Award for Tire Recapping Services for FY21

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

Action Form No.: AF-98-2020
 Work Session: April 20, 2020
 First Reading: N/A

Final Adoption: April 21, 2020
 Staff Work By: Committee
 Presentation By: R. McReynolds, S. Hightower

Recommendation:

Approve the Resolution.

Executive Summary:

Bids were opened on June 14, 2017 for the purchase of Tire Recapping Services for use by the Fleet Maintenance Department for FY18. The Invitation to Bid contained a renewal option clause and it is recommended to extend the bid award for FY21 to the apparent low bidder The Goodyear Tire & Rubber Company @ an estimated annual cost of \$67,500.00. The Goodyear Tire & Rubber Company has agreed to hold pricing from 7/1/20-6/30/21. Please see their attached memo for pricing and recommendation for renewal.

Funding is identified in account # 51100001410000 Fleet Inventory Stock.

Attachments:

1. Resolution
2. Bid Opening Minutes
3. Recommendation Memo & Vendor Letter

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

The money required for such contract, agreement, obligation or expenditure is in the treasury or safely assured to be forthcoming and available in time to comply with or meet such contract, agreement, obligation or expenditure: *[Signature]*

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

RESOLUTION NO. _____

A RESOLUTION RENEWING THE CONTRACT FOR PURCHASE OF TIRE RECAPPING SERVICES FOR FLEET MAINTENANCE FOR FISCAL YEAR 2021 TO THE GOODYEAR TIRE AND RUBBER COMPANY AND AUTHORIZING THE CITY MANAGER TO EXECUTE PURCHASE ORDERS FOR THE SAME

WHEREAS, bids were opened June 14, 2017, for the tire recapping services for use by the fleet maintenance; and

WHEREAS, the bid documents included an option to renew the agreement, provided pricing and quality of services are acceptable to the city; and

WHEREAS, the city would like to renew the contract with Goodyear Tire and Rubber Company for the purchase of tire recapping services on an as needed basis for use by fleet maintenance from Goodyear Tire and Rubber Company for the period of July 1, 2020 through June 30, 2021, at an annual estimated cost of \$67,500.00; and

WHEREAS, funding will be provided in account # 51100001410000 Fleet Inventory Stock.

Now therefore,

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

SECTION I. That the renewal of the contract for tire recapping services for the period of July 1, 2020 through June 30, 2021, at an estimated annual cost of \$67,500.00 with Goodyear Tire and Rubber Company is approved and the city manager is authorized to execute purchase orders for same.

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

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

ADOPTED this the 21st day of April, 2020.

PATRICK W. SHULL, MAYOR

ATTEST:

SIDNEY H. COX, CITY RECORDER

APPROVED AS TO FORM:

J. MICHAEL BILLINGSLEY, CITY ATTORNEY

MINUTES
BID OPENING
June 14, 2017
4:00 P.M.

Present: Brent Morelock, Assistant Procurement Manager; and Michelle Ramey, Assistant Procurement Manager, Schools

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

The Assistant Procurement Manager opened with the following bids:

TIRE RECAPPING SERVICE				
Description of Items:	Est. Qty.:	*Goodyear:	Best One Tire:	Tire Centers, LLC:
Tire Cap Cold MS – 12R22.5 – Gripper 22/32"	20	\$120.00	\$120.00	\$ 2.00
Tire Cap Cold MS – 10R22.5 – Gripper 22/32"	20	\$135.00	\$110.00	\$129.88
Tire Cap Cold MS – 11R22.5 – Gripper 22/32"	70	\$115.00	\$112.00	\$139.88
Tire Cap Cold MS Lug – 425/65R22.5 – 26/32"	10	\$200.00	\$225.00	\$ 2.00
Tire Recap All Position – 315/80R22.5 – Wide Base Rib 16/32"	20	\$145.00	\$120.00	\$ 2.00
Tire Recap All Position – 275/80R22.5 – Highway 18/32"	6	\$111.56	\$115.00	\$119.88
Tire Recap Mud and Snow – 255/70R22.5 – Gripper 22/32"	6	\$105.00	\$103.00	\$119.88
Tire Recap Mud & Snow – 12R22.5 – XDUS Refuse Tread 32/32"	100	\$178.00	\$230.00	\$259.00
Tire Recap Mud & Snow – 11R22.5 – XDUS Refuse Tread 32/32"	120	\$165.00	\$215.00	\$249.00
Tire Recap Mud & Snow – 315/80R22.5 – XDUS Refuse Tread 32/32"	50	\$210.00	\$250.00	\$269.00

*Taken exception to Terms and Conditions regarding patents.

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



FLEET MAINTENANCE DEPARTMENT
City of Kingsport, Tennessee

MEMO

To: Nikisha Eichmann, Assistant Procurement Manager
From: Steve Hightower, Fleet Manager
Mike Creasman, Fleet Stores Clerk
Date: April 8, 2020
Re: Annual Tire Purchase Agreement Recommendation

This Memo will serve as our confirmation and review of the Annual Tire Purchase Agreement of Goodyear Commercial Tire & Service Centers, Akron, Ohio.

Five of the ten tires quoted have remained the same pricing as the current operational year's pricing. Only five tire types have increased. The price increase adjustments quoted for those five particular tire types reflects a 2.4% increase on the most expensive to a 4.2% increase on the least expensive tire. This reflects an average over all price increase of 3.16% which is within the range of and below the predicted 5% increase that many of the tire manufacturers have predicted for 2020. The pricing is within expectations, therefore, I am recommending we renew our current agreement.

Goodyear's tire and tread options are with compliance of the City of Kingsport's current specifications and their past years' service has been satisfactory.

Should you have any questions on this recommendation, please do not hesitate to contact us.

Thank you.



April 8, 2020

Nikisha Eichmann
Asst. Procurement Manger
City of Kingsport
225 W. Center St.
Kingsport TN, 37660

Subject: Price Increase

Dear Ms. Eichmann,

In reference to our conversation regarding pricing for the 7/1/20-6/30-21 duration of our contract I have provided the new pricing per SKU below. The one highlighted are the only prices that will change.

Description	Amount
254087932 12R225 PC RDA 22 UVC	125.00
254085911 10R225 PC UNIGRIP UMC 22DX	135.00
254375072 425/65R225 PC G177 MOD 2015T 27	200.00
254096351 315/80R22.5 PC G686 23/32	150.00
254330199 275/80R22.5 PC ALL POSITION 18 18/32	111.50
254086702 11R225 PC G167 22	115.00
254886702 255/70R225 PC G167 STP 22	105.00
254086184 11R22.5 PC G292 WHD 32/32	170.00
254087184 12R22.5 PC G292 WHD 32/32	183.00
254096184 315/80R225 PC G292 WHD 32/32	215.00

Please contact me with any questions you might have.

Sincerely,

Samantha Staten
Senior Manger, Operations
Goodyear Commercial Tire & Service Centers

200 Innovation Way, Akron, Ohio 44316 Telephone: 330-796-4600 Facsimile: 330-796-4276



AGENDA ACTION FORM

Renewing the Award for Janitorial & MRO Supplies/Equipment for FY21

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

Action Form No.: AF-100-2020
 Work Session: April 20, 2020
 First Reading: N/A

Final Adoption: April 21, 2020
 Staff Work By: Committee
 Presentation By: R. McReynolds

Recommendation:

Approve the Resolution.

Executive Summary:

In June of 2015, following a thorough evaluation of City and Schools janitorial needs, the Janitorial Services Committee recommended and the BMA approved to enter into an agreement with The Home Depot Pro to make them our primary custodial supplies & equipment vendor for FY16. City and Schools staff are recommending to extend the award to purchase janitorial and MRO supplies and equipment from The Home Depot Pro for FY21 as well. The estimated annual cost for janitorial & MRO items is \$250,000. This past year we entered into partnership plus agreement and received a rebate in the amount of \$4,365.54.

Products purchased from The Home Depot Pro's catalogs will be consistent with the U.S. Communities Contract for Maintenance, Repair, Operating Supplies, Industrial Supplies, and Related Products and Services – Contract #16154. The City of Kingsport has participated in the U.S. Communities cooperative since 2005. U.S. Communities along with National IPA are now known as Omnia Partners. The BMA approved entering into an agreement with Omnia Partners via action form in April of 2019.

With Omnia Partners, agencies can utilize competitively solicited contracts to help save time and resources while still meeting purchasing requirements. All cooperative purchasing contracts from Omnia Partners have been competitively solicited by a lead public agency and meet rigorous cooperative standards and supplier commitments. Each supplier commits to delivering their best overall government pricing so that the City of Kingsport can buy with confidence.

Funding is identified in various City and Schools accounts.

