



## **AGENDA**

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

**Monday, December 14, 2020, 4:30 p.m.  
City Hall, 225 W. Center St., Council Room**

#### **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  
J. Michael Billingsley, City Attorney  
Scott Boyd, Fire Chief  
George DeCroes, Human Resources Director  
Ken Weems, Planning Manager  
John Morris, Budget Director

Ryan McReynolds, Deputy City Manager  
Sid Cox, City Recorder/Chief Financial Officer  
David Quillin, Police Chief  
Jessica Harmon, Assistant to City Manager  
Adrienne Batara, Public Relations Director  
John Rose, Economic Development Director

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. KEDB / NETWORKS Update – Craig Denison & Clay Walker
5. Safety Update – John Burkholder
6. Disposal of Midland & Improvement Bldg. Sites – Ryan McReynolds
7. Review of Items on December 15, 2020 Business Meeting Agenda
8. Adjourn

**Next Work Session Tues., January 19, 4pm**

## BMA Report, December 14, 2020



### **Kingsport Employee Wellness, George DeCroes**

	01/01/2020 – 11/30/2020	12/01/2020 – 12/08/2020
Total Utilization	84.7%	84.3%
City – Active Employees	66.0%	59.5%
City – Dependents	29.2%	31.9%
City – Retirees	0.4%	0.0%
Extended-Patient Services/Other	0.5%	3.3%
Work Comp	0.4%	0.0%
No Show	3.5%	5.3%

### **Worker's Compensation, Mike Billingsley**

For the month of November 2020, the city had four recordable worker's compensation claims that involved lost time or restricted duty. Of the four claims involved, three are restricted duty and one was lost time.



# City of Kingsport

December 15, 2020

## Project Status in Pictures

### 1 Sewer Rehab Project

Crews are working to install new inflow and infiltration piping in the vicinity of Cloud Apartments.

### 3 Stone Drive Sidewalks

Crews are working on grading, concrete placement and drainage work near E Windsor Street.

### 2 Bays Mountain Planetarium

The projector has been dismantled and sent to Germany. Projector stand and theatre upgrades have started.

### 4 Riverfront Parking Facility

Asphalt topping has been laid and the project just lacks the striping of the 23 parking spaces.





# Status Updates on Active Projects sorted by Cost

Estimated Cost	Project Owner	Project Name	Project Description	Completion Date	CurrentStatus
\$13,500,000.00	Ryan McReynolds	<b>SR 347 (Rock Springs Road) [State &amp; MTPO funded]</b>	TDOT Managed, joint funded reconstruction of the State portion of Rock Springs Road	12/31/2022	TDOT contract amendment approved by BMA and is routed for signatures. This reduced the local commitment from \$2.0 million to \$1.0 million MPO funds. Updated estimated cost to reflect amendment.
\$6,000,000.00	Michael Thompson	<b>Main Street Rebuild</b>	The reconstruction of Main Street from Sullivan Street to Clay Street. [City & MTPO Funded]	6/1/2021	Appraisals for 11 of 12 properties affected were received 9/4/2020.
\$5,963,000.00	Niki Ensor	<b>West Kingsport Forcemain and Pump Station Improvements</b>	Rehab of West Kingsport SLS (#119) and installation of new forcemain to the WWTP.	2/2/2021	Wet well pre-work inspection complete - results favorable. FM E/I/B continues down Greenbelt. Demo still ongoing inside pump station.
\$3,500,000.00	Michael Thompson	<b>Island Road Improvements from SR-126 to Kingsport City Limits</b>	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 still working on NEPA document.
\$2,508,812.00	Niki Ensor	<b>WWTP Electrical Improvements</b>	Design of wastewater treatment plant improvements. Project includes replacement of the Main Switchgear, Switchgear SB-1 and related equipment at the wastewater treatment plant.	5/18/2021	TEC on site hooking up temporary power and laying out conduit
\$2,500,000.00	Michael Thompson	<b>2021 Main Road Paving (MTPO Funded)</b>	Paving of functionally classified roadways: Meadowview Pkwy, Moreland Dr, Cooks Valley, Fall Creek and Netherland Inn Road	12/31/2021	NEPA documents submitted to TDOT on 7/6/2020.
\$2,300,000.00	Ryan McReynolds	<b>Justice Center Renovations</b>	Renovations and expansion of Justice Center that will accommodate court space and county offices currently residing in City Hall.	12/31/2020	Architect is working on plans and having discussions with staff.
\$2,225,522.00	Ryan McReynolds	<b>City Hall Relocation - Phase 2</b>	Renovations of floors 1 & 2 for the consolidation of City offices to one location at 415 Broad Street.	2/26/2021	Ceramice tile work on first floor lobby has begun.
\$1,477,741.00	Chad Austin	<b>Phase 5 Water Improvements</b>	Project includes water line replacements in Fort Robinson area, Sherwood Road, Roller Street area, Gibson Mill area, and Waverly Road.	11/30/2021	Contractor to begin work in the Roller Street area on 12/7/20.
\$1,044,000.00	Kitty Frazier	<b>Kingsport Greenbelt Extension from Rotherwood Drive to Lewis Lane</b>	This project will build an extension of the Kingsport Greenbelt walking and biking path west from the end of the current Greenbelt at Rotherwood Drive to Lewis Lane on West Stone Drive (State Route 1).	5/31/2024	NEPA document has been submitted to TDOT and going thru their review process.
\$873,345.88	Chad Austin	<b>2019 I &amp; I Sewer Rehab/Replacement</b>	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 working in the Gibson Mill area near Cloud Apartments.



Estimated Cost	Project Owner	Project Name	Project Description	Completion Date	CurrentStatus
\$699,000.00	Niki Ensor	<b>Hillcrest &amp; Allandale Water Storage Tank Rehabilitation</b>	Will be a partial rehabilaiaon Allandale tank and a full rehabilitation of Hillcrest Tank.	1/3/2021	Hillcrest completed. Currently in Paint Cure time. Estimated 2 weeks before disinfection of tank and put back online.
\$670,291.15	Michael Thompson	<b>Stone Drive - Phase 1 (SR 1, US 11W) Sidewalk Improvements</b>	Construction of sidewalk along Stone Drive from Stonebrook Place Pvt. Dr. to nearPinebrook Drive where current sidewalk gaps exist. Includes work to make existing driveways ADA accessible. [95% State Funded 5% City]	5/28/2021	Work is underway. Contractor started on Phase 2 end of project.
\$461,607.00	Michael Thompson	<b>Stone Drive - Phase 2 (SR 1, US 11W) Sidewalk Improvements</b>	Construction of sidewalk along Stone Drive from Stonebrook Place Pvt. Dr. to Bloomingdale Pike [95% State Funded 5%]	5/28/2021	Ongoing work in vicinity of intersection with Rufus Road. Grading, concrete placement, and drainage work ongoing.
\$415,000.00	Chad Austin	<b>SR 93- Fall Branch section (TDOT)</b>	TDOT project to improve State Route 93 in the Fall Branch area. Impacted waterlines in this area will be are to be relocated as part of the TDOT project.	8/31/2021	TDOT to begin construction June 1, 2020; project estimated completion dated 8/31/2021
\$352,000.00	Chad Austin	<b>SR 93- Horse Creek/Derby Drive Section (TDOT)</b>	TDOT project to improve State Route 93 in the Horse Creek/Derby Drive area. Project also includes improvements with the intersection with Derby Drive, along with a new bridge crossing Horse Creek. Impacted waterlines in this area will be are to be reloc	8/31/2022	TDOT "B Date" package due date pushed back to 5/28/2021; anticipated letting December 2021
\$197,791.00	Kitty Frazier	<b>Riverfront Parking Facility</b>	Construction of a 23 space parking lot on the south side of Industry Drive.	12/19/2020	Aspahlt surface topping expected to be completed by 12/11. Bollards and parking curbs expected to be completed by 12/18.

# Status Updates on Active Projects sorted by Completion Date

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## **AGENDA**

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

#### **BUSINESS MEETING**

**Tuesday, December 15, 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  
J. Michael Billingsley, City Attorney  
David Quillin, Police Chief  
George DeCroes, Human Resources Director  
Ken Weems, Planning Manager  
John Morris, Budget Director

Ryan McReynolds, Deputy City Manager  
Sid Cox, City Recorder/Chief Financial Officer  
Scott Boyd, Fire Chief  
Jessica Harmon, Assistant to City Manager  
Adrienne Batara, Public Relations Director  
John Rose, Economic Development Director

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

#### **II.A. PLEDGE OF ALLEGIANCE TO THE FLAG – Led by New Vision Youth**

#### **II.B. INVOCATION – Pastor Scott Young, Temple Baptist Church**

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

#### **III.B. A determination by the board that meeting electronically with limited 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. Billy Wayne Arrington (Alderman Cooper)
2. Cartegraph High Performance Government Award (Kristen Steach)
3. SeeClickFix Demonstration (Kristen Steach)
4. Chief David Quillin

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

1. Appointment to the Historic Zoning Commission (AF: 318-2020) (Mayor Shull)
  - Appointment

#### **V. APPROVAL OF MINUTES**

1. Work Session – November 30, 2020
2. Business Meeting – December 1, 2020

#### **VI. COMMUNITY INTEREST ITEMS**

##### **A. PUBLIC HEARINGS**

1. December 2020 Plan of Services Annual Update (AF: 312-2020) (Elizabeth Rowe)
  - Public Hearing
2. Amend Zoning of a Portion of the Brickyard Area from M-2 (General Manufacturing District) to PD (Planned Development District) (AF: 306-2020) (Ken Weems)
  - Public Hearing
  - Ordinance – First Reading
3. Amendment Two to the 2019 Annual Action Plan for the Community Development Block Grant Program (AF: 323-3030) (Jessica McMurray)
  - Public Hearing
  - Resolution

#### **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 Integrity Building Group, LLC Related to the Miller Parke Phase 1 Development and an Ordinance to Appropriate the Funds (AF: 295-2020) (Ryan McReynolds)
  - Resolution
  - Ordinance – First Reading
2. Enter into Agreement with TDOT for the Brickyard Park Bicycle-Pedestrian Bridge (AF: 314-2020) (Ryan McReynolds)
  - Ordinance – First Reading
  - Resolution
3. Budget Adjustment Ordinance for Various Funds in FY21 (AF: 311-2020) (Chris McCartt)
  - Ordinance

**C. BUSINESS MATTERS REQUIRING FINAL ADOPTION**

1. Budget Adjustment Ordinance for Library Governing Board Fund in FY20 (AF: 310-2020) (Chris McCartt)
  - Ordinance – Second Reading and Final Adoption

**D. OTHER BUSINESS**

1. Accept a Donation of Tempur-Pedic Mattresses (AF: 313-2020) (Scott Boyd)
  - Resolution
2. Professional Services Agreement with Barge Design Solutions for the Kingsport Demolition Landfill Phase 1, Area 2 Closure Project (AF: 315-2020) (Ryan McReynolds)
  - Resolution
3. Awarding the Bid for the Purchase of Three (3) Mid-Sized AWD SUV (AF: 316-2020) (Ryan McReynolds, David Quillin, Steve Hightower)
  - Resolution
4. Approving a Sealed Proposal from Assured Partners for Excess Workers' Compensation Insurance (AF: 320-2020) (Chris McCartt)
  - Resolution
5. Amend the Agreement with Prairie Farms Dairy to Renew for an Additional Year (AF: 319-2020) (David Frye, Jennifer Walker)
  - Resolution
6. Cooperatively Purchase Software Upgrades for the Kingsport Police Department from CentralSquare Technologies (AF: 321-2020) (David Quillin)
  - Resolution
7. Approving Renewal of Property Insurance for City Owned Buildings (AF: 324-2020) (Chris McCartt)
  - Resolution

**VII. CONSENT AGENDA**

1. Cancelling the Board of Mayor and Aldermen January 4, 2021, Work Session and the January 5, 2021, Business Meeting and Setting a Work Session on January 19, 2021, for the Board of Mayor and Aldermen (AF: 317-2020) (Chris McCartt)
  - Resolution
2. Consideration of the 2021 Joint Tri-Cities Legislative Policy (AF: 322-2020) (Chris McCartt)
  - Legislative Policy

**VIII. COMMUNICATIONS**

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



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

**IX. ADJOURN**



## AGENDA ACTION FORM

### Appointment to the Historic Zoning Commission

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

Action Form No.: AF-318-2020  
 Work Session: December 14, 2020  
 First Reading: N/A

Final Adoption: December 15, 2020  
 Staff Work By: Savannah Garland  
 Presentation By: Mayor Shull

### Recommendation:

Approve appointment.

### Executive Summary:

It is recommended to appoint Rev. Jack Edwards to the Historic Zoning Commission to fulfill an unexpired term that will be in effect February 1, 2021. If approved by the Board of Mayor and Aldermen the recommended table reflects term dates.

Terms are five years with no term limits. The commission is comprised of seven members; a representative of a local patriotic or historical organization, one architect, one Planning Commission member and four at-large members who are residents of Kingsport.

Current Commission:			
Member	Term Expires	No. of Terms	Eligibility
Erin Reid	6/30/24	1	At-large
Liza Harmon	6/30/25	3	Historian
Jewell McKinney	6/30/21	3	At-large
Liza Howle	6/30/21	Fulfilling unexpired term	A-large
Dineen West	6/30/22	2	Architect
Beverley Perdue	6/30/23	1	Planning Comm. Rep.
Jason Meredith	6/30/23	1	At-large

Recommended Commission:			
Member	Term Expires	No. of Terms	Eligibility
Erin Reid	6/30/24	1	At-large
Liza Harmon	6/30/25	3	Historian
Jewell McKinney	6/30/21	3	At-large
Rev. Jack Edwards	6/30/21	Fulfilling unexpired term	A-large
Dineen West	6/30/22	2	Architect
Beverley Perdue	6/30/23	1	Planning Comm. Rep.
Jason Meredith	6/30/23	1	At-large

### Attachments:

1. Jack Edwards Bio

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

Rev. Pierce J. (Jack) Edwards  
4169 Cooks Point  
Kingsport, TN 37664-3977  
(423) 288-2163 (home)  
(423) 276-5929 (cell)  
[edwardsfbs@mounet.com](mailto:edwardsfbs@mounet.com)

Born: Grayson County, VA

Education: Galax High School, Galax, VA  
Tennessee Wesleyan College, B.A., 1964  
Candler School of Theology, Emory University, M. Div., 1967

Married: Judy Jarvis, Rockwood, TN (58 years)

Children: Joy E. Munsey, Cleveland, VA. Assistant Principal of the Career Technical  
Education Center of Washington County, VA  
Janna E. Fowler, Knoxville, TN. Owner of *All About Weddings*

Grandchildren: Andrew Munsey, age 26, Pilot with American Airlines (currently  
furloughed due to the pandemic of Covid 19)  
Jacob Munsey, age 22, Graduated from Virginia Tech Dec. 2019 and  
Currently enrolled in Nursing School

Luke Fowler, age 12 (6<sup>th</sup> grade at Farragut Middle School)  
Ella Fowler age 12 (6<sup>th</sup> grade at Farragut Middle School)

Ordained: Deacon 1965 in The Methodist Church  
Elder 1967 in The Methodist Church

Retired June 12, 2007 from the Holston Conference of The United Methodist Church  
after having served 45 years in the active ministry. Six of these years were served as the  
district superintendent of the Morristown District and the last six years were served as the  
senior pastor of First Broad Street United Methodist Church, Kingsport, TN.

Other: A delegate to two General Conferences and a delegate to five Jurisdictional  
Conferences. Alternate delegate to the 2008 Jurisdictional Conference

- Member of the Appalachian District Committee on Ministry
- Chairman of the Appalachian District Building and Location Committee
- Member of the Wesleyan Covenant Association

Local: Member of the Downtown Kingsport Façade Committee

Been employed for 14 years with Carter-Trent Funeral Homes as a Funeral Assistant



Minutes of the Regular Work Session of the  
Board of Mayor and Aldermen, City of Kingsport, Tennessee  
Monday, November 30, 2020, 4:30 PM  
Council Room – City Hall

PRESENT: Board of Mayor and Aldermen

Mayor Patrick W. Shull, Presiding

Vice-Mayor Colette George

Alderman Jennifer Adler (via zoom)

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 (via zoom)

Sid Cox, City Recorder

Angie Marshall, City Clerk/Deputy City Recorder

Bart Rowlett, Assistant City Attorney

David Quillin, Chief of Police (via zoom)

Terry Arnold, Assistant Fire Chief

John Morris, Budget Officer

George DeCroes, Human Resources Manager (via zoom)

Jessica Harmon, Assistant to City Manager

Chris Campbell, Public Transportation Manager

Adrienne Batara, Public Information & Communications Director

1. **CALL TO ORDER:** 4:30 p.m. by Mayor Patrick W. Shull.
2. **ROLL CALL:** By Deputy City Recorder Marshall.
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.  
**Mayor Shull made this declaration and each alderman verbally affirmed.**
4. **TRANSIT STUDY RECOMMENDATIONS.** Chris Campbell presented this item. Michelle Poyourow and Ricky Angueira from Jarrett Walker and Associates provided additional information via zoom and answered questions from the board. Discussion followed.
5. **ANIMAL ORDINANCE DISCUSSION.** Assistant City Attorney Rowlett gave a presentation on this item, pointing out the four primary categories that focus on the majority of complaints and what other local municipalities are doing. There was some discussion.
6. **REVIEW OF AGENDA ITEMS ON THE DECEMBER 1, 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.

**Minutes of the Regular Work Session of the Board of Mayor and Aldermen of  
Kingsport, Tennessee, Monday, November 30, 2020**

**VI.D.1 Amend the Stonegate Redevelopment District Plan and Approve Tax Increment Financing for the West Gate Project** (AF: 307-2020). Vice-Mayor George commented on the vote by the county and noted the expectations for future projects such as these.

**VI.D.2 Extend Via Temporary Policy the Expiration Date of the Emergency Paid Sick Leave Act** (AF: 309-2020). Assistant City Attorney Rowlett discussed this item, noting the Governor's previously approved exceptions for COVID-19 mandates expire on December 31. This will allow the city to extend it to June 1 or until the State of Emergency is lifted. He noted the main goal was to incentivize people to stay home if they're sick to keep the workplace as safe as possible.

**VI.D.3 Amendment to an Economic Development Contribution to the Industrial Development Board of Kingsport and Authorizing One or More Agreements Pertaining to the Same** (AF: 301-2020). The city manager provided details stating this would allow for the loan to be restructured because it was originally set up for industrial use.

**VII.2 Reject Bids for Property at 1725 Netherland Inn Road** (AF: 291-2020). City Recorder Cox noted the bids were not near the appraisal price. He stated staff would reevaluate and move forward.

**VIII.C REPORT ON DEBT OBLIGATION - GO REFUNDING BONDS, SERIES 2020**. City Recorder Cox explained this was a standard report required by the comptroller when debt is issued. He noted the city got a great rate and would be saving 1.8 million dollars over a 10-12 year period.

**7. ADJOURN.** Seeing no other matters presented for discussion at this work session, Mayor Shull adjourned the meeting at 6:10 p.m.

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ANGELA MARSHALL  
Deputy City Recorder

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PATRICK W. SHULL  
Mayor

Minutes of the Regular Business Meeting of the  
Board of Mayor and Aldermen of the City of Kingsport, Tennessee  
Tuesday, December 1, 2020, 7:00 PM  
Large Court Room – City Hall

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

City Administration  
Chris McCartt, City Manager  
J Michael Billingsley, City Attorney (via zoom call)  
Angie Marshall, City Clerk/Deputy City Recorder

**I. CALL TO ORDER:** 7:00 p.m., by Mayor Patrick W. Shull.

**II.A. PLEDGE OF ALLEGIANCE TO THE FLAG:** Jessica McMurray.

**II.B. INVOCATION:** Pastor Scottie Burkhalter, Holy Trinity Lutheran Church.

**III.A. ROLL CALL:** By City Recorder Cox. All Present.

**III.B.** A determination by the board that meeting electronically with limited 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.**

1. Supplies for Soldiers - Angela McCamy (Mayor Shull).
2. Mark Miller TN Public Works Project of the Year Award - Miracle Field.  
City will receive the award from the Branch Director, Byron Fortner, Public Works Director of Sevierville (Ryan McReynolds).

**IV.B. APPOINTMENTS.** None.

**V. APPROVAL OF MINUTES.**

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

- A. November 16, 2020 Regular Work Session
- B. November 17, 2020 Regular 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, December 1, 2020**

**VI. COMMUNITY INTEREST ITEMS.**

**A. PUBLIC HEARINGS.** None.

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

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

**1. Budget Adjustment for Library Governing Board Fund FY20**  
(AF: 310-2020) (Chris McCartt).

Motion/Second: George/Adler, to pass:

AN ORDINANCE TO AMEND THE LIBRARY GOVERNING BOARD FUND BUDGET FOR THE YEAR ENDING JUNE 30, 2020; AND, TO FIX THE EFFECTIVE DATE OF THIS ORDINANCE

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

**C. BUSINESS MATTERS REQUIRING FINAL ADOPTION.** None.

**D. OTHER BUSINESS.**

**1. Amend the Stonegate Redevelopment District Plan and Approve Tax Increment Financing for the West Gate Project** (AF: 307-2020) (Chris McCartt). There was some discussion on this item.

Motion/Second: Olterman/Phillips, to pass:

**Resolution No. 2021-099**, A RESOLUTION APPROVING A TAX INCREMENT FINANCING AMENDMENT FOR THE STONEGATE PLAZA REDEVELOPMENT DISTRICT – WEST GATE PROJECT

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

**2. Extend Via Temporary Policy the Expiration Date of the Emergency Paid Sick Leave Act** (AF: 309-2020) (Chris McCartt).

Motion/Second: Duncan/Cooper, to pass:

**Resolution No. 2021-100**, A RESOLUTION TO EXTEND VIA TEMPORARY POLICY THE EXPIRATION DATE OF THE EMERGENCY PAID SICK LEAVE ACT CREATED BY THE FAMILIES FIRST CORONAVIRUS RESPONSE ACT AND TO FIX THE EFFECTIVE DATE OF THIS RESOLUTION

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, December 1, 2020**

**3. Amendment to an Economic Development Contribution to the Industrial Development Board of Kingsport and Authorizing One or More Agreements Pertaining to the Same (AF: 301-2020) (Chris McCartt).**

Motion/Second: Phillips/Olterman, to pass:

**Resolution No. 2021-101**, A RESOLUTION APPROVING AN AMENDMENT TO THE ECONOMIC DEVELOPMENT CONTRIBUTION AGREEMENT WITH THE INDUSTRIAL DEVELOPMENT BOARD OF THE CITY OF KINGSFORT, TENNESSEE; 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."

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

Motion/Second: George/Duncan, to adopt:

**1. Reject All Bid(s) Related to the Purchase of Paratransit Vans for Urban Mass Transit (AF: 304-2020) (Chris Campbell).**

Pass:

**Resolution No. 2021-102**, A RESOLUTION REJECTING ALL BIDS RELATED TO THE PURCHASE OF 5 HIGHTOP PARATRANSIT VANS

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

**2. Reject Bids for Property at 1725 Netherland Inn Road (AF: 291-2020) (Chris McCartt, Sid Cox).**

**Resolution No. 2021-103**, A RESOLUTION REJECTING ALL BIDS RELATED TO THE REAL PROPERTY LOCATED AT 1725 NETHERLAND INN ROAD

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

**3. Amend Community Develop Advisory Committee (AF: 308-2020) (Jessica McMurray).**

Pass:

**Resolution No. 2021-104**, A RESOLUTION AMENDING RESOLUTION No. 2021-027 WHICH CREATED THE COMMUNITY DEVELOPMENT ADVISORY COMMITTEE, ESTABLISHED ITS PURPOSE, AUTHORITY, MEMBERSHIP, LENGTH OF TERMS, ORGANIZATION, MEETING REQUIREMENTS, APPOINTMENT OF SUBCOMMITTEES, AND OTHER MATTERS PERTAINING TO THE COMMITTEE

**Minutes of the Regular Business Meeting of the Board of Mayor and Aldermen  
of the City of Kingsport, Tennessee, Tuesday, December 1, 2020**

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

**VIII. COMMUNICATIONS.**

- A. CITY MANAGER.** Mr. McCartt extended sympathies on behalf of city staff to former building inspector Mike Freeman on the loss of his wife Linda, who was also active with the Downtown Kingsport Association.
- B. MAYOR AND BOARD MEMBERS.** Alderman Duncan invited everyone to attend Jingle and Mingle downtown Thursday night from 5-8pm. He also commented on his participation with the virtual Christmas tree lighting which can be viewed online. He congratulated the nominees for the upcoming KOSBE awards and mentioned the scooter drive being coordinated by Vanessa Bennett at the Chamber. Alderman Adler stated the Symphony of the Mountains would hold a virtual concert on December 5 at 4pm and additionally the Kingsport Ballet will be airing the Nutcracker later in December. Lastly, she commented on local shopping and encouraged the use of curbside pickup to make it even easier. Alderman Phillips echoed the city manager’s sentiments to Mike Freeman. He also encouraged people to get out and drive by Christmas light decorations, noting a website that had a list of local addresses to visit pointing out the majority were in Kingsport. Lastly he commented on the recently approved housing units. Alderman Cooper stated that since the Isaiah 1:17 house opened in September, there have been over 50 kids to use the facility. She provided details on how to sponsor these children. Alderman Olterman thanked Eastman for professionally handling a recent incident. He congratulated Danny and Karla Karst who were present in the audience for doing great things for Kingsport. Lastly he encouraged everyone to get out and support local school sports. Vice-Mayor George also emphasized the importance of shopping local. Mayor Shull spoke about economic development and the actions that have been taken since he became mayor. He thanked the staff and the BMA for their work and support to make these things happen.
- C. REPORT ON DEBT OBLIGATION - GO REFUNDING BONDS, SERIES 2020.**
- D. VISITORS.** None.

**IX. ADJOURN.** Seeing no other business for consideration at this meeting, Mayor Shull adjourned the meeting at 7:47 p.m.

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ANGELA MARSHALL  
Deputy City Recorder

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PATRICK W. SHULL  
Mayor



## AGENDA ACTION FORM

### December 2020 Plan of Services Annual Update

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

Action Form No.: AF-312-2020  
 Work Session: December 14, 2020  
 First Reading: N/A

Final Adoption: December 15, 2020  
 Staff Work By: Elizabeth Rowe  
 Presentation By: Elizabeth Rowe

### Recommendation:

Conduct a Public Hearing and receive comment concerning the Annual Plan of Services Report for unfulfilled Annexation commitments for December 2020

Cherry Knoll Ordinance No. 5784 – Annual Update  
 Border Regions Area 1 Ordinance No. 6169 – Annual Update-Complete  
 Border Regions Area 2 Ordinance No. 6171 – Annual Update- Complete  
 Border Regions Area 3 Ordinance No. 6173 – Annual Update-Complete  
 Kingsport South Ordinance No. 6192 – Annual Update-Complete  
 Seaver Road Ordinance No. 2017-176- Annual Update- Complete  
 Worthington Drive Ordinance No. 2020-214- 6 Month Update

### Executive Summary:

Tennessee Code Annotated 6-51-108 states in part "...upon expiration of six (6) months from the date any annexed territory for which a Plan of Service has been adopted becomes a part of the annexing of the municipality, and annually thereafter until such services have been extended according to such plan, there shall be prepared and published in the newspaper of general circulation in the municipality a report of the progress made in the preceding year... the governing body by municipality shall publish notice of the public hearing on such progress reports and changes, and hold such hearings thereon..." As a result of this statute, and the need to conduct annual public hearings concerning unfulfilled Plan of Service commitments, it is required that the Board of Mayor and Aldermen conduct a public hearing to receive comments concerning the Annual Plan of Service Reports. The Notice of Public Hearing was published December 02, 2020.

