



AGENDA

BOARD OF MAYOR AND ALDERMEN WORK SESSION

**Monday, December 19, 2022, 4:30 p.m.
City Hall, 415 Broad St., Boardroom, 3rd Floor**

Board of Mayor and Aldermen

Mayor Patrick W. Shull, Presiding
Vice Mayor Colette George
Alderman Betsy Cooper
Alderman Darrell Duncan

Alderman Paul W. Montgomery
Alderman Tommy Olterman
Alderman James Phillips

Leadership Team

Chris McCartt, City Manager
Michael Borders, Assistant City Manager
Bart Rowlett, City Attorney
Lisa Winkle, City Recorder/Treasurer
Tyra Copas, Human Resources Director
John Morris, Budget Director
Floyd Bailey, Chief Information Officer

Ryan McReynolds, Deputy City Manager
Jessica Harmon, Assistant City Manager
Dale Phipps, Police Chief
Scott Boyd, Fire Chief
Adrienne Batara, Public Relations Director
John Rose, Economic Development Director

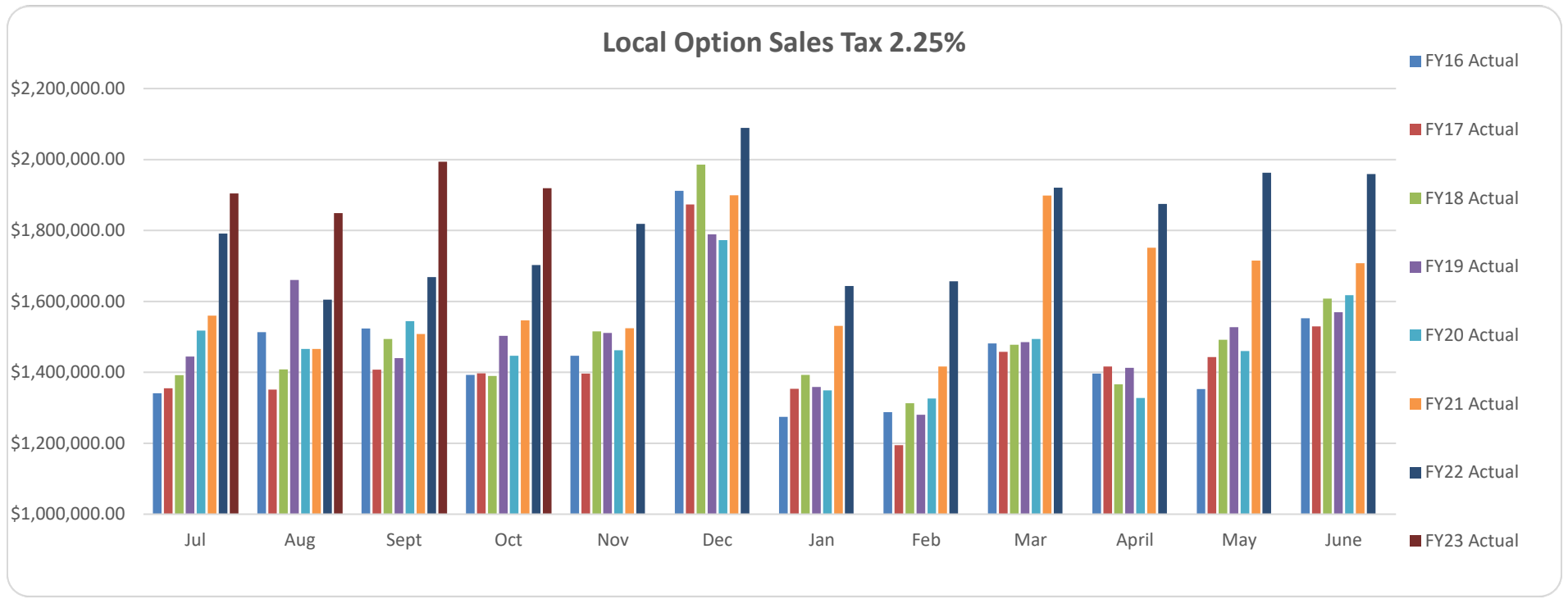
1. Call to Order
2. Roll Call
3. KEDB/NETWORKS Update – Craig Denison, Clay Walker
4. Fire Station #2 Update – Chief Boyd
5. Adjourn

Next Work Session, Tues., Jan. 17, 4pm

Local Option Sales Tax 2.25%

October 2022

	FY18 Actual	FY19 Actual	FY20 Actual	FY21 Actual	FY22 Actual	FY23 Actual	FY23 Revised Budget	Over/Under FY23 Budget	% Over/Under FY23 Budget	Over/Under FY22 Actual	% Over/Under FY22 Actual
Jul	\$1,392,147.27	\$1,444,727.00	\$1,517,710.01	\$1,560,032.54	\$1,791,460.48	\$1,904,436.51	\$1,769,500.00	\$134,936.51	7.63%	\$112,976	6.31%
Aug	\$1,408,119.00	\$1,660,189.01	\$1,466,245.00	\$1,466,134.09	\$1,605,188.64	\$1,849,130.72	\$1,621,500.00	\$227,630.72	14.04%	\$243,942	15.20%
Sept	\$1,493,952.13	\$1,440,056.00	\$1,544,461.94	\$1,508,122.79	\$1,668,359.84	\$1,994,020.56	\$1,675,100.00	\$318,920.56	19.04%	\$325,661	19.52%
Oct	\$1,389,451.00	\$1,503,032.00	\$1,447,066.95	\$1,546,557.57	\$1,702,507.26	\$1,919,283.71	\$1,714,600.00	\$204,683.71	11.94%	\$216,776	12.73%
Nov	\$1,515,210.00	\$1,510,894.40	\$1,462,498.00	\$1,524,485.85	\$1,818,738.26		\$1,760,200.00				
Dec	\$1,985,601.00	\$1,788,766.43	\$1,772,437.00	\$1,898,886.33	\$2,088,757.00		\$2,102,600.00				
Jan	\$1,392,917.00	\$1,358,902.17	\$1,348,872.00	\$1,530,774.86	\$1,643,547.05		\$1,611,800.00				
Feb	\$1,312,713.00	\$1,280,154.07	\$1,326,133.00	\$1,416,746.27	\$1,656,365.50		\$1,595,400.00				
Mar	\$1,477,699.00	\$1,484,980.00	\$1,493,996.00	\$1,898,355.80	\$1,920,619.39		\$1,844,200.00				
April	\$1,366,099.00	\$1,412,517.03	\$1,327,489.66	\$1,750,965.28	\$1,874,537.84		\$1,787,500.00				
May	\$1,492,028.00	\$1,527,469.00	\$1,460,028.68	\$1,715,204.91	\$1,962,580.55		\$1,864,800.00				
June	\$1,608,149.00	\$1,571,086.24	\$1,617,153.10	\$1,707,660.22	\$1,959,190.92		\$1,902,800.00				
Total	\$17,834,085.40	\$17,982,773.35	\$17,784,091.34	\$19,523,926.50	\$21,691,852.73	\$7,666,871.50	\$21,250,000.00	\$886,171.50	13.16%	\$899,355	13.44%



City of Kingsport

Project Status in Pictures

1 Main Street Rebuild Project

The Main Street Rebuild Project is underway with current work including water line and utility work.

3 Parkcliff Drive Waterline Improvements

The new waterline installation is complete and the road is being prepped for asphalt paving.

2 Riverbend Park

Installation of the compacted gravel trail surface continues and benches on the trail have been installed.

4 Upper Sevier Terrace Concrete Project

The concrete road improvements are nearing completion within Area 11.



Status Updates on Active Projects sorted by Cost

Estimated Cost	Project Owner	Project Name	Project Description	Completion Date	Current Status
\$38,000,000.00	Chad Austin	Reedy Creek Trunk Line (Lovedale to John B Dennis)	Replacement and upgrade of the sewer trunkline along the Reedy Creek corridor from Lovedale Dr to John B Dennis Highway. Project will be completed in multiple phases to be determined during the design process.	12/31/2030	Received proposal from Barge Design Services for final design of entire trunkline. Contract to BMA on 11/1/22.
\$28,693,000.00	Ryan McReynolds	Meadow Park Lane State Industrial Access Road	Construction of a new access road (Meadow Park Lane) that tie into the existing Riverport Road and S. Wilcox Road, approximately 2.34 miles.		Contract amendment #1 to insert construction funds has been fully executed.
\$17,610,480.00	Michael Thompson	Main Street Rebuild	The reconstruction of Main Street from Sullivan Street to Clay Street. [City & MTPO Funded]	7/1/2024	Work to begin the week of 10/31/22.
\$15,500,000.00	Tom Hensley	Wastewater Storage Facility	Storage facility required to equalize flows into the plant during heavy rain events, thereby decreasing overflows. Tank will be located alongside the plant.	5/31/2023	60% drawings/specifications to City for review mid-December
\$13,500,000.00	Ryan McReynolds	SR 347 (Rock Springs Road) [State & MTPO funded]	TDOT Managed, joint funded reconstruction of the State portion of Rock Springs Road	12/31/2022	TDOT expects to have a Public Hearing Spring 2023.
\$6,400,000.00	Niki Ensor	WTP High Service Improvements	Improvements to WTP high service pump station to improve reliability and redundancy. Improvements include addition of 4th high service pump, new electrical building, and ancillary work (pipe connections, valves and flow metering).	7/1/2024	Working on EDA grant documentation
\$4,000,000.00	Michael Thompson	Brickyard Park Bicycle-Pedestrian Bridge	Bicycle-Pedestrian bridge over the CSX Railroad at Centennial Park connecting downtown Kingsport to the Brickyard Park Development. Design funded 80% Fed./ 20% Local via STB Grant and Construction is funded 75% Fed./ 25% Local via TA Grant.	12/31/2024	TDOT has awarded the City of Kingsport additional grant funding in the amount of \$775,000 for the pedestrian bridge. This brings the total Transportation Alternatives Program grant funding to \$2,625,000.
\$3,500,000.00	Michael Thompson	Island Road Improvements from SR-126 to Kingsport City Limits	This project will realign Island Road to the southeast to improve vertical and horizontal roadway geometry for better traffic management and safety. The remaining unused portion of Island Road will be converted into a separated buffered multi-use path co	4/30/2024	Mattern & Craig received comments back from TDOT on 11/17/2022 regarding clarification on some design guidelines. They are moving forward with finishing design based on feedback.
\$3,000,000.00	Chad Austin	FY23 Sewer Collection System Upgrades	Upgrade of sewer collection system to include internal lining of trunkline along Garden Dr and several areas throughout the system.	12/29/2023	Project currently under design with Engineering Division
\$3,000,000.00	Chad Austin	Sullivan County ARP Water Upgrades	Upgrade of waterlines in Lakecrest area of Colonial Heights, areas off HWY 36 in the Midway area, and along Gravelly Rd and Thomas Addition. This is funded by ARP funds granted to Sullivan County. They are proposing using \$2.3M in their funding and the c	11/30/2023	Funding approved by County Commission. Interlocal agreement and budget ordinance on 11/1 BMA agenda.

Estimated Cost	Project Owner	Project Name	Project Description	Completion Date	Current Status
\$2,500,000.00	Michael Thompson	2021 Main Road Paving (MTPO Funded)	Paving of functionally classified roadways: Meadowview Pkwy, Moreland Dr, Cooks Valley, Fall Creek and Netherland Inn Road	11/1/2023	Still working through TDOT right-of-way process requirements.
\$2,300,000.00	Chad Austin	FY23 Water Meter Installation	Installation of 10,000 AMI water meters. After this project we will have 27,000 of 37,000 meters upgraded to full AMI (remote read meters).	6/30/2023	Envocore/RTS Water Solution was low bidder at \$46.06 per meter. Purchasing working with bidder to finalize contract.
\$2,300,000.00	Ryan McReynolds	Justice Center Renovations	Renovations and expansion of Justice Center that will accommodate court space and county offices currently residing in City Hall.	12/29/2023	Architect is working on plans and having discussions with staff.
\$2,000,000.00	Tom Hensley	Pendragon Sewer Lift Station Upgrade	Upgrade of the Pendragon Sewer Lift Station. Lift station was built in the 1950s and has reached the end of its useful life.	12/31/2023	Lift Station currently in preliminary design and data collection phase.
\$1,311,841.00	Niki Ensor	SLS Rehab and Replacement	Rehabilitation of SLS # 108 (Oak Glen Drive). Replacement of SLS #307 (Cooks Valley) and #308 (Lakeside Drive).	7/31/2023	Contractor moving equipment to Lakeside Dr
\$1,300,000.00	Niki Ensor	Water Intake Screen Replacement	Replacement of the traveling water screens at the WTP intake. The three traveling water screens prevent debris from river from entering the raw water tunnel. Number of screens replaced will depend on bids and available funding.	12/31/2023	Working on ARC grant environmental review
\$1,228,491.00	Chad Austin	ETSU @ Valleybrook Farm sewer extension	Approximately 5,000 ft extension of sewer to Valleybrook Farm facility owned by ETSU. Project is funded through grant from Appalachian Regional Commission and Washington County.	3/31/2023	Contract to BMA for approval on 11/15
\$1,200,000.00	Chad Austin	Washington Co Water Task Force - waterline extension	Washington County is funding waterline extensions throughout their county. This project will provide upgraded or new service to residents along Double Springs Rd, Deakins Rd, and Hunt Rd, all in the Fall Branch area.	8/31/2023	Interlocal agreement on 11/1 BMA agenda.
\$1,044,000.00	Kitty Frazier	Kingsport Greenbelt Extension from Rotherwood Drive to Lewis Lane	This project will build an extension of the Kingsport Greenbelt walking and biking path west from the end of the current Greenbelt at Rotherwood Drive to Lewis Lane on West Stone Drive (State Route 1).	5/31/2024	TDOT sent back preliminary design comments on 11/23/22. Barge will be working to address the comments.
\$952,601.98	Kitty Frazier	Riverbend Park - Phase 1		3/31/2023	The stabilized stone surfacing of the trail continues. The benches along the trail have been installed.
\$912,400.00	Michael Borders	MeadowView Roof Replacement	Partial Re-Roofing of the MeadowView Conference Resort & Convention Center	12/31/2022	Infrared analysis has been completed. Cranes are on site and demolition and reroofing is beginning.
\$393,285.00	Tom Hensley	WWTP Digester Cleaning	Two Wastewater plant 75' digesters were last cleaned in 2004. Grit and solids have built up in these two tanks and causing problems pumping sludge from tanks to the dewatering centrifuges.	12/30/2022	Merrell Bros. provided update, projected start date early December 2022.

Estimated Cost	Project Owner	Project Name	Project Description	Completion Date	CurrentStatus
\$352,000.00	Chad Austin	SR 93- Horse Creek/Derby Drive Section (TDOT)	TDOT project to improve State Route 93 in the Horse Creek/Derby Drive area. Project also includes improvements with the intersection with Derby Drive, along with a new bridge crossing Horse Creek. Impacted waterlines in this area will be are to be reloc	6/30/2024	Scheduled for construction in FY24
\$300,000.00	Chad Austin	Reservoir Road Culvert Replacement	Replacement of deteriorating 42" CMP culvert under Revervoir Road.	4/30/2023	GRC was low bidder. Purchasing working on contract approval.
	Borders, Michael	Collar Replacement	Collar replacement for all 18 holes at Cattails at Meadowview	6/30/2023	Bid has been accepted, and we are currently working through the contract process.
	Chad Austin	Stormwater Master Plan	Develop overall Stormwater Program Master Plan to determine where we should be focusing our stormwater efforts to make the most impact	9/1/2025	Developing RFQ to bring in consultant using ARP funding
	Chris Campbell	KATS Maintenance Facility Phase 2	Bus garage and maintenance building with wash bay and storage. (FTA Grant & City Funded)		Roof installation has begun.
	Kitty Frazier	Bike Park at Brickyard	New Bike Park in the vicinity of the new Skate Park.		Staff are making recommendations to the bid submittals.
	Kristie Leonard	Farmer's Market Upgrades	Cosmetic and ventilation updates to the Farmer's Market Building		Design plans are currently being created by engineers.
	Megan Krager	Bays Mountain Park Nature Center Balcony	Renovation and Repairs of the Nature Center Balcony at Bays Mountain Park	12/16/2022	Wall framing being constructed
	Michael Borders	Bays Mountain Park Amphitheater	Construction of new amphitheater at Bays Mountain		Project went out for bid on December 4, and will be opened on December 21.
	Michael Borders	Bays Mountain Park Nature Center Renovations- Phase 1	Renovations to the Nature Center at BMP.		Park staff are working on interior material selections and construction documents are being developed.
	Tom Hensley	WWTP Motor Control Center 6 Upgrade	Upgrade of Motor Control Center 6 at the Wastewater Treatment Plant	9/1/2023	30% design documents received from consultant

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AGENDA

BOARD OF MAYOR AND ALDERMEN

BUSINESS MEETING

Tuesday, December 20, 2022, 7:00 p.m.
City Hall, 415 Broad St., Boardroom, 3rd Floor

Board of Mayor and Aldermen

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City Administration

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John Rose, Economic Development Director

I. CALL TO ORDER

II.A. PLEDGE OF ALLEGIANCE TO THE FLAG – New Vision Youth

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

III. ROLL CALL

IV.A RECOGNITIONS & PRESENTATIONS

None

IV.B APPOINTMENTS

1. Appointments to Neighborhood Advisory Commission (AF: 355-2022) (Mayor Shull)
 - Appointments

V. APPROVAL OF MINUTES

1. Work Session – December 5, 2022
2. Business Meeting – December 6, 2022

VI. COMMUNITY INTEREST ITEMS

A. PUBLIC HEARINGS

None

COMMENT

Citizens may speak on agenda items. When you come to the podium, please state your name and address and sign the register that is provided. You are encouraged to keep your comments non-personal in nature, and they should be limited to five minutes. A total of thirty minutes is allocated for public comment during this part of the agenda.

B. BUSINESS MATTERS REQUIRING FIRST READING

1. Ordinance to Amend the FY 2023 the General Purpose School Fund Budget (AF: 376-2022) (David Frye)
 - Ordinance – First Reading

C. BUSINESS MATTERS REQUIRING FINAL ADOPTION

1. Amend Zoning of 847 Mitchell Road from the A-1, Agricultural District, to the B-3, Highway Oriented Business District (AF: 352-2022) (Ken Weems)
 - Ordinance – Second Reading & Final Adoption
2. Amend Zoning of Tax Map 120, a Portion of Parcel 003.00 from the P-1, Professional Offices District and M-1R, Light Manufacturing Restricted District to the R-3, Low Density Apartment District (AF: 353-2022) (Ken Weems)
 - Ordinance – Second Reading & Final Adoption
3. Accept a Private Monetary Donation for the Police K-9 Program and Appropriate the Funds (AF: 351-2022) (Dale Phipps)
 - Ordinance – Second Reading & Final Adoption
4. Budget Ordinance and Agreement with TDOT for Resurfacing of Various Roadways Authorizing the Mayor to Sign all Applicable Documents (AF: 367-2022) (Ryan McReynolds)
 - Ordinance – Second Reading & Final Adoption
5. Acceptance of a Donation from Kingsport Eagles Auxiliary 3141 and Appropriate the Funds (AF: 363-2022) (Terry Arnold)
 - Ordinance – Second Reading & Final Adoption
6. Budget Adjustment Ordinance for Various Funds in FY23 (AF: 365-2022) (Chris McCartt)
 - Ordinance – Second Reading & Final Adoption

7. An Ordinance to Amend an Ordinance that Abandoned a Section of a Stormwater Sewer Easement Located off of Tay Station (AF: 385-2022) (Bart Rowlett)
 - Ordinance – Second Reading & Final Adoption

D. OTHER BUSINESS

1. Holiday Schedule: Updated Policy Adding Two Additional Holidays (AF: 318-2022) (Tyra Copas)
 - Resolution
2. Approving a Public Transportation Agency Safety Plan for the Kingsport Area Transit Service (AF: 373-2022) (Cindy Johnson)
 - Resolution
3. Enter into a Professional Services Agreement with LJA Engineering, Inc. to Provide Engineering and Sewer Flow Monitoring Services for the West Kingsport Sewer Basin (AF: 374-2022) (Ryan McReynolds)
 - Resolution
4. Approval of an Amendment to the Thompson & Litton Agreement for Architectural Services for the DBHS Dome Re-Roofing Project (AF: 375-2022) (David Frye)
 - Resolution
5. Acceptance of Grant Funds from Northeast State Community College (AF: 378-2022) (Tyra Copas)
 - Resolution
6. Authorize the Mayor to Execute Documents to Apply for and Receive a Drinking Water Revolving Loan from the State of Tennessee for the Water Treatment Plant High Service Pump Station Project (AF: 377-2022) (Ryan McReynolds)
 - Resolution
- Added Lease 7. Consideration of a Resolution Identifying the Primary Funding Source for the Lease of the Dental Clinic (AF: 384-2022) (Chris McCartt)
 - Resolution
8. Approve and Award Purchase of IBM Client Relationship Agreement and Cloud Services Agreement Utilizing National Cooperative Purchasing Alliance Purchasing Agreement (AF: 379-2022) (Floyd Bailey)
 - Resolution

All matters listed under the Consent Agenda are considered in the ordinary course of business by the Board of Mayor and Aldermen and will be enacted on by one motion by a roll call vote. However, if discussion of an item is desired by any member of the board, the item will be removed from the Consent Agenda and considered separately.

VII. CONSENT AGENDA

1. Enter into an Interlocal Agreement with The Interlocal Purchasing System (TIPS Cooperative Purchasing) (AF: 302-2022) (David Frye)
 - Resolution
2. Apply for and Receive a Grant for \$475,917.00 from the State of Tennessee Violent Crime Intervention Fund Grant for the Upcoming Year (AF: 372-2022) (Jason Bellamy)
 - Resolution
3. Renewing the Award for Generator Services (AF: 370-2022) (Ryan McReynolds)
 - Resolution
4. Application to Receive the Tennessee Agriculture Enhancement Program Grant (AF: 368-2022) (Michael Borders)
 - Resolution
5. Ratify Mayor's Signature for Authorization to Renew the License to Receive Funding from the USDA for SNAP (Supplemental Nutrition Assistance Program) at the Kingsport Farmers Market (AF: 371-2022) (Michael Borders)
 - Resolution
6. Recommendation to Award the Bid of the DBHS Pool Improvements Project and Authorize the Mayor to Enter into Agreement with Preston Construction Company (AF: 369-2022) (David Frye)
 - Resolution
7. Authorizing A Change Order to a Purchase Order with Stowers Equipment and the City Manager to Execute (AF: 380-2022) (Ryan McReynolds)
 - Resolution
8. Approve Application for Cement Hill Park to Be Accepted into Tennessee Department of Environment and Conservation's (TDEC) Voluntary Brownfield Agreement Program (AF: 383-2022) (John Rose)
 - Resolution
9. Authorize the Mayor to Enter into a Lease Agreement with Congresswoman Diana Harshbarger for Office Space at the Kingsport Center for Higher Education (AF: 382-2022) (Chris McCartt)
 - Resolution
10. Renewal of a Policy for Stop Loss Insurance Coverage with Voya ReliaStar Life Insurance Company (AF: 381-2022) (Tyra Copas)
 - Resolution

Corrected
Resolution

VIII. COMMUNICATIONS

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

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

IX. ADJOURN



AGENDA ACTION FORM

Appointments to Neighborhood Advisory Commission

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

Action Form No.: AF-355-2022
 Work Session: December 19, 2022
 First Reading: N/A

Final Adoption: December 20, 2022
 Staff Work By: Commission
 Presentation By: Mayor Shull

Recommendation: Approve appointments.

Executive Summary:

It is recommended to reappoint Amy Provance and to appoint Eddie Grills, Laurie Christopher, Sandy Larkin and Ryan Shipley to the Neighborhood Advisory Commission.

If approved by the Board of Mayor and Aldermen, the recommended table reflects term dates. Terms are three years with members serving no more than two consecutive terms. The board is comprised of twelve (12) members who are residents of and represent all of Kingsport.

Current Commission:			
Member	Term Expires	No. of Terms	Residing Neighborhood
Anitra Little	12/31/23	1	Midtown
Alanna Leonberg	12/31/23	1	Allandale
James Johnson	12/31/22	Fulfilling unexpired term	Preston Forrest
Tammy Fannon	12/31/22	Fulfilling unexpired term	Lynn Garden
Amy Provance	12/31/22	Fulfilling unexpired term	Fairacres
Jamie Jackson	12/31/22	2	Edinburgh
Jerry Woods	12/31/23	Fulfilling unexpired term	Bloomingdale
Trey Darnell	12/31/23	1	Fairacres
Christie Gott	12/31/24	1	Amersham
Tiffany Hickman	12/31/24	1	Midtown
Theresa Ann Fanning	12/31/24	1	Preston Woods
Christy McMakin	12/31/24	Fulfilling unexpired term	Green Acres

Recommended Commission:			
Member	Term Expires	No. of Terms	Residing Neighborhood
Anitra Little	12/31/23	1	Midtown
Alanna Leonberg	12/31/23	1	Allandale
Laurie Christopher	12/31/25	1	Midtown
Sandra Larkin	12/31/25	1	Preston Woods
Amy Provance	12/31/25	1	Fairacres
Ryan Shipley	12/31/25	1	Fairacres
Jerry Woods	12/31/23	Fulfilling unexpired term	Bloomingdale
Eddie Grills	12/31/23	Fulfilling unexpired term	Lovedale
Christie Gott	12/31/24	1	Amersham
Tiffany Hickman	12/31/24	1	Midtown
Theresa Ann Fanning	12/31/24	1	Preston Woods
Christy McMakin	12/31/24	Fulfilling unexpired term	Green Acres

Attachments:

1. Amy Provance Bio
2. Eddie Grills Bio
3. Laurie Christopher Bio
4. Sandy Larkin Bio
5. Ryan Shipley Bio

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

Amy Provance

Linville Street (Fairacres)
Kingsport, TN 37660

amyprovance@yahoo.com

I have lived in Kingsport for 15 years and have been very involved in the community. My children have attended Kingsport City Schools. I have a passion for seeing Kingsport be successful and want to see people move here and stay here; see a thriving downtown community; services in place for the homeless and less fortunate and a safe community for my kids and grandkids.

I have volunteered on the PTA as well as at Bellafina Chocolates. I attend Christ Fellowship Church and have served in many capacities there. I am also the Treasurer of the Kingsport Medical Alliance.



November 11, 2002

RE: Reference Letter
Edmon Wayne Grills

To Whom It May Concern:

It is an honor for me to recommend my friend and former coworker, Eddie Grills. I have known Eddie almost fifteen years and value his friendship and support. Seven of those years, we were coworkers with Settlers Life Insurance Company working to build an agency force second to none. Eddie was always there when I needed someone upon which to rely.

My position at Settlers Life (Personnel and Agency Services Manager) permitted me to observe our staff and continually evaluate their work ethic. Eddie's professional ability and judgment were excellent. He never demonstrated anything less than complete devotion to his duties. As our Director of Final Expense and Agent Recruitment, Eddie rolled up his sleeves and made plans come together.

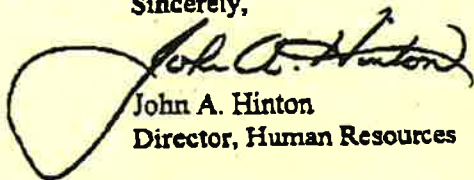
As a supervisor, he provided direction and guidance while unselfishly permitting employees to work autonomously. The confidence he instilled in our personnel through his management style bolstered morale and fostered a creative environment. Eddie has always given subordinates an equal opportunity to excel under his leadership. Likewise, he is equally proud when they succeed and the first in line to congratulate them.

Socially, Eddie is a gentleman. His manners are impeccable, and his poise is striking. He is more than capable of effectively handling any public relations situation. Your organization would have a polished representative in the Kingsport community.

Eddie, in closing, is a person of integrity. He will not compromise his values for personal gain. His record at Settlers Life supports this endorsement.

I hope you will look upon Eddie's resume with favor. It is without reservation that I recommend him for your position. I would consider it an honor to work with Eddie again in the future.

Sincerely,


John A. Hinton
Director, Human Resources

Chowan College
P. O. Box 1848
Murfreesboro, NC 27855
(252) 398-6500

Laurie Christopher

I moved to Kingsport over Memorial Day weekend of this year. This move brought my husband and I closer to properties that we own in North Carolina.

I currently work for First Community Bank of Eastern Tennessee in Kingsport. I am a loan processor. I have worked in the title and escrow field for 37 years prior to this new job.

I love giving back to my church and community. I have led many different ministries in my churches I attended, including one in which we went to the homes of widows, single moms and the disabled in which we did yardwork or fixed stairs or built wheelchair ramps. I volunteer at my church here, in the food pantry, distributing food to the needy. My husband and I worked with our old city in trying to fix issues with illegal fireworks in our town and organized town meetings with the residents and the Mayor.

I am married to Dave Machado, for 4 years. I have two daughters, 29 and 26. My husband has a daughter, 30 and a son, 33. The kids live all over the United States and we are not local to any of them.

We are enjoying our new town and making new friends and seeing what our new town offers.

Sandy Larkin

Sandra ("Sandy") Larkin retired earlier this year from her position as Senior Director from General Dynamics IT ("GDIT"). She led business strategy across GDIT's Army Sector generating \$2B in new business wins. Her strategy oversight spanned sales, finance, technical and contracts on the company's large "must win" programs.

After 40 years of visiting her sister's family in Kingsport, she and her husband Larry moved to Kingsport in 2019. Sandy has become active in Kingsport's community. She cooks for Meals on Wheels, serves as Fundraising Chair for the Holston Rowing Club, Social Chair for PEO (a charity organization that supports women's educational needs) and Pendleton Place HOA Board Member. She attends First Broad Street United Methodist Church.

Prior to Kingsport, Sandy was a Girl Scout Co-leader, soccer coach (elementary age) and held several leadership positions at Faith United Methodist Church in Rockville, MD.

Sandy believes in the mission of the Neighborhood Commission and her ability to apply her professional and community skills to support the Board's mission.

Ryan Shipley

Ryan Shipley has joined the Sync Space team as Director of Special Projects. With nearly a decade of experience within the creative services industry, Ryan brings unique insight to each individual project. He can quickly adapt to a variety of situations and can easily connect the dots across industries. With these skills, he brings efficiency to strategic planning and project management applied to entrepreneurs, startups, and large corporations.



Ryan has led multiple successful projects in a variety of industries ranging from technology, entertainment, marketing, video production, corrections, and gaming. Notable clients include Netflix, Activision, Barstool Sports, and the American Cancer Society.

Throughout Ryan's career he has been recognized for outstanding work within these fields by receiving multiple ADDY Awards in Northeast Tennessee. One of his most recent achievements includes becoming a 40 Under 40 Honoree, a recognition rightfully earned by his tireless and dedicated work resulting in exceptional impact in this region and across the nation.

Minutes of the Regular Work Session of the
Board of Mayor and Aldermen, City of Kingsport, Tennessee
Monday, December 5, 2022, 4:30 PM
City Hall, Boardroom, 415 Broad Street

PRESENT: Board of Mayor and Aldermen
Mayor Patrick W. Shull, Presiding
Vice-Mayor Colette George
Alderman Betsy Cooper
Alderman Darrell Duncan
Alderman Paul Montgomery
Alderman Tommy Olterman
Alderman James Phillips

City Administration
Chris McCartt, City Manager
Ryan McReynolds, Deputy City Manager
Michael Borders, Assistant City Manager
Jessica Harmon, Assistant City Manager
Bart Rowlett, City Attorney
Lisa Winkle, City Recorder/Treasurer
Scott Boyd, Fire Chief
Dale Phipps, Police Chief
John Morris, Budget Officer
John Rose, Economic Development Director
Floyd Bailey, Chief Information Officer
Tyra Copas, Human Resources Manager
Adrienne Batara, Public Relations Director
Michael Thompson, Public Works Director
Ken Weems, Planning Manager
Angie Marshall, City Clerk/Deputy City Recorder

1. **CALL TO ORDER:** 4:30 p.m. by Mayor Patrick W. Shull.
2. **ROLL CALL:** by City Recorder/Treasurer Lisa Winkle.

(NOTE: Items 3 and 4 were switched on the agenda order.)

3. **LEGISLATIVE DELEGATION CONVERSATION.** City Manager McCartt presented upcoming Kingsport initiatives and projects requiring support and funding from the State. Items discussed included infrastructure, economic development, higher education and policy. There was discussion throughout and following the presentation.

4. **BALLAD HEALTH UPDATE.** Ms. Rebecca Beck gave a presentation highlighting current statistics regarding staffing, facilities and population health metrics. She also provided specific data to Kingsport. Discussion followed as she answered questions from the board. She also introduced Dr. Chad Couch, Regional CEO.

Minutes of the Regular Work Session of the Board of Mayor and Aldermen of Kingsport, Tennessee, Monday, December 5, 2022

5. REVIEW OF AGENDA ITEMS ON THE DECEMBER 6, 2022 REGULAR BUSINESS MEETING AGENDA. City staff gave a summary for each item on the proposed agenda. The following items were discussed at greater length or received specific questions or concerns.

VI.A.1 Amend Zoning of 847 Mitchell Road from A-1, Agricultural District, to B-3, Highway-Oriented Business District (AF: 352-2022). The mayor and the vice-mayor both commented they would be abstaining from this vote.

V.D.1 Change Certain Meeting Dates for Work Sessions and Business Meetings of the Board of Mayor and Aldermen (AF: 350-2022). Vice-Mayor George inquired about the timeline. Borders stated they would know more after the pre-construction meeting, but they are shooting to be finished by the third quarter of next year.

VII.8 Transfer Midland Center to the Industrial Development Board of the City of Kingsport (AF: 317-2022). Vice-Mayor George commented this property would be going back on the tax roll.

Alderman Cooper thanked everyone including police, fire and city staff who helped out with all of the Christmas events on Saturday. Alderman Montgomery inquired about construction on the library and Mr. McCartt confirmed it would begin in the spring. Alderman Phillips gave details on the self-guided walking tour this Thursday night downtown with performances from Lamplight Theatre actors stationed throughout the route. The Vice-Mayor stated the appreciated the effort the city made to get people in the Christmas spirit. Alderman Duncan and Alderman Phillips commented on the legislation discussion and the state sales tax. Some discussion followed. The mayor noted the city employee Christmas luncheon was tomorrow.

6. ADJOURN. Seeing no other matters presented for discussion at this work session, Mayor Shull adjourned the meeting at 6:20 p.m.

ANGELA MARSHALL
Deputy City Recorder

PATRICK W. SHULL
Mayor

Minutes of the Regular Business Meeting of the
Board of Mayor and Aldermen of the City of Kingsport, Tennessee
Tuesday, December 6, 2022, 7:00 PM
City Hall, 415 Broad Street, Boardroom

PRESENT: Board of Mayor and Aldermen
Mayor Patrick W. Shull, Presiding
Vice Mayor Colette George
Alderman Betsy Cooper
Alderman Darrell Duncan
Alderman Paul Montgomery
Alderman Tommy Olterman
Alderman James Phillips

City Administration
Chris McCartt, City Manager
Bart Rowlett, City Attorney
Lisa Winkle, Treasurer/City Recorder

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

II.A. **PLEDGE OF ALLEGIANCE TO THE FLAG:** St. Dominic's Students.

II.B. **INVOCATION:** Ms. Traci Strohm, St. Dominic's Teacher.

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

IV.A. **RECOGNITIONS AND PRESENTATIONS.**

1. Recognition of Dobyys-Bennett High School Band - 2022 Class AAA National Champions (Band Director Lafe Cook; Drum Majors: Ella Halliburton, Ryan True and Kaden Powers; Color Guard Captain Skylar Carter) (Mayor Shull)

IV.B. **APPOINTMENTS/REAPPOINTMENTS.**

1. **Appointment to the Emergency Communications District/E-911 Board** (AF: 358-2022) (Mayor Shull).

Motion/Second: Olterman/George, to approve:

APPOINTMENT OF MR. KEITH J. CUNNINGHAM TO FULFILL AN UNEXPIRED TERM ON THE **EMERGENCY COMMUNICATIONS DISTRICT/E-911 BOARD** EFFECTIVE IMMEDIATELY AND EXPIRING ON DECEMBER 31, 2023.

Passed: All present voting "aye."

V. **APPROVAL OF MINUTES.**

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

- A. November 14, 2022 Regular Work Session
- B. November 15, 2022 Regular Business Meeting

Approved: All present voting "aye."

**Minutes of the Regular Business Meeting of the Board of Mayor and Aldermen
of the City of Kingsport, Tennessee, Tuesday, December 6, 2022**

VI. COMMUNITY INTEREST ITEMS.

A. PUBLIC HEARINGS.

1. Amend Zoning of 847 Mitchell Road from A-1, Agricultural District, to B-3, Highway-Oriented Business District (AF: 352-2022) (Ken Weems).

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

Motion/Second: Olterman/Duncan, to pass:

AN ORDINANCE TO FURTHER AMEND THE ZONING CODE, TEXT AND MAP, TO REZONE PROPERTY LOCATED ALONG MITCHELL ROAD FROM THE A-1 DISTRICT TO THE B-3, HIGHWAY ORIENTED BUSINESS DISTRICT, IN THE 14TH CIVIL DISTRICT OF SULLIVAN COUNTY; TO FIX A PENALTY FOR THE VIOLATION OF THIS ORDINANCE; AND TO FIX THE EFFECTIVE DATE OF THIS ORDINANCE

Passed on first reading: All present voting "aye" except George and Phillips "abstaining."

2. Amend Zoning of Tax Map 120, a Portion of Parcel 003.00 from P-1, Professional Offices District and M-1R, Light Manufacturing Restricted District to R-3, Low Density Apartment District (AF: 353-2022) (Ken Weems).

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

Motion/Second: Olterman/Phillips, to pass:

AN ORDINANCE TO FURTHER AMEND THE ZONING CODE, TEXT AND MAP, TO REZONE PROPERTY LOCATED ALONG BRECKENRIDGE TRACE FROM THE P-1 AND M-1R DISTRICTS TO THE R-3, LOW DENSITY APARTMENT DISTRICT IN THE 14TH CIVIL DISTRICT OF SULLIVAN COUNTY; TO FIX A PENALTY FOR THE VIOLATION OF THIS ORDINANCE; AND TO FIX THE EFFECTIVE DATE OF THIS ORDINANCE

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

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. Accept a Private Monetary Donation for the Police K-9 Program and Appropriate the Funds (AF: 351-2022) (Dale Phipps).

Motion/Second: George/Cooper, to pass:

Resolution No. 2023-118, A RESOLUTION ACCEPTING A DONATION FOR THE KINGSFORT POLICE DEPARTMENT K-9 PROGRAM

Passed: All present voting "aye."

**Minutes of the Regular Business Meeting of the Board of Mayor and Aldermen
of the City of Kingsport, Tennessee, Tuesday, December 6, 2022**

Motion/Second: Phillips/George, to pass:

AN ORDINANCE TO AMEND THE GENERAL PROJECT-SPECIAL REVENUE FUND BUDGET BY APPROPRIATING DONATED FUNDS FOR THE YEAR ENDING JUNE 30, 2023; AND TO FIX THE EFFECTIVE DATE OF THIS ORDINANCE

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

2. Budget Ordinance and Agreement with TDOT for Resurfacing of Various Roadways and Authorize the Mayor to Sign all Applicable Documents (AF: 367-2022) (Ryan McReynolds).

Motion/Second: Duncan/Montgomery, to pass:

Resolution No. 2023-119, A RESOLUTION APPROVING A LOCAL AGENCY PROJECT AGREEMENT NUMBER 220034 WITH THE TENNESSEE DEPARTMENT OF TRANSPORTATION FOR RESURFACING OF VARIOUS ROADWAYS AND AUTHORIZING THE MAYOR TO EXECUTE THE AGREEMENT AND ALL OTHER DOCUMENTS NECESSARY AND PROPER TO EFFECTUATE THE PURPOSE OF THE AGREEMENT

Passed: All present voting “aye.”

Motion/Second: Montgomery/Olterman, to pass:

AN ORDINANCE TO AMEND THE METROPOLITAN PLANNING ORGANIZATION (MPO) FUND AND THE GENERAL PROJECTS – SPECIAL REVENUE FUND BUDGETS FOR THE YEAR ENDING JUNE 30, 2023; AND TO FIX THE EFFECTIVE DATE OF THIS ORDINANCE

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

3. Accept a Donation from Kingsport Eagles Auxiliary 3141 and Appropriate the Funds (AF: 363-2022) (Terry Arnold).

Motion/Second: George/Cooper, to pass:

Resolution No. 2023-120, A RESOLUTION ACCEPTING A DONATION FOR THE KINGSFORT FIRE DEPARTMENT FROM KINGSFORT EAGLES AUXILIARY 3141

Passed: All present voting “aye.”

Motion/Second: Duncan/Cooper, to pass:

AN ORDINANCE TO AMEND THE GENERAL FUND BUDGET BY APPROPRIATING DONATED FUNDS FOR THE YEAR ENDING JUNE 30, 2023; AND TO FIX THE EFFECTIVE DATE OF THIS ORDINANCE

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

**Minutes of the Regular Business Meeting of the Board of Mayor and Aldermen
of the City of Kingsport, Tennessee, Tuesday, December 6, 2022**

**4. Budget Adjustment for Various Funds in FY23 (AF: 365-2022)
(Chris McCartt).**

Motion/Second: George/Olterman, to pass:
AN ORDINANCE TO AMEND VARIOUS FUND BUDGETS FOR THE YEAR ENDING
JUNE 30, 2023; AND, TO FIX THE EFFECTIVE DATE OF THIS ORDINANCE
Passed on first reading: All present voting “aye.”

C. BUSINESS MATTERS REQUIRING FINAL ADOPTION.

**1. Amend the General Fund by Appropriating a Grant from the
First Tennessee Development District (AF: 339-2022) (Tyra Copas).**

Motion/Second: Phillips/Olterman, to pass:
ORDINANCE NO. 7059, AN ORDINANCE TO AMEND THE GENERAL FUND BUDGET
FOR THE YEAR ENDING JUNE 30, 2023; AND, TO FIX THE EFFECTIVE DATE OF
THIS ORDINANCE
Passed on second reading in a roll call vote: Cooper, Duncan, George, Montgomery,
Olterman, Phillips and Shull voting “aye.”

**2. Budget Adjustment for the General Projects-Special Revenue
Fund in FY23 (AF: 347-2022) (Terry Arnold).**

Motion/Second: Montgomery/Olterman, to pass:
ORDINANCE NO. 7060, AN ORDINANCE TO AMEND THE GENERAL PROJECTS-
SPECIAL REVENUE FUND BUDGET FOR THE YEAR ENDING JUNE 30, 2023; AND,
TO FIX THE EFFECTIVE DATE OF THIS ORDINANCE
Passed on second reading in a roll call vote: Cooper, Duncan, George, Montgomery,
Olterman, Phillips and Shull voting “aye.”

D. OTHER BUSINESS.

**1. Change Certain Meeting Dates for Work Sessions and Business
Meetings of the Board of Mayor and Aldermen (AF: 350-2022) (Chris McCartt).**

Motion/Second: Duncan/Montgomery, to pass:
Resolution No. 2023-121, A RESOLUTION CHANGING CERTAIN WORK SESSIONS
AND BUSINESS MEETINGS OF THE BOARD OF MAYOR AND ALDERMEN IN
JANUARY, JULY, AND SEPTEMBER 2023 IN ACCORDANCE WITH ARTICLE III,
SECTION 7 OF THE CHARTER OF THE CITY OF KINGSFORT, TENNESSEE
Passed: All present voting “aye.”