Attachments:

1. Resolution
2. Recommendation Memo & Vendor Letter

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

The money required for such contract, agreement, obligation or expenditure is in the treasury or safely assured to be forthcoming and available in time to comply with or meet such contract, agreement, obligation or expenditure: *[Signature]*

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

RESOLUTION NO. _____

A RESOLUTION RENEWING AN AGREEMENT WITH THE HOME
DEPO PRO FOR VARIOUS JANITORIAL ITEMS; AND
AUTHORIZING THE CITY MANAGER TO EXECUTE PURCHASE
ORDERS FOR THE SAME

WHEREAS, the city would like to renew the contract with Home Depo PRO for the janitorial need of both city and schools for the fiscal year 2021; and

WHEREAS, the estimated annual cost for janitorial supplies would be in an amount not to exceed \$250,000.00; and

WHEREAS, the city is a member of Omnia Partners, a cooperative purchasing group that allows the city to purchase goods and services directly from holders of contracts with the network without conducting the bidding process, as authorized by T.C.A. Section 12-3-1009; and

WHEREAS, The Home Depot Pro has a contract with Omnia Partners; and

WHEREAS, funding is available in various city and school accounts.

Now therefore,

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

SECTION I. That the renewal of the agreement through fiscal year 2021, with The Home Depot PRO for various janitorial supplies, in an amount not to exceed \$250,000.00 for schools and city departments, is approved.

SECTION II. That the city manager is authorized to execute purchase orders to The Home Depot Pro for various janitorial supplies in an amount not to exceed \$250,000.00 for schools and city departments.

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

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

ADOPTED this the 21st day of April, 2020.

PATRICK W. SHULL, MAYOR

ATTEST:

SIDNEY H. COX, CITY RECORDER

APPROVED AS TO FORM:

J. MICHAEL BILLINGSLEY, CITY ATTORNEY



David Sewell
Supervisor of Maintenance
& Custodial Services

1000 Popular Street
Kingsport, TN 37660

p: (423) 378.2196
dsewell@k12k.com
www.k12k.com

April 14, 2020

Brent Morelock, Procurement Manager
City of Kingsport
Purchasing Department
265 W. Industry Drive
Kingsport, TN 37660

RE: Recommendation to Renew Home Depot Pro Agreement

As the Supervisor of Maintenance & Custodial Services, it is my recommendation that the City of Kingsport renew their contract with Home Depot Pro so that Kingsport City Schools Maintenance Department may continue to purchase janitorial supplies and equipment as needed.

I am very happy with their service and pricing and the programs that we have established to make the ordering and delivery process efficient for our schools. The support that we receive is exceptional. With the current ordering set up, we are able to track orders, keep our budget current with each order and view our order history. All of this helps in our planning while controlling cost.

Sincerely,

A handwritten signature in blue ink that reads "David Sewell".

David Sewell
Supervisor of Maintenance
& Custodial Services
Kingsport City Schools

Enclosure(s)

Inspire. Cultivate. Impact

Facebook: KptSchools
Twitter: @KCS_District

WWW.K12K.COM

Facility maintenance

Memo

To: Nikisha

From: Randy Salyer

Date: 04/6/2020

Re: Janitorial Supplies

I think at this time we should continue to use Home Depot Pro for our janitorial supplies we have not had any problems with them in the past year. Their website makes it easy to order and to see what is in stock and when it will be delivered. It also is under Omnia Partners cooperative contract and the pricing is very competitive with other vendors.



Home Depot U.S.A., Inc.
DBA The Home Depot PRO
Payables Department
PO Box 105715
Atlanta, GA 30348-5715

Remittance From:

INTERLINE BRANDS INC
801 W BAY STREET
JACKSONVILLE FL 32204

Remittance To:

CITY OF KINGSPORT (REBATES)
225 WEST CENTER STREET
KINGSPORT TN 37660

Remit Number: 1210794
Payment Date: 4/1/2020
Payment Amount: 4365.54

Payment Type: ACH Payment
Vendor Acct: 1471365

Invoice No.	Invoice Date	Description	Gross Amount	Disc	Net Amount
CRB2019ANN-201194	3/30/2020	SupplyWorks CRB2019Ann	4365.54		4365.54
Payment Totals:			4365.54		4365.54



AGENDA ACTION FORM

Enter into a Wellness Reimbursement Agreement with American Specialty Health's, Silver and Fit Program

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

Action Form No.: AF-01-2020
 Work Session: April 20, 2020
 First Reading: N/A

Final Adoption: April 21, 2020
 Staff Work By: Shirley Buchanan
 Presentation By: Shirley Buchanan

Recommendation:

Approve the Resolution.

Executive Summary:

The Silver and Fit program is very similar to the Silver Sneaker program already in place at the Senior Center. Entering into this agreement will allow seniors with Blue Cross and Blue Shield insurance plans to enjoy the benefits of the Senior Center, and the Center to receive reimbursement and training from the Silver and Fit program.

Attachments:

1. Resolution

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

RESOLUTION NO. _____

A RESOLUTION APPROVING AN AGREEMENT WITH AMERICAN SPECIALTY HEALTH FOR ITS SILVER AND FIT PROGRAM 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 currently has a program at the Senior Center called the Silver Sneaker Program; and

WHEREAS, by entering into an agreement and addendum with American Specialty Health for its Silver and Fit program the city will be able to allow seniors with Blue Cross and Blue Shield insurance plans to enjoy the benefits of the Senior Center, and the Center to receive reimbursement and training from the Silver and Fit program.

Now therefore,

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

SECTION I. That an agreement with American Specialty Health for its Silver and Fit program 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 and addendum with American Specialty Health for its Silver and Fit program 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:

**AMERICAN SPECIALTY HEALTH FITNESS, INC. FITNESS FACILITY SERVICES AGREEMENT
KINGSPORT SENIOR CENTER – CITY OF KINGSPORT, TN**

AMERICAN SPECIALTY HEALTH FITNESS, INC.

FITNESS FACILITY SERVICES AGREEMENT WITH CITY OF KINGSPORT

THIS FITNESS FACILITY SERVICES AGREEMENT, ("this Agreement") is entered into between American Specialty Health Fitness, Inc., a Delaware corporation ("ASH Fitness"), and the City of Kingsport Tennessee, a Tennessee municipal corporation, ("Fitness Facility"). This Agreement will not become effective until both Fitness Facility and ASH Fitness have signed it. After Fitness Facility and ASH Fitness have both signed this Agreement, Fitness Facility will automatically become a Contracted Facility as of the Effective Date specified in Article 31 of this Agreement.

RECITALS

A. Insurers, trust funds, health care service plans, health maintenance organizations, employer groups and other groups (collectively referred to as "ASH Clients" and further defined below) have entered into agreements with ASH Fitness for the provision of Services to their Members (as defined below in Section 1.10).

B. ASH Fitness wishes to arrange for and facilitate the provision of Services to Members.

AGREEMENT

NOW, THEREFORE, ASH Fitness and Fitness Facility agree as follows:

ARTICLE 1 DEFINITIONS.

For purposes of this Agreement and in addition to the terms elsewhere defined herein, the following terms shall have the meanings indicated:

1.1 Agreement. This Fitness Club Services Agreement between Fitness Facility and ASH Fitness, the attachments and exhibits listed below, the Program Manual and any amendments to such documents.

Attachment A: Silver&Fit1 Basic Facility Attachment Attachment G: ASH Client List
Attachment I: Health and Safety Guidelines and Code of Conduct Attachment J:
Medicare Addendum

Attachment K: Guidelines for Trademark Use by Third Parties Attachment L: Program
Compensation Attachment

The attachments and exhibits listed above and the Program Manual are hereby incorporated by
reference.

1.2 Annual Member Fee. If included as part of an ASH Client's member benefit plan the fee
the Member is required to pay in order to access Services.

1.3 ASH Client. A health care service plan, health maintenance organization, insurer, employer
group, trust fund, third party administrator, or other person or entity who contracts with ASH Fitness
or an ASH Fitness' affiliate to arrange for the provision of Services to Members and who is listed on
the ASH client list provided to Fitness Facility, a sample of which is attached to this Agreement as
Attachment G.

1.4 ASHLink. A proprietary software system developed by an ASH Fitness affiliate and utilized
by ASH Fitness to support the secure and confidential electronic distribution of information with
Fitness Facility via the Internet.

1.5 Contracted Facility. A fitness club or fitness clubs that has contracted with ASH Fitness.

1.6 Days. Calendar days.

1.7 Effective Date. The date this Agreement becomes operative, as specified in Article 31.

1.8 Fitness Facility Fitness Advisor. An individual employed or contracted by Fitness Facility
that will support Services, as that term is defined in Section 1.17, by acting as the primary contact on
behalf of the Fitness Facility that Member will contact at the Fitness Facility Participating Location
and fulfills the requirements detailed in Section 3.09.3.

1.9 Fitness Facility Participating Location. The location where Services will actually be
performed and for ease of reference, Fitness Facility and Fitness Facility Participating Location shall
be used interchangeably for a Fitness Facility with only one participating location.

1.10 Member(s). Individual(s) who is/are eligible to receive Services by meeting all the eligibility
requirements for participation in a program.

1.11 Member Eligibility/Benefits. Information maintained by ASH Fitness or one of its affiliates
pertaining to each Member regarding his or her eligibility, including initial date of eligibility, term of
membership and benefits.

1.12 Member Payments. Charges which are the direct financial responsibility of the Member
and are paid directly to Fitness Facility for any service which is a Non-Covered Service under this
Agreement.