### Attachments:

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

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

**DECEMBER 2020 ANNUAL PLAN OF SERVICE REPORT  
FOR ORDINANCE NUMBERS: 5784, 6169, 6171, 6173, 6192, 2017-176 & 2020-214**

<u>Annexation Area</u>	<u>Effective Date</u>	<u>POS Deadline</u>	<u>Est. Completion</u>	<u>Status</u>
Cherry Knoll Ordinance No. 5784	12/04/2008	Water Service Sewer Service Street Lighting	to be provided when development occurs to be provided when development occurs to be provided when development occurs	
Border Regions Area 1 Ordinance No. 6169	03/09/2012	Water Service Sewer Service Street Lighting		Completed Completed Completed
Border Regions Area 2 Ordinance No. 6171	03/09/2012	Water Service Sewer Service Street Lighting		Completed Completed Completed
Border Regions Area 3 Ordinance No. 6173	03/09/2012	Water Service Sewer Service Street Lighting		Completed Completed Completed
Kingsport South Ordinance No. 6192	04/20/2012	Water Service Sewer Service Street Lighting		Completed Completed Completed
Seaver Road Ordinance No. 2017-176	05/05/2017	Water Service Sewer Service Street Lighting		Completed Completed Completed
Worthington Drive Ordinance No. 2020-214	06/26/2020	Water Service Sewer Service Street Lighting		Available when Annexed Available when Annexed N/A (no new roadway annexed)

## NOTICE OF PUBLIC HEARING

The Kingsport Board of Mayor and Aldermen will conduct a public hearing concerning the ANNUAL PLAN OF SERVICE (POS) REPORT— DECEMBER, on the following annexation areas at its December 15, 2020 regular business meeting at 7:00 P.M. in the courtroom of the City Hall Building, 225 W. Center Street, Kingsport Tennessee.

Annexation Area: Cherry Knoll Annexation, Ordinance No.5784

Effective Date: 12/04/2008

POS, deadline: Annual update. Water, Sewer & Lighting, when development occurs

Annexation Area: Border Regions Area 1, Ordinance No. 6169

Effective Date: 03/09/2012

POS, deadline: Annual update. Water, Sewer & Lighting, Complete.

Annexation Area: Border Regions Area 2, Ordinance No. 6171

Effective Date: 03/09/2012

POS, deadline: Annual update. Water, Sewer & Lighting, Complete.

Annexation Area: Border Regions Area 3, Ordinance No. 6173

Effective Date: 03/09/2012

POS, deadline: Annual update. Water, Sewer & Lighting, Complete.

Annexation Area: Kingsport South, Ordinance No. 6192

Effective Date: 04/20/2012

POS, deadline: Annual update. Water, Sewer & Lighting, Complete.

Annexation Area: Seaver Road, Ordinance Number 2017-176

Effective Date: 05/05/2017

POS, Deadline: Annual Update. Lighting is complete. Water and Sewer, 2022.

Annexation Area: Worthington Drive, Ordinance number 2020-214

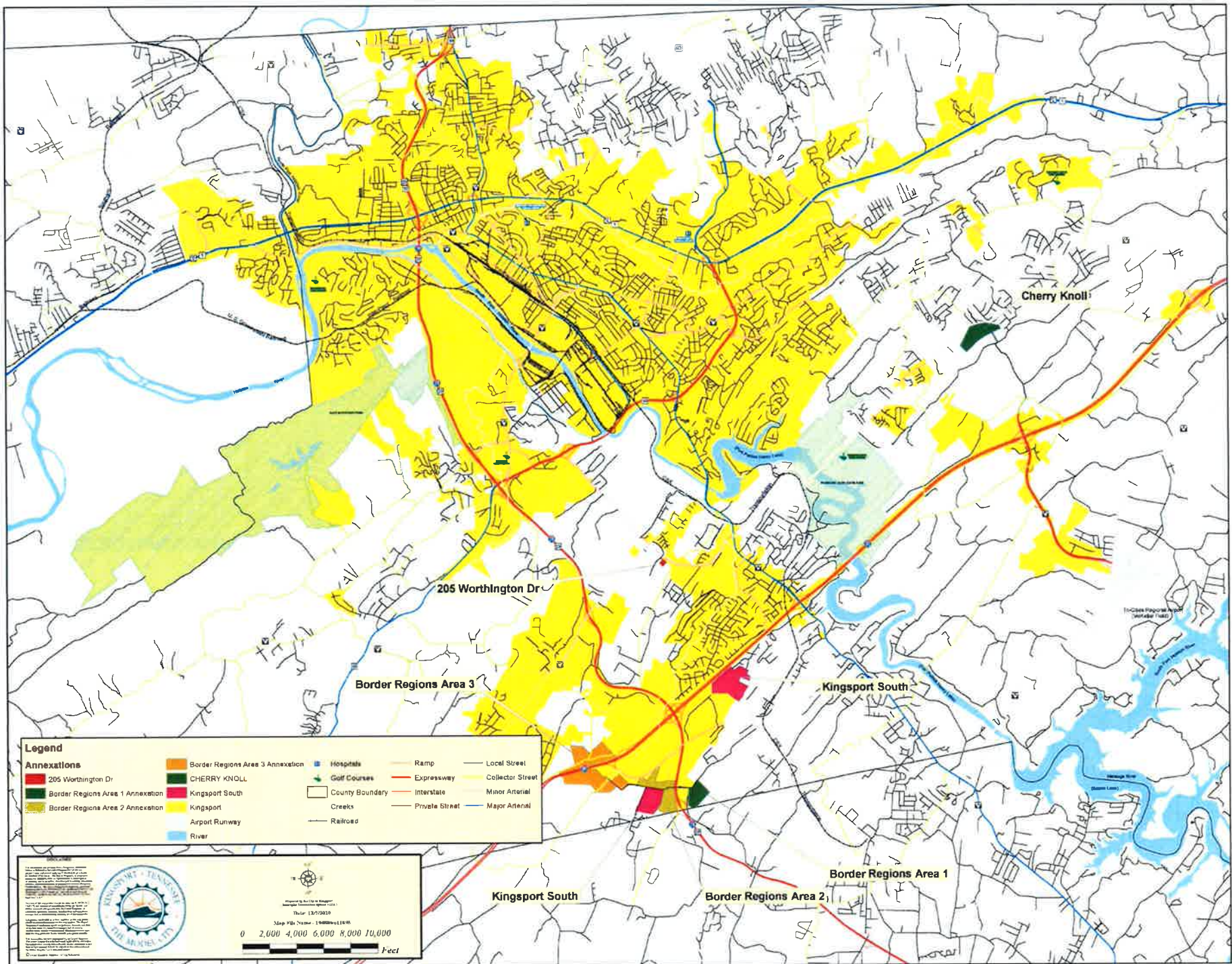
Effective Date: 06/26/2020

POS, Deadline: 6 month update.

All City of Kingsport public meetings are conducted in accessible locations. If you require accommodations to participate in this meeting, these may be requested by calling (423) 229-9401, ext. 5 or by emailing [ADAContact@KingsportTN.gov](mailto:ADAContact@KingsportTN.gov) at least 72 hours in advance. Copies of any documents used are available in accessible formats upon request.

City of Kingsport  
Angie Marshall, City Clerk.  
P1T: 12/02/2020





2019 ANNEXATION PLAN OF SERVICES ANNUAL UPDATE FOR DECEMBER 2020					
Pursuant to TCA 6-51-108, the City of Kingsport Tennessee is presenting the following report of progress on adopted Plans of Services.					
*All items in yellow are up for their annual update*					
ANNEXATION PROJECT and LOCATION	ORD/RES No.	EFFECTIVE DATE	WATER SERVICE	SEWER SERVICE	STREET LIGHTING
<b>2008 Annexations</b>					
08-301-00018 Cherry Knoll Annexation	5784	Dec 4, 2008	POS Amended 12/4/16 provided when dev. occurs	POS Amended 12/4/16 provided when dev. occurs	POS Amended 12/4/16 provided when dev. occurs
<b>2012 Annexations</b>					
11-301-00019 Border Regions Area 1	6169	March 9, 2012	Completed	Completed	Completed
11-301-00020 Border Regions Area 2	6171	March 9, 2012	Completed	Completed	Completed
11-301-00021 Border Regions Area 3	6173	March 9, 2012	Completed	Completed	Completed
12-301-00001 Kingsport South	6192	April 20, 2012	Completed	Completed	Completed
<b>2017 Annexations</b>					
17-301-00001 Seaver Road Annexation	2017-176	May 5, 2017	Completed	Completed	Completed
<b>2020 Annexations</b>					
20-301-00001 Worthington Drive Annexation	2020-214	June 26th, 2020	Available at time of Annexation	Available at time of Annexation	n/a
20-301-00003 Bell Ridge Road Annexation	2021-032	August 28th, 2020	Available at time of Annexation		n/a
20-301-00002 Cooks Valley Road	2021-034	August 28th, 2020	Available at time of Annexation	Available at time of Annexation	n/a
* All Annexation Plans of Services include Police & Fire Services, Electric Services, Solid Waste Disposal, Zoning Services , Recreational Facilities, Street Maintenance and City Schools. These services are established upon the effective date of the annexation*					





## AGENDA ACTION FORM

### **Amend Zoning of a Portion of the Brickyard Area from M-2 (General Manufacturing District) to PD (Planned Development District)**

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

Action Form No.: AF-306-2020  
 Work Session: December 14, 2020  
 First Reading: December 15, 2020

Final Adoption: January 19, 2021  
 Staff Work By: Ken Weems  
 Presentation By: Ken Weems

#### **Recommendation:**

- Hold Public Hearing
- Approve Ordinance amending the zoning ordinance to rezone property containing a portion of parcels 9 and 9.50, located at the terminus of Brickyard Park Drive, from M-2, General Manufacturing District to PD, Planned Development District.

#### **Executive Summary:**

This is an owner-requested rezoning of approximately 43 acres located at the terminus of Brickyard Park Drive from M-2 (General Manufacturing District) to PD (Planned Development District). The purpose of the rezoning is to facilitate development of both the residential and green space portions of the Brickyard Development. During their November 2020 regular meeting, the Kingsport Regional Planning Commission voted unanimously to send a favorable recommendation to rezone the property to the Board of Mayor and Aldermen by a vote of 9-0. This rezoning effort has not received any public comment. The notice of public hearing was published on November 30, 2020.

#### **Attachments:**

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

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

## NOTICE OF PUBLIC HEARING

NOTICE IS HEREBY GIVEN to all citizens of the City of Kingsport, Tennessee, to all persons interested, and the public at large that the City of Kingsport Board of Mayor and Aldermen will conduct a Public Hearing during its regular business meeting on December 15, 2020 to consider the rezoning for a portion of parcels 9 and 9.5 located along Brickyard Park Drive from the M-2 District to the PD District. The regular business meeting will begin at 7:00 p.m. in the large courtroom located on the second floor of City Hall, at 225 W. Center Street, Kingsport, Tennessee.

The property proposed for rezoning is generally described as follows:

*BEGINNING at a point, said point being the eastern corner of Tax Map 61B, parcel 9; thence in a southwesterly direction, approximately 1,247 feet to a point, said point being the western corner of parcel 15; thence in a northwesterly direction, approximately 1,207 feet to a point, said point lying on the southeast boundary of Brickyard Park Drive right-of-way; thence in a northeasterly direction, following the right-of-way of Brickyard Park Drive, approximately 90 feet to a point, said point lying on the southeast boundary of Brickyard Park Drive right-of-way; thence in a northwesterly direction, crossing Brickyard Park Drive right-of-way, approximately 569 feet to a point, said point lying on the boundary of parcel 9.5; thence in a northwesterly direction, approximately 453 feet to a point, said point lying on the boundary of parcel 9; thence in a northeasterly direction, approximately 457 feet to a point, said point being the northern corner of parcel 9; thence in a southeasterly direction, approximately 2,033 feet to the point of BEGINNING, and being a portion of parcels 9 and 9.5, including a portion of Brickyard Park Drive right-of-way, approximately 100 feet in length, Tax Maps 46A, 61A, and 61B as shown on the August 2020 Sullivan County Tax Maps.*

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

All City of Kingsport public meetings are conducted in accessible locations. If you require accommodations to participate in this meeting, these may be requested by calling (423) 229-9401, ext. 5 or by emailing [ADAContact@KingsportTN.gov](mailto:ADAContact@KingsportTN.gov) at least 72 hours in advance. Copies of any documents used are available in accessible formats upon request.

CITY OF KINGSPORT  
Angie Marshall, City Clerk  
PIT: 11/30/2020

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

AN ORDINANCE TO FURTHER AMEND THE ZONING CODE, TEXT AND MAP, TO REZONE PROPERTY LOCATED ALONG BRICKYARD PARK DRIVE FROM M-2, GENERAL MANUFACTURING DISTRICT TO PD, PLANNED DEVELOPMENT DISTRICT IN THE 11<sup>TH</sup> CIVIL DISTRICT OF SULLIVAN COUNTY; TO FIX A PENALTY FOR THE VIOLATION OF THIS ORDINANCE; AND TO FIX THE EFFECTIVE DATE OF THIS ORDINANCE

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

SECTION I. That the zoning code, text, and map, be and the same is hereby further amended to rezone property located along Brickyard Park Drive from M-2, General Manufacturing District to PD, Planned Development District in the 11<sup>th</sup> Civil District of Sullivan County; said area to be rezoned being further and more particularly described as follows:

BEGINNING at a point, said point being the eastern corner of Tax Map 61B, parcel 9; thence in a southwesterly direction, approximately 1,247 feet to a point, said point being the western corner of parcel 15; thence in a northwesterly direction, approximately 1,207 feet to a point, said point lying on the southeast boundary of Brickyard Park Drive right-of-way; thence in a northeasterly direction, following the right-of-way of Brickyard Park Drive, approximately 90 feet to a point, said point lying on the southeast boundary of Brickyard Park Drive right-of-way; thence in a northwesterly direction, crossing Brickyard Park Drive right-of-way, approximately 569 feet to a point, said point lying on the boundary of parcel 9.5; thence in a northwesterly direction, approximately 453 feet to a point, said point lying on the boundary of parcel 9; thence in a northeasterly direction, approximately 457 feet to a point, said point being the northern corner of parcel 9; thence in a southeasterly direction, approximately 2,033 feet to the point of BEGINNING, and being a portion of parcels 9 and 9.5, including a portion of Brickyard Park Drive right-of-way, approximately 100 feet in length, Tax Maps 46A, 61A, and 61B as shown on the August 2020 Sullivan County Tax Maps.

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

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

\_\_\_\_\_  
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 \_\_\_\_\_



**Rezoning Report**

**Kingsport Regional Planning Commission**

**File Number 20-101-00005**

**Brickyard Rezoning**

<b>Property Information</b>			
<b>Address</b>		Brickyard Park Dr	
<b>Tax Map, Group, Parcel</b>		046P, F, a portion of parcels 9 and 9.50	
<b>Civil District</b>		11	
<b>Overlay District</b>		n/a	
<b>Land Use Designation</b>		Industrial	
<b>Acres</b>		43 +/-	
<b>Existing Use</b>	Vacant land	<b>Existing Zoning</b>	M-2
<b>Proposed Use</b>	Residential and green space	<b>Proposed Zoning</b>	PD
<b>Owner /Applicant Information</b>			
<b>Name:</b> City of Kingsport & Kingsport Industrial Dev Bd <b>Address:</b> 225 W. Center St <b>City:</b> Kingsport <b>State:</b> TN <b>Zip Code:</b> 37660 <b>Phone:</b> (423)229-9368		<b>Intent:</b> <i>To rezone from M-2 (General Manufacturing District) to PD (Planned Development District) to accommodate future Brickyard area residential and green space uses.</i>	
<b>Planning Department Recommendation</b>			
<p>The Kingsport Planning Division recommends sending a <b>POSITIVE</b> recommendation to the Kingsport Board of Mayor and Aldermen for the following reasons:</p> <p><i>The site for this proposed PD district will provide residential living convenient to downtown. The green space area is an ideal location for PD zone designated open space.</i></p> <p><i>The proposal supports future development of the Brickyard Park area.</i></p> <p><b>Staff Field Notes and General Comments:</b></p> <p><i>The rezoning site is level ground and ideal for revitalization from its past use of brick manufacturing.</i></p> <p><i>The City is currently assembling an RFP to best dictate the future residential and green space configuration. The current concept plan for the area is included in this report.</i></p>			
<b>Planner:</b>	Ken Weems	<b>Date:</b>	November 9, 2020
<b>Planning Commission Action</b>		<b>Meeting Date:</b>	<b>November 19, 2020</b>
<b>Approval:</b>			
<b>Denial:</b>		<b>Reason for Denial:</b>	
<b>Deferred:</b>		<b>Reason for Deferral:</b>	

**PROPERTY INFORMATION**

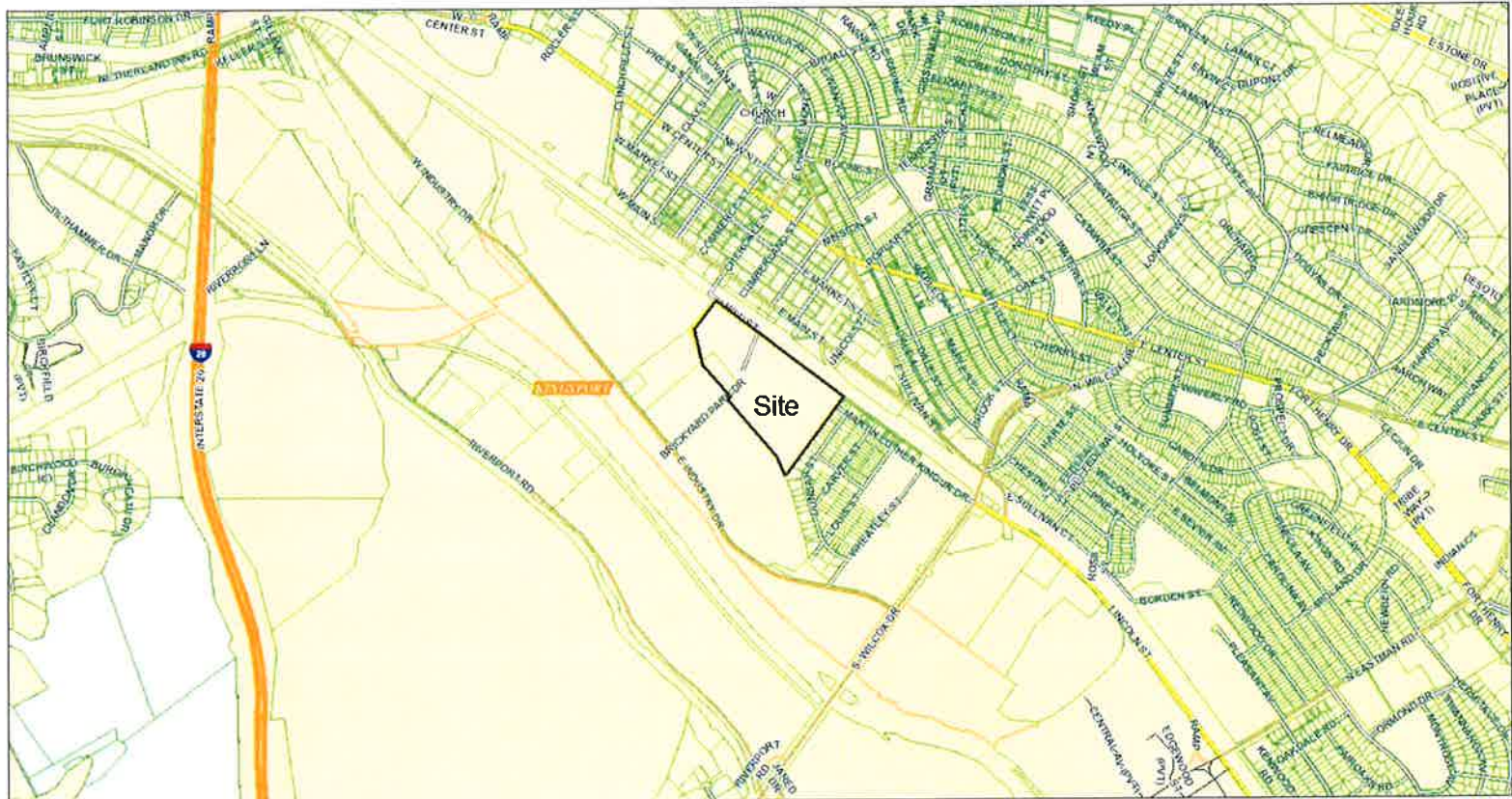
<b>ADDRESS</b>	Brickyard Park Dr
<b>DISTRICT</b>	11
<b>OVERLAY DISTRICT</b>	n/a
<b>EXISTING ZONING</b>	M-2
<b>PROPOSED ZONING</b>	PD
<b>ACRES</b>	43 +/-
<b>EXISTING USE</b>	vacant land
<b>PROPOSED USE</b>	residential and green space

**INTENT**

*To rezone from M-2 (General Manufacturing District) to PD (Planned Development District) to accommodate future Brickyard area residential and green space uses.*

Vicinity Map

ArcGIS Web Map



12/7/2020, 11:32:41 PM

Sullivan County Parcels  
Lake\_Pond  
Parcel\_Conflict  
Parcels  
Railroad\_ROW  
River  
Street\_ROW  
Hawkins County Parcels  
Lake\_Pond  
Parcel\_Conflict  
Parcels  
Railroad\_ROW  
River

1:18,056  
0 0.225 0.45 0.9 mi  
0 0.35 0.7 1.4 km

Web AppBuilder for ArcGIS



Surrounding Zoning Map

ArcGIS Web Map



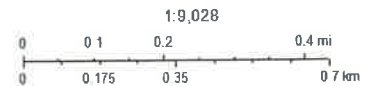
11/7/2020, 11:36:44 PM

<b>Ivan County Parcels</b>	Street_ROW	River
Lake_Pond	<b>Hawkins County Parcels</b>	Street_ROW
Parcel_Conflict	Lake_Pond	Urban Growth Boundary
Parcels	Parcel_Conflict	<b>City Zoning</b>
Railroad_ROW	Parcels	<Null>
River	Railroad_ROW	TAC

R-5	B-1	B-4P
GC	B-2	BC
B-2E	B-3	GC
A-1	B-4	M-1
A-2	B-4P	M-1R
AR		M-2

MX	P-1
P-D	PBD-3
PBD/*	PD

PMD-1	R-1B	R-4
PMD-2	R-1C	Split
PUD	R-2	TA
PVD	R-3	TA-C
R-1	R-3A	UAE
R-1A	R-3B	



Web AppBuilder for ArcG



Future Land Use Plan 2030  
Designation: Industrial

ArcGIS Web Map



7/7/2020, 11:38:08 PM

Ilwaco County Parcels	Street_ROW	River	Multi-Family
Lake_Pond	Hawkins County Parcels	Street_ROW	Industrial
Parcel_Conflict	Lake_Pond	Urban Growth Boundary	Retail/Commercial
Parcels	Parcel_Conflict	Future Land Use	Public
Railroad_ROW	Parcels	Agri/Vacant	Utilities
River	Railroad_ROW	Single Family	



Web AppBuilder for ArcGIS



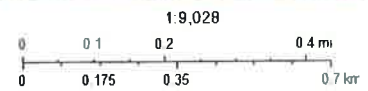
Aerial

ArcGIS Web Map



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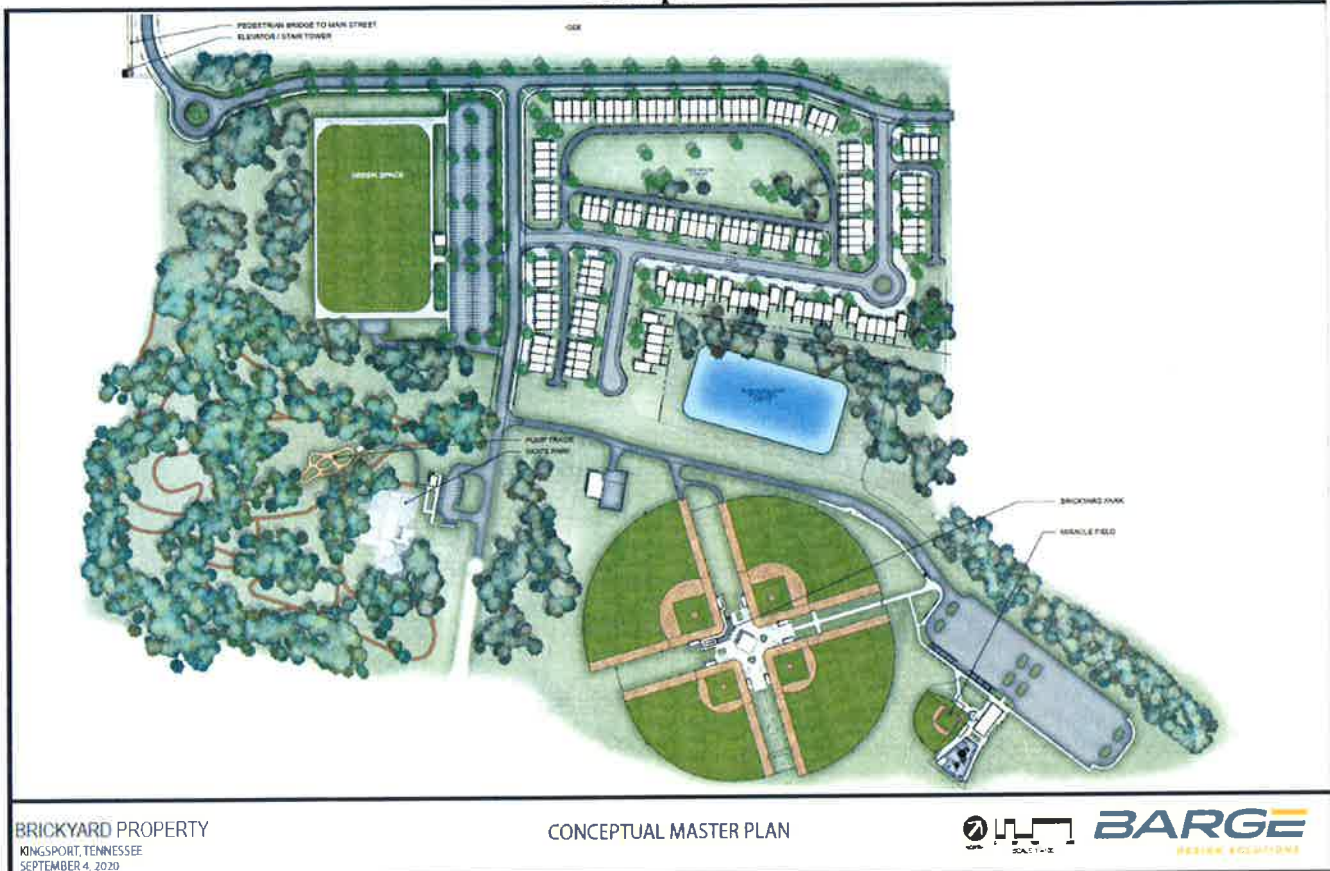
- |  |  |   |
|--|--|---|
| <b>Ilwaco County Parcels</b>             | <input type="checkbox"/> Street_ROW      | <input type="checkbox"/> River                            |
| <input type="checkbox"/> Lake_Pond       | <b>Hawkins County Parcels</b>            | <input type="checkbox"/> Street_ROW                       |
| <input type="checkbox"/> Parcel_Conflict | <input type="checkbox"/> Lake_Pond       | <input checked="" type="checkbox"/> Urban Growth Boundary |
| <input type="checkbox"/> Parcels         | <input type="checkbox"/> Parcel_Conflict |   |
| <input type="checkbox"/> Railroad_ROW    | <input type="checkbox"/> Parcels         |   |
| <input type="checkbox"/> River           | <input type="checkbox"/> Railroad_ROW    |   |



Web AppBuilder for Arc



Concept Plan



Future residential portion of Brickyard

Prepared by Kingsport Planning Department for the  
Kingsport Regional Planning Commission Meeting on November 19, 2020



**(end of Martin Luther King Jr. Drive in background, center)**



**Future Brickyard green space (Cement Hill in background)**



**Cement Hill with green space in foreground**





Existing Uses Location Map  
ArcGIS Web Map



1/7/2020, 11:48:39 PM

- Iliwa County Parcels
- Lake\_Pond
- Parcel\_Conflict
- Parcels
- Railroad\_ROW
- River
- Street\_ROW
- Hawkins County Parcels
- Lake\_Pond
- Parcel\_Conflict
- Parcels
- Railroad\_ROW
- River
- Street\_ROW
- Urban\_Growth\_Boundary



Web AppBuilder for ArcGIS

Existing Zoning/ Land Use Table

Location	Parcel / Zoning Petition	Zoning / Use	History Zoning Action Variance Action
North, East, Northwest	1	<u>Zone: City B-2</u> <u>Use: park</u>	n/a
Further North and Northwest	2	<u>Zone: City B-2</u> <u>Use: Higher Ed Center</u>	n/a

East	3	Zone: City R-1C Use: single family	n/a
Further East	4	Zone: City PVD Use: VO Dobbins	n/a
Southeast and South	5	Zone: City M-2 Use: Miracle Field	n/a
Further South	6	Zone: City M-2 Use: various industrial uses	n/a
West	7	Zone: City M-2 Use: Domtar plant	n/a

**Standards of Review**

Staff shall, with respect to each zoning application, investigate and make a recommendation with respect to factors 1 through 7, below, as well as any other factors it may find relevant.