**Minutes of the Regular Business Meeting of the Board of Mayor and Aldermen
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2. Bid Award for the Construction of the Kingsport Pump Track
(AF: 364-2022) (Michael Borders, Kitty Frazier)

Motion/Second: Montgomery/Olterman, to pass:

Resolution No. 2023-122, A RESOLUTION AWARDING THE BID FOR THE BICYCLE PUMP TRACK CONSTRUCTION PROJECT TO GRC CONSTRUCTION AND AUTHORIZING THE MAYOR TO SIGN AN AGREEMENT FOR THE SAME AND ALL DOCUMENTS NECESSARY AND PROPER TO EFFECTUATE THE PURPOSE OF THE AGREEMENT

Passed: All present voting "aye."

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

Motion/Second: George/Olterman, to adopt:

1. Ratify Mayor's Signature on NPDES Permit for Municipal Separate Storm Sewer Systems (MS4) Notice of Intent (AF: 359-2022) (Ryan McReynolds).

Resolution No. 2023-123, A RESOLUTION RATIFYING THE MAYOR'S SIGNATURE ON A TENNESSEE DEPARTMENT OF ENVIRONMENT AND CONSERVATION, DIVISION OF WATER RESOURCES GENERAL NPDES PERMIT OF MUNICIPAL SEPARATE STORM SEWER SYSTEMS (MS4) NOTICE OF INTENT

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

2. Submit Qualifying Local Program (QLP) for Construction Site Stormwater Runoff to the Tennessee Department of Environment and Conservation (AF: 360-2022) (Ryan McReynolds).

Resolution No. 2023-124, A RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE THE TENNESSEE DEPARTMENT OF ENVIRONMENT AND CONSERVATION APPLICATION FOR A QUALIFYING LOCAL PROGRAM FOR CONSTRUCTION SITE STORMWATER RUNOFF AND ALL OTHER DOCUMENTS NECESSARY AND PROPER TO EFFECTUATE THE PURPOSE OF THE APPLICATION

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

3. Apply for and Receive Annual Partnership Support Grant from the Tennessee Arts Commission (AF: 357-2022) (Michael Borders).

Resolution No. 2023-125, A RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE ALL DOCUMENTS NECESSARY AND PROPER TO APPLY FOR AND RECEIVE AN ANNUAL PARTNERSHIP SUPPORT GRANT FROM THE TENNESSEE ARTS COMMISSION

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

4. Agreement Between Friends of Allendale and the City of Kingsport for Use of CivicRec (AF: 361-2022) (Michael Borders).

Resolution No. 2023-126, A RESOLUTION AUTHORIZING AN AGREEMENT BETWEEN THE FRIENDS OF ALLENDALE AND THE CITY FOR EVENT REGISTRATION AND TICKET SALES TO BE CONDUCTED THROUGH CIVICREC AND AUTHORIZING THE MAYOR TO EXECUTE THE AGREEMENT AND ALL OTHER DOCUMENTS NECESSARY AND PROPER TO EFFECTUATE THE PURPOSE OF THE AGREEMENT

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

5. Agreement Between the Downtown Kingsport Association and the City of Kingsport for Downtown Holiday Displays (AF: 362-2022) (Michael Borders).

Resolution No. 2023-127, A RESOLUTION APPROVING AN AGREEMENT WITH THE DOWNTOWN KINGSPORT ASSOCIATION FOR DOWNTOWN HOLIDAY DISPLAYS AND AUTHORIZING THE MAYOR TO EXECUTE THE AGREEMENT AND ALL OTHER DOCUMENTS NECESSARY AND PROPER TO EFFECTUATE THE PURPOSE OF THE AGREEMENT

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

6. Memorandum of Understanding with the Tennessee Task Force 1 (AF: 356-2022) (Jason Bellamy).

Resolution No. 2023-128, A RESOLUTION APPROVING A MEMORANDUM OF UNDERSTANDING WITH THE TENNESSEE DISTRICT 1 TASK FORCE; AUTHORIZING THE MAYOR TO EXECUTE THE MEMORANDUM AND ALL OTHER DOCUMENTS NECESSARY AND PROPER TO EFFECTUATE THE PURPOSE OF THE MEMORANDUM OF UNDERSTANDING

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

7. Approve an In-Kind Donation to Exotic Pet Wonderland in Knoxville, Tennessee (AF: 354-2022) (Michael Borders).

**Minutes of the Regular Business Meeting of the Board of Mayor and Aldermen
of the City of Kingsport, Tennessee, Tuesday, December 6, 2022**

Resolution No. 2023-129, A RESOLUTION AUTHORIZING THE DONATION OF SURPLUS PERSONAL PROPERTY KNOWN AS THE CORN CRIB FOX HABITAT; APPROVING A MEMORANDUM OF UNDERSTANDING SETTING OUT THE TERMS OF THE DONATION; AND ANY AND ALL DOCUMENTS NECESSARY AND PROPER TO EFFECTUATE THE PURPOSE OF THE DONATION OR THIS RESOLUTION
Passed in a roll call vote: Cooper, Duncan, George, Montgomery, Olterman, Phillips and Shull voting “aye.”

8. Transfer Midland Center to the Industrial Development Board of the City of Kingsport (AF: 317-2022) (Chris McCartt).

Resolution No. 2023-130, A RESOLUTION AUTHORIZING DONATION OF REAL PROPERTY COMMONLY KNOWN AS THE MIDLAND CENTER TO THE INDUSTRIAL DEVELOPMENT BOARD OF THE CITY OF KINGSPORT AND AUTHORIZING THE MAYOR TO EXECUTE AN APPROPRIATE QUITCLAIM DEED AND ALL OTHER DOCUMENTS NECESSARY AND PROPER TO CONVEY THE PROPERTY TO THE INDUSTRIAL DEVELOPMENT BOARD OF THE CITY OF KINGSPORT
Passed in a roll call vote: Cooper, Duncan, George, Montgomery, Olterman, Phillips and Shull voting “aye.”

9. Award RFP for Temporary Employment Service (AF: 337-2022) (Tonya Fletcher).

Resolution No. 2023-131, A RESOLUTION AWARDING THE REQUEST FOR PROPOSALS FOR TEMPORARY EMPLOYMENT SERVICES TO ACCUFORCE HR SOLUTIONS, LLC AND PROFESSIONAL PERSONNEL SERVICE, INC D/B/A LUTTRELL STAFFING GROUP AND AUTHORIZING THE MAYOR TO SIGN AGREEMENTS FOR THE SAME AND ALL DOCUMENTS NECESSARY AND PROPER TO EFFECTUATE THE PURPOSE OF THE AGREEMENTS
Passed in a roll call vote: Cooper, Duncan, George, Montgomery, Olterman, Phillips and Shull voting “aye.”

10. Formal Acceptance of Deeds and Deeds of Easement (AF: 366-2022) (Bart Rowlett).

Resolution No. 2023-132, A RESOLUTION TO ACCEPT DEEDS, DEEDS OF EASEMENT, AND OTHER MUNIMENT OF TITLE FROM THE VARIOUS PROPERTY OWNERS AND OTHERS HAVING AN INTEREST IN PROPERTY AS HEREINAFTER SET OUT, CONVEYING TO THE CITY OF KINGSPORT TITLE TO THE PROPERTY DESCRIBED THEREIN
Passed in a roll call vote: Cooper, Duncan, George, Montgomery, 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 6, 2022**

VIII. COMMUNICATIONS.

- A. CITY MANAGER.** Mr. McCartt congratulated Alderman Montgomery for receiving an award from Leadership Kingsport last week, noting it was well deserved and expressing his appreciation for Mr. Montgomery's community service. He commented on the Christmas activities this past Saturday downtown, thanking Alderman Cooper and Alderman Phillips as well as city staff. He pointed out Channel 192 was back up and running and the BMA meetings could be seen after the fact. The City Manager again recognized the DB band again for their achievements this year.
- B. MAYOR AND BOARD MEMBERS.** Alderman Duncan also congratulated Alderman Montgomery, quoting the newspaper article stating he was "a good community leader and a champion for education." He also commented on shopping local downtown on Black Friday and Small Business Saturday. He also commented on parade and other events last Saturday. Mr. Duncan reminded everyone Santa would be at the Carousel on December 16 from 1:30 to 3:00. Lastly, he mentioned the musical Scrinch would be playing at Lamplight Theatre through December 21. Alderman Cooper reminded everyone to keep up with the events going on downtown throughout the month and to pray for good weather. She also noted the DB basketball team would be playing their first game at the new facility next Friday. Alderman Montgomery thanked everyone for their kind remarks earlier, stating it was a joy and a pleasure to serve Kingsport. He pointed out his daughter was in Lafe Cook's first band at DB, noting he had a vision for the program and has taken it to a high level and our community is blessed with his leadership. He also thanked Stewart Baggett for his continued support. Mr. Montgomery pointed out the city was currently ahead financially and hoped inflation numbers would not kick in and affect that at the year end so more could be done for the city. Alderman Phillips expressed his appreciation for Lafe Cook and the band, noting he needed to stay for 13 more years so his daughter could be in the color guard and go to the Macy's Day Parade. He stated this Friday was the 1818 Christmas at Netherland Inn and remarked they were looking for help to rebuild the flatboat as it has deteriorated over time. He added comments about Saturday, pointing out it was his favorite day in Kingsport and thanked those who contributed to its success including the landscape and grounds crew, Stephen Cline for lighted decorations in the park, the traffic crew, leisure services and maintenance, Michael Borders, Kristie Leonard, Downtown Kingsport Association, Visit Kingsport and This is Kingsport, noting the schedule for future events can be found on the latter's website. He also promoted the upcoming Polar Express Day at the library, providing details. Alderman Olterman mentioned the DB basketball team and wished everyone a Merry Christmas. Vice-Mayor George mentioned she had a friend visiting town who stated it looked like a Hallmark movie. She mentioned the Christmas events happening this weekend and commented on the recent Allandale tours. The Vice-Mayor also stated the

**Minutes of the Regular Business Meeting of the Board of Mayor and Aldermen
of the City of Kingsport, Tennessee, Tuesday, December 6, 2022**

bobcats were doing well at Bays Mountain and were still getting acclimated to their new environment, noting a family pass to the park would make a great Christmas gift. She thanked the legislators who attended the work session yesterday to discuss topics that affect Kingsport. Mayor Shull remarked Ballard had some useful information at the work session as well. The Mayor commented on Lamplight's Scrinch show, pointing out there were extra weekday performances for this production. He stated the Nutcracker was also coming up this weekend at Eastman Toy F. Reid Center. The mayor commended the recent performance of the Symphony of the Mountains. He congratulated Alderman Montgomery as well. He stated he was pleased with downtown activities and new businesses in Kingsport and encouraged citizens to support them. Lastly, he stated the Christmas parade was successful and there were more events continuing throughout the holiday season.

C. VISITORS. None.

IX. ADJOURN. Seeing no other business for consideration at this meeting, Mayor Shull adjourned the meeting at 7:50 p.m.

ANGELA MARSHALL
Deputy City Recorder

PATRICK W. SHULL
Mayor



AGENDA ACTION FORM

Consideration of an Ordinance to Amend the FY 2023 the General Purpose School Fund Budget

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

Action Form No.: AF-376-2022
 Work Session: December 19, 2022
 First Reading: December 20, 2022

Final Adoption: January 17, 2023
 Staff Work By: David Frye
 Presentation By: David Frye

Recommendation:

Approve the Ordinance.

Executive Summary:

The Board of Education approved fiscal year 2023 budget amendment number five at their meeting on December 13, 2022. This amendment decreases the General Purpose School Fund budget by \$2,089,250. The estimated revenue for Other Local Revenue is being increased by \$70,350. These funds are from a donation for Cora Cox Academy and grant funds from the Niswonger and Eastman Foundations. The estimated revenue for Fund Balance Appropriations is being decreased by \$2,159,600. The appropriation for Land Purchase is being decreased by \$2,250,000 and the appropriations for salaries and benefits are being increased by \$90,400.

Attachments:

1. Ordinance
2. BOE Budget Amendment Number Five – FY 2023

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
Cooper	—	—	—
Duncan	—	—	—
George	—	—	—
Montgomery	—	—	—
Olterman	—	—	—
Phillips	—	—	—
Shull	—	—	—

ORDINANCE NO. _____

AN ORDINANCE TO AMEND THE GENERAL PURPOSE
SCHOOL FUND BUDGET FOR THE FISCAL YEAR ENDING
JUNE 30, 2023; AND TO FIX THE EFFECTIVE DATE OF THIS
ORDINANCE

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

SECTION I. That the General Purpose School Fund Budget be amended by increasing the estimated revenue for Other Local Revenue by \$70,350 and the estimated revenue for Fund Balance Appropriations is being decreased by \$2,159,600. The expenditure budget will be amended by increasing the appropriations for Cora Cox Academy Awards and Dues by \$1,500; increasing the appropriations and Special Education Teachers and Instructional Assistants salaries and benefits by \$69,300; increasing the appropriations for Student Support salaries and benefits by \$21,100; increasing the appropriations Regular Education Teacher Salaries, Benefits, and Instructional Supplies by \$68,850 and by decreasing the appropriation for Land Purchase by \$2,250,000.

Fund 141: General Purpose School Fund

Revenues:

	\$	\$	\$
141-0000-369-4990 Other Local Revenue	817,192	70,350	887,542
141-0000-392-0100 Fund Balance Appropriations	6,731,792	(2,159,600)	4,572,192
Totals	7,548,984	(2,089,250)	5,459,734

Expenditures:

	\$	\$	\$
141-7247-781-0599 Cora Cox – Awards & Dues	1,250	1,500	2,750
141-7150-721-0116 Sp Ed – Teachers Salaries	3,220,200	41,900	3,262,100
141-7150-721-0163 Sp Ed – Inst Assts Salaries	656,200	13,200	669,400
141-7150-721-0201 Sp Ed – Social Security	259,300	3,400	262,700
141-7150-721-0204 Sp Ed – State Retirement	369,400	3,750	373,150
141-7150-721-0206 Sp Ed – Life Insurance	8,000	150	8,150
141-7150-721-0207 Sp Ed – Medical Insurance	626,200	5,850	632,050
141-7150-721-0209 Sp Ed – L-T Disability	4,900	150	5,050
141-7150-721-0210 Sp Ed – Unemp Insurance	4,700	100	4,800
141-7150-721-0212 Sp Ed – Medicare	60,900	800	61,700
141-7150-711-0116 Reg Ed – Teacher Salaries	28,143,600	54,000	28,197,600
141-7150-711-0201 Reg Ed – Social Security	1,757,400	3,400	1,760,800
141-7150-711-0212 Reg Ed – Medicare	410,900	800	411,700
141-7150-711-0429 Reg Ed – Inst Supplies	0	6,800	6,800
141-7250-785-0138 Tech Ser – Other Salaries	886,800	14,500	901,300
141-7250-785-0201 Tech Ser – Social Security	52,700	900	53,600
141-7250-785-0204 Tech Ser – State Retirement	110,100	1,300	111,400
141-7250-785-0206 Tech Ser – Life Insurance	1,700	100	1,800
141-7250-785-0207 Tech Ser – Medical Ins	88,500	3,900	92,400
141-7250-785-0209 Tech Ser – L-T Disability	900	100	1,000
141-7250-785-0210 Tech Ser – Unemp Insurance	800	100	900

141-7250-785-0212	Tech Ser – Medicare	12,400	200	12,600
141-7105-711-0429	Reg Ed – Rob. Inst Supplies	41,352	550	41,902
141-7110-711-0429	Reg Ed – Sev. Inst Supplies	33,113	1,100	34,213
141-7116-711-0429	Reg Ed – Roo. Inst Supplies	13,093	1,100	14,193
141-7120-711-0429	Reg Ed – Jef. Inst Supplies	22,330	550	22,880
141-7154-711-0429	Reg Ed – C&I Inst Supplies	205,823	550	206,373
141-7650-871-0715	Land Purchase	2,250,000	(2,250,000)	0
	Totals	39,242,561	(2,089,250)	37,153,311

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.

PAT W. SHULL
Mayor

ATTEST:

ANGELA MARSHAL
Deputy City Recorder

APPROVED AS TO FORM:

RODNEY B. ROWLETT, III
City Attorney

PASSED ON 1ST READING: _____

PASSED ON 2ND READING: _____

December 13, 2022

**KINGSPORT CITY SCHOOLS
FISCAL YEAR 2022-2023
BUDGET AMENDMENT NUMBER FIVE**

GENERAL PURPOSE SCHOOL FUNDS

ITEM ONE: DONATION

Cora Cox Academy has received a \$1,500 donation from Mr. Frederick Baggett. These funds will be spent for the students at Cora Cox Academy.

It is recommended that the estimated revenue for Other Local Revenue and the appropriations for Awards and Dues be increased by \$1,500.

ITEM TWO: PRE-K SPECIAL EDUCATION

Kingsport City Schools has experienced an increase in the number of pre-k special education students that has required to addition of a new classroom and associated personnel to serve this population. This classroom has been staffed with a teacher and 2 part-time instructional assistants. It is anticipated that these positions will be required to be funded in the FY 2024 budget and beyond. In the FY 2024 budget, this classroom can be funded with the increase in TISA funds. For FY 2023 the funding will need to come from an appropriation from the Unreserved Fund Balance.

It is recommended that the estimated revenue for Fund Balance Appropriations and the appropriations for Special Education Teachers, Teacher Assistants, and related benefits be increased by \$69,300.

ITEM THREE: STUDENT INFORMATION POSITION

For the past several years the KCS student information department has been staffed with two positions. The new State of Tennessee TISA funding formula will require that student information reporting to the State meet accelerated deadlines. This will require our data to be verified for accuracy and reported to the State within days or a couple of weeks after the end of each 20 day reporting period. TISA funding will make up the largest single source of revenue received by Kingsport City Schools and the accurate and timely reporting of student information is imperative to insure that Kingsport City Schools receives the correct amount of TISA funds. The KCS administration is recommending that an additional position be added to the Student Information Services department. In order to have an individual of board and trained prior to the beginning of the FY 2024 school year, it is recommended that is position be added now. In future years this position will be funded with the increase in TISA funding. For the remainder of the FY 2023 year this position can be funded from the Unreserved Fund Balance.

It is recommended that the estimated revenue for Fund Balance Appropriations and the appropriations for Student Information Services Salaries and related benefits be increased by \$21,100.

ITEM FOUR: COLONIAL HEIGHTS MIDDLE SCHOOL PURCHASE FUNDS

Previously, funds were appropriated from the Unreserved Fund Balance for the possible purchase of the Colonial Heights Middle School property. Kingsport City Schools was unsuccessful in the bidding process and the property has been sold to another party. Since the previous appropriation will not be spent, it is necessary to return the funds to the Unreserved Fund Balance.

It is recommended that the estimated revenue for Fund Balance Appropriations and the appropriation for Land Purchase be decreased by \$2,250,000.

ITEM FIVE: NISWONGER - PROJECT ON TRACK GRANT FUNDS

Sevier Middle Schools has been awarded a "Project on Track" grant from the Niswonger Foundation. This grant is to fund tutoring activities for at-risk students. The amount of the grant is \$65,000.

It is recommended that the estimated revenue for Other Local Funds and the appropriations for Regular Education Teachers Salaries and Benefits and Instructional Supplies and Materials be increased by 65,000.

ITEM SIX: MATHELITE/SCIECNELITE GRANT FUNDS

The Eastman Foundation has awarded grant funds to a number of KCS teachers for completing professional development activities related to math and science. These funds are to be used to purchase classroom instructional supplies. Seven teachers have been awarded \$550 each, for a total of \$3,850.

It is recommended that the estimated revenue for Other Local Revenue and the appropriations for Instructional Supplies and Materials be increased by \$3,850.



AGENDA ACTION FORM

Amend Zoning of 847 Mitchell Road from the A-1, Agricultural District, to the B-3, Highway Oriented Business District

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

Action Form No.: AF-352-2022
 Work Session: December 5, 2022
 First Reading: December 6, 2022

Final Adoption: December 20, 2022
 Staff Work By: Ken Weems
 Presentation By: K. Weems

Recommendation:

Approve ordinance amending the zoning ordinance to rezone 847 Mitchell Road from A-1, Agricultural District, to the B-3, Highway Oriented Business District.

Executive Summary:

This is an owner-requested rezoning of approximately 8.45 acres located at 847 Mitchell Road from the A-1 zone to the B-3 zone. The purpose of the rezoning is to relocate East Tennessee Cheer and Gymnastics from its current location along Wilcox Court. This item has not received any public comment. During their November 2022 regular meeting, the Kingsport Regional Planning Commission voted to send a favorable recommendation to rezone the property to the Board of Mayor and Aldermen by a vote of 6-0. The notice of public hearing was published on November 21, 2022.

Attachments:

1. Zoning 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
Cooper	—	—	—
Duncan	—	—	—
George	—	—	—
Montgomery	—	—	—
Olterman	—	—	—
Phillips	—	—	—
Shull	—	—	—

ORDINANCE NO. _____

AN ORDINANCE TO FURTHER AMEND THE ZONING CODE, TEXT AND MAP, TO REZONE PROPERTY LOCATED ALONG MITCHELL ROAD FROM THE A-1 DISTRICT TO THE B-3, HIGHWAY ORIENTED BUSINESS DISTRICT, IN THE 14TH 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 KINGSFORT, AS FOLLOWS:

SECTION I. That the zoning code, text, and map, be and the same is hereby further amended to rezone property located along Mitchell Road from the A-1, Agricultural District, to the B-3, Highway Oriented Business District in the 14th 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 western corner of parcel 30, Tax Map 120, along the southern right-of-way of Mitchell Road; thence in an easterly direction, following the southern right-of-way of Mitchell Road, approximately 193 feet to a point, said point being the northeast corner of parcel 30 in common with the southern right-of-way border of Mitchell Road and the western right-of-way border of Interstate Highway 26; thence in a southerly direction, following the western right-of-way of Interstate Highway 26, approximately 1,300 feet to a point, said point being the southeastern corner of parcel 30 in common with the western right-of-way of Interstate Highway 26; thence in a northwesterly direction, approximately 537 feet to a point, said point being a western corner of parcel 30; thence in a northeasterly direction, approximately 510 feet to a point, said point being a western corner of parcel 30; thence in a northwesterly direction, approximately 89 feet to a point, said point being a western corner of parcel 30; thence in a northeasterly direction, approximately 570 feet to the point of BEGINNING, and being all of parcel 30, Tax Map 120, less parcel 31.

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:

ANGELA MARSHALL
Deputy City Recorder

APPROVED AS TO FORM:

RODNEY B. ROWLETT, III
City Attorney

PASSED ON 1ST READING _____
PASSED ON 2ND READING _____



AGENDA ACTION FORM

Amend Zoning of Tax Map 120, a Portion of Parcel 003.00 from the P-1, Professional Offices District and M-1R, Light Manufacturing Restricted District to the R-3, Low Density Apartment District

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

Action Form No.: AF-353-2022
 Work Session: December 5, 2022
 First Reading: December 6, 2022

Final Adoption: **December 20, 2022**
 Staff Work By: Ken Weems
 Presentation By: K. Weems

Recommendation:

Approve ordinance amending the zoning ordinance to rezone Tax Map 120, a Portion of Parcel 003.00 from the P-1, Professional Offices District and M-1R, Light Manufacturing Restricted District to the R-3, Low Density Apartment District.

Executive Summary:

This is an owner-requested rezoning of approximately 5.84 acres located along Breckenridge Trace from the P-1 zone and the M-1R zone to the R-3 zone. The purpose of the rezoning is to facilitate construction of the future Miller Parke Phase III residential development, which is proposed to contain 28 multifamily units and 7 single family units. This item has not received any public comment. During their November 2022 regular meeting, the Kingsport Regional Planning Commission voted to send a favorable recommendation to rezone the property to the Board of Mayor and Aldermen by a vote of 6-0. The notice of public hearing was published on November 21, 2022.

Attachments:

1. Zoning Ordinance

Funding source appropriate and funds are available: *Jim*

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

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

ORDINANCE NO. _____

AN ORDINANCE TO FURTHER AMEND THE ZONING CODE, TEXT AND MAP, TO REZONE PROPERTY LOCATED ALONG BRECKENRIDGE TRACE FROM THE P-1 AND M-1R DISTRICTS TO THE R-3, LOW DENSITY APARTMENT DISTRICT IN THE 14TH 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 Breckenridge Trace from the P-1, Professional Offices District and M-1R, Light Manufacturing Restricted District to the R-3, Low Density Apartment District in the 14th Civil District of Sullivan County; said area to be rezoned being further and more particularly described as follows:

Tract 1 (A portion of Parcel 003.00; P-1 Portion):

BEGINNING AT A POINT, SAID POINT BEING A CORNER TO LOT 12, INTERSTATE PARK SOUTH (PLAT BOOK 37, PAGE 6) AND LOCATED ON THE WESTERLY SIDELINE OF BRECKENRIDGE TRACE. THENCE ALONG SAID SIDELINE SOUTH 20° 14' 53" EAST A DISTANCE OF 136.54 FEET TO A POINT, SAID POINT BEING A PC FOR A CURVE TO THE RIGHT. THENCE ALONG SAID CURVE HAVING A RADIUS OF 960.00 FEET, AN ARC LENGTH 92.62 FEET AND A CHORD SOUTH 17° 29' 11" EAST, A DISTANCE OF 92.59 FEET TO A POINT, SAID POINT BEING THE PT OF SAID CURVE. THENCE SOUTH 14° 43' 39" EAST, A DISTANCE OF 149.28 FEET TO A POINT. THENCE LEAVING SAID SIDELINE AND THROUGH THE WILLIAM P. BAILEY, JR. PROPERTY (PLAT BOOK 52, PAGE 780) SOUTH 41° 43' 42" WEST, A DISTANCE OF 143.98 FEET TO A POINT; NORTH 14° 43' 39" WEST, A DISTANCE OF 25.76 FEET TO A POINT; SOUTH 75° 15' 44" WEST, A DISTANCE OF 48.40 FEET TO A POINT; SOUTH 40° 15' 36" WEST, A DISTANCE OF 143.86 FEET TO A POINT; SOUTH 59° 00' 20" WEST, A DISTANCE OF 311.41 FEET AND NORTH 40° 56' 04" WEST, A DISTANCE OF 297.40 FEET TO A POINT, SAID PONT BEING IN THE REAR LINE OF LOT 14, INTERSTATE PARK SOUTH. THENCE ALONG LOTS 14, 13 AND 12 INTERSTATE PARK SOUTH NORTH 49° 03' 56" EAST, A DISTANCE OF 778.99 FEET TO THE POINT OF BEGINNING, SAID PARCEL CONTAINS 5.506 ACRES, MORE OR LESS.

Tract 2 (a Portion of Parcel 003.00; M-1R Portion):

TO LOCATE THE POINT OF BEGINNING COMMENCE AT A POINT, SAID POINT BEING A CORNER TO LOT 12, INTERSTATE PARK SOUTH (PLAT BOOK 37, PAGE 6) AND LOCATED ON THE WESTERLY SIDELINE OF BRECKENRIDGE TRACE. THENCE ALONG SAID SIDELINE SOUTH 20° 14' 53" EAST, A DISTANCE OF 136.54 FEET TO A POINT, SAID POINT BEING A PC FOR A CURVE TO THE RIGHT. THENCE ALONG SAID CURVE HAVING A RADIUS OF 960.00 FEET, AN ARC LENGTH 92.62 FEET AND A CHORD SOUTH 17° 29' 11" EAST, A DISTANCE OF 92.59 FEET TO A POINT, SAID POINT BEING THE PT OF SAID CURVE. THENCE SOUTH 14° 43' 39" EAST, A DISTANCE OF 312.00 FEET TO A POINT, SAID POINT BEING KNOWN AS THE POINT OF BEGINNING. THENCE LEAVING SAID SIDELINE AND THROUGH THE WILLIAM P. BAILEY, JR. PROPERTY (PLAT BOOK 52, PAGE 780) SOUTH 75° 16' 21" WEST, A DISTANCE OF 120.00 FEET TO A POINT; NORTH 14° 43' 39" WEST, A DISTANCE OF 83.16. FEET TO A POINT AND NORTH 41° 43' 42" EAST, A DISTANCE OF 143.98 FEET TO A POINT, SAID POINT LOCATED ON THE WESTERLY SIDELINE OF BRECKENRIDGE TRACE. THENCE ALONG SAID SIDELINE SOUTH 14° 43' 39" EAST, A DISTANCE OF 162.72 FEET TO THE POINT OF BEGINNING, SAID PARCEL CONTAINS 0.338 ACRES, MORE OR LESS.

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:

ANGELA MARSHALL
Deputy City Recorder

APPROVED AS TO FORM:

RODNEY B. ROWLETT, III
City Attorney

PASSED ON 1ST READING _____
PASSED ON 2ND READING _____



AGENDA ACTION FORM

Accept a Private Monetary Donation for the Police K-9 Program and Appropriate the Funds

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

Action Form No.: AF-351-2022
 Work Session: December 5, 2022
 First Reading: December 6, 2022

Final Adoption: December 20, 2022
 Staff Work By: Commander Chambers
 Presentation By: Chief Phipps

Recommendation:

Approve the Ordinance.

Executive Summary:

Kingsport citizen, Frederick Stewart Baggett, wishes to make a monetary contribution to the police department in the amount of \$3,000.00 (Three thousand dollars). The intended purpose of this contribution is to assist with the cost of maintaining the Kingsport Police Department's K-9 Unit. It is with this action that the police department respectfully requests the board to accept the contributions and place the funds into a project line to be utilized for the furtherance of the K-9 program. A project line has previously been established for this purpose, as Baggett has donated monies for the K-9 program in the past. The previously established project line is NC 1808 Account # 111-0000-364.10-00.

Attachments:

1. Ordinance

Funding source appropriate and funds are available: *John*

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: *20*

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

AN ORDINANCE TO AMEND THE GENERAL PROJECT-SPECIAL REVENUE FUND BUDGET BY APPROPRIATING DONATED FUNDS FOR THE YEAR ENDING JUNE 30, 2023; AND TO FIX THE EFFECTIVE DATE OF THIS ORDINANCE

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

SECTION I. That the General Project-Special Revenue Fund budget be amended by appropriating funds received from Stewart Baggett in the amount of \$3,000 for the K-9 program.

Account Number/Description:

General Projects-Special Revenue Fund: 111

K-9 Donation (NC1808)

Revenues:

111-0000-364.10-00 From Individuals

Totals:

<u>Budget</u>	<u>Incr/(Decr)</u>	<u>New Budget</u>
\$ 22,000	\$ 3,000	\$ 25,000
22,000	3,000	25,000

Expenditures:

111-0000-601.30-12 Food

111-0000-601.30-20 Operating Supplies & Tools

Totals:

<u>Budget</u>	<u>Incr/(Decr)</u>	<u>New Budget</u>
\$ 2,000	\$ 00	\$ 2,000
20,000	3,000	23,000
22,000	3,000	25,000

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

PATRICK W. SHULL, Mayor

ATTEST:

ANGELA MARSHALL, Deputy City Recorder

APPROVED AS TO FORM:

RODNEY B. ROWLETT III, City Attorney

PASSED ON 1ST READING:

PASSED ON 2ND READING:



AGENDA ACTION FORM

Budget Ordinance and Agreement with TDOT for Resurfacing of Various Roadways Authorizing the Mayor to Sign all Applicable Documents

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

Action Form No.: AF-367-2022
Work Session: December 5, 2022
First Reading: December 6, 2022

Final Adoption: December 20, 2022
Staff Work By: M. Thompson/T. Elsea
Presentation By: Ryan McReynolds

Recommendation:

Approve the Budget Ordinance.

Executive Summary:

As part of our current paving initiatives, we have the opportunity to enter into an agreement with TDOT for resurfacing of various functionally classified roadways. This project consists of milling, resurfacing, base repairs, ADA improvements, striping, and signage. Roadways include North Eastman Road, from Lincoln Street to SR-1 (US-11W, East Stone Drive); Clinchfield Street, From SR-36 (West Center Street) to SR-1 (US-11W, East Stone Drive).

The estimated total cost for all phases of this project is \$1,750,000, which will be funded 80% through Metropolitan Transportation Planning Organization (MTPO) Surface Transportation Block Grant (STBG) funding source (Federal funds); and the local government is responsible for the 20% matching share (estimated amount of \$350,000).

Therefore, we request to enter into a Local Agency Project Agreement with TDOT for Resurfacing of North Eastman Road, From Lincoln Street to SR-1 (US-11W, East Stone Drive); Clinchfield Street, From SR-36 (West Center Street) to SR-1 (US-11W, East Stone Drive). It is also requested to transfer funds at this time from NC2300 Street Resurfacing to MP023A Resurf Eastman/Clinchfield in the amount of \$60,000 for NEPA and Design phases of the project. The remaining portion of the 20% match will come from future paving dollars.

Project Data: TDOT Agreement #: 220034; PIN: 132587.00; Federal Project #: STP-M-9108(53); State Project #: 82LPLM-F3-101.

Attachments:

1. Budget Ordinance

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: *am*

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

ORDINANCE NO. _____

AN ORDINANCE TO AMEND THE METROPOLITAN
PLANNING ORGANIZATION (MPO) FUND AND THE
GENERAL PROJECTS – SPECIAL REVENUE FUND
BUDGETS FOR THE YEAR ENDING JUNE 30,
2023; AND TO FIX THE EFFECTIVE DATE OF THIS
ORDINANCE

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

SECTION I. That the Metropolitan Planning Organization (MPO) Fund budget be amended by transferring \$60,000 from the Street Resurfacing project (NC2300) and by appropriating TDOT grant funds in the amount of \$1,460,000 to the Resrf Eastman/Clinchfield project (MPO23A).

Account Number/Description:

Fund 111: General Project-Special Rev Fund

Street Resurfacing (NC2300)

Revenues:

	<u>Budget</u>	<u>Incr/(Decr)</u>	<u>New Budget</u>
	\$	\$	\$
111-0000-331.95-00 American Rescue Plan Act	927,518	0	927,518
111-0000-391.01-00 From General Fund	2,707,482	(60,000)	2,647,482
Totals:	3,635,000	(60,000)	3,575,000

Expenditures:

	<u>Budget</u>	<u>Incr/(Decr)</u>	<u>New Budget</u>
	\$	\$	\$
111-0000-601.20-22 Construction Contracts	3,050,000	0	3,050,000
111-0000-601.20-23 Arch/Eng/Landscaping Serv	585,000	(60,000)	525,000
Totals:	3,635,000	(60,000)	3,575,000

Fund 110: General Fund

Expenditures:

	<u>Budget</u>	<u>Incr/(Decr)</u>	<u>New Budget</u>
	\$	\$	\$
110-4804-481.70-35 To Gen Proj-Special Rev	6,328,530	(60,000)	6,268,530
110-4804-481.70-52 To MPO Fund	68,000	60,000	128,000
Totals:	6,396,530	0	6,396,530

Fund 122: MPO Fund

Resrf Eastman/Clinchfield (MPO23A)

Revenues:

	<u>Budget</u>	<u>Incr/(Decr)</u>	<u>New Budget</u>
	\$	\$	\$
122-0000-337.90-10 TN Section 5303 80%	0	1,400,000	1,400,000
122-0000-391.01-00 From General Fund	0	60,000	60,000
Totals:	0	1,460,000	1,460,000

Expenditures:

	<u>Budget</u>	<u>Incr/(Decr)</u>	<u>New Budget</u>
	\$	\$	\$
122-0000-609.20-22 Construction Contracts	0	1,383,100	1,383,100
122-0000-609.20-23 Arch/Eng/Landscaping	0	76,900	76,900
Totals:	0	1,460,000	1,460,000

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

PATRICK W. SHULL, Mayor

ATTEST:

ANGELA MARSHALL, Deputy City Recorder

APPROVED AS TO FORM:

RODNEY B. ROWLETT III, City Attorney

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



AGENDA ACTION FORM

Acceptance of a Donation from Kingsport Eagles Auxiliary 3141 and Appropriate the Funds

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

Action Form No.: AF-363-2022
 Work Session: December 5, 2022
 First Reading: December 6, 2022

Final Adoption: December 20, 2022
 Staff Work By: Terry Arnold
 Presentation By: Asst. Chief Terry Arnold

Recommendation:

Approve the Ordinance.

Executive Summary:

The Kingsport Eagles Auxiliary 3141 has graciously made a donation to the Kingsport Fire Department in the amount of \$1000.00. The Kingsport Fire Department requests the donation be placed in account #110-3504-451-3022 to purchase needed Haz Mat equipment.

Attachments:

1. Ordinance

Funding source appropriate and funds are available: *gm*

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: *202*

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

ORDINANCE NO. _____

**PRE-FILED
CITY RECORDER**

AN ORDINANCE TO AMEND THE GENERAL FUND
BUDGET BY APPROPRIATING DONATED FUNDS
FOR THE YEAR ENDING JUNE 30, 2023; AND TO
FIX THE EFFECTIVE DATE OF THIS ORDINANCE

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

SECTION I. That the General Fund budget be increased by appropriating funds received from the Kingsport Eagles Auxiliary 3141 in the amount of \$1,000 for the purchase of Haz Mat equipment.

Account Number/Description:

General Fund: 110

Revenues:

110-0000-364.30-00 From Non-Profit Groups
Totals:

<u>Budget</u>	<u>Incr/(Decr)</u>	<u>New Budget</u>
\$ 75,000	\$ 1,000	\$ 76,000
75,000	1,000	76,000

Expenditures:

110-3504-451.30-22 Maintenance Supplies
Totals:

<u>Budget</u>	<u>Incr/(Decr)</u>	<u>New Budget</u>
\$ 5,000	\$ 1,000	\$ 6,000
5,000	1,000	6,000

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

PATRICK W. SHULL, Mayor

ATTEST:

ANGELA MARSHALL, Deputy City Recorder

APPROVED AS TO FORM:

RODNEY B. ROWLETT III, City Attorney

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



AGENDA ACTION FORM

Consideration of a Budget Adjustment Ordinance for Various Funds in FY23

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

Action Form No.: AF-365-2022
 Work Session: December 5, 2022
 First Reading: December 6, 2022

Final Adoption: December 20, 2022
 Staff Work By: Morris
 Presentation By: McCartt

Recommendation:

Approve the Ordinance.

Executive Summary:

This ordinance transfers funds from 7 projects for a total \$177,927 going to the Bike Park and Lighting project.

The General Projects-Special Revenue Fund budget is being amended by transferring \$40,000 from the Greenbelt Landscaping project (NC2227) and \$11,046 from the General Park Improvements project (NC2229) for a total of \$51,046 to the Bike Park & Lighting project (GP2204).

The General Project fund is being amended by transferring \$35,581 from the River Bend project (GP1512), \$41,900 from the Greenbelt East Ext. Ph. 1 project (GP1529), \$5,926 from the Lynn View Improv-Phase 1 project (GP2006), \$19,555 from the Swinging Bridge project (GP2104), and \$2,360 from the Kingsport Parks & River Masterplan project (GP1924) for a total of \$105,322 to the Bike Park & Lighting project (GP2204).

The Visitors Enhancement Fund is being amended by transferring \$21,559 from the Improvements line (135-1015-405.90-03) to the To General Project Fund line (135-4804-481.70-36) for transfer to the Bike Park & Lighting project (GP2204).

Attachments:

- Ordinance

Funding source appropriate and funds are available: *CM*

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

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

ORDINANCE NO.

AN ORDINANCE TO AMEND VARIOUS FUND BUDGETS FOR
THE YEAR ENDING JUNE 30, 2023; AND, TO FIX THE
EFFECTIVE DATE OF THIS ORDINANCE

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

SECTION I. That the General Projects-Special Revenue Fund budget be amended by transferring \$40,000 from the Greenbelt Landscaping project (NC2227) and \$11,046 from the General Park Improvements project (NC2229) for a total of \$51,046 to the Bike Park & Lighting project (GP2204).

SECTION II. That the General Project fund be amended by transferring \$35,581 from the River Bend project (GP1512), \$41,900 from the Greenbelt East Ext. Ph. 1 project (GP1529), \$5,926 from the Lynn View Improv-Phase 1 project (GP2006), \$19,555 from the Swinging Bridge project (GP2104), and \$2,360 from the Kingsport Parks & River Masterplan project (GP1924) for a total of \$105,322 to the Bike Park & Lighting project (GP2204).

SECTION III. That the Visitors Enhancement Fund be amended by transferring \$21,559 from the Improvements line (135-1015-405.90-03) to the To General Project Fund line (135-4804-481.70-36) for transfer to the Bike Park & Lighting project (GP2204).