1.13 Member Termination Report. A report compiled by ASH Fitness and posted on ASHLink
which lists Members who have terminated their Membership at the Fitness Facility and/or are no
longer eligible for participation under the program. Terminated Members shall be listed on the
Member Termination Report for at least thirty (30) days from their termination date.

1.14 Non-Covered Services. All services other than a Standard Fitness Facility Membership
and any other program components as clearly laid out in each attachment and as applicable to the
Member's benefit.

1.15 Party(ies). The individual(s) or entity(ies) that execute this Agreement.

1.16 Program Compensation Rate. The amount ASH Fitness will pay Fitness Facility for the
Standard Fitness Facility Membership and Services for each Member who has signed a membership
agreement with Fitness Facility.

1.17 Services. Those collective services which fall under this Agreement Attachment A.

1.18 Standard Fitness Facility Membership. Member benefits which provides at least the
following services: access to a Fitness Facility Participating Location during normal facility hours of
operation for the use of cardiovascular exercise equipment (e.g. treadmills, exercise bicycles,
"elliptical machines", etc.), strength or resistance training equipment (e.g. selectorized equipment,
free weights, etc.), and use of locker room and shower facilities. It also includes instructor-led classes
(such as group fitness classes, Pilates, group cycling, yoga, etc.) which do not require a separate fee
to be paid to Fitness Facility for an individual class or set of classes, but are routinely included for
the general membership as part of the general monthly fee. The Standard Fitness Facility
Membership does not include instructor-led classes, personal training and other amenities for which
the Fitness Facility routinely charges a separate fee.

1.19 Quality Management Program. The set of policies, processes, procedures and standards
established, determined and utilized by ASH Fitness under this Agreement to evaluate and determine
whether a Contracted Facility has satisfied all ASH Fitness' Health and Safety Guidelines and Code
of Conduct requirements adopted by ASH Fitness and to approve a Contracted Facility's participation
in ASH Fitness and/or ASH Client's networks.

1.20 Visit. Member utilization of a Fitness Facility Participating Location for exercise.

ARTICLE 2 ASH FITNESS' RESPONSIBILITIES.

2.1 Prepare and Maintain Program Manual. ASH Fitness shall prepare and maintain a program manual setting forth ASH Fitness' policies, processes, standards and procedures regarding Fitness Facility's participation in any ASH Fitness' fitness network ("Program Manual").

2.2 Distribution of Revised Agreement, Attachments, Amendments, and Program Manual. ASH Fitness shall prepare and distribute any updated Agreements, attachments and exhibits, Member Termination Reports, ASH Client Lists, amendments and/or Program Manual, which may be revised by ASH Fitness in accordance with Article 25 of this Agreement. ASH Fitness may distribute all materials directly to Fitness Facility and to each Fitness Facility Participating Location, where such information pertains to the Fitness Facility Participating Location.

2.3 Records Management. ASH Fitness and its affiliates shall develop, update and maintain policies and procedures that comply with applicable statutory and regulatory requirements for the secure and confidential storage, retention, retrieval and destruction of all records pertaining to its business operations, whether these records are in paper or electronic form.

2.4 Maintain Eligibility. ASH Fitness or its affiliates shall provide Fitness Facility with services related to Member Eligibility verification for Services to be provided by Fitness Facility. ASH Fitness makes no representation or guarantees concerning the number of Members, if any, that will access Fitness Facility under this Agreement.

2.5 Communication Regarding Participation of Fitness Facility. ASH Fitness and its affiliates shall communicate the participation of Fitness Facility in ASH Fitness or its affiliates' programs to existing and prospective ASH Clients in various forms, including but not limited to ASH Fitness or ASH Client network directories and the applicable websites accessed by Members. Such communication may include information such as the location's name, address, telephone number, available services and hours of operation. ASH Fitness shall assist Members to select a Contracted Facility under the Member's program. In addition, ASH Fitness shall, within sixty (60) days of the effective date of a location, notify ASH Clients of the addition of a Fitness Facility Participating Location where that location may perform Services for ASH Client.

2.6 Deletion of Fitness Facility Participating Location from Network Directories. ASH Fitness will notify all ASH Clients, no later than thirty (30) days after the effective date of Fitness Facility Participating Location's resignation or termination of this Agreement, or of the need to delete the location's information from network directories and/or other such sources of Fitness Facility information.

2.7 ASH Fitness' Payment to Fitness Center. ASH Fitness shall compensate Fitness Center in accordance with the Program Compensation Rates specified in Attachment L under which Fitness Center is participating within thirty (30) days of receipt of a billing report for Services provided to Members. For billing reports listing a Member for whom an Annual Member Fee applies, ASH Fitness shall deduct the amount of any Annual Member Fees from the compensation due to Fitness Center until such time the entire Annual Member Fee has been collected. If the member does not utilize the Fitness Center enough times during the Member's Benefit Year to satisfy the full amount of the Annual Member Fee, ASH Fitness will deduct any outstanding balances of the Annual Member Fee from the Fitness Center's compensation payment ninety (90) days after the end of the Member's Benefit Year until the entire Annual Member Fee has been reconciled.

Fitness Center and ASH Fitness agree that a program of equal to best pricing and equal to best reimbursement model supports fair and competitive pricing and that fair and competitive pricing fosters program competition, enhancement and innovation, and reduces costs. The parties agree that Fitness Center will offer to ASH Fitness Equal To Or Best Pricing and an Equal To Or Best Reimbursement model for Subsidized Fitness Programs. For the purposes of this Agreement and any Attachments, Subsidized Fitness Benefit Programs means any of programs by which an eligible individual receives membership with and/or access to Fitness Center in connection with Silver&Fit, Active&Fit and FitnessCoach (collectively "Fitness Benefit Programs"). Any ASH Fitness consumer-direct purchase program is not included in this definition. "Equal To Or Best Pricing" means that Fitness Center agrees that for each contract it enters with any third party(s) offering Subsidized Fitness Benefit Programs, the rates that Fitness Center will charge such third party(s) will not be less than the rate that Fitness Center charges ASH Fitness under this contract. Equal To Or Best Reimbursement Model means that Fitness Center will not utilize any reimbursement model that permits a third party offering Subsidized Fitness Benefit Programs to reimburse Fitness Center for fitness services at a lower rate than the rate that Fitness Center is charging ASH Fitness under this contract, regardless of the reimbursement model.

Nothing herein shall prevent Fitness Center and a third party offering Subsidized Fitness Benefit Programs from agreeing to a rate lower than the rate Fitness Center charges ASH Fitness pursuant to this contract at the time of the agreement, or from agreeing to a reimbursement model that permits

the third party to reimburse Fitness Center for fitness services at a rate lower than the rate Fitness Center is charging ASH Fitness under this contract at the time of the agreement, regardless of reimbursement model. If Fitness Center contracts with a third party to offer lower pricing or a better reimbursement model than which it has with ASH Fitness, Fitness Center will provide notice to ASH Fitness in advance of the effective date of such third party agreement and, upon ASH Fitness' written notice stating that ASH Fitness wishes to have the rates that Fitness Center charges ASH Fitness reduced to reflect the better pricing/reimbursement model offered to the third party ("Pricing Notice"), Fitness Center shall automatically provide the same lower pricing and/or the better reimbursement model to ASH Fitness as of the effective date of the third party contract. Upon ASH Fitness' delivery to Fitness Center of the Pricing Notice, this agreement will be deemed automatically amended to incorporate the lower rates and/or better reimbursement model with all other contract terms remaining unchanged. The parties agree that the existence of Equal To Or Best Pricing and Reimbursement Models will be subject to audits by an independent third party agreed upon by ASH Fitness and Fitness Center. If Fitness Center does not provide the advance notice required by this paragraph, ASH Fitness shall have the right to recover the difference between the lower price and/or reimbursement model and ASH Fitness' current pricing and reimbursement model as of the effective date of the lower price and/or reimbursement model by offsetting future payments to Fitness Center until such time the recovery is complete. Such remedy does not exclude ASH Fitness from seeking other remedies to which it may be entitled.

ARTICLE 3 FITNESS FACILITY'S RESPONSIBILITIES.

3.1 Comply with Federal and State Law. Fitness Facility shall comply with all federal and state and local laws applicable to Fitness Facility and Services provided under this Agreement.

3.2 Comply with Program Manual. Fitness Facility shall comply fully with the Program Manual as described in Section 2.01.

3.3 Comply with Quality Management Program. Fitness Facility shall comply with the Quality Management Program and shall cooperate with ASH Fitness in ASH Fitness' administration of its grievance procedures, including procedures to resolve complaints or grievances filed by Members with ASH Fitness as they pertain to Fitness Facility and its responsibilities under this Agreement.

3.4 Compliance with Medicare Requirements. Where Fitness Facility is providing Services to Members enrolled in an ASH Client's Medicare Advantage plan, Fitness Facility shall comply with the provisions outlined in Attachment J to this Agreement.

3.5 Immediate Notification by Fitness Facility of Certain Occurrences. Fitness Facility shall notify ASH Fitness in writing by overnight mail service or email, within 96 hours of the occurrence of: i) the commencement of any voluntary or involuntary bankruptcy proceedings by or against Fitness Facility or any similar proceedings; ii) any lapse of general and/or professional liability insurance maintained by Fitness Facility; iii) Fitness Facility's owner(s) or manager(s) knows, or reasonably should have known, of the filing of criminal charges against Fitness Facility's owners, directors, management or staff that directly interact with Members.