- Whether or not the proposal will permit a use that is suitable in view of the use and development of adjacent and nearby property?** The proposal will permit a use that is compatible with both the adjacent single family housing in the Riverview Community, downtown, and surrounding Brickyard Park amenities.
- Whether or not the proposal will adversely affect the existing use or usability of adjacent or nearby property?** The proposal of residential use and green space will not create an adverse effect on adjacent or nearby property. Residential use is the preferred use identified by the Riverview Community during a recent meeting about the future of the rezoning site.
- Whether the property to be affected by the proposal has a reasonable economic use as currently zoned?** The current industrial zone for the area is no longer economically reasonable due to the change in surrounding land uses.
- Whether the proposal is in conformity with the policies and intent of the land use plan?** The proposed PD zone does not conform to the future land use plan, which identifies industrial use for the area. The land use plan, however, did not take the expansion of Brickyard Park into consideration when it was produced.

**Proposed use:** single family residential and green space

**The Future Land Use Plan Map recommends** industrial use.

- Whether there are other existing or changed conditions affecting the use and development of the property which give supporting grounds for either approval or**

**disapproval of the proposal?** The existing conditions of the property, considering the revitalization of the Riverview Community, the creation of Brickyard Park, and the city's acquisition of Cement Hill, provide supporting grounds for the rezoning.

- 6. Whether the present district boundaries are illogically drawn in relation to existing conditions?** The present district boundaries are illogically drawn in relation to the existing conditions. This is due to the transition of the area from industrial use to residential, park, and green space use.
- 7. Whether the change will create an isolated district unrelated to similar districts:** The proposed PD zone will contain the same use as the nearby Breckenridge Planned Development.

### CONCLUSION

Staff recommends sending a POSITIVE recommendation to the Board of Mayor and Aldermen to rezone from M-2 to PD. The proposed PD zone promotes the goal of developing the Brickyard Park area by implementing the proper zone for development of residential and green space uses to the site.



## AGENDA ACTION FORM

### Amendment Two to the 2019 Annual Action Plan for the Community Development Block Grant Program

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

Action Form No.: AF-323-2020  
Work Session: December 14, 2020  
First Reading: N/A

Final Adoption: December 15, 2020  
Staff Work By: Jessica McMurray  
Presentation By: Jessica McMurray

#### Recommendation:

- Conduct Public Hearing
- Approve Resolution Amending 2019 Annual Action Plan

#### Executive Summary:

The City of Kingsport's Annual Action Plan, amended in June 2020, upon receipt of Coronavirus Aid, Relief and Economic Security (CARES) Act funds, which provided a Round 1 grant in the amount of \$249,332 to the City of Kingsport to assist in addressing the impact of the COVID-19 virus. This funding is made available by the U.S. Department of Housing and Urban Development through a special allocation to our Community Development Block Grant program. This funding is available to benefit low and moderate income families, aid the prevention of slums and blight and address community needs resulting from the COVID-19 virus. It is necessary to continue amending the 2019 Annual Action Plan as required and as needs arise, until all funds are allocated.

Amendments to the 2019 Annual Action Plan to allocate this additional funding are being proposed.

The \$20,000 of funding has been proposed for use to provide PPE/Cleaning/Sanitizing supplies including the purchase of facemasks for the homeless, cleaning supplies and mass cleaning of non-governmental buildings impacted by COVID-19.

The CARES Act provided for additional flexibility in the grant process. The public comment period for amendments to the Annual Action Plan was reduced from 30 days to 5 days. A notice of public hearing was published 12/8/2020 to advertise for public comment between 12/8/2020-12/14/2020 on the proposed amendment to the 2019 Annual Action Plan and public hearing at the Board of Mayor and Aldermen meeting.

#### Attachments:

1. Resolution amending the 2019 Annual Action Plan
2. Notice of Public Hearing
3. Amended 2019 Annual Action Plan

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: *an*

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



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

A RESOLUTION APPROVING AMENDMENT 2 TO THE  
COMMUNITY DEVELOPMENT BLOCK GRANT 2019 ANNUAL  
ACTION PLAN AND AUTHORIZING THE MAYOR TO EXECUTE  
ALL DOCUMENTS NECESSARY AND PROPER TO  
EFFECTUATE THE PURPOSE OF THE ANNUAL ACTION PLAN

WHEREAS, in May, 2019, the board approved a 2019 Annual Action Plan in order to receive Community Development Block Grant (CDBG) funds, which was amended in June, 2020 to receive allocations under the CARES Act for COVID-19; and

WHEREAS, the Annual Action Plan describes the strategies, objectives, projects and activities for funding under the program; and

WHEREAS, under the CARES Act, the city has received an allocation of \$249,332.00 in funding to respond to the growing effects of the COVID-19 public health crisis, which must be used for COVID-19 related activities and should relate to topics serving low to moderate income individuals.

WHEREAS, Amendment 2 to the 2019 Annual Action Plan sets out that \$20,000 of funding will be to provide PPE/Cleaning/Sanitizing supplies including the purchase of facemasks for the homeless, and cleaning supplies and mass cleaning of a non-governmental buildings impacted by COVID-19.

Now therefore,

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

SECTION I. That Amendment 2 to the Community Development Block Grant (CDBG) 2019 Annual Action Plan is approved and adopted as set out attached as Exhibit 1, and is incorporated herein by reference.

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 15<sup>th</sup> day of December, 2020.

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

ATTEST:

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

APPROVED AS TO FORM:

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

## NOTICE OF PUBLIC HEARING

NOTICE IS HEREBY GIVEN to all citizens of the City of Kingsport, Tennessee, to all persons interested, and the public at large that the City of Kingsport Board of Mayor and Aldermen will conduct a Public Hearing during its regular business meeting on December 15, 2020 to consider an amendment to the 2019 Community Development Block Grant Program. This additional funding was authorized by U.S. department of Housing and Urban Development (HUD) through the Coronavirus Aid, Relief and Economic Security Act (CARES Act) to respond to the growing effects of this historic public health crisis. The Cares Act provided an additional \$249,332 in Community Development Block Grant Coronavirus (CDBG-CV) funds to the City of Kingsport, Tennessee. The 30 day comment period has been waived, and no less than five days are now provided for public comments. The use of these funds is outlined in the 2019 action plan substantial amendment or CDBG-CV and fund allocations are planned to be used for public services, business development and administration.

The meeting will be available via livestream on the city website ([www.kingsporttn.gov](http://www.kingsporttn.gov)). Viewers can watch by clicking on the 'Livestream Video' box on the homepage. The meeting will also air on Charter channel 192.

The public is invited to offer comments concerning the proposed use of funds. Written or oral comments should be submitted to Jessica McMurray, Community Development Planner, City of Kingsport, 201 W. Market Street, Kingsport, TN 37660 or (423)224-2877 or by emailing [JessicaMcMurray@KingsportTN.gov](mailto:JessicaMcMurray@KingsportTN.gov). There will be a five day comment period of 12/8/20-12/14/20. Activities funded by CDBG programs must contribute to the goals and objectives of the consolidated plan and meet all federal requirements.

If citizens would like to attend the meeting, the courtroom has a limited physical capacity of 16. Once the courtroom is full, the public is welcome to wait in the lobby until it is their turn to give their public comment.

Citizens that attend are strongly encouraged to practice social distancing and wear their masks during the course of the meeting.

All City of Kingsport public meetings are conducted in accessible locations. If you require accommodations to participate in this meeting, these may be requested by calling (423) 229-9401, ext. 5 or by emailing [ADAContact@KingsportTN.gov](mailto:ADAContact@KingsportTN.gov) at least 72 hours in advance. Copies of any documents used are available in accessible formats upon request.

CITY OF KINGSPORT

Angie Marshall, Deputy City Recorder

PIT: 12/8/20

### Project Summary Information

N o.	Project	Goals Supported	Geogr aphic Areas	Needs Addressed	Funding
1	KAHR Program	Decent, Safe and Affordable Housing		Decent, Safe and Affordable Housing	CDBG : \$160,092
	Description	Rehabilitation and emergency repair for low and moderate income households.			
	Target Date for Completion				
	Estimate the number and type of families that will benefit from the proposed activities (Note: Additional information for this discussion may be available on the AP-36 Project Detail screen.)	20			
	Location Description (Note: Additional information for this discussion may be available on the AP-36 Project Detail screen.)	City-wide.			
	Planned Activities (Note: Additional information for this discussion may be available on the AP-36 Project Detail screen.)	Rehabilitation and emergency repair.			
4	Community Enrichment	Public Services		Public Services	CDBG : \$35,000
	Description	Cultural and educational enrichment program for low and moderate income, minority youth.			
	Target Date for Completion				
	Estimate the number and type	300 families are expected to be provided community enrichment services.			

	of families that will benefit from the proposed activities (Note: Additional information for this discussion may be available on the AP-36 Project Detail screen.)	
	Location Description (Note: Additional information for this discussion may be available on the AP-36 Project Detail screen.)	
	Planned Activities (Note: Additional information for this discussion may be available on the AP-36 Project Detail screen.)	Programs to encourage educational and cultural opportunities for low and moderate income, minority youth.
5	Code Enforcement	Decent, Safe and Affordable Housing
	Description	Code enforcement for low and moderate income housing in the city.
	Target Date for Completion	
	Estimate the number and type of families that will benefit from the proposed activities (Note: Additional information for this discussion may be available on the AP-36 Project Detail screen.)	
	Location Description (Note: Additional information for	

this discussion may be available on the AP-36 Project Detail screen.)	
Planned Activities (Note: Additional information for this discussion may be available on the AP-36 Project Detail screen.)	Code enforcement inspections.
HOPE VI/108 Loan	Public Facilities CDBG : \$70,000
Description	Installment for 108 loan supporting the 2008 HOPE VI project.
Target Date for Completion	
Estimate the number and type of families that will benefit from the proposed activities (Note: Additional information for this discussion may be available on the AP-36 Project Detail screen.)	
Location Description (Note: Additional information for this discussion may be available on the AP-36 Project Detail screen.)	
Planned Activities (Note: Additional information for this discussion may be available on the AP-36 Project Detail screen.)	108 Installment.

7	Program administration				CDBG : \$78,272
	Description	Program administration.			
	Target Date for Completion				
	Estimate the number and type of families that will benefit from the proposed activities (Note: Additional information for this discussion may be available on the AP-36 Project Detail screen.)				
	Location Description (Note: Additional information for this discussion may be available on the AP-36 Project Detail screen.)				
	Planned Activities (Note: Additional information for this discussion may be available on the AP-36 Project Detail screen.)	Program administration.			
8	CV-Homeless	Public Services Decent, Safe and Affordable Housing		Public Services Decent, Safe and Affordable Housing	Other - CDBG-CV : \$100,000
	Description	To provide hotel rooms for those who are street homeless to contain and prevent the spread of the Coronavirus. Homeless individuals and families will be housed in hotel for up to 15 weeks in phase 1. Clients will be provided case management services by social worker employed by the Kingsport Police Department, and a homeless liaison employed by the United Way of Greater Kingsport.			
	Target Date for Completion	07/01/2020			
	Estimate the number and type of families that	It is estimated that at least 35 individuals will be assisted			

	will benefit from the proposed activities (Note: Additional information for this discussion may be available on the AP-36 Project Detail screen.)	
	Location Description (Note: Additional information for this discussion may be available on the AP-36 Project Detail screen.)	Kingsport
	Planned Activities (Note: Additional information for this discussion may be available on the AP-36 Project Detail screen.)	Street homeless individuals and families will be assisted by providing hotel rooms to help contain and prevent the spread of the Coronavirus. Clients will be provided with case management services through the Kingsport Police Departments Social Worker, and the United Way of Greater Kingsport's homeless liaison.
	CV-Salvation Army	Public Services
		Public Services Decent, Safe and Affordable Housing
		Other - CDBG-CV : \$25,000
	Description	Salvation Army provides shelter and meals to those in need in the community. Funding will support continued shelter operations. The Salvation Army lost significant revenue stream due to the Coronavirus when they had to close the thrift store they operated.
	Target Date for Completion	09/01/2020
9	Estimate the number and type of families that will benefit from the proposed activities (Note: Additional information for this discussion may be available on the AP-36 Project Detail screen.)	It is estimated that at least 35 individuals will be assisted through the service of meals while they are at the hotel. It is estimated that 15 individuals and families will be assisted by utilizing the Salvation Army shelter for overnight stays.



	Location Description (Note: Additional information for this discussion may be available on the AP-36 Project Detail screen.)	Kingsport Salvation Army, and Americourt Hotel			
	Planned Activities (Note: Additional information for this discussion may be available on the AP-36 Project Detail screen.)	Provide meals to clients housed at the Americourt Hotel. Provide overnight shelter services to homeless individuals or families.			
10	CV-Second Harvest Food Bank	Public Services		Public Services	Other - CDBG-CV : \$25,000
	Description	Second Harvest food bank serves the area by providing food and meals throughout the Kingsport area. Over 5,400 people are served each month by Second Harvest. Due to the Coronavirus Second Harvest has seen an increase in requested services. They have also lost donations due to the closing of restaurants.			
	Target Date for Completion	09/01/2020			
	Estimate the number and type of families that will benefit from the proposed activities (Note: Additional information for this discussion may be available on the AP-36 Project Detail screen.)	The Second Harvest Food Bank provides over 4,000 meals each month the Kingsport area. During this time with schools not being in session the food bank is providing meal services to schoolchildren in the area. All families that benefit are low income.			
	Location Description (Note: Additional information for this discussion may be available on the AP-36 Project Detail screen.)	Kingsport			

Planned Activities (Note: Additional information for this discussion may be available on the AP-36 Project Detail screen.)	<p>Second Harvest Food Bank operates a fixed location where residents can go to pick-up food. They also operate multiple mobile food pantries in the area where residents can pick-up food.</p> <p>Second Harvest has seen a substantial increase clients who are seeking to utilize their services. This is likely caused by the closing down of non-essential businesses. The food bank also seen a decrease in donations due to the same reasons.</p>			
CV-PPE/Cleaning/Sanitizing	Public Services		Public Services Public Facilities	Other - CDBG-CV : \$20,000
Description	Provide PPE as needed to homeless individuals/homeless service providers as well as cleaning and sanitizing supplies/services to homeless service providers.			
Target Date for Completion	12/31/2021			
Estimate the number and type of families that will benefit from the proposed activities (Note: Additional information for this discussion may be available on the AP-36 Project Detail screen.)				
Location Description (Note: Additional information for this discussion may be available on the AP-36 Project Detail screen.)				
Planned Activities (Note: Additional information for this discussion may be available on the AP-36 Project Detail screen.)	Provide masks to homeless individuals encountered by our Social Worker or Homeless Services Liaison, provide cleaning and sanitizing supplies and services to those who provide assistance to homeless individuals.			



## AGENDA ACTION FORM

### **Enter into a Materials Agreement with The Integrity Building Group, LLC Related to the Miller Parke Phase 1 Development and an Ordinance to Appropriate the Funds**

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

Action Form No.: AF-295-2020  
 Work Session: December 14, 2020  
 First Reading: December 15, 2020

Final Adoption: January 19, 2021  
 Staff Work By: David Harris  
 Presentation By: Ryan 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 Integrity Building Group, LLC has requested that the proposed Miller Parke Phase 1 Development, be allowed to participate in the materials agreement program. The total amount of the agreement is proposed at \$81,823.42 for a new thirty eight (38) lot development.

To date, including this development, the program has supported 921 new/proposed lots within the City of Kingsport. Of those lots, 572 Building Permits and 514 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: *pm*

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: *aw*

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

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

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

A RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE A MATERIALS AGREEMENT WITH THE INTEGRITY BUILDING GROUP, LLC RELATED TO MILLER PARKE PHASE 1 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 Integrity Building Group, LLC would like to enter into a Materials Agreement for the provision of certain water and sewer materials by the city for Miller Parke Phase 1, a 38 lot development in the city; and

WHEREAS, the total amount of the agreement as proposed is \$81,823.42;

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 Integrity Building Group, LLC to provide certain water and sewer materials by the city for Miller Parke Phase 1, in the amount of \$81,823.42, and the mayor is further authorized and directed to execute all documents necessary and proper to effectuate the purpose of the agreement, said agreement being as follows:

**MATERIALS AGREEMENT**

This AGREEMENT made and entered into on this 1st day of December, 2020, by and between the Integrity Building 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 Miller Parke Phase 1, 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 2,250 LFT of Waterline and 2,357 LFT of Sanitary Sewer Line to construct.
3. The estimated cost of the materials listed in paragraph 2 above is approximately \$81,823.42. 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.

[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 this materials agreement promotes the use of high-quality and uniform materials in the construction of certain water and sanitary sewer infrastructure in new residential development in the city, which infrastructure will be a part of the city owned water and sanitary sewer systems as publicly owned infrastructure, and this will reduce future maintenance costs for the city's water and sanitary sewer systems caused by the use of substandard materials, and that the actions authorized by this resolution are in the public interest and for a public purpose and will promote the health, comfort and prosperity of the citizens of the city.

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

ADOPTED this the 15th day of December, 2020.

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PATRICK W. SHULL, MAYOR

ATTEST:

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SIDNEY H. COX, CITY RECORDER

APPROVED AS TO FORM:

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J. MICHAEL BILLINGSLEY, CITY ATTORNEY

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

**PRE-FILED  
CITY RECORDER**

AN ORDINANCE TO AMEND THE WATER AND SEWER PROJECT FUNDS BY TRANSFERRING FUNDS TO THE MILLER PARKE PHASE 1 MATERIALS AGREEMENT PROJECTS (WA2151 AND SW2151); 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 \$49,204 and by decreasing the funds transferred from the Sewer Fund operating budget by \$25,522 to the Miller Parke Phase 3 projects (WA2150 and SW2150) to fund the materials agreement.

**Account Number/Description:**

**Water Project Fund:451**  
**Miller Parke Phase 1 (WA2151)**  
**Revenues**

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

**Expenditures:**

451-0000-605-9003 Improvements  
***Totals:***

<u>Budget</u>	<u>Incr/&lt;Decr&gt;</u>	<u>New Budget</u>
\$0	\$49,204	\$49,204
<b>\$0</b>	<b>\$49,204</b>	<b>\$49,204</b>
\$0	\$49,204	\$49,204
<b>\$0</b>	<b>\$49,204</b>	<b>\$49,204</b>

**Account Number/Description:**

**Sewer Project Fund:452**  
**Miller Parke Phase 1 (SW2151)**  
**Revenues**

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

**Expenditures:**

452-0000-606-9003 Improvements  
***Totals:***

\$0	\$25,522	\$25,522
<b>\$0</b>	<b>\$25,522</b>	<b>\$25,522</b>
\$0	\$25,522	\$25,522
<b>\$0</b>	<b>\$25,522</b>	<b>\$25,522</b>

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

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

ATTEST:

\_\_\_\_\_  
SIDNEY COX  
City Recorder

APPROVED AS TO FORM:

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

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

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



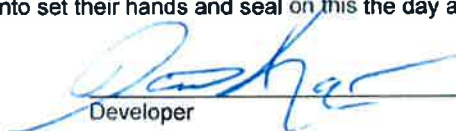
## MATERIALS AGREEMENT

This AGREEMENT made and entered into on this 1st day of December, 2020, by and between the Integrity Building 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 Miller Parke Phase 1, 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 2,250 LFT of Waterline and 2,357 LFT of Sanitary Sewer Line to construct.
3. The estimated cost of the materials listed in paragraph 2 above is approximately \$81,823.42. 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: Miller Parke Phase 1  
 Date: November 24, 2020  
 Developer: Integrity Building Group, LLC

File No.: 2020-D19

Water Line		Anticipated		Estimated	
Item #	Item Description	Units	U/M	Price	Total
41864	8" x 18' D.I. Pipe	126.00	Joints	\$337.14	\$42,479.64
42120	4' Bury Hydrant	2.00	each	\$1,639.17	\$3,278.34
42325	6" MJ Gate Valve	2.00	each	\$495.17	\$990.34
43031	8x8x6 Anchor Tee	2.00	each	\$105.31	\$210.62
42845	6" x 18" MJ Anchor Coupling	2.00	each	\$92.00	\$184.00
42100	8x8x8 MJ Tee	3.00	each	\$109.00	\$327.00
42335	8" MJ Gate Valve	2.00	each	\$788.68	\$1,577.36
41794	8" Plug w/ 2" Tap	3.00	each	\$51.95	\$155.85
Building Code					
	Receipt To:				
Subtotal:	<b>451-0000-391-4200</b>				\$49,203.15
Sales Tax:	<b>451-0000-207-0201</b>			9.50%	\$4,674.30
Project #	<b>WA2151</b>			Water Total:	\$53,877.45
	Expense To:				
Water Acct. #	<b>451-0000-605-9003</b>				



## Materials Agreement

Project: Miller Parke Phase 1  
 Date: November 24, 2020  
 Developer: Integrity Building Group, LLC

File No.: 2020-D19

Sanitary Sewer		Anticipated		Estimated	
Item #	Item Description	Units	U/M	Price	Total
45003	8" x 14' SDR-35 gsktd Sewer Pipe	169.00	Joints	\$46.62	\$7,878.78
45057	8" x 6" Tee Wye gsktd Sewer	38.00	each	\$38.90	\$1,478.20
45112	Manhole Frame & Covers V-1312-44	15.00	each	\$237.23	\$3,558.45
45226	Manhole Base (24") w/ Invert	15.00	each	\$550.00	\$8,250.00
45229	Manhole Ring Riser 2"	13.00	each	\$31.00	\$403.00
45230	Manhole Ring Riser 4"	1.00	each	\$41.00	\$41.00
45232	Manhole Concrete 24" Riser	1.00	each	\$187.00	\$187.00
45224	Manhole Concrete 32" Riser	4.00	each	\$240.00	\$960.00
45219	Manhole Concrete 16" Concrete Cone	13.00	each	\$170.00	\$2,210.00
45221	Manhole Concrete 24" Concrete Cone	1.00	each	\$197.00	\$197.00
45218	Manhole Concrete 32" Concrete Cone	1.00	each	\$246.00	\$246.00
45203	Extra Boot Charge	2.00	each	\$56.00	\$112.00
Building Code					
Receipt To:					
Subtotal:	<b>452-0000-391-4200</b>				\$25,521.43
Sales Tax:	<b>452-0000-207-0201</b>			9.50%	\$2,424.54
Project #	<b>SW2151</b>			Sewer Total	\$27,945.97
Expense To:					
Sewer Acct #	<b>452-0000-606-9003</b>				
				Grand Total:	\$81,823.42



Integrity Building Group, LLC

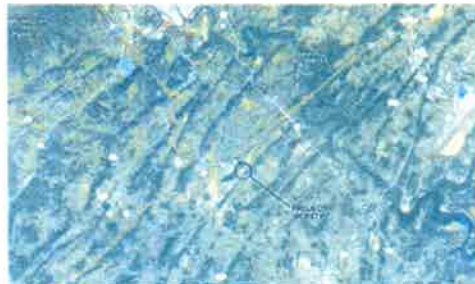
# Miller Parke Phase I

Revision 4 - Resubmitted October 22, 2020  
SITE / CIVIL PACKAGE  
Project # 202034

## INDEX OF DRAWINGS

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REV 4 C-00	SITE / CIVIL PACKAGE COVER SHEET
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C-03A	ROADWAY PROFILE
REV 4 C-03	ROADWAY DETAILS
REV 4 C-04	GRADING AND DRAINAGE PLAN
C-05	DRAINAGE PATH - EXISTING
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VICINITY MAP



LOCATION MAP



CIVIL ENGINEER



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

New Development for:  
**Integrity Building Group, LLC**  
Daguerre, TN

**Cain  
Rash  
West**

130 Regional Park Dr.  
Kingsport, TN 37660  
Phn (423) 349-7760  
Fax (423) 349-7413  
www.grcinc.com

Scale: 1" = 100'




Expiry: 12/31/2020  
Registration: 0041  
License: 0041  
Project No.: 202034

COVER SHEET

C-00







City of Kingsport  
MATERIALS AGREEMENT

Developer	Development	Proposed Lots/Development	Agreement Amt.	Date	Bldg. Permits	CO's	Reim to Dev	Status
Butch Rose	Hillcrest Heights	6	\$5,140.09	06/19/07	3	3	\$4,636.74	Closed
	Windridge Phase IV	40	\$92,202.29	04/15/08	16	15	\$85,648.47	Closed
Jeff McKee	Settler's Ridge Phase I	41	\$45,344.29	03/20/07	Total of 7	7	\$41,214.30	Closed
	Settler's Ridge Phase II	7	\$18,822.89	11/06/07			\$17,439.89	Closed
Edinburgh Group LLC	Edinburgh Phase IA, Section 1	32	\$42,867.62	02/19/07	Total of 230	198	\$39,474.82	Closed
	Edinburgh Phase IA, Section 2	15	\$25,205.92	04/17/07			\$23,273.53	Closed
	Edinburgh Phase 2, Section 1A	6	\$2,852.48	02/02/10			\$2,659.62	Closed
	Edinburgh Phase 2, Section 2	6	\$11,976.02	11/16/10			\$11,116.69	Closed
	Edinburgh Phase 2, Section 2B	11	\$9,472.85	10/18/11			\$8,770.02	Closed
	Edinburgh Phase 2, Section 2C	14	\$20,128.29	04/03/12			\$18,549.10	Closed
	Edinburgh Phase 2, Section 2E	8	\$25,177.34	10/02/12			\$23,403.87	Closed
	Edinburgh Phase 2, Section 2F	9	\$19,382.60	05/07/13			\$17,792.14	Closed
	Edinburgh Phase 4	17	\$65,033.97	07/24/13			\$60,735.18	Closed
	Edinburgh Phase V	12	\$51,965.42	10/7/2014			\$48,501.91	Closed
	Edinburgh Phase VII	20	\$27,552.51	6/2/2015			\$25,162.11	Closed
	Edinburgh Phase 9	6	\$5,917.93	5/5/2016			\$5,386.74	Closed
	Edinburgh Phase 10	10	\$38,265.22	3/1/2017			\$34,953.21	Closed
	Edinburgh South Phase 1	23	\$36,694.42	11/1/2016			\$33,722.81	Closed
	Edinburgh Phase 11	14	\$26,250.40	6/19/2018			\$23,984.14	Closed
	Edinburgh S. Phase 2 Gibson Spr	24	\$28,924.56	5/5/2020				Open
	Edinburgh S. Phase 3 Gibson Spr	19	\$38,378.10	10/15/2019			\$35,631.30	Closed
	Edinburgh Phase 12	13	\$12,752.16	7/23/2019				Open
Jerry Petzoldt	Old Island Phase II	59	\$118,027.86	05/06/08	45	41	\$111,538.58	Closed
Jim Nottingham	Riverwatch	29	\$47,605.13	04/15/08	20	20	\$44,680.99	Closed
Harold Slemp & Jack McMurray	Villas at Andover - Polo Fields	104	\$76,522.72	08/07/07	46	45	\$70,722.51	Closed
George Hunt	Hunts Crossing Phase II	22	\$18,375.20	04/15/08	6	6	\$16,883.63	Closed
Rob McLean	Anchor Point	80	\$72,552.51	07/15/08	42	41	\$66,603.46	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	\$8,203.18	Closed
Ken Bates	Chase Meadows Phase I (reim for 1)	15	\$39,418.91	07/15/08	Total of 62	55	\$31,518.06	Closed
	Chase Meadows Phase II (amt not paid)	87	(\$68,096.96)	08/19/08				Closed
Terry Orth	Autumn Woods Phase I	19	\$30,628.25	10/07/08	19	19	\$28,588.47	Closed
	Autumn Woods Phase II	51	\$97,091.46	09/01/09	43	42	\$91,166.09	Closed
Gary Alexander	Riverbend Phase I	15	\$32,767.17	02/03/09	10	0	\$26,351.32	Closed
	Riverbend - Epcon Phase II (tabled 1/10/11)	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	\$30,938.04	Closed
Jane Karst	Jane Karst Subdivision	4	\$4,100.78	09/20/11			\$3,799.14	Closed
M & M Builders	Brookton Park Subdivision	7	\$2,145.88	09/20/11	7	7	\$1,959.94	Closed
Vic Davis	The Summitt at Preston Park Ph 3	20	\$79,327.82	12/03/13	4	3	\$70,967.77	Closed
	<b>TOTAL</b>	<b>921</b>	<b>\$1,214,225.48</b>		<b>572</b>	<b>514</b>	<b>\$1,165,977.77</b>	

Revised 11/03/20



## AGENDA ACTION FORM

### Enter into Agreement with TDOT for the Brickyard Park Bicycle-Pedestrian Bridge

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

Action Form No.: AF-314-2020  
 Work Session: December 14, 2020  
 First Reading: December 15, 2020

Final Adoption: January 19, 2021  
 Staff Work By: M. Thompson, L. Phillips  
 Presentation By: Ryan McReynolds

**Recommendation:** Approve the Budget Ordinance and Resolution.

#### **Executive Summary:**

We request to enter into a Local Agency Project Agreement with the Tennessee Department of Transportation (TDOT) in order to proceed with the design phases of the proposed pedestrian bridge connecting downtown with the Brickyard / Riverview Area. This agreement establishes the relationship between the City and TDOT for the delivery of the proposed bridge.