Account Number/Description:

General Projects-Special Revenue Fund: 111

Greenbelt Landscaping (NC2227)

Revenues:

	<u>Budget</u>	<u>Incr/(Decr)</u>	<u>New Budget</u>
	\$	\$	\$
111-0000-391.01-00 From General Fund	147,075	(40,000)	107,075
Total:	147,075	(40,000)	107,075

Expenditures:

	<u>Budget</u>	<u>Incr/(Decr)</u>	<u>New Budget</u>
	\$	\$	\$
111-0000-601.20-23 Arch/Eng/Landscaping Serv	147,075	(40,000)	107,075
Total:	147,075	(40,000)	107,075

General Park Improvements (NC2229)

Revenues:

	<u>Budget</u>	<u>Incr/(Decr)</u>	<u>New Budget</u>
	\$	\$	\$
111-0000-391.01-00 From General Fund	60,000	(11,046)	48,954
Total:	60,000	(11,046)	48,954

Expenditures:

	<u>Budget</u>	<u>Incr/(Decr)</u>	<u>New Budget</u>
	\$	\$	\$
111-0000-601.90-03 Improvements	60,000	(11,046)	48,954
Total:	60,000	(11,046)	48,954

Account Number/Description:**General Project Fund: 311****River Bend (GP1512)****Revenues:**

	<u>Budget</u>	<u>Incr/(Decr)</u>	<u>New Budget</u>
	\$	\$	\$
311-0000-334.50-10 KHRA	666,666	0	666,666
311-0000-368.10-47 2014 A GO Bonds	1,099,802	0	1,099,802
311-0000-368.10-66 Series 2019 GO Improvment	134,981	0	134,981
311-0000-368.21-01 Premium From Bond Sale	125,749	0	125,749
311-0000-391.01-00 From General Fund	424,436	(35,581)	388,855
Total:	2,451,634	(35,581)	2,416,053

Expenditures:

	\$	\$	\$
311-0000-601.20-23 Arch/Eng/Landscaping Serv	150,000	0	150,000
311-0000-601.40-41 Bond Sale Expense	14,968	0	14,968
311-0000-601.90-01 Land	6,827	0	6,827
311-0000-601.90-03 Improvements	2,279,839	(35,581)	2,244,258
Total:	2,451,634	(35,581)	2,416,053

Greenbelt East Ext. PH. 1 (GP1529)**Revenues:**

	<u>Budget</u>	<u>Incr/(Decr)</u>	<u>New Budget</u>
	\$	\$	\$
311-0000-331.37-00 Dept of Transportation	962,519	0	962,519
311-0000-364.20-00 From Corporations	20,000	0	20,000
311-0000-368.10-47 Series 2014 A GO Bonds	10,000	0	10,000
311-0000-368.10-51 Series 2015 A (Oct) GO PI	167,360	0	167,360
311-0000-368.10-54 Series 2016 GO (Nov 4)	172,654	0	172,654
311-0000-368.21-01 Premium From Bond Sale	20,138	0	20,138
311-0000-391.01-00 From General Fund	153,000	(41,900)	111,100
Total:	1,505,671	(41,900)	1,463,771

Expenditures:

	\$	\$	\$
311-0000-601.20-23 Arch/Eng/Landscaping	166,000	0	166,000
311-0000-601.40-41 Bond Sale Expense	5,152	0	5,152
311-0000-601.90-01 Land	150,000	0	150,000
311-0000-601.90-03 Improvements	1,184,519	(41,900)	1,142,619
Total:	1,505,671	(41,900)	1,463,771

Lynn View Improv-Phase 1 (GP2006)

	<u>Budget</u>	<u>Incr/(Decr)</u>	<u>New Budget</u>
<u>Revenues:</u>	\$	\$	\$
311-0000-368.10-66 Series 2019 GO Improvement	52,409	0	52,409
311-0000-368.21-01 Premium From Bond Sale	4,693	0	4,693
311-0000-391.01-00 From General Fund	50,000	(5,926)	44,074
Total:	107,102	(5,926)	101,176

Expenditures:

	\$	\$	\$
311-0000-601.20-23 Arch/Eng/Landscaping	0	71,252	71,252
311-0000-601.40-41 Bond Sale Expense	796	0	796
311-0000-601.90-03 Improvements	106,306	(77,178)	29,128
Total:	107,102	(5,926)	101,176

Swinging Bridge (GP2104)

	<u>Budget</u>	<u>Incr/(Decr)</u>	<u>New Budget</u>
<u>Revenues:</u>	\$	\$	\$
311-0000-391.01-00 From General Fund	222,841	(19,555)	203,286
Total:	222,841	(19,555)	203,286

Expenditures:

	\$	\$	\$
311-0000-601.20-23 Arch/Eng/Landscaping Serv	12,014	(541)	11,473
311-0000-601.90-03 Improvements	210,827	(19,014)	191,813
Total:	222,841	(19,555)	203,286

Kingsport Parks & River Masterplan (GP1924)

	<u>Budget</u>	<u>Incr/(Decr)</u>	<u>New Budget</u>
<u>Revenues:</u>	\$	\$	\$
311-0000-391.01-00 From General Fund	125,000	(2,360)	122,640
Total:	125,000	(2,360)	122,640

Expenditures:

	\$	\$	\$
311-0000-601.20-20 Professional/Consultant	125,000	(2,360)	122,640
Total:	125,000	(2,360)	122,640

Bike Park & Lighting (GP2204)

	<u>Budget</u>	<u>Incr/(Decr)</u>	<u>New Budget</u>
<u>Revenues:</u>	\$	\$	\$
311-0000-368.10-69 GO Bonds Series 2021	1,288,700	0	1,288,700
311-0000-368.21-01 Premium from Bond Sale	126,564	0	126,564
311-0000-391.01-00 From General Fund	0	156,368	156,368
311-0000-391.69-00 Visitors Enhancement Fund	0	21,559	21,559
Total:	1,415,264	177,927	1,593,191

Expenditures:

	\$	\$	\$
311-0000-601.40-41 Bond Sale Expense	15,264	0	15,264
311-0000-601.90-03 Improvements	1,400,000	177,927	1,577,927
Total:	1,415,264	177,927	1,593,191

Account Number/Description:**Visitors Enhancement Fund: 135**

	<u>Budget</u>	<u>Incr/(Decr)</u>	<u>New Budget</u>
<u>Revenues:</u>	\$	\$	\$
135-0000-316.20-00 Motel-Room Occupancy Tax	440,000	0	440,000
135-0000-392.01-00 Fund Bal Appropriations	85,000	0	85,000
Total:	525,000	0	525,000

Expenditures:

	\$	\$	\$
135-1015-405.20-20 Professional/Consultant	70,000	0	70,000
135-1015-405.20-47 BMA Sponsored Meet/Events	25,000	0	25,000
135-1015-405.30-20 Operating Supplies & Tool	30,000	0	30,000
135-1015-405.80-15 KCVB (Tourism Council)	30,000	0	30,000
135-1015-405.90-03 Improvements	150,000	(21,559)	128,441
135-4804-481.70-36 General Project Fund	0	21,559	21,559
135-4804-481.70-39 Aquatic Center Fund	220,000	0	220,000
Total:	525,000	0	525,000

Account Number/Description:**General Fund: 110**

	<u>Budget</u>	<u>Incr/(Decr)</u>	<u>New Budget</u>
<u>Expenditures:</u>	\$	\$	\$
110-4804-481.70-35 To Gen Proj-Special Rev	6,328,530	(51,046)	6,277,484
110-4804-481.70-36 To General Project Fund	207,557	51,046	258,603
Total:	6,536,087	0	6,536,087

SECTION IV. 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:

ANGELA MARSHALL, Deputy City Recorder

APPROVED AS TO FORM:

J. MICHAEL BILLINGSLEY, City Attorney

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



AGENDA ACTION FORM

An Ordinance to Amend an Ordinance that Abandoned a Section of a Stormwater Sewer Easement Located off of Tay Station

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

Action Form No.: AF-385-2022
 Work Session: December 19, 2022
 First Reading: December 19, 2022

Final Adoption: December 20, 2022
 Staff Work By: Bart Rowlett
 Presentation By: Bart Rowlett

Recommendation:

Approve the Ordinance.

Executive Summary:

The board approved Ordinance No. 7046 at the second reading on October 18, 2022 which was an ordinance to abandon a section of a stormwater Sewer Easement located off of Tay Station in the West Gate area of West Stone Drive.

Due to a scrivener's error the book, page number, and legal description for the recorded easement contained in Ordinance No. 7046 was incorrect. This Ordinance will amend the previous ordinance to correct these errors.

Attachments:

1. Ordinance

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

ORDINANCE NO. _____

AN ORDINANCE TO AMEND ORDINANCE NUMBER 7046 ABANDONING A SECTION OF A STORMWATER SEWER EASEMENT LOCATED OFF OF TAY STATION SITUATED IN THE CITY OF KINGSPORT, TWELFTH CIVIL DISTRICT OF SULLIVAN COUNTY; AND TO FIX THE EFFECTIVE DATE OF THIS ORDINANCE

WHEREAS, the board adopted Ordinance No. 7046 on second reading at its October 18, 2022 meeting abandoning a stormwater easement located in the 12th Civil District of Sullivan County; and

WHEREAS, following adoption of Ordinance No. 7046 it was discovered that as a result of a scrivener's error the deed book, page number, and legal description for the recorded easement was incorrect; and

WHEREAS, this ordinance amends Ordinance Number 7046 to correct the scrivener's error.

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

SECTION I. The city hereby amends Ordinance Number 7046 to correct information related to the abandoned easement, said easement to be abandoned being of record in Deed Book 651c Page 267 and more particularly described as follows:

SITUATED in the Twelfth (12th) Civil District of Sullivan County, Tennessee, and being more particularly described as follows:

BEING a parcel of land 12 feet in width, 6 feet on either side of a centerline described as follows:

TO FIND THE POINT OF BEGINNING, commence at a concrete monument located at the intersection of the northwesterly right-of-way line of West Stone Drive (U.S. Highway 11-W and State Highway No. 1) with the northeasterly right-of-way line of Interstate Highway 181 and corner to Outsite #1 (Developers Corporation property); thence along the common line of the northeasterly right-of-way line of Interstate Highway 181 and Outsite #1, N. 59° 08' 45" W., 34.04 feet to the point of BEGINNING; thence across Outsite #1, two calls as follows: N. 72° 42' E., 42.25 feet to the point of intersection with "B" line; N. 57° 42' W., 107.62 feet to a point in the common property line of Outsite #1 and Outsite #2 (Developers Corporation property); thence across the said Outsite #2, three calls as follows: N. 57° 42' W., 4.66 feet to a point; N. 27° 53' E., 90.22 feet to a point; and N. 20° 40' W., 69.40 feet to a point in the common property line of the said Outsite #2 and Tract 1 (Ed H. Street, Jr. and Judy R. Street property); thence across the said Tract 1, to calls as follows: N. 20° 40' W., 219.12 feet to a point; N. 22° 06' E., 237.57 feet to a point in the southwesterly right-of-way line of Plantation Road, said point being located S. 18° 21' E., 412.46 feet, as measured along the said southwesterly right-of-way line of Plantation Road from the common corner of Tract 1 and Model City Associates.

BEING a portion of the same property conveyed to the City of Kingsport, Tennessee, a municipal corporation, by Deed of Easement from Ed H. Street, Jr., Judy R. Street and Developers Corporation, a Tennessee corporation, of record in Book 651C, Page 267, in

the Register's Office for Sullivan County, Tennessee, dated December 22, 1988, and recorded on December 28, 1988.

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:

ANGELA MARSHALL, Deputy City Recorder

APPROVED AS TO FORM:

RODNEY B. ROWLETT, III, City Attorney

PASSED ON 1ST READING: _____

PASSED ON 2ND READING: _____



AGENDA ACTION FORM

Holiday Schedule: Updated Policy Adding Two Additional Holidays

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

Action Form No.: AF-318-2022
 Work Session: December 19, 2022
 First Reading: N/A

Final Adoption: December 20, 2022
 Staff Work By: Michael Wessely
 Presentation By: Tyra Copas

Recommendation:

Approve the Resolution.

Executive Summary:

A recent review of the City's paid Holiday schedule shows that the City of Kingsport lags behind other local employers and municipalities in the number of paid Holiday days provided to employees.

For both recruiting and retention purposes, Human Resources recommends the City of Kingsport add the Veterans Holiday and a Floating Holiday to the holiday schedule. This would move the city from 10 to 12 paid Holidays in a calendar year and bring us in line with the other local employers and municipalities.

The Holiday Policy (#17) has been updated to reflect the addition of the two holidays and provided guidance on the use of the Floating Holiday.

Attachments:

1. Resolution
2. Holiday Leave Policy
3. Chart showing local employers and municipalities paid Holidays.

Funding source appropriate and funds are available: *gm*

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
Cooper	—	—	—
Duncan	—	—	—
George	—	—	—
Montgomery	—	—	—
Olterman	—	—	—
Phillips	—	—	—
Shull	—	—	—

RESOLUTION NO. _____

A RESOLUTION AMENDING THE HOLIDAY LEAVE POLICY FOR
CITY EMPLOYEES

WHEREAS, the city adopted a Holiday Leave Policy by Resolution No. 2015-202, which was effective June 17, 2015; and

WHEREAS, the city would like to amend the Holiday Leave Policy to allow for two additional holidays, one being Veterans Day and the other a floating holiday.

Now, therefore,

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

SECTION I. That the following policy is amended and adopted as the official Holiday Leave Policy for the City of Kingsport:

Holiday Leave Policy

The city will award 12 paid holidays:

- New Year's Day
- Martin Luther King, Jr. Day
- Good Friday
- Memorial Day
- Independence Day
- Labor Day
- Veterans Day
- Thanksgiving Day
- Friday after Thanksgiving Day
- Christmas Eve
- Christmas Day
- Floating Holiday (1 day)

The city may, at its discretion, require employees to work on scheduled holidays. When regular duty shifts require employees to work on a holiday, such employees will be given equivalent time off as schedules permit and as approved by the department head or designee. Nonexempt employees who are required to work on holidays and who would otherwise be off from work will be provided time and one-half pay pursuant to the city's Holiday Pay policy.

The Floating Holiday is established to allow employees to select a day significant to them, i.e., a holiday not observed, a birthday, an anniversary, etc. The floating holiday must be scheduled and approved in advance by the employee's supervisor.

When a holiday falls on Saturday, the Friday before the holiday will be substituted. When a holiday falls on Sunday, the following Monday will be substituted (see special provisions for Christmas/Christmas Eve).

Special Christmas/Christmas Eve provisions

When Christmas falls on Saturday
Christmas Eve will be recognized on Thursday Christmas will be recognized on Friday

When Christmas falls on Sunday
Christmas Eve will be recognized on Friday Christmas will be recognized on Monday

When Christmas falls on Monday Christmas day will be a holiday
Christmas Eve will be recognized on the Tuesday after Christmas Employees working 24 hour shifts
Employees who work 24 hour shifts will receive holiday leave in 12-hour segments for

each holiday to be taken as schedules permit and as approved by the department head or designee.

Other Provisions

The Floating Holiday should be used within the normal work week, and should not be used to generate overtime.

Employees who have exhausted all other leave and have been granted personal leave without pay will be eligible to receive holiday pay pursuant to the wage and salary policy.

Nothing in this policy should be construed to conflict with or supersede state or federal law, or as interfering with the constitutional rights of employees.

While the city is committed to the principles embodied in this policy, the policy itself is not intended to state contractual terms and does not constitute a contract between the city and its employees. This policy supersedes all policies that conflict with the terms of this policy. Furthermore, this statement constitutes ONLY the policy of the city. A finding of a violation of this policy does not mean that the conduct violates state and/or federal laws.

SECTION II. That nothing herein shall be construed to conflict with or supersede any applicable state or federal law.

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 20th day of December, 2022.

PATRICK W. SHULL, MAYOR

ATTEST:

ANGELA MARSHALL, DEPUTY CITY RECORDER

APPROVED AS TO FORM:

RODNEY B. ROWLETT, III, CITY ATTORNEY



Section No: 17	Effective Date: December 20, 2022
Subject: Holiday Leave Policy	Resolution Number: <i>Replaces Resolution: 2015-202</i>

The city will award 12 paid holidays:

- New Year's Day
- Martin Luther King, Jr. Day
- Good Friday
- Memorial Day
- Independence Day
- Labor Day
- Veterans Day
- Thanksgiving Day
- Friday after Thanksgiving Day
- Christmas Eve
- Christmas Day
- Floating Holiday (1 day)

The city may, at its discretion, require employees to work on scheduled holidays. When regular duty shifts require employees to work on a holiday, such employees will be given equivalent time off as schedules permit and as approved by the department head or designee. Nonexempt employees who are required to work on holidays and who would otherwise be off from work will be provided time and one-half pay pursuant to the city's Holiday Pay policy.

The Floating Holiday is established to allow employees to select a day significant to them, i.e., a holiday not observed, a birthday, an anniversary, etc. The floating holiday must be scheduled and approved in advance by the employee's supervisor. The time should be entered into the payroll system as "HF".

When a holiday falls on Saturday, the Friday before the holiday will be substituted. When a holiday falls on Sunday, the following Monday will be substituted (see special provisions for Christmas/Christmas Eve).

Special Christmas/Christmas Eve provisions

When Christmas falls on Saturday

Christmas Eve will be recognized on Thursday

Christmas will be recognized on Friday

When Christmas falls on Sunday

Christmas Eve will be recognized on Friday

Christmas will be recognized on Monday

When Christmas falls on Monday

Christmas day will be a holiday

Christmas Eve will be recognized on the Tuesday after Christmas

Employees working 24 hour shifts

Employees who work 24 hour shifts will receive holiday leave in 12-hour segments for each holiday to be taken as schedules permit and as approved by the department head or designee.

Other Provisions

The Floating Holiday should be used within the normal work week, and should not be used to generate overtime.

Employees who have exhausted all other leave and have been granted personal leave without pay will be eligible to receive holiday pay pursuant to the wage and salary policy.

Nothing in this policy should be construed to conflict with or supersede state or federal law, or as interfering with the constitutional rights of employees.

While the city is committed to the principles embodied in this policy, the policy itself is not intended to state contractual terms and does not constitute a contract between the city and its employees. This policy supersedes all policies that conflict with the terms of

this policy. Furthermore, this statement constitutes ONLY the policy of the city. A finding of a violation of this policy does not mean that the conduct violates state and/or federal laws.

Holiday Name	Kingsport	Bristol	Johnson City	Greeneville	Morristown	Elizabethton	Northeast State	Domtar Hourly	Domtar Salary	Eastman	Knoxville	Alcoa	Marysville	Kingsport City Schools (12 month employees)
New Year's Day	8	8	8	8	8	8	8	8	8	8	8	8	8	8
Martin Luther King Day	8	8	8	8	8	8	8			8	8	8	8	
Presidents Day						8								
Good Friday	8	8		8	8	8		8		8	8	8	8	
Monday after Easter								8						
Memorial Day	8	8	8	8	8	8	8	8	8	8	8	8	8	8
Juneteenth						8								
July 4th	8	8	8	8	8	8	8	8	8	16	8	8	8	8
July 5th								8		0				
Labor Day	8	8	8	8	8	8	8	8	8	8	8	8	8	8
Columbus Day						8								
Veterans Day		8				8								
Day before Thanksgiving														8
Thanksgiving	8	8	8	8	8	8	8	8	8	8	8	8	8	8
Day after Thanksgiving	8	8	8	8	8	8		8	8	8	8	8	8	8
Christmas Eve	8	8	8	4	8	8		8	8	8	8	8	8	8
Christmas Day	8	8	8	8	8	8	8	8	8	8	8	8	8	8
New Year's Eve														8
Floating Holiday		8	8		8			16	32			8		
Birthday/Personal Day			8	8	8	8				8				
Admin Closing Days							48							
Holiday Hours	80	96	88	84	96	120	104	104	96	96	80	88	80	80
Holiday Days	10	12	11	10.5	12	15	13	13	12	12	10	11	10	10

Total days (excluding COK)

divided by 12 employers = an average of 11.8 days

Total days (municipalities - COK)

divided by 8 municipalities = an average of 11.4 days

Total days (municipalities - COK and Knoxville area)

divided by 5 municipalities = an average of 12.1 days



AGENDA ACTION FORM

Resolution Approving a Public Transportation Agency Safety Plan for the Kingsport Area Transit Service

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

Action Form No.: AF-373-2022
 Work Session: December 19, 2022
 First Reading: N/A

Final Adoption: December 20, 2022
 Staff Work By: Cindy Johnson
 Presentation By: Cindy Johnson

Recommendation:

Approve the Resolution.

Executive Summary:

As a recipient of Federal Transit Agency (FTA) grant funds under 49 U.S.C. 5307, the Kingsport Area Transit Service (KATS) is required to comply with the Public Transportation Agency Safety Plan (PTASP) Final Rule (49 CFR Part 673). The goal of this plan is to enhance all aspects of safety within the Transit Division by guiding management of safety risks and prioritizing capital investments using performance-based planning. KATS current PTASP was developed in partnership with the Tennessee Department of Transportation (TDOT). Based on serving an urbanized area with a population of less than 200,000, the Bipartisan Infrastructure Law requires the PTASP be updated so that the plan is developed in cooperation with frontline employees and that the plan is consistent with guidelines of the Centers for Disease Control and Prevention or a State health authority to minimize exposure to infectious diseases. The attached updated PTASP has been crafted to meet these new Federal requirements and will help achieve the highest practical level of operational safety for the riding public, employees, and anyone encountering the system.

Attachments:

1. Resolution
2. Updated Public Transportation Agency Safety Plan (PTASP)

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
Cooper	—	—	—
Duncan	—	—	—
George	—	—	—
Montgomery	—	—	—
Olterman	—	—	—
Phillips	—	—	—
Shull	—	—	—

RESOLUTION NO. _____

A RESOLUTION APPROVING AND ADOPTING A PUBLIC
TRANSPORTATION AGENCY SAFETY PLAN FOR THE
KINGSPORT AREA TRANSIT SERVICE

WHEREAS, as a recipient of Federal Transit Agency (FTA) grant funds under 49 U.S.C. 5307, the Kingsport Area Transit Service (KATS) is required to comply with the Public Transportation Agency Safety Plan (PTASP) Final Rule (49 CFR Part 673); and

WHEREAS, the goal of this plan is to enhance all aspects of safety within the Transit Division by guiding management of safety risks and prioritizing capital investments using performance-based planning; and

WHEREAS, the city implemented a plan in 2020, and since then, the federal requirements have been updated, requiring the city to update its plan; and

WHEREAS, based on serving an urbanized area with a population of less than 200,000, the Bipartisan Infrastructure Law requires the PTASP be updated so that the plan is developed in cooperation with frontline employees and that the plan is consistent with guidelines of the Centers for Disease Control and Prevention or a State health authority to minimize exposure to infectious diseases.

Now therefore,

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

SECTION I. That the Public Transportation Agency Safety Plan as updated, is approved and adopted.

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, all documents necessary and proper to effectuate an update to the Public Transportation Agency Safety Plan, and all other documents necessary and proper to comply with the Public Transportation Agency Safety Plan Final Rule as recorded in 49 CFR Part 673.

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 20th day of December, 2022.

PATRICK W. SHULL, MAYOR

ATTEST:

ANGELA MARSHALL, DEPUTY CITY RECORDER

APPROVED AS TO FORM:

RODNEY B. ROWLETT, III, CITY ATTORNEY

Kingsport Area Transit Service

Agency Safety Plan
(ASP)

December 2022

Revision History

Date	Revision	Description of Revision
TBD	0	Initial draft issuance
20200608	1	Post Agency Assessments Changes Complete...2020 Performance Targets Updates Complete
20221210	1	Revised in compliance with the Bipartisan Infrastructure Law 49 U.S.C. 5329 (d) Section 5329 (d)

Agency Safety Plan Approvals¹

Prepared by: _____ **Date** _____
NAME
KATS Chief Safety Officer or SMS Executive

Approved by: _____ **Date** _____
NAME
KATS Accountable Executive

Approved by: _____ **Date** _____
NAME
(Board of Directors/City Council/City Commissioner)

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The mission of the Tennessee Department of Transportation (TDOT) is to provide a safe and reliable transportation system for people, goods and services that supports economic prosperity in Tennessee. TDOT's Office of Public Transportation carries out this mission by providing both financial and technical assistance to transit agencies and projects in the state. This joint Agency Safety Plan (ASP) is the result of a collaborative effort between TDOT and the participating Tennessee public transportation agencies that opted in for coverage under the joint plan instead of writing their own ASP.

The 11 small public transportation operators for which this ASP has been prepared are:

- Bristol Tennessee Transit
- Clarksville Transit System
- SETHRA - Cleveland Urban Area Transit System
- East Tennessee Human Resource Agency
- First Tennessee Human Resource Agency
- Jackson Transit Agency
- Johnson City Transit
- Kingsport Area Transit Service
- Knox County Community Action Committee Transit
- Knoxville Area Transit
- City of Murfreesboro Transportation Department

TDOT certifies that this ASP meets the requirements of 49 CFR Part 673 and that all agencies covered under this joint ASP will have completed any remaining documentation required in Addendums 1-11 not later than the July 20, 2020, the federal deadline for Public Transportation Agency Safety Plan certification. TDOT will continue to support the participating agencies as they work beyond the ASP deadline to continue maturing SMS throughout their organizations.

In 2022 Kingsport Area Transit Service updated their plan in compliance to the Bipartisan Infrastructure Law which amends FTA's safety program at 49 U.S.C 5329(d) by adding the public transportation agency safety plan (PTASP) requirements. These changes include the requirement that certain agencies establish a Safety Committee. Changes to PTASP requirements for agencies fewer than 200,000 (small urbanized area) must develop its ASP in cooperation with frontline employee representatives by December 31, 2022

1. Safety Management System Overview

1.1. SMS Introduction

Safety Management Systems (SMS) is a formal, top-down, organization-wide approach to managing safety risk and assuring the effectiveness of safety risk mitigation. SMS includes systematic and proactive procedures, practices, and policies for managing risks and hazards. By bringing employees together from all levels of the agency to manage risk, SMS helps agencies detect and address safety problems earlier, share and analyze data more effectively, and measure safety performance more precisely.

Four main components make up SMS:

- **Safety Management Policy** (Section 2) is a transit agency's documented commitment to safety. The policy defines the transit agency's safety objectives and the safety accountabilities and responsibilities of its employees.
- **Safety Risk Management** (Section 3) is the process for identifying hazards and analyzing, assessing, and mitigating safety risk.
- **Safety Assurance** (Section 4) is the processes that ensures the implementation and effectiveness of safety risk mitigation and ensures that the agency meets or exceeds its safety objectives through the collection, analysis, and assessment of safety data.
- **Safety Promotion** (Section 5) is a combination of safety training and communication applied to the agency's transportation system to support SMS.

Refer to Appendix A for Definitions of terms used in this plan and refer to Appendix B for Acronyms and Abbreviations used in this plan. Refer to the Participating Agency Addenda for agency-specific information to supplement the joint Agency Safety Plan (ASP).

1.2. Goal, Objectives, and Purpose

1.2.1. Goal

The overarching goal of this ASP is to enhance all aspects of safety within the participating public transportation agencies by guiding effective and proactive management of safety risks in their systems and prioritizing capital investments using performance-based planning.

1.2.2. Objective

The objective of this ASP is to establish processes and procedures to support the implementation of SMS that meets Federal Transit Administration (FTA)-mandated requirements under the PTASP Final Rule (49 CFR Part 673).

1.2.3. Purpose

The Tennessee Department of Transportation (TDOT) ASP formalizes the SMS principles and strategies for demonstrating Safety Management Policy, Safety Risk Management, Safety Assurance and Safety Promotion through all operation and maintenance activities. The ASP defines the process for identifying, evaluating, and resolving hazards associated with operations of a bus system involved in revenue service. This process helps achieve the highest practical level of operational safety for the riding public, employees, and anyone encountering the System.

1.3. Applicability and Scope

Recipients and sub-recipients of FTA Urbanized Area Formula Grant Program funds under 49 U.S.C. § 5307 are required to comply with the PTASP Final Rule². TDOT sponsored this ASP for sub-recipient agencies to opt in for coverage under it or to opt out and develop their own ASP. The following Tennessee public transportation agencies (hereinafter collectively referred to "Participating Agencies") opted to meet their PTASP requirements under 49 CFR Part 673 through participation in the TDOT ASP.

This plan was originally sponsored by TDOT to assist the majority of transit agencies in TN based on the new legislation. This ASP meets all the requirements under 49 CFR part 673 and encompasses the equipment, facilities, plans, procedures, operation and maintenance as they relate to a bus system. The ASP is scaled to the size, scope, and complexity of Kingsport Area Transit Service.

² FTA deferred the applicability of the PTASP requirements for small operators who receive funds through FTA's Formula Grants for the Enhanced Mobility of Seniors and Individuals with Disabilities Program under 49 U.S.C. § 5310 and for Formula Grants for Rural Areas Program under 49 U.S.C. § 5311.

1.4.ASP Review and Updates

The KATS ASP will be reviewed at least annually and updated as necessary to ensure that it remains current and consistent with FTA guidance and industry best practice.

2. Safety Management Policy

2.1.KATS ASP Safety Management Policy Statement

The participating Tennessee public transportation agencies covered by this Agency Safety Plan (ASP) recognize management of safety as a core agency function and are dedicated to planning, designing, constructing, operating and maintaining transportation systems that optimize the safety of passengers, employees, consultants, contractors, emergency responders, and the public.

Accountability for safety begins with the Accountable Executive and permeates all levels of employees. The following safety objectives reflect the agencies' overarching safety goals and demonstrate commitment to establishing, implementing, and continually improving Safety Management Systems (SMS):

- Integrate safety management into the primary responsibilities of all employees;
- Support safety management through the allocation of resources and promotion of a safety culture that facilitates safe practices and effective employee safety reporting and communication;
- Define roles and responsibilities for all employees that contribute to safety performance and SMS;
- Implement risk-based hazard management consistent with risk acceptance levels;
- Operate an employee safety reporting program that ensures no action will be taken against any employee who discloses a safety concern unless disclosure indicates beyond reasonable doubt an illegal act, gross negligence, or a deliberate disregard of regulations or procedures;
- Comply with or exceed legislative and regulatory requirements and industry standards;
- Ensure systems and services that support operations meet or exceed agency safety standards;
- Provide safety information and training to ensure all employees are competent in safety management for tasks allocated to them;
- Establish and measure safety performance against data-driven safety performance targets; and
- Continually improve safety performance and implementation of SMS.

By applying SMS as outlined above and detailed in this ASP, the participating Tennessee public transportation agencies are committed to making safety the top priority of all agency operations.

2.2.Safety Accountabilities and Responsibilities

Under SMS, identified positions have specific responsibilities under SMS. Refer to the Participating Agency Addenda for a matrix under each Participating Agency that names the specific agency position(s) and committee(s) responsible for each role described below.

2.2.1. Accountable Executive

The Accountable Executive is a single, identifiable person who has ultimate responsibility and accountability for implementing and maintaining the agency's SMS and ASP. This is the same person responsible for carrying out the agency's Transit Asset Management (TAM) Plan. The Accountable Executive has control or direction over the human and capital resources needed to develop and maintain both the agency's ASP and TAM Plan. The Accountable Executive is also responsible for ensuring action is taken, as necessary, to address substandard performance in

the agency's SMS. This individual is the primary decision-maker who is ultimately responsible for both safety and TAM.

2.2.2. Chief Safety Officer (or SMS Executive)

The Chief Safety Officer, or SMS Executive, can also be Accountable Executive. This person will have adequate training to take responsibility for safety and act as the SMS Executive. The Chief Safety Officer has the authority and responsibility for day-to-day implementation and operation of the agency's SMS and must have a direct line of reporting to their Accountable Executive. Participating Agencies may designate a Chief Safety Officer who serves in other operational or maintenance capacities³.

2.2.3. All Employees

In addition to the Accountable Executive and/or Chief Safety Officer, each transit agency has identified those with authority and responsibility for day-to-day implementation and operation of the agency's SMS.

All agency employees are responsible for safety. Each employee is required to work safely, correct unsafe behavior, identify and report safety hazards, and abstain from performing any task that the person feels could injure themselves or others.

2.2.4. Safety Committee(s)

KATS has established a safety committee made up of both frontline and administrative staff to ensure that the system is operated and maintained in a safe manner. The Safety Committee can support SMS by informing and assuring agency management of safety issues affecting the agency and addressing safety issues assigned to it by the agency's executive management.

2.3. Integration with Public Safety and Emergency Management

There are several internal and external programs that may affect safety management. Refer to Participating Agency Addenda for agency-specific integration of programs and a list of the plans and procedures that support the transit agency's public safety and emergency management activities.

2.4. Safety Performance Targets

KATS has established targets that represent a quantifiable, measurable safety performance or condition. KATS will regularly monitor the performance of their system to ensure we are meeting our targets and improving safety outcomes. At least annually, when reviewing and updating their ASP, KATS will evaluate their safety performance to determine whether they should change their safety performance targets. Agency safety performance targets are categorized below by safety performance measures:

- **Performance Measure: Fatalities** – Total number of reportable⁴ fatalities and rate per total unlinked passenger trips, by mode.
- **Performance Measure: Injuries** – Total number of reportable injuries and rate per total unlinked passenger trips, by mode.
- **Performance Measure: Safety Events** – Total number of reportable events and rate per total vehicle miles, by mode.

³ A Chief Safety Officer may only serve in other operational or maintenance capacities if they are employed by a transit agency that is a small public transportation provider as defined CFR Part 673, or a public transportation provider that does not operate a rail fixed guideway public transportation system.

⁴ The thresholds for "reportable" fatalities, injuries, and events are defined in the National Transit Database Safety and Security Reporting Manual, available at <https://www.transit.dot.gov/ntd/2019-ntd-safety-and-security-policy-manual>.

- **Performance Measure: System Reliability** – Mean distance between failures, by mode.

SMS Documentation and Records

At all times, KATS will maintain documents that set forth in this ASP, including those related to the implementation of its SMS and result from SMS processes and activities. The KATS will maintain documents that are included in whole, or by reference, that describe the programs, policies, and procedures that the agency uses to carry out its ASP. These documents will be made available upon request by the FTA or other federal entity. The transit agency will maintain these documents for a minimum of three years after they are created.

2.5. Employee Safety Reporting

KATS has established and implemented an employee safety reporting program that allows employees and contractors to report safety conditions or hazards to senior management, which describes the protections for employees who report safety conditions or hazards, and which describes employee behaviors that may result in disciplinary action.

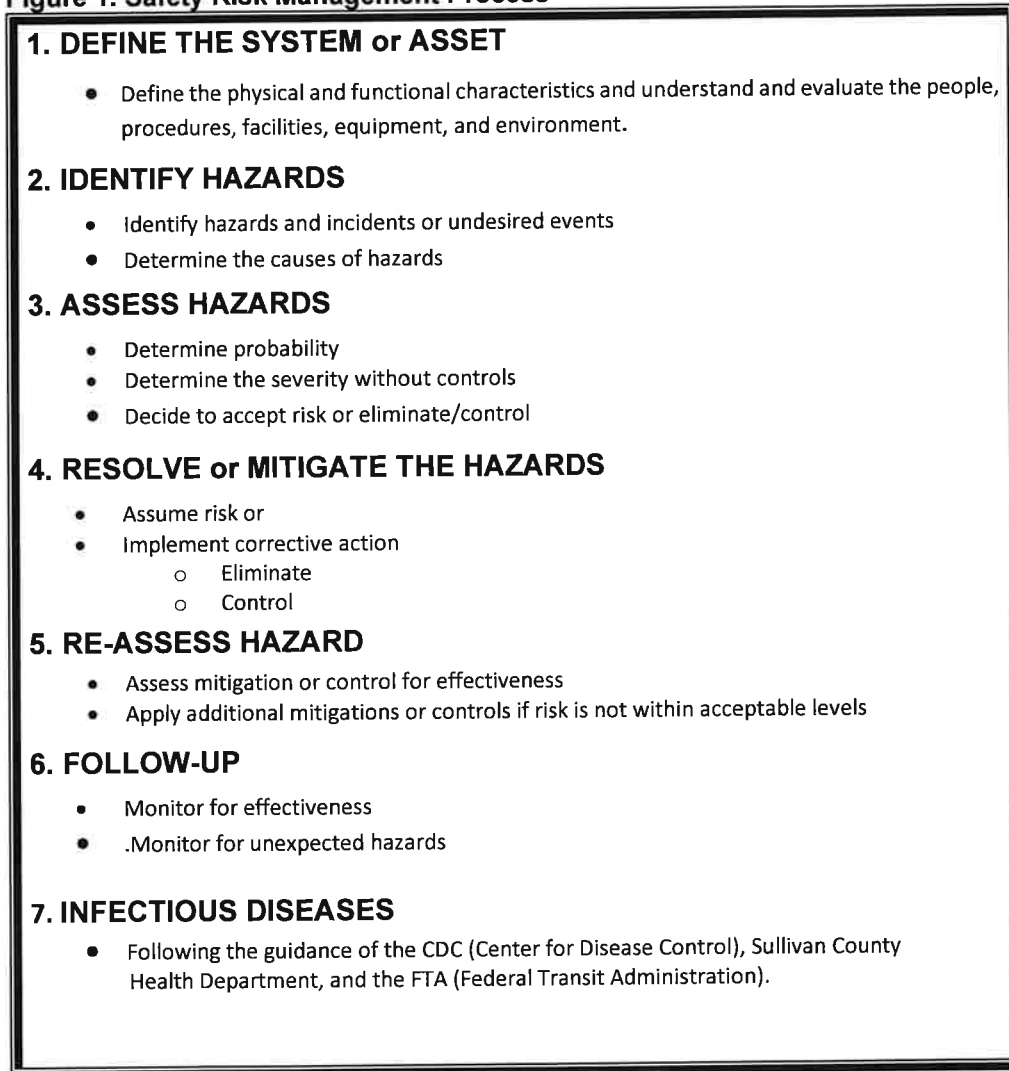
Refer to the Participating Agency Addenda for agency-specific employee safety reporting program descriptions.

3. Safety Risk Management

3.1. Introduction

This chapter provides detail on Safety Risk Management (SRM). SRM includes the activities that a public transportation agency undertakes to control the probability or severity of the potential consequence of hazards. Major SRM sub-components include Hazard Identification and Analysis and Safety Risk Evaluation and Mitigation. Figure 1 below summarizes the six basic steps of SRM.

Figure 1. Safety Risk Management Process



3.2. Hazard Identification and Analysis

The first step in a hazard analysis is defining the systems and sub-systems subject to hazards, followed by identifying specific physical and procedural hazards related to the identified systems and subsystems.

Kingsport Area Transit Services

The Kingsport Area Transit Services (KATS) operates seven buses over six fixed routes of service from 7:30am until 5:30pm Monday through Friday (except city observed holidays). Kingsport Area Transit Services also operates six vans that provide ADA service and Job Access service. The KATS bus and van service is a valuable asset to the community and the city is encouraged by its progress and growth. These services are provided to residents of the city of Kingsport with a population of over 53,000.

3.2.1. Identifying Hazards

A safety hazard is:

- Any real or potential condition that can cause personal injury or death or damage to or loss of equipment or property,
- A condition that may be a prerequisite to an accident, or
- Is a situation that has the potential to do harm.

Hazards are identified through a variety of sources, including those listed below. In addition, SMS enables every employee to identify hazards through Safety Promotion efforts and non-punitive hazard reporting, described further in Section 5.

- FTA's *Hazard Analysis Guideline for Transit Projects* (January 2000)
- Accident/incident data and experience
- Accident/incident data from other bus systems with similar characteristics
- Hazard scenarios
- Applicable industry standards
- Field assessments and surveys
- Project-specific design data and drawings, reviews, testing, and start-up activities

The following tools and techniques may be used for hazard identification and analysis:

- Preliminary Hazard Analysis (PHA)
- Operational Hazard Assessment (OHA)
- Accident/Incident Analysis
- Job Hazard Analysis (JHA)

3.3. Safety Risk Evaluation

After identifying system-specific hazards, SRM assesses safety risk by first identifying the potential to do harm in the system and then analyzing options to mitigate the hazard to an acceptable level. The process seeks to identify and define as many hazardous conditions as possible and initiate the safety risk mitigation process before those conditions or associated activities cause an accident.

3.3.1. Analyzing Risk

The methodology for analyzing safety risk has two elements: evaluating hazard severity and evaluating hazard probability. The US Department of Defense's *Standard Practice for System Safety, MIL-STD-882E*, establishes system safety criteria guidelines for determining hazard severity and probability. This ASP adapts the MIL-STD-882E Risk Assessment and Hazard Risk Index matrixes to the transit environment for use in the Participating Agencies' safety risk assessment process.

3.3.1.1. Determining Severity

Hazards are rated in terms of their effect on transit customers, employees, the public, and the operating system. Hazard severity is a subjective measure of the worst credible case consequence that results from design inadequacies, component failure or malfunction, human error, environmental conditions, or operating or maintenance practice, and procedure deficiencies. The ratings are illustrated in Figure 2. The categorization of hazards is consistent with risk-based criteria for severity and reflects the principle that not all hazards pose an equal amount of risk.

Figure 2. Hazard Severity Definition

SEVERITY	CHARACTERISTICS			
	People	Equipment/Services	Financial	Reputational
Catastrophic 1	Several deaths and/or numerous severe injuries <i>(per event)</i>	Total loss of equipment or system interruption, requiring months to repair	Estimated loss from the incident in excess of \$500,000	Ongoing media coverage, irreparable reputational damage, government intervention (weeks – months)
Critical 2	Low number of deaths and/or serious injury* <i>(per event)</i>	Significant loss of equipment or system interruption, requiring weeks to repair	Estimated loss from the incident in excess of \$100,000-\$499,999	Prolonged media campaign, serious reputational damage, sustained government involvement (days - weeks)
Moderate 3	Minor injury and possible serious injury <i>(per event)</i>	Some loss of equipment or system interruption, requiring seven or less days to repair	Estimated loss from the incident in excess of \$10,000-\$99,999	Adverse media coverage, reputational damage, government involvement
Minor 4	Possible minor injury <i>(per event)</i>	Some loss of equipment, no system interruption, less than 24 hours to repair	Estimated loss from the incident in excess of \$1,000-\$9,999	Local media coverage and some reputational damage
Insignificant 5	No injury	Minor damage to equipment no system interruption, no immediate repair necessary	Estimated loss from the incident is likely less than \$1,000	No adverse media coverage or reputational damage

*Per 49 CFR 673, serious injury: 1) Requires hospitalization for more than 48 hours, commencing within 7 days from the date of the injury was received; 2) Results in a fracture of any bone (except simple fractures of fingers, toes, or noses); 3) Causes severe hemorrhages, nerve, muscle, or tendon damage; 4) Involves any internal organ; or 5) Involves second or third-degree burns, or any burns affecting more than 5 percent of the body surface.

3.3.1.2. Determining Probability

The probability that a hazard will occur during the planned life expectancy of the system element, sub-system or component is described qualitatively, in potential occurrences per unit of time, events, population, items, or activity. A qualitative hazard probability is derived from research, analysis, evaluation of safety data from the operating experience of the agency or historical safety data from similar bus systems, and from expert opinion. Figure 3 summarized the hazard probability categories.

Figure 3. Hazard Probability Categories

PROBABILITY LEVEL	SPECIFIC INDIVIDUAL ITEM	FLEET OR INVENTORY	FREQUENCY
Frequent A	Likely to occur frequently in the life of a system	Continuously experienced	> 1 event / month
Probable B	Will occur often in the life of a system	Will occur frequently in the system	> 1 event / year
Occasional C	Likely to occur sometime in the life of an item	Will occur several times	> 1 event / 10 years
Remote D	Unlikely, but possible to occur in the life of an item	Unlikely, but can be expected to occur	> 1 event / 20 years
Improbable E	So unlikely, it can be assumed occurrence may not be expected	Unlikely to occur, but possible	> 1 event / 30 years

3.3.2. Assessing Risk

Together, hazard severity and probability measure a hazard's magnitude and priority for applying the control measures. Hazards are then examined, qualified, addressed, and resolved based on the severity of a potential outcome and the likelihood that such an outcome will occur. The value derived by considering a hazard's severity and probability is the Hazard Risk Index. The resulting risk index is a measure of the acceptability or undesirability of the hazard and is applied to the Risk Assessment Index.

Assignment of a Hazard Risk Index enables agency management to properly understand the amount of risk involved by accepting the hazard relative to what it would cost (schedule, dollars, operations, etc.) to reduce the hazard to an acceptable level.





Figure 4 identifies the Hazard Risk Index based upon hazard severity and probability and outlines the criteria for further action and decision authority based upon each index category. The Hazard Risk Index is used to assist the decision-making process in determining whether a safety risk should be eliminated, controlled, or accepted. This helps prioritize hazardous conditions and focus available resources on the most serious hazards requiring resolution while effectively managing available resources.

For example, if the potential for an accident/incident reveals a Category 1 (catastrophic) occurrence with a Level A (frequent) probability, the assessed level of risk is Unacceptable and the system safety effort is directed toward eliminating the hazard or at the very least to implementing redundant hazard control measures. A Category 1 (catastrophic) or Category 2 (critical) safety risk may be tolerable if it can be demonstrated that its occurrence is highly improbable. This approach provides a basis for logical management decision-making that considers the hazard's severity and probability.

Figure 4. Hazard Risk Index

HAZARD RISK INDICES					
Frequency Or Probability	Severity Category				
	1 Catastrophic	2 Critical	3 Moderate	4 Minor	5 Insignificant
(A) Frequent	1A	2A	3A	4A	5A
(B) Probable	1B	2B	3B	4B	5B
(C) Occasional	1C	2C	3C	4C	5C
(D) Remote	1D	2D	3D	4D	5D
(E) Improbable	1E	2E	3E	4E	5E

LEGEND

	Unacceptable - Cannot be accepted as is, <u>must</u> be mitigated
	Undesirable - Acceptable with Executive-level signoff
	Acceptable w/ Review - Acceptable Operational-level signoff
	Acceptable - Can be accepted as is.