3.6 Notification of Change in Any Information. Fitness Facility shall notify ASH Fitness at least sixty (60) days prior to any change in Fitness Facility or Fitness Facility Participating Location's physical address, Fitness Facility or Fitness Facility Participating Location's mailing address, telephone number, email address, office hours, taxpayer identification number, or any other information listed in the Network Application. Where sixty (60) days prior notice is not possible, Fitness Facility shall notify ASH Fitness as soon as possible of such changes.

3.7 Non-Interference with Property and Contract Rights. During the term of this Agreement and for one (1) year following the date of its termination, Fitness Facility agrees that Fitness Facility shall not interfere with ASH Fitness or an ASH Fitness affiliate's property or contract rights with any ASH Client or Member. This includes, but is not limited to, advising any Member to dis-enroll from any Services, advising any party who has contracted with ASH Fitness or an ASH Fitness Affiliate to terminate, cancel or decline renewal of its contract, and/or solicit any Member to enroll for the provision of similar services offered by any other firm administering fitness benefit programs, health care service plan, health maintenance organization, health insurer, preferred provider organization or any other similar organization.

If Fitness Facility violates this Section, Fitness Facility acknowledges that it will be responsible for paying any and all actual damages incurred by ASH Fitness or any ASH Client as a result of that violation and may be liable for other costs, expenses, damages, claims or liabilities; and, if money damages are insufficient to compensate ASH Fitness or ASH Client for the violation of this Section, Fitness Facility may be subject to an injunction prohibiting the activity which constitutes a violation of this Section and/or other equitable relief. Nothing in this Section shall affect any of ASH Fitness' other rights under this Agreement, at law or in equity. Nothing in this Section shall prohibit Fitness Facility from maintaining a direct relationship with Member that is no longer enrolled in a program with ASH Fitness or its affiliates due to Member dis-enrollment or termination of this Agreement.

3.8 Election to Participate in all Product Offerings. Fitness Facility may elect to participate in any program specified in Attachment A through and indicates in Article 30 which programs it wishes to participate in. Fitness Facility is not obligated to participate in all programs but must participate in at least one program at all times while this Agreement is in effect. Where there is no clear indication of participation, ASH Fitness will deem Fitness Facility as participating in all programs. Any time after the Effective Date of the Agreement Fitness Facility may choose to expand the programs it participates in. However, after the Effective Date, Fitness Facility may only terminate participation in a specific program, pursuant to Article 6.

3.9 Provision of Member Services. Fitness Facility has the following responsibilities:

3.9.1 Standard Fitness Facility Membership. Fitness Facility shall provide Members with a Standard Fitness Facility Membership and any other services as required by the applicable program attachments. The Standard Fitness Facility Membership shall include, at no cost to the Member, an orientation session to familiarize Members with the Fitness Facility and its equipment.

3.9.2 Conversion of Pre-Established Membership. Fitness Facility agrees to assist any Member that has a previously established membership with Fitness Facility and the Member becomes eligible for a program under this Agreement. Fitness Facility will freeze the Member's previously established fitness facility membership without any penalty or termination of the membership and accept the Program Compensation rate as payment in full for the Standard Fitness Facility Membership on behalf of the Member while they are eligible for ASH Program Services. Where a Member is no longer eligible for ASH Program Services, Fitness Facility shall re-activate the Member's frozen membership subject to the original terms and conditions of the previously established membership. Fitness Facility shall not charge Member any activation fees or penalties for the re-activation and such membership shall be reinstated for the period of time that was remaining on the membership at the time it was frozen.

3.9.3 Fitness Facility Fitness Advisor. Fitness Facility agrees to support Services by training one or more Fitness Facility employee(s) as a Fitness Facility Advisor during normal business hours to support Member questions and enrollment into the applicable Services as described in this Agreement and its Attachments.

3.9.4 Offering of non-Covered Services and Notification to Members of Financial Responsibility for Member Payments for Non-Covered Services. Fitness Facility may upgrade or sell Members additional products or services not covered under this Agreement or any applicable program attachment but only if Fitness Facility informs Members in advance and in writing that such products and services are Non-Covered Services and are the Member's financial responsibility. Fitness Facility shall collect appropriate Member Payments as that term is defined in Section 1.12, at the time of service and shall bill Members according to the procedures described in the Program Manual. Where a Member upgrades their Standard Fitness Facility Membership, Fitness Facility agrees that the upgraded membership will be equal to or less than the pricing offered to the general public ("Upgraded Membership Price") and the cost to the Member shall be the Upgraded Membership Price minus the Fitness Facility's standard fee for a basic membership (this is not the Program Compensation Rate but the standard fee charged by the Fitness Facility). All Non-Covered Services are ineligible for compensation by ASH Fitness and are the direct responsibility of the Member. Fitness Facility agrees to refund any amounts paid by a Member that the Fitness Facility collects in a manner not consistent with this Section.

3.9.5 Member Billing. Nothing in this Agreement shall preclude Fitness Facility from charging Member for Services rendered, where Member is determined to not be eligible, including retroactive determinations, for a program under this Agreement and where Fitness Facility complied with Section 3.10. Any such charges shall be consistent with Fitness Facility's lowest standard membership dues. In addition, as Section 3.09.4 details, Fitness Facility may charge a Member for Non-Covered Services where Member has been informed, in writing, prior to the provision of the Non-Covered Services.

3.9.6 Non Discrimination. Fitness Facility shall not discriminate against Member for any reason, including but not limited to race, ethnicity, national origin, religion, gender, age, mental or physical disability, health status, payment experience, medical history, genetic information, political affiliation, evidence of insurability or geographic location within the service area or source or amount of compensation. Fitness Facility shall offer Services to a Member covered by ASH Fitness or one of its affiliates in the same manner, in accordance with the same standards, and within the same time availability as services offered to members who are not covered by ASH Fitness or its affiliates.

3.10 Verification of Member Eligibility and Services. Unless otherwise specified in a program attachment, Fitness Facility shall verify Member Eligibility and applicable Services with ASH Fitness at the time of a Member's first attempt to utilize Fitness Facility Participating Location within a Benefit Year. Fitness Facility shall verify that Member's health plan is on the ASH Client list as participating in the applicable program as well as verify Member Eligibility in the applicable Services by requesting

Member to show their current program identification card/welcome letter, or the Member's health plan identification card if the Member does not have their current program identification card/welcome letter, and by verifying the Member's eligibility with ASH Fitness. Fitness Facility may contact ASH Fitness via ASHLink or call customer service to verify eligibility. Member's current program identification card/welcome letter or health plan identification card is not a guarantee of current eligibility and Fitness Facility must verify the Member's eligibility with ASH Fitness upon the Member's first visit to the Fitness Facility Participating Location. Where a Member has not yet paid their Annual Member Fee, if applicable, to ASH Fitness prior to their first visit to Fitness Facility, Fitness Facility shall allow the Member to work out that day with a free trial pass. Fitness Facility must instruct the Member to contact ASH Fitness and pay their applicable Annual Member Fee prior to their next visit to Fitness Facility. If after the free trial visit, the Member does not pay their applicable Annual Member Fee to ASH Fitness and Fitness Facility continues to allow the Member to work out at Fitness Facility, those visits will not be reimbursed by ASH Fitness.

3.11 Program Compensation. Fitness Facility shall accept Program Compensation Rates, as specified in Attachment L as payment in full for the Services provided pursuant to this Agreement. Fitness Facility shall not charge the Member an initiation fee, enrollment fees, processing fee, monthly membership fees and/or any other administrative fees for the Standard Fitness Facility Membership. Fitness Facility shall be responsible for any and all sales, use or other taxes which may be imposed on the compensation paid to Fitness Facility by ASH Fitness.

3.12 Billing Report Submission. Unless otherwise specified in a program attachment, Fitness Facility will submit a billing report each month and shall provide supporting information to ASH Fitness that identifies each Visit at a Fitness Facility Participating Location, the Member name, Member's identification number listed on the Member's program identification card/welcome letter or health plan identification card, program abbreviation, Member month and day of birth, health plan name and the dates of the Visit. Such information may be submitted through ASHLink, electronically or in paper claim formats, that are mutually agreed upon by the Parties. Fitness Facility must submit billing reports in chronological order (i.e. January's billing report must be submitted prior to February's billing report). Billing reports submitted out of order will be denied.

Billing reports received over one hundred eighty (180) days after the date of service will not be approved for payment due to late submission. Fitness Facility shall waive all charges against Member, ASH Fitness and/or ASH Client related to a billing report received by ASH Fitness more than one-hundred eighty (180) days after the date of service.

3.13 Reimbursement Adjustments. ASH Fitness may be required to make an adjustment to a reimbursement previously paid by ASH Fitness in order to correct an over or under payment as a result of (1) corrected information received by ASH Fitness, or (2) incorrect determination of benefit or (3) an incorrect calculation of payment amounts. The process for any reimbursement adjustment shall be set forth in the Program Manual.