Earlier this year, the City applied for a Transportation Alternative Program (TAP, 75% Federal / 25% Local) Grant from TDOT for the construction of the proposed bridge. The estimated cost of the total project is \$3,500,000 with \$3,000,000 estimated for construction and \$500,000 estimated for design phases (NEPA, Design, and ROW). In order to move forward with the design phases prior to the award of the TAP grant, the project has been added to the MTPO's Transportation Improvement Program (TIP). The TIP reflects the design phases to be funded by the MTPO's annually allocated Surface Transportation Block Grant (STBG) funds (80% Federal / 20% Local). Additionally, the TIP currently reflects the construction phase to be funded by local funds though the actual construction cost is anticipated to be funded by the TAP Grant. If the City does not receive the TAP Grant, we plan to modify the TIP to fund the construction through STBG funds.

Additionally, it is requested to fund the local obligation for the NEPA and Design portions of the design phase in the amount of \$75,000 by transferring funds from GP 2000 (Local Roads) into GP 2108 (Pedestrian Bridge).

Project Data: TDOT Agreement #: 200308; PIN: 131049.00; Federal Project #: STP-M-9108(52); State Project #: 82LPLM-F3-100.

#### **Attachments:**

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

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

PRE-FILED  
CITY RECORDER

ORDINANCE NO.

AN ORDINANCE TO AMEND GENERAL PROJECTS FUND  
BUDGET FOR THE YEAR ENDING JUNE 30, 2021; 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 Fund budget be amended by transferring \$75,000 from the Local Roads project (GP2000) to the Pedestrian Bridge project (GP2108).

<u>Account Number/Description:</u>	<u>Budget</u>	<u>Incr/&lt;Decr&gt;</u>	<u>New Budget</u>
<b><u>Fund 311: General Project Fund</u></b>			
<b><u>Pedestrian Bridge (GP2108)</u></b>			
<b><u>Revenues:</u></b>	\$	\$	\$
311-0000-332.90-00 Dept of Transportation	0	0	0
311-0000-368.10-66 Series 2019 GO Improvment	0	64,145	64,145
311-0000-368.21-01 Premium From Bond Sale	0	10,855	10,855
<b><u>Totals:</u></b>	<b>0</b>	<b>75,000</b>	<b>75,000</b>
<b><u>Expenditures:</u></b>	\$	\$	\$
311-0000-601.90-03 Improvements	0	75,000	75,000
<b><u>Totals:</u></b>	<b>0</b>	<b>75,000</b>	<b>75,000</b>
<b><u>Local Roads (GP2000)</u></b>			
<b><u>Revenues:</u></b>	\$	\$	\$
311-0000-368.10-66 Series 2019 GO Improvment	233,680	(64,145)	169,535
311-0000-368.21-01 Premium From Bond Sale	39,547	(10,855)	28,692
<b><u>Totals:</u></b>	<b>273,227</b>	<b>(75,000)</b>	<b>198,227</b>
<b><u>Expenditures:</u></b>	\$	\$	\$
311-0000-601.40-41 Bond Sale Expense	21,227	0	21,227
311-0000-601.90-03 Improvements	252,000	(75,000)	177,000
<b><u>Totals:</u></b>	<b>273,227</b>	<b>(75,000)</b>	<b>198,227</b>

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.

\_\_\_\_\_  
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:



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

A RESOLUTION APPROVING AN AGREEMENT WITH THE TENNESSEE DEPARTMENT OF TRANSPORTATION FOR THE BRICKYARD PARK BICYCLE-PEDESTRIAN BRIDGE PROJECT AND AUTHORIZING THE MAYOR TO EXECUTE THE AGREEMENT AND ALL OTHER DOCUMENTS NECESSARY AND PROPER TO EFFECTUATE THE PURPOSE OF THE AGREEMENT

WHEREAS, the city would like to build a bicycle-pedestrian bridge which will connect the Brickyard/Riverview area to downtown Kingsport at Centennial Park at the total estimated cost of \$3,500,000.00; and

WHEREAS, the city would like to enter into an agreement with the Tennessee Department of Transportation (TDOT) for this project; and

WHEREAS, the first steps in the process are the National Environmental Policy Act (NEPA) and Design phases which are estimated at a cost of \$375,000.00 and will be funded with 80% federal funds and 20% (\$75,000.00) local funds which are available in account GP2108.

Now therefore,

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

SECTION I. That an agreement with the Tennessee Department of Transportation (TDOT) to build a bicycle-pedestrian bridge which will connect the Brickyard/Riverview area to downtown Kingsport at Centennial Park, is approved.

SECTION II. That the mayor, or in his absence, incapacity, or failure to act, the vice-mayor, is authorized and directed to execute, in a form approved by the city attorney and subject to the requirements of Article X, Section 10 of the Charter of the City of Kingsport, the agreement with the Tennessee Department of Transportation (TDOT) to build a bicycle-pedestrian bridge which will connect the Brickyard/Riverview area to downtown Kingsport at Centennial Park and all other documents necessary and proper and take such acts as necessary, to effectuate the purpose of the agreement or this resolution, said agreement being as follows:

Agreement Number:	200308
Project Identification Number:	131049.00
Federal Project Number:	STP-M-9108(52)
State Project Number:	82LPLM-F3-100
State of Tennessee Department of Transportation	

**LOCAL AGENCY PROJECT AGREEMENT**

THIS AGREEMENT, made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2020 by and between the STATE OF TENNESSEE DEPARTMENT OF TRANSPORTATION, an agency of the State of Tennessee (hereinafter called the "Department") and the CITY OF KINGSPORT (hereinafter called the "Agency") for the purpose of providing an understanding between the parties of their respective obligations related to the management of the project described as:

**"Brickyard Park Bicycle-Pedestrian Bridge"**

**A. PURPOSE OF AGREEMENT**

**A.1 Purpose:**

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

**A.2 Modifications and Additions:**

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

**B. ACCOMPLISHMENT OF PROJECT**

**B.1 General Requirements:**

a)

	<b>Responsible Party</b>	<b>Funding Provided by Agency or Project.</b>
Environmental Clearance by:	<b>AGENCY</b>	<b>PROJECT</b>
Preliminary Engineering by:	<b>AGENCY</b>	<b>PROJECT</b>
Right-of-Way by:	<b>AGENCY</b>	<b>PROJECT</b>
Utility Coordination by:	<b>AGENCY</b>	<b>PROJECT</b>
Construction by:	<b>AGENCY</b>	<b>AGENCY</b>

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

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

**B.2 Completion Date:**

a) The Agency agrees to complete the herein assigned phases of the Project on or before **December 31, 2025**. If the Agency does not complete the herein described phases of the Project within this time period, this Agreement will expire on the last day of scheduled completion as provided in this paragraph unless an extension of the time period is requested by the Agency and granted in writing by the Department prior to the expiration of the Agreement. An extension of the term of this Agreement will be effected through an amendment to the Agreement. Expiration of this Agreement will be considered termination of the Project. The cost of any work performed after the expiration date of the Agreement will not be reimbursed by the Department.

**B.3 Environmental Regulations:**

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

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

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

**B.4 Plans and Specifications**

a) In the event that the Agency is made responsible for the Preliminary Engineering in Section B.1.(a) of this Agreement and federal and/or state funding is providing reimbursement, except as otherwise authorized in writing by the Department, the Agency shall not execute an agreement for

the Preliminary Engineering phase of the Project without the written approval of the Department. Failure to obtain such written approval shall be sufficient cause for nonpayment by the Department.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

requirements are consistent with competitive bidding.

**B.7 Detours**

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

**B.8 Utilities**

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

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

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

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

**B.9 Railroad**

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

**C. PAYMENT TERMS AND CONDITIONS**

**C.1 Total Cost:**

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

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

**C.2 Eligible Costs:**

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

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

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

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

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

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

**C.4 Payment Methodology:**

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

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

the form of a canceled check or other means acceptable to the Department.

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

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

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

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

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

1) **Misrepresentation:**

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

2) **Litigation:**

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

3) **Approval by Department:**

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

4) **Conflict of Interests:**

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

5) **Default:**

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

**C.6 Final Invoices:**

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

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

**C.7 Offset:**

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

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

**C.8 Travel Compensation:**

a) If the Project provided for herein includes travel compensation, reimbursement to the Agency for travel, meals, or lodging shall be subject to amounts and limitations specified in the "State Comprehensive Travel Regulations," as they are amended from time to time and subject to the Agreement Budget.

**D. STANDARD TERMS AND CONDITIONS**

**D.1 Governing Law:**

a) This Agreement shall be governed by and construed in accordance with the laws of the State of Tennessee. The Agency agrees that it will be subject to the exclusive jurisdiction of the courts of the State of Tennessee in actions that may arise under this Agreement. The Agency acknowledges and agrees that any rights or claims against the State of Tennessee or its employees hereunder, and any remedies arising therefrom, shall be subject to and limited to those rights and remedies, if any,



available under Tennessee Code Annotated, Sections 9-8-101 through 9-8-407.

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

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

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

**D.3 State Law:**

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

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

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

**D.5 Appropriations of Funds:**

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

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

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

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

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

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

**D.8 Independent Contractor:**

a) The parties hereto, in the performance of this Agreement, shall not act as agents, employees, partners, joint ventures, or associates of one another. It is expressly acknowledged by the parties hereto that such parties are independent contracting entities and that nothing in this Agreement shall be construed to create a principal/agent relationship or to allow either to exercise control or direction over the manner or method by which the other transacts its business affairs or provides its usual services. The employees or agents of one party shall not be deemed or construed to be the employees or agents of the other party for any purpose whatsoever.

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

**D.9 Maintenance:**

a) Nothing contained herein shall be construed as changing the maintenance responsibility of either party for any part of the referenced project that lies on its system of highways. If the project funded hereunder results in the installation of any traffic signal, lighting or other electrically operated device(s), then the Agency shall be solely responsible for and pay all costs associated with maintenance and operation of all electrically operated devices together with the related equipment, wiring and other necessary appurtenances, and the Agency shall furnish electrical current to all such

devices which may be installed as part of the project. Additionally, the Agency shall be solely responsible for and pay all costs associated with the maintenance and operation of solar-powered devices, including, but not limited to, replacement of solar panels, batteries, lights and lenses.

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

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

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

a) DBE Policy:

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

b) DBE Obligation:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

2) Have not within a 3-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or agreement under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

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

4) Have not within a 3-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

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

**D.13 Equal Employment Opportunity:**

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

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

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

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

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

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

**D.16 Conflicts of Interest:**

a) The Agency warrants that no amount shall be paid directly or indirectly to an employee or official of the State of Tennessee as wages, compensation, or gifts in exchange for acting as an

officer, agent, employee, subContractor, or consultant to the Agency in connection with any work contemplated or performed relative to this Agreement.

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

1) "No amount shall be paid directly or indirectly to an employee or official of the State of Tennessee as wages, compensation, or gifts in exchange for acting as an officer, agent, employee, subContractor, or consultant to the Agency in connection with any work contemplated or performed relative to this Agreement."

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

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

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

**The Agency certifies, to the best of its knowledge and belief, that:**

a) No federally appropriated funds have been paid or will be paid, by or on behalf of the Agency, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress in connection with the awarding of any federal agreement, the making of any federal grant, the making of any federal loan, and entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal agreement, grant, loan, or cooperative agreement.

b) If any funds other than federally appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this grant, loan, or cooperative agreement, the Agency shall complete and submit Standard Form- LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

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

**D.19 Records:**

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

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

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

**D.20 Inspection:**

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

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

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

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

b) All books of account and financial records shall be subject to annual audit by the Tennessee Comptroller of the Treasury or the Comptroller's duly appointed representative. When an audit is

required, the Agency may, with the prior approval of the Comptroller, engage a licensed independent public accountant to perform the audit. The audit agreement between the Agency and the licensed independent public accountant shall be on an agreement form prescribed by the Tennessee Comptroller of the Treasury. Any such audit shall be performed in accordance with generally accepted government auditing standards, the provisions of OMB Circular A-133, if applicable, and the Audit Manual for Governmental Units and Recipients of Grant Funds published by the Tennessee Comptroller of the Treasury.

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

**D.22 Termination for Convenience:**

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

**D.23 Termination for Cause:**

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

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

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

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

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

**D.25 Agreement Format:**

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

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

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

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

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

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

**D.27 Amendment:**



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

**D.28 State Liability:**

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

**D.29 Force Majeure:**

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

**D.30 Required Approvals:**

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

**D.31 Estimated Cost:**

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

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

**D.32 Third Party Liability:**

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

**D.33 Deposits:**

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

**D.34 Department Activities:**

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

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

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

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

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

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

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

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

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

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

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

[Acknowledgements Deleted for Inclusion in this Resolution]

**SECTION III.** That the mayor is further authorized to make such changes approved by the mayor and the city attorney to the agreement set out herein that do not substantially alter the

material provisions of the agreement, and the execution thereof by the mayor and the city attorney is conclusive evidence of the approval of such changes.

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

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

ADOPTED this the 15th day of December, 2020.

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

ATTEST:

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

APPROVED AS TO FORM:

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

**Agreement Number: 200308**

**Project Identification Number: 131049.00**

**Federal Project Number: STP-M-9108(52)**

**State Project Number: 82LPLM-F3-100**

**State of Tennessee Department of Transportation**

## **LOCAL AGENCY PROJECT AGREEMENT**

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

"Brickyard Park Bicycle-Pedestrian Bridge"

### **A. PURPOSE OF AGREEMENT**

#### **A.1 Purpose:**

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

#### **A.2 Modifications and Additions:**

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

## **B. ACCOMPLISHMENT OF PROJECT**

### **B.1 General Requirements:**

a)

	<b>Responsible Party</b>	<b>Funding Provided by Agency or Project.</b>
Environmental Clearance by:	<b>AGENCY</b>	<b>PROJECT</b>
Preliminary Engineering by:	<b>AGENCY</b>	<b>PROJECT</b>
Right-of-Way by:	<b>AGENCY</b>	<b>PROJECT</b>
Utility Coordination by:	<b>AGENCY</b>	<b>PROJECT</b>
Construction by:	<b>AGENCY</b>	<b>AGENCY</b>

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

### **B.2 Completion Date:**

- a) The Agency agrees to complete the herein assigned phases of the Project on or before **December 31, 2025**. If the Agency does not complete the herein described phases of the Project within this time period, this Agreement will expire on the last day of scheduled completion as provided in this paragraph unless an extension of the time period is requested by the Agency and granted in writing by the Department prior to the expiration of the Agreement. An extension of the term of this Agreement will be effected through an amendment to the Agreement. Expiration of this Agreement will be considered termination of the Project. The cost of any work performed after the expiration date of the Agreement will not be reimbursed by the Department.

### **B.3 Environmental Regulations:**

- a) The Department will review environmental documents and require any appropriate changes for approval as described in the Department's Local Government Guidelines.
- b) In the event the Agency is made responsible for the Environmental Clearances in Section B.1(a) of this Agreement, the Agency will be solely responsible for compliance with all applicable environmental regulations and for any liability arising from non-compliance with these regulations and will reimburse the Department of any loss incurred in connection therewith to the extent permitted by Tennessee Law. The Agency will be responsible for securing any applicable permits as described in the Department's Local Government Guidelines.
- c) In the event the Agency is made responsible for the Environmental Clearances in section B.1.(a) of this Agreement, then the Agency must complete environmental clearances before it begins final design and understands that a separate Notice to Proceed will be submitted for final design. Any work on final design performed ahead of this Notice to Proceed will not be reimbursable.

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

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



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

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

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

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

- a) In the event that the Agency is made responsible for the Construction phase in section B.1.(a) of this Agreement, except as otherwise authorized in writing by the Department, the Agency shall not execute an agreement for the Construction phase of the Project without the written approval of the Department. Failure to obtain such approval shall be sufficient cause for nonpayment by the Department.
- b) In the event that the Department is made responsible for the Construction phase in section B.1.(a) of this Agreement, when the construction phase begins, the Agency may make such periodic visits to the Project site as necessary to familiarize itself generally with the progress and quality of the work and to determine in general if

the work is proceeding in accordance with the Construction Agreement. If there is any perceived failure, the Agency shall give prompt written notification to the Department's Resident Engineer in charge.

- c) If the Project includes State Highway Right-of-Way and the Agency is responsible for the Construction phase, the Agency shall follow all requirements imposed by the TDOT Traffic Engineer.
- d) In the event that the Project includes State Highway Right-of-Way and the Agency is performing any construction work on this project, such work shall be performed to the satisfaction of the Department. If the Agency is being compensated for any construction work under this Agreement, any remedial work deemed necessary by the Department shall be done at the Agency's sole expense.
- e) The Agency understands that all contractors allowed to bid hereunder must be included on the Department's pre-qualified contractor list. Under Federal law, however, no contractor shall be required by law, regulation, or practice to obtain a license before submitting a bid or before a bid may be considered for an award of a contract; provided, however, that this is not intended to preclude requirements for the licensing of a contractor upon or subsequent to the award of the contract if such requirements are consistent with competitive bidding.

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

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

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

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

## **B.9 Railroad**

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

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

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

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

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

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

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

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

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

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

- b) For any amounts determined to be ineligible for federal and/or state reimbursement for which the Department has made payment, the Agency shall promptly reimburse the Department for all such amounts within ninety (90) days of written notice.
- c) The Agency agrees to pay all costs of any part of this project which are not eligible for federal and/or state funding. These funds shall be provided upon written request therefore by either (a) check, or (b) deposit to the Local Government Investment Pool, whenever requested.

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

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

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

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

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

- a) Subject to other provisions hereof, the Department will honor requests for reimbursement to the Agency in amounts and at times deemed by the Department

to be proper to ensure the carrying out of the Project and payment of the eligible costs. However, notwithstanding any other provision of this Agreement, the Department may elect not to make a payment if:

1) **Misrepresentation:**

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

2) **Litigation:**

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

3) **Approval by Department:**

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

4) **Conflict of Interests:**

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

5) **Default:**

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

**C.6 Final Invoices:**

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

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

**C.7 Offset:**

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

- a) If, after Project completion, any claim is made by the Department resulting from an audit or for work or services performed pursuant to this Agreement, the Department may offset such amount from payments due for work or services done under any agreement which it has with the Agency owing such amount if, upon



demand, payment of the amount is not made within sixty (60) days to the Department. Offsetting any amount pursuant to this section shall not be considered a breach of agreement by the Department.

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

- a) If the Project provided for herein includes travel compensation, reimbursement to the Agency for travel, meals, or lodging shall be subject to amounts and limitations specified in the "State Comprehensive Travel Regulations," as they are amended from time to time and subject to the Agreement Budget.

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

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

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

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

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

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

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

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

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

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

**D.5 Appropriations of Funds:**

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

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

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

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

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

**D.8 Independent Contractor:**

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

entities and that nothing in this Agreement shall be construed to create a principal/agent relationship or to allow either to exercise control or direction over the manner or method by which the other transacts its business affairs or provides its usual services. The employees or agents of one party shall not be deemed or construed to be the employees or agents of the other party for any purpose whatsoever.

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

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

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

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

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

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

**b) DBE Obligation:**

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

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

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

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

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

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

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

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

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

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

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

**D.13 Equal Employment Opportunity:**

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



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

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

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

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

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

**D.16 Conflicts of Interest:**

- a) The Agency warrants that no amount shall be paid directly or indirectly to an employee or official of the State of Tennessee as wages, compensation, or gifts in exchange for acting as an officer, agent, employee, subContractor, or consultant to the Agency in connection with any work contemplated or performed relative to this Agreement.
- b) The Agency shall insert in all agreements entered into in connection with the Project or any property included or planned to be included in any Project, and shall require its Contractors to insert in each of it's subcontracts, the following provision:
  - 1) "No amount shall be paid directly or indirectly to an employee or official of the State of Tennessee as wages, compensation, or gifts in exchange for acting as an officer, agent, employee, subContractor, or consultant to the Agency in connection with any work contemplated or performed relative to this Agreement."

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

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

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

**The Agency certifies, to the best of its knowledge and belief, that:**

- a) No federally appropriated funds have been paid or will be paid, by or on behalf of the Agency, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress in connection with the awarding of any federal agreement, the making of any federal grant, the making of any federal loan, and entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal agreement, grant, loan, or cooperative agreement.
- b) If any funds other than federally appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this grant, loan, or cooperative agreement, the Agency shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- c) The Agency shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including sub-grants, subcontracts, and agreements under grants, loans, and cooperative agreements) and that all sub-recipients of federally appropriated funds shall certify and disclose accordingly.

**D.19 Records:**

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

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

#### **D.20 Inspection:**

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

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

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

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

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

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

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

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

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

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

**D.25 Agreement Format:**

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

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

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

**D.27 Amendment:**

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

**D.28 State Liability:**

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

**D.29 Force Majeure:**

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

**D.30 Required Approvals:**

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

**D.31 Estimated Cost:**

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

**D.32 Third Party Liability:**

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

**D.33 Deposits:**

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

**D.34 Department Activities:**

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



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

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

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

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

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

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

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

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

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

**CITY OF KINGSFORT**

**STATE OF TENNESSEE  
DEPARTMENT OF TRANSPORTATION**

By: _____	_____	By: _____	_____
<b>Patrick Shull</b>	<b>Date</b>	<b>Clay Bright</b>	<b>Date</b>
<b>Mayor</b>		<b>Commissioner</b>	

**APPROVED AS TO  
FORM AND LEGALITY**

**APPROVED AS TO  
FORM AND LEGALITY**

By: _____	_____	By: _____	_____
<b>J. M. Billingsley</b>	<b>Date</b>	<b>John Reinbold</b>	<b>Date</b>
<b>Attorney</b>		<b>General Counsel</b>	

## EXHIBIT "A"

**AGREEMENT #:** 200308

**PROJECT IDENTIFICATION #:** 131049.00

**FEDERAL PROJECT #:** STP-M-9108(52)

**STATE PROJECT #:** 82LPLM-F3-100

**PROJECT DESCRIPTION:** Brickyard Park Bicycle-Pedestrian Bridge. This project will construct a pedestrian bridge over the CSX Railroad at Centennial Park connecting downtown Kingsport to the Brickyard Park development. Railroad tracks separate downtown Kingsport from the Brickyard Park area and Riverview neighborhood. The new pedestrian bridge will provide a much safer route of travel between downtown Kingsport and the Brickyard Park and Riverview neighborhood by eliminating the current at-grade crossing.

**CHANGE IN COST:** Cost hereunder is controlled by the figures shown in the TIP and any amendments, adjustments or changes thereto

**TYPE OF WORK:** Bicycles and Pedestrian Facility

PHASE	FUNDING SOURCE	FED %	STATE %	LOCAL %	ESTIMATED COST
PE-NEPA	STBG	80	0	20	\$125,000.00
PE-DESIGN	STBG	80	0	20	\$250,000.00
RIGHT-OF-WAY	STBG	80	0	20	\$125,000.00
CONSTRUCTION	LOCAL	0	0	100	\$3,115,000.00
CEI	LOCAL	0	0	100	\$350,000.00
TDOT ES	LOCAL	0	0	100	\$35,000.00

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

**TDOT ENGINEERING SERVICES (TDOT ES):** In order to comply with all federal and state laws, rules, and regulations, the TDOT Engineering Services line item in Exhibit A is placed there to ensure that TDOT's expenses associated with the project during construction are covered. The anticipated TDOT expenses include but are not necessarily limited to Construction Inspection and Material and Testing Expenses (Quality Assurance Testing).

**LEGISLATIVE AUTHORITY:** STBG: 23 U.S.C.A, Section 133, Surface Transportation Block Grant Program funds allocated or subject to allocation to the Agency.

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



## AGENDA ACTION FORM

### Budget Adjustment Ordinance for Various Funds in FY21

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

Action Form No.: AF-311-2020  
 Work Session: December 14, 2020  
 First Reading: December 15, 2020

Final Adoption: January 19, 2021  
 Staff Work By: Morris  
 Presentation By: McCartt

### Recommendation:

Approve the Ordinance.

### Executive Summary:

This ordinance amends the General Project Fund by accepting a payment in lieu of sidewalk in the amount of \$5,494 to the AEP Sidewalk Improvements project (GP2015) and by appropriating \$88,917 to the Public Safety Software & Equipment project (GP2103).

This ordinance also amends the Stormwater Project Fund by transferring \$25,000 from the Storm Water Infrastructure project (ST1602) to the ST System Mapping project (ST2103) and transfers \$9,770 from the Storm Water Infrastructure project (ST1602) to the Misc SW Line Rehab project (ST2102).

### Attachments:

1. Ordinance

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: *2W*

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

# PRE-FILED CITY RECORDER

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

AN ORDINANCE TO AMEND VARIOUS FUND BUDGETS FOR  
THE YEAR ENDING JUNE 30, 2021; AND, TO FIX THE  
EFFECTIVE DATE OF THIS ORDINANCE

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

SECTION I. That the General Project Fund be amended by accepting a payment in lieu of sidewalk in the amount of \$5,494 to the AEP Sidewalk Improvements project (GP2015) and by appropriating \$88,917 to the Public Safety Sftw&Equip project (GP2103).

SECTION II. That the Stormwater Project Fund be amended by transferring \$25,000 from the Storm Water Infrastructure project (ST1602) to the ST System Mapping project (ST2103) and by transferring \$9,770 from the Storm Water Infrastructure project (ST1602) to the Misc SW Line Rehab project (ST2102).

<u>Account Number/Description:</u>	<u>Budget</u>	<u>Incr/&lt;Decr&gt;</u>	<u>New Budget</u>
<b>General Project Fund: 311</b>			
<b>AEP Sidewalk Improvements (GP2015)</b>			
<b>Revenues:</b>	\$	\$	\$
311-0000-364.20-00 From Corporations	49,120	5,494	54,614
311-0000-368.10-66 Series 2019 GO Improvment	30,382	0	30,382
311-0000-368.21-01 Premium From Bond Sale	2,382	0	2,382
311-0000-391.01-00 From General Fund	507,236	0	507,236
<b>Totals:</b>	<b>589,120</b>	<b>5,494</b>	<b>594,614</b>

<b>Expenditures:</b>	\$	\$	\$
311-0000-601.90-03 Improvements	238,140	5,494	243,634
311-0000-601.90-06 Purchases \$5,000 & Over	350,980	0	350,980
<b>Totals:</b>	<b>589,120</b>	<b>5,494</b>	<b>594,614</b>

<b>Public Safety Software &amp; Equip (GP2103)</b>			
<b>Revenues:</b>	\$	\$	\$
311-0000-391.01-00 From General Fund	700,000	88,917	788,917
<b>Totals:</b>	<b>700,000</b>	<b>88,917</b>	<b>788,917</b>

<b>Expenditures:</b>	\$	\$	\$
311-0000-601.90-04 Equipment	50,000	(50,000)	0
311-0000-601.90-08 Software \$5,000 & Over	650,000	138,917	788,917
<b>Totals:</b>	<b>700,000</b>	<b>88,917</b>	<b>788,917</b>

<u>Account Number/Description:</u>	<u>Budget</u>	<u>Incr/&lt;Decr&gt;</u>	<u>New Budget</u>
<b>General Fund: 110</b>			
<b>Expenditures:</b>	\$	\$	\$
110-3030-443.10-10 Salaries & Wages	3,737,500	(88,917)	3,648,583
110-4804-481.70-36 General Project Fund	2,425,000	88,917	2,513,917
<b>Totals:</b>	<b>6,162,500</b>	<b>88,917</b>	<b>6,162,500</b>

**Account Number/Description:****Stormwater Project Fund:457****Storm Water Infrastructure (ST1602)****Revenues:**

457-0000-391.95-00 Storm Water Fund

***Totals:*****Budget****Incr/<Decr>****New Budget**

\$

538,755

\$

(34,770)

\$

503,985

**538,755****(34,770)****503,985****Expenditures:**

457-0000-622.20-22 Construction Contracts

457-0000-622.20-23 Arch/Eng/Landscaping Serv

457-0000-622.90-03 Improvements

***Totals:***

\$

66,271

\$

(8,808)

\$

57,463

58,000

(203)

57,797

414,484

(25,759)

388,725

**538,755****(34,770)****503,985****ST System Mapping (ST2103)****Revenues:**

457-0000-391.95-00 Storm Water Fund

***Totals:***

\$

100,000

\$

25,000

\$

125,000

**100,000****25,000****125,000****Expenditures:**

457-0000-622.90-03 Improvements

***Totals:***

\$

100,000

\$

25,000

\$

125,000

**100,000****25,000****125,000****Misc SW Line Rehab (ST2102)****Revenues:**

457-0000-391.95-00 Storm Water Fund

***Totals:***

\$

100,000

\$

9,770

\$

109,770

**100,000****9,770****109,770****Expenditures:**

457-0000-622.90-03 Improvements

***Totals:***

\$

100,000

\$

9,770

\$

109,770

**100,000****9,770****109,770**

SECTION III. 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.