3.4. Safety Risk Mitigation

3.4.1. Treating Risk

As safety risks are identified, whether through a formal risk assessment or informally such as through employee reporting mechanisms, hazards can be resolved by deciding to either assume the risk associated with the hazard or to eliminate or control the risk. Mitigation to bring a hazard to an acceptable level of risk is applied in the following order of precedence, listed from most effective at the top of the list to least effective mitigations at the bottom:

- Avoidance
- Elimination
- Substitution
- Engineering Controls
- Warnings
- Administrative Controls such as Operations and Maintenance Procedures
- Personal Protective Equipment and Guards

3.4.2. Hazard Tracking

Once mitigations are agreed upon for identified hazards, mitigations are tracked through the agency's safety certification process to ensure all concerns raised have been addressed and mitigated properly. This hazard tracking and certification process may be done through reports, logs, worksheets and/or similar methods that allow for updating if changes occur that impact the findings of the safety analysis. KATS will use a hazard tracking worksheet in Microsoft Excel to capture and track hazards from analysis through implementation. Refer to Appendix C for a blank

copy of the hazard tracking worksheet.

4. Safety Assurance

4.1. Overview

Safety assurance includes safety reviews, evaluations, audits, and inspections, as well as data tracking and analysis and investigations. Safety Assurance encompasses the processes within the transit agency's SMS that ensures the implementation and effectiveness of SRM and ensures that the agency meets or exceeds its safety objectives through the collection, analysis, and assessment of information. Each transit agency will conduct an annual review of the effectiveness of its safety risk mitigations through its safety assurance efforts.

4.2. Safety Performance Monitoring and Measurement

SMS generates data and information that senior management need to evaluate whether implemented safety risk mitigations are appropriate and effective, and how well an agency's safety performance fits with their established safety objectives and safety performance targets. Safety performance monitoring will occur through routine monitoring of operations and maintenance activities. It also includes risk monitoring to track implementation and success of mitigations and controls put in place to manage risk.

KATS will establish audit and evaluate safety in compliance with this ASP and SMS. The program will:

- Monitor compliance and sufficiency of procedures for operations and maintenance
- Monitor operations to identify ineffective, inappropriate, or unimplemented safety risk mitigations
- Conduct investigations of safety events to identify causal factors
- Monitor information from safety reporting systems
- Document audit outcomes
- Collect and track safety data

4.3. Management of Change

KATS, under this ASP will re-evaluate safety when significant change occurs within the agency. These changes may include:

- New contractor providing service
- New buses brought into fleet
- New or changed routes
- Other changes that might have a safety impact.

If the change has a safety impact, risk associated with the change will be evaluated, treated and documented. If the change does not have a safety impact, no further steps will be taken.

4.4. Continuous Improvement

Each agency will evaluate their SMS program annually to identify areas of improvement and any changes that require input for the agency to grow in safety management.

5. Safety Promotion

5.1. Introduction

KATS will utilize Safety Promotion to communicate and disseminate safety information to strengthen the safety culture. Safety Promotion includes safety lessons learned, reporting systems, recommendations based on safety metrics, and safety training. The goal is to foster a positive safety culture where employees receive ongoing training and updates of safety progress; feel comfortable reporting safety issues or concerns; and understand why safety is important and how they impact safety.

5.2. Safety Communication and Culture

5.2.1. Safety Communication

KATS will communicate safety and safety performance information throughout the agency's organization that, at a minimum, conveys the TDOT safety management policy statement in Section 2.1 above; each covered agency's employee safety reporting program procedures and policies; and, information on hazards and safety risks relevant to employees' roles and responsibilities. The communication will be used to inform employees of safety actions taken in response to reports submitted through an employee safety reporting program.

5.2.2. Dissemination of Lessons Learned

KATS will review lessons learned from incidents, accidents and reported hazards and provide feedback regarding findings. This communication is an important step in letting employees know that they are important to the agency.

5.3. Competencies and Training

KATS will establish and implement a safety training program for all employees and contractors directly responsible for safety in the agency's public transportation system. The training program must include refresher training, as necessary. Safety training will also be part of new-hire training and specific job safety training. Training and competencies of all staff will be documented and tracked.

Refer to the Participating Agency Addenda for agency-specific safety training programs.

5.1. Contractor Safety (as applicable)

When contracting for services that have a safety component and/or may impact safety or assessed risk, procurement language and specification requirements will be included, as applicable. Contractors will demonstrate job-appropriate competencies and training that meet or exceed the requirements of the agency.

Appendix A – Definitions

Accident	An Event that involves any of the following: A loss of life; a report of a serious injury to a person; a collision of public transportation vehicles; a runaway train; an evacuation for life safety reasons; or any derailment of a rail transit vehicle, at any location, at any time, whatever the cause.
Accountable Executive	A single, identifiable person who has ultimate responsibility for carrying out the Agency Safety Plan of a public transportation agency; responsibility for carrying out the agency's Transit Asset Management Plan; and control or direction over the human and capital resources needed to develop and maintain both the agency's Agency Safety Plan, in accordance with 49 U.S.C. 5329(d), and the agency's Transit Asset Management Plan in accordance with 49 U.S.C. 5326.
Agency Safety Plan (ASP)	The documented comprehensive agency safety plan for a transit agency that is required by 49 U.S.C. 5329 and 49 CFR 673.
Assessment	An estimation of the size/scope of risk or quality of system or procedure.
Cause	Events that, result in a hazard or failure. Causes can occur by themselves or in combinations.
Change	To modify, alter, or make different.
Chief Safety Officer (CSO)	An adequately trained individual who has responsibility for safety and reports directly to a transit agency's chief executive officer, general manager, president, or equivalent officer. A Chief Safety Officer may not serve in other operational or maintenance capacities, unless the Chief Safety Officer is employed by a transit agency that is a small public transportation provider as defined in this part, or a public transportation provider that does not operate a rail fixed guideway public transportation system.
Configuration Management	A management process for establishing and maintaining consistency of a product's performance, functional and physical attributes with its requirements, design, and operational information throughout its life.
Control	Anything that mitigates the risk of a hazard's effects. A control is the same as a safety requirement. All controls are written in requirement language.
Effect	The effect is a description of the potential outcome or harm of the hazard if it occurs in the defined system state.
Equipment	A complete assembly, operating either independently or within a sub-system or system, that performs a specific function.
Equivalent Authority	An entity that carries out duties similar to that of a Board of Directors, for a recipient or subrecipient of FTA funds under 49 U.S.C. Chapter 53, including sufficient authority to review and approve a recipient or subrecipient's Public Transportation Agency Safety Plan.
Event	Any Accident, Incident, or Occurrence.
Hazard	Any real or potential condition that can cause injury, illness, or death to people; damage to or loss of a system, equipment, or property; or damage to the environment. A hazard is a condition that is a prerequisite to an accident or incident.
Hazard Tracking	A closed-loop means of ensuring that the requirements and mitigations associated with each hazard that has associated medium or high risk are implemented. Hazard tracking is the process of defining safety requirements, verifying implementation, and re- assessing the risk to make sure the hazard meets its risk level requirement before being accepted.

Human Factors	A multidisciplinary effort to generate and compile information about human capabilities and limitations and apply that information to equipment, systems, facilities, procedures, jobs, operations, environments, training, staffing, and personnel management for safe, comfortable, efficient and effective human performance.
Incident	An event that involves any of the following: A personal injury that is not a serious injury; one or more injuries requiring medical transport; or damage to facilities, equipment, rolling stock, or infrastructure that disrupts the operations of a transit agency.
Investigation	The process of determining the causal and contributing factors of an accident, incident, or hazard, for the purpose of preventing recurrence and mitigating risk.
Maintenance	Any repair, adaptation, upgrade, or modification of equipment or facilities. This includes preventive maintenance.
Mitigation	Actions taken to reduce the risk of a hazard's effects.
National Public Transportation Safety Plan	The plan to improve the safety of all public transportation systems that receive Federal financial assistance under 49 U.S.C. Chapter 53.
Occurrence	An Event without any personal injury in which any damage to facilities, equipment, rolling stock, or infrastructure does not disrupt the operations of a transit agency.
Oversight	To validate the development of a defined system and verify compliance to a pre-defined set of standards.
Performance Measure	An expression based on a quantifiable indicator of performance or condition that is used to establish targets and to assess progress toward meeting the established targets.
Performance Target	A quantifiable level of performance or condition, expressed as a value for the measure, to be achieved within a time period required by the FTA.
Probability	An expression of often an event is expected to occur.
Process	A set of interrelated or interacting activities which transforms inputs into outputs.
Public Transportation Agency Safety Plan (PTASP)	A safety plan based on the Safety Management System approach. The FTA's PTASP Final Rule (49 CFR Part 673) requires States and certain operators of public transportation systems that receive Federal financial assistance under 49 USC Chapter 53 to develop and implement ASPs.
Public Transportation Safety Certification Training Program	The certification training program established either for Federal and State employees, or other designated personnel, who conduct safety audits and examinations of public transportation systems, and employees of public transportation agencies directly responsible for safety oversight, established through interim provisions in accordance with 49 U.S.C. 5329(c)(2), or the program authorized by 49 U.S.C. 5329(c)(1)
Qualitative Data	Subjective data that is expressed as a measure of quality; nominal data.
Quantitative Data	Objective data expressed as a quantity, number, or amount; allows for more rational analysis and substantiation of findings.
Requirement	An essential attribute or characteristic of a system. It is a condition or capability that must be met or passed by a system to satisfy a contract, standard, specification, or other formally imposed document or need.

Reportable Event	<p>A safety or security event occurring on transit right-of-way or infrastructure, at a transit revenue facility, at a transit maintenance facility, during a transit related maintenance activity or involving a transit revenue vehicle that results in one or more of the following conditions, as defined in the National Transit Database Safety and Security Reporting Manual (2019):</p> <ul style="list-style-type: none"> • A fatality confirmed within 30 days of the event • An injury requiring immediate medical attention away from the scene for one or more person(s) • Property damage equal to or exceeding \$25,000 • Collisions involving transit revenue vehicles that require towing away from the scene for a transit roadway vehicle or other non-transit roadway vehicle • An evacuation for life safety reasons
Risk	<p>The composite of predicted severity and likelihood of the potential effect of a hazard in the worst credible system state.</p> <p>(1) Initial. The composite of the severity and likelihood of a hazard considering only verified controls and documented assumptions for a given system state. It describes the risk at the preliminary or beginning stage of a proposed change, program or assessment.</p> <p>(2) Residual. The risk that remains after all control techniques have been implemented or exhausted and all controls have been verified. Only verified controls can be used to assess residual risk.</p>
Risk Acceptance	Agreement by the appropriate management official that he/she understands the safety risk associated with the change and he/she accepts that safety risk.
Safety	Freedom from unintentional harm.
Safety Assurance	Processes within a transit agency's Safety Management System that functions to ensure the implementation and effectiveness of safety risk mitigation, and to ensure that the transit agency meets or exceeds its safety objectives through the collection, analysis, and assessment of information.
Safety Culture	The product of individual and group values, attitudes, competencies, and patterns of behavior that determine commitment to, and the style and proficiency of, an organization's safety management. In addition, the four key components of a safety culture are reporting culture (encourage employees to divulge information about all hazards that they encounter), just culture (employees are held accountable for deliberate violations of the rules but are encouraged and rewarded for providing essential safety-related information), flexible culture to changing demands), and learning culture (willing to change based on safety indicators and hazards) uncovered through assessments, data, and incidents).
Safety Management Policy	A transit agency's documented commitment to safety, which defines the transit agency's safety objectives and the accountabilities and responsibilities of its employees in regard to safety.
Safety Management System (SMS)	The formal, top-down, organization-wide approach to managing safety risk and assuring the effectiveness of a transit agency's safety risk mitigation. SMS includes systematic procedures, practices, and policies for managing safety risks to the lowest acceptable level practicable.
Safety Promotion	A combination of training and communication of safety information to support SMS as applied to the transit agency's public transportation system.

Safety Requirement	A control written in requirements language.
Safety Risk Management (SRM)	A process within a transit agency's ASP for identifying hazards and analyzing, assessing, and mitigating safety risk. SRM is a formalized, proactive approach to system safety and applied to all changes to ensure all risks are identified and mitigated prior to the change being made. It provides a framework to ensure that once a change is made, it continues to be tracked throughout its lifecycle.
Serious Injury	Any injury which: <ul style="list-style-type: none"> (1) Requires hospitalization for more than 48 hours, commencing within 7 days from the date of the injury was received; (2) Results in a fracture of any bone (except simple fractures of fingers, toes, or noses); (3) Causes severe hemorrhages, nerve, muscle, or tendon damage; (4) Involves any internal organ; or (5) Involves second- or third-degree burns, or any burns affecting more than 5 percent of the body surface.
Severity	The measure of how bad the results of an event are predicted to be. Severity is determined by the most probable outcome.
Source (of a hazard)	Any potential origin of system failure, including equipment, operating environment, human factors, human-machine interface, procedures, and external services.
State Safety Oversight Agency (SSOA)	An agency established by a State that meets the requirements and performs the functions specified by 49 U.S.C. 5329(e) and the regulations set forth in 49 CFR part 674.
System	An integrated set of constituent pieces that are combined in an operational or support environment to accomplish a defined objective. These pieces include people, equipment, information, procedures, facilities, services, and other support services.
Transit Asset Management Plan	The strategic and systematic practice of procuring, operating, inspecting, maintaining, rehabilitating, and replacing transit capital assets to manage their performance, risks, and costs over their life cycles, for the purpose of providing safe, cost-effective, and reliable public transportation, as required by 49 U.S.C. 5326 and 49 CFR part 625
Validation	The process of proving that the right system is being built, i.e., that the system requirements are unambiguous, correct, complete, and verifiable.
Verification	The process that ensures that the system requirements have been met by the design solution and the system is ready to be used in the operational environment for which it is intended.

Appendix B – Acronyms and Abbreviations

ADA	Americans with Disabilities Act
CAP	Corrective Action Plan
CFR	Code of Federal Regulations
CUATS	Cleveland Urban Area Transit System (operated by SETHRA)
ETHRA	East Tennessee Human Resource Agency
FHA	Fault Hazard Analysis
FTA	Federal Transit Administration
FTHRA	First Tennessee Human Resource Agency
JHA	Job Hazard Analysis
JTA	Jackson Transit Authority
JTA	Johnson City Transit
KAT	Knoxville Area Transit
KATS	Kingsport Area Transit Services
Knox County CAC	Knox County Community Action Committee Transit
MPO	Metropolitan Planning Organization
OHA	Operational Hazard Assessment
OSHA	Occupational Safety and Health Administration
Participating Agencies	The Tennessee public transportation agencies covered by the joint PTASP
PHA	Preliminary Hazard Analysis
PM	Preventative Maintenance
PTASP	Public Transportation Agency Safety Plan
SETHRA	Southeast Tennessee Human Resource Agency
SMS	Safety Management Systems
SRM	Safety Risk Management
TAM	Transit Asset Management
TDOT	Tennessee Department of Transportation

Appendix C – Hazard Tracking Worksheet

Preliminary Hazard Analysis													
General Description			Hazard Cause / Effect			Risk Index			Corrective / Mitigation Action		Risk Index		
Reference	Overall System	Hazard	Potential Causes	Operational Effects	Safety Effects	Severity	Probability	Risk	Design Mitigations	Operational Mitigations	Resolution Severity	Resolution Probability	Resolution Risk
Use a number to track hazard, ie Bus #1	BUS (or other system)	Trip and Fall on Bus	Wet floor	Delay of service	Minor to severe injury	3	B	3B	Slip resistant flooring	Driver Training	3	C	3C
			Hard braking						Handholds placed regularly				
			Human error (standing on moving vehicle)										

Participating Agency Addenda

These Participating Agency Addenda provide additional agency-specific information to supplement the joint ASP, including agency safety roles and responsibilities, safety training programs, safety reporting programs, and safety-related agency plans and procedures, as applicable. Each addendum applies only to the agency for which it is written and approved.

Addendum 1 – Kingsport Area Transit Service

900 E. Main St, Kingsport, TN 37660

ASP and Addendum 8 Approvals

Prepared by: _____
NAME _____ Date _____
Safety Manager/Director

Approved by: _____
Chris Campbell _____ Date _____
Public Transportation Manager (Accountable Executive)

Approved by: _____
NAME _____ Date _____
(Board of Directors/City Council/City Commissioner)

Safety Roles and Responsibilities

The matrix below names the positions at Kingsport Area Transit Service (KATS) responsible for the safety roles and responsibilities described in Section 2.2 of this ASP.

Kingsport Area Transit Service Roles & Responsibility	Chris Campbell Public Transportation Manager	Cynthia Johnson Transportation Operations Supervisor	Candace Sherer Transit Planner	Timothy Land Transit Planner	Fleet Manager	Management Manager	All KATS Employees	Kingsport Police	Tennessee Highway Patrol
Accountable Executive (AE)	P	N							
Chief Safety Officer (CSO) (SMS Implementation)	O	P	S	S					
Safety Management Policy	A/P	O	S	S		R			
Safety Risk Management (Hazard ID/Mitigation)	A	P	S	S	S	S	S		
Safety Assurance (Audits/Inspections)	A	P	R	R					
Safety Promotion (Communication/Training)	A	P	S	S		S			
Hazard Identification & Safety Risk Assessment	A	P	S	S	S				
Safety Reporting & Follow-up	A	P	R	R					
Safety Performance Targets & Measurement	A	P	S	S					
Accident Investigation	A/S	P	R	R		S		S	S

KEY

A Approval
O Oversight
P Primary
S Secondary/Support
R Review/Comment
N Not Applicable/No Significant Role

Integration with Public Safety and Emergency Management

KATS utilizes off duty City Police Officers for security in and around transit facilities. On an as needed basis, the Kingsport Police and Fire Departments will provide notice of potential issues or upcoming events that may be of interest to KATS. Based on the agency size, this model has worked. In rare occasions, Police and Fire have requested KATS to transport clients due to a medical condition or natural event.

Safety Performance Targets for 2023

Number of Fatalities	Rate of Fatalities Per 100K VRM	Number of Injuries	Rate of Injuries Per 100K VRM	Number of Safety Events	Rate of Safety Events Per 100 VRM	Total Major Mechanical Failures	Miles between Major Mechanical Failures (System Reliability)
0	0	2	0.60	2	0.60	15	22,102

Hazard Identification and Tracking

KATS accepts the hazard identification and tracking method established in the joint plan.

Safety Training Program

KATS requires training in the following safety-related areas:

Driver training, including safe operation and elements related to safety and security of the operator and the public, incident management, and wheelchair securement among other activities.

KATS is now listed in the FMCAS's Training Provider Registry as an approved Entry-Level Driver training program. ELDT students must complete the training program before permitted to take CDL skills and knowledge tests. This includes the addition of the (P) passenger endorsement when it is added to an existing CDL.

Employee Safety Reporting Program

KATS implemented a standard employee safety reporting form and anonymous collection drop box in 2020 for discrete notification of safety concerns.

Safety-Related Agency Documents

KATS has several safety related documents including this ASP and processes and procedures described in conjunction with this document.



AGENDA ACTION FORM

Enter into a Professional Services Agreement with LJA Engineering, Inc. to Provide Engineering and Sewer Flow Monitoring Services for the West Kingsport Sewer Basin

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

Action Form No.: AF-374-2022
 Work Session: December 19, 2022
 First Reading: N/A

Final Adoption: December 20, 2022
 Staff Work By: W. Stallard / C. Austin
 Presentation By: R. McReynolds

Recommendation:

Approve the Resolution.

Executive Summary:

In order to properly plan for future capital expenditures, in-depth monitoring of sewer flows during rainy periods is necessary to assess the overall capacity of the sewer system. The West Kingsport Sewer Drainage Basin has seen increased development over the past few years and an assessment of the sewer system is needed.

The project will cover approximately 464,588 linear feet of main line sewer in the drainage basin employing 20 temporary wastewater flow meters and 3 temporary rain gauges for a period of 60 days. The data collected will be used to update our wastewater flow model, capacity assurance tools and develop a Rain Derived Inflow & Infiltration Technical Memorandum (RDII-TM) for the basin. This RDII-TM will be used as a guide to identify areas in the basin that need immediate (or longer term) remediation to meet current needs and future development.

LJA Engineering, Inc. has proposed to coordinate the actions listed above. The cost for this project is \$154,920 and funds are identified in SW2207.

Attachments:

1. Resolution
2. Engineering Services Proposal
3. Location Map

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
Cooper	—	—	—
Duncan	—	—	—
George	—	—	—
Montgomery	—	—	—
Olterman	—	—	—
Phillips	—	—	—
Shull	—	—	—

RESOLUTION NO. _____

A RESOLUTION APPROVING A PROFESSIONAL SERVICES AGREEMENT WITH LJA ENGINEERING, INC. FOR A STUDY OF THE WEST KINGSPORT SEWER BASIN AND AUTHORIZING THE MAYOR TO EXECUTE THE AGREEMENT AND ALL OTHER DOCUMENTS NECESSARY AND PROPER TO EFFECTUATE THE PURPOSE OF THE AGREEMENT

WHEREAS, the West Kingsport Sewer Drainage Basin has seen increased development over the past few years and an assessment of the sewer system is needed; and

WHEREAS, the city desires to enter into a service agreement with LJA Engineering, Inc., for the study of approximately 464,588 linear feet of main line sewer in the drainage basin to include data collection and analysis which will be used to update our wastewater flow model, capacity assurance tools, and develop a Rain Derived Inflow & Infiltration Technical Memorandum (RDII-TM) for the basin; and

WHEREAS, the cost for this project is \$154,920.00 and funds are identified in SW2207.

Now therefore,

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

SECTION I. That a professional services agreement with LJA Engineering, Inc., to provide engineering and sewer flow monitoring for the West Kingsport Sewer Basin 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 LJA Engineering, Inc., to provide engineering and sewer flow monitoring for the West Kingsport Sewer Basin, to deliver the agreement and take any and all action as may be required on the part of the city to carry out, give effect to, and consummate the transactions contemplated by the agreement and 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 20th day of December, 2022.

PATRICK W. SHULL, MAYOR

ATTEST:

ANGELA MARSHALL, DEPUTY CITY RECORDER

APPROVED AS TO FORM:

RODNEY B. ROWLETT, III, CITY ATTORNEY

December 6, 2022

PROPOSAL

Mr. Chad Austin
Assistant Utility Director
Kingsport Utilities
1113 Konnarock Road
Kingsport, Tennessee 37664

**RE: Engineering Services as Related to the
Flow Monitoring Study – Option 1
Kingsport Utilities
Kingsport, Tennessee 37664
LJA Proposal No. 20221206A**

Dear Mr. Austin,

LJA Engineering, Inc. ("LJA") is pleased to provide this proposal for engineering services associated with **Option 1** of the attached memorandum in Exhibit A. This task order is made pursuant to the terms and conditions of the Professional Services Agreement ("PSA") entered into on November 28, 2022, by and between LJA Engineering, Inc and Kingsport Utilities ("Client").

Background

LJA staff has coordinated with the Client for flow monitoring within a portion of sanitary sewer system to identify and create a prioritization based on wet weather inflow and infiltration (I/I). LJA staff presented a memorandum (Exhibit A) outlining different options to consider including the associated "pros and cons." Subsequently, the Client has requested a proposal for **Option 1**, which just addresses the sanitary sewer system along the north and western portion of the City and includes approximately 464,588 linear feet of mainline (see Figure 1).

Figure 1 – Western Portion of Sanitary Sewer System



The following Scope of Services more specifically defines the phases and associated tasks related to the project.

Scope of Services

1.0 Mobilization, Site Location, Installation & Field Coordination

- LJA staff will coordinate with subcontractor to identify strategic sites in which to install flow monitoring equipment which will provide the information needed to determine the volume of increase during wet weather events. LJA staff and subcontractor will perform site investigations in the field to verify that proper hydraulics exists to yield acceptable flow monitoring results. LJA will also investigate adjacent manholes in order to identify the most suitable monitoring locations. LJA will provide the Client installation information once all meters have been installed. LJA will communicate with the Client during the installation process as necessary to obtain information and/or verify details.

2.0 Flow Monitoring & Rain Gauge Operation & Maintenance

- LJA staff will coordinate with subcontractor to perform required operation and maintenance on the installed equipment. It is anticipated that twenty (20) gravity meters and three (3) rain gauges will be utilized for a period of up to 60 calendar days to verify flow and rain quantities, respectively. Should it become necessary to increase the monitoring time in the absence of wet weather, LJA staff will coordinate with the Client and present a contract addendum for approval prior to the end of the 60 day study period.
- Field calibrations will be performed as needed along with all spare parts and equipment necessary to maintain the equipment once installed. (Note: Exact flow monitoring locations will be determined at the time the agreement is authorized and include some coordination of details with the Client and subcontractor.)
- LJA will utilize the ISCO Model 2150 area-velocity flow monitor to measure flow on all gravity sites and the ISCO Model 674 rain gauge tipping bucket to record rainfall. Flow depths and velocities will be independently measured and recorded on a 5-minute or 15-minute interval. Flow quantities will be calculated using the area-velocity relationship. LJA will maintain properly licensed software required to collect data and service all monitoring equipment throughout the duration of the project. LJA will facilitate field work utilizing a subcontractor with trained field crews to service the equipment as directed by the data analyst. LJA will proactively review each site for potential downtime (battery voltage, etc.). Independent field confirmation techniques shall be utilized as needed to verify depth and velocity.

3.0 Management, Engineering, Report, and Final Data Submittal

- Once all data is collected, LJA staff will finalize data to ensure accuracy. Basic deliverables will be submitted to the Client as part of the final technical memorandum and will include monthly hydrographs and listings for depth, velocity, flow, and rain (Exhibit B). LJA staff will evaluate the flow data during both "dry" and wet weather periods to determine the extent of I/I volume observed during associated rain events. (Note: Given the meters will likely be installed during a wintertime season, true "dry" weather conditions will not exist and will therefore be analyzed based on relative conditions.) A technical memorandum will be prepared to summarize the findings by completing a rain-dependent inflow & infiltration (RDII) analysis incorporating associated graphs, figures, tables, and

narrative (Exhibit C). LJA will present these results to the Client in person with supporting documentation provided in one (1) hard copy and one (1) electronic copy in PDF format.

Client's Responsibilities

Client shall be responsible for the following items:

- Provide assistance in locating and accessing the strategic manholes identified for monitoring sites.
- Provide assistance in accessing a secure location suitable for rain gauge installation.
- Providing updated GIS layers and associated information required to complete the assessment and final memorandum.

Compensation

We propose to provide the specific services described above to be billed as follows:

Description	Units	Unit Cost	Total
Mobilization/Site Location/Installation/Field Coordination	20	\$ 2,025.00	\$ 40,500.00
Mobilization/Rain Gauge Installation	3	\$ 1,150.00	\$ 3,450.00
*Meter Operation & Maintenance	1,200	\$ 57.50	\$ 69,000.00
*Rain Gauge Operation & Maintenance	180	\$ 11.50	\$ 2,070.00
Management/Engineering Reporting/Final Data Submittal	LS	\$ 39,900.00	\$ 39,900.00
TOTAL			\$ 154,920.00

*NOTE: Weekly extensions can be provided at the unit rates above as needed and authorized via contract addendum. Additional fees may be required for the final reporting and deliverables.

Any work not authorized within three (3) months of the date of this agreement will be subject to renegotiations based on current rates.

Schedule

Given the size of the project and the likelihood the authorization to proceed may be given during the holidays, the actual meter installations would likely begin during the first part of February 2023, to provide time for site investigations and equipment preparation. The final report will be ready to present approximately 60 days following the last day of metering.

Reimbursables and additional services

Included in the above fees are reimbursable expenses incurred on the project's behalf, including mileage, printing, plotting, photocopies, reproduction, express mail, and/or courier services. Any regulatory agency review fees associated with plan reviews shall be the responsibility of the Client. Reimbursable expenses will be billed at cost plus ten percent (10%). LJA will bill monthly for all work performed and expenses incurred on the project's behalf. Unpaid invoices after thirty (30) days will accrue service charges at 1-1/2% per month and include any costs of collections and reasonable attorney's fees.

Authorization

If this proposal meets with your approval, your signature below will be sufficient authorization for LJA to commence the stated work as indicated in the above Scope of Services.

We appreciate the opportunity to submit this proposal and look forward to working with you on this project. If you have any questions, please contact me at 931.273.8999.

Sincerely,



Travis E. Wilson, PE
Vice President

Accepted By:
KINGSPORT UTILITIES

By: _____

Name: _____

Title: _____

Date: _____

TEW

Attachment

Exhibit A

Flow Monitoring Recommendation Memorandum

Kingsport Flow Monitoring Options

1. West Basin – 464,588 LF
 - a. Approximately 25 to 28 meters, three rain gauges
 - b. 60-day monitoring period with extension (weekly or monthly)
 - i. Study would ideally start mid-December to incorporate some dry weather
 - ii. Study would ideally include the month of February which is traditionally been the wettest month
 - iii. Study would need to be approved at the December Board meeting and a contractor ready to install meters immediately after
 - c. Locations selected with the following in mind
 - i. Potential development
 - ii. Potential I/I
 - iii. SSOs
 - iv. Future modeling needs
 - v. Facilitate evaluation of pump station capacity
 - d. Data from study should be good for 8-10 years
 - i. All sites on west side evaluated using same dry weather conditions and rainfall
 - ii. Data can be utilized as a baseline for future monitoring locations, established flow monitoring basins
 - iii. Reporting should include dry and wet weather evaluation, RDII analysis, West Side prioritization
 1. Follow-up inspection work in the priority areas would be performed within the correct seasonal period
 - a. (wet weather – manhole inspections, CCTV, flow isolations)
 - b. (dry weather – smoke testing)
 2. Inspection schedule would begin January 2024 and be completed fall 2024; Design and rehab could begin ~ 2025 at the earliest



Kingsport Flow Monitoring Options

2. West Basin – 464,588 LF

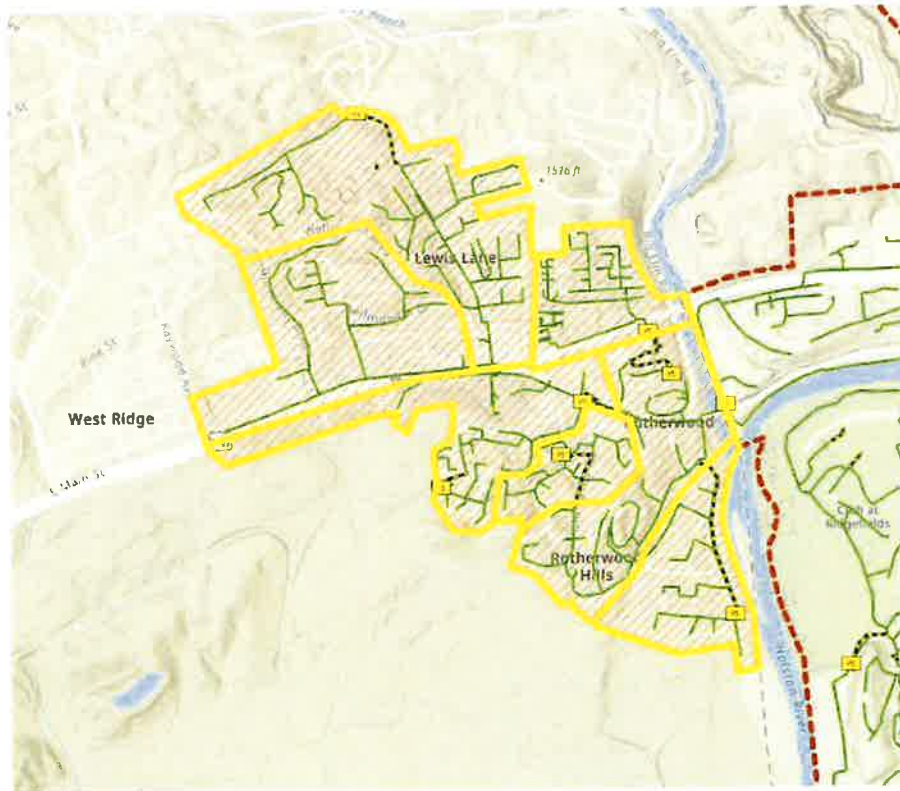
- a. Approximately 25 to 28 meters, three rain gauges
- b. 60-day monitoring period with extension (weekly or monthly)
 - i. Study would ideally start mid-December to incorporate some dry weather
 - ii. Study would ideally include the month of February which is traditionally been the wettest month
 - iii. Study would need to be approved at the December Board meeting and a contractor ready to install meters immediately after
- c. Locations selected with the following in mind
 - i. Potential development
 - ii. Potential I/I
 - iii. SSOs
 - iv. Future modeling needs
 - v. Facilitate evaluation of pump station capacity
- d. Data from study should be good for 8-10 years
 - i. All sites on west side evaluated using same dry weather conditions and rainfall
 - ii. Data can be utilized as a baseline for future monitoring locations, established flow monitoring basins
 - iii. Reporting should include dry and wet weather evaluation, RDII analysis, West Side prioritization
 - 1. Follow-up inspection work in the priority areas would be performed during and immediately after the flow monitoring study
 - a. (wet weather – manhole inspections, CCTV, flow isolations, begin as soon as some rain events are experienced, can be preliminarily evaluated, and contractors dispatched to priority areas – CCTV and manhole inspections would be completed in priority areas by June 2023 to identify defects in need of repair)
 - b. (dry weather – smoke testing would be conducted during summer 2023)
 - 2. Design and rehab could begin fall 2023 with construction to begin as early as 2024

3. Allendale Basin – 108,732 LF

- a. Approximately 5 to 7 meters, one rain gauge
- b. 60-day monitoring period with extension (weekly or monthly)
 - i. Study would ideally start mid-December to incorporate some dry weather
 - ii. Study would ideally include the month of February which is traditionally been the wettest month
 - iii. Study would need to be approved at the December Board meeting and a contractor ready to install meters immediately after
- c. Locations selected with the following in mind
 - i. Potential development
 - ii. Potential I/I
 - iii. SSOs

Kingsport Flow Monitoring Options

- iv. Future modeling needs – only associated with Allendale basin
- d. Data from study would be isolated to only the Allendale basin
 - i. As future metering is performed throughout other areas of the system, it will be difficult to associate the exact conditions and make a relative comparison for a system wide priority
 - ii. Although the highest priority areas within this subbasin will be identified, those may not be the highest priority within the system, may not receive the best “bang for the buck” on rehabilitation projects
 - iii. Reporting should include dry and wet weather evaluation, RDII analysis, Allendale prioritization
 - 1. Follow-up inspection work in the priority areas would be performed within the correct seasonal period
 - a. (wet weather – manhole inspections, CCTV, flow isolations)
 - b. (dry weather – smoke testing)
 - 2. Inspection schedule would begin January 2024 and be completed fall 2024; Design and rehab could begin ~ 2025 at the earliest
 - 3. With the small area, it may be more efficient to complete the work during the flow monitoring study



Kingsport Flow Monitoring Options

Summary

As discussed in the most recent meeting, the purpose for conducting a flow metering project and associated goals to be achieved should direct the choice of options illustrated in this memo, as they each have both short- and long-term impacts. Options 1 and 2 include metering the larger west side area together at the same time which allows an equal comparison between all basins. Although both options cost more up front, they provide significant cost savings on the rehabilitation work by ensuring that rehabilitation dollars are spent in the highest priority areas (maximum results for the money spent). Additionally, the results of both options 1 & 2 may provide guidance on management and planning over the next 8 to 10 years since it incorporates a significant portion of the sanitary sewer system.

The difference in Options 1 and 2 is the speed in which the program proceeds with subsequent activities that lead to a rehabilitation project. Because the steps following the flow monitoring project are directly related to weather/seasonal periods, there is a limited time each year in which they can be performed. Option 1 defers those activities (and associated costs) to the following year, thus delaying the earliest potential start time of a rehabilitation project. Option 2 maximizes time and incorporates the wet weather inspection work during the same season as the flow monitoring is conducted (and associated costs) which also requires a level of assessment during the flow monitoring study. Below is an example of the earliest schedule in which activities might be convened to help aid in both the short-term and long-term budgeting process.

Option 3 provides metering a much smaller area and has a significantly less upfront cost; however, only a small portion of the system would be assessed and would not provide a comprehensive evaluation of the system. This approach would be specific by targeting the Allendale basin without consideration of how those subbasins prioritize within the entire collection system. By only metering the sites outlined in Option 3, the Allendale basin is effectively being prioritized highest above all other areas in the system and subsequently identifying those basins to be the focus of rehabilitation dollars spent over the next several years.

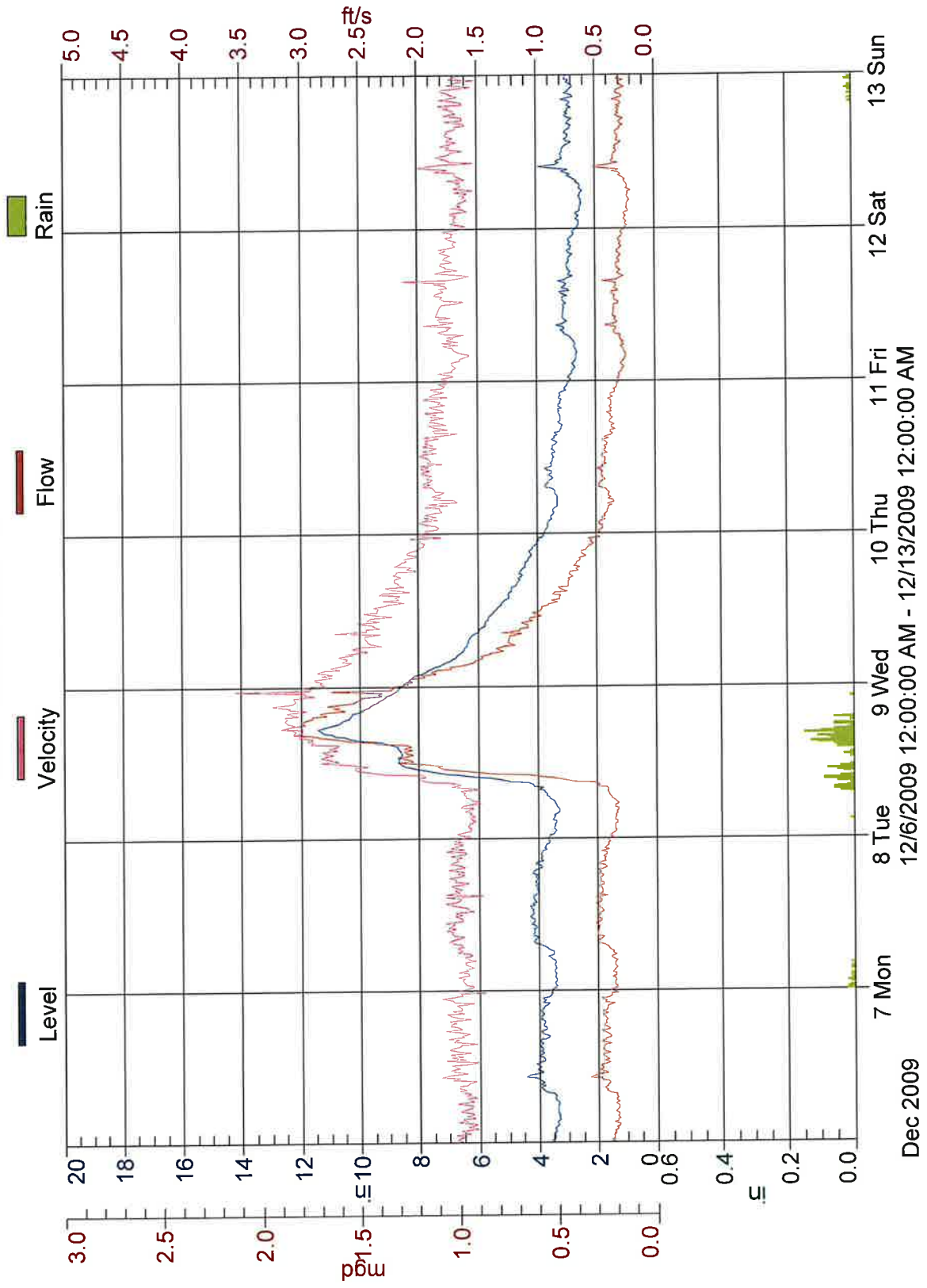
Activity	Option 1		Option 2	
	Estimated Start Date	Estimated Completion Date	Estimated Start Date	Estimated Completion Date
Flow Monitoring	12/19/2022	2/24/2023	12/19/2022	2/24/2023
Priority CCTV	1/6/2024	5/31/2024	2/6/2023	5/31/2023
Preliminary Reporting	NA	NA	1/23/2023	
RDII Analysis/Reporting		4/3/2023		4/3/2023
Priority Manhole Inspections	1/6/2024	5/31/2024	3/6/2023	5/31/2023
Priority Smoke Testing	6/5/2024	6/30/2024	6/5/2023	6/30/2023
SSES Summary Reporting		7/31/2024		7/31/2023
Rehabilitation Project Design	8/1/2024	9/29/2024	8/1/2023	9/29/2023
Advertise/Bid	10/16/2024	11/16/2024	10/16/2023	11/16/2023
Rehab Notice-to-Proceed	1/8/2025		1/8/2024	
Construction Complete		1/8/2026		1/8/2025

Exhibit B

Standard Flow Monitoring Deliverables

Weekly Depth, Velocity, Flow

14.25" Diameter Round Pipe



BB1087 Hourly Data Min/Max Depth, Velocity, and Flow
8.00" Diameter Pipe

Date/Time	Minimum Level (in)	Maximum Level (in)	Minimum Velocity (ft/s)	Maximum Velocity (ft/s)	Minimum Flow (mgd)	Maximum Flow (mgd)	Summary Rainfall (in)
4/26/2007 12:00:00 AM	1.2	2.4	0.3	0.6	0.010	0.028	0.42
4/27/2007 12:00:00 AM	1.2	2.4	0.3	0.5	0.011	0.022	0.00
4/28/2007 12:00:00 AM	1.2	2.4	0.3	0.6	0.009	0.025	0.17
4/29/2007 12:00:00 AM	1.2	2.4	0.3	0.4	0.010	0.015	0.00
4/30/2007 12:00:00 AM	1.2	2.4	0.3	0.5	0.011	0.025	0.00
5/1/2007 12:00:00 AM	1.2	2.4	0.3	0.5	0.010	0.021	0.00
5/2/2007 12:00:00 AM	1.2	2.4	0.3	0.5	0.011	0.023	0.14
5/3/2007 12:00:00 AM	1.2	2.4	0.3	0.5	0.012	0.027	0.01
5/4/2007 12:00:00 AM	1.2	2.4	0.3	0.5	0.011	0.024	0.42
5/5/2007 12:00:00 AM	1.2	6.0	0.4	0.8	0.015	0.118	0.61
5/6/2007 12:00:00 AM	2.4	2.4	0.4	0.5	0.018	0.024	0.00
5/7/2007 12:00:00 AM	2.4	2.4	0.4	0.6	0.017	0.029	0.00
5/8/2007 12:00:00 AM	2.4	2.4	0.4	0.5	0.015	0.029	0.00
5/9/2007 12:00:00 AM	2.4	2.4	0.3	0.5	0.014	0.028	0.00
5/10/2007 12:00:00 AM	2.4	2.4	0.3	0.5	0.015	0.037	0.00
5/11/2007 12:00:00 AM	2.4	52.8	0.3	0.7	0.022	0.156	0.29
5/12/2007 12:00:00 AM	2.4	3.6	0.5	0.7	0.038	0.073	0.00
5/13/2007 12:00:00 AM	2.4	2.4	0.4	0.5	0.031	0.041	0.00
5/14/2007 12:00:00 AM	2.4	3.6	0.4	0.5	0.027	0.045	0.00
5/15/2007 12:00:00 AM	2.4	3.6	0.4	0.6	0.025	0.048	0.10
5/16/2007 12:00:00 AM	2.4	3.6	0.3	0.6	0.025	0.054	0.36
5/17/2007 12:00:00 AM	2.4	3.6	0.4	0.5	0.026	0.042	0.00
5/18/2007 12:00:00 AM	2.4	3.6	0.3	0.4	0.023	0.036	0.00
5/19/2007 12:00:00 AM	2.4	2.4	0.3	0.3	0.019	0.024	0.00
5/20/2007 12:00:00 AM	2.4	2.4	0.3	0.3	0.017	0.022	0.00
5/21/2007 12:00:00 AM	2.4	3.6	0.3	0.4	0.019	0.032	0.00
5/22/2007 12:00:00 AM	2.4	3.6	0.2	0.4	0.016	0.036	0.00
5/23/2007 12:00:00 AM	2.4	3.6	0.3	0.4	0.017	0.034	0.00
5/24/2007 12:00:00 AM	2.4	3.6	0.3	0.4	0.017	0.033	0.00
5/25/2007 12:00:00 AM	2.4	3.6	0.3	0.4	0.017	0.032	0.00
5/26/2007 12:00:00 AM	2.4	2.4	0.3	0.3	0.017	0.021	0.00
5/27/2007 12:00:00 AM	2.4	2.4	0.2	0.3	0.015	0.021	0.00
5/28/2007 12:00:00 AM	2.4	3.6	0.3	0.4	0.017	0.031	0.00
5/29/2007 12:00:00 AM	2.4	3.6	0.2	0.5	0.014	0.034	0.00
5/30/2007 12:00:00 AM	2.4	2.4	0.2	0.4	0.012	0.026	0.00
5/31/2007 12:00:00 AM	2.4	3.6	0.3	0.5	0.015	0.035	0.00
6/1/2007 12:00:00 AM	2.4	2.4	0.3	0.4	0.014	0.032	0.00
6/2/2007 12:00:00 AM	2.4	2.4	0.3	0.4	0.013	0.022	0.00
6/3/2007 12:00:00 AM	2.4	2.4	0.3	0.4	0.016	0.023	0.00
6/4/2007 12:00:00 AM	2.4	2.4	0.3	0.7	0.015	0.048	0.02
6/5/2007 12:00:00 AM	2.4	2.4	0.3	0.5	0.014	0.033	0.00
6/6/2007 12:00:00 AM	2.4	2.4	0.3	0.5	0.012	0.031	0.00
6/7/2007 12:00:00 AM	2.4	2.4	0.3	0.5	0.015	0.031	0.00