3.14 Fitness Facility's Participating Locations. Where Fitness Facility has more than one facility operating under the terms of this Agreement, Fitness Facility shall have additional obligations, including but not limited to: Agreement notification, informing participating locations, and members' use of multiple locations. These additional obligations shall be described in the Program Manual. Fitness Facility shall require each Fitness Facility Participating Location to comply with the requirements of this Agreement and any applicable state or federal law or regulations, including but not limited to, the federal False Claims Act (31 U.S.C. §§ 3729– 3733). Any incidents of non-compliance should be reported immediately to ASH Fitness upon discovery.

3.15 Liability Insurance Limits. Fitness Facility shall maintain professional liability insurance, comprehensive general liability insurance and any other insurance policies, including but not limited to Workers' Compensation, in accordance with ASH Fitness' liability insurance requirements in this Agreement. To the extent that the Fitness Facility is notified by its insurance company, the Fitness Facility shall notify ASH Fitness when applicable of any material change to any or all insurance policies. This insurance requirement will be required for each of the Fitness Facility Participating Locations. Fitness Facility shall maintain general and professional liability insurance in the amount of one million dollars (\$1,000,000) per claim and one million dollars (\$1,000,000) in the aggregate per year for each Fitness Facility Participating Location.

ARTICLE 4 CORRECTIVE ACTION PLANS

Corrective Action Plans. ASH Fitness shall have the ability to evaluate Fitness Facility's participation and performance in accordance with the terms of this Agreement and fitness industry business practices. If ASH Fitness finds that Fitness Facility is not performing in accordance with the terms of this agreement, ASH Fitness may issue a Corrective Action Plan (CAP) to Fitness Facility. ASH Fitness will deliver all CAPs in writing to Fitness Facility. Fitness Facility agrees to comply with ASH Fitness' CAPs within the timelines specified and to respond to the CAP in writing or as otherwise requested. Fitness Facility may submit information to ASH Fitness in response to the CAP which

explains Fitness Facility's position including, but not limited to, any information demonstrating that Fitness Facility is in compliance with the Agreement or Program Manual. Fitness Facility acknowledges that a frequent or repeated lack of compliance with a program requirement may be considered a pattern of performance that is unacceptable to ASH Fitness and may consider this a material breach of the Agreement giving rise to the right to terminate the Agreement for cause pursuant to Section 6.02.

ARTICLE 5 TERM.

The initial term of this Agreement shall be from the Effective Date specified in Article 31 of this Agreement through and including December 31st of the current year subject to the termination provisions set forth in Article 6. After the initial term, the Agreement will need to be renewed by both parties prior to January 1 of the following year. If either Party elects to not renew the Agreement prior to January 1 of the following year, the Agreement is terminated pursuant to Article 6.

ARTICLE 6 TERMINATION.

6.1 Termination of This Agreement with Cause with Notice. Notwithstanding any other provision in this Agreement, either Party may terminate this Agreement with cause for the other Party's breach of any material term, covenant or condition and subsequent failure to cure such breach. The Party asserting cause for termination of this Agreement ("Terminating Party") shall provide written notice of termination to the other Party ("Receiving Party"). The notice of termination shall specify the breach or deficiency underlying the cause for termination. Receiving Party shall have thirty (30) calendar days from the receipt of such notice to cure the breach or deficiency to the satisfaction of the Terminating Party. If Receiving Party fails to cure the breach or deficiency, this Agreement shall terminate upon written notice from the Terminating Party. The termination date shall be the date the Receiving Party receives such notice or such other date as may be specified in the notice.

6.2 ASH Fitness Immediate Termination of This Agreement for Cause with Notice. ASH Fitness may terminate this Agreement, or a Fitness Facility Participating Location(s) participation, immediately upon written notice by ASH Fitness to Fitness Facility upon any of the following occurrences:

- a) A determination that services rendered to a Member by Fitness Facility in conjunction with this Agreement do not meet the recognized fitness industry standards adopted by ASH Fitness and/or potentially place a Member at risk;
- b) Any material misrepresentation, falsification or failure to provide accurate information to ASH Fitness, ASH Client, or a Member by Fitness Facility or Fitness Facility's staff, agent or representative in connection with this Agreement;
- c) The filing and/or conviction of any criminal charges against Fitness Facility's directors, officers, owners or employees;
- d) The termination of any contractual relationship other than this Agreement between Fitness Facility and ASH Fitness, or an ASH Fitness' affiliate;
- e) Fitness Facility is not participating in at least one program pursuant to this Agreement;
- f) Fitness Facility has no Fitness Facility Participating Locations; or
- g) Any occurrence or condition which materially impairs the ability of Fitness Facility or a Fitness Facility Participating Location to perform responsibilities under this Agreement

6.3 Fitness Facility Appeal of Termination. Fitness Facility may appeal ASH Fitness' termination for cause by providing a written request to ASH Fitness within thirty (30) days from the date of the termination notice by ASH Fitness. Such appeal rights may occur before and/or after the effective date of termination. If a termination appeal results in a reinstatement, ASH Fitness may provide Fitness Facility with a new Effective Date for this Agreement

6.4 Effect of Termination. Except as otherwise provided herein, this Agreement shall be of no further force or effect following the date of termination, except that each Party shall remain liable for any obligations or liabilities arising from the activities carried on by it hereunder prior to the date of termination.

6.5 Survival of Certain Contractual Provisions after Termination. Notwithstanding any other provision of this Agreement, the following provisions of this Agreement shall survive any termination of this Agreement: Sections 2.02, 2.04, 3.01, 3.09.2, 6.04, 6.05, and 6.06, in addition to, Article 7, Article 8, Article 9, Article 10, Article 15, Article 16, Article 18, Article 19, and Article 20.

6.6 Fitness Facility Responsibility during Termination Notice Period. Where Fitness Facility or ASH Fitness provides notice of non-renewal pursuant to Article 5 or termination pursuant to Section 6.01 Fitness Facility shall continue to provide Services pursuant to this Agreement up to and including the effective date of termination or non-renewal.

6.7 Fitness Facility Responsibilities after Termination of Program, Location or Agreement. Fitness Facility understands that materials such as network directories provided to Members by ASH Fitness or ASH Clients may continue to reflect that a location is participating in the

ASH Fitness and/or ASH Client's network for some period of time following the termination of a location's participation. Therefore, to avoid Member confusion regarding the location's status with ASH Fitness, regardless of which Party terminates this Agreement or a location's participation, Fitness Facility shall inform any Member who seeks Services that the location is no longer contracted with ASH Fitness. If a Member wishes to continue to receive services from Fitness Facility the process for continuing their membership is set forth in the Program Manual.

ARTICLE 7 HOLD HARMLESS.

To the extent not covered by insurance, Fitness Facility shall be solely responsible for and shall hold ASH Fitness free and harmless from any claims, losses, damages, liabilities, costs, expenses, attorneys' fees and costs or obligations arising from or relating to any act or omission of Fitness Facility, Fitness Facility's, employees or representatives in providing or failing to provide Services in conjunction with this Agreement to Members. To the extent not covered by insurance, ASH Fitness shall be solely responsible for and shall hold Fitness Facility free and harmless from any claims, losses, damages, liabilities, costs, expenses, attorneys' fees and costs or obligations arising from or relating to any act or omission of ASH Fitness employees or representatives in connection with ASH Fitness' responsibilities under this Agreement.

ARTICLE 8 COMMUNICATION OF RELATIONSHIP WITH ASH FITNESS AND ASH CLIENTS.

Fitness Facility shall not initiate any written communication, solicitation or advertisement of any type referencing the relationship with ASH Fitness and/or ASH Client without the prior written approval of the communication by ASH Fitness. This includes, but is not limited to, Internet web pages, social networking, newspapers, yellow pages, billboards, mass mailings, telemarketing, location posters or business cards. Only where ASH Fitness reviews and gives prior written approval may Fitness Facility display and/or distribute materials to promote programs associated with this Agreement.

ARTICLE 9 RECORDS AND DATA COLLECTION.

9.1 Maintenance of Records. Fitness Facility shall maintain and provide ASH Fitness, and upon the request of ASH Clients, U.S. Department of Health and Human Services, U.S. Department of Justice, Office of Inspector General, Center for Medicare and Medicaid Services and/or other federal and state agencies, with all records relating to Services provided to each Member by Fitness Facility, in such form and containing such information as is required by applicable federal and state law, and such other information as ASH Fitness, ASH Clients, or other such agencies may require. For Members enrolled in an ASH Client's Medicare Advantage plan, records shall be retained in accordance with Section 8 of Attachment J. For all other Members, such records shall be retained by Fitness Facility the greater of seven years or in accordance with applicable state laws.

9.2 Access to Facility and Records. Fitness Facility shall provide access to ASH Fitness, at reasonable times upon request by ASH Fitness ASH Client, and/or regulatory agencies with oversight of ASH Fitness or ASH Client operations, to monitor program compliance and inspect Fitness Facility's facilities, equipment, books, papers, and records relating to Fitness Facility's performance under this Agreement.