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

ATTEST:

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

APPROVED AS TO FORM:

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

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





## AGENDA ACTION FORM

### Budget Adjustment Ordinance for Library Governing Board Fund in FY20

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

Action Form No.: AF-310-2020  
Work Session: November 30, 2020  
First Reading: December 1, 2020

Final Adoption: December 15, 2020  
Staff Work By: Morris  
Presentation By: McCartt

#### Recommendation:

Approve the Ordinance.

#### Executive Summary:

This ordinance increases the Library Governing Board Fund budget by appropriating \$9,471 in fund balance to cover reclassified expenses.

#### Attachments:

1. Ordinance

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: *aw*

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

ORDINANCE NO.

AN ORDINANCE TO AMEND THE LIBRARY GOVERNING BOARD 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 Library Governing Board Fund budget be amended by appropriating \$9,471 from fund balance to the Electric Service line (137-4540-474.20-30) in the amount of \$5,795 and to the Library Programs Supplies line (137-4540-474.30-39) in the amount of \$3,676.

<u>Account Number/Description:</u>	<u>Budget</u>	<u>Incr/&lt;Decr&gt;</u>	<u>New Budget</u>
<b>General Projects-Special Revenue Fund: 137</b>			
<b>Revenues:</b>	\$	\$	\$
137-0000-392.01-00 Fund Bal Appropriations	13,275	9,471	22,746
<b>Totals:</b>	<b>13,275</b>	<b>9,471</b>	<b>22,746</b>
<b>Expenditures:</b>	\$	\$	\$
137-4540-474.20-30 Electric Service	37,723	5,795	43,518
137-4540-474.30-39 Library Programs Supplies	16,259	3,676	19,935
<b>Totals:</b>	<b>53,982</b>	<b>9,471</b>	<b>63,453</b>

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.

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

ATTEST:

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

APPROVED AS TO FORM:

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

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



## AGENDA ACTION FORM

### Accept a Donation of Tempur-Pedic Mattresses

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

Action Form No.: AF-313-2020  
 Work Session: December 14, 2020  
 First Reading: N/A

Final Adoption: December 15, 2020  
 Staff Work By: John Hollowell, Scott Boyd  
 Presentation By: Scott Boyd

### Recommendation:

Approve the Resolution.

### Executive Summary:

The Kingsport Area Safety Council has a donation of twenty-two (22) new Tempur-Pedic mattresses that they are donating to the Kingsport Fire Department (KFD). The value of the mattresses is \$49,984.00.

### Attachments:

1. Resolution

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

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

A RESOLUTION ACCEPTING A DONATION OF TWENTY-TWO  
TEMPUR-PEDIC MATTRESSES FOR USE BY THE KINGSPORT  
FIRE DEPARTMENT

WHEREAS, the Kingsport Area Safety Council would like to donate twenty-two (22) new Tempur-Pedic mattresses to the Kingsport Fire Department (KFD); and

WHEREAS, the estimated value of this donation is \$49,984.00.

Now therefore,

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

SECTION I. That the donation to the city from the Kingsport Area Safety Council of twenty-two (22) new Tempur-Pedic mattresses for use by Kingsport Fire Department (KFD) in the estimated value of \$49,984.00 is accepted.

SECTION II. That the board finds 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 15th day of December, 2020.

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

ATTEST:

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

APPROVED AS TO FORM:

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



## AGENDA ACTION FORM

### Professional Services Agreement with Barge Design Solutions for the Kingsport Demolition Landfill Phase 1, Area 2 Closure Project

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

Action Form No.: AF-315-2020  
 Work Session: December 14, 2020  
 First Reading: N/A

Final Adoption: December 15, 2020  
 Staff Work By: Tim Elsea  
 Presentation By: Ryan McReynolds

#### Recommendation:

Approve the Resolution.

#### Executive Summary:

The City is preparing for the closure of Phase 1, Area 2 (map) of the Demolition Landfill located within the Brookside Industrial Park. The Demolition Landfill is a critical component of the City's effort to manage construction and yard waste. The closure work includes the installation of a protective clay cap and topsoil over the latest completed cell. This cell has actively served the community for 16 years. Although the work will be completed in-house, Construction Quality Assurance Services (CQA) will be required to ensure compliance with the Tennessee Department of Environment and Conservation's (TDEC) permit requirements. These services will include bidding and award for the clay soil used, survey staking plans, and a full time CQA officer throughout the closure ensuring proper reporting to TDEC throughout the process.

It is requested to enter into a professional services agreement with Barge Design Solutions for this service in the amount of \$230,490. Funding is available and identified in DL2000.

#### Attachments:

1. Resolution
2. Proposal
3. Area Map

Funding source appropriate and funds are available: *AM*

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: *aw*

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

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

A RESOLUTION APPROVING A PROFESSIONAL SERVICES AGREEMENT WITH BARGE DESIGN SOLUTIONS FOR THE CLOSURE OF PHASE 1 AREA 2 OF THE DEMOLITION LANDFILL LOCATED WITHIN THE BROOKSIDE INDUSTRIAL PARK AND AUTHORIZING THE MAYOR TO EXECUTE THE AGREEMENT AND ALL OTHER DOCUMENTS NECESSARY AND PROPER TO EFFECTUATE THE PURPOSE OF THE AGREEMENT

WHEREAS, the city would like to enter into a professional services agreement with Barge Design Solutions for the closure of Phase 1 Area 2 of the demolition landfill located within the Brookside Industrial Park; and

WHEREAS, the agreement with Barge Design Solutions for the closure the area will ensure the requirements that need to be met are met including Construction Quality Assurance Services (CQA) to ensure compliance with the Tennessee Department of Environment and Conservation's (TDEC) permit requirements, and will include bidding and award for the clay soil used, survey staking plans, and a full time CQA officer throughout the closure ensuring proper reporting to TDEC throughout the process; and

WHEREAS, the professional services agreement with Barge Design Solutions for this service is in the amount of \$230,490.00, and funding is available and identified in DL2000.

Now, therefore,

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

SECTION I. That the professional services agreement with Barge Design Solutions for the closure of Phase 1 Area 2 of the demolition landfill located within the Brookside Industrial Park in the amount of \$230,490.00, is approved.

SECTION II. That the mayor, or in his absence, incapacity, or failure to act, the vice-mayor, is authorized and directed to execute, in a form approved by the city attorney and subject to the requirements of Article X, Section 10 of the Charter of the City of Kingsport, the professional services agreement with Barge Design Solutions for the closure of Phase 1 Area 2 of the demolition landfill located within the Brookside Industrial Park and all other documents necessary and proper, and to take such acts as necessary, to effectuate the purpose of the agreement or this resolution.

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

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

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



ADOPTED this the 15<sup>th</sup> day of December, 2020.

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

ATTEST:

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

APPROVED AS TO FORM:

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



The scope of work is presented in the following elements.

- I. Project Description
- II. Scope of Services
- III. Project Understanding, Assumptions, and Exclusions
- IV. Time of Performance
- V. Client's Responsibilities
- VI. Deliverables
- VII. Compensation

**I. Project Description**

Barge Design Solutions (Barge) is proposing to provide Construction Quality Assurance (CQA) Services for the Kingsport Demolition Landfill Phase 1 Area 2 Closure Project.

**II. Scope of Services**

Barge proposes the following Scope of Services related to the above-noted item.

- A. Provide Bid and Award Services and Construction Administration that consist of the following tasks and assumptions:
  - 1. Provide Bid and Award Services for the selection of clay soil used for the landfill closure cap. Services include preparation of pre-bid meeting agenda, participation in pre-bid meeting, preparation of bid tab, and recommendation of award.
  - 2. Provide coordination with Geotechnical Engineer and potential clay soil providers during the qualification stage of the clay soil procurement. Evaluate the geotechnical qualities of the clay soils submitted to select solicitation of pricing.
  - 3. Provide construction administration services for the clay soil provider that includes review and approval of pay applications.
- B. Provide CQA Services for the construction Phase 1 Area 2 Closure to achieve compliance with the City's permit.
  - 1. Prepare GPS files for use in earthmoving equipment and survey staking plans for clay and topsoil installation. Prepare survey staking plans for installation of stormwater diversion berms.
  - 2. Provide surveying throughout the closure construction for staking, GPS control checks, and as-built surveying of the clay and topsoil layers for compliance with the City's permit requirements.

3. Provide CADD and Engineering throughout the closure construction to process, monitor, and evaluate field collected survey and geotechnical data for compliance with the City's permit requirements.
  4. Provide a full-time CQA officer throughout the closure construction. Construction is estimated at 16-weeks and is the basis of this Scope of Work. Responsibilities include monitoring and recording daily construction activities, coordinating geotechnical testing by others, coordinating surveying, and coordinating with the clay soil provider.
- C. Prepare CQA Report for the construction Phase 1 Area 2 Closure to submit to TDEC for approval of compliance with the City's permit.
1. Prepare as-built drawings of the closure construction that includes closure contours of the clay soil and topsoil layers and fill tables documenting the clay soil and topsoil layer thicknesses for compliance with the City's permit requirements.
  2. Prepare CQA report for submittal to TDEC for approval of compliance with the City's permit requirements. Report will include daily monitoring reports, geotechnical data provided by others, and as-built drawings prepared in Item C.1 above.
  3. Address comments and request for additional information from TDEC that might arise from the review of the CQA report.

### **III. Project Understandings, Assumptions, and Exclusions**

- A. Barge will provide the above-noted services based upon a given set of assumptions. These assumptions are as follows.
1. Geotechnical testing and services will be provided by a Geotechnical firm qualified to perform the required testing of the soils. The Geotechnical firm shall be capable of providing testing results in a timely manner and provide a field technician for testing services as requested. The Geotechnical firm shall have an agreement directly with the City for these services.
  2. Barge will have access to the site and adjoining areas, as required.
  3. Permit, recording fees, etc., are to be paid by the Client/Owner.
  4. Design will not be phased, and one set of construction documents will be produced.
  5. Construction budget for items listed in our scope of services is unknown at this time; Barge will strive to work with the Client in the establishment of this budget, but cannot be held responsible as to whether or not the yet-undefined budget is achieved.
  6. There are no historical structures involved with the project.
  7. The site is properly zoned, and rezoning or variance applications are not necessary.
  8. All environmental, property, land acquisition, and zoning issues are assumed to have been resolved.
  9. Schedule is dependent upon the timely receipt of critical information, such as final site plan, building footprints with utility points of connection, responses from regulatory authorities, and Owner/Contractor/Property Owners. Information to be provided by others will be received in a timely manner that corresponds to the civil

engineering/site development project schedule. If the information is not received in a timely manner, then additional design fees may be required.

10. Any easements for utilities or other site requirements are assumed by others.
11. All environmental, property, land acquisition, platting, and zoning issues are assumed to have been resolved.
12. Any Special Waste Permit requirements from TDEC, as well as associated fees, are by the contractor or Client.

B. The following excluded services can be provided as an additional service with an appropriate adjustment in fees

1. Services resulting from significant changes in general scope or character of the project or its design, particularly those resulting from differing field conditions discovered during construction (such as, but not limited to, soil conditions, environmental issues, etc.)
2. Delays that result in the extension of the construction duration provided in Item B.4.
3. Preparation of multiple, separate construction contract packages

#### **IV. Time of Performance**

Barge is prepared to begin work upon written authorization to proceed. Items provided in A of the Scope of Services are estimated to occur January through July 2021. Items provided in B of the Scope of Services are estimated to occur April through August 2021. Items provided in C of the Scope of Services are estimated to occur August through October 2021.

#### **V. Client's Responsibilities**

Barge strives to work closely with our clients. In order for the project team to function efficiently, certain information needs to be provided by the Client and other interested stakeholders in a timely manner. These items and responsibilities are noted below.

- A. Provide information as required to support development of Barge's scope, as required in the project agreement for services.
- B. Provide review comments in a timely manner.
- C. Provide single point of contact for project coordination purposes.
- D. Coordination of public meetings, including public announcements/invitations, providing meeting space, public information, and associated expenses will be provided by Client.

#### **VI. Deliverables**

The following is a list of documents that will be produced as a part of this effort.

- A. Bid Tab and Recommendation of Award for the Clay Soil Provider.
- B. GPS files for earthmoving equipment and survey staking plans for clay and topsoil installation.

- C. CQA report for submittal to TDEC for approval of compliance with the City's permit requirements. Report will include daily monitoring reports, geotechnical data provided by others, and as-built drawings

## VII. Compensation

The compensation to be paid to Barge for providing requested services is provided in the Fee Summary Table below.

**Fee Summary Table**

Items	Fee Type	Fee Amount
A. Closure CQA Services	Lump Sum	\$230,490
TOTAL	LS	\$230,490

The fees provided above are valid up to three (3) months from the date of this proposal.





**BARGE**  
DESIGN SOLUTIONS

Four Sheddin Square // Suite 100 // Kingsport, Tennessee 37660  
PHONE (423) 247-5525 // FAX (423) 247-4233

EXHIBIT

KINGSPORT C & D LANDFILL  
PHASE 1 AREA 2 CLOSURE  
KINGSPORT, TENNESSEE

DRAWN BY:  
DH

CHECKED BY:  
EL

DRAWING NO.:

1 of 1

PROJECT NO.:  
36793-03

DATE:  
12-04-2020





## AGENDA ACTION FORM

### Awarding the Bid for the Purchase of Three (3) Mid-Sized AWD SUV

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

Action Form No.: AF-316-2020  
 Work Session: December 14, 2020  
 First Reading: N/A

Final Adoption: December 15, 2020  
 Staff Work By: Committee  
 Presentation By: McReynolds, Quillin, Hightower

### Recommendation:

Approve the Resolution.

### Executive Summary:

Bids were opened on November 25, 2020 for the purchase of Three (3) Mid-Sized AWD SUV for use by the Grounds, Parks, and Police Communication Departments. The advertisement for the Invitation to Bid was published in the Kingsport Times News on November 11, 2020 and placed on our website for 14 calendar days. It is the recommendation of the committee to accept the apparent low, responsible compliant bid from Friendship Ford of Bristol for Three (3) 2021 Ford Explorer Base 4x4 as follows:

	\$29,941.00	Unit Cost
Less	\$2,000.00	Trade-in Allowance #1867
Less	\$2,000.00	Trade-in Allowance #1748
Less	<u>\$2,000.00</u>	Trade-in Allowance #1509
	\$83,823.00	Total Purchase Price

This unit is a fleet replacement.

Funding is identified in Project/Account # 51150085019010.

### Attachments:

1. Resolution
2. Bid Opening Minutes
3. Vendor List
4. Recommendation Memo w/ Photo

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: *2021*

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

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

A RESOLUTION AWARDDING THE BID FOR THE PURCHASE OF  
THREE MID SIZED ALL WHEEL DRIVE SUV'S TO FRIENDSHIP  
FORD OF BRISTOL AND AUTHORIZING THE CITY MANAGER  
TO EXECUTE A PURCHASE ORDER FOR THE SAME

WHEREAS, bids were opened November 25, 2020, for the purchase of three (3) mid-sized AWD SUVs for use by the grounds, parks and police communication departments; and

WHEREAS, the city will receive \$2,000.00 for a trade-in allowance for vehicle #1867, \$2,000.00 for a trade-in allowance for vehicle #1748, and a trade-in allowance of \$2,000.00 for vehicle #1509; and

WHEREAS, upon review of the bids, the board finds Friendship Ford of Bristol is the lowest responsible compliant bidder meeting specifications for the particular grade or class of material, work or service desired and is in the best interest and advantage to the city, and the City of Kingsport desires to purchase three (3) 2021 Ford Explorer Base 4x4 all-wheel drive SUV's from Friendship Ford of Bristol, at a total purchase cost of \$83,823.00 which includes the deduction of the \$6,000.00 trade-in allowance; and

WHEREAS, funding is identified in account #51150085019010.

Now therefore,

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

SECTION I. That the bid for the purchase of three (3) 2021 Ford Explorer Base 4x4 all-wheel drive SUV's at a total purchase cost of \$83,823.00, which includes the deduction of the \$6,000.00 trade-in allowance, is awarded to Friendship Ford of Bristol, and the city manager is authorized to execute a purchase order for the 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 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 15th day of December, 2020.

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

ATTEST:

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

APPROVED AS TO FORM:

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

# MINUTES BID OPENING

November 25, 2020

4:00 P.M.

Present: Nikisha Eichmann, Assistant Procurement Manager; Olivia Nickens, Procurement Specialist

The Bid Opening was held in the Procurement Department

The Procurement Manager opened with the following bids:

MID-SIZED AWD SUV					
Vendor:	Qty.:	Unit Cost:	Trade-Ins:	Delivery Time:	Make/Model:
Friendship CJDR of Bristol	3	\$31,665.00	1867 - \$2000.00 1748 - \$2000.00 1509 - \$2000.00	120 Bus. Days	Dodge Durango
Friendship Ford of Bristol	3	\$29,941.00	1867 - \$2000.00 1748 - \$2000.00 1509 - \$2000.00	120 Bus. Days	2021 Ford Explorer Base 4x4
Auto World of Big Stone Gap	3	\$29,749.00	1867 - \$501.00 1748 - \$501.00 1509 - \$501.00	180 Bus. Days	2021 WDEL75 Durango SXT AWD

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

# Vehicle Vendors

Email Address	Business
brian@autoworldbsg.com	Auto World of Big Stone Gap
carlarcher@billgatton.com	Bill Gatton
chite@courtesykingsport.com	Courtesy Chevrolet
crabtreebgmc@gmail.com	Crabtree Buick GMC
kp_porter@hotmail.com	Empire Ford
jason.empireford@gmail.com	Empire Ford II
alandrinnon@fairwaykingsport.com	Fairway Ford
drewjohnson32@yahoo.com	Freedom Ford/Chevrolet
herb.odom@freelandauto.com	Freeland Auto
wpickard@goldencircle.com	Golden Circle Ford
ctuckerold@lcford.com	Lance Cunningham Ford
lcag.fleet@gmail.com	Lonnie Cobb Ford
Donna.Newell@Ford1.biz	Neighborhood Ford
piper.kirk@tricitiedodge.com	Tri Cities Dodge
dmeador@heavymachinesinc.com	Heavy Machines
sales@goodpasturemotor.com	Goodpasture Motor Co
dave@g-sproducts.com	GSP Marketing
jrogers@thepetestore.com	The Pete Store
chris.jessee@mhc.com	MHC Kenworth
robert@mtjoyrv.com	Mid State Equipment
mequip@iglou.com	Municipal Equipment
nick.jennings@tricitiedodge.com	Tri-cities dodge
scott.pekar@thetruckpeople.com	Worldwide Equipment
todd.love@thetruckpeople.com	Worldwide Ford Sales
rob@ciequipment.com	Carolina Industrial Equipment
cbaton@cdjrcolumbia.com	Columbia Chrysler Dodge Jeep Ram
cmiequip@bellsouth.net	CMI Equip
cory@pweasi.com	Public Works Equipment
richmondmachinery@msn.com	Richmond Machinery
roddersandjetsco@aol.com	Rodders & Jets
dhigdon@stowerscat.com	Stowers
craig@stringfellow.bz	Stringfellow
bjanutolo@triadfreightlinertn.com	Triad Freightliner
tlove@friendshipauto.com	Friendship Automotive
jchamblee@tedrussell.com	Ted Russell Ford



## FLEET MAINTENANCE DEPARTMENT

City of Kingsport, Tennessee

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**To:** Nikisha Eichmann, Assistant Procurement Manager  
**From:** Steve Hightower, Fleet Manager  
**Date:** December 3, 2020  
**Re:** Midsized AWD SUV - Purchase Recommendation

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This will confirm our review and recommendation to purchase the low compliant bid of the following vendor for use by the Grounds, Parks and Police Communications Departments. We are further recommending that the trade in offering of \$2,000 each for units 1867, 1748, and 1509 be accepted. This would make the final price of each unit \$27,941.

<u>Item</u>	<u>Quantity</u>	<u>Description</u>	<u>Award to Vendor</u>	<u>Fuel Economy</u>
1	3	2021 Ford Explorer 4x4	Friendship Ford of Bristol	27 City/ 29 Hwy

### Low Compliant Bidder

The bidder was the low compliant bidder in all major aspects of the minimum specification requirements for the Midsized AWD SUV unit(s) specified.

### These unit(s) will be Fleet Replacements

Delivery and Compliance to Specifications expectations have been added to insure prompt delivery of any vehicle or piece of equipment purchased by the City of Kingsport. Failure of the awarded vendor to deliver on time or correct pre acceptance inspection deficiencies within the allotted time results in a monetary penalty assessed on a daily basis. This process will insure the departments receive their replacement units in a timely manner. Specified time allotted for delivery is 180 business days after notification with 15 days to correct inspection deficiencies after delivery inspection and a \$50 dollar a day penalty assessed for non-compliance.

The bid offerings were reviewed with the by Mike Burnette, Tony Bellamy, and Tim Elsea who are in agreement with this recommendation. Confirmation emails are attached below.

### Fuel Economy Improvement

20%

An anticipated 20% fuel economy improvement may be realized since the unit(s) have a slightly higher MPG rating than the current unit(s) being operated when fuel economies are averaged across the three traded units.

### **Trade In(s)**

1. Trade in(s):
  - a. 1509 - 2001 Ford Ranger – Age: 19 Years – 105,805 Mileage – 12.04 MPG
    - i. Trade Offering: \$2,000
  - b. 1748 - 2007 Ford Escape – Age: 13 Years – 115,415 Mileage – 16.96 MPG
    - i. Trade Offering: \$2,000
  - c. 1867 - 2009 Toyota Prius Age: 11 Years – 157,924 Mileage – 37.80 MPG
    - i. Trade Offering: \$2,000

### **Origin/ Dealer Information**

1. New Unit(s) Origin of Manufacture:
  - a. Chicago, Illinois
    - i. 65% Domestic Content
    - ii. 35% Import Content
2. Unit(s) Dealer:
  - a. Friendship Ford, Bristol, TN

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

Thank you.



Picture is for demonstration purposes only and does not reflect the actual unit(s) being purchased.



**From:** Elsea, Tim  
**Sent:** Thursday, December 03, 2020 2:43 PM  
**To:** Hightower, Steve <SteveHightower@KingsportTN.gov>  
**Subject:** Re: 2021 Ford Explorer

Steve,

Thank you for working on this for our group. We rely on Fleet experience in bid assessment and review of specifications to guide us through the process. As you mentioned to me Fleet has no concerns with this vehicle and it is the best value for the City. We agree with your recommendation to purchase a 2021 Ford Explorer.

Tim

**From:** Burnette, Mike  
**Sent:** Thursday, December 03, 2020 3:42 PM  
**To:** Hightower, Steve <SteveHightower@KingsportTN.gov>  
**Subject:** Bid for Explorer

Steve Hightower,

I agree that the bid for the Ford Explorer should be awarded to Friendship Ford.

Thanks,

Sgt Michael M Burnette  
Kingsport Police Dept  
Office #423-229-9370  
Cell #423-429-5871



## AGENDA ACTION FORM

### **Approving a Sealed Proposal from Assured Partners for Excess Workers' Compensation Insurance**

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

Action Form No.: AF-320-2020  
 Work Session: December 14, 2020  
 First Reading: N/A

Final Adoption: December 15, 2020  
 Staff Work By: Committee  
 Presentation By: C. McCartt

#### **Recommendation:**

Approve the Resolution.

#### **Executive Summary:**

On October 7, 2020, the city issued a request for sealed proposals for Excess Workers' Compensation Insurance. Upon review of the two sealed proposals received it has been determined that the proposal submitted by Assured Partners for the self-insured retention of \$500,000 is the lowest compliant proposal of the two proposals submitted, and the recommendation is to accept the proposal submitted by Assured Partners for the \$500,000 self-insured retention, for a term of one year, beginning January 1, 2021, ending December 31, 2021.

Assured Partners is the broker and has proposed that the excess insurance will be provided through the combination of two companies, The Gray Insurance Company and Midwest Employers Casualty Company.

The self-insured retention of the city is \$500,000. Both proposers provided quotes for the \$500,000 self-insured retention. The premium quote provided by Assured Partners was lower, as was the estimated annual premium. The combined rate for Gray Insurance and Midwest is \$0.2030 per \$100 of payroll per year. The estimated annual premium is \$174,533. The other proposal was higher.

While both proposers alternatively quoted a rate for self-insured retention of \$500,000 except for fire and police, which had a self-insured retention of \$750,000, the city does not have that self-insured retention for fire and police and the proposals did not meet the request for proposals issued by the city.

#### **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: *aw*

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

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

A RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE AN AGREEMENTS WITH THE GRAY INSURANCE COMPANY AND MIDWEST EMPLOYERS CASUALTY COMPANY THROUGH ASSURED PARTNERS FOR EXCESS WORKERS' COMPENSATION INSURANCE AND AUTHORIZING THE MAYOR TO EXECUTE ALL DOCUMENTS NECESSARY AND PROPER TO EFFECTUATE THE PURPOSE OF THE AGREEMENT

WHEREAS, proposals were opened pursuant to a request for proposals issued on October 7, 2020, for excess workers compensation insurance with a self-insured retention of \$500,000; and

WHEREAS, upon review of the proposal, the board finds that the proposals submitted by Assured Partners is the lowest responsible compliant proposal meeting specifications for the particular grade or class of material, work or service desired and is in the best interest and advantage to the city, and the City of Kingsport desires to enter into an agreement with The Gray Insurance Company and Midwest Employers Casualty Company through Assured Partners to provide specific workers compensation excess insurance coverage for the city's self-funded workers compensation insurance plan effective January 1, 2021, through December 31, 2021, with an estimated annual premium of \$174,533; and

WHEREAS, the annual premium funding is available in the Risk Management Insurance budget.

Now therefore,

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

SECTION I. That the mayor, or in his absence, incapacity, or failure to act, the vice mayor, is authorized to execute, in a form approved by the city attorney, agreements with The Gray Insurance Company and Midwest Employers Casualty Company through Assured Partners to provide excess workers' compensation insurance coverage for the city's self-funded workers' compensation program with a self-insured retention of \$500,000 effective January 1, 2021 through December 31, 2021 and all documents necessary and proper to effectuate the purpose of the agreements.

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 15th day of December, 2020.

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PATRICK W. SHULL, MAYOR

ATTEST:

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SIDNEY H. COX, CITY RECORDER

APPROVED AS TO FORM:

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J. MICHAEL BILLINGSLEY, CITY ATTORNEY



## AGENDA ACTION FORM

### Amend the Agreement with Prairie Farms Dairy to Renew for an Additional Year

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

Action Form No.: AF-319-2020  
 Work Session: December 14, 2020  
 First Reading: N/A

Final Adoption: December 15, 2020  
 Staff Work By: Committee  
 Presentation By: David Frye / Jennifer Walker

### Recommendation:

Approve the Resolution.

### Executive Summary:

On December 19, 2017, the Board of Mayor and Aldermen passed a resolution to award the KCS School Nutrition Dairy Bid to Prairie Farms Dairy. This agreement was to establish a continuous supply of dairy items for use by the City of Kingsport School Nutrition Services. The agreement included an option to renew the agreement for up to three additional years, in one-year increments, provided pricing and quality of services are acceptable to the City of Kingsport. The quality of service is satisfactory and prices are in line with market value when compared to the Consumer Price Index for All Urban Consumers, U.S. Food and Beverages. It is now recommended to amend this agreement for an additional year and extend it for the January 8, 2021– January 7, 2022 for the not to exceed contract amount of \$250,000.00.