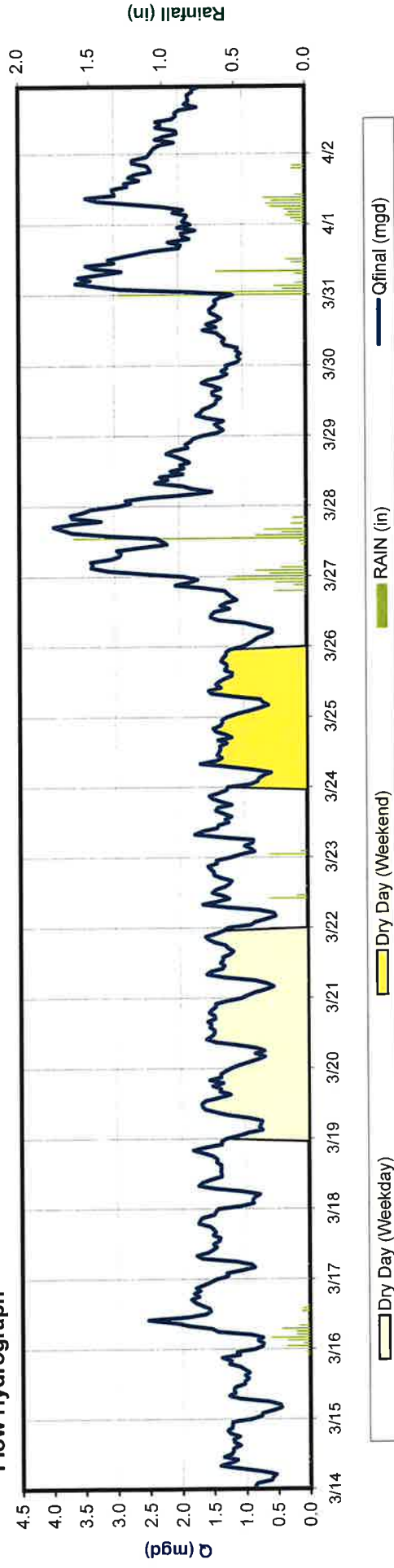
Exhibit C

Example RDII Analysis Graphs & Figures

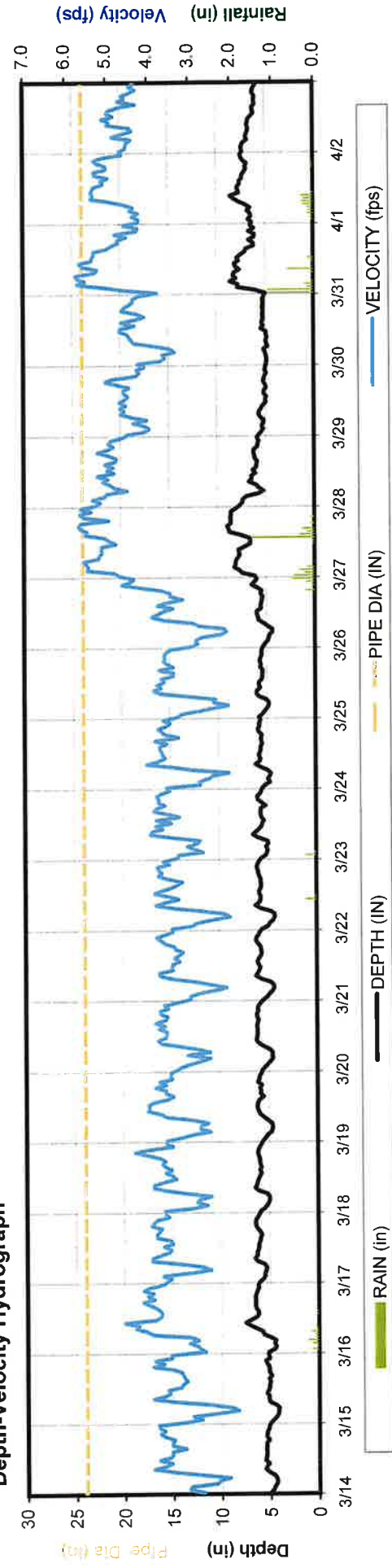
Monthly Flow Charts

Monitor: **MP07** Pipe Dia: **24 in** Date Range: **03/14/05** to **04/02/05**
 Location: **In easement off of North Donahue Dr near creek** Rain Gauge: **RG01**

Flow Hydrograph

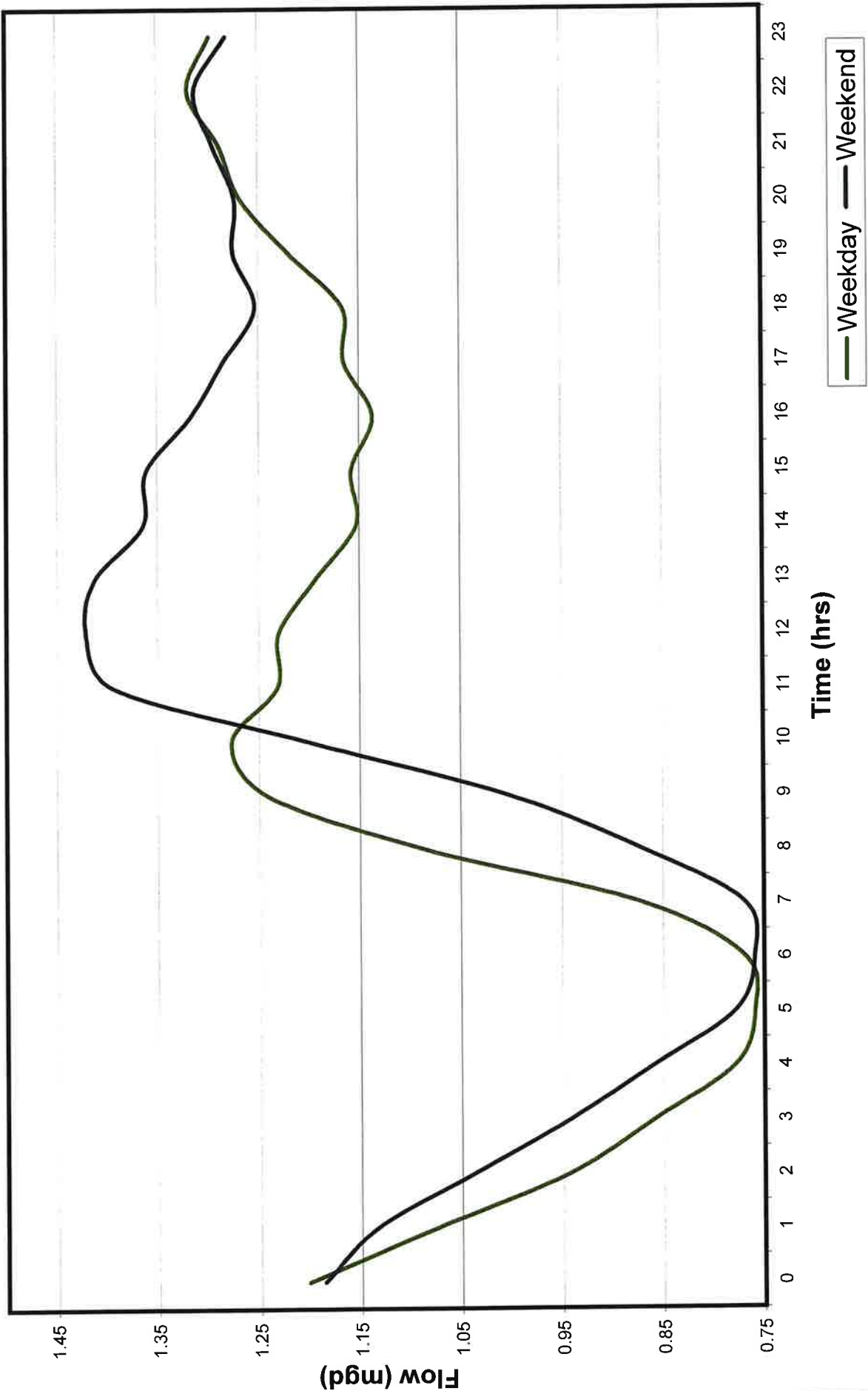


Depth-Velocity Hydrograph

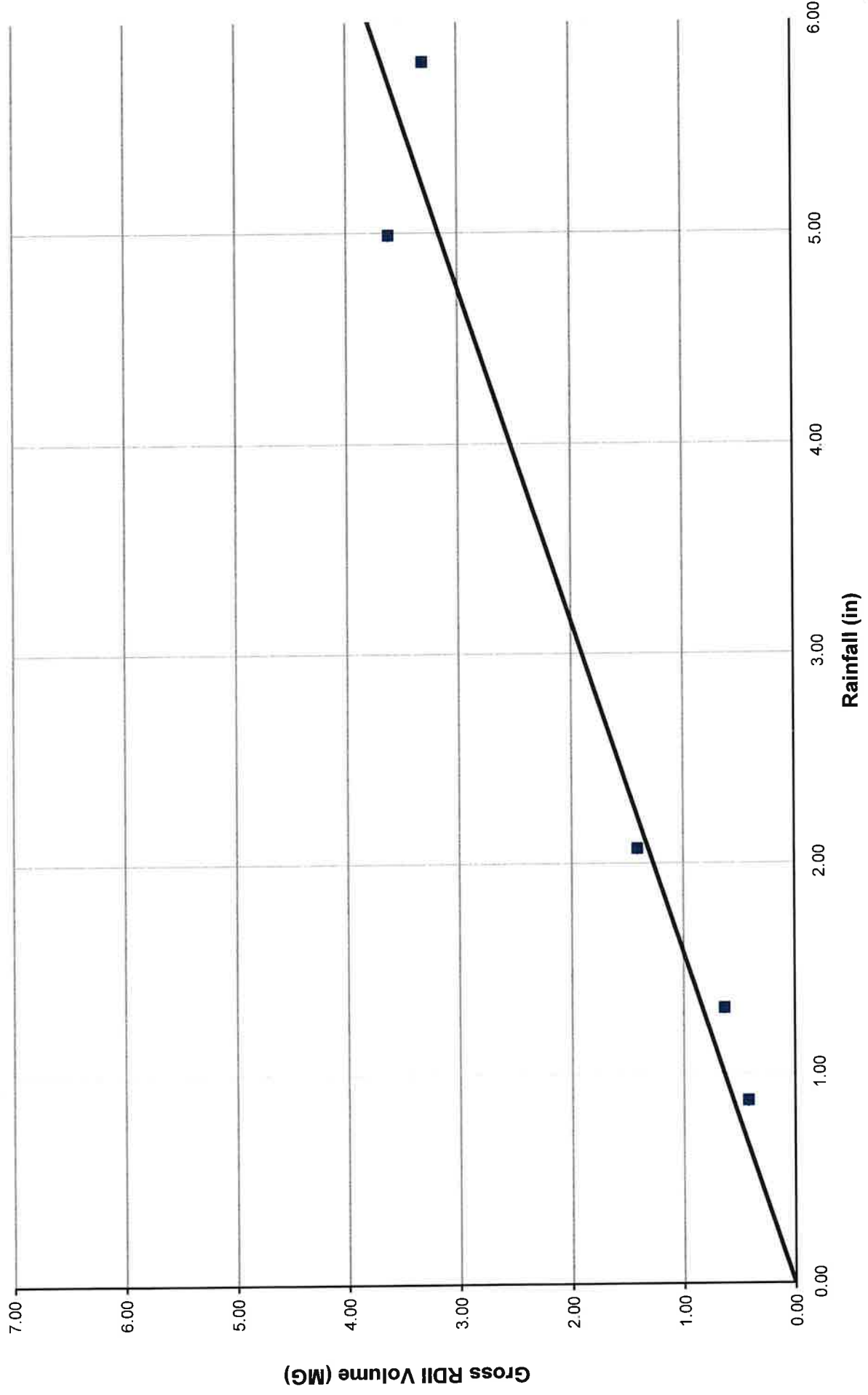


Average Dry Day Profiles

Site 06
Anytown, USA



Q vs. i REGRESSION ANALYSIS - MP01
GROSS RDII VOLUME vs RAINFALL
Anytown, USA



TEMPORARY FLOW MONITORING STUDY STORM SUMMARY TABLE

Monitor Name: **MP06**
 Project Name: **Anytown, USA**
 Monitoring Period: **14-Sep-04** to **8-Nov-04**

Storm Analysis Summary

Date	Day of Week	Rainfall Start Date	Rainfall Start Time	Rainfall (inches)	Gross RDII Volume (MG)	Peak Hourly Rainfall (inches)	Gross Peak Flow (MGD)	Gross Peak RDII (MGD)
16-Sep-04	Thu	16-Sep	9:00	4.35	1.90	0.77	3.79	2.57
19-Oct-04	Tue	19-Oct	10:00	2.56	0.61	0.64	3.49	2.27
2-Nov-04	Tue	2-Nov	18:00	1.35	0.57	0.56	2.91	1.63
4-Nov-04	Thu	4-Nov	3:00	1.11	0.93	0.52	3.23	2.41

Average Dry Weather Flow (MGD): 1.11
 Peak Dry Weather Flow (MGD): 1.32
 Minimum Dry Weather Flow (MGD): 0.76

Linear Regression Summary

	Slope	y-intercept	r
Gross RDII Volume (MG) vs. 24-hr Rainfall (in)	0.34	0.20	0.94
Gross Peak RDII Volume (MG) vs. 24-hr Rainfall (in)	0.16	1.84	0.92

Projected Gross RDII Volume Summary

Design Storm	RDII Volume (MG)	Peak Hour RDII Volume (MG)
1.0 in.	1.55	1.98
2.0 in.	1.89	2.19
3.0 in.	2.55	2.79
5.0 in.	3.25	3.78

Site MP01
Depth-Velocity Scattergraph
Data period: 03-03-05 through 04-27-05

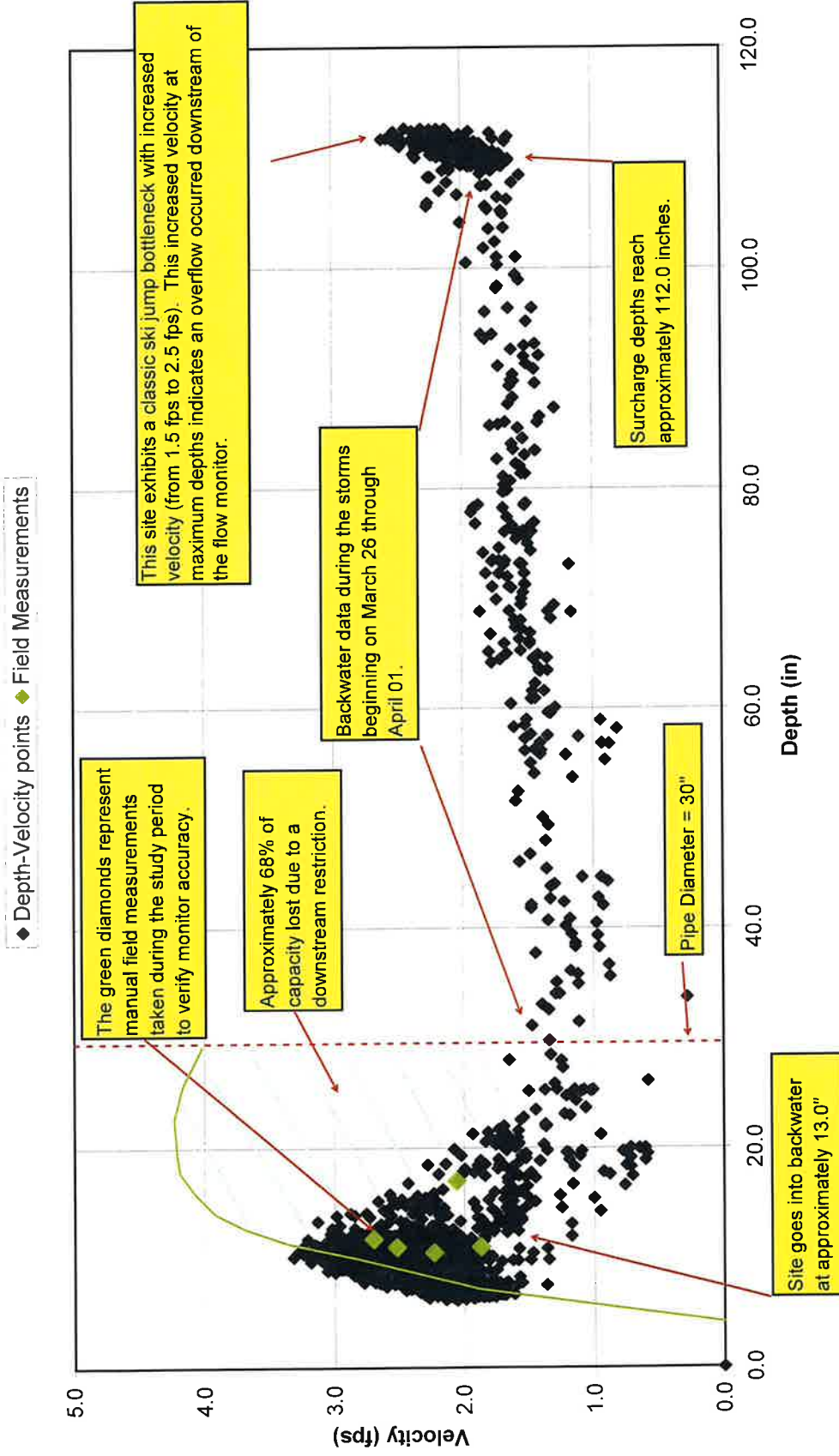
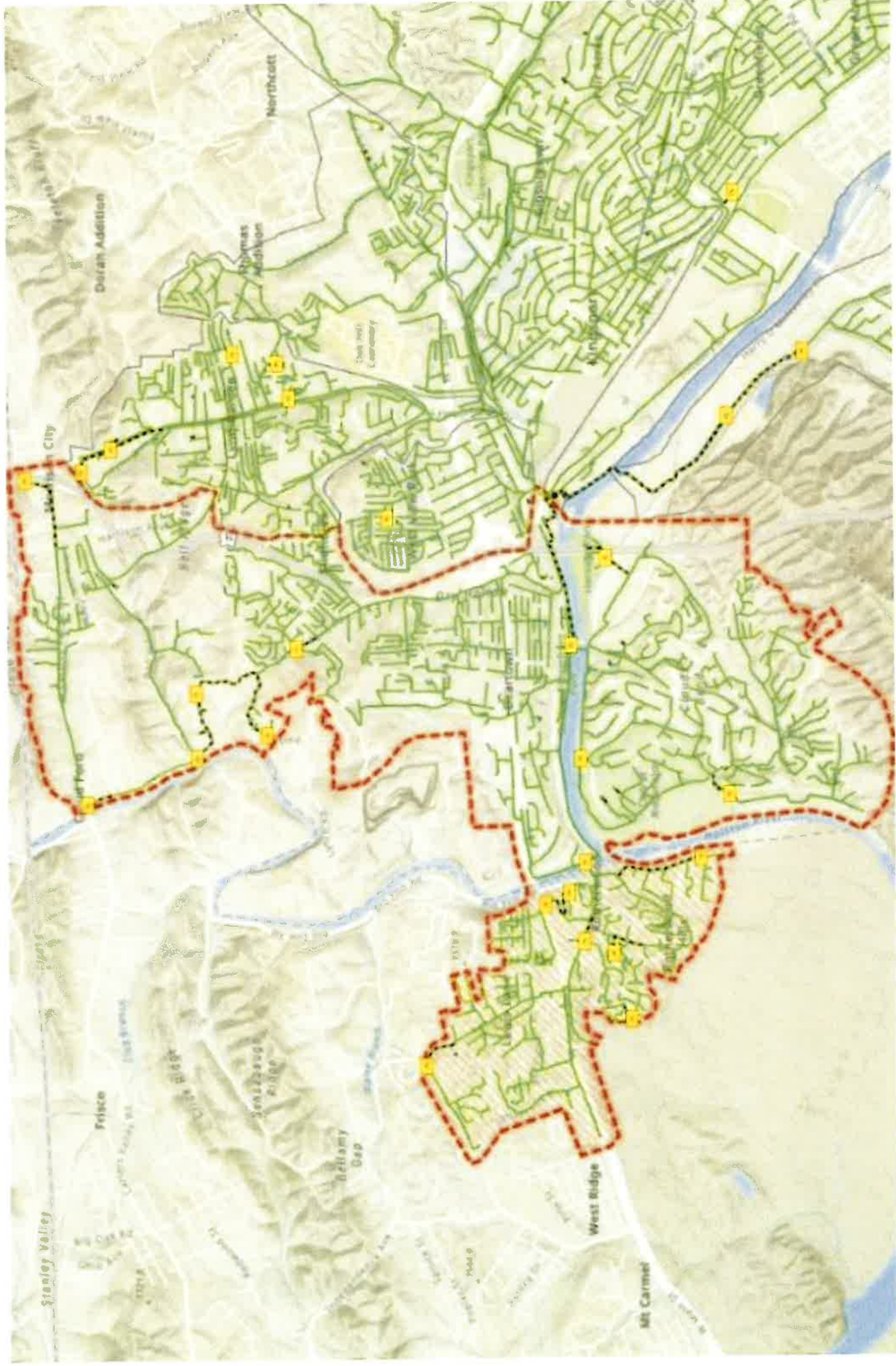


Figure 1 – Western Portion of Sanitary Sewer System





AGENDA ACTION FORM

Consideration of a Resolution for Approval of an Amendment to the Thompson & Litton Agreement for Architectural Services for the DBHS Dome Re-Roofing Project

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

Action Form No.: AF-375-2022
 Work Session: December 19, 2022
 First Reading: N/A

Final Adoption: December 20, 2022
 Staff Work By: Committee
 Presentation By: David Frye

Recommendation:

Approve the Resolution.

Executive Summary:

On June 23, 2021, the City of Kingsport for its Kingsport City Schools entered into an agreement with Thompson & Litton, Inc., for architectural services for the DBHS Dome Re-Roofing Project. Since that time, additional architectural services were added as a result of the initial findings on the dome structure. Amendment Number 1 was executed making the total agreement price for all services not to exceed \$121,869.53.

The administration desires to execute Amendment Number 2 with Thompson & Litton for a 5.75% fee for professional services for the dome repair and renovation, the associated interior spaces outside of the dome proper, and requested exterior work. At this time, the estimated construction cost for the dome project is \$17,385,628.00. The base fee will be \$999,680.00. Additional services to be included in the amendment are an acoustical design consultant to make the dome a concert venue – allowance of \$66,000.00; audio/visual design consultant to address the audio/visual requirements inside the dome – allowance of \$60,000.00; surveying services at the main entrance to the dome, the proposed rear ADA entrance, and the new rear parking lot - allowance of \$23,000.00; geotechnical services – allowance of \$29,000.00; structural mock-ups – allowance of \$83,000.00. The total of all allowances will be \$261,000.00. The total fee for the proposed work is \$1,260,680.

Funding will come from the Dobyns-Bennett Renovation Project GP2111.

Attachments:

1. Resolution
2. Proposal

Funding source appropriate and funds are available: *gm*

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: *gm*

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

RESOLUTION NO. _____

A RESOLUTION TO AMEND THE AGREEMENT WITH THOMPSON & LITTON, INC., FOR THE DOBYNS-BENNETT HIGH SCHOOL DOME RE-ROOFING PROJECT AND AUTHORIZING THE MAYOR TO SIGN AN AGREEMENT FOR THE SAME AND ALL DOCUMENTS NECESSARY AND PROPER TO EFFECTUATE THE PURPOSE OF THE AGREEMENT

WHEREAS, an agreement was executed between Thompson & Litton, Inc., and the City for the Dobyns-Bennett High School Dome Re-Roofing Project on June 23, 2021; and

WHEREAS, an amendment was executed to include additional services, making the total agreement price a not to exceed amount of \$121,869.53; and

WHEREAS, the Board of Education recommends amending the agreement to include a 5.75% fee for professional services for the dome renovation, the associated interior spaces outside of the dome proper, and requested exterior work, increasing the contract amount \$1,260,680.00; and

WHEREAS, funding is available in the Dobyns-Bennett Renovation Project GP2111.

Now therefore,

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

SECTION I. That Amendment Number 2 to the agreement with Thompson & Litton, Inc., in the amount of \$1,260,680.00 is approved.

SECTION II. That an amendment to the Thompson & Litton agreement is approved, and 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 amendment for the same, to deliver the agreement and take any and all action as may be required on the part of the city to carry out, give effect to, and consummate the transactions contemplated by the agreement.

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

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

ADOPTED this the 20th day of December, 2022.

PATRICK W. SHULL, MAYOR

ATTEST:

ANGELA MARSHALL, DEPUTY CITY RECORDER

APPROVED AS TO FORM:

RODNEY B ROWLETT, III, CITY ATTORNEY



**THOMPSON
& LITTON** EST.
1956

ENGINEERS ARCHITECTS

December 9, 2022

Mr. David Frye, Chief Finance Officer
Kingsport City Schools
400 Clinchfield Street, Suite 200
Kingsport, TN 37660

RE: Dobyns-Bennett Dome Renovation
Architectural and Engineering Services
T&L Project #: 16051

Dear Mr. Frye:

Pursuant to our recent discussion on the above project, Thompson & Litton, Inc. (Thompson & Litton) is providing this proposal for professional services pertaining to the renovation to the Dobyns-Bennett dome, the associated interior spaces outside of the dome proper, and the requested exterior work. Per our conversation, this proposal will be included as an amendment to our original Dobyns-Bennett dome contract dated June 23, 2021.

This proposal is based on the work described in the presentation which will be provided to the Kingsport City Schools Board of Education on December 13, 2022. Based on discussions at our recent dome meetings, Option #1 from the presentation is the basis of this proposal and the anticipated professional services. The Option #1 estimated construction cost is \$17,385,628.

Through a subconsultant relationship to Thompson & Litton, Spoden and Wilson Consulting Engineers and Dome Technology will be providing structural engineering services for this project and the costs of these structural engineering services are included in this proposal.

Thompson & Litton proposes to provide the services identified below:

- Architectural Services (Thompson & Litton)
- Structural Engineering (Spoden and Wilson Consulting Engineers and Dome Technology)
- Mechanical Engineering (Thompson & Litton)
- Plumbing Engineering (Thompson & Litton)
- Fire Protection Engineering (Thompson & Litton)
- Electrical Engineering (Thompson & Litton)
- Civil/Site Engineering (Thompson & Litton)



The scope of services of this proposal will address the anticipated work from the end of the Phase 2 dome investigation to the completion of the project. Proposed services include design development, construction documents, bidding assistance, and construction contract administration. Also as noted in our discussions, some of the work identified in the Option #1 estimate may be bid as alternates – this is included in the above fee proposal.

Architecture and engineering services will be related to following anticipated construction:

OPTION #1 –

BUCK VAN HUSS DOME RENOVATION SCOPE OF WORK

Dome Roof and Associated Work - Installation of a new steel structure, steel erection, insulation and acoustical updates, roof membrane.

Replace HVAC - 200 tons broken into eight (8) 25-ton HVAC units and all associated ductwork.

Floor Replacement - Replace the existing wood gymnasium floor with a new wood floor including the associated painting and stripping.

Replace Existing Lights - Replace the existing lighting with an attempt to provide new lighting to look similar to the existing dome lighting.

Replace Existing Chairback Seats (Upper Level) - Replace approximately 2,724 individual seats (original to the building) with new plastic seats which mount to the concrete risers.

Concessions Area - Miscellaneous improvements including the installation of a hood.

New Audio System - Thompson & Litton will coordinate audio system design by others and the Owner's audio vendor.

New Scoreboards Including a Center Hung Video Board - Thompson & Litton will coordinate design by others of new four-sided video board which will be installed at the center of the dome once the new roof structure is installed.

New Basketball Goals, Two Goals - New freestanding basketball goals with associated game clock.

Technology Upgrades for Events Such as Convocation, Graduation, Concerts, and Public Events - Thompson & Litton will coordinate design by others and the Owner's vendor.

Fire Sprinkler System Upgrades - Modifications required due to the dome roof work and HVAC modifications.

Fire Detection System Upgrades - Work as required by the State Fire Marshalls Office.



Security, Cameras, and Access Control - Thompson & Litton will coordinate design by others and the Owner's vendor.

Acoustical Upgrades – Thompson and Litton, through an acoustical engineer subconsultant, will select and design acoustical upgrades as requested by the Owner in order to address the possible use of the dome as a concert venue.

Media/Technology (Provide for Broadcast Media and In-House Production) - Thompson & Litton will coordinate design by others and the Owner's vendor.

OTHER DOME RENOVATION WORK

ACTIVITIES/LOBBY:

Event Ticket Space/Storage Area - Minor renovations to include paint, flooring, and wall base.

Heritage/Branding (Displays, All-State Athletes, Trophies, Banners, Electronic Communication) - Additional technology and possible casework displays. Thompson & Litton will coordinate design by others and the Owner's vendor.

Activities Office/WCSH/Central Receiving (Redesign to Support Secure Entry, Deliveries, Office Space, Spirit Merchandise, Ticket Sales, Etc.) - Room modifications in this area to address the arrangement of the space for better access into the building for mercantile sales and for the use of the athletic staff. This work will include new walls, flooring, ceiling, lighting, and electrical.

Potential Reduction/Redesign of Exterior Door Volume - Potential changes to the number of doors to the exterior from the lobby area by providing aluminum storefront windows instead of doors. Conversations with the building official will need to occur before this is confirmed.

Exterior - Repair/Replace Retaining Wall - Exterior entry area modifications and retaining wall work.

Modify the Entry Doors and Frames into the Building and Between the Lobby and the Dome and Update the Lobby - Potential changes to the number of doors between the lobby and the dome, and updates to the ceilings and lighting in the lobby.

BACK ENTRY/EXIT #3:

Branding - Additional technology and possible casework displays. Thompson & Litton will coordinate design by others and the Owner's vendor.

State Championship Displays/Hall of Fame (Type Historical/Heritage Branding) - Additional technology and possible casework displays. Thompson & Litton will coordinate design by others and the Owner's vendor.



Potential Rework of Entry/Stairwell - Additional technology and possible casework displays. Thompson & Litton will coordinate design by others and the Owner's vendor.

SURROUNDING SPACES:

Weight Room (Repurpose for Cardio Studio and Wellness Classes) - Remove and replace approximately 2,600 square feet of flooring, paint, provide approximately 1,000 square feet of acoustical upgrades, new fitness equipment along with new floor mats.

Auxiliary Gymnasium (Acoustic Improvements) - Remove the existing acoustical panels and provide approximately 5,500 square feet of new acoustical panels mounted on the walls.

Auxiliary Gymnasium (Replace Small Goals) - Remove the six existing wall mounted goals and provide six new wall mounted goals.

Auxiliary Gymnasium (Replace Floor) - Replace the existing wood gymnasium floor with a new wood floor including all of the associated painting and stripping. This will include flooring in the additional square footage.

Auxiliary Gymnasium (2,283 Addition) - Provide a new addition to the existing auxiliary gymnasium to provide a 94-foot-long basketball court with five feet at each end.

Locker Rooms (Modernization, Upgrades, Better Use of Space, Technology) - Remove and replace approximately 4,500 square feet of flooring, paint approximately 8,000 linear feet of walls, and remove and replace approximately 200 linear feet of lockers.

Wrestling (Add Locker Room, Room Improvements, Mat Upgrades, Ceiling Based Storage System for Mats) - Remove and replace approximately 4,500 square feet of flooring, paint approximately 363 linear feet of walls, provide approximately 1,000 square feet of acoustical upgrades, provide miscellaneous wall replacement and repairs along with new floor mats.

Coaches Offices (Modernization) - Minor renovations to include paint, flooring, and wall base.

Broadcasting Suite (Address ADA Area, Include WCSK) - Minor modifications.

Spirit Teams (Add Locker Room Space) - Minor renovations to include paint, flooring, and wall base.

Security Access and Restrictions to the Alley Behind the Math Pod - Provide access controls and a rolling gate to that area. Thompson & Litton will coordinate design by others and the Owner's vendor.

INFRASTRUCTURE/ADA:

Door Replacements - Remove and replace approximately 30 metal doors and the associated door hardware.



Additional Storage Areas as Available - Miscellaneous casework as needed.

ADA Improvements (Including ADA Parking and Access into the Building) - Handrail upgrades and ADA access upgrades at the rear of the building.

New Rear Parking Lot (Approximately 70 Parking Spaces) - New gravel, asphalt binder, asphalt topping, and stripping.

Card Reader Access (Additional Access Controls) - Additional technology. Thompson & Litton will coordinate design by others and the Owner's vendor.

Branding (Cohesive General Branding Plan) - Additional technology and possible casework displays. Thompson & Litton will coordinate by others and the Owner's vendor.

Address Drainage Issues on the Lower Level of the Dome - Work to address existing moisture issues by installing a new storm drainage system.

Replace the Existing Boilers - Remove and provide new boilers at the same location as the current boilers.

COMPENSATION AND SCHEDULE

Thompson & Litton proposes a lump sum fee of \$999,680 for basic services.

ADDITIONAL SERVICES

In addition to the services pertaining to the above anticipated construction work, the required additional services below are noted with allowances:

- Acoustical design consultant to address the requests to make the dome a concert venue - allowance of \$66,000.00
- Audio/visual design consultant to address the audio/visual requirements inside of the dome - allowance of \$60,000.00
- Surveying services at the main entrance to the dome (including the retaining wall), the proposed rear ADA entrance, and the new rear parking lot - allowance of \$23,000.00
- Geotechnical services - allowance of \$29,000.00
- Structural mock-ups which have been requested by Spoden and Wilson Consulting Engineers and Dome Technology - allowance of \$83,000.00
- Allowances for required additional services total \$261,000.00

Total fees for this proposal are \$1,260,680.00.

Thompson & Litton estimates that the construction documents package will be completed by the end of June 2023. Public procurement of the construction is anticipated to take approximately two months and the construction period for Option #1 is assumed to be 14 months.



Mr. David Frye, Chief Finance Officer
December 9, 2022
Page 6

If you have any questions or concerns on the above, please let me know. Thompson & Litton appreciates the opportunity to provide this proposal.

Sincerely,

Brian C. Alderson, AIA, NCARB, LEED AP
Senior Architect



AGENDA ACTION FORM

Acceptance of Grant Funds from Northeast State Community College

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

Action Form No.: AF-378-2022
 Work Session: December 19, 2022
 First Reading: N/A

Final Adoption: December 20, 2022
 Staff Work By: Tyra Copas
 Presentation By: Tyra Copas

Recommendation:

Approve the Resolution.

Executive Summary:

Northeast State Community College has offered the City of Kingsport to take part in a workforce grant for students in the networking program. The grant funds being offered are through the Governor's Investment in Vocational Education program. This program is intended to facilitate partnerships between employers and vocational and technical educational institutions. The grant funds would at least partially reimburse the city for pay the wages of the students working in intern positions in the Information Technology Department.

The City of Kingsport would be able to bring on up to six interns and receive reimbursement for their salaries, for a total award of up to \$5,200.

There is no formal application process and no requirement that matching funds be made available.

Attachments:

1. Resolution

Funding source appropriate and funds are available: *CM*

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

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

RESOLUTION NO. _____

A RESOLUTION ACCEPTING GRANT FUNDS FROM NORTHEAST STATE COMMUNITY COLLEGE MADE AVAILABLE THROUGH THE GOVERNOR'S INVESTMENT IN VOCATIONAL EDUCATION PROGRAM AND AUTHORIZING THE MAYOR TO EXECUTE ALL DOCUMENTS NECESSARY AND PROPER TO RECEIVE THE GRANT FUNDS AND TO DEMONSTRATE CITY'S COMPLIANCE WITH THE GRANT PROGRAM

WHEREAS, currently six Northeast State Community College students are interning with the city's information technology department; and

WHEREAS, Northeast State Community College, has offered the city grant funds made available through the Governor's Investment in Vocational Education program which is designed to facilitate partnerships among employers and vocational and technical educational institutions; and

WHEREAS, a total of \$5,200.00 in grant funds have been offered which will at least partially reimburse the city for wages paid to the student interns; and

WHEREAS, city would be able to employ up to six student interns and receive reimbursement for wages paid to the student interns.

WHEREAS, there is no formal application process and no matching funds are required to receive the grant funds.

Now therefore,

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

SECTION I. That the Governor's Investment in Vocational Education program grant funds in the amount of \$5,200.00 offered by Northeast State Community College are hereby accepted.

SECTION II. That the mayor, or in his absence, incapacity, or failure to act, the vice mayor, is authorized to execute, in a form approved by the city attorney, and subject to the requirements of Article X, Section 10 of the Charter of the City of Kingsport, all documents necessary and proper to receive the aforementioned grant funds.

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

SECTION 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 public.

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

ADOPTED this the 20th day of December, 2022.

PATRICK W. SHULL, MAYOR

ATTEST:

ANGELA MARSHALL, DEPUTY CITY RECORDER

APPROVED AS TO FORM:

RODNEY B. ROWLETT, III, CITY ATTORNEY



AGENDA ACTION FORM

Resolution to Authorize the Mayor to Execute Documents to Apply for and Receive a Drinking Water Revolving Loan from the State of Tennessee for the Water Treatment Plant High Service Pump Station Project.

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

Action Form No.: AF-377-2022
 Work Session: December 19, 2022
 First Reading: N/A

Final Adoption: December 20, 2022
 Staff Work By: Niki Ensor
 Presentation By: Ryan McReynolds

Recommendation:

Approve the Resolution.

Executive Summary:

The high service pump station houses three pumps that deliver drinking water to our customers. The station was built in 1970. The electrical equipment is original and has far exceeded its useful life. Two pumps are required to meet current water demand. The City could be at risk at not being able to meet demand when a pump is taken out of service for repair or maintenance. The project includes replacement of the electrical feed equipment and the addition of a fourth high service pump to help ensure continuous water service during equipment downtime.

The project was approved in the FY22 budget process and is ready to progress into the construction phase. The City of Kingsport wishes to fund the improvements through the State of Tennessee Drinking Water Revolving Loan Fund and an Economic Development Administration (EDA) grant. The \$1,500,000 EDA grant has been awarded and currently in the administrative process. The City has requested a loan amount of \$7,000,000. Rates and terms for the State Loan are more favorable than the Bond Market at this time. Contingent upon State Revolving Loan approval, interest rate will be 2.13% for 20 year term.

Attachments:

1. Resolution
2. Project Pictures
3. SRF Loan Agreement

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
Cooper	—	—	—
Duncan	—	—	—
George	—	—	—
Montgomery	—	—	—
Olterman	—	—	—
Phillips	—	—	—
Shull	—	—	—

AUTHORIZING RESOLUTION # _____

RESOLUTION AUTHORIZING AND PROVIDING FOR THE FINANCING OF THE CONSTRUCTION OF A WATER FACILITIES PROJECT, INCLUDING AUTHORIZING THE EXECUTION OF APPLICATIONS, CONTRACTUAL AGREEMENTS, AND OTHER NECESSARY DOCUMENTS, AND MAKING CERTAIN REPRESENTATIONS, CERTIFICATIONS, AND PLEDGES OF CERTAIN REVENUE IN CONNECTION WITH SUCH FINANCING.

WHEREAS, the City of Kingsport is a public and governmental body in Kingsport (Sullivan and Hawkins Counties) , Tennessee (the "Local Government"); and

WHEREAS, the Local Government has determined that it is necessary and desirable to undertake certain activities or tasks in connection with a water facilities project, Department of Environment and Conservation Number DWF 2023-254 (the "Project"), in and for the Local Government; and

WHEREAS, Drinking Water Revolving Loan Fund Act of 1997, Tennessee Code Annotated, Sections 68-221-1201 et seq., provide for the lending of funds in the water facilities Revolving Loan Fund to Local Governments for the purpose of providing funds for Project Loans; and

WHEREAS, the Local Government has determined that it is necessary and advisable to borrow funds for the Project pursuant to these sections.

NOW, THEREFORE, be it resolved as follows:

Section 1. Local Government hereby approves the creation of indebtedness on behalf of the Local Government in the principal amount of seven million dollars (\$7,000,000) by the obtaining of a Project Loan.

Section 2. The execution and delivery of the application for a Project Loan in the principal amount of seven million dollars (\$7,000,000), for the purpose of funding all or a portion of the total estimated cost of the Project, which is seven million dollars (\$7,000,000), by Patrick Shull, the Mayor of the Local Government, is hereby ratified and approved in all respects.

Section 3. The form, terms, and provisions of the agreement for the Project Loan among the Local Government, the Tennessee Department of Environment and

Conservation and the Tennessee Local Development Authority (the "Loan Agreement"), as presented at this meeting, are hereby approved.

Section 4. The Local Government hereby agrees to honor and accept the method of financing as may be determined by the Authority pursuant to the Loan Agreement.

Section 5. The Local Government hereby agrees to make the monthly payments on the Project Loan in accordance with the Payment Schedule to be attached to the Loan Agreement.

Section 6. The Local Government hereby agrees to levy fees, rates or charges for services provided by the Project and/or to levy ad valorem taxes sufficient to pay the interest on and principal of the Project Loan in accordance with the Loan Agreement. The Local Government also agrees to levy fees, rates, or charges and/or ad valorem taxes sufficient to pay the cost of operation and maintenance of the water system of which the Project is a part, which cost shall include depreciation and all other debt service expense of the system.