9.3 Confidential Member Information.

9.3.1 ASH Fitness and its affiliates shall protect access to, and distribution of, information and/or records that are subject to regulatory requirements for protection of member information and privacy including, but not limited to protection for non-public personal health information. Therefore, ASH Fitness and Fitness Facility shall abide by all Federal and State laws and regulations, including the Health Insurance Portability and Accountability Act (HIPAA) of 1996, regarding privacy, security and disclosure of Member personal information. Fitness Facility agrees to maintain records and other information with respect to Members in an accurate and timely manner, to provide timely access by Members to the records and information that pertain to them and to safeguard the privacy of any information that can be used to identify a particular Member, including but not limited to the Member's health plan name or health plan identification number ("Personal Information"). Fitness Facility shall limit uses and disclosures of Personal Information obtained in connection with this Agreement (including any information received from ASH Fitness or through ASHLink) solely for payment and related operational purposes permitted or required by this Agreement or as required by law. Fitness Facility shall only use such Personal Information only to the extent minimally necessary to satisfy those obligations. Any other use of Personal Information obtained in connection with this Agreement is strictly prohibited unless required by law or as otherwise permitted in writing by ASH Fitness. This specifically includes using Member's Personal Information obtained or created in fulfillment of obligations under this Agreement for marketing and fundraising purposes. Fitness Facility shall not directly or indirectly receive remuneration in exchange for any Personal Information of a Member obtained or created pursuant to fulfillment of obligations under this Agreement.

9.3.2 Upon discovering an incident where the Personal Information of a Member could have been acquired, used or disclosed in a manner not permitted under this Agreement, including situations where such Personal Information could have been viewed by persons other than Fitness

Facility employees authorized by the Fitness Facility to perform duties under this Agreement, Fitness Facility shall immediately, but in no case later than one (1) business day, report the incident to ASH Fitness' Privacy Office. Fitness Facility will expediently supply all information reasonably requested by ASH Fitness regarding the investigation of suspected privacy incidents referenced above.

9.3.3 Fitness Facility shall advise members of its workforce of their obligations to protect and safeguard Members' Personal Information obtained or created in the fulfillment of Fitness Facility's obligations under this Agreement. Fitness Facility will develop, implement, maintain and use appropriate administrative, technical and physical safeguards, in compliance with Social Security Act §1173(d), 45 C.F.R. §164.530(c)(1) and any other implementing regulations issued by the U.S. Department of Health and Human Services, to preserve the integrity and confidentiality of and to prevent non-permitted or violating use or disclosure of Member's Personal Information

9.3.4 Fitness Facility shall notify ASH Fitness Privacy Office immediately of any requests for restrictions on uses and disclosure of Personal Information by a Member.

9.3.5 ASH Fitness is the exclusive owner of Personal Information generated or used by Fitness Facility for fulfillment of its obligations under the terms of this Agreement.

9.3.6 Fitness Facility will indemnify and hold harmless ASH Fitness, its officers, directors, employees from and against any claim, cause of action, liability, damage, cost or expense, including attorneys' fees and costs and court or proceeding costs, arising out of or in connection with any unauthorized or intentional non-permitted or violating use or disclosure of Members' Personal Information by Fitness Facility or any subcontractor, agent, person or entity under Fitness Facility's control.

9.3.7 Upon termination, cancellation, expiration or other conclusion of the services provided by Fitness Facility, Fitness Facility will if feasible, return to ASH Fitness or destroy all Confidential Member Information in whatever form or medium including any electronic medium under Fitness Facility's custody or control that Fitness Facility created or received for or from ASH Fitness. Fitness Facility will complete such return or destruction as promptly as possible, but no later than thirty (30) days after the effective date of the termination, cancellation, expiration or other conclusion of the services provided by Fitness Facility. If return or destruction of Confidential Member Information is infeasible, Fitness Facility will extend the protections of this Article 9 to such information and limit its further use or disclosure to those purposes that make return or destruction of Confidential Member Information infeasible.

9.3.8 Notices to the ASH Fitness Privacy Office may be sent by overnight mail, first class mail, fax, email or hand delivery to:

American Specialty Health Fitness, Inc. Attn: Privacy Officer

10221 Wateridge Circle San Diego, CA 92121

E-mail: HIPAA@ashn.com Tel: (800) 848-3555

Fax: (858) 237-3839

ARTICLE 10 PROPRIETARY INFORMATION.

All information, documents, software and other materials furnished to Fitness Facility by ASH Fitness including, without limitation, the Program Manual, any Client Lists, and any copyrighted or trademarked materials, shall be the property of ASH Fitness. Such proprietary information is only to be used by Fitness Facility in connection with the performance of Fitness Facility's obligations under this Agreement and only in the manner provided for in this Agreement. Fitness Facility shall not disclose or use any proprietary information or trade secrets for Fitness Facility's own benefit during the term of this Agreement or after termination of this Agreement, except as authorized in writing by ASH Fitness. Fitness Facility shall have no ownership rights in said proprietary information including, but not limited to, copying, use or distribution of said proprietary information.

Upon termination of this Agreement, Fitness Facility shall return to ASH Fitness all proprietary information in Fitness Facility's possession, if requested, and in a manner to be specified by ASH Fitness. Fitness Facility shall cooperate with ASH Fitness in maintaining the confidentiality of such proprietary information at all times during and after termination of this Agreement.

ARTICLE 11 TRADEMARKS

11.1 Use of Names and Marks. This Agreement does not grant Fitness Facility a license or sublicense, except as provided in this Article 11, to use the names, trademarks, service marks, corporate names, trade names, domain names, or logos owned by ASH Fitness or its parent company American Specialty Health Incorporated ("ASH Marks"). During the term of this Agreement Fitness Facility may use ASH Fitness' name or ASH Marks solely in connection with identifying the relationship as contemplated in this Agreement or as specified in Section 11.02 below. Any other use of ASH Marks is subject to the prior review and written approval of ASH Fitness.

11.2 Identification of Marks and Form of Use. Subject to the terms of this section, ASH Fitness grants Fitness Facility a non-exclusive, non-transferable, royalty-free license to use the trademark Silver&Fit on its web sites and print media for the promotion of Fitness Facility's participation in the

applicable programs for which Fitness Facility is a Contracted Facility. Fitness Facility shall be allowed to use the ASH Marks as described above, as long as such use complies with this Article and the "Guidelines for Trademark Use by Third Parties" issued by ASH Fitness from time to time, a current version of which is attached hereto as Attachment K. In addition, Fitness Facility shall mark the ASH Marks with the symbol "TM" or "®" as appropriate, and include the following trademark attribution in reasonably close proximity to the first use of the ASH Marks in any document or on a screen display, or in a location to which users are directed for statements concerning the Fitness Facility's ownership of intellectual property rights.

"Silver&Fit® is a trademark of American Specialty Health Incorporated and are licensed by Fitness Facility for use herein."

Fitness Facility shall not alter the ASH Marks in any way, including but not limited to, skewing, changing the color, rotating, separating logo elements or changing the typeface.

11.3 Approval for Use of Marks. Approval in Section 11.02 above shall be deemed automatically withdrawn upon the effective date of expiration or termination of this Agreement, unless sooner withdrawn by written notice from ASH Fitness.

11.4 Injunctive Relief. The Parties agree that a breach of the terms and conditions of this Article shall cause immediate and irreparable harm. Therefore, in addition to any other rights or remedies available at law or in equity, each Party is entitled to seek injunctive relief to restrain or enjoin the breach, without any requirement of bond or security.

ARTICLE 12 ASSIGNMENT AND CHANGE OF OWNERSHIP.

ASH Fitness may assign all or a portion of its rights or responsibilities under this Agreement to any party with prior written notice to the Fitness Facility. All provisions of this Agreement and obligations arising hereunder shall extend to and be binding upon the Parties hereto and their respective successors and assignees and shall inure to the benefit, and be enforceable by the Parties hereto and their respective legal representatives, successors and assignees.

ARTICLE 13 SUBCONTRACTS

Fitness Facility shall not subcontract any of its obligations under this Agreement to any third party without the prior written approval of ASH Fitness.

ARTICLE 14 FORCE MAJEURE.

Neither Fitness Facility nor ASH Fitness, as the case may be, shall be considered not to have performed its obligations under this Agreement in the event of enforced delay (an "Enforced Delay") due to causes beyond its control and without its fault or negligence or failure to comply with applicable laws, including, but not restricted to, acts of God, fires, floods, epidemics, pandemics, quarantine, restrictions, embargoes, labor disputes, and unusually severe weather or the delays of subconsultants or materialmen due to such causes, acts of a public enemy, war, terrorism or act of terror (including but not limited to bio-terrorism or eco-terrorism), nuclear radiation, blockade, insurrection, riot, labor strike or interruption, extortion, sabotage, or similar occurrence or any exercise of the power of eminent domain of any governmental body on behalf of any public entity, or a declaration of moratorium or similar hiatus (whether permanent or temporary) by any public entity directly affecting the Fitness Facility's operations. In no event will Enforced Delay include any delay resulting from unavailability for any reason of labor shortages, or the unavailability for any reason of particular consultants, subconsultants, vendors or investors desired by ASH Fitness in connection with the Fitness Facility's operations. ASH Fitness agrees that ASH Fitness alone will bear all risks of delay which are not Enforced Delay. In the event of the occurrence of any such Enforced Delay, the time or times for performance of the obligations of the Party claiming delay shall be extended for a period of the Enforced Delay; provided, however, that the Party seeking the benefit of the provisions of this Section shall, within 5 business days after such Party knows or should know of any such Enforced Delay, first notify the other Party of the specific delay in writing and claim the right to an extension for the period of the Enforced Delay; and provided further that in no event shall a period of Enforced Delay exceed ninety (90) calendar days.