Funding will be provided from the Kingsport City School Nutrition Services program budget.

### Attachments:

1. Resolution
2. Letter of Intent to Renew

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: *aw*

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

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

A RESOLUTION APPROVING AN ADDENDUM TO THE AGREEMENT WITH PRAIRIE FARMS DAIRY FOR DAIRY ITEMS FOR THE KINGSPORT CITY SCHOOL NUTRITION SERVICES; AUTHORIZING AND DIRECTING THE MAYOR TO EXECUTE THE ADDENDUM; AND ALL OTHER DOCUMENTS NECESSARY AND PROPER TO EFFECTUATE THE PURPOSE OF THE ADDENDUM

WHEREAS, on December 19, 2017, the board approved an agreement with Prairie Farms Dairy to provide dairy products to the Kingsport City School Nutrition Services for the period of January 8, 2018, to January 7, 2019, with the option to renew the agreement for an additional three years, in one year increments; and

WHEREAS, the Kingsport City School Nutrition Services would like to renew the agreement for the term of January 8, 2021, to January 7, 2022, for \$250,000.00; and

WHEREAS, funding will be provided from Kingsport City School Nutrition Services budget.

Now therefore,

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

SECTION I. That an addendum to the agreement with Prairie Farms Dairy for dairy products for the Kingsport City School Nutrition Services for the period of January 8, 2021, to January 7, 2022, 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 addendum to the agreement with Prairie Farms Dairy for dairy products for the Kingsport City School Nutrition Services for the period of January 8, 2021 to January 7, 2022, and all other documents necessary and proper to effectuate the purpose of the amendment or this resolution, said amendment being generally as follows:

**ADDENDUM TO AGREEMENT  
BETWEEN PRAIRIE FARMS DAIRY  
AND CITY OF KINGSPORT, TENNESSEE FOR ITS KINGSPORT CITY SCHOOLS  
MADE AND ENTERED INTO ON THE 8TH DAY OF JANUARY 2018**

**SECTION 2. CONTRACT TERM.** The work to be performed under this Contract shall be from JANUARY 8, 2021 to JANUARY 7, 2022. Providing all terms, conditions and cost are acceptable to both parties. The City reserves the right to re-bid at the end of any contract period.

**SECTION 3. THE CONTRACT PRICE.** The City shall pay, in current fund, the Contractor for the performance of this Contract on the basis of the unit price cost per unit, as set forth in SECTION 1 above, and as set out and stipulated in the bid or proposal of said Contract, and the total cost of TWO HUNDRED FIFTY THOUSAND DOLLARS AND NO CENTS (\$250,000.00) is an estimated total cost, based upon the number of units required for the performance of this Contract and in the event there is any variation in the units actually required in the performance of this Contract, and the estimate made above, then the unit price shall in all things control, so that the total estimated cost of TWO HUNDRED FIFTY THOUSAND DOLLARS AND NO CENTS (\$250,000.00) is subject to being increased in the event the units required for this Contract are greater than that estimated, and is subject to being decreased in the event said units are less than that estimated; which said payment, based upon the unit costs mentioned above, shall be full compensation for all materials and supplies furnished, and all labor done by the Contractor under and pursuant to this Agreement, and said sum



shall also pay for all losses or damages of the Contractor arising out of the nature of the work, and for any and all expenses incurred in consequence of the work under this Contract, and for the well and faithful performance of said Contract.

Notwithstanding any other language to the contrary in the Agreement, the following terms shall be controlling:

1. This Agreement shall terminate at the end of the contract year, January 7, 2022. Additional annual term(s), each of which said term shall expire at the end of the then current contract year, shall be at the sole option of the City of Kingsport. If not renewed, for reason of Funding Out (which means school has insufficient funds to pay at June 30), City shall have no obligation to pay any additional costs and City shall surrender all rights and interest in any asset(s) which are not fully owned by City to Company. Except for the Maintenance Component and charges based upon the usage of the Equipment, the balance of the monthly payment owed by the City shall be consistent during the term(s) of the Agreement.

2. The Agreement shall be governed by the laws of the State of Tennessee. Any action brought in law or in equity to enforce any provision of the entire Agreement shall be filed in the appropriate state court in Sullivan County, Tennessee.

3. In any action to enforce this Agreement, the prevailing party shall be entitled to recover its costs and expenses, including reasonable attorney's fees.

By our signatures we have read the above terms of this Addendum and agree with the terms.

[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 15<sup>th</sup> day of December, 2020.

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

ATTEST:

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

APPROVED AS TO FORM:

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



**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](mailto:jwalker@k12k.com)  
[www.k12k.com](http://www.k12k.com)

## MEMORANDUM

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**TO:** KCS Board of Education/  
Board of Mayor & Aldermen

**FROM:** Jennifer Walker

**DATE:** 12/03/20

**RE:** Renew Prairie Farms Dairy Contract - School Nutrition Services

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**Recommendation:** Approve renewal agreement to extend Prairie Farms Dairy contract for one year

The City of Kingsport entered into an agreement with Prairie Farms Dairy beginning January 8, 2018. This agreement was to establish a continuous supply of dairy items for use by the City of Kingsport School Nutrition Services. The agreement included 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. The quality of service is very good and prices are in line with market value when compared to the Consumer Price Index for All Urban Consumers, U.S. Food and Beverages. It is now recommended to amend this agreement for an additional year and extend it for the January 8, 2021 – January 7, 2022 term for the not to exceed contract amount of \$250,000.00.

Funding will be provided from Kingsport City School Nutrition budget.



December 1, 2020

Michelle Ramey  
Procurement  
Kingsport City Schools  
400 Clinchfield Street Suite 200  
Kingsport TN 37660

Dear Ms. Ramey,

Prairie Farms Dairy - Somerset Division agrees to renew the current bid with Kingsport City Schools for the contract period of January 8, 2021 through January 7, 2022. Pricing be adjusted each month based on the raw milk announcement.

Thank you for allowing Prairie Farms Dairy - Somerset Division the opportunity to serve you. If you need anything else, please let us know.

Sincerely,

Mike Chandler  
General Manager

MC/cpd

PRAIRIE FARMS DAIRY, INC.

607 East Bourne Avenue, Somerset, KY42501 phone 606-679-1131

Serving: Illinois • Indiana • Missouri • Iowa • Kentucky • Tennessee • Nebraska • Michigan • Ohio • Oklahoma • Arkansas • Kansas • Mississippi • Alabama • Georgia • North Carolina • Virginia



## AGENDA ACTION FORM

### Cooperatively Purchase Software Upgrades for the Kingsport Police Department from CentralSquare Technologies

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

Action Form No.: AF-321-2020  
 Work Session: December 14, 2020  
 First Reading: N/A

Final Adoption: December 15, 2020  
 Staff Work By: Capt. Gore  
 Presentation By: Chief Quillin

#### Recommendation:

Approve the Resolution.

#### Executive Summary:

The Kingsport Police Department is requiring a computer upgrade to their existing software system from their current provider, CentralSquare Technologies. Carter County, Tennessee has already signed a contract with CentralSquare Technologies and begun the implementation of the software that the Kingsport Police Department requires upgrading. As part of Carter County's contract with CentralSquare Technologies, they requested it be permissible for other governments in Tennessee to cooperatively purchase the same items or services. CentralSquare Technologies, on page 240 of the RFP, responded affirmatively to this request. The Kingsport Police Department requests we continue moving forward via cooperative purchasing with the software upgrade. The quote provided for the upgrade is \$751,601.09, which includes a \$189,193.54 discount if the contract is completed by the end of the current year (2020).

#### Attachments:

1. Resolution
2. Letter from CentralSquare Technologies to the City of Kingsport, TN re: PiggyBack/Cooperative Purchasing

Funding source appropriate and funds are available: *pm*

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: *aw*

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

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

A RESOLUTION APPROVING A CONTRACT WITH CENTRAL SQUARE TECHNOLOGIES FOR SOFTWARE UPGRADES FOR THE EXISTING SOFTWARE FOR THE KINGSPORT POLICE DEPARTMENT; APPROVING A COMPUTER DATA PLATFORM MEMBERSHIP WITH TRITECH SOFTWARE SYSTEMS AND AUTHORIZING THE MAYOR TO EXECUTE THE CONTRACTS AND ALL OTHER DOCUMENTS NECESSARY AND PROPER TO EFFECTUATE THE PURPOSE OF THE CONTRACTS

WHEREAS, the city benefits by using cooperative contracts with the confidence that it is receiving competitive pricing knowing the products and services awarded have already been through the procurement process of the principal procurement agency; and

WHEREAS, T.C.A. Section 12-3-1203 authorizes in-state "piggyback" contracts whereby local governments in Tennessee may purchase supplies, goods, equipment and services under the same terms as a legal bid initiated by any other city, county, utility district, or other local government unit in Tennessee; and

WHEREAS, the city currently has CentralSquare Technologies software which requires upgrades, and Carter County, Tennessee currently has a contract CentralSquare Technologies that allows other local governments to purchase the services; and

WHEREAS, the city would like to enter into a Pro Suite Contract with CentralSquare Technologies for computer upgrade to their existing software system from their current provider as well as a Computer Data Platform Membership with TriTech Software Systems; and

WHEREAS, the maximum cost estimate for the contract with CentralSquare Technologies is \$751,601.09, and is available in GP2103.

Now therefore,

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

SECTION I. That a Pro Suite Contract with CentralSquare Technologies 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 Pro Suite Contract with CentralSquare 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:

Software License and Service Agreement  
Kingsport Police Department

This Software License and Service Agreement (this "Agreement") entered into as of this \_\_\_ day of \_\_\_\_\_, 20\_\_\_, by and between City of Kingsport for its Kingsport Police Department ("Customer"), having its principal place of business at \_\_\_\_\_, and CentralSquare Technologies LLC ("CentralSquare"), parent company of TriTech Software Systems ("TriTech"), having its principal place of business at 1000 Business Center Drive, Lake Mary, FL 32746. Customer and CentralSquare may also be referred to herein individually as a "Party" or collectively as the "Parties".

WHEREAS, Customer and TriTech previously entered into a Software License Agreement dated December 31, 2008, as subsequently amended, for the license and implementation of TriTech's Vision public safety software applications (the "TriTech software") for the Kingsport Police Department; and

WHEREAS, Customer desires to upgrade to the CentralSquare Pro Suite software applications as further defined in this Agreement; and

WHEREAS, this agreement shall replace and supersede all prior agreements, written or oral, with respect to implementation and support for the Customer's Vision applications.

This Agreement details the responsibilities of CentralSquare and Customer with regard to the public safety software, hardware, and related services to be provided by CentralSquare under this Agreement.

Now, therefore, in consideration of the mutual covenants and promises contained in this Agreement, the Parties agree as follows:

#### 1.0 Exhibits and Order of Precedence

The following Exhibits are incorporated into this Agreement:

1. Exhibit A: Statement of Work
2. Exhibit B: Pricing Detail
3. Exhibit C: Payment Schedule
4. Exhibit D: Maintenance Agreement

In the event of any inconsistency among the various documents that comprise this Agreement, the order of precedence shall be as follows: (i) the Agreement, followed by (ii) the Exhibits to the Agreement in the order in which they appear in 1.0, Exhibits and Order of Precedence.

#### 2.0 License

##### 2.1 Grant of the License

In consideration of Customer's payment of the license fees set forth in Exhibit B: Pricing Detail, and subject to the terms and conditions set forth herein, CentralSquare hereby grants to Customer, and Customer accepts, a perpetual, non-transferable and non-exclusive license to use certain CentralSquare software (the "Software") identified in Exhibit B: Pricing Detail only for Customer's own business purposes in object code format.

Applications listed as a subscription service in Exhibit B: Pricing Detail are not provided as a perpetual license. Such applications are provided on an annual subscription basis, which requires payment of the applicable annual subscription fees.

##### 2.2 Copies and Modifications

Customer may make a copy of the Software solely for backup or archival purposes. No CentralSquare identifying marks, copyright or proprietary right notices may be deleted from any copies of the Software made by Customer. Customer shall not decompile, or create by reverse engineering or otherwise, the source codes from the object code supplied hereunder, or adapt the Software in any way or use it to create a derivative work. CentralSquare shall not be responsible in any way for Software performance if the Software has been modified, except as modified by CentralSquare.

##### 2.3 Restrictions on Usage

Customer shall not allow any party, other than CentralSquare, to add, update, or delete database records or file system objects directly to or on the server or database except as provided for in the CentralSquare Documentation.

Customer shall not access any Server Hardware except as provided in the CentralSquare Documentation or cause any software except the Software provided under this Agreement to be installed on or executed on the Server Hardware.

##### 2.4 Infringement

CentralSquare will at its expense defend against any claim, action or proceeding by a third party ("Action" herein) for infringement by the CentralSquare Software of copyright or trade secrets, provided that Customer immediately notifies CentralSquare in writing of such Action and cooperates fully with CentralSquare and its legal counsel in the defense thereof. CentralSquare may in its discretion (i) contest,

(ii) settle, (iii) procure for Customer the right to continue using the CentralSquare Software, or (iv) modify or replace the CentralSquare Software so that it no longer infringes (as long as the functionality and performance described in the Specifications substantially remains following such modification or replacement.) Customer may participate in the defense of such Action at its own expense. If CentralSquare concludes in its sole judgment that none of the foregoing options are commercially reasonable, and Customer's use of the CentralSquare Software is permanently enjoined as a result of a judgment of a court of competent jurisdiction in such Action, then CentralSquare will return to Customer the CentralSquare Software license fee(s) paid by Customer under this Agreement less a prorated portion of said fee(s) for Customer's use of the CentralSquare



Software (calculated by multiplying the ratio of the number of months of actual use in live operations to thirty-six (36) months times the license fees paid) and the licenses granted in this Agreement shall terminate. In addition, in the event such Action results in a money judgment against Customer which does not arise, wholly or in part, from the actions or omissions of Customer, its officers, directors, employees, contractors, agents, or elected officials, or a third party, CentralSquare will, subject to Section 5.0 herein, indemnify Customer therefrom.

Notwithstanding the above, CentralSquare shall have no duty under this Section 2.4 with respect to any claim, action or proceeding arising from or related to infringements (i) by Third Party Software, including operating system software, or hardware, (ii) arising out of modifications to the CentralSquare Software and/or Documentation not made by CentralSquare, (iii) resulting from use of the CentralSquare Software to practice any method or process which does not occur wholly within the CentralSquare Software, or (iv) resulting from modifications to the CentralSquare Software or Documentation prepared pursuant to specifications or other material furnished by or on behalf of Customer. This Section 2.4 states the entire obligation of CentralSquare regarding infringement of intellectual property rights, and it will survive the termination of this Agreement.

### 3.0 Delivery, Fees and Payments

#### 3.1 Delivery of Software to Customer

The Software shall be delivered in executable object code form only. CentralSquare shall initially deliver and install copies of the Software as set forth in Exhibit A: Statement of Work, in the quantities set forth in Exhibit B: Pricing Detail. Except as stated in Exhibit D: Maintenance Agreement, CentralSquare shall not be responsible for providing any updates, enhancements, modifications, revisions, additions, replacements, conversions or maintenance to the Software.

#### 3.2 Delivery of Server Hardware to Customer

CentralSquare shall ship Server Hardware provided under this Agreement as set forth in Exhibit B: Pricing Detail to Customer's location at a mutually agreeable time in the project timeline. Items shipped via commercial carrier are FOB destination at the fixed price stated in Exhibit B: Pricing Detail. It shall be Customer's responsibility to install all Hardware and to perform proper facility preparation (such as appropriate uninterrupted power, air conditioning, space, electrical drops, security, network equipment, network drops, etc.) not specified in this Agreement as being provided by CentralSquare, but necessary to accommodate equipment as specified in the Statement of Work before, during, and/or after installation.

#### 3.3 Delivery of Services to Customer

CentralSquare will provide Services as set forth in Exhibit A: Statement of Work.

#### 3.4 Fees

Customer will pay CentralSquare the fees, without deduction or offset, on the dates set forth in Exhibit C: Payment Schedule.

#### 3.5 Late Payment

If Customer fails to pay any amount due within thirty (30) days of invoice date, Customer shall pay late charges of one and one half percent (1.5%) or the highest allowed by law, whichever is lower, per month on such balance, together with all of CentralSquare's expenses, collection costs and reasonable attorneys' fees incurred in enforcing this Agreement.

#### 3.6 Software Acceptance

Customer acknowledges that the CentralSquare Software shall be deemed accepted on the date of delivery. In the event that a Customer notifies CentralSquare of a material non-conformity in the Software as compared with the Statement of Work, CentralSquare shall use commercially reasonable efforts to correct the reported non-conformity in accordance with the support provisions set forth in Exhibit D:

Maintenance Agreement. This provision does not apply to System Acceptance, which will be achieved in accordance with the implementation, acceptance, and Go Live process as defined in the Statement of Work.

#### 3.7 Hardware Acceptance

Customer acknowledges that the Hardware shall be deemed accepted on the date of delivery. In the event that a Customer notifies CentralSquare of a material non-conformity in the Hardware as compared with the Statement of Work, CentralSquare shall use commercially reasonable efforts to correct the reported non-conformity.

#### 3.8 Additional Components

Other components (hardware and/or software, collectively "Third-Party Components") may be desired for use with the System. CentralSquare assumes no responsibility under this Agreement for obtaining and/or supporting any Third-Party Components except as expressly agreed herein. This includes, but is not limited to, networking equipment, workstations, servers for third-party systems, mobile networking equipment, and mobile workstations, laptops, or tablets.

#### 3.9 Third-Party Costs

Except as expressly agreed herein, CentralSquare assumes no responsibility for any third-party costs related to implementation of the System. This includes, but is not limited to, any third-party costs associated with the implementation of Interfaces as defined in Exhibit A: Statement of Work.

#### 4.0 Rights and Obligations

##### 4.1 Proprietary Rights

CentralSquare represents that it is the owner of or otherwise has the rights to the Software and that it has the right to grant the License. CentralSquare retains title to the Software and its associated Documentation, including, without limitation, all copies and audiovisual aspects thereof and all rights to patents, copyrights, trademarks, trade secrets and other intellectual property rights inherent therein and appurtenant thereto. Customer shall not, by virtue of this Agreement or otherwise, acquire any proprietary rights whatsoever in the Software or its associated Documentation, which shall be confidential information of CentralSquare and the sole and exclusive property of CentralSquare. CentralSquare hereby expressly reserves any right not expressly granted to Customer by this Agreement. No identifying marks, copyright or proprietary right notices may be deleted from any copy of the Software provided to or made by Customer. All right and title to any third-party software provided by CentralSquare under this Agreement shall remain with the applicable vendor thereof. Nothing in this Agreement shall be construed as conveying title in the Software, its associated Documentation, or any third-party software to Customer.

##### 4.2 Trademarks and Trade Names

Any and all trademarks and trade names, which CentralSquare uses in connection with the License granted hereunder, are and shall remain the exclusive property of CentralSquare. Nothing contained in this Agreement shall be deemed to give Customer any right, title or interest in any trademark or trade name of CentralSquare.

##### 4.3 Confidentiality

Except as otherwise provided in this Agreement, Customer shall not sell, transfer, publish, disclose or otherwise make available any portion of the Software or its associated Documentation to others. Customer shall use its reasonable best efforts to cooperate with and assist CentralSquare in identifying and preventing any unauthorized use, copying or disclosure of the Software or any portion thereof or any of the algorithms or logic contained therein or any other deliverables.

4.3.1 CentralSquare agrees to maintain Customer's confidential business information and confidential data, including patient identifying data, to which CentralSquare gains access in confidence and to not disclose such information except as required to perform hereunder or as required by law. Customer will use reasonable efforts to identify or designate information or data as confidential at or within five (5) business days of disclosure. Notwithstanding the above, CentralSquare shall own the copyrights, trade secrets, patent rights and other proprietary rights in and may use without restriction knowledge, information, ideas, methods, know-how, and copyrightable expression learned or acquired (including without limitation any feedback, suggestions, or other information or materials) as a result of or in connection with this Agreement to make modifications and enhancements to the CentralSquare Software or Documentation. Customer shall acquire no intellectual property ownership rights to the CentralSquare Software or Documentation as a result of such use, whether as author, joint author, or otherwise. Confidential information does not include any information which (a) is generally available to the public or becomes generally known to the public through no act or omission of CentralSquare or any violation of confidentiality; (b) is disclosed to CentralSquare by third parties without breach of confidentiality obligations; (c) is already in the lawful or rightful possession of CentralSquare prior to receipt of the confidential information or (d) is developed independently by CentralSquare without use of the confidential information.

4.3.1.1 CentralSquare maintains a security program for managing access to customer data – particularly HIPAA and CJIS information ("Security Approved Personnel"). This includes 1) a pre-employment background check; 2) security training required by Federal CJIS regulations; and 3) criminal background checks/fingerprints required by Federal or State regulations. CentralSquare will work with the Customer to provide reasonably required documentation (such as the CJIS Security Addendum Certification form and VPN documents).

4.3.1.2 If required by the Customer, CentralSquare will provide paper fingerprint cards for such Security Approved personnel with the fingerprinting performed in the state of the CentralSquare staff's job assignment. If the Customer requires fingerprints submitted in a form other than paper prints (such as Live Scan) or that such fingerprints be performed at the Customer's site, the Customer will reimburse CentralSquare for the cost of CentralSquare Security Approved Personnel traveling to the Customer's site or for a vendor (such as Live Scan) to travel to the applicable CentralSquare office location. This provision will apply during the installation of the Project and for the duration of the Customer's Maintenance Agreement.

4.3.1.3 Notwithstanding anything in the Agreement to the contrary the Agreement, its exhibits, attachments, or amendments, now or hereinafter made, are not Confidential Information or trade

secrets, but are public records under Tennessee law. Notwithstanding anything to the contrary this Agreement, or its exhibits, attachments, or amendments, now or hereinafter, and any documents or materials, including the Agreement, its exhibits, attachments, or amendments, now or hereinafter made, 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., 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, Customer 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 CentralSquare or providing CentralSquare with notice or the time to obtain a protective order.

#### 4.4 Termination for Breach

CentralSquare may immediately terminate this Agreement, including all license rights granted herein, in the event Customer breaches any of its material confidentiality obligations regarding the Software and its associated Documentation.

#### 4.5 Non-Confidential Information

Confidentiality obligations of the Parties shall not extend to information that:

- (a) is, as of the time of its disclosure, or thereafter becomes part of the public domain through a source other than the receiving party;
- (b) was known to the receiving party at the time of its disclosure and such knowledge can be proven by documentation;
- (c) is independently developed by the receiving party;
- (d) is subsequently learned from a third party not under a confidentiality obligation to the providing party; or
- (e) is required to be disclosed pursuant to court order, subpoena, or government authority, whereupon the receiving party shall provide notice to the other party prior to such disclosure.

#### 4.6 Limited Warranties

##### 4.6.1 Software Warranties

CentralSquare warrants that: (i) it owns or otherwise has the rights in the Software and has the right to license the Software as described in this Agreement. CentralSquare further warrants that for a period of twelve (12) months from the date of Go Live (the "Warranty Period"), the CentralSquare Software will perform in conformance with the CentralSquare Documentation and any applicable specifications set forth in Exhibit A: Statement of Work. CentralSquare's sole obligation or liability during the Warranty Period shall be to use commercially reasonable efforts to correct the Software upon receipt of written notice of a warranty defect from Customer, in a reasonable time in accordance with the provisions of Exhibit D: Maintenance Agreement. In the event CentralSquare fails to remedy material defects in the Software under this warranty, Customer's sole remedy and CentralSquare's sole liability shall be to receive a refund of any fee paid hereunder for the portion of the Software, if any, which contains an uncorrected material defect.

##### 4.6.1.1 Wireless Service Limitations

Problems in the CentralSquare software or transmission of data caused by wireless services, including cell phone carriers, cell phone devices and operating systems, and any personal settings on the devices are not warranted by CentralSquare, or covered under the terms of this Agreement. The Customer's use of services provided by wireless service providers or carrier, or transmission of data from cell phone carriers, cell phones and operating systems, and the security, privacy, or accuracy of any data provided via such services is at the Customer's sole risk.

##### 4.6.2 Hardware and Third-Party Software Warranties

CentralSquare warrants that, at the time of delivery, the Hardware will be new and unused. In addition, CentralSquare warrants that upon payment of the applicable fees, Customer will acquire good and clear title to the Hardware, free and clear of all liens and encumbrances.

All Hardware and Third-Party Software warranties provided by the manufacturer will be passed through to Customer. CentralSquare will be solely responsible for processing and managing of all Hardware and Third-Party Software warranty claims that may be necessary during the term of this Agreement.

TO THE EXTENT PERMITTED BY TENNESSEE LAW CENTRALSQUARE EXPRESSLY DISCLAIMS, AND CUSTOMER HEREBY EXPRESSLY WAIVES, ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

#### 4.7 Legal Relationship

It is expressly understood by Customer and CentralSquare that CentralSquare shall not be construed to be, and is not, an employee of Customer. CentralSquare shall provide services to Customer as an independent contractor with control over the time, means and methods for accomplishing the

services outlined in this Agreement. CentralSquare further acknowledges that it is not entitled to such benefits as holiday time, vacation time, sick leave, retirement benefits, health benefits, or other benefits usually associated with employment.

#### 4.8 Insurance Provision

CentralSquare, at all times during the term of this Agreement, shall obtain and maintain in force insurance coverage of the types and with the limits as follows:

- (a) Commercial General Liability Insurance: Commercial general liability insurance with a limit of \$1,000,000 for each occurrence; \$2,000,000 in the aggregate.
- (b) Professional Liability Insurance: Professional liability insurance with a limit of \$5,000,000 each claim; \$5,000,000 in the aggregate.
- (c) Business Automobile Liability Insurance: Business automobile liability insurance or equivalent form with a limit of not less than \$1,000,000 for each accident. Such insurance shall include coverage for owned, hired and non-owned vehicles.

At Customer's request, CentralSquare shall provide properly executed Certificates of Insurance which shall clearly evidence all insurance required in this Agreement and which provide that such insurance may not be canceled, except on 30 days prior written notice to Customer.

#### 5.0 Indemnification and Limitation of Liability

CentralSquare shall indemnify, defend and hold harmless Customer from any and all claims, lawsuits or liability, including attorneys' fees and costs, allegedly arising out of, in connection with, or incident to any loss, damage or injury to persons or property or arising from a wrongful or negligent act, error or omission of CentralSquare, its employees, agents, contractors, or any subcontractor as a result of CentralSquare's or any subcontractor's performance pursuant to this Agreement; however, CentralSquare shall not be required to indemnify Customer for any claims or actions caused to the extent of the negligence or wrongful act of Customer, its employees, agents, or contractors. Notwithstanding anything to the contrary in the foregoing, if a claim, lawsuit or liability results from or is contributed to by the actions or omissions of Customer, or its employees, agents or contractors, CentralSquare's obligations under this provision shall be reduced to the extent of such actions or omissions based upon the principle of comparative fault. Except as provided in the Tennessee Governmental Tort Liability Act, T.C.A. section 29-20-101 et seq. Customer is not responsible for the acts of any third party.

To the extent permitted by Tennessee law notwithstanding the foregoing, the aggregate liability of CentralSquare for any reason and upon any cause of action of claim, including, without limitation, CentralSquare's obligation to indemnify and hold harmless under this agreement, shall be limited to direct damages which shall not exceed (i) the amount of the fees paid for the portion of the System giving rise to such claims in the aggregate, including, without limitation, breach of contract, breach of warranty, indemnity, negligence, strict liability, misrepresentations, and other torts; or (ii) for claims arising under annual maintenance, the amount of the maintenance fees paid for the term in which the claim arises.

IN NO EVENT SHALL CENTRALSQUARE, ITS SUBCONTRACTORS OR SUPPLIERS BE LIABLE WHETHER IN CONTRACT OR IN TORT FOR LOST PROFITS, LOST SAVINGS, LOST DATA, LOST OR DAMAGED SOFTWARE, OR ANY OTHER CONSEQUENTIAL OR INCIDENTAL DAMAGES ARISING OUT OF, OR OTHERWISE RELATED TO THIS AGREEMENT, REGARDLESS OF WHETHER CENTRALSQUARE HAS NOTICE OF THE POSSIBILITY OF ANY SUCH LOSS OR DAMAGE.