Section 7. The Local Government assigns and pledges its State-Shared Taxes to the State and consents to the withholding and application of State-Shared Taxes in the event of failure by the Local Government to remit monthly payments in accordance with the terms of the Loan Agreement, as the Loan Agreement may be supplemented or amended from time to time.

Section 8. The Local Government hereby agrees that there are no local pledges of State-Shared Taxes other than those disclosed.

Section 9. The Local Government hereby agrees to obtain alternative methods of financing for all costs necessary for the completion of the Project which are in excess of the combined financing provided by any agency of the United States Government and by the Tennessee Local Development Authority.

Section 10. The Mayor of the Local Government is authorized and directed to execute the Loan Agreement, and any amendments or supplements to the Loan Agreement, in the name and behalf of the Local Government; to deliver such documents to the other parties to such documents, such execution and delivery to be conclusive proof of the approval of the Local Government of such documents; and to take such further action and to execute and deliver such further instruments or

documents as such officer may consider necessary or advisable in connection with the Loan Agreement. Provided, however, this resolution shall not be deemed to grant authority to the named officer to approve any increase in the amount of the Project Loan.

Section 11. All orders, resolutions, or ordinances in conflict with this resolution are and the same are repealed insofar as such conflict exists. This resolution shall become effective immediately upon its passage.

Duly passed and approved this 20th day of December, 2022.

I certify under penalty of law that this document and all attachments were prepared by me, or under my direction or supervision. The submitted information is to the best of my knowledge and belief true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment. As specified in Tenn. Code Ann. § 39-16-702(a)(4), this declaration is made under penalty of perjury.

PATRICK W. SHULL, MAYOR

ATTEST:

ANGELA MARSHALL, DEPUTY CITY RECORDER

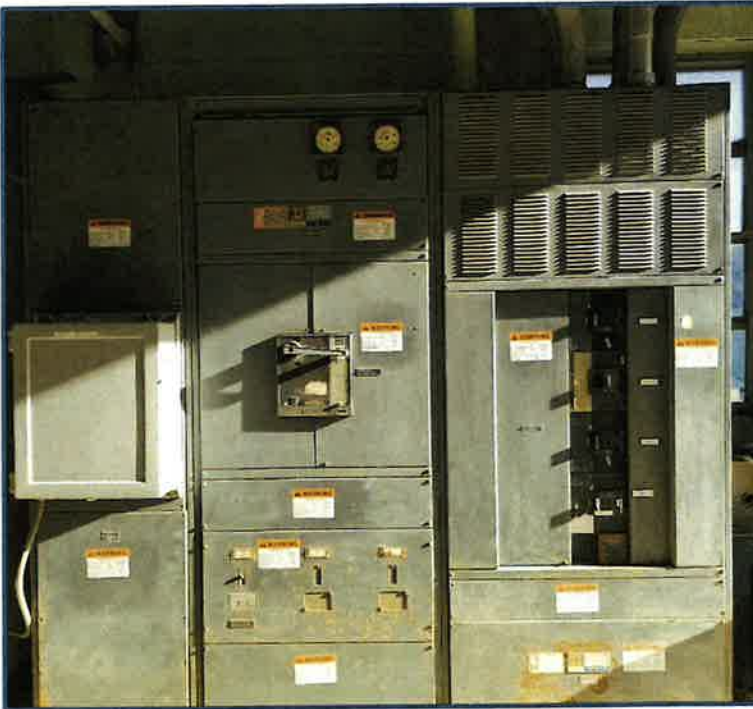
APPROVED AS TO FORM:

RODNEY B. ROWLETT, III, CITY ATTORNEY

High Service Pump Station



Original Electrical Equipment



Pump Room





TENNESSEE DEPARTMENT OF ENVIRONMENT AND CONSERVATION
DIVISION OF WATER RESOURCES
State Revolving Fund Loan Program
William R. Snodgrass Tower, 312 Rosa L. Parks Avenue, 12th Floor
Nashville, Tennessee 37243
STATE REVOLVING FUND LOAN APPLICATION

Section 1. Applicant Information *(Authorized representative responsible for project, signs certification below and hereby makes an application for a Project Loan to fund the following described activities or tasks concerning a facility or plan (the "Project").*

Legal Applicant Name: Patrick Shull		Signatory's Title or Position: Mayor	
Facility Name: City of Kingsport		Type of Entity: City	
Mailing Address: 415 Broad Street		City: Kingsport	State: TN Zip: 37660
Phone: 423-229-9412		E-mail: PatShull@KingsportTN.gov	
Unique Entity ID Number:	Population Served:	County(ies) Served: Sullivan/Hawkins Counties	

Section 2. Contact/Consultant Information *(a consultant is not required)*

Alternate Contact Name: Niki Ensor			
Company: City of Kingsport		Title or Position: Water/Wastewater Facilities Manager	
Mailing Address: 1113 Konnarock Road		City: Kingsport	State: TN Zip: 37660
Phone: 423-224-2487		E-mail: NikiEnsor@KingsportTN.gov	
Phone:			

Section 3. Project Information *(Check all that apply)*

- | | |
|--|--|
| <input type="checkbox"/> Clean Water Project | <input type="checkbox"/> Green Project Reserve |
| <input checked="" type="checkbox"/> Drinking Water Project | <input type="checkbox"/> Special Project |

Detailed Project Description: WTP Improvements (Upgrades to the High Service Pump Station).

The entire Project is estimated to cost:	\$7,000,000
Amount of State Revolving Fund Loan Requested:	\$7,000,000
Requested Term of Loan:	20 Years

Section 4. Project Funding Information *(Completed by SRFLP Office)*

Project Number: DWF 2023-254	Loan Amount:	\$7,000,000
	Loan Forgiveness Amount:	\$0
	Term of Loan in Years:	20
	Bond Buyer Index Rate and Date:	3.55% As of October 24, 2022
	ATPI:	60% (Tier 2)
	Interest Rate:	(3.55% X 60%) = 2.13%

Section 5. Previous Loans (Completed by SRFLP Office)

Program Loans:	The total amount of outstanding or applied for program loans under the Health Loan Programs of the Tennessee Local Development Authority is:	\$0
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Project Loans:	The total amount of outstanding or applied for project loans and the State Revolving Fund is: (this application is excluded)	\$12,215,959
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Section 6. Pledge of State-Shared Taxes or Security Deposit (Completed by SLF Office)

Municipality:	State-Shared Taxes pledged to payment of outstanding obligations of the Local Government Unit in addition to the Program Loans and Project Loans listed above:	
	Amount of State-Shared Taxes received in prior fiscal year of the state:	\$8,939,103.00

Utility District/ Authority:	A Security Deposit will be required in an amount equal to MADS.	
	Anticipated MADS:	\$

Section 7. Signature of Applicant or Signatory Authority (*Application must be signed and dated. By signing, applicant verifies that all information supplied on this application is correct to the best of his/her knowledge. This application expires 90 days from the date the loan application is sent from SRFLP to the Applicant.*)

I certify under penalty of law that this document and all attachments were prepared by me, or under my direction or supervision. The submitted information is to the best of my knowledge and belief true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment. As specified in Tenn. Code Ann. § 39-16-702(a)(4), this declaration is made under penalty of perjury.

Signature: Patirck Shull, Mayor

Date

Section 8. Signature of Department of Environment and Conservation

David W. Salyers, P.E., Commissioner

Date

**CITY OF KINGSPORT
DWF 2023-254
AUTHORIZING RESOLUTION # _____**

RESOLUTION AUTHORIZING AND PROVIDING FOR THE FINANCING OF THE CONSTRUCTION OF A WATER FACILITIES PROJECT, INCLUDING AUTHORIZING THE EXECUTION OF APPLICATIONS, CONTRACTUAL AGREEMENTS, AND OTHER NECESSARY DOCUMENTS, AND MAKING CERTAIN REPRESENTATIONS, CERTIFICATIONS, AND PLEDGES OF CERTAIN REVENUE IN CONNECTION WITH SUCH FINANCING.

WHEREAS, the City of Kingsport is a public and governmental body in Kingsport (Sullivan and Hawkins Counties) , Tennessee (the "Local Government"); and

WHEREAS, the Local Government has determined that it is necessary and desirable to undertake certain activities or tasks in connection with a water facilities project, Department of Environment and Conservation Number DWF 2023-254 (the "Project"), in and for the Local Government; and

WHEREAS, Drinking Water Revolving Loan Fund Act of 1997, Tennessee Code Annotated, Sections 68-221-1201 et seq., provide for the lending of funds in the water facilities Revolving Loan Fund to Local Governments for the purpose of providing funds for Project Loans; and

WHEREAS, the Local Government has determined that it is necessary and advisable to borrow funds for the Project pursuant to these sections.

NOW, THEREFORE, be it resolved as follows:

Section 1. Local Government hereby approves the creation of indebtedness on behalf of the Local Government in the principal amount of seven million dollars (\$7,000,000) by the obtaining of a Project Loan.

Section 2. The execution and delivery of the application for a Project Loan in the principal amount of seven million dollars (\$7,000,000), for the purpose of funding all or a portion of the total estimated cost of the Project, which is seven million dollars (\$7,000,000), by Patrick Shull, the Mayor of the Local Government, is hereby ratified and approved in all respects.

Section 3. The form, terms, and provisions of the agreement for the Project Loan among the Local Government, the Tennessee Department of Environment and Conservation and the Tennessee Local Development Authority (the "Loan Agreement"), as presented at this meeting, are hereby approved.

Section 4. The Local Government hereby agrees to honor and accept the method of financing as may be determined by the Authority pursuant to the Loan Agreement.

Section 5. The Local Government hereby agrees to make the monthly payments on the Project Loan in accordance with the Payment Schedule to be attached to the Loan Agreement.

Section 6. The Local Government hereby agrees to levy fees, rates or charges for services provided by the Project and/or to levy ad valorem taxes sufficient to pay the interest on and principal of the Project Loan in accordance with the Loan Agreement. The Local Government also agrees to levy fees, rates, or charges and/or ad valorem taxes sufficient to pay the cost of operation and maintenance of the water system of which the Project is a part, which cost shall include depreciation and all other debt service expense of the system.

Section 7. The Local Government assigns and pledges its State-Shared Taxes to the State and consents to the withholding and application of State-Shared Taxes in the event of failure by the Local Government to remit monthly payments in accordance with the terms of the Loan Agreement, as the Loan Agreement may be supplemented or amended from time to time.

Section 8. The Local Government hereby agrees that there are no local pledges of State-Shared Taxes other than those disclosed.

Section 9. The Local Government hereby agrees to obtain alternative methods of financing for all costs necessary for the completion of the Project which are in excess of the combined financing provided by any agency of the United States Government and by the Tennessee Local Development Authority.

Section 10. The Mayor of the Local Government is authorized and directed to execute the Loan Agreement, and any amendments or supplements to the Loan Agreement, in the name and behalf of the Local Government; to deliver such documents to the other parties to such documents, such execution and delivery to be conclusive proof of the approval of the Local Government of such documents; and to take such further action and to execute and deliver such further instruments or documents as such officer may consider necessary or advisable in connection with the Loan Agreement. Provided, however, this resolution shall not be deemed to grant authority to the named officer to approve any increase in the amount of the Project Loan.

Section 11. All orders, resolutions, or ordinances in conflict with this resolution are and the same are repealed insofar as such conflict exists. This resolution shall become effective immediately upon its passage.

Duly passed and approved this _____ day of _____, 2022.

I certify under penalty of law that this document and all attachments were prepared by me, or under my direction or supervision. The submitted information is to the best of my knowledge and belief true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment. As specified in Tenn. Code Ann. § 39-16-702(a)(4), this declaration is made under penalty of perjury.

Patrick Shull, Mayor

**GENERAL CERTIFICATE
CITY OF KINGSPORT
DWF 2023-254**

The undersigned, by Patrick Shull, the Mayor of Kingsport (Sullivan and Hawkins Counties), Tennessee ("Local Government"), **CERTIFIES** as follows:

1. The Local Government is a validly created and duly organized and existing subdivision of the State of Tennessee.
2. The resolution or ordinance of the Local Government duly adopted on (insert date of resolution), a copy of which is attached, authorizing the undersigned to execute in the name and behalf of the Local Government all documents in connection with the Project Loan with the State of Tennessee to finance a project for:

☒the Drinking Water Revolving Loan Fund Act of 1997 ("Project") has not been amended, modified, supplemented, or rescinded since its date of adoption: or

☐the Wastewater Facilities Act of 1987 ("Project") has not been amended, modified, supplemented or rescinded since its date of adoption.

3. The resolution or ordinance of the Local Government duly adopted on July 8, 2022, a copy of which is attached, establishing the rate and fee structure for the water system of which the Project is a part has not been amended, modified, supplemented, or rescinded since its date of adoption.
4. The Local Government is aware that each request for disbursement submitted pursuant to Section 5 of the Project Loan Agreement constitutes a reaffirmation by the Local Government as to the continuing truth and completeness of the statements and representations contained in the Project Loan Agreement.

IN WITNESS OF THE CERTIFICATE, the undersigned has executed this certificate and affixed the seal, if any, of the Local Government on this _____ day of _____, 2022.

I certify under penalty of law that this document and all attachments were prepared by me, or under my direction or supervision. The submitted information is to the best of my knowledge and belief true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment. As specified in Tenn. Code Ann. § 39-16-702(a)(4), this declaration is made under penalty of perjury.

Patrick Shull, Mayor

**REPRESENTATION OF
LOANS AND STATE-SHARED TAXES
CITY OF KINGSPORT
DWF 2023-254**

As security for payments due under a State Revolving Fund (SRF) Loan Agreement, a local government pledges user fees, charges, and ad valorem taxes as necessary to meet its obligations under a SRF Loan Agreement. As an additional security for such payments due, a local government pledges and assigns its unobligated state-shared taxes (SSTs) in an amount equal to maximum annual debt service (MADS) requirements.

1. State-Shared Taxes

The total amount of SSTs, as identified pursuant to Tenn. Code Ann. § 4-31-105(c)(2), received by the local government in the prior fiscal year of the State is \$8,939,103.00.

2. Prior Obligations

(a.) Prior SRF loans which have been funded or approved for which the Local Government has pledged its SSTs are as follows:

Loan Type	Loan #	Base Loan*	Principal Forgiveness*	MADS**
SRF/Water	DWF 2014-140	\$13,556,601.00	\$0.00	\$806,484.00
SRF/Water	DG8 2022-249	\$1,300,000.00	\$0.00	\$72,162.00

* If applicable, the original approved amount is adjusted for decreases and approved increases

**MADS is an estimate until final expenses have been determined

The total MADS from section 2(a.) having a lien on SSTs is \$878,646.00.

(b.) Other prior obligations which have been funded or approved for which the local government has pledged its SSTs are as follows:

Type of Obligation	Identifying #	Loan Amount	Principal Forgiveness	MADS
QSCB	BFC07000	\$1,240,000.00	\$0.00	\$177,080.83
TLDA/Public Health				
TLDA/Transportation				

The total MADS from section 2(b.) having a lien on SSTs is \$177,080.83.

(c.) The total MADS from prior obligations having a lien on SSTs [subsections 2(a)+2(b)] is \$1,055,726.83.

3. Loan Requests

The loan(s) which have been applied for and for which state-shared taxes will be pledged:

Loan Type	Loan #	Anticipated Interest Rate	Base Loan	Principal Forgiveness	Anticipated MADS
SRF/Water	DWF 2023-254	2.13%	\$7,000,000.00	\$0.00	\$430,133.00

The anticipated total maximum annual pledge of state-shared taxes pursuant to loan request(s) is \$430,133.00.

4. Unobligated SSTs

The amount set forth in section (1) less the total amounts set forth in sections 2 and 3 is \$7,453,243.17.

The Local government hereby represents the information presented above is accurate and understands that funding for the loan request(s) presented is contingent upon approval by the TLDA.

Duly signed by an authorized representative of the Local Government on this (insert day) day of (insert month), 2022.

This is the Comptroller's certificate as required by TCA 4-31-108.

LOCAL GOVERNMENT

BY:

Patrick Shull, Mayor

REQUIREMENT FOR REPORT ON DEBT OBLIGATION
(FORM CT-0253)
CITY OF KINGSPORT
DWF 2023-254

Pursuant to Tenn. Code Ann. § 9-21-134, a Report on Debt Obligation (the "Report") must be prepared for all debt obligations issued or entered into by any public entity and filed with its governing body with a copy sent to the Office of State and Local Finance/Comptroller of the Treasury for the State of Tennessee. The purpose of the Report is to provide clear and concise information to members of the governing or legislative body that authorized and is responsible for the debt issued.

Public entities that fail to comply with the requirements of Tenn. Code Ann. § 9-21-134 are not permitted to enter into any further debt obligations until they have complied with the law. A State Revolving Fund (SRF) loan program applicant that is not in compliance with this law should file the Report as soon as possible and provide notification of filing to the SRF loan program so that it may proceed with the loan application. Instructions on how to file the Report are located in the "Debt" category for "Local Finance" on the website of the Tennessee Comptroller of the Treasury.

Municipal Securities Rulemaking Board (MSRB) – Required Disclosure

Local governments that issue municipal securities on or after February 27, 2019, should be aware that the Securities and Exchange Commission (SEC) adopted amendments to Rule 15c2-12 of the Securities Exchange Act that require reporting on material financial obligations that could impact an issuer's financial condition or security holder's rights. The amendments add two events to the list of events that must be included in any continuing disclosure agreement that is entered into after the compliance date:

- Incurrence of a financial obligation of the issuer or obligated person, if material, or agreement to covenants, events of default, remedies, priority rights, or other similar terms of a financial obligation of the issuer or obligated person, any of which affect security holders, if material; and
- Default, event of acceleration, termination event, modification of terms, or other similar events under the terms of the financial obligation of the issuer or obligated person, any of which reflect financial difficulties.

To learn how to report these new disclosures please refer to the MSRB's Electronic Municipal Market Access EMMA® website (emma.msrb.org).

The applicant, City of Kingsport, attests that it is in compliance with Tenn. Code Ann. § 9-21-134 for its debt obligations and understands that the Report is required to be filed once the SRF loan has been approved by the Tennessee Local Development Authority and the agreement has been executed by the borrower. The applicant further acknowledges that it may be responsible to perform continuing disclosure undertakings related to SEC Rule 15c2-12. Local governments should always consult bond counsel in order to obtain advice on appropriate disclosures related to this rule.

Patrick Shull, Mayor
This is the Comptroller's certificate as required by TCA 4-31-108.

Date

**STATE REVOLVING FUND PROJECT LOAN AGREEMENT
CITY OF KINGSPORT
DWF 2023-254**

This Loan Agreement is among the Tennessee Department of Environment and Conservation (the "Department"), the Tennessee Local Development Authority (the "Authority") and the City of Kingsport (Sullivan/Hawkins Counties) (the "Local Government"), which is a Tennessee governmental entity authorized to own, operate and manage water and/or wastewater facilities. The purpose of this Loan Agreement is to provide the financing of all or a portion of a water facility by the Local Government. The Local Government applied for financing on (insert date of application), which is hereby incorporated into this Loan Agreement.

1) DEFINITIONS.

Unless the context in this Loan Agreement indicates another meaning, the following terms shall have the following meaning:

- a) **"Administrative fee"** means the fee to be collected by the Authority for administration of the loan in accordance with Tenn. Code Ann. §§ 68-221-1004(a) and 68-221-1204(a), both as amended;
- b) **"Agreement"** means this Loan Agreement providing financing for the Project from the Fund;
- c) **"Facility"** means either a wastewater facility or a water system;
- d) **"Fund"** means:
 - i) For wastewater projects, the wastewater revolving loan fund created by the Tennessee Wastewater Facilities Act of 1987, Tenn. Code Ann. §§ 68-221-1001 to -1015, as amended, and rules and regulations promulgated thereunder; or
 - ii) For water projects, the drinking water revolving loan fund created by the Drinking Water Revolving Loan Fund Act of 1997, Tenn. Code Ann. §§ 68-221-1201 to -1207, as amended, and rules and regulations promulgated thereunder;
- e) **"Initiation of Operation"** means the date when all, but minor components of the Project have been built, all treatment equipment is operational, and the Project is capable of functioning as designed and constructed;
- f) **"Local Government"** means the governmental entity borrowing under this Loan Agreement described in (1) Tenn. Code Ann. § 68-221-1003(7), as amended, if a wastewater facility and (2) Tenn. Code Ann. § 68-221-1203(6), as amended, if a water system;
- g) **"Obligations"** means bonds, notes and any other evidence of indebtedness lawfully issued or assumed by the Local Government;
- h) **"Period of Performance"** allows for the payment of expenses if they incurred during the time period stated in the contract; and if the loan recipient received prior approval from the

program in writing to include the cost listing in the request for reimbursement, then it would be acceptable to pay.

- i) **"Project"** means the activities or tasks concerning a facility described in the application submitted by the Local Government to be financed pursuant to this Loan Agreement;
- j) **"Project Cost"** means the total amount of funds necessary to complete the Project;
- k) **"Project Loan"** means the funds loaned from the Fund to finance the Project and, except for principal forgiven, if any, required to be repaid pursuant to this Loan Agreement;
- l) **"Revenues"** means all fees, rents, tolls, rates, rentals, interest earnings, or other charges received or receivable by the Local Government from the water or wastewater system which is the Project, or of which the Project is or will be a component, including any revenues derived or to be derived by the Local Government from a lease, agreement or contract with any other local government, local government instrumentality, the state, or a state or federal agency for the use of or in connection with the system, or all other charges to be levied and collected in connection with and all other income and receipts of whatever kind or character derived by the Local Government from the operation of the system or arising from the system;
- m) **"State"** means the state of Tennessee acting through the Department and the Authority, jointly or separately, as the context requires;
- n) **"State-Shared Taxes"** has the meaning established by Tenn. Code Ann. Section 4-31-102, as amended; and
- o) **"Unobligated State-Shared Taxes"** means State-Shared Taxes which have not been pledged or applied to any other prior indebtedness.

2) PROJECT.

a) Description.

The description of the Project is as described in the application submitted by the Local Government.

b) Funding Sources.

The Local Government estimates the total Project Cost to be (\$7,000,000) which is expected to be funded as follows:

Project Loan	\$7,000,000
Principal Forgiveness	\$0
Local Funds	\$0
Other Funds	\$0
	<hr/>
TOTAL	<hr/> \$7,000,000 <hr/>

c) **Type of Project. (Please check one)**

- i) ☐ Planning. (Project schedule is required)
The following project schedule is established:
 - (1) Submission of facilities plans on or before (insert date).
- ii) ☐ Planning and Design. (Project schedule is required)
The following project schedule is established:
 - (1) Submission of facilities plans on or before (insert date).
 - (2) Submission of engineering plans and specifications on or before (insert date).
- iii) ☒ Planning, Design, and Construction. (A project schedule is required)
The following project schedule is established:
 - i) Submission of engineering plans and specifications on or before March 1, 2023
 - ii) Start construction on or before June 1, 2023.
 - iii) Initiate operation on or before March 1, 2025
 - iv) Complete construction on or before June 1, 2025.

The Department's State Revolving Fund Loan Program may amend the project schedule above upon written request and for good cause shown.

The written request to amend the project schedule above should be submitted to the Department within 60 days prior to the end date of the milestones established above. The written request should detail the nature of the delay(s); the amended milestone dates; and any efforts to be implemented to adhere to the amended project schedule.

Failure to adhere to the project schedule established above or secure an amended project schedule from the State Revolving Fund Loan Program, will constitute a breach of contract, and may result in loss of principal forgiveness, loss of interest rate reduction or both.

The State Revolving Fund Loan Program may take other such actions as may be necessary relative to breach of contract against a borrower that fails to carry out its obligations under Tenn. Comp. R. & Regs. Chapter 0400-46-06 and this loan agreement up to and including cancellation of loan funding.

d) **Land Ownership, Easement, and Right-of-Ways.**

Land Acquisition.

- (1) Owner of a dwelling. The term owner of a dwelling means a person who is considered to have met the requirement to own a dwelling if the person purchases or holds any of the following interests in real property: (i) Fee title, a life estate, a land contract, a 99-year lease, or a lease including any options for extension with at least 50 years to run from the date of acquisition per 40 CFR 24(20).
- (2) Additionally, the borrower must own easements and/or land, or have taken condemnation proceedings needed to construct the project before plans and specifications for a construction loan will be approved by the Department as per State Rule 0400-46-06-.06.

- (3) ☒ By checking this box, the Local Government certifies that all property, easements, and rights-of-way necessary to construct the Project is owned or, in the case of right-of-way, is permitted for use by the Local Government.
- (4) ☐ By checking this box, the Local Government certifies that it has acquired or has entered into condemnation proceedings for all real property including easements and rights-of-way that are or will be required for the construction (erection, extension, modification, addition), operation, and maintenance of the entire wastewater treatment works funded under this Project.

3) PROJECT FILES.

The State of Tennessee and/or the United States Environmental Protection Agency shall have access to the official project files and job site.

4) FISCAL SUSTAINABILITY PLAN (FSP) REQUIREMENTS. (CLEAN WATER PROJECTS ONLY)

The Local Government will comply with the Fiscal Sustainability Plan (FSP) requirements set out in the Clean Water Act section 603(d)(1)(E) by developing and implementing an FSP that includes:

- a) an inventory of critical assets that are a part of the treatment works;
- b) an evaluation of the condition and performance of inventoried assets or asset groupings;
- c) a certification that the recipient has evaluated and will be implementing water and energy conservation efforts as part of the plan; and
- d) a plan for maintaining, repairing, and as necessary, replacing the treatment works and a plan for funding such activities; or
- e) a certification that the recipient has developed and implemented a plan that meets the requirements under Type of Project.

5) LOAN.

a) Loan and use of proceeds.

The State shall lend to the Local Government from funds available in the Fund an aggregate principal amount not to exceed \$7,000,000 to bear interest as described in (b) below. The Project Loan shall be used by the Local Government for completion of the Project and in accordance with engineering plans and specifications and special conditions, approved and required by the Department and hereby incorporated into this Loan Agreement. Interest on the Project loan will begin to accrue upon the first disbursement of the Project Loan pursuant to Section 5 of this Loan Agreement.

b) Interest rate.

The rate of interest for this Project Loan is 2.13%, which is the rate established by the Authority at the meeting at which this Project Loan is approved and stated on the payment schedule which is incorporated into and attached to this Loan Agreement.

c) **Administrative fee.**

The Authority shall collect a fee equal to eight basis points of the total Project Loan, where one basis point is equal to one-hundredth of one percent (0.01%). This fee shall be payable in monthly installments equal to one-twelfth (1/12) of the annual fee amount as stated on the payment schedule.

d) **Payment schedule.**

The Local Government expressly agrees to make all payments of principal and interest in accordance with the payment schedule, including the form of payment (currently electronic funds transfer), as it is from time to time revised by the State. A revision of the payment schedule shall not be deemed to be an amendment of this Loan Agreement.

6) REPAYMENT OF PROJECT LOAN.

a) **Payments.**

i) The Local Government promises to repay to the order of the State the Project Loan plus interest, payable in installments on the 20th day of each month in accordance with the payment schedule established by the Authority and attached to this Loan Agreement. The payment schedule will require payments of interest to begin after the first disbursement pursuant to Section 6 of this Loan Agreement. The payment schedule will require repayments of principal to begin the earlier of:

(1) Within ninety (90) days after Initiation of Operation of the Project for construction loans or within two (2) years of loan approval for planning and design loans; or

(2) Within one hundred twenty (120) days after ninety percent (90%) of the Project Loan has been disbursed.

ii) Notwithstanding Section 5(a)(i)(1), the Authority may agree in the instance of a newly created water system to defer the commencement of principal repayment for no more than one year after Initiation of Operation of the Project.

b) **Reduction.**

i) The Project Loan, and the required payments made pursuant to the payment schedule, shall be reduced to reflect:

(1) Funding not listed in Section 2(b) which subsequently becomes available; or

(2) The amount actually disbursed by the State to the Local Government pursuant to the Loan Agreement as the Project Loan.

ii) If any of the conditions set out in Section (b)(i)(1) or (b)(i)(2) occur, a new payment schedule reflecting such changes shall be submitted to the Local Government to be attached to this Loan Agreement, superseding any previous schedules.

c) **Prepayment.**

The Local Government, at its option, may prepay all or any portion of the Project Loan.

d) **Principal Forgiven.**

A portion of the original principal amount of the Project loan may be forgiven by the State. The principal forgiven shall be zero percent (0%) of the original principal amount of the project loan, or if the full original amount of the Project loan is not used, then zero percent (0%) of the amount of the project loan actually disbursed. Notwithstanding Section 4 no interest shall accrue on the amount of principal forgiven pursuant to this Section 5(d).

7) DISBURSEMENT OF PROJECT LOAN.

a) **Payment Methodology.**

The Local Government shall receive disbursements of the Project Loan only for actual, reasonable, and necessary costs based upon the current approved Project Budget, not to exceed the Project Loan amount listed in Section 4(a). Upon progress toward the completion of the Project, as described in Section 4 of the Project Loan Application, the Local Government shall submit disbursement requests, including invoices and supporting documents of actual expenditures, prior to any reimbursement of allowable costs.

b) **Disbursement Requirements.**

The Local Government shall request disbursement from the State no more often than monthly with all necessary supporting documentation. Each disbursement request shall be sent to the contact indicated in Section 27 and shall clearly and accurately detail all of the following required information (calculations must be extended and totaled correctly):

i) Addressed to:

Department of Environment and Conservation
State Revolving Fund Loan Program
William R. Snodgrass Tower, 312 Rosa L. Parks Avenue, 12th Floor
Nashville, Tennessee 37243

ii) Via Email: SRF.Payments@tn.gov

iii) Reference Number (assigned by the Local Government).

iv) Date.

v) Period to which the disbursement request is applicable.

vi) Project Loan Number (assigned by the Department).

vii) Local Government Name.

viii) Local Government Tennessee Edison Registration ID Number Referenced in Preamble of this Loan Agreement.

ix) Local Government Remittance Address.

x) Local Government Contact for Invoice Questions (name, phone, or fax).

- xi) Itemization of Disbursement Requested for the Disbursement Period— it must detail, at minimum, all of the following:
 - i. The amount requested by Project Budget line-item (including any travel expenditure reimbursement requested and for which documentation and receipts, as required by "State Comprehensive Travel Regulations," are attached to the invoice).
 - ii. The amount disbursed by Project Budget line-item to date.
 - iii. The total amount disbursed under the Project Loan to date.
 - iv. The total amount requested (all line-items) for the Disbursement Period.
- c) **The Local Government understands and agrees to all of the following:**
 - i) A disbursement request under this Loan Agreement shall include only requests for actual, reasonable, and necessary expenditures required in the delivery of service described by this Loan Agreement and shall be subject to the Project Budget and any other provision of this Loan Agreement relating to allowable disbursements.
 - ii) A disbursement request under this Loan Agreement shall not include any request for future expenditures.
 - iii) The period of performance for a disbursement request (§200.77) means the time during which the Local Government may incur new obligations to carry out the work authorized under the Loan Agreement. The Local Government must include start and end dates of the period of performance in the Loan Agreement.
 - iv) The Local Government agrees that any pre-award costs (§200.458), which are costs incurred prior to the effective date of the Loan Agreement directly pursuant to the negotiation and in anticipation of the Loan Agreement where such costs necessary for efficient and timely performance of the scope of work. Such costs are allowable only to the extent that they would have been allowable if incurred after the date of Loan Agreement and **only** with the prior written approval of the State. If charged to the Loan Agreement, these costs must be charged to the initial budget period of the award, unless otherwise specified by the Federal awarding agency or pass-through entity.
 - v) **Planning Loans Only**
 - (1) The maximum allowable disbursement is 80% of the loan until the Facilities Plan is **received** by SRF.
 - (2) The maximum allowable disbursement is 90% of the loan until the Facilities Plan is **approved** by SRF.
 - vi) **Planning and Design Loans Only**
 - (1) The maximum allowable disbursement is 80% of the planning fees until the Facilities Plan is **received** by SRF.
 - (2) The maximum allowable disbursement is 90% of the planning fees until the Facilities Plan is **approved** SRF.
 - (3) The maximum allowable disbursement is 80% of the Design Loan or design fees until plans and specifications are **received** by SRF.

- (4) The maximum allowable disbursement is 90% of the Design Loan until plans and specifications are **approved** by SRF.

d) **Budget Line-items.**

Expenditures and disbursements under this Loan Agreement shall adhere to the Project Budget. Any increases or decreases within the Project Budget's grand total amounts shall require the Local Government to submit a request to amend the Project Budget and receive approval from the Department.

e) **Travel Compensation.**

Disbursement to the Local Government for travel, meals, or lodging shall be subject to amounts and limitations specified in the "State Comprehensive Travel Regulations," as they are amended from time to time, and shall be contingent upon and limited by the Project Budget funding for said disbursement.

f) **Procurement.**

If other terms of this Loan Agreement allow disbursements for the cost of goods, materials, supplies, equipment, or contracted services, such procurement shall be made on a competitive basis, including the use of competitive bidding procedures, where practical. The Local Government shall maintain documentation for the basis of each procurement for which a disbursement is made pursuant to this Loan Agreement. In each instance where it is determined that use of a competitive procurement method is not practical, supporting documentation shall include a written justification for the decision and for use of a non-competitive procurement. If the Local Government is a sub-recipient, the Local Government shall comply with 2 C.F.R. §§ 200.317—200.326 when procuring property and services under a federal award.

g) **Retainage.**

- i) All construction contracts for the Project may provide for the withholding of retainage; provided, however, that the retainage amount may not exceed five percent (5%) of the amount of the contract.
- ii) Proof of retainage deposits must be submitted with each disbursement request. In the instance of the first payment, documented proof of the retainage account must be submitted. Subsequent payments the Local Government must provide proof that retainage was deposited into the established retainage bank account. Upon the final payment requested from the Local Government, the Local Government will provide proof the all retainage is paid to its contractors.
- iii) The Local Government shall release and pay all retainages for work completed pursuant to the terms of any contract to the prime contractor within 90 days after completion of the work or within 90 days after substantial completion of the project for work completed, whichever occurs first. As used in this subsection, work completed shall mean the completion of the scope of the work and all terms and conditions covered by the contract under which the retainage is being held. The prime contractor shall pay all retainages due to any subcontractor within 10 days after receipt of the retainages from the owner. Any subcontractor receiving the retainage from the prime contractor shall pay to any sub-

subcontractor or material supplier all retainages due the sub-subcontractor or material supplier within 10 days after receipt of the retainages.

- iv) Any default in the making of the payments shall be subject to those remedies provided in this Loan Agreement.
- v) In the event that the Local Government or its prime contractor withholds retainage that is for the use and benefit of the prime contractor or its subcontractors pursuant to Tenn. Code Ann. § 66-34-104(a) and (b), neither the prime contractor nor any of its subcontractors shall be required to deposit additional retained funds into an escrow account in accordance with Tenn. Code Ann. § 66-34-104(a) and (b).
- vi)
 - (1) It is an offense for a person, firm, or corporation to fail to comply with Tenn. Code Ann. §66-34-104(a).
 - (2) A violation of this subsection (e) is a Class A misdemeanor, subject to a fine of three thousand dollars (\$3,000).
 - (3) Each day a person, firm or corporation fails to comply with subsection (a) or (b) or Tenn. Code Ann. § 66-34-104(a) is a separate violation of this subsection (e).
 - (4) Until the violation of this subsection (e) is remediated by compliance, the punishment for each violation shall be consecutive to all other such violations.
 - (5) In addition to the fine imposed pursuant to subdivisions (e)(2)(A) and (B), the court shall order restitution be made to the owner of the retained funds. In determining the appropriate amount of restitution, the formula stated in Tenn. Code Ann. § 40-35-304 shall be used.
- h) **Request for Disbursement as Certification.**

Each request by the Local Government for disbursement of the Project Loan shall constitute a certification by the Local Government that all representations made in this Loan Agreement remain true as of the date of the request and that no adverse developments affecting the financial condition of the Local Government or its ability to complete the Project or to repay the Project Loan plus interest have occurred since the date of this Loan Agreement unless specifically disclosed in writing by the Local Government in the request for disbursement. Submitted requests for disbursement must be supported by proper invoices and other documentation required by and acceptable to the Department and the Authority.
- i) **Payment Certification.**

After the Department has certified and the Authority has approved a request for disbursement, the Authority will disburse the Project Loan during the progress of the Project. Each disbursement shall be by electronic funds transfer or such other form of payment as specified in the payment schedule and shall be equal to that portion of the unpaid principal amount incurred to the date of the Local Government's request for disbursement. The amount of any principal forgiven shall be allocated on a pro-rata basis to each disbursement made.
- j) **90% of the Project Loan.**

No more than 90% of the Project Loan shall be paid to the Local Government prior to the time:

 - (1) the construction of the Project has been completed;

- (2) the facilities constituting the Project are, in the opinion of the Department, in proper operation; and
- (3) the Project has been approved by the Department. Following approval of the Project by the Department, the remaining 10% of the Project Loan may be paid to the Local Government. Provided, however, that if this Project Loan is for planning or planning and design, payments may be made prior to the completion of construction of the Project for the full amount of costs associated with the planning or planning and design.

8) ADDITIONAL FUNDING REQUEST.

a) Increase in Project Loan.

If the final Project Cost is greater than estimated in Section 2(b), then the Project Loan may be increased by an amendment executed by the parties to this Loan Agreement if the following conditions are fulfilled:

- i) Amounts in the Fund are authorized and available for such increase;
- ii) The increased Project Loan otherwise meets the applicable statutory requirements and the rules adopted thereunder; and
- iii) Such increase in this Project Loan does not result in any violation or breach of any contract, resolution, or ordinance of the Local Government

b) Loan Number and Interest Rate.

A companion or supplemental loan will be issued with an new loan number and the current interest rate will be applied.

c) Other Amendments and Modifications.

Any other amendment or modification of this Loan Agreement must first be approved by the Authority and must be in writing executed by the parties to this Loan Agreement.

9) NOTIFICATION OF DEFAULT OR DELAY OF PROJECT PERFORMANCE.

The Local Government shall provide written notice to the Department within 30 days of becoming aware of any event that prevents or causes the default or delay in the performance of its obligations under this Loan Agreement. The written notice should describe in reasonable detail the nature of the default or delay and any efforts, workaround plans, alternative sources, or other means being conducted to resume performance. If the Local Government's failure to perform is longer than 180 days, the Department may, upon notice to Local Government: (a) cancel principal forgiveness; or (b) cancel the loan funding, in whole or in part, and place the loan in repayment. The Local Government may reapply for another SRF loan once a resolution is reached by the Local Government and the Department.

10) TERMINATION FOR CONVENIENCE.

The State may terminate this Project Loan without cause for any reason. A termination for convenience shall not be a breach of this Loan Agreement. The State shall give the Local Government at least thirty (30) days written notice before the effective termination date. The Local Government shall be entitled to disbursement of loan funds for authorized expenditures

and satisfactory services completed as of the termination date, but in no event shall the State be liable to the Local Government for compensation for any service that has not been rendered. The final decision as to the amount for which the State is liable shall be determined by the State. The Local Government shall not have any right to any actual general, special, incidental, consequential, or any other damages whatsoever of any description or amount for the State its exercise of its right to terminate for convenience.

11) TERMINATION FOR CAUSE.

If the Local Government fails to properly perform its obligations under this Project Loan, or if the Local Government violates any terms of this Project Loan, the State shall have the right to immediately terminate this Project Loan and withhold payments in excess of fair disbursements for completed services. Notwithstanding the exercise of the State's right to terminate this Project Loan for cause, the Local Government shall not be relieved of liability to the State and Department for damages sustained by virtue of any breach of this Project Loan by the Local Government.

12) REPRESENTATIONS AND PLEDGES OF LOCAL GOVERNMENT.

The Local Government hereby represents, agrees, and covenants with the State as follows:

- a) To construct, operate, and maintain the Project in accordance, and to comply, with all applicable federal and state statutes, rules, regulations, procedural guidelines, and grant conditions;
- b) To comply with:
 - i) The Project schedule, engineering plans and specifications, and any and all special conditions established and/or revised by the Department; and
 - ii) Any special conditions established and/or revised by the Authority including, but not limited to, the Authority's "State Revolving Fund Policy and Guidance for Borrowers" adopted on September 21, 2016, with any amendments made as of the date of execution of the Project Loan Agreement, the terms, and conditions of which are adopted by reference as if fully set forth herein;
- c) To commence operation of the Project on its completion and not to contract with others for the operation and management of, or to discontinue operation or dispose of, the Project without the prior written approval of the Department and the Authority;
- d) To provide for the Local Government's share of the cost of the Project;
- e) To comply with applicable federal requirements including the laws and executive orders listed on Attachment A to this Loan Agreement;
- f) To advise the Department before applying for federal or other state assistance for the Project;
- g) To establish and maintain adequate financial records for the Project in accordance with generally accepted government accounting principles; to cause to be made an annual audit acceptable to the Comptroller of the Treasury of the financial records and transactions

covering each fiscal year; and to furnish a copy of such audit to the Authority. In the event of the failure or refusal of the Local Government to have the annual audit prepared, then the Comptroller of the Treasury may appoint an accountant or direct the Department of Audit to prepare the audit at the expense of the Local Government;

- h) To provide and maintain competent and adequate engineering supervision and inspection of the Project to ensure that the construction conforms with the engineering plans and specifications approved by the Department;
- i) To abide by and honor any further guarantees or granting of security interests as may be required by the State which are not in conflict with state or federal law;
- j) To do, file, or cause to be done or filed, any action or statement required to perfect or continue the lien(s) or pledge(s) granted or created hereunder;
- k) To establish and collect, and to increase, user fees and charges and/or increase or levy, as the case may be, ad valorem taxes as needed to pay the monthly installments due under this Loan Agreement, as well as the other costs of operation and maintenance including depreciation and debt service of the system of which the Project is a part;
- l) The Local Government is subject to the jurisdiction of the Water and Wastewater Financing Board ("WWFB") established in Tenn. Code Ann. § 68-221-1008 or of the Utility Management Review Board ("UMRB") created in Tenn. Code Ann. § 7-82-701 as provided by law. If the Authority, in its sole discretion, determines that the Local Government's obligations under this Loan Agreement have been or may be impaired, the Authority may refer the Local Government to the WWFB or UMRB (each a "Board") as appropriate. In the event of default under this Loan Agreement, the Authority shall refer the Local Government to the Board having jurisdiction over the entity. In such event, the Local Government covenants, to the extent permitted by law, to request advisory technical assistance from the Board and to request that the Board propose any and all management, fiscal and/or rate changes necessary to enable the Local Government to fulfill its obligations to the Authority under this Loan Agreement. The Local Government agrees to supply the Board with any information that the Board may request in connection with its analysis of the Local Government's system. The Local Government agrees that it will implement any and all technical, management, fiscal and/or rate changes recommended by the Board and determined by the Authority to be required for the Local Government to fulfill its obligations to the Authority under this Loan Agreement.

Towns, Cities, and Counties.

- m) To receive the approval of the Authority prior to issuing any Obligations that are payable all or in part from any part of the Revenues if such Obligations are intended to be on parity or superior to the lien position created under this Loan Agreement;
- n) To notify the Assistant Secretary to the Authority in writing prior to issuing any Obligations that are payable all or in part from any part of the Revenues if such Obligations are intended to be subordinate to the lien position created under this Loan Agreement;

- o) To receive the approval of the Authority prior to pledging or encumbering the Local Government's State-Shared Taxes; and

Utility Districts & Commissions.