ARTICLE 15 INDEPENDENT CONTRACTORS.

15.1 None of the provisions of this Agreement shall be construed to create a relationship of agency, representation, joint venture, ownership, control or employment between the Parties, other than that of independent parties contracting solely for the purpose of effectuating this Agreement.

15.2 Fitness Facility shall be responsible solely to eligible Members for Services. Fitness Facility is an independent contractor and ASH Fitness shall have no dominion or control over Fitness Facility, Fitness Facility-Member relationship, Fitness Facility's personnel or Fitness Facility's services. Fitness Facility and Fitness Facility's employees and agents shall not have any claim, under this Agreement or otherwise, against ASH Fitness for vacation pay, sick leave or retirement or other benefits of any kind. During the term of this Agreement or any renewals hereof, Fitness Facility shall be fully responsible and liable for all state and federal income taxes or other taxes to which payments made by ASH Fitness to Fitness Facility may become subject. Fitness Facility is responsible to

maintain all necessary insurance policies, such as workers' compensation, errors and omissions, and general business liability insurance in amounts necessary to provide adequate coverage.

ARTICLE 16 GOVERNING LAW.

The terms and conditions of this Agreement shall be governed by and interpreted in accordance with the laws of the State of Tennessee. Any action at law or in equity brought by either Party for the purpose of enforcing a right or rights provided for in this Agreement, shall be tried in a court of competent jurisdiction in Sullivan County, State of Tennessee. The Parties each agree to waive their separate rights to a trial by a jury. This waiver means that the trial or settlement proceedings will be held before a judge in accordance with the terms and conditions of this agreement. The Parties hereby waive all provisions of law providing for a change of venue in such proceeding to any other county. In the event either Party shall bring suit to enforce any term of this Agreement or to recover any damages for and on account of the breach of any term or condition in this Agreement, it is mutually agreed that the prevailing party in such action shall recover all costs including: all litigation and appeal expenses, collection expenses, reasonable attorneys' fees, necessary witness fees and court costs to be determined by the court in such action.

ARTICLE 17 SEVERABILITY.

Fitness Facility and ASH Fitness each believe that the execution, delivery and performance of this Agreement are in compliance with all applicable laws. However, in the unlikely event that any provision of this Agreement is declared void or unenforceable (or is construed as requiring Fitness Facility to do any act in violation of any applicable laws, including any constitutional provision, law, regulation, or city code), such provision shall be deemed severed from this Agreement and this Agreement shall otherwise remain in full force and effect; provided that this Agreement shall retroactively be deemed reformed to the extent reasonably possible in such a manner so that the reformed agreement (and any related agreements effective as of the same date) provide essentially the same rights and benefits (economic and otherwise) to the Parties as if such severance and reformation were not required. Unless prohibited by Applicable Laws, the Parties further shall perform all acts and execute, acknowledge and/or deliver all amendments, instruments and consents necessary to accomplish and to give effect to the purposes of this Agreement, as reformed.

ARTICLE 18 DISPUTES BETWEEN FITNESS FACILITY AND MEMBERS.

Where ASH Fitness and/or an ASH Client determine that a dispute between Fitness Facility and Member is subject to the provisions of this Agreement and ASH Fitness and/or ASH Client's appeals and grievance processes, policies, procedures and standards, Fitness Facility agrees to assist ASH Fitness and provide any information necessary, at no cost to ASH Fitness, for ASH Fitness to review and evaluate a Member grievance or appeal presented for resolution. ASH Fitness' grievance and appeal process is described in the Program Manual. This section does not preclude Fitness Facility and Member from seeking any appropriate legal action to resolve any controversy, dispute or claim which is not governed by the terms of this Agreement.

ARTICLE 19 DISPUTES BETWEEN FITNESS FACILITY AND ASH FITNESS.

In the event of any dispute between Fitness Facility and ASH Fitness arising out of or relating to this Agreement, Fitness Facility and ASH Fitness shall first attempt in good faith to resolve the dispute mutually between themselves. If Fitness Facility and ASH Fitness are unable to resolve the dispute by mutual agreement, the all matters in controversy may be submitted to a court of competent jurisdiction in accordance with Article 16.

ARTICLE 20 DISPUTES BETWEEN FITNESS FACILITY AND ASH CLIENT.

In the event of any dispute between Fitness Facility and a ASH Client arising out of or relating to this Agreement, at the request of ASH Fitness, Fitness Facility shall first attempt in good faith to resolve the dispute mutually with the ASH Client through ASH Fitness, including but not limited to, utilizing all available levels of ASH Fitness' grievance and appeals processes, unless otherwise prohibited by state law. Fitness Facility may seek ASH Fitness' assistance with regard to any dispute by contacting ASH Fitness in writing or by telephone at the address and telephone referenced in Article 21.

ARTICLE 21 NOTICES.

Any notice required or permitted to be given under this Agreement to ASH Fitness or Fitness Facility, shall be in writing and shall be (a) delivered by electronic means (i.e. ASHLink, sent via an inalterable email document (such as PDF), or facsimile with confirmation) , (b) delivered in person, (c) sent by certified, registered mail, or "overnight express" by the United States Postal Service with return receipt requested and postage prepaid, or (d) sent "express mail," "two day delivery," "3-5 day ground" or any similar service offered by private, prepaid courier such as Federal Express, United Parcel Service or any similar organization.

NOTICES TO ASH FITNESS:

American Specialty Health Fitness, Inc.

P.O. Box 509117

San Diego, CA 92150-9001 ASH Fitness (877) 329-2746

NOTICES TO FITNESS FACILITY:

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

Notice shall be effective on the earlier of the date received or the date deemed received.

- Notices given by electronic means (i.e. ASHLink, sent via an inalterable email document (such as PDF), or facsimile with confirmation) shall be deemed received one (1) business day after being sent.
- Notices delivered personally shall be deemed received upon actual receipt.
- Notices given by certified or registered mail shall be deemed received three (3) United States Postal Service business days after the date mailed.
- Notices given by "3-5 day ground" will be deemed received five (5) business days after the date delivered to the United States Postal Service, Federal Express, United Parcel Service or any similar organization.
- Notices sent for delivery by any other means specified in this first paragraph of this Article shall be deemed received three (3) business days after delivery to the United States Postal Service, Federal Express, United Parcel Service or any similar organization.

ARTICLE 22 ATTORNEY COSTS

In the event that either Party brings legal action relating to this Agreement, the prevailing Party shall be entitled to payment by the other of all reasonable attorneys' fees, costs and expenses incurred in such action.

ARTICLE 23 CAPTIONS.

Captions in this Agreement are descriptive only and shall not affect the intent or interpretation of this Agreement.

ARTICLE 24 NO THIRD PARTY BENEFICIARIES.

Except as otherwise expressly provided in this Agreement, nothing in this Agreement shall create or be deemed to create any rights or remedies in any third party, including but not limited to a Member or a Fitness Facility other than Fitness Facility, subject only to Article 26.

ARTICLE 25 AMENDMENTS.

Fitness facility has the right to reject any amendments to this Agreement, including but not limited to, revised or newly issued attachments, ASH Client Lists or revisions to the Program Manual. Where Fitness Facility does not agree with the terms of an amendment, Fitness Facility may terminate this Agreement upon one hundred twenty (120) days prior written notice to ASH Fitness. No Amendment, modifications or addition to this agreement shall be valid unless made in writing and signed by both Parties.

ARTICLE 26 INSOLVENCY OF ASH FITNESS; PROTECTION OF INTERESTS OF FITNESS FACILITY, MEMBERS, AND ASH CLIENTS.

ASH Fitness and Fitness Facility each expressly agrees to the inclusion of this Article in this Agreement to provide a means to protect the interests of Fitness Facility, Members, and ASH Clients in the event of the insolvency of ASH Fitness. This Article shall apply only in the event of the insolvency of ASH Fitness and only if, as a result of the insolvency, ASH Fitness is unable to discharge its duties under this Agreement. This Article shall not apply in any other circumstances. For purposes of this Article, the insolvency of ASH Fitness means the filing of a voluntary petition by ASH Fitness, or the filing of an involuntary petition by ASH Fitness' creditors, under Chapter 7 of the Bankruptcy Code (Liquidation), and the date of the insolvency shall be the date on which any such petition is filed. The insolvency of ASH Fitness shall not include the filing of a voluntary petition by ASH Fitness, or the filing of an involuntary petition by ASH Fitness' creditors, under Chapter 11 of the Bankruptcy Code (Reorganization). Notwithstanding anything in this Article, this Article shall not apply to the extent its application would violate any provision of the Bankruptcy Code or any other applicable federal or state statute or regulation, any automatic or other stay issued pursuant to the Bankruptcy Code, any order issued by the court with jurisdiction over the bankruptcy proceeding, or any other court order.