#### 6.0 Termination

##### 6.1 By CentralSquare for Cause

In addition to various other express rights of CentralSquare to terminate this Agreement set forth herein, CentralSquare shall also have the right to terminate this Agreement upon thirty (30) day's prior written notice and cancel any unfulfilled portion of it by written notice to Customer due to Customer's failure to comply with any material terms or conditions of this Agreement, or in other cases if: (i) Customer becomes bankrupt or insolvent or enters into any arrangement or composition with its creditors or if a receiver is appointed to direct the business of Customer, or (ii) Customer sells or assigns its rights, duties or obligations under this Agreement to any person or entity, in whole or in part, whether by assignment, merger, transfer or assets, sale of stock, operation of law or otherwise, without the express written permission of CentralSquare or (iii) upon Customer's breach of the License or confidentiality and nondisclosure provisions contained herein, or (iv) upon a violation of CentralSquare's proprietary rights hereunder. The termination of this Agreement shall automatically terminate and extinguish the License.

CentralSquare may exercise any rights available to it under Tennessee State law to terminate for cause upon the failure of Customer to comply with the terms and conditions of this Agreement; provided that CentralSquare shall give Customer written notice specifying Customer's failure and a reasonable opportunity for Customer to cure the defect.

## 6.2 By Customer for Cause

Customer may terminate this Agreement for cause based upon the failure of CentralSquare to comply with any material terms and/or conditions of the Agreement, provided that Customer shall give CentralSquare thirty (30) days' written notice specifying CentralSquare's failure. If within thirty (30) days after receipt of such notice, CentralSquare shall not have either corrected such failure or, in the case of failure which cannot be corrected in thirty (30) days, begun in good faith to correct said failure and thereafter proceeded diligently to complete such correction, then Customer may, at its option, place CentralSquare in default and the Agreement shall terminate on the date specified in such notice.

## 6.3 Termination without Cause

After the fifth anniversary of the System Go Live date, this Agreement and the Software license granted herein may be terminated by either party by providing notice one-hundred eighty (180) days prior to the date the next annual maintenance payment is due.

## 6.4 Post-Termination Obligations

All provisions hereof relating to CentralSquare's proprietary rights, confidentiality, non-disclosure and non-solicitation shall survive the termination or expiration of this Agreement. Any fees due as per Exhibit C: Payment Schedule for work completed prior to termination shall still be paid by Customer. In the event of termination of this Agreement prior to implementation of the CentralSquare Software, or termination due to Customer's breach of CentralSquare's intellectual property rights, the license to the CentralSquare Software granted under this Agreement shall also terminate and Customer shall remove all CentralSquare Software from its computer system and at CentralSquare's direction, either return or destroy the Software and its associated Documentation.

## 7.0 Customer Responsibilities

Customer shall provide one primary Project Manager to be the main point of contact for CentralSquare. Duties of the Project Manager are outlined in Exhibit A: Statement of Work.

## 7.1 Delivery

Upon notice to Customer that the Software and Hardware is ready to be delivered, Customer shall ensure that personnel are available to receive Software and Hardware at the location designated for installation, at a date and time mutually agreed to by Customer and CentralSquare.

## 8.0 Miscellaneous

### 8.1 Force Majeure

Neither party shall be responsible for failure to fulfill its obligations hereunder or liable for damages resulting from delay in Delivery or performance as a result of war, acts of terrorism, fire, strike, riot or insurrection, natural disaster, delay of carriers, governmental order or regulation, complete or partial shutdown of plant, unavailability of equipment or software from suppliers, default of a subcontractor or vendor (if such default arises out of causes beyond such party's reasonable control), the actions or omissions of the other party or its employees or agents and/or other similar occurrences beyond the party's reasonable control (an "Excusable Delay"). In the event of any such Excusable Delay, Delivery or performance shall be extended for a period of time as may be reasonably necessary to compensate for such delay. The party affected by an Excusable Delay hereunder, shall provide written notice to the other party of such delay as soon as reasonably possible.

### 8.2 Governing Law

This Agreement and performance hereunder shall be governed by the law of the State of Tennessee, without giving effect to the principles of conflict of law of such state or international treaties.

### 8.3 Forum Selection

The Parties hereby submit to the exclusive jurisdiction and venue of Tennessee state, or federal courts with respect to any action between the Parties relating to this Agreement.

### 8.4 Assignment

This Agreement shall apply to, inure to the benefit of, and be binding upon the Parties hereto and upon their permitted successors in interest and permitted assigns. Customer may not assign, without the prior written consent of CentralSquare, which consent shall not be unreasonably withheld, Customer's rights, duties or obligations under this Agreement to any person or entity, in whole or in part, whether by assignment, merger, transfer of assets, sale of stock, operation of law or otherwise, and any attempt to do so shall be deemed a material breach of this Agreement.

### 8.5 Notice

Any notice provided pursuant to this Agreement, if specified to be in writing, shall be in writing and shall be deemed given (i) if by hand delivery, upon receipt hereof; (ii) if mailed, 7 days after deposit in the U.S. mails, postage prepaid, certified mail, return receipt requested. All notices shall be addressed to the Parties at the addresses set forth on the first page hereof.

### 8.6 Survival

All provisions of this Agreement relating to proprietary rights, confidentiality, non-disclosure, public records, governing law, forum selection, and to payment of fees by Customer shall survive the termination of this Agreement.

#### 8.7 No Waiver

The waiver or failure of either party to exercise any right in any respect provided for herein shall not be deemed a waiver of any further right hereunder.

#### 8.8 Enforceability

If for any reason a court of competent jurisdiction finds any provision of this Agreement, or portion thereof, to be unenforceable, that provision shall be enforced to the maximum extent permissible so as to affect the intent of the Parties, and the remainder of this Agreement shall continue in full force and effect.

#### 8.9 Remedies

Unless otherwise specified herein, the rights and remedies of the Parties set forth in this Agreement are not exclusive and are in addition to any other rights and remedies available at law or in equity.

#### 8.10 Headings

The headings of the sections of this Agreement are inserted for convenience only and shall not constitute a part hereof or affect in any way the meaning or interpretation of this Agreement.

#### 8.11 No Third-Party Beneficiaries

The Parties agree that this Agreement is for the benefit of the Parties hereto and is not intended to confer any rights or benefits on any third party, and that there are no third-party beneficiaries as to this Agreement or any part or specific provision of this Agreement.

#### 8.12 Limitation of Actions

No action, regardless of form, arising out of or relating to this Agreement or the subject matter hereof may be brought by either party more than two (2) years after the cause of action has initially arisen, with the exception of either Party's breach of its confidentiality or non-disclosure obligations herein or Customer's violation of CentralSquare's proprietary rights in the Software or any other software owned or licensed by CentralSquare, provided however, any claim by the Customer asserted under this Agreement may be initiated within the time limits of the limitation of actions applicable in the State of Tennessee.

#### 8.13 Taxes

Customer is a tax-exempt from Tennessee for sales or use taxes incurred for products or services. Customer will supply CentralSquare with Customer's Sales and Use Tax Exemption Certificate. Thereafter, CentralSquare will bear the burden of providing its suppliers with a copy of Customer's tax exemption certificate and CentralSquare shall assume all liability for such taxes, if any, that should be incurred.

#### 8.14 Non-Discrimination

CentralSquare agrees to abide by the requirements of the following as applicable: Title VI of the Civil Rights Act of 1964 and Title VII of the Civil Rights Act of 1964, as amended by the Equal Employment Opportunity Act of 1972, Federal Executive Order 11246 as amended, the Rehabilitation Act of 1973, as amended, the Vietnam Era Veteran's Readjustment Assistance Act of 1974, Title IX of the Education Amendments of 1972, the Age Discrimination Act of 1975, the Fair Housing Act of 1968 as amended, and CentralSquare agrees to abide by the requirements of the Americans with Disabilities Act of 1990. CentralSquare agrees not to discriminate in its employment practices, and will render services under this Agreement without regard to race, color, religion, sex, national origin, veteran status, political affiliation, disabilities, or because of an individual's sexual orientation. Any act of discrimination committed by CentralSquare, or failure to comply with these obligations when applicable shall be grounds for termination of this Agreement.

#### 8.15 Change Orders

Change orders and out-of-scope work will be defined by written agreement.

#### 8.16 Entire Agreement

This Agreement, and any Exhibits specifically incorporated therein by reference, constitutes the entire agreement between the Parties with respect to the subject matter. These documents supersede and merge all previous proposals of sale, communications, representations, understandings and agreements, whether oral or written, between the Parties with respect to the subject hereof.

This Agreement may not be modified except by a writing subscribed to by authorized representatives of both Parties.

This Agreement may be executed in any number of identical counterparts, and each such counterpart shall be deemed a duplicate original thereof.

#### 9.0 Definitions

(a) Documentation: All written, electronic, or recorded end user and system administrator documentation and functional descriptions therein that describe the uses, features, and functional

capabilities of the System, and that are published or provided to Customer by CentralSquare.

(b) Executable Object Code: Software code which has been compiled for use by the computer and is no longer directly readable or modifiable by humans.

(c) Execution of Agreement: Date Agreement is signed by all enumerated Parties.

(d) Hardware: All hardware, equipment, and other tangible non-Software items supplied to Customer by CentralSquare under this Agreement.

(e) Go Live: The use of the System as a live, non-test-bed system. This can be exhibited by events such as the completion of the first real-world booking, the taking of the first real-world call for service, the entry of the first real-world case report, or a similar event dealing with real-world use.

(f) Software: Any computer programs in object code form and any updates, enhancements, modifications, revisions, additions, replacements or conversions thereof owned by CentralSquare and set forth or identified in Exhibit B: Pricing Detail or subsequently licensed to Customer. Software specifically excludes any Third-Party Software.

(g) Server Hardware: All hardware, equipment, and other tangible non-Software items supplied to Customer by CentralSquare under this Agreement listed as "Server Hardware" in Exhibit B: Pricing Detail.

(h) Services: All project management, training, data conversion, and other services to be provided by CentralSquare under this Agreement.

(i) SSH: Secure Shell. A cryptographic protocol for securing data which is transmitted over an insecure network.

(j) System: The Software, Hardware, and Services to be purchased, developed, licensed, supplied, installed, configured, or implemented by CentralSquare under this Agreement.

(k) Third-Party Software: Any software to be supplied by CentralSquare under this agreement that is purchased or licensed from any source external to CentralSquare for use with or integration into the System.

*EACH PARTY'S ACCEPTANCE HEREOF IS EXPRESSLY LIMITED TO THE TERMS OF THIS AGREEMENT, INCLUDING ITS EXHIBITS, AND NO DIFFERENT OR ADDITIONAL TERMS CONTAINED IN ANY PURCHASE ORDER, CONFIRMATION OR OTHER WRITING SHALL HAVE ANY FORCE OR EFFECT UNLESS EXPRESSLY AGREED TO IN WRITING BY THE PARTIES.*

[Acknowledgements and Exhibits 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, provided changes needed by the city for legal compliance may alter some material provisions and are allowed, and the execution thereof by the mayor and the city attorney is conclusive evidence of the approval of such changes.

SECTION IV. That a Computer Data Platform Membership with TriTech Software Systems 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, the Computer Data Platform Membership with TriTech Software Systems 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:

#### COMMUNITY DATA PLATFORM MEMBERSHIP PROGRAM

Client: Kingsport Police Department, a department of the City of Kingsport, Tennessee.

##### Membership

A. TriTech offers qualifying Member Agencies access to IQ Search and CrimeMapping.com limited services (the Software and Services) as defined in this Agreement.

B. Clients who wish to qualify as a Member Agency must:

- a. Be a CJIS compliant Law Enforcement Agency
- b. Agree to contribute data to the Community Data Platform including:
  - i. CAD
  - ii. RMS Incidents
  - iii. RMS Arrests



- iv. RMS Warrants
- v. RMS Master Names
- c. Agree to allow TriTech to share their data with other Member Agencies and third parties as provided in this Agreement
- C. The Member Agency (also referred to herein as "Client") will receive the following benefits:

Free subscription to IQ Search for up to 10 Concurrent Users, limited to the following:			
	Your Contributed Data	Your State's Participating Agencies	National Participating Agencies
<b>RMS Incidents</b>			
• Quickview (Date of Occurrence, Location, Incident Type Description, Case Status, RMS Case Number, Agency)	YES	YES	
<b>CAD Call for Service</b>			
• QuickView	YES		

Free subscription to CrimeMapping.com
<b>Public access to:</b>
<b>Radius searches of crime data from a specified location</b>
<b>Map-based summary of RMS Incident statistics based on crime type, description, location, agency, date</b>
<b>Register for alerts on RMS Incident activity within a certain radius of a location and/or crime type</b>
<b>Map-based citizen/public access to categorized RMS Incidents</b>

A free 90-day trial to the national IQ Search service which includes full detailed searches.

D. The Member Agency will receive up to 10 concurrent user licenses to the Community Data Platform.

E. In consideration of the free subscription to IQ Search and CrimeMapping.com as defined above, Client understands and agrees that TriTech will process and anonymize data from the IQ Community Data Platform (the "Aggregate Data") to provide further commercial services for its clients and third parties as described below.

F. Full search concurrent user licenses can be purchased to increase concurrent user access and search/query builder capabilities.

#### License

Membership includes a limited non-exclusive, non-transferable license to use the Software and Services, located on TriTech's servers, through Client's computer(s).

The Software and Services provide users an effective set of tools for conducting investigations, monitoring regional crime trends, and increasing transparency to the community.

Client is expressly prohibited from sublicensing, selling, renting, leasing, providing service bureau or timeshare services, distributing or otherwise making the Software and Services available to third parties.

#### Access and Passwords

A. Access to IQ Search by Client's authorized end users ("Authorized Users") will require the use of a password. Client is responsible for management and control of passwords for its end users.

B. Client acknowledges (i) that the protection of passwords issued to Authorized Users is an integral part of TriTech's security and data protection process and procedures and, (ii) that TriTech

will rely on Client utilizing and maintaining proper password control obligations and procedures. In the event that Client has reasonable cause to believe that a password is being improperly used by an Authorized User or used by an unauthorized person, Client shall promptly notify TriTech. TriTech reserves the right to deactivate a compromised password immediately upon notice from Client without further notice to Client or the affected Authorized User. TriTech shall have the right, at its sole cost and expense, to utilize an independent certified accounting firm, to verify the number of passwords that have been issued for use by Authorized Users of the Client and use of these passwords within Client's organization in compliance with the terms of this Agreement.

#### Termination

A. This Agreement may be terminated by TriTech upon thirty (30) days' written notice due to a material breach by Client.

B. Either Party may terminate this Agreement for convenience upon thirty (30) days' written notice to the other Party.

#### Client Responsibilities

A. Client will assign a Client Administrator to manage end user access and passwords.

B. Client is responsible for providing hardware, operating system and browser software that meets TriTech's technical specifications, as well as providing and maintaining a fast, stable, high speed connection and remote connectivity for data contribution services as well as individual client user access.

C. Client is solely responsible for the integrity of all data and information that is provided to TriTech under this Agreement (i.e., the Client Information), including completeness, accuracy, validity, authorization for use and integrity over time, regardless of form and format, and whether or not such data is used in conjunction with the Subscription Services.

D. Client shall not attempt to decode, disassemble, copy, transmit, transfer or otherwise reverse engineer the Services, including, without limitation, the Software.

E. Client is responsible for maintaining an active e-mail account for correspondence with TriTech.

F. Client is responsible for proper firewall maintenance allowing for data to move from their on-premise data contributing system to the applicable IQ application.

#### Confidentiality

A. In association with the execution of this Agreement and TriTech's participation in the use and support of the Software and Services, Client has obtained, will have access to, or will obtain confidential information regarding intellectual property of TriTech, the Software and Services and its contents, sales and marketing plans and other similar information (hereinafter referred to as "Confidential Information"). Client acknowledges that the Software and Services itself represents and embodies certain trade secrets and confidential information of TriTech. Client hereby agrees that, for itself and its shareholders, officers, directors, employees, and agents, Client shall not disclose any of TriTech's trade secrets or Confidential Information without TriTech's prior written consent for any such disclosure.

B. In association with the execution of this Agreement and the participation of TriTech in the support of the Software and Services, TriTech has obtained or will obtain confidential information of Client regarding the business of Client or its customers ("Client Information"). TriTech shall not use any Client Information except as expressly set forth in this Agreement.

C. Confidential Information of either Party shall not include any information that is (i) already known to the receiving Party at the time of the disclosure; (ii) publicly known at the time of the disclosure or becomes publicly known through no wrongful act or failure of the receiving Party; (iii) subsequently disclosed to receiving Party on a non-confidential basis by a third party not having a confidential relationship with the other Party hereto that rightfully acquired such information; (iv) communicated to a third party by receiving Party with the express written consent of the other Party hereto; or (v) legally compelled to be disclosed pursuant to a subpoena, summons, order or other judicial or governmental process, provided the receiving Party provides prompt notice of any such subpoena, order, etc. to the other Party so that such Party will have the opportunity to obtain a protective order.

D. Each Party agrees to restrict access to the Confidential Information or Client Information of the other Party to those employees or agents who require access in order to use or support the Software and Services, acknowledging that certain Confidential Information or Client Information of each Party may be disclosed to Authorized Users as a necessary function of the Software and Services; and, except as otherwise provided, neither Party shall make Confidential Information or Client Information available to any other person or entity without the prior written consent of the other Party.

E. Notwithstanding the foregoing, Client understands and agrees that TriTech may transfer Client Information to a third party hosting entity for the purposes of providing the communications

infrastructure, hosting services and/or related support and other operations necessary to deliver all or certain portions of the Services; provided that TriTech, in turn, binds such third party to confidentiality and non-disclosure terms that are at least as protective of TriTech's and Client's interests as the terms stated herein. In addition, TriTech may also access and use Client Information and results or data, in a de-identified form, for data or analysis purposes (including for the purpose of preparing the Aggregate data and for crime data reporting), and may distribute the results of such analysis or data summaries to other Member Agencies or third parties provided no personally identifying information in the Client Information is disclosed. Client acknowledges that TriTech shall have no responsibility or liability for unauthorized access to or dissemination of Client Information by Authorized Users or other third parties, whether as a result of breach of data security, misappropriation or misuse of passwords or any other cause.

F. Notwithstanding anything in the Agreement to the contrary the Agreement, its exhibits, attachments, or amendments, now or hereinafter made, are not Confidential Information or trade secrets, but are public records under Tennessee law. Notwithstanding anything to the contrary this Agreement, or its exhibits, attachments, or amendments, now or hereinafter, and any documents or materials, including the Agreement, its exhibits, attachments, or amendments, now or hereinafter made, 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., 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, Client 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 TriTech or providing TriTech with notice or the time to obtain a protective order.

G.

#### Ownership and Rights

A. TriTech owns all rights and title in and to the Software and Services. Further, Client agrees that the Software screens and any output of the Software, excepting the Client Information, are the property of TriTech and subject to United States and other patent, copyright, trademark, trade secret and other applicable laws and treaties and Client agrees that it shall not remove, alter or obstruct any ownership or use legends that TriTech places on any such screens or output of the Services. Nothing contained in this Agreement shall be construed as granting Client any rights in or to the Software and Services (including, without limitation, the Software and output of the Services), the deliverables from the implementation or additional services or related Confidential Information, other than the right to use the Software and Services and any applicable Confidential Information of TriTech during the Term, in accordance with this Agreement.

B. Clients who elect to participate in the Membership Program contribute to a database of information utilized by members to conduct investigations, monitor regional crime trends, and increase transparency to their communities. Notwithstanding anything to the contrary herein, excluding CJIS data, or personally identifying data, Client agrees that TriTech has and retains all rights to use any data and information relating to the Software and Services that is uploaded, inputted, or otherwise submitted by Client for any commercial purposes during or after the term of this Agreement; and any information that constitutes, or results in, an improvement or other modification to the Software and Services. TriTech shall retain all rights and ownership to the Aggregate Data.

C. As between the parties, TriTech agrees that all Client Information provided to TriTech under this Agreement for TriTech's use in connection with the Software and Services is the property of Client; provided, however, TriTech shall have the right to retain Client Information in accordance with its obligations under the terms of this Agreement in the event that the return or the destruction of any Client Information is infeasible, and in any event may use and retain Client Information as provided in Section E of the "Confidentiality" section above.

D. The term "Developments" shall mean all programs, upgrades, updates or other enhancements or modifications to the Software, if any, and all Documentation or other materials developed and/or delivered by TriTech in the course of providing technical support or otherwise, under this Agreement.

E. Client will not have the ability to copy the Client Information entered onto the Software. Rather, TriTech shall retain the physical copy of the Software, title, right and interest in and to the Software, including upgrades, updates, and/or other enhancements or modifications to the Software in any medium, including but not limited to all copyrights, patents, trade secrets, trademarks, and other proprietary rights.

F. TriTech reserves the right to provide free cloud storage only for those data items viewable as part of the Limited Search Capabilities. Additional data attached to contributions such as video, images, and other document types may induce optional storage fees for cloud retention.

#### Liability

A. THE SERVICES, SOFTWARE AND ANY DOCUMENTATION ARE MADE AVAILABLE FOR CLIENT'S USE "AS IS" AND EXCEPT AS OTHERWISE SPECIFICALLY STATED HEREIN, WITHOUT WARRANTY OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

B. TRITECH DOES NOT WARRANT THAT THE SOFTWARE WILL OPERATE UNINTERRUPTED OR ERROR-FREE. CLIENT AGREES TO INDEMNIFY TRITECH AGAINST ANY SUCH LIABILITY TO CLIENT, REGARDING THE CLIENT'S USE OF THE SERVICES, THE SOFTWARE AND ANY DOCUMENTATION OR OTHERWISE. IN NO EVENT SHALL TRITECH BE LIABLE TO CLIENT OR ANY THIRD PARTY, WHETHER IN CONTRACT, TORT, OR OTHERWISE FOR INCIDENTAL, SPECIAL, INDIRECT, GENERAL, OR CONSEQUENTIAL DAMAGE OR LOSS OF ANY NATURE, INCLUDING BUT NOT LIMITED TO LOSS OF BUSINESS PROFITS, INCOME, LOSS OR USE OF DATA, WHICH MAY ARISE IN CONNECTION WITH THIS AGREEMENT OR THE USE OF OR INABILITY TO USE THE SERVICES, SOFTWARE AND ANY DOCUMENTATION EVEN IF TRITECH HAD BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THIS CLAUSE SHALL SURVIVE FAILURE OF AN EXCLUSIVE REMEDY.

C. TRITECH DISCLAIMS ALL LIABILITY FOR THE ACCURACY AND/OR COMPLETENESS OF DATA, INCLUDING BUT NOT LIMITED TO DATA SUPPLIED WITH THE SOFTWARE OR AS ADDED OR MODIFIED BY CLIENT OR ANY THIRD PARTY, OR DATA AS PROCESSED ON CLIENT'S OR TRITECH'S COMPUTER NETWORK. CLIENT BEARS THE ENTIRE RESPONSIBILITY FOR ITS COMPUTER NETWORK, INCLUDING CLIENT'S USE OF THE SOFTWARE, THE PERFORMANCE OF THE SERVICES AND THE SOFTWARE AND THE BEHAVIOR OF THE DATA ON EITHER CLIENT'S OR TRITECH'S COMPUTER NETWORK.

D. TRITECH REPRESENTS AND WARRANTS TO CLIENT THAT, TO TRITECH'S CURRENT AND ACTUAL KNOWLEDGE, THE SOFTWARE, WHEN USED IN ACCORDANCE WITH THIS AGREEMENT, DOES NOT VIOLATE ANY EXISTING

U.S. COPYRIGHTS, PATENTS, TRADEMARKS, OR OTHER INTELLECTUAL PROPERTY RIGHTS OF ANY THIRD PARTY AS OF THE DATE OF THIS AGREEMENT. TRITECH SHALL INDEMNIFY AND HOLD CLIENT HARMLESS FROM AND AGAINST ANY AND ALL ACTIONS, SUITS, PROCEEDINGS, CLAIMS, DEMANDS, LOSSES, LIABILITIES, COSTS AND EXPENSES, INCLUDING REASONABLE ATTORNEYS FEES, INCURRED BY CLIENT ARISING OUT OF ANY BREACH OF THIS WARRANTY ON THE PART OF TRITECH.

E. TO THE EXTENT PERMITTED BY TENNESSEE LAW IN NO EVENT SHALL TRITECH'S TOTAL CUMULATIVE LIABILITY HEREUNDER, FROM ALL CAUSES OF ACTION OF ANY KIND, WHETHER ARISING UNDER CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, BREACH OF WARRANTY OR OTHERWISE, EXCEED THE VALUE OF ONE ANNUAL TERM OF THE SUBSCRIPTION FEES FOR IQ SEARCH AND CRIMEMAPPING.COM.

#### Assignment

Client shall not transfer or assign any of its rights or obligations under this Agreement to any other person or entity without the express written permission of TriTech, which permission shall not be unreasonably withheld. Any assignment without such express written permission of TriTech shall result in the automatic termination of this Agreement.

#### Notices

Written notices required or permitted to be given under this Agreement shall be made to the parties at the following addresses and shall be presumed to have been received by the other party (i) (three) 3 days after mailing by the party when notices are sent by First Class Mail, postage prepaid; (ii) upon transmission (if sent via facsimile with a confirmed transmission report); or (iii) upon receipt (if sent by hand delivery or courier service).

To Client:		To TriTech:
Kingsport Police Department		TriTech Software Systems
225 West Center Street		Attn: Contracts
Kingsport, TN 37660		1000 Business Center Drive
		Lake Mary, FL 32746

#### Governing Law

Except to the extent that this Agreement is governed by the laws of the United States, this Agreement shall be governed, interpreted and enforced in accordance with the laws of the State of Tennessee, without regard to its conflict of law provisions.

#### Support Services

Support will be provided in accordance with Attachment A.

This Agreement does not include any other TriTech subscription services. Additional subscription services purchased by Client will be subject to applicable fees.

#### **Schedule A**

#### **TECHNICAL SUPPORT**

This Schedule describes the terms and conditions relating to technical support that TriTech will provide to Client during the Term of the Agreement.

#### Technical Support Services:

**Email Assistance.** Client may contact TriTech via email for issues with IQ Search at: [CH\\_ClientServicesTriage@tritech.com](mailto:CH_ClientServicesTriage@tritech.com); and for CrimeMapping: [omega-support@tritech.com](mailto:omega-support@tritech.com) during normal Customer Service hours, (between 7:30am and 7:30pm Central Time) on regular business days, excluding TriTech holidays, to consult with TriTech technical support staff concerning problem resolution, bug reporting, documentation clarification, and general technical guidance. Assistance may include remote connectivity, modem, or electronic bulletin board.

**Software Problem Reporting.** Client may submit requests to TriTech identifying potential problems in the Software. Requests should be in writing and directed to TriTech by e-mail. TriTech retains the right to determine in its sole discretion the final disposition of all requests, and will inform Client of the disposition of each request. If TriTech decides in its sole judgment to act upon a request, it will do so by providing a bug fix as described above.

**Scheduled Maintenance.** IQ applications may be unavailable periodically for system maintenance. Regular system maintenance includes installation of the IQ Updates, operating system updates/patches and updates to other third-party applications as needed. Clients are notified of maintenance periods via an email message.

#### Exclusions from Technical Support Services:

TriTech shall have no support obligations with respect to any third-party hardware or software product ("Nonqualified Product"). If TriTech provides support services for a problem caused by a Nonqualified Product, or if TriTech's service efforts are increased as a result of a Nonqualified Product, TriTech will charge time and materials for extra service at its current published rates for custom software services. If, in TriTech's opinion, performance of technical support is made more difficult or impaired because of a Nonqualified Product, TriTech shall so notify Client, and Client will immediately remove the Nonqualified Product at its own risk and expense during any efforts to render technical support under this Agreement. Client shall be solely responsible for the compatibility and functioning of Nonqualified Products with the Software.

#### Client Responsibilities:

In connection with TriTech's provision of technical support as described herein, Client acknowledges that Client has the responsibility to do each of the following:

- 1) Provide hardware, operating system and browser software that meets TriTech's technical specifications, as well as a fast, stable, high speed connection and remote connectivity.
- 2) Maintain the designated computer system and associated peripheral equipment in good working order in accordance with the manufacturers' specifications, and ensure that any problems reported to TriTech are not due to hardware malfunction;
- 3) Maintain the designated computer system at the latest code revision level deemed necessary by TriTech for proper operation of the Software;
- 4) Supply TriTech with access to and use of all information and facilities determined to be necessary by TriTech to render the technical support described herein;
- 5) Perform any test or procedures recommended by TriTech for the purpose of identifying and/or resolving any problems;
- 6) At all times follow routine operator procedures as specified in the Documentation or any policies of TriTech posted on the TriTech website;
- 7) Other than TriTech's confidentiality obligations with respect to Client Information as set forth in this Agreement, Client shall remain solely responsible at all times for the safeguarding of Client's proprietary, confidential, and classified information; and
- 8) Ensure that the designated computer system is isolated from any process links or anything else that could cause harm before requesting or receiving remote support assistance.