- p) To establish and collect, and to increase user fees and charges sufficient to meet a 1.20X debt service coverage to net revenues. Net revenues are gross earnings, fees and charges, less current expenses. Current expenses are those incurred in the operation of the system, determined in accordance with generally accepted accounting principles ("GAAP"), including the reasonable and necessary costs of operating, maintaining, repairing, and insuring the system, salaries, wages, cost of material and supplies, and insurance premiums, but shall specifically exclude depreciation and debt service payments;
- q) No additional debt payable from Revenues will be issued or entered into unless:
 - i) Prior approval is received from the Authority;
 - ii) The annual audit required by the terms of this Loan Agreement for the most recent fiscal year has been delivered within six (6) months after the end of such fiscal year;
 - iii) The covenant this Loan Agreement is met for the most recent fiscal year;
 - iv) The net revenues of the system for the next three fiscal years ending after the issuance of the additional debt will be sufficient to comply with the covenant in this Loan Agreement; and
 - v) The Local Government has adopted a revised schedule of rates and fees and taken action to put such revisions in effect at or prior to the issuance of the additional debt.

13) SECURITY AND DEFAULT.

- a) **Towns, Cities, and Counties.** As security for payments due under this Loan Agreement, the Local Government pledges users' fees, and charges and/or ad valorem taxes, and covenants and agrees that it shall increase such fees or increase or levy, as the case may be, ad valorem taxes as needed to pay the monthly installments due under this Loan Agreement, as well as the other costs of operation and maintenance of the system, including depreciation. The Local Government covenants to establish and collect such fees and taxes and to make such adjustments to raise funds sufficient to pay such monthly payments and costs but to create only a minimum excess. The Local Government further pledges such other additional available sources of Revenues as are necessary to meet the obligations of the Local Government under this Loan Agreement.

As further security for payments due under this Loan Agreement, the Local Government pledges and assigns subject to the provisions herein its Unobligated State-Shared Taxes in an amount equal to the maximum annual debt service requirements under this Loan Agreement. If the Local Government fails to remit the monthly payments as established in the payment schedule, the Authority shall deliver by certified mail a written notice of such failure to the Local Government within five days of such failure and the Authority shall suspend making disbursements as provided in Section 6 until such delinquency is cured. If the Local

Government fails to cure payment delinquency within 60 days of the receipt of such notice, such failure shall constitute an event of default under this Loan Agreement and, in addition, the Authority shall notify the Commissioner of Finance and Administration of the State of Tennessee of the default of the Local Government and the assignment of Unobligated State-Shared Taxes under this Loan Agreement. Upon receipt of such notice, the Commissioner shall withhold such sum or part of such sum from any State-Shared Taxes which are otherwise apportioned to the Local Government and pay only such sums necessary to liquidate the delinquency of the Local Government to the Authority for deposit into the fund. The Local Government acknowledges that it has no claim on State-Shared Taxes withheld as permitted under this Loan Agreement.

If the Local Government breaches any other provision of this Loan Agreement, the Authority shall deliver by certified mail a written notice of such breach to the Local Government within 30 days of the Authority learning of such breach. The Local Government's failure to cure the breach within 60 days from receipt of notice of such breach shall constitute an event of default under this Loan Agreement.

- b) **Utility Districts and Commissions.** As security for payments due under this Loan Agreement, the Local Government pledges user fees and charges, and covenants and agrees that it shall increase such fees and charges as needed to pay the monthly installments due under this Loan Agreement, as well as the other costs of operation and maintenance of the system, including depreciation. The Local Government further pledges such other additional available sources of Revenues as are necessary to meet the obligations of the Local Government under this Loan Agreement.

Prior to the first disbursement of funds under this Loan Agreement, the Local Government will deposit with the Authority an amount of funds equal to the maximum annual debt service (the "security deposit"). The amount of the security deposit will be adjusted to reflect adjustments in the payment schedule. The Authority will credit the Local Government with interest earnings on the security deposit on at least an annual basis pursuant to policy of the Authority.

As further security for payments due under this Loan Agreement, the Local Government pledges, and assigns, subject to the provisions herein, any funds due to the Local Government from the State.

If the Local Government fails either to fully fund the security deposit as provided above or to remit the monthly payments as established in the payment schedule, the Authority shall deliver by certified mail written notice of such failure to the Local Government within seven days of such failure and the Authority shall suspend making disbursements as provided in Section 6 until such delinquency is cured. If the Local Government fails to cure payment delinquency within 15 days of the receipt of such notice, such failure shall constitute an event of default under this Loan Agreement, and in addition, the Authority shall apply from the security deposit only the funds necessary to liquidate the amount of the delinquency of the Local Government to the Authority as of that date. If the funds deposited in the security deposit are not sufficient to cure the delinquency, the Authority shall notify the Commissioner of Finance and Administration, and the Commissioner shall withhold such amount from any

funds otherwise due to the Local Government from the State and pay such amount to the Authority for deposit into the Fund. The Local Government acknowledges that it has no claim on such funds withheld or paid over as permitted under this Loan Agreement. The Local Government shall replenish the security deposit within 60 days from any withdrawal of funds from that account by the Authority to liquidate the delinquency as provided above. Failure to replenish the security deposit within 60 days shall constitute an event of default under this Loan Agreement.

If the Local Government breaches any other provision of the Loan Agreement, the Authority shall deliver by certified mail a written notice of such breach to the Local Government within 30 days of the Authority learning of the breach. The Local Government's failure to cure any breach within 60 days from receipt of notice of such breach shall constitute an event of default under this Loan Agreement.

- c) **Applicable to ALL.** Upon an event of default, the Authority may declare all unpaid principal and interest to be immediately due and payable as well as pursue all available legal and equitable remedies. The Local Government shall be responsible for all costs that the Authority incurs in enforcing the provisions of this Loan Agreement after an event of default, including, but not limited to, reasonable attorneys' fees.

14) CONDITIONS PRECEDENT.

This Loan Agreement is further conditioned on the receipt of the following documents, in form and substance acceptable to the Authority, if applicable, on or before the date of the first disbursement of the Project Loan; each document is to be dated or certified, as the case may be, on or before the date of the first disbursement of the Project Loan:

- a) A general certificate of the Local Government certifying the resolution or ordinance authorizing the Local Government to enter into this Loan Agreement, the resolution or ordinance authorizing the rate and fee structure for the users of the system, and other matters;
- b) An opinion of the attorney or special counsel to the Local Government stating:
 - i) The Local Government has been duly created and is validly existing and has full power and authority (under its charter and by-laws or general law, if applicable, and other applicable statutes) to enter into and carry out the terms of this Loan Agreement;
 - ii) This Loan Agreement is duly executed and constitutes a valid and binding contract of the Local Government, enforceable in accordance with its terms except as the enforceability thereof may be limited by bankruptcy, reorganization, insolvency, moratorium, or similar laws affecting the enforcement of creditors rights generally;
 - iii) This Loan Agreement is not in conflict in any material way with any contracts, resolutions, or ordinances of the Local Government; and
 - iv) There is no litigation materially adversely affecting this Loan Agreement or the financial condition of the Local Government;

- c) An opinion of a licensed engineer or certified public accountant as to the sufficiency of the rates, fees and charges and any other fees and charges to meet costs of operation and maintenance, including depreciation and all debt service of the Local Government, as set forth in Paragraph 11(k) above;
- d) An opinion of a licensed engineer as to the reasonableness of the project costs and as to the estimated completion date of the Project;
- e) If the Local Government is a **Utility District or Commission** and the Project for the expansion of a wastewater facility rather than remedial (correction of public health problem), the Local Government shall submit written evidence of consent to the expansion by the relevant governing bodies;
- f) If the Local Government is a **Town, City, or County**, a representation of the Local Government as to loans and State-Shared Taxes.

15) NONDISCRIMINATION.

The Local Government hereby agrees, warrants, and assures that no person shall be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination in the performance of this Project Loan or in the employment practices of the Local Government on the grounds of handicap or disability, age, race, color, religion, sex, national origin, or any other classification protected by federal, Tennessee state constitutional, or statutory law. The Local Government shall, upon request, show proof of nondiscrimination and shall post in conspicuous places, available to all employees and applicants, notices of nondiscrimination.

16) PUBLIC NOTICE.

All notices, informational pamphlets, press releases, research reports, signs, and similar public notices prepared and released by the Local Government in relation to this Project Loan shall include the statement, "This project is funded by the Tennessee State Revolving Loan Program." All notices by the Local Government in relation to this Project Loan shall be approved by the State.

17) RECORDS.

The Local Government and any approved subcontractor shall maintain documentation for all charges under this Project Loan. The books, records, and documents of the Local Government, insofar as they relate to work performed or money received under this Project Loan, shall be maintained in accordance with applicable Tennessee law. In no case shall the records be maintained for a period of less than five (5) full years from the date of the final payment. The Local Government's records shall be subject to audit at any reasonable time and upon reasonable notice by the Grantor State Agency, the Comptroller of the Treasury, or their duly appointed representatives.

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

- b) In addition, documentation of grant applications, budgets, reports, awards, and expenditures will be maintained in accordance with the U.S. Office of Management and Budget's Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards. Grant expenditures shall be made in accordance with local government purchasing policies and procedures and purchasing procedures for local governments authorized under state law. The Local Government shall also comply with any recordkeeping and reporting requirements prescribed by the Tennessee Comptroller of the Treasury.
- c) The Local Government shall establish a system of internal controls that utilize the COSO Internal Control - Integrated Framework model as the basic foundation for the internal control system. The Local Government shall incorporate any additional Comptroller of the Treasury directives into its internal control system.
- d) Any other required records or reports which are not contemplated in the above standards shall follow the format designated by the head of the Grantor State Agency, the Central Procurement Office, or the Commissioner of Finance and Administration of the State of Tennessee.

18) LICENSURE.

Any person performing work funded through this Loan Agreement shall be licensed pursuant to all applicable federal, state, and local laws, ordinances, rules, and regulations and shall upon request provide proof of all licenses.

19) AUDIT REPORT.

- a) The Local Government shall be audited in accordance with applicable Tennessee law.
- b) The Local Government will comply with the following 2 C.F.R. Part 200 – Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards
- c) The funding for this loan could be disbursed from federal or state sources or both. Therefore, the recipient should consider that all funding received is a federal award and abide by all relevant federal and/or state compliance requirements.
- d) The funding for this Project Loan is:
CFDA Title: Capitalization Grants for Drinking Water State Revolving Funds CFDA#: 66.468
Research and Development Award: Number
Grant Number: FS98427221
Federal Awarding Agency: Environmental Protection Agency
- e) Confirmations of funds disbursed can be obtained at fiscal year-end from the Tennessee Comptroller of the Treasury, Division of Local Government Audit's Website at <https://comptroller.tn.gov/>. Any questions regarding sources of funds should be directed to the Department.
- f) At fiscal year-end, contact state SRF Loan Program for a breakdown by specific grant period(s), loan(s), and amount(s).

- i) 2 C.F.R. Part 200.501, 200.505, 200.512 – Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards

2 C.F.R. § 200.501 states, “A non-Federal entity that expends \$750,000 or more during the non-Federal entity's fiscal year in Federal awards must have a single or program-specific audit conducted for that year in accordance with the provisions of this part.”

2 C.F.R. § 200.512 states, “(1) The audit must be completed, and the data collection form described in paragraph (b) of this section and reporting package described in paragraph (c) of this section must be submitted within the earlier of 30 calendar days after receipt of the auditor's report(s), or nine months after the end of the audit period. If the due date falls on a Saturday, Sunday, or Federal holiday, the reporting package is due the next business day.”

2 C.F.R. § 200.505 states, “In cases of continued inability or unwillingness to have an audit conducted in accordance with this part, Federal agencies and pass-through entities must take appropriate action as provided in § 200.338 Remedies for noncompliance.”

A copy of the audit report shall be provided to the Comptroller by the licensed, independent public accountant. Audit reports shall be made available to the public.

20) DAVIS-BACON ACT.

The Davis-Bacon Act, 46 Stat. 1494 (Pub. Law 71-800), and Related acts apply to contractors and subcontractors performing on federally funded or assisted contracts in excess of \$2,000 for the construction, alteration, or repair (including painting and decorating) of public buildings or public works. The Davis-Bacon Act (DBA) and Related Acts require contractors and subcontractors to pay their laborers and mechanics employed under the contract no less than the locally prevailing wages and fringe benefits for corresponding work on similar projects in the area. The Davis-Bacon Act directs the Department of Labor to determine such locally prevailing wage rates. The Davis-Bacon Act applies to contractors and subcontractors performing work on federal or District of Columbia contracts. The prevailing Davis-Bacon Act wage provisions apply to the “Related Acts,” under which federal agencies assist construction projects through grants, loans, loan guarantees, and insurance.

For prime contracts in excess of \$100,000, contractors and subcontractors must also, under the provisions of the Contract Work Hours and Safety Standards Act, as amended, pay laborers and mechanics, including guards and watchmen, at least one and one-half times their regular rate of pay for all hours worked over 40 in a workweek. The overtime provisions of the Fair Labor Standards Act may also apply to DBA-covered contracts.

The Local Government will comply with the following:

- a) The Local Government must adhere to the most current Wage Rate (Davis-Bacon Act) applicable to the project.
- b) The bid advertisement for construction must state the wage rate requirements. The wage rate needs to be current at the bid opening.

- c) The wage determination (including any additional classifications and wage rates conformed) and a WH-1321 - Davis-Bacon Poster English and a WH-1321 - Davis Bacon Poster Spanish must be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen.
- d) The wage rate information can be obtained at www.wdol.gov/.

21) AMERICAN IRON AND STEEL.

The American Iron and Steel (AIS) provision requires Clean Water State Revolving Fund (CWSRF) and Drinking Water State Revolving Fund (DWSRF) assistance recipients to use iron and steel products that are produced in the United States. This requirement applies to projects for the construction, alteration, maintenance, or repair of a public water system or treatment works.

The Clean Water Act (CWA) includes permanent requirements for the use of AIS in CWSRF projects. Section 608 of the CWA now contains requirements for AIS that repeat those of the Consolidated Appropriations Act of FY 2014. As such, all CWSRF projects must comply with Section 608 of the CWA for implementation of the permanent AIS requirements. Therefore, all guidance's adopted for FY 2014 apply for the permanent AIS requirements for the CWSRF. The AIS provision is a permanent requirement for CWSRF treatment works projects. The America's Water Infrastructure Act of 2018 amended the Safe Drinking Water Act to extend the AIS provision for DWSRF projects through Fiscal Year 2023.

Waiver. Each Local Government that receives CWSRF and/or DWSRF water infrastructure financial assistance is required to use American made iron and steel products in the construction of its project. However, if the recipient can justify a claim made under one of the categories below, a waiver may be granted. Until a waiver is granted by EPA, the AIS requirement must be adhered to as described in the Act.

EPA's implementation memorandum on AIS requirements includes specific instructions for communities interested in applying for a waiver.

How to Request a Waiver

General Steps:

- a) Community prepares the waiver request and submits it to the State SRF. The request should include project specifications for the product.
- b) State SRF reviews and submits the request to EPA.
- c) EPA posts the waiver request for public comment for 15 days (see the Waiver Requests Received by EPA tab).
- d) EPA provides a response and posts it on the website.

22) DISADVANTAGED BUSINESS ENTERPRISE (MBE)/WOMEN'S BUSINESS ENTERPRISE (WBE)

In accordance with federal Executive Order 11625 dated October 13, 1971, and Executive Order 12138 dated May 18, 1979, the local government must make a good faith effort to include participation from Disadvantaged Business Enterprises (DBE) in sub-agreement awards. The

Minority Business Enterprises (MBE) fair share goal is 2.6% for construction and 5.2% for supplies, services, and equipment. The Women's Business Enterprises (WBE) fair share goal is 2.6% for construction and 5.2% for supplies, services, and equipment.

Pursuant to 40 C.F.R. § 33.301, the recipient agrees to make the following good faith efforts whenever procuring construction, equipment, services, and supplies under an EPA financial assistance agreement, and to require that sub-recipients, loan recipients, and prime contractors also comply. Records documenting compliance with the six good faith efforts shall be retained:

- a) Ensure Disadvantaged Business Enterprises (DBE) are made aware of contracting opportunities to the fullest extent practicable through outreach and recruitment activities. For Indian Tribal, State, and Local Government recipients, this will include placing DBEs on solicitation lists and soliciting them whenever they are potential sources.
- b) Make information on forthcoming opportunities available to DBEs and arrange time frames for contracts and establish delivery schedules, where the requirements permit, in a way that encourages and facilitates participation by DBEs in the competitive process. This includes, whenever possible, posting solicitations for bids or proposals for a minimum of 30 calendar days before the bid or proposal closing date.
- c) Consider in the contracting process whether firms competing for large contracts could subcontract with DBEs. For Indian Tribal, State, and local Government recipients, this includes dividing total requirements when economically feasible into smaller tasks or quantities to permit maximum participation by DBEs in the competitive process.
- d) Encourage contracting with a consortium of DBEs when a contract is too large for one of these firms to handle individually.
- e) Use the services and assistance of the Small Business Administration (SBA) and the Minority Business Development Agency of the Department of Commerce.
- f) If the prime contractor awards subcontracts, require the prime contractor to take the steps in paragraphs (a) through (e).

23) TITLE VI COMPLIANCE.

Local Government shall comply with requirements of Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d-1, pursuant to the guidelines established by the Tennessee Human Rights Commission's Title VI Compliance Office, by completing all of the following items:

- a) Provide name and contact information of Local Government's Title VI Coordinator to State.
- b) Ensure Policies and Procedures Manual contains a Title VI section with information on:
(a) Filing a complaint; (b) Investigations; (c) Report of findings; (d) Hearings and appeals;
(e) Description of Title VI Training Program; (f) Limited English Proficiency (LEP) procedure; and
(g) Retaliation.

- c) Train all staff (regular, contract, volunteer) on Title VI upon employment and annually thereafter. Training documentation shall be made available upon request of State and include: 1) dates and duration of each training; 2) list of staff completing training on each date.
- d) Annually complete and submit a Title VI self-survey as supplied by Department.
- e) Implement a process and provide documentation to ensure service recipients are informed of Title VI and how to file a discrimination complaint.
- f) Additional Title VI resources may be found at: [Title VI Compliance Program Website](#).

24) FEDERAL FUNDING ACCOUNTABILITY AND TRANSPARENCY ACT (FFATA).

This Project Loan requires the Local Government to provide supplies or services that are funded in whole or in part by federal funds that are subject to FFATA. The Local Government is responsible for ensuring that all applicable FFATA requirements are met and that the Local Government provides information to the State as required.

25) UNIQUE ENTITY IDENTIFIER (UEI)

A Unique Entity Identifier (UEI) is a number issued by the System for Award Management (SAM) to identify businesses and other entities that do business with the federal government. The UEI has replaced the DUNS number as the authorized identifier for the federal government. Local Government can obtain a UEI number directly from SAM.gov.

26) GOVERNING LAW.

This Loan Agreement shall be governed by and construed in accordance with the laws of the state of Tennessee. The Tennessee Claims Commission or the state or federal courts in Tennessee shall be the venue for all claims, disputes, or disagreements arising under this Loan Agreement. The Local Government acknowledges and agrees that any rights, claims, or remedies against the State of Tennessee or its employees, including but not limited to, the Department, the Authority, and the employees thereof, arising under this Loan Agreement shall be subject to and limited to those rights and remedies available under Tenn. Code Ann. Title 9, Chapter 8.

27) SEVERABILITY.

In the event any covenant, condition or provision of this Loan Agreement is held to be invalid or unenforceable by a final judgment of a court of competent jurisdiction, the invalidity thereof shall in no way affect any of the other covenants, conditions, or provisions hereof.

28) NOTICES COMMUNICATIONS AND CONTACTS.

All instructions, notices, consents, demands, or other communications required or contemplated by this Project Loan shall be in writing and shall be made by certified, first class mail, return receipt requested and postage prepaid, by overnight courier service with an asset tracking system, or by email or facsimile transmission with recipient confirmation. All communications, regardless of method of transmission, shall be addressed to the respective party as set out below: Any notice shall be delivered to the parties at the addresses below (or such other addresses as the parties shall specify to each other in writing):

To Department: Tennessee Department of Environment and Conservation
State Revolving Fund Loan Program
312 Rosa L. Parks Ave, 12th Floor
Nashville, TN 37243
ATTN: Administrative/Financial Manager

To Authority: Tennessee Local Development Authority
Cordell Hull Building
425 Rep. John Lewis Way N.
Nashville, TN 37243-3400
ATTN: Assistant Secretary

To Local Government: City of Kingsport
225 West Center Street
Kingsport, Tennessee 37660
ATTN: Patrick Shull, Mayor

29) SECTION HEADINGS.

Section headings are provided for convenience of reference only and shall not be considered in construing the intent of the parties to this Loan Agreement.

30) EFFECTIVE DATE.

The effective date of this Loan Agreement shall be the date on which the Authority approves this Loan Agreement as by the signature.

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

LOCAL GOVERNMENT

Name: City of Kingsport
(City)

Signature: _____
Patrick Shull, Mayor

Date: _____

TENNESSEE LOCAL DEVELOPMENT AUTHORITY

Name: _____

Signature: _____

Date: _____

Meeting Approval Date: _____

Interest Rate: _____

APPROVED AS TO FUNDING:

**COMMISSIONER, DEPARTMENT OF
ENVIRONMENT AND CONSERVATION**

Signature: _____
David W. Salyers, P.E., Commissioner

Date: _____

**COMMISSIONER OF FINANCE AND
ADMINISTRATION**

Signature: _____

Date: _____

APPROVED AS TO FORM:

**DEPARTMENT OF ENVIRONMENT AND CONSERVATION
OFFICE OF GENERAL COUNSEL**

Signature: _____

Date: _____

(PLEASE TYPE ON CITY ATTORNEY'S LETTERHEAD)
(MUST BE SIGNED ON OR AFTER THE DATE OF THE LOAN AGREEMENT SIGNATURE)

(insert date)

Tennessee Local Development Authority and
Tennessee Department of Environment and Conservation
Attention: State Revolving Fund Loan Program
Rosa L Parks Ave, 12th Floor
Nashville, TN 37243

RE: City of Kingsport (Sullivan/Hawkins County)
DWF 2023-254
Project: WTP Improvements (Upgrades to the High Service Pumpstation)

Dear Madam/Sir:

I am the City Attorney for City of Kingsport, Tennessee and I have reviewed the Revolving Fund Loan Agreement for the above referenced project (the "Agreement") in the amount of \$7,000,000.

Pursuant to provisions of Paragraph 9 of the Loan Agreement, you have requested that the City of Kingsport, Tennessee furnish you with my opinion as to certain matters. It is my opinion that:

1. The City of Kingsport, Tennessee City, a municipality, has been duly created and is validly existing and has full power and authority (under its Charter and By-laws or general law, if applicable, and other applicable statutes) to enter into and carry out the terms of the Agreement;
2. The Agreement is duly executed and constitutes a valid and binding contract to the City of Kingsport, Tennessee, a municipality, enforceable in accordance with its terms except as the enforceability thereof may be limited by bankruptcy, reorganization, insolvency, moratorium, or similar laws affecting the enforcement of creditors rights generally;
3. The Agreement is not in conflict in any material way with any contracts or ordinances of the City of Kingsport, Tennessee, municipality; and
4. There is no litigation materially adversely affecting the Agreement or the financial condition of the City of Kingsport, Tennessee, Tennessee, a municipality.

Sincerely,

Name, Title
Firm

(PLEASE TYPE ON ENGINEER'S LETTERHEAD)
(MUST BE SIGNED ON OR AFTER THE DATE OF THE LOAN AGREEMENT SIGNATURE)

(insert date)

Tennessee Local Development Authority and
Tennessee Department of Environment and Conservation
Attention: State Revolving Fund Loan Program
Rosa L Parks Ave, 12th Floor
Nashville, TN 37243

RE: City of Kingsport (Sullivan/Hawkins County)
DWF 2023-254
Project: WTP Improvements (Upgrades to the High Service Pumpstation)

Dear Madam/Sir:

We are the consulting engineers for the City of Kingsport, Tennessee. Pursuant to Paragraph 9 of the Revolving Fund Loan Agreement in the amount of \$7,000,000 to finance the above referenced project, you have requested that the City of Kingsport furnish you with our opinion as to certain matters. We are of the opinion:

1. The user charges implemented by the City of Kingsport, Tennessee are sufficient based on a Rate Study dated (insert date of rate study) to meet costs of operation and maintenance including depreciation and all debt service of the system; and
2. The estimated Project costs are reasonable; and
3. The estimated completion date of the Project will be (insert date project completion date).

Sincerely,

Name, Title
Firm

ATTACHMENT A

FEDERAL LAWS AND EXECUTIVE ORDERS

ENVIRONMENTAL:

Clean Air Act (Pub. L. 101-549, 42 U.S.C. § 7401, et seq.), as amended.

Endangered Species Act (Pub. L. 93-205, 16 U.S.C. § 1531, et seq.), as amended.

Environmental Justice, Executive Order 12898, 59 Fed. Reg. 7629 (1994), as amended.

Floodplain Management, Executive Order 11988 42 Fed Reg. 26951 (1977), as amended by Executive Order 12148, 44 FR 43239 (1979) (pertaining to Federal Emergency Management) and as further amended by Executive Order 13690, 80 FR 6425 (2015), as amended.

Protection of Wetlands, Executive Order 11990, 42 Fed Reg. 26961 (1977), as amended.

Farmland Protection Policy Act, (Pub. L. 97-98, 7 U.S.C. § 4201, et seq.), as amended.

Fish and Wildlife Coordination Act, (Pub. L. 85-624, 16 U.S.C. § 661 et seq.), as amended.

National Historic Preservation Act of 1966, (Pub. L. 113-287, 54 U.S.C. § 300101 et seq.), as amended.

Water Pollution Control Act of 1972, (Pub. L. 114-181, 33 U.S.C. § 1251 et seq.), as amended.

Safe Drinking Water Act (Title XIV of the Public Health Service Act, Pub. L. 93-523, 42 U.S.C. § 300f et seq.), as amended.

Wild and Scenic Rivers Act, (Pub. L. 90-542, 28 U.S.C. § 1271, et seq.), as amended.

Water Resources Reform and Development Act (WRRDA), (Pub. L. 113-121).

America's Water Infrastructure Act of 2018 (AWIA), (Pub. L. 115-270).

Archeological and Historic Preservation Act of 1974, (Pub. L. 86-523, 16 U.S.C. 469-469c), as amended

Improper Payment Elimination and Recovery Act of 2010, (31 U.S.C. § 3321 et seq.).

ECONOMIC AND MISCELLANEOUS AUTHORITIES:

Demonstration Cities and Metropolitan Development Act of 1966, (Pub. L. 89-754, 42 U.S.C. § 3331, et seq.), as amended.

Inter-governmental Review of Federal Programs, Executive Order 12372, 47 Fed. Reg. 30959 (1982), as amended.

Procurement Prohibitions under Section 306 of the Clean Air Act, 42 U.S.C. § 7606, and Section 508 of the Clean Water Act, 33 U.S.C. § 1368, including Executive Order 11738, 38 Fed. Reg. 25161(1973) (Administration of Clean Air Act and the Federal Water Pollution Control Act with Respect to Federal Contracts, Grants and Loans), as amended.

Uniform Relocation and Real Property Acquisition Policies Act (Pub. L. 91-646, 42 U.S.C. § 4601, et seq.), as amended.

Debarment and Suspension, Executive Order 12549, 51 Fed. Reg. 6370 (1986), as amended.

Kickbacks from Public Works Employees Prohibited, 18 U.S.C. § 874.

Requirements for Public Work Contractors to Comply with U.S. Dept. of Labor Regulations (Pub. L. 103-322, Title XXXIII, § 330016(1)(K), 40 U.S.C. § 3145), as amended.

Contract Work Hours and Safety Standards Act (Pub. L. 111-350, 40 U.S.C. § 3701, et seq.), as amended.

SOCIAL POLICY AUTHORITIES:

Age Discrimination in Employment Act (Pub. L. 114-181, 29 U.S.C. § 621, et seq.), as amended.

Title VI of Civil Rights Act of 1964 (Pub. L. 88-352, 42 U.S.C. § 2000d, et seq.), as amended, and related anti-discrimination statutes.

Section 504 of the Rehabilitation Act of 1973 (Pub. L. 93-112, 29 U.S.C. § 701), as amended, and Executive Order 12250 (45 Fed. Reg. 72995 (1980)).

Equal Employment Opportunity, Executive Order 11246 [30 Fed. Reg. 12319, 12935 (1965)].

Executive Order 11375 (32 Fed. Reg. 14303 (1967)), and Executive Order 13672 (79 Fed. Reg. 42971 (2014)).

Women's and Minority Business Enterprise Executive Orders 11625 (36 Fed. Reg. 19967 ((1971)), 12138 (44 Fed. Reg. 29637 (1979)), and 12432 (48 Fed. Reg. 32551 (1983)).

Section 129 of Small Business Administration Reauthorization and Amendment Act (Pub. L. 100-590, 15 USC § 637), as amended.



AGENDA ACTION FORM

Consideration of a Resolution Identifying the Primary Funding Source for the Lease of the Dental Clinic

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

Action Form No.: AF-384-2022
 Work Session: December 19, 2022
 First Reading: N/A

Final Adoption: December 20, 2022
 Staff Work By: Chris McCartt
 Presentation By: Chris McCartt

Recommendation:

Approve the Resolution.

Executive Summary:

In October of this year the BMA authorized the Mayor to sign a Memorandum of Understanding between the City of Kingsport, Ballad, University of Tennessee, and East Tennessee State University to establish a dental clinic with a goal of ultimately establishing a four year dental college. The MOU identified the role each entity would play to which the City of Kingsport was tasked with securing space for the clinic. In partnership with the University of Tennessee, the Kingsport Economic Development Board (KEDB) evaluated multiple properties and ultimately identified space located at 111 West Sevier Avenue (suite 220). KEDB has successfully negotiated a lease (attached) for this space which will be executed upon approval of this action form.

The City of Kingsport will be responsible for providing KEDB with funding on an annual basis to cover the lease. As stated in the MOU the City will work with the University of Tennessee to determine if funding through the Healthy Smiles Initiative can assist with covering a portion of the annual operating/lease costs. Additionally, City staff will evaluate other funding sources to support the overall project.

Attachments:

1. Resolution
2. MOU
3. Lease
4. Supplemental Information

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: *JW*

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

RESOLUTION NO. _____

A RESOLUTION AUTHORIZING THE IDENTIFICATION OF A PRIMARY FUNDING SOURCE FOR THE LEASE OF SPACE AT 111 WEST SEVIER AVENUE WHICH WILL SERVE AS THE SITE OF THE FUTURE DENTAL CLINIC TO BE ESTABLISHED IN COLLABORATION WITH EAST TENNESSEE STATE UNIVERSITY, UNIVERSITY OF TENNESSEE HEALTH SCIENCE CENTER AND BALLAD HEALTH

WHEREAS, on October 18th, 2022 the board passed Resolution No. 2023-094 which approved a memorandum of understanding (MOU) between the city, East Tennessee State University, University of Tennessee Health Science Center, and Ballad Health; and

WHEREAS, the MOU identified the respective roles of each party for the establishment of a dental clinic within the city's corporate limits with an ultimate goal of establishing a four year dental college within the corporate limits of the city; and

WHEREAS, city accepted the role of working with the Industrial Development Board of the City of Kingsport (KEDB) to identify and secure space to house the dental clinic; and

WHEREAS, in furtherance of this role the Industrial Development Board of the City of Kingsport (KEDB) has identified space located at 111 West Sevier Avenue which would meet the criteria set forth in the MOU for a dental clinic; and

WHEREAS, KEDB has successfully negotiated a lease for this space which will be executed once city has identified a funding source for the leased space.

Now therefore,

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

SECTION I. That a funding source be identified to contribute funds to KEDB on an annual basis to reimburse KEDB for the annual lease payments.

SECTION II. That the boards 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 20th day December, 2022.

PATRICK W. SHULL, MAYOR

ATTEST:

ANGELA MARSHALL, DEPUTY CITY RECORDER

APPROVED AS TO FORM:

RODNEY B. ROWLETT, III, CITY ATTORNEY

**Memorandum of Understanding
October 5, 2022**

This Memorandum of Understanding ("MOU") among the City of Kingsport, East Tennessee State University ("ETSU"), Ballad Health ("Ballad Health"), and the University of Tennessee, on behalf of its Health Science Center ("UTHSC"), collectively referred to as the "Parties," outlines mutual objectives related to dental education and dental care in the Appalachian Highlands Region ("Region").

Whereas UTHSC offers a broad range of postgraduate and selected baccalaureate training opportunities across six colleges: Dentistry, Graduate Health Sciences, Health Professions, Medicine, Nursing and Pharmacy and UTHSC also educates and trains cohorts of medicine, pharmacy, and health professions students — in addition to medical residents and fellows — at its major sites in Memphis, Knoxville, Chattanooga, and Nashville;

Whereas UTHSC's College of Dentistry was founded in 1878 and is the third oldest public college of dentistry in the United States and was relocated from Nashville to Memphis in 1911;

Whereas ETSU was founded in 1911 to improve the quality of life in the Region and conducts a comprehensive Academic Health Science Center ("ETSU Health"), which is composed of five colleges: medicine, nursing, pharmacy, public health, and clinical and rehabilitative health sciences that offers world-class health care in dozens of specialties and partners with health care providers such as Ballad Health, the Veterans Administration Medical Center, and other care delivery sites;

Whereas ETSU Health's College of Clinical and Rehabilitative Health Sciences maintains a competitive baccalaureate dental hygiene program with clinical rotations at facilities in Johnson City, Kingsport, and Bristol;

Whereas, the City of Kingsport through the creation and development of the academic village and the City's ongoing partnerships with several colleges and universities has demonstrated its commitment to advancing higher education in the region;

Whereas UTHSC and ETSU serve as the state's public academic health science centers, dedicated to providing education and access to care across the state;

Whereas Ballad Health is an integrated, innovative community health improvement organization serving approximately 1 million people in 29 counties in northeast Tennessee, southwest Virginia, northwest North Carolina, and southeast Kentucky;

Whereas Ballad Health operates a system of 21 hospitals, post-acute care and behavioral health services, and a large multi-specialty group physician practice that works closely with an independent medical community and has created the largest Accountable Care Community in the United States;

Whereas ETSU, Ballad Health, and UTHSC have a shared mission to enhance dental care access in the Appalachian Highlands Region;

Whereas the State of Tennessee seeks to address the critical need of increasing access to dental care, especially in high-risk populations, rural and underserved counties;

Whereas Tennessee currently has approximately 3,200 licensed dentists with 40% anticipated to retire over the next decade;

Whereas according to the American Dental Association (ADA), Tennessee currently has an estimated shortage of over 700 dentists state-wide, ranking 45th in the nation for the ratio of population to dentists with 89 (mostly rural) counties that are partially or fully designated as Dental Health Professional Shortage Areas;

Whereas in 2021, under the leadership of Governor Bill Lee, the Tennessee Department of Health convened a Working Group to develop recommendations for addressing the critical need for increased access to dental care;

Whereas based on the Work Group's proposal, the State subsequently approved a five-year \$94 million program to expand access to dental care known as the Healthy Smiles Initiative, which includes recommendations for funding to expand dental school classes at UTHSC;

Whereas the Working Group highlighted the importance of recruiting students from and placing residents in rural and underserved communities as a proven strategy for growing the number of dentists ultimately practicing in those communities; and

Whereas the City of Kingsport, UTHSC, ETSU, and Ballad Health believe that a strategic alliance will benefit the collective goals of bringing needed dental care and dental education to the Region to help fulfill the vision of Governor Lee and the Working group.

Now therefore, the Parties agree to collaborate in establishing dental training, education, and residency programs that will help address the dental workforce demands in the state while concurrently providing necessary dental care to the Region as follows:

The Parties will work together to:

1. Evaluate the patient population and dental care needs of the region.
2. Engage area dentists and members of the First District Dental Society.
3. Explore existing and needed dental specialty coverage.
4. Identify physical space within the corporate limits of the City of Kingsport for a clinic building within sufficient proximity of a Ballad Health hospital to support UTHSC dental students.

5. UTHSC will explore whether clinical operation funds from Healthy Smiles Initiative can potentially contribute, even if minimally and in good faith, to the building support kindly provided by the City of Kingsport.
6. Identify sources and models for start-up costs and sustained operational funding.
7. Develop a phased plan, actionable timeline, and outcome measures.
8. Develop and operate a dental clinic supported by Residents from Ballad Health.
9. Explore the establishment of a four-year full dental educational program (or potentially dental school) collaboratively within the corporate limits of the City of Kingsport

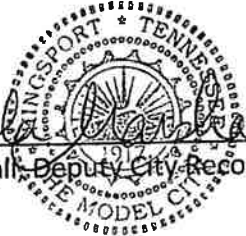
Following the Parties' work as set forth above, any binding agreements as to dental training, education, or residency programs developed under this MOU will be set out in formal written agreement(s) between the parties. Any party may terminate this MOU, without incurring any penalty or liability, by providing 90 days' written notice to the other two parties.

Patrick W. Shull

Patrick W. Shull, Mayor
City of Kingsport, Tennessee

Attest:

Angela Marshall
Angela Marshall, Deputy City Recorder

The seal of the City of Kingsport, Tennessee, is circular. It features a central sunburst design with the words "KINGSPORT * TENNESSEE" around the top and "THE MODEL CITY" around the bottom. The year "1912" is also visible in the center.

Approved as to form:

Rodney B. Rowlett, III
Rodney B. Rowlett, III City Attorney

Dr. Brian Noland

Dr. Brian Noland
President, East Tennessee State University

Alan Levine

Alan Levine
Executive Chairman, President, and Chief Executive Officer
Ballad Health

Peter F. Buckley, MD

Peter F. Buckley, MD
Chancellor, University of Tennessee Health Science Center

MEDICAL SPACE LEASE

This Lease is made and entered into as of the ____ day of _____, 2022, by and between **AW SEVIER CENTER, LLC, a Delaware limited liability company (“Landlord”)** and **THE INDUSTRIAL DEVELOPMENT BOARD OF THE CITY OF KINGSPORT, TENNESSEE (“Tenant”)**.

In consideration of the mutual promises, covenants and conditions herein contained and the Rent reserved by Landlord to be paid by Tenant, Landlord hereby leases to Tenant and Tenant hereby rents from Landlord, the Premises, upon the terms and conditions set forth herein.

SUMMARY OF TERMS

- A. **Landlord’s Address:** AW SEVIER CENTER, LLC
Attn: Brian K. Waxman
11780 US Highway One, Suite 305
North Palm Beach, Florida 33408
Phone (561) 687-5800
Fax (561) 689-1255
- B. **Tenant’s Address:** THE INDUSTRIAL DEVELOPMENT BOARD
OF THE CITY OF KINGSPORT, TENNESSEE
400 Clinchfield Street Suite 100
Kingsport, TN 37660
Fax:
Email:
- C. **Premises:** Suite 220 on the second floor of the Building, as
shown on the attached floor plan marked **Exhibit A**.
- D. **Rentable Area:** +/- **7,080** square feet.
- E. **Building and/or Facility:** The medical office building and/or facility known
as “Sevier Center Medical Building” and located
at 117 Sevier Avenue, Kingsport, Tennessee,
which facility is located upon land (the “**Land**”),
the legal description of which is attached hereto
and made a part hereof as **Exhibit A-1**.
- F. **Lease Term or Term:** The period commencing on the Commencement
Date and expiring on the date which is Six (6)
years following the Rent Commencement Date
(the “**Expiration Date**”); provided, however, if
the Rent Commencement Date shall occur on a

date other than the first day of a calendar month, the Lease Term shall be increased by the number of days in the partial month in which the Rent Commencement Date occurs.

G. Commencement Date and Rent Commencement Date:

The Commencement Date shall be January 1, 2023, which shall be the date that Landlord delivers possession of the Premises to Tenant for the purposes of Tenant's construction of the Tenant Improvements.

The Rent Commencement Date shall be January 1, 2023.

H. Lease Structure:

Net-Net-Net.

I. Base Rent:

<u>Period</u>	<u>Rate/PSF</u>	<u>Monthly Base Rent</u>
Months 1-12	\$ 0.01	\$5.90
Months 13-24	\$14.00	\$8,260.00
Months 25-36	\$14.42	\$8,507.80
Months 37-48	\$14.85	\$8,761.50
Months 49-60	\$15.30	\$9,027.00
Months 61-72	\$15.76	\$9,298.40

J. Additional Rent:

Tenant's Proportionate Share of Operating Expenses, Taxes and Insurance Premiums. The initial Additional Rent shall be payable in monthly installments of \$4,720.00, subject to annual adjustments as set forth herein. Notwithstanding anything contrary contained in this Lease, Tenant's Proportionate Share of Controllable Operating Expenses (as defined below) shall not increase annually by more than five percent (5%) on a calendar year basis, from one calendar year to the next calendar year during the Term. "Controllable Operating Expenses" means all Operating Expenses other than real estate taxes, insurance and utilities.

K. Rent:

Base Rent and Additional Rent, together with any other payment due from Tenant to Landlord or required to be paid by Tenant under this Lease.

- | | | |
|----|--------------------------------------|---|
| L. | Annual Escalations: | Base Rent shall increase annually by 3% of the immediately preceding Lease Year's Base Rent, as described in Paragraph I. above. |
| M. | Tenant's Proportionate Share: | The rentable area of the Premises divided by the rentable area of the Building (+/-27,652 sq. ft.), or 25.60%. |
| N. | Prepaid Rent: | The sum of \$4,725.90, which represents Base Rent and Additional Rent for the first calendar month of the Lease Term, which amount shall be delivered by Tenant upon execution of this Lease. |
| O. | Security Deposit: | The sum of \$12,980.00, which shall be delivered by Tenant upon execution of this Lease. |
| P. | Permitted Purpose: | Use of the Premises as a teaching and applications dental clinic for the University of Tennessee Dentistry School and related activities. |
| Q. | Broker(s) of Record: | Mitch Cox Realty representing the Landlord and TCI Group representing the Tenant, which are to be paid by Landlord per separate agreement. |

This Lease is comprised of: (i) the Summary of Terms set forth above, (ii) the Standard Lease Provisions hereinafter set forth, (iii) the Exhibits, and (iv) the Addenda (if any), all of which are incorporated herein by reference.

STANDARD LEASE PROVISIONS

1. "Base Rent". (a) Tenant covenants to pay to Landlord the Base Rent which shall be due and payable in monthly installments in advance, commencing on the Rent Commencement Date, and continuing on the first day of each calendar month during the Lease Term, without notice, demand, deduction or offset, except as otherwise expressly provided in this Lease, at Landlord's Address or such other office designated in writing by Landlord. Rent for any partial calendar month during the Term will be prorated on a *per diem* basis.

(b) For the purposes of this Lease, "Additional Rent" shall mean and refer to any and all amounts due from Tenant hereunder other than the Base Rent, expressly including, by way of illustration but not limitation, Tenant's Proportionate Share of Operating Expenses, Taxes and Insurance Premiums. Tenant will pay all sales taxes, governmental surcharges and the like levied or assessed against all rent payments due under this Lease simultaneously with each rent payment required.