If, within sixty (60) days after the date of the insolvency of ASH Fitness, an ASH Client provides written notice to Fitness Facility stating that, with regard to any Member who is a beneficiary, employee, member, or insured of that ASH Client, (a) ASH Client shall pay Fitness Facility, in accordance with the provisions of this Agreement, for any billing reports submitted for Services rendered by Fitness Facility to any such Member on or after the date of the insolvency, to the extent ASH Fitness has not paid such reimbursements, and (b) ASH Client otherwise shall use its best efforts to discharge the duties of ASH Fitness under this Agreement, or to cause ASH Fitness to discharge those duties, with regard to any such Member, then Fitness Facility shall continue to be available to render Services to those Members and shall continue to render Services to those Members in accordance with the provisions of this Agreement for up to (60) days after the date of

the insolvency, as specified by ASH Client. To the extent this Article grants any rights to any ASH Client, Fitness Facility hereby expressly agrees and acknowledges that ASH Client is a third-party beneficiary of the provisions of this Article and shall have all rights granted under law by a third-party beneficiary to enforce the provisions of this Article.

ARTICLE 27 ENTIRE AGREEMENT.

This Agreement includes all attachments, the Program Manual, and all amendments thereto. Each Party acknowledges that no representation, inducement, promise or agreement, orally or otherwise, has been made by any Party or anyone acting on behalf of any Party, which is not embodied herein. In the event of an inconsistency between this Agreement and any ASH Client Summary or this Agreement and attachments, this Agreement, the ASH Client List or attachments, respectively, shall control the rights and duties of the Parties. In the event of any inconsistency between the Program Manual and this Agreement, this Agreement, together with any attachments, exhibits and amendments, including any current ASH Client List, shall control the rights and duties of the Parties.

ARTICLE 28 TIME IS OF THE ESSENCE.

Time is of the essence with the respect to all provisions in this agreement. Any delay in performance by either Party shall constitute a material breach of this Agreement.

ARTICLE 29 NON-EXCLUSIVITY.

Each party understands and acknowledges that the relationship created hereby is of a non-exclusive nature, meaning either party may do business with any other party that provides the same or similar services

ARTICLE 30 EFFECTIVE DATE OF AGREEMENT.

ASH Fitness will provide Fitness Facility with notice of the Effective Date after Fitness Facility returns one original copy of this Agreement to ASH Fitness, and all pre-contractual requirements are fulfilled based upon a determination by ASH Fitness. Fitness Facility agrees to be bound by this Agreement as of the Effective Date as determined by ASH Fitness and indicated immediately below.

The Effective Date of this Agreement is _____.

[To be completed by ASH Fitness Only]

Fitness Facility agrees to participate in the following attachments, as indicated with a check in the attachment(s) box:

Attachment A: Silver&Fit Basic Facility Attachment

IN WITNESS WHEREOF, the Parties have executed this Agreement on the dates set forth below.

[Acknowledgements Deleted for Inclusion in this Resolution]

**ADDENDUM TO FITNESS FACILITY SERVICES AGREEMENT WITH
AMERICAN SPECIALTY HEALTH FITNESS, INC.**

This Addendum (herein "Addendum") amends the Agreement, including all attachments, exhibits, any actual or virtual documents or writings, referenced therein (all of which are herein "Agreement") between American Specialty Health Fitness, Inc. (herein "Vendor") and City of Kingsport, Tennessee for its Kingsport Senior Citizens Center (herein "City"). In consideration of using Vendor's form agreement, the mutual promises set out herein, and other good and valuable consideration, the sufficiency of which is hereby acknowledged the Agreement is amended as follows:

1. Name. Precedence. Notwithstanding any other provision in the Agreement, the language in this Addendum takes precedence over all other terms, conditions or language to the contrary or in conflict with the language herein, 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.

2. 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, including, but not limited to Article 7, Section 9.03.6, and Attachment J paragraph 2 of the Agreement, requiring City to indemnify or hold harmless Vendor or any other person or entity and any limitation of liability in favor of Vendor is deleted. No provision of the Agreement shall act or be deemed a waiver by City of any immunity, including its rights or privileges or of any provision of the Tennessee Governmental Tort Liability Act, T.C.A. section 29-20-101 et seq. Because Tennessee law may not allow City to agree to the disclaimer of warranties any such disclaimer of warranties shall be enforceable only to the extent permitted by Tennessee law. City reserves all rights afforded to local governments under law for all general and implied warranties.

3. Non-appropriation. Vendor 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 Vendor shall be returned to City.

4. 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.

5. Confidentiality. The Agreement, including the attachments, is a public record, along with documents or materials, in any format, including, but not limited to, paper, electronic, or virtual, that are public records pursuant to the Tennessee Open Records Act, set out in T.C.A. §10-7-503 et seq., and are not confidential and are subject to disclosure in whole or in part, without regard to any provision contained in the Agreement declaring information confidential. Additionally, City must, upon proper request, release public documents and records as defined by T.C.A. §10-7-503 et seq., including, but not limited to, the Agreement and all records created and maintained related to the Agreement, without the requirement to disclose such request to Vendor or provide Vendor with notice or the time to obtain a protective order.

6. Lockers and Showers. The City does not have locker rooms or showers facilities and any requirement to provide such in the Agreement is deleted.

7. Equal to or Best Pricing. Delete the second and third paragraphs of Section 2.07 of the Agreement, and any other reference to equal to or best pricing or other similar reference.

8. Liability Insurance Limits. Delete Section 3.15 of the Agreement pertaining to liability insurance limits and any other provision in the Agreement that requires the City to maintain insurance. Notwithstanding anything in this Agreement to the contrary, City is self-insured through Public Entity Partners, formerly known as Tennessee Municipal Risk Pool, for general liability insurance, and automobile insurance. Additionally, any and all claims against City or its employees are governed by the provisions of the Tennessee Governmental Tort Liability Act, found at T.C.A. section 29-20-101 et seq., and it contains limits of liability. City does not have the authority to waive its governmental immunity, so the limits of liability in the Governmental Tort Liability apply notwithstanding any provision in this Agreement to the contrary. Additionally, no provision of this Agreement shall act or be deemed a waiver by City of its rights or privileges as a sovereign entity, as waiver can only be made by the Tennessee General Assembly.

9. 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 Vendor with its Sales and Use Tax Exemption Certificate upon Vendor's request. Vendor shall bear the burden of providing its suppliers with a copy of City's tax exemption certificate and Vendor shall assume all liability for such taxes, if any, that should be incurred.

10. Termination for Convenience. The Agreement may be terminated by City upon thirty (30) days written notice to Vendor. Such termination will not be deemed a breach of contract by either party. Should City exercise this provision, City will compensate Vendor for all satisfactory and authorized services completed as of the termination date, and Vendor will refund to City any funds paid by City in excess of such amount. Upon such termination, Vendor will not have any right to any actual general, special, incidental, consequential, or any other damages whatsoever of any description or amount.

11. No Liability for Users or Third Parties. Except as provided in the Tennessee Governmental Tort Liability Act, T.C.A. section 29-20-101 et seq. City is not responsible for liability of any third party.

12. No Automatic Renewal. The term of the Agreement shall not be renewed or extended beyond the initial term and any provision providing for automatic or continuing renewal of the Agreement is not applicable, except by written mutual consent of the parties.

13. Limitation of Actions or Claims. Any claim by City asserted under this Agreement may be initiated within the time limits of the limitation of actions applicable in the State of Tennessee.

14. Unilateral Modification of Agreement Not Permitted. Unilateral modification or amendment of the Agreement by Vendor is prohibited and any provision permitting such by Vendor is not applicable to City. Any amendment or modification of the Agreement or this Addendum is binding only if it is in writing and properly executed by the non-electronic signatures of authorized representatives of the parties hereto, including attestation by City's city recorder and approved as to form by City's city attorney.

15. Use of City's Logo or Name. Vendor shall not use City's name or any logo (including any school) in marketing or publicity materials or for marketing or publicity purposes without prior written authorization from City.

16. Communications. ASH Fitness shall not initiate any written communication, solicitation or advertisement of any type referencing the relationship with City without the prior written approval of the communication by City, including, but not limited to Internet web pages, social networking, newspapers, yellow pages, billboards, mass mailings, telemarketing, location posters or business cards.

17. Binding Effect This Agreement is the entire agreement between City and Vendor. 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 other agreements or understandings, whether electronic, click-through, or shrink-wrap, and whether verbal or written, with City's employees or other end users, to the contrary are null, void and without effect as it applies to City.

18. No Liability of City Officials and Employees. No member, official, or employee of City shall be personally liable to Vendor 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.

19. Survival. 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.

20. Effective Date. This Addendum has the effective date of the Agreement.

[Acknowledgements Deleted for Inclusion in this Resolution]

SECTION III. That the mayor is further authorized to make such changes approved by the mayor and the city attorney to the agreement and addendum 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 21st day of April, 2020.

PATRICK W. SHULL, MAYOR

ATTEST:

SIDNEY H. COX, CITY RECORDER

APPROVED AS TO FORM:

J. MICHAEL BILLINGSLEY, CITY ATTORNEY