[Acknowledgements and Exhibits Deleted for Inclusion in this Resolution]

SECTION VI. That the mayor is further authorized to make such changes approved by the mayor and the city attorney to the agreement set out herein that do not substantially alter the material provisions of the agreement, provided changes needed by the city for legal compliance

may alter some material provisions and are allowed, 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 15th day of December, 2020.

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

ATTEST:

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

APPROVED AS TO FORM:

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

December 4th, 2020

City of Kingsport, TN

RE: Piggy Back/ Cooperative Purchasing

To Mr. Brent Morelock:

This letter serves as confirmation that Carter County, TN signed a contract with CentralSquare Technologies on December 16<sup>th</sup>, 2019 to purchase Computer Aided Dispatch (CAD), Records Management (RMS) and Jail Management (JMS) Software.

Carter County, TN issued an RFP requesting such software and upon completing the competitive process selected CentralSquare Technologies. In the RFP (page 5), Carter County, asked if it was permissible for other governments in Tennessee to cooperatively purchase the same items or services being solicited. CentralSquare's responded affirmatively in the RFP response (page 240).

The software that was solicited and ultimately contracted with the Carter County, TN in their RFP matches, at the macro level, the software that has been proposed to the City of Kingsport. These matching software modules are CAD, RMS and JMS.

Should you have any questions, please do not hesitate to contact me at [jarred.wiseman@centralsquare.com](mailto:jarred.wiseman@centralsquare.com) or (954)666-0886.

Sincerely,



Jarred Wiseman  
Sr. Account Executive





## AGENDA ACTION FORM

### **Approving Renewal of Property Insurance for City Owned Buildings**

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

Action Form No.: AF-324-2020  
 Work Session: December 14, 2020  
 First Reading: N/A

Final Adoption: December 15, 2020  
 Staff Work By: John Burkholder  
 Presentation By: Chris McCartt

### **Recommendation:**

Approve the Resolution.

### **Executive Summary:**

The city's property insurance coverage is provided through Travelers and covers all buildings owned by the City of Kingsport and Kingsport City Schools. Travelers has agreed to renew the insurance at \$.0442 per \$100.00 of covered value, up from \$.0373 last year. This is an increase of \$.0069 per \$100. The increase is due to the extreme losses throughout the property insurance industry resulting from hurricanes, tornadoes, wildfires and other natural disasters over the last three years. The value of our properties is also increased due to continued increased building costs for our replacement coverage and additional/renovated properties.

Our local insurance company, McGriff Insurance Services reached out to 12 other insurers for quotes, those insurers either declined to quote or would not provide a premium that was lower than Travelers. The 2020 premium will be \$268,435.00, which is an increase of \$44,601.

### **Attachments:**

1. Resolution

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

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: \_\_\_\_\_

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

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

A RESOLUTION AUTHORIZING THE RENEWAL OF THE AGREEMENT WITH TRAVELERS INSURANCE FOR CITY OF KINGSPORT PROPERTY INSURANCE AND AUTHORIZING THE MAYOR TO EXECUTE ALL DOCUMENTS NECESSARY AND PROPER TO EFFECTUATE THE PURPOSE OF THE AGREEMENT

WHEREAS, the city would like to renew the agreement with Travelers Insurance to provide specific insurance coverage for the city's property effective December 31, 2020, through December 31, 2021; and

WHEREAS, the valuation of the property that insured is \$607,776,692; and

WHEREAS, due to a hardening in the property insurance market, the rate for the premium from last year, which was \$.0373, will increase to \$.0442 per \$100.00 of covered value; and

WHEREAS, funding is available in the Risk Administration Operating Fund.

Now therefore,

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

SECTION I. That the renewal of the agreement with Travelers Insurance to provide specific insurance coverage for the city's property insurance, effective December 31, 2020, through December 31, 2021, at the rate of \$.0442 per \$100.00 is approved.

SECTION II. That the mayor, or in his absence, incapacity, or failure to act, the vice-mayor, is authorized and directed to execute, in a form approved by the city attorney and subject to the requirements of Article X, Section 10 of the Charter of the City of Kingsport, the agreement with Travelers Insurance to provide property insurance coverage for the city's property effective December 31, 2020, through December 31, 2021, and all other documents necessary and proper, and to take such acts as necessary, to effectuate the purpose of the agreement or this resolution.

SECTION III. That the 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 15th day of December, 2020.

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

ATTEST:

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SIDNEY H. COX, CITY RECORDER

APPROVED AS TO FORM:

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J. MICHAEL BILLINGSLEY, CITY ATTORNEY



## AGENDA ACTION FORM

### **Cancelling the Board of Mayor and Aldermen January 4, 2021, Work Session and the January 5, 2021, Business Meeting and Setting a Work Session on January 19, 2021, for the Board of Mayor and Aldermen**

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

Action Form No.: AF-317-2020  
 Work Session: December 14, 2020  
 First Reading: N/A

Final Adoption: December 15, 2020  
 Staff Work By: B. Rowlett  
 Presentation By: C. McCartt

#### **Recommendation:**

Approve the Resolution.

#### **Executive Summary:**

Due to the Christmas and New Year's holidays cancellation of the board of mayor and aldermen January 4, 2021, work session and the January 5, 2021, business meeting is appropriate. Additionally, due to the holiday for Martin Luther King, Jr. day on January 18, 2021, the work session normally scheduled for the Monday preceding the Tuesday business meeting is rescheduled to Tuesday January 19, 2021, at 4:00 p.m.

Article III, section 7 of the Charter of the City of Kingsport grants the board the authority to fix the time and place of regular board meetings by ordinance or resolution.

Accordingly, the attached resolution cancels the January 4, 2021, work session, the January 5, 2021, business meeting of the board of mayor and aldermen, and sets the January work session for January 19, 2021.

#### **Attachments:**

1. Resolution

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

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

A RESOLUTION CANCELLING THE JANUARY 4, 2021 WORK SESSION AND THE JANUARY 5, 2021, BUSINESS MEETING OF THE BOARD OF MAYOR AND ALDERMEN AND SETTING A WORK SESSION ON JANUARY 19, 2021, IN ACCORDANCE WITH ARTICLE III, SECTION 7 OF THE CHARTER OF THE CITY OF KINGSPORT, TENNESSEE

WHEREAS, Article III, section 7 of the Charter of the City of Kingsport, Tennessee provides that the business meeting of the board of mayor and aldermen will take place on the first and third Tuesdays of each month at 7:00 p.m., unless otherwise provided by resolution or ordinance; and

WHEREAS, the board of mayor and aldermen finds that due to the Christmas and New Year's day holidays it is appropriate to cancel the January 4, 2021, work session and the January 5, 2021, business meeting; and

WHEREAS, work sessions are usually held on the Monday preceding the business meeting, but in honor of the Martin Luther King, Jr. day holiday the board of mayor and aldermen would like to set a work session on January 19, 2021, at 4:00 p.m., in lieu of holding the work session on Monday January 18, 2021.

Now therefore,

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

SECTION I. That in accordance with Article III, section 7 of the Charter of the City of Kingsport, Tennessee, the board approves the canceling of the January 4, 2021, work session and the January 5, 2021, business meeting due to the Christmas and New Year holidays.

SECTION II. That in honor of the Martin Luther King, Jr. day holiday the board sets a work session for January 19, 2021, at 4:00 p.m. in lieu of a work session on Monday January 18, 2021

SECTION III. That the city recorder is authorized and directed to advertise the work session set on January 19, 2021, at 4:00 p.m. and to take all acts needed to ensure that notice of the meeting is made to the public in compliance with T.C.A. §10-7-503 and any applicable executive order from the Governor.

SECTION IV. That the board finds 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 15<sup>th</sup> day of December, 2020.

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PATRICK W. SHULL  
Mayor

ATTEST:

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SIDNEY H. COX  
City Recorder

APPROVED AS TO FORM:

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J. MICHAEL BILLINGSLEY  
City Attorney



## AGENDA ACTION FORM

### Consideration of the 2021 Joint Tri-Cities Legislative Policy

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

Action Form No.: AF-322-2020  
 Work Session: December 14, 2020  
 First Reading: N/A

Final Adoption: December 15, 2020  
 Staff Work By: McCartt/Billingsley  
 Presentation By: C. McCartt

### Recommendation:

Adopt the 2021 Tri-Cities legislative policy.

### Executive Summary:

A copy of the proposed 2021 Tri-Cities Legislative Policy is attached. As in years past this is a cooperative effort of Kingsport, Bristol and Johnson City. Since this is the second session of the General Assembly the policy is similar to the policy last year.

The new areas discussion of electronic meetings and expanding Industrial Development Board authority to include single family residential incentives.

The governing bodies for Bristol and Johnson City are also in the process of approving the policy.

### Attachments:

1. Proposed Joint Tri-Cities Legislative Policy

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



**2021 Tri-Cities  
Joint Legislative Policy**

**112th General Assembly  
First Session**

**January 2021**

## **Foreword**

This time last year COVID-19 was essentially unknown. That changed quickly, and while the existence of the virus became widely known, there was a lot of uncertainty both as to the virus and its impact on our state. Science is making progress on learning about the virus and its impact on individuals. Meanwhile, we are learning more about its impact on our citizens, businesses, and our communities, and making adjustments accordingly. In times like this our citizens and business look to all levels of government for help. We are all trying to work through the effects of the pandemic on our citizens, and businesses, and fulfill our responsibilities as government. There have been many unknowns and none of it has been easy, but the state has been responsive. In light of the recent increase in COVID-19 cases, we all will need to continue to work through the challenges of the pandemic.

We express our thanks to you for your leadership on this issue and for the partnership with the state in providing help and assistance to our communities. We look forward to working with you now and in the future to find ways for citizens, businesses, our communities, and the state not only to survive the pandemic, but to thrive in spite of the pandemic.

For many years now Bristol, Johnson City, and Kingsport, collectively known as the Tri-Cities, have provided our local state legislators with the common legislative goals and ideas of the cities in the form of this Joint Legislative Policy. This documents is representative of a long-standing commitment by the Tri-Cities to work together to address the problems that face all three cities, as well as other cities across this region and state.

To the returning members of our legislative delegation we say thank you for your service. To those newly elected we extend our congratulations. We look forward to working with all of you for the betterment of Tennessee. The three cities have a long history of working with our local legislative delegation to make this the best area of the state, and we look forward to that relationship continuing. Communication is a key to understanding, so our doors are open to you.

In the statewide debate of legislation that will impact local government and the delivery of services, it is important to make our voices heard for the benefit of our state legislators and in service of our constituents. This Joint Legislative Policy is designed with the expectation that it will help state legislators understand, appreciate, and give voice to the cities' positions on these issues. Ultimately, this Joint Legislative Policy is aimed at helping each city create an atmosphere of growth and stability that benefits the cities, the region, and the state.

Tennessee cities provide the fuel that drives the economic engine of the state. Cities have the infrastructure needed to attract industry and commerce that employ's Tennessee's citizens. Cities are commercial centers where citizens go to obtain their most basic needs, from medical care to groceries. Cities also serve as vibrant centers of culture and the arts, making life more enjoyable. When cities grow and prosper, the state grows and prospers.

Yet, cities struggle to provide that economic fuel. They face a number of threats: erosion of revenue sources, changes in annexation and de-annexation laws, and loss of control over municipal concerns.

To continue to effectively serve as the state's economic growth engine for Tennessee, the Tri-Cities needs to maintain local control. This gives the elected local representatives the ability to make decisions that impact their constituents. Generally, making a decision at the level closest to the people makes government more accountable. While there are clearly issues that have state wide impact and are appropriately addressed by the state government, Tennessee needs a balance. The following pages contain some detail about the major legislative priorities of the Tri-Cities. Most are tempered with the request to let the elected local representatives do what they are elected to do – make policy and law in the best interests of the cities and citizens they serve. We want to work with you to make this a great place to live and work.

## **Emergency Powers**

House Bill 7 has been filed for the upcoming legislative session. It will impact the six counties that have locally run county health departments. The bill would remove the authority of the county health director or county health officer to order required actions to abate a health emergency and place that authority in the county mayor. While recognizing the concept that such decision should be made by an elected individual rather than by an unelected individual, it should be balanced by the consideration that many decisions of state and local government are made by unelected individuals. In an effort to protect the health of the public sometimes it is necessary to make unpopular or difficult decisions that may have negative consequences to some individuals, even if some of the public want a different action. Keep in mind that the General Assembly thought that allowing the county health officer to make these decisions was good public policy, probably because it put the decision beyond the reach of political tension. In the current situation actions taken by a county health officer in an attempt to protect public health, in light of the unknowns at the time the decisions were made, and the reaction by some of the public should not change the longstanding public policy. One would expect the public health officer to make the decision based upon the beneficial impact to the public health versus the detrimental impact to the public health and not for some other reason. In such emergency situations these decisions may have been appropriate, even if unpopular.

In Sullivan County, the county health director is appointed by the mayor, works under the general supervision of the mayor, and can be removed by the mayor. In health crises, and in particular in epidemic, it may be necessary to take unpopular action to stem the impact of an epidemic.

## **Urban Growth & Planning**

### **De-annexation**

Cities provide the fuel for the state's economic engine, so providing the resources cities need to create that fuel is critically important to the interest of Tennessee. Since 1999, cities have followed prevailing law and allocated extensive capital to provide services to annexed areas through the required "plan of services" (waterline upgrades for fire flow, sewer and storm water, street lights, paving, refuse collection, schools, emergency services, parks, *etc.*). Authorizing de-annexation of taxable properties that were included in the repayment assumptions for this capital may have a negative impact on municipal bond ratings. De-annexation should only be available if a city has failed to meet its plan of services or, in other words, failed to allocate the capital necessary to extend services.

We oppose any legislation allowing de-annexation unless the city involved is in default of its plan of services.

### **Annexation**

To ensure the annexation process proceeds in an orderly and predictable manner, annexation laws should be clarified. For example, the legislature should define terms such as "qualified voter" to make it clear who is entitled to vote in an annexation referendum.

Further clarification is also needed regarding the statutory requirement of an interlocal agreement to address road maintenance and emergency services for interceding properties of non-contiguous annexations. Specifically, it would be helpful to better identify which properties should be included in the inter-local agreement for emergency services such as those fronting the most direct road route to the annexation site or within a certain distance from the road. Additionally, the road maintenance requirement for interceding properties could be clearer. Is it adequate to simply state in the inter-local agreement that the city will conduct road maintenance on the most direct route to the non-contiguous annexation? A sample interlocal agreement for this requirement would be helpful.

### **Planning**

We oppose any legislation that would reduce the authority of regional planning commissions to regulate land use within cities' urban growth boundaries.

### **Residential Development Incentives**

We support initiatives designed to give local government greater flexibility in incentivizing all levels of residential development. Greater availability of single family homes can make a region more attractive for companies seeking to locate in Tennessee. Smaller metro areas can be attractive because of lower cost of living and doing business. However, companies may view the lack of available single family housing for incoming employees as an obstacle, and may decide to relocate elsewhere, including outside Tennessee. In order to attract new business and industry, local governments need to be able to encourage the development of single family housing for incoming employees at all levels, from line workers to C-suite executives. In the 2020 legislative session, SB 2663/HB 2776 would have given industrial

development boards in certain counties the ability to promote the development of single-family housing, regardless of the target market for such housing, with the approval of the local governing body. We would support similar, expanded, legislation in the upcoming session, giving that ability to industrial development boards across the state.

## **Blight Elimination**

Property blight affect counties and cities across Tennessee. Blighted properties are in disrepair, often to the point of being uninhabitable or unusable, and may be surrounded with weeds and overgrowth. In addition to posing a public health risk, many blighted properties result in reduced property taxes and lower the value of neighboring properties, causing a ripple effect that hurts the overall tax base. If the record owners of the properties have died or do not live in the area, property taxes may not have been paid. Blighted properties have a detrimental effect on all local governments; therefore, we support the creation of new and enhanced mechanisms for local governments to deal with blighted residential and commercial properties. In particular, allowing additional methods of providing notice to owners and occupants of blighted or neglected properties, within constitutional limits, would allow local governments to move ahead with remediation of those properties.

## **Historic Tax Credits**

Historic tax credits have proven a valuable tool in downtown and urban core revitalization, particularly in converting obsolete manufacturing and commercial facilities to productive new uses. Tax credits make such projects viable by reducing the financial risk in projects that often contain many structural unknowns. By reducing this risk, projects that might otherwise not be feasible, yet are important to the cultural fabric of the community, become affordable. This helps cities by making it easier to preserve historic assets from blight and dilapidation.

Every state contiguous to Tennessee provides historic preservation tax credits. This places us at a competitive disadvantage, as state tax credits may add 25% to the existing 20% federal credit for renovations.

## **Education Funding**

### **Maintenance of Effort for Education**

Maintenance of effort for education requires that local funding bodies allocate at least the same dollar amount to school districts that they allocated in the previous funding year, with limited exceptions. Cities with city school systems are responsible for making up the shortfall when the county changes the way it funds the county school system thereby avoiding allocation a portion of the funding to city school systems. In 2017, Sullivan County did just that, resulting in a reduction in funds from the county's required allocation to the Bristol and Kingsport city school systems. The county's decision to change the way it funded the county school system was not made until August, well after the start of the fiscal year, well after the

Bristol and Kingsport school systems had established their budgets, and well after Bristol and Kingsport had appropriated funding to their respective school systems.

Both cities were informed that they might be expected to make up that revenue shortfall, even though neither city had any control over the county's funding decision. The Comptroller's Office interprets maintenance of efforts provisions to mean that local revenues must be maintained from year to year, regardless of the source of that local revenue. This requirement has the potential to throw the budgets of cities that have school systems into turmoil, because of a decision by the county, over which the cities have no control.

Clear direction is needed from the legislature as to the requirements of maintenance of efforts for education in situations like this, including the timing of the budget decisions. Such legislation could provide that a funding body such as a city or a county could not reduce revenues going to a school system, whether the county school system or a city, once any school system's budget in the county has been approved. This would provide funding certainty for that year to the county, the cities, and their school systems. The funds used by the county to fund county schools primarily comes from county property taxes, including tax payments made by city residents. Accordingly, it is reasonable that the county provide some of the funds to the city school systems.

### **Repairing the Education Finance Act**

On September 6, 2019, Tennessee Advisory Commission on Intergovernmental Relations ("TACIR") released a draft report on funding issues for Multiple School Systems. There are 35 city school systems, and 30 of the state's 95 counties have more than one school system. The Education Finance Act, and other state laws governing how education in Tennessee is funded, were not written with these city school systems in mind. As a result, statutes that operate with clarity and fairness in counties with a unified school system often have the opposite effect in counties with city school systems. As TACIR's draft report noted, there are taxpayer and spending equity concerns in favor of both the city school systems and the county school systems. Despite this, city school systems provide excellent educational opportunities for their students, often exceeding the counties in which they are located. Given this track record of success, the legislature should address the concerns raised in the TACIR report in a way that does not take away revenue sources from city school systems.

We support efforts to legislatively repair the damage done by the 2014 Court of Appeals decision in *City of Athens Board of Education v. McMinn County*, 467 S.W.3d 458 (Tenn. Ct. App. 2014). This case allows counties to collect school tax dollars and earmark them for capital projects, without apportioning any of those funds with the city school systems in those counties. This could be fixed by amending T.C.A. § 49-3-315 to reflect the clear intent of the legislature, which is that all school funds collected by a county, not just those for current operation and maintenance, must be apportioned by the county trustee among the local education system in the county on the basis of Average Daily Attendance.

## **Local Revenue**

### **The Need for Local Revenue Options**

Given the reduction and eventual elimination of the Hall Income Tax, cities need other options to raise local revenue. Otherwise, cities are faced with property tax increases as the primary means to maintain services.

We appreciate the legislature's efforts to provide for fair distribution of online sales taxes, exemplified in 2019's Public Chapter 491. The cities' position has been and continues to be that this is not a new tax. It is the collection of the tax that has always been owed. We strongly urge the legislature to refrain from offsetting the State sales tax or any other tax as a result of "new" internet sales tax revenue. While the State is currently in a strong financial position, we feel it is imperative to maintain this position without further reducing our revenue options for the future. Without question, there will be recessions in the future. No one wants to revisit the scenario in the early 2000's, when the State withheld a portion of the city share of State shared sales tax in order to balance the State budget.

Additionally, cities need local funding options that allow them to identify revenue sources that are tailored to individual cities and their residents. We request our legislators consider the following:

- **Raising or Eliminating the Single-Article Sales Tax Cap.** The single-article sales tax cap further hinders the ability of cities to realize their economic success as commercial centers. Cities and counties in the Tri-Cities can only collect local option sales tax on the first \$1,600 of the sales price of single articles of personal property, such as motor vehicles, boats, televisions, large machinery or equipment. The local option sales tax on items such as this is no more than \$44 per item, regardless of the total sales price, meaning a buyer pays the same tax whether purchasing a new Lexus or a used Toyota. Giving cities and counties the opportunity to collect their local option sales taxes on a greater portion of the sales price would increase local revenues by up to \$27.50 per \$1,000 of sales price, depending on the applicable local option sales tax rate.
- **Local Option Restaurant Privilege Tax.** Similar to what Sevierville, Pigeon Forge, and Gatlinburg are now able to do, a local option restaurant privilege tax would allow cities to decide for themselves whether to levy a privilege tax of up to 2% on the amount charged by restaurants, cafes, and other such establishments. A substantial portion of the revenue generated from such a privilege tax would be dedicated to infrastructure and programs that support tourism, with the remainder going to the city's general fund.
- **Local Option Taxes on Tobacco Products.** Currently, the State collects a tax on tobacco products in addition to state and local sales taxes. The rate is \$0.62 per pack of 20 cigarettes, or 6.6% of the wholesale cost of other tobacco products. Giving local governments the option to collect an additional local tax on tobacco products would



serve the dual purposes of deterring harmful use of tobacco products by increasing the cost of tobacco products and providing additional revenue for local governments.

- Reducing or Eliminating Trustee Fees. Currently, the State Department of Revenue collects local option sales taxes, and charges local governments a fee of 1.125% of the total amount for administrative costs. The taxes are then transferred to the county trustee, whose office deducts another 1% before transferring the money to the city where the tax was generated. The county performs very minimal calculations in order to make this transfer – primarily writing a check. In FY 2020, including both city and school systems collectively, Kingsport lost approximately \$285,000 to county trustee fees, Bristol lost approximately \$127,792, and Johnson City lost approximately \$503,000. These amounts are disproportionate to the work performed by the county. In an automated era, these trustee fees are unnecessary and serve to punish cities for generating sales taxes. We urge our legislators to make the Department of Revenue responsible for direct distribution of taxes, eliminating trustee fees.

Permitting these alternative locally imposed options for sources of revenue would help cities offset the loss of Hall Income Tax revenue. We ask our delegation to consider pursuing all of these measures. This will give each of the Tri-Cities, and all Tennessee cities, the flexibility to pursue one, more, or none of these new sources of local revenue, depending upon the needs of the citizens in each city.

Statewide, all local governments would benefit from legislative efforts to update and streamline state statutes governing how local governments collect delinquent real and personal property taxes. These statutes have not always been updated to reflect court rulings and thus may not provide constitutionally required protections to the property owner. At the same time, the current statutory scheme is cumbersome and requires several expensive newspaper publications, which then add to the burden on taxpayers. The Cities recommend that the legislature order a review of current delinquent tax laws, perhaps jointly by CTAS and MTAS, with the goal of updating, consolidating, and clarifying the delinquent tax collection process.

### **Caps on Recovery for Medical Bills in Tort Suits**

In the 2017 case of *Dedmon v. Steele*, 535 S.W.3d 431 (Tenn. Ct. App. 2017), the Tennessee Supreme Court ruled that in a personal injury case, plaintiffs are free to submit evidence of the injured party's full, undiscounted medical bills as proof of the reasonable medical expenses that the plaintiff would be entitled to in a successful personal injury lawsuit. The collateral source rule prevents defendants from submitting evidence that the plaintiff's insurance had paid discounted rates because of negotiated agreements with providers. As a result, though neither the plaintiff nor plaintiff's insurance actually paid the full, undiscounted medical bills, the defendant was held liable for that full, undiscounted amount.

This affects local governments (as well as any potential defendant in the state) because it dramatically increases the potential recoveries against local governments in personal injury lawsuits. It is also based on the application of the collateral source rule to an area that has little relation to typical markets; charges for medical expenses are not determined by a free market. Almost no one pays the sticker price for their medical care – the insured pay the negotiated rates, while the uninsured may enter bankruptcy proceedings and end up paying pennies on the dollar. While tort defendants should pay reasonable medical expenses, it is unfair to require them to pay undiscounted medical expenses when no one else does so.

### **Public Safety and Health**

#### **Law Enforcement**

Additional funds and resources are needed to assist law enforcement and prosecutors to investigate and prosecute cases involving fatal and non-fatal drug overdoses.

#### **Drug Trafficking and DUI Seizures**

We oppose any legislation that would restrict local governments' ability to seize assets related to drug trafficking and DUI arrests. In the event seizures are not allowed to occur until after a conviction, it will limit the intended impact of such seizures, especially since convictions in criminal cases can take months and sometimes years. Currently, seizures are subject to judicial review before a forfeiture warrant is issued.

Any change that impedes law enforcement's ability to seize assets from applicable DUI and drug cases in a timely manner causes us concern. It is important to have the ability to seize assets used in a criminal enterprise as the seizure affects the ability of criminals to continue illegal activity in our communities. With vehicles seized in connection with a driving under the influence charge, there are parameters under which the vehicle may be seized, and for good reason, as prescribed in Tennessee Code Annotated § 55-10-414(c).

Although there may be a few isolated incidents, the current process is an effective system that over time has served our communities and law enforcement well and should not be discarded wholesale. The Cities also oppose any legislation that would divert funds away from local drug task forces, without providing for an alternate, equivalent source of funds.

#### **Smoking**

Smoking is proven to be detrimental to one's health. In the Tri-Cities area, tobacco usage is responsible for the majority of our chronic health problems and deaths. The percentage of nonsmokers outweighs smokers by more than three to one. Granting cities the authority to prohibit smoking within a set number of feet from public facility entrances and in public venues and parks will protect public health. We appreciate the efforts of the legislative delegation in the passage of Public Chapter 529 that allows local government the option to prohibit smoking on the grounds of a playground.

## **Public Transportation**

### **Passenger & Freight Rail Service**

Passenger rail service is increasing in use in the U.S. In October 2017, AMTRAK extended service to Roanoke, and studies are in process with the hope of extending the service to Bristol, Virginia. We support rail service as an alternate mode of transportation that can improve safety and reduce traffic congestion, fuel consumption, and pollution. The tourism economy can also increase with extended service. We support the extension of rail service south, including Knoxville and Chattanooga, to facilitate the movement of passengers and freight through the State and to increase the use of rail service by passengers and freight, with intermodal ports along the line. We request the legislature consider the formation of a separate Department of Rail and Public Transportation to focus on rail and other modes of intermodal public transportation, including coordinating with the Virginia Department of Rail and Public Transportation to initiate studies for the feasibility of extending rail service along the Interstates 81, 40, and 75 corridors.

## **Other Items**

### **Electronic Open Meetings**

Various governing bodies in the Tri-Cities are meeting safely and successfully throughout the COVID-19 pandemic due to the flexibility offered by Governor Lee's executive orders allowing governing bodies to meet electronically when necessary to protect the health, safety, and welfare of Tennesseans. The ability to hold electronic open meetings maintains productivity during a crucial time for Tennessee's local governments. Electronic meetings have also proven to be convenient for members of governing bodies, the press, and the public. Even after the pandemic wanes, circumstances could arise nationally, regionally, or locally that make meeting electronically necessary. Therefore, all local governing bodies and their affiliated boards and commissions should have the permanent option to meet electronically, including the ability for some members to participate electronically while others gather in a physical location. Electronic meetings should be held with safeguards: agendas and supporting materials should be made available ahead of time; everyone participating in the meeting should be able to see and hear each speaker; and electronic meetings should be accessible to the public through live broadcasts. With those safeguards in place, local governments can continue to transparently and effectively conduct their business, regardless of the physical location of the members of the governing body, along with boards, commissions, and committees that are subject to the open meetings requirements.