(c) Other remedies for non-payment of rent notwithstanding, any payment of rent not paid within 10 days of the date due will be subject to a late payment charge, for each occurrence, equal to 4% of the amount overdue and payable. Such late charge will be due and payable with the

next succeeding rent payment. This late payment charge is intended to compensate Landlord for the additional administrative costs resulting from Tenant's failure to timely pay the rent and has been agreed upon by Landlord and Tenant after negotiation as a reasonable estimate of the additional administrative costs incurred by Landlord as a result of Tenant's failure to timely pay the rent. Such late charge will constitute additional rent. The covenants to pay rent under this Lease are independent of any other covenant. Further, in the event Tenant is late in the payment of Rent two (2) or more times in any twelve (12) month period, then at Landlord's election, and upon at least thirty (30) days' notice to Tenant, Landlord may require that all future payments of Rent and other amounts due hereunder be automatically set up and made in immediately available funds or by wire transfer by electronic fund transfer through the Automated Clearing House network or any similar system designated by Landlord ("ACH"). Such payments shall be initiated by Tenant or Landlord, at Landlord's election, to an account designated from time to time by Landlord at an ACH member bank for settlement not later than 12:00 o'clock noon, Eastern Standard Time, on the dates such sums or payments are respectively due. Any payment received after such time shall be deemed to have been made after the due date.

2. "Additional Rent". Tenant agrees as follows:

(a) In addition to the payment of Base Rent as herein provided, Tenant agrees to pay Landlord, Tenant's Proportionate Share of: (1) Operating Expenses as defined in (b) below, (2) real property taxes, special assessments and all other taxes and assessments and governmental charges, whether Federal, State, County or Municipal, levied or assessed against the real property and the improvements thereon, as well as all other taxes and assessments attributable to the Facility or its operations (excluding Federal, State, County or Municipal net income, excess profit, gift, estate, inheritance, franchise, excise and transfer taxes and any other taxes relating solely to the operation of Landlord's business (other than any taxes levied against rent) but not the Building or Land) (the "**Taxes**") and (3) Insurance Premiums. Subject to paragraph (c) below, the amounts provided for in this paragraph shall be paid by Tenant within thirty (30) days after the receipt of written notice of amounts due from Landlord.

(b) The term "**Operating Expenses**" as used herein shall include all direct and indirect costs of administration, operation and maintenance of the Facility and shall include the following by way of example and not by way of limitation: the cost of labor, materials and services for the operation and maintenance of the Facility, including, but not limited to, electric and natural gas charges, water and sewer charges, garbage and waste disposal (except for Hazardous Waste disposed of by Tenant as provided in Section 10 hereof), licenses, permits and inspection fees; assessments paid to any applicable condominium and/or property owners' associations; a reasonable management fee including an allowance to Landlord for Landlord's supervision and management; utilities for the Common Areas; elevator services; plumbing maintenance contracts; the cost of janitorial services for the Building; watchmen, guards and personnel engaged in administration operation and maintenance of the Facility together with payroll, taxes and any employee fringe benefits; expenses relating to Common Areas, landscaped and parking lot areas; driveway repairs and sealing; supplies; materials; tools and equipment; and shall include any repairs or replacements made to the existing Facility, building equipment or Common Areas (except that replacements in excess of \$5,000.00 for any one item in a calendar year shall be amortized over a life equivalent to that used for Landlord's income tax reporting procedure, but not to exceed five (5) years, with an appropriate amount to be allocated for each year including

and following the year of replacement). In order to avoid distortion and inequities, the following items shall also be considered to be "Operating Expenses" and shall be treated in the same manner as "replacements" made to the Facility, building equipment or Common Areas as set forth above: (1) repairs that extend the life of a component of the Facility; (2) capital items that produce a reduction in Operating Expenses; (3) capital items caused by governmental requirements imposed after the commencement of this Lease. The term "**Insurance Premiums**" shall include all insurance costs incurred by the Landlord on behalf of the Facility. Operating Expenses shall not include: (A) costs (including, without limitation, permit, license and inspection fees) of any alterations, renovations or improvements of, or decorating in, the Premises or any other tenant's premises in the Building; (B) principal or interest payments on loans secured by mortgages or trust deeds on the Building (except interest on any capital improvements permitted to be included in Operating Expenses under this Lease, or lease rentals paid or payable on any ground or underlying lease or expenses, fees and transaction costs (including, without limitation, legal fees) incurred in obtaining such loans or ground or underlying leases; (C) all expenses for which Landlord has received any reimbursement to the extent of such reimbursement including, without limitation, reimbursements from Tenant or other tenant (such as reimbursement for repairs) or pursuant to contractor's or other warranties or condemnation, other than matters paid as additional rent or rent adjustment or other tax or expense pass-through or escalation expressly provided for in a tenant lease; (D) attorneys' fees, costs and disbursements and other expenses incurred in connection with any matters related to Landlord which are not related to the maintenance, operation or repairing of the Building including, without limitation, any matter related to (i) the formation and continued existence of Landlord, (ii) any loans to Landlord relating to the Building, (iii) tenant leases, including, without limitation, negotiations with prospective tenants or disputes with or enforcement actions against any tenant, and (iv) the defense of Landlord's title to or interest in the Building; (E) expenses for repairs or other work occasioned by a casualty, to the extent that such expenses are required to be covered by Landlord's property insurance as described in this Lease provided that all costs which are not recoverable under such insurance as a result of any deductible amount shall be included as Operating Expenses; (F) depreciation and amortization except for that attributable to those capital improvements permitted to be included in Operating Expenses under this Lease; (G) real estate brokers' commissions or compensation and other expenses (including, without limitation, appraisal, architectural, space planning or engineering services) incurred in leasing or procuring tenants; (H) costs (including permit, license and inspection fees) incurred by the Landlord in connection with any construction which Landlord is obligated to perform pursuant to the this Lease or under any other tenant leases and the cost of correcting defects in such construction or in the elements of the Building (including, without limitation, the utility systems) or in the Building equipment (as opposed to the cost of normal repair, materials and equipment installed in the Building in light of their specifications); (I) the cost of any repair made by Landlord pursuant to or as a result of condemnation; (J) the cost of any repairs, alterations, additions, charges, replacements and other items not specifically permitted to be included under this Section 2(b) and which, under generally accepted accounting principles, are properly classified as capital expenditures; (K) a property management fee in excess of 5% of the gross revenues of the Land and Building; provided, however, that such cap on management fees will not apply to wages, salaries and benefits to management personnel; (L) executive salaries above the grade of "General Manager" and salaries of off-site management personnel except for the pro rata portion of the salaries of off-site management personnel attributable to time actually spent by such personnel at the Building in connection with the management thereof; (M) expenses incurred in connection

with services (including special service from Landlord's employees) or other benefits of a type which are not available or provided to Tenant but which are available to or provided to another tenant or occupant of the Building; (N) any interest or penalty charges incurred by Landlord due to the violation of any law or failure to pay obligations of the Landlord before they become delinquent (regardless of whether the payment of such obligations is reimbursed through Operating Expenses); (O) costs incurred by the Landlord to comply with or correct any violations of any governmental laws, rules and regulations existing as of the Commencement Date, including, without limitation, (i) costs to remove freon or other CFCs from the Building HVAC, (ii) costs to comply with the Americans With Disabilities Act (as in effect and as interpreted as of the date of this Lease), and (iii) costs of complying with existing environmental laws; and (P) payments in respect of profit to parties related to Landlord for services, supplies or materials to the extent that the cost of such services, supplies or materials exceeds the cost that would have been paid had such services, supplies or materials been provided by parties unaffiliated with the Landlord on a competitive basis.

(c) After the commencement of the Lease, Landlord may, one time per year, notify Tenant of the amount which Landlord estimates will be Tenant's monthly share of the Operating Expenses, Taxes and Insurance Premiums for the then applicable calendar year, and the amount of such estimate shall be added to and paid concurrently with the payment of the monthly Base Rent otherwise payable by Tenant under the Lease. Within 90 days after the end of each calendar year during the term of the Lease, or as soon thereafter as is commercially practicable, Landlord shall furnish Tenant with a statement (the "**Annual Statement**") which shall show (i) the Operating Expenses, Taxes and Insurance Premiums incurred during the preceding calendar year, (ii) Tenant's Proportionate Share thereof (calculated in accordance with the terms of this Lease), (iii) the total estimated payments made by Tenant during such calendar year and (iv) the balance due from Tenant or to be credited to Tenant, as applicable. If the actual amount of Tenant's Proportionate Share of Operating Expenses, Taxes and Insurance Premiums as shown on Landlord's Annual Statement (i) exceeds the amount previously paid by Tenant for such calendar year, Tenant shall pay Landlord the amount shown as due thereon, which payment shall be due within thirty (30) days of Tenant's receipt of the Annual Statement, or (ii) is less than the amount previously paid by Tenant, provided that Tenant is not in default hereunder, Tenant shall be credited the amount of such excess against the next succeeding monthly payment(s) of Rent (or, if such excess relates to the period during which the term of this Lease expires, such excess shall be refunded in cash to Tenant within thirty (30) days of Tenant's receipt of the Annual Statement). Landlord shall keep and make available to Tenant for a period of six months after its Annual Statement is rendered as provided in this Section, records of its expenditures for Operating Expenses, Taxes and Insurance Premiums and reasonable details of the matters included in the Annual Statement for the period covered by such statement and shall permit Tenant and Tenant's accountants to examine and audit such of its records as may be reasonably required to verify such statements, at reasonable times during business hours. Tenant may within six months after an Annual Statement is received, object to such Annual Statement by sending written notice to Landlord of Tenant's objections and specifying the respects in which such statement is claimed to be incorrect or objectionable. If the issues raised by such notice are not amicably settled between Landlord and Tenant within thirty (30) days after such written notice is sent, either party may refer the decision of the issues raised by such notice to a nationally recognized firm of certified public accountants, that is not being compensated on a contingency fee basis for the audit, selected by such party, and reasonably acceptable to the other, and the decision of such accountants shall be

conclusively binding upon the parties. The fees and expenses involved in such decision shall be borne by Tenant unless, in connection with the audit, it is demonstrated that Landlord overstated Operating Expenses (including Taxes and Insurance Premiums) by 5% or more in the aggregate (after netting any understated line items against overstated line items), in which case Landlord will pay such costs (which costs will not exceed the amount repaid or credited to Tenant). Landlord reserves the right to adopt a fiscal year for purposes of this Section, in which case the foregoing references to calendar year shall be modified to conform to Landlord's fiscal year. The obligations and liabilities of Landlord and Tenant under this Section shall survive the expiration or earlier termination of the Lease.

(d) Utilities. Landlord shall furnish the Premises with (i) electricity subject to the provisions set forth in this Lease; (ii) water; and (iii) sewerage. If Landlord reasonably determines that Tenant's consumption of water and/or electricity is in excess of that normally used by medical or office tenants, Landlord may (a) require Tenant to reimburse Landlord for any prior excessive use of water and/or electric, and (b) require such water and/or electric to be separately metered at Tenant's cost or, alternatively, may charge Tenant as rent a monthly sum for excess water and/or electric consumed in the premises.

3. Condition of the Premises and Tenant Improvements. Any obligation Landlord has to improve the Premises shall be particularly described in **Exhibit B** to this Lease. If such improvements are to be made in accordance with specific plans and specifications, those plans and specifications shall be more particularly described in said Exhibit. If there are no improvements set forth in **Exhibit B**, Tenant shall take possession of the Premises in an "as is" condition.

4. Default by Tenant. The following shall be deemed to be Events of Default by Tenant under this Lease:

(a) The failure of Tenant to pay any rent or any other sums of money due hereunder within 10 days after notice; or

(b) Tenant shall abandon the Premises; or

(c) Tenant shall fail to comply with any term, provision or covenant of this Lease, other than the payment of rent, and the failure is not cured within thirty (30) days after written notice to Tenant (provided that in the case of any default which cannot be cured by the payment of money and due diligence within such 30-day period, then the time for curing shall be extended for such period as may be necessary (not to exceed sixty (60) days) so long as Tenant is diligently and continuously attempting to cure in a manner reasonably satisfactory to Landlord); or

(d) Tenant shall fail to cure forthwith, immediately after receipt of notice from Landlord, any hazardous condition which Tenant has created or permitted in violation of law or of this Lease; or

(e) Tenant shall file a petition or be adjudged bankrupt or insolvent under the U.S. Bankruptcy Code, as amended, or any similar law or statute of the United States or any state; or a receiver or trustee shall be appointed for all or substantially all of the assets of Tenant; or

Tenant shall make a transfer in fraud of creditors or shall make an assignment for the benefit of creditors; or

(f) Tenant shall do or permit to be done any act which results in a lien being filed against the Premises or the Facility and such lien is not removed pursuant to Section 20 of the Lease; or

5. Remedies for Tenant's Default; Landlord's Default. (a) Upon the occurrence of any Event of Default set forth in the Lease, Landlord shall have the rights and remedies hereinafter set forth, which shall be distinct, separate and cumulative and shall not operate to exclude or deprive Landlord of any other right or remedy allowed it by law or in equity or elsewhere in this Lease:

(i) Landlord may terminate this Lease by giving to Tenant written notice of Landlord's election to do so, in which event the Term of this Lease (or any Renewal Term, if exercised) shall end, and all right, title and interest of Tenant hereunder shall expire, on the date stated in such notice;

(ii) Landlord may terminate Tenant's right to possession of the Premises without terminating this Lease by giving to Tenant written notice that Tenant's right of possession shall end on the date stated in such notice, whereupon the right of Tenant to possession of the Premises or any part thereof shall cease on the date stated in such notice; and

(iii) Landlord may enforce the provisions of this Lease and may enforce and protect the rights of Landlord hereunder by a suit or suits in equity or at law for the specific performance of any covenant or agreement contained herein, or for the enforcement or any other appropriate legal or equitable remedy, including without limitation injunctive relief, and for recovery of all moneys due or to become due from Tenant under any of the provisions of this Lease. Tenant agrees to reimburse Landlord on demand for any expenses which Landlord may incur in effecting compliance with Tenant's obligations under this Lease, including, without limitation, court costs and reasonable attorney's fees.

(b) If Landlord exercises either of the remedies provided in paragraphs (a)(i) and (ii) of this Section 5, Tenant shall surrender possession of and vacate the Premises and immediately deliver possession thereof to Landlord, and Landlord may then and at any time thereafter re-enter and take complete and peaceful possession of the Premises, with process of law, full and complete license so to do being hereby granted to Landlord, or may expel or remove Tenant and any others who may be occupying or within the Premises and remove any and all property therefrom, using such force as may be necessary, without being deemed in any manner guilty of trespass, eviction or forcible entry or detainer, and without relinquishing Landlord's rights to Rent or any other right given to Landlord hereunder or by law or in equity.

(c) If Landlord terminates the right of Tenant to possession of the Premises without terminating this Lease, such termination of possession shall not release Tenant, in whole or in part, from Tenant's obligation to pay the Rent hereunder for the full Term (or any Renewal Term, if exercised), and the aggregate amount of the Rent for the period from the date stated in the

notice terminating possession to the end of the Term (or any Renewal Term, if exercised), which shall be payable each month as provided in Section 1(a), minus any amount that Landlord receives from re-letting the Premises, together with any other moneys due hereunder, and Landlord shall have the right to recovery of all such amounts. Landlord shall make reasonable efforts to relet the Premises or any part thereof for the account of Tenant for such rent, for such time (which may be for a term extending beyond the Term of this Lease) and upon such terms as Landlord in Landlord's reasonable discretion shall determine. However, Landlord shall not be required to accept any tenant offered by Tenant or to observe any instructions given by Tenant relative to such reletting. Landlord shall also not be required to rent the Premises under less than market terms or to divert prospective tenants to the Premises from other parts of the Facility. Also, in any such case Landlord may make repairs, alterations and additions in or to the Premises and redecorate the same to the extent deemed by Landlord necessary or desirable, and in connection therewith Landlord may change the locks to the Premises, and Tenant shall upon demand pay the cost thereof together with Landlord's expenses of reletting, including without limitation, brokers' commissions. Landlord may collect the rents from any such reletting and apply the same first to the payment of the expenses of re-entry, redecoration, repair and alterations and the expenses of reletting and second to the payment of Rent herein provided to be paid by Tenant, and any excess or residue shall operate only as an offsetting credit against the amount of Rent as the same thereafter becomes due and payable hereunder, but the use of such offsetting credit to reduce the amount of Rent due Landlord, if any, shall not be deemed to give Tenant any right, title or interest in or to such excess or residue and any such excess or residue shall belong to Landlord solely; provided that in no event shall Tenant be entitled to a credit on its indebtedness to Landlord in excess of the aggregate sum (including Rent) which would have been paid by Tenant for the period for which the credit to Tenant is being determined, had no Event of Default occurred. No such re-entry or repossession, repairs, alterations, additions or reletting shall be construed as an eviction or ouster of Tenant or as an election on Landlord's part to terminate this Lease, unless a written notice of such intention is given to Tenant or shall operate to release Tenant in whole or in part from any of Tenant's obligations hereunder, and Landlord may, at any time and from time to time, sue and recover judgment for any deficiencies from time to time remaining after the application from time to time of the proceeds of any such reletting.

(d) In the event of the termination of this Lease by Landlord as provided in paragraph (a)(i) of this Section 5, Landlord shall be entitled to recover from Tenant all the fixed dollar amounts of Rent accrued and unpaid for the period up to and including such termination date, as well as all other additional sums payable by Tenant, which may be then owing and unpaid, and all costs and expenses, including without limitation court costs and reasonable attorneys' fees incurred by Landlord in the enforcement of its rights and remedies hereunder, and in addition, Landlord shall be entitled to recover as damages for loss of the bargain and not as a penalty (w) the unamortized cost to Landlord, computed and determined in accordance with generally accepted accounting principles, of the leasehold improvements, additions and alterations, if any, paid for by Landlord pursuant to this Lease, (x) the aggregate sum which at the time of such termination represents the excess, if any, of the present value of the aggregate rents at the same annual rate for the remainder of the Term (or Renewal Term, if exercised) as then in effect pursuant to the applicable provisions of this Lease, over the then present value of the then aggregate fair rental value of the Premises for the balance of the Term (or Renewal Term, if exercised), such present worth to be computed in each case on the basis of a per annum discount at one-half ($\frac{1}{2}$) of the prime rate as published each business day in the "Money Rates" section of the *Wall Street Journal*,

or its successor, as of the date of the Tenant's default hereunder, from the respective dates upon which such rentals would have been payable hereunder had this Lease not been terminated, and (y) any damages in addition thereto, including reasonable attorneys' fees and court costs, which Landlord shall have sustained by reason of the breach of any of the covenants of this Lease other than for the payment of Rent.

(e) If Landlord fails to perform any of its obligations under this Lease, Landlord will not be deemed to be in default unless obligations required of Landlord hereunder are not performed by Landlord within thirty (30) days after written notice thereof by Tenant to Landlord, which notice specifies that there has been a failure to perform such obligations; provided, however, that if the nature of such obligations is such that more than thirty (30) days are reasonably required for their cure, Landlord will not be deemed to be in default hereunder if Landlord commences such cure with reasonable promptness within such thirty (30) day period and thereafter diligently prosecutes such cure to completion. Tenant will also endeavor in good faith to give a copy of such notice to any lender or other lien holder with rights in all or any portion of the Building, whose names and addresses are furnished to Tenant in writing; provided, however, that Tenant shall not be considered in default of its obligations under this Lease if Tenant does not give such notice to any such lender or lien holder, subject to the second paragraph of this Section 5(e). However, if Landlord fails to cure such default within the time set forth above, then any lender or other lien holder with rights in all or any portion of the Facility will have the right to cure such default, but not the obligation to do so, within the same cure period afforded Landlord, or if such default cannot be cured within that time, then such additional time as may be necessary if within such thirty (30) days any such lender has commenced such cure and thereafter diligently prosecutes such cure to completion. If the alleged default involves a failure by Landlord to maintain, repair or replace any item that is Landlord's responsibility under Section 11 of this Lease, and Landlord fails to cure such default within the initial 30-day cure period (or if the nature of such cure is such that more than thirty (30) days are reasonably required, and Landlord fails to commence such cure within said 30-day period) then Landlord shall be deemed in default under this Lease. However, if Tenant desires to cure such default on Landlord's behalf, Tenant shall provide a second default notice of default to Landlord. Tenant's second notice shall specify the remedial action that Tenant proposes to undertake and shall be accompanied by a written work proposal from a reputable third-party contractor identifying the work to be undertaken by the contractor and the cost of the work. If (i) Landlord fails to cure such default within ten (10) days after receipt of Tenant's second notice of default (or if the nature of such cure is such that more than ten (10) days are reasonably required, and Landlord fails to commence sure cure within said 10-day period and thereafter diligently prosecute such cure to completion), (ii) the maintenance, repair or replacement does not affect the structure of the Building, the HVAC system or electrical, mechanical, plumbing or other lines or systems in the Building or the Building circuitry, and (iii) the written work proposal described above does not exceed \$10,000.00, then Tenant shall have the right, but not the obligation, to cure the default by having the third-party contractor complete the work described in the written work proposal furnished to Landlord. In that event, Landlord shall promptly reimburse the costs incurred by Tenant in curing such default upon receipt of an invoice (which shall not be in an amount materially greater than the proposal furnished to Landlord) from Tenant, which shall be accompanied by reasonable supporting documentation, including, without limitation, lien waivers. If Landlord fails to reimburse Tenant within thirty (30) days after receipt of Tenant's invoice, Tenant, in addition to all other available rights and remedies, shall have the right to deduct such unpaid amount from the next installment(s) of Rent due to Landlord until reimbursed in full.

Notwithstanding the foregoing, if Landlord disputes in good faith either the alleged default or the amount owed to Tenant, Landlord shall so notify Tenant in writing within ten (10) business days after receipt of Tenant's invoice. In that event, either Landlord or Tenant shall have the right to submit the dispute for resolution to an independent architect mutually selected by the parties. The decision of such architect shall be final and binding on the parties. If the architect rules in Tenant's favor and Landlord fails to reimburse Tenant for the costs incurred by Tenant in curing Landlord's default within thirty (30) days after the architect's decision is rendered, Tenant shall have the right to deduct such unpaid amount from the next installment(s) of Rent due to Landlord until reimbursed in full. Notwithstanding anything contained in this Section 5(e) to the contrary, (A) Landlord's maximum cumulative aggregate liability under this Section 5(e) in any 12 month period is limited to \$20,000.00; (B) Tenant will cause any work performed by Tenant under this self-help right to comply with applicable insurance requirements and with all applicable laws, codes and governmental regulations; and (C) Tenant's rights and Landlord's obligations under this Section 5(e) will be suspended during the existence and continuance of any Monetary Default. A "**Monetary Default**" means the failure of Tenant to pay any rent or any other sums of money due under this Lease within 10 days after notice from Landlord.

Tenant agrees that it will not exercise this self-remedy unless and until it has given the lender that holds the first priority mortgage or security interest on the Building a copy of Tenant's notice of Landlord's default and an opportunity to cure such default as provided above in the preceding paragraph.

6. Exemptions. Tenant hereby waives the benefit of any exemption under the homestead or bankruptcy laws or the benefit of any valuation and reappraisal laws as to the obligations of this Lease.

7. Assignment and Subletting.

(a) Tenant shall not, without the prior written consent of Landlord, and to the extent required under any applicable ground lease, ground lessor: (i) assign, convey or encumber this Lease or any interests under it; (ii) allow any transfer hereof or any lien upon Tenant's interest hereunder; (iii) sublet the Premises or any part thereof; or (iv) permit the use or occupancy of the Premises or any part thereof by any other individual, partnership or corporation, other than Tenant. The consent by Landlord to any assignment of this Lease or subleasing of the Premises will not be unreasonably withheld or delayed. Provided, however, Landlord hereby acknowledges that the Premises will be subleased to the University of Tennessee (or related entity) or a to be formed entity which shall operate the dental teaching and applications clinic and related services and Landlord hereby consents to and approves such a sublease provided that the subtenant shall be required to occupy the Premises in compliance with the applicable provisions of this Lease.

(b) Landlord's consent to any requested assignment of this Lease or subletting of all or any part of the Premises shall, at a minimum, be subject to the following conditions: (i) any such sublessee or assignee shall, in Landlord's reasonable discretion, be financially capable of performing its obligations with respect to the Premises; (iv) such sublessee or assignee shall assume and agree in writing to perform all of Tenant's obligations under this Lease insofar as they pertain to the space so sublet or assigned; (v) Tenant is not in default of any term or condition of this Lease at the time it requests Landlord's consent; (vi) the use proposed by such sublessee or

assignee shall not constitute a breach of this Lease or any applicable ground lease. The acceptance by Landlord of checks or cash from persons other than Tenant shall in no event evidence consent of Landlord to any assignment or sublease by Tenant.

(c) Landlord shall have the right to transfer and assign, in whole or in part, its rights and obligations in the Premises, the Facility and the property that are the subject of this Lease.

8. Repair and Maintenance; Tenant's Use of Premises. Landlord shall maintain the Facility Common Areas, exterior and interior walls, roof, foundation, all areas housing mechanical, plumbing and electrical equipment, all heating, ventilating and air conditioning (HVAC) equipment, except for the repair of damages occasioned by the acts or omissions of Tenant, which Tenant shall pay to Landlord in full. Landlord shall not be in default hereunder or be liable for any damages directly or indirectly resulting from, nor shall the Rent herein reserved be abated by reason of: (i) the installation, use or interruption of use of any equipment in connection with the furnishing of any of the foregoing services; (ii) failure to furnish or delay in furnishing any such services when such failure or delay is caused by accident or any condition beyond the reasonable control of Landlord or by the making of necessary repairs or improvements to the Premises or to the Facility; or (iii) any limitation, curtailment, rationing or restriction on use of water, electricity, or any other form of energy serving the Premises or the Facility. Landlord shall use reasonable and diligent efforts to remedy any interruption in the furnishing of such services to the extent such remedy is within Landlord's reasonable control.

Tenant may use the Premises for the Permitted Purpose specified in the Summary of Terms and none other; will not make or suffer any waste or nuisance upon the Premises; or make or permit any improper or offensive use thereof or any use which, directly or indirectly, is forbidden by public law, ordinance or governmental regulation or which may increase the premium cost of or invalidate any policy of insurance carried on the Facility or covering its operation; and will comply with the Rules and Regulations attached as Exhibit C, which Rules and Regulations are made a part of this Lease by reference, and such other reasonable rules and regulations as Landlord, upon written notice to Tenant, shall hereafter adopt, together with any rules and regulations as may be promulgated by a ground lessor under any applicable ground lease.

Tenant shall, at its sole cost and expense, comply with any and all requirements, pertaining to Tenant's use and occupancy of the Premises, of any insurance organization or company necessary for the maintenance of reasonable fire and public liability insurance, covering said Premises and appurtenances. Tenant shall comply with the provisions of any applicable ground lease, declaration of easements, covenants, conditions and restrictions, together with all other recorded covenants, conditions and restrictions, any applicable property and condominium owners' associations, and all zoning, fire and other governmental laws, ordinances, regulations or rules applicable to the Premises.

In accordance with the terms, conditions and provisions of that certain Ground Lease dated September 12, 2008, by and between Wellmont Health System, as ground lessor, and Landlord, as ground lessee (the "Ground Lease"), Tenant acknowledges and agrees that Tenant shall not conduct within the Premises any Prohibited Competitive Services, as defined in Exhibit D. Notwithstanding the immediately preceding sentence, it is understood and agreed that the

foregoing shall not apply to services that are routinely performed in a typical physician's office on hospital campuses in the county in which the Premises are located, as determined by ground lessor in its reasonable discretion.

9. Compliance with Laws. Tenant shall not use, or permit any other person to use, the Premises for any purpose tending to injure the reputation thereof, or of Landlord, or for any illegal, improper or offensive use, or any use not in compliance with all applicable public laws, ordinances, restrictions or regulations now in force or which may hereafter be enacted or promulgated. Landlord will be responsible for any repairs, additions, alterations or changes to the Premises and the Building that are necessitated by any governmental requirements that affect office buildings generally or the Building specifically and are not required solely because of the particular use (as opposed to mere medical office use) of the Premises by Tenant, subject to the right of Landlord to include the costs thereof in Operating Expenses to the extent permitted pursuant to Section 2(b) above. Tenant shall, at its sole cost and expense, comply with the laws, regulations and requirements of all county, state and federal authorities now in force, or which may hereafter be in force, pertaining to its occupancy and use of the Premises, and shall faithfully observe in the use of the Premises all county ordinances and state and federal statutes now in force or which may hereafter be in force. The judgment of any court of competent jurisdiction, or the admission of Tenant in any action or proceeding against Tenant, whether Landlord is a party thereto or not, that Tenant has violated any such ordinance or statute in the use of the Premises, shall be conclusive of that fact as between Landlord and Tenant.

10. Hazardous Waste. As used herein (i) "Hazardous Wastes" means all waste materials subject to regulation under the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §§ 9601, *et seq.*, or applicable state law and any other applicable federal, state, or local laws and their regulations now in force or hereafter enacted relating to hazardous waste disposal (except customary substances and materials in normal and reasonable amounts for medical tenants stored, used and disposed of in compliance with Environmental Laws) and (ii) "Toxic Substances" means and includes any materials present on the Facility which have been shown to have significant adverse effects on human health or which are subject to regulation under the Toxic Substances Control Act, 15 U.S.C. §§ 2601, *et seq.*, applicable state law, or any other applicable federal, state, or local laws now in force or hereafter enacted relating to toxic substances. "Toxic Substances" includes, but is not limited to, asbestos, polychlorinated biphenyls (PCB's), petroleum products (other than immaterial quantities in connection with the operation of combustion engines), and lead based paints. Tenant further agrees to comply with all requirements of the Federal Hazardous Substances Act, 15 U.S.C. §1261, *et seq.*, the Federal Water Pollution Control Act, 33 U.S.C. §1251, *et seq.* All such laws relating to hazardous waste disposal and toxic substances are collectively referred to herein as "Environmental Laws". Except for the use, in the ordinary course of Tenant's business as a teaching and applications dental clinic, of ordinary office supplies in customary quantities for office tenants and in compliance with Environmental Laws, Tenant and any sublessees, licensees, employees, contractors and invitees of Tenant, shall not be involved in any activity at the Facility which activity could involve or lead to (i) the use, generation, manufacture, storage, release or disposal of Hazardous Wastes or Toxic Substances, or (ii) the imposition of liability on Tenant or any other subsequent or former owner of the Facility or the creation of a lien on the Facility under any Environmental Laws. Tenant agrees to comply strictly and in all respects with the requirements of all Environmental Laws and shall promptly notify Landlord in the event of the discovery of Hazardous Wastes or Toxic Substances at the

Facility that is not in compliance with the requirements of this Section 10. Further, Tenant agrees to promptly forward to Landlord copies of all orders, notices, permits, applications, or other communications and reports that Tenant receives or of which Tenant otherwise becomes aware in connection with any discharge, spillage, use, or the discovery of Hazardous Wastes and Toxic Substances or any other matters relating to the Environmental Laws as they may affect the Facility that is not in compliance with the terms of this Section 10. Tenant agrees that in the event of the presence of any Hazardous Waste or Toxic Substances upon the Premises, whether or not the same originates or emanates from the Facility, or if Tenant shall fail to comply with any of the requirements of the Environmental Laws, Landlord may, at its election, but without the obligation to do so, (i) give such notices, (ii) cause such work to be performed at the Premises, or (iii) taken any and all other actions as Landlord shall deem necessary or advisable in order to abate, remove, and clean up the Hazardous Waste or Toxic Substance or otherwise cure Tenant's noncompliance.

Tenant shall indemnify, defend, protect and hold Landlord and each of Landlord's officers, directors, partners, employees, agents, successors and assigns harmless from and against any and all claims, liabilities, damages, costs, penalties, forfeitures, losses or expenses (including attorneys' fees) for death or injury to any person or damage to any property whatsoever arising or resulting, in whole or in part, directly or indirectly, from the presence or discharge of Hazardous Waste or Toxic Substances, in, on , under, upon or from the Premises or Facility or from the transportation or disposal of Hazardous Waste or Toxic Substances to or from the Premises or Facility to the extent caused by Tenant whether knowingly or unknowingly, the standard herein being one of strict liability. Tenant's obligations hereunder shall include, without limitation, and whether foreseeable or unforeseeable, all costs of any required or necessary repairs, clean-up or detoxification or decontamination of the Premises or Facility, and the performance of any remedial action in connection therewith, and shall survive the expiration or termination of this Lease. For purposes of the indemnity provided herein, any acts or omissions of Tenant, or its employees, agents, customers, sub-lessees, assignees, contractors or sub-contractors of Tenant (whether or not they are negligent, intentional, willful or unlawful) shall be strictly attributable to Tenant.

11. Services. Throughout the Lease Term, Landlord shall provide the Premises and the Facility with the following services, the cost of which shall be included in the Operating Expenses:

(a) Adequate heating and air-conditioning 24 hours a day, 7 days a week for the entire term of this Lease.

(b) Use of water, as supplied through the Facility piping, subject to the provisions of Section 2(d) of hereof.

(c) Use of electricity, subject to the provisions of Section 2(d) hereof.

(d) Normal and customary janitorial services.

(e) Toilet room supplies.

(f) Elevator Service.

In addition, during the Term, Landlord shall maintain in good working condition and repair all Common Areas and all structural elements, components and portions of the Facility, including, but not limited to, the roof, weight bearing walls and columns, footings, foundations and structural floors. Subject to any conditions, restrictions and limitations set forth in Section 2, all costs incurred by Landlord in performing such maintenance, repair and replacement will be included in Operating Expenses.

Landlord shall not be liable for the interruption of any of the above-mentioned services caused by repairs, renewals, improvements, alterations, strikes, lockouts, accidents, inability of Landlord to procure such services or to obtain fuel or supplies or other cause or causes beyond the reasonable control of Landlord. Any interruption of service shall never be deemed an eviction or disturbance of Tenant's use and possession of the Premises or Facility or any part thereof, or render Landlord liable to Tenant for damages, or relieve Tenant from performance of Tenant's obligation under this Lease. If any utility or other service described in this Section 11 is interrupted, Tenant will promptly notify Landlord in writing. If (a) any utility or other service described in this Section 11 is discontinued or interrupted and (b) such discontinuance or interruption is within Landlord's reasonable control, and (c) such discontinuance or interruption continues for at least 5 consecutive business days and renders all or a material portion of the Premises untenable for such period such that Tenant cannot and does not operate its business from the Premises or such portion for such period, then as Tenant's sole and exclusive remedy for such discontinuance or interruption Landlord will equitably abate Tenant's obligation to pay Tenant's Proportionate Share of Operating Expenses, Taxes and Insurance Premiums (as set forth in Section 2) beginning on the 6th business day after the later of (i) the first day of such interruption and (ii) the date of Landlord's receipt of Tenant's notice thereof, and ending on the date on which such service is substantially restored.

12. Claims for Damages. All personal property belonging to Tenant or to any other person, located in or about the Facility or the Premises, shall be there at the sole risk of Tenant or other such person, and except for Landlord's gross negligence or willful misconduct, neither Landlord nor Landlord's agents shall be liable for the theft or misappropriation thereof nor for any damage or injury thereto, nor for damage or injury to Tenant, its employees or invitees, or to other persons or to other property in and about the Facility, caused by water, fire, snow, frost, or other elements, steam, heat or cold, dampness, falling plaster, sewers or sewage, gas, odors, noise, the bursting or leaking of pipes, plumbing, electrical wiring and equipment and fixtures of all kinds or by any act or neglect of other lessees or occupants of the Facility or of any other person, or caused in any other manner whatsoever. Tenant shall give to Landlord, or its duly authorized agent, immediate written and telephone notice of any accidents to, or defects in any equipment or part of the Facility and of any fire, to the end that Landlord may promptly remedy such conditions. Tenant will protect, indemnify and save harmless Landlord from all losses, costs or damages sustained by reason of any act or other occurrence causing injury to any person and/or property whomsoever or whatsoever, due directly or indirectly to the use of the Premises or any part thereof by Tenant.

13. Condemnation. In the event that (i) the Premises, or any portion thereof, or (ii) 25% or more of the Facility or of the land on which the Facility is located, is condemned by any federal, state, county, or public authority or body, individual or corporate, authorized under any law, with the power of eminent domain, and by reason thereof (a) the Premises, or any portion thereof, or (b) 25% or more of the Facility or of the land on which the Facility is located, are taken

by such governmental or other duly constituted authority pursuant to such condemnation, this Lease, notwithstanding other provisions herein contained to the contrary, shall at the option of Landlord, thereupon terminate, and all further rights and/or obligations of either party hereto shall thereupon cease. Tenant shall have no right to receive from Landlord any compensation or any part thereof which Landlord shall have or may receive pursuant to such condemnation proceedings, except amounts specifically awarded for moving expenses. Notwithstanding anything to the contrary contained herein, in the event any applicable ground lease shall terminate as a result of any condemnation, this Lease shall automatically terminate and expire as of the date of such condemnation.

14. Casualty Damage.

(a) If the Premises or any part thereof are damaged by fire or other casualty, Tenant will give prompt written notice thereof to Landlord.

(b) If the Facility is damaged such that substantial alteration or reconstruction of the Facility is, in Landlord's reasonable judgment, required (whether or not the Premises are damaged by such casualty) or if any mortgagee of the Facility (or of the underlying land) requires that the insurance proceeds payable as a result of a casualty be applied to the payment of the mortgage debt or in the event of any material uninsured loss to the Facility, Landlord may, at its option, terminate this Lease by notifying Tenant in writing of such termination within 90 days after the date of such damage. In addition, if a substantial portion of the Facility is destroyed such that the Premises become untenable, then Landlord will select a registered architect licensed to do business in the State of Tennessee to estimate the time for completion. If such architect should certify that such work to the Premises cannot be accomplished by using standard working methods and procedures so as to make the Premises tenantable within 12 months from the date the rehabilitation is started or within 3 months from such date if the Lease Term has less than 12 months remaining, either party will have the right to terminate this Lease by giving to the other notice of such election within 30 days after Tenant's receipt of the architect's certificate. If said fire or other casualty results in the total destruction of the Facility, this Lease will automatically terminate as of the date of said fire or other casualty.

(c) If this Lease is not terminated pursuant to Section 14(b), then (i) Tenant will obtain the insurance proceeds on Tenant's trade fixtures and personal property in the Premises; (ii) Tenant will take such action as is necessary to make available applicable insurance proceeds on alterations and leasehold improvements which Tenant is required to insure in accordance with Section 22(a)(v), and Tenant will cause such insurance proceeds on such leasehold alterations and improvements for which Landlord paid, to be paid to Landlord; and (iii) Landlord will take such action as is necessary to make applicable insurance proceeds available with respect to the Facility and will commence and proceed with reasonable diligence to restore the Facility and the Premises. However, Landlord will not be obligated to spend for such work an amount in excess of the insurance proceeds actually received by Landlord as a result of the casualty. Tenant will be responsible for replacing and restoring Tenant's trade fixtures and personal property.

(d) Landlord will not be liable for any inconvenience or annoyance to Tenant or injury to the business of Tenant resulting in any way from such damage or the repair thereof,

except that Landlord will allow Tenant a fair diminution of rent during the time and to the extent the Premises are unfit for occupancy.

15. Subordination; Attornment; Notice to Landlord's Mortgagee.

(a) **Subordination.** This Lease shall be subordinate to any deed of trust, mortgage, or other security instrument (each, a "**Mortgage**"), and to any ground lease, master lease, or primary lease (each, a "**Primary Lease**"), that now or hereafter covers all or any part of the Premises (the mortgagee under any such Mortgage, beneficiary under any such deed of trust, or the lessor under any such Primary Lease is referred to herein as a ("**Landlord's Mortgagee**"). Any Landlord's Mortgagee may elect, at any time, unilaterally, to make this Lease superior to its Mortgage, Primary Lease, or other interest in the Premises by so notifying Tenant in writing. The provisions of this Section shall be self-operative and no further instrument of subordination shall be required; however, in confirmation of such subordination, Tenant shall execute and return to Landlord (or such other party designated by Landlord) within ten (10) days after written request therefor such documentation, in recordable form if required, as a Landlord's Mortgagee may reasonably request to evidence the subordination of this Lease to such Landlord's Mortgagee's Mortgage or Primary Lease (including a subordination, non-disturbance and attornment agreement) or, if Landlord's Mortgagee so elects, the subordination of such Landlord's Mortgagee's Mortgage or Primary Lease to this Lease.

(b) **Attornment.** Tenant shall attorn to any party succeeding to Landlord's interest in the Premises, whether by purchase, foreclosure, deed in lieu of foreclosure, power of sale, termination of lease, or otherwise, upon such party's request, and shall execute such agreements confirming such attornment as such party may reasonably request.

(c) **Notice to Landlord's Mortgagee.** Tenant shall not seek to enforce any remedy it may have for any default on the part of Landlord without first giving written notice by certified mail, return receipt requested, specifying the default in reasonable detail, to any Landlord's Mortgagee whose address has been given to Tenant, and affording such Landlord's Mortgagee a reasonable opportunity to perform Landlord's obligations hereunder.

(d) **Landlord's Mortgagee's Protection Provisions.** If Landlord's Mortgagee shall succeed to the interest of Landlord under this Lease, Landlord's Mortgagee shall not be: (i) liable for any act or omission of any prior lessor (including Landlord); (ii) bound by any rent or additional rent or advance rent which Tenant might have paid for more than the current month to any prior lessor (including Landlord), and all such rent shall remain due and owing, notwithstanding such advance payment; (iii) bound by any security or advance rental deposit made by Tenant which is not delivered or paid over to Landlord's Mortgagee and with respect to which Tenant shall look solely to Landlord for refund or reimbursement; (iv) bound by any termination, amendment or modification of this Lease made without Landlord's Mortgagee's consent and written approval, except for those terminations, amendments and modifications permitted to be made by Landlord without Landlord's Mortgagee's consent pursuant to the terms of the loan documents between Landlord and Landlord's Mortgagee; (v) subject to the defenses which Tenant might have against any prior lessor (including Landlord); or (vi) subject to the offsets which Tenant might have against any prior lessor (including Landlord) except for those offset rights which (A) are expressly provided in this Lease; (B) relate to periods of time following the

acquisition of the Building by Landlord's Mortgagee; and (C) Tenant has provided written notice to Landlord's Mortgagee and provided Landlord's Mortgagee a reasonable opportunity to cure the event giving rise to such offset event. Landlord's Mortgagee shall have no liability or responsibility under or pursuant to the terms of this Lease or otherwise after it ceases to own an interest in the Building. Nothing in this Lease shall be construed to require Landlord's Mortgagee to see to the application of the proceeds of any loan, and Tenant's agreements set forth herein shall not be impaired on account of any modification of the documents evidencing and securing any loan.

16. Entry by Landlord. Subject to the provisions of Section 42(e) below, Landlord and Landlord's agents shall have the right to enter the Premises at all reasonable times and upon reasonable notice for the purpose of examining or inspecting the same, to supply any services to be provided by Landlord hereunder, to show the same to prospective purchasers and prospective lessees of the Facility, and to make such alterations, repairs, improvements or additions to the Premises or to the Facility as Landlord may deem necessary or desirable. Landlord and Landlord's agents may enter the Premises at all times and without advance notice for the purpose of responding to an actual or apparent emergency. Landlord shall retain a master key to the Premises. If, during the last sixty (60) days of the term hereof, Tenant shall have removed substantially all of its property from the Premises, Landlord may immediately enter and alter, renovate and redecorate the Premises without elimination or abatement of rent or incurring liability to Tenant for any compensation.

17. Quiet Enjoyment. Landlord covenants that Tenant, on payment of all of the aforesaid installments of Rent and performing all the covenants and observing all the Rules and Regulations, shall and may peacefully and quietly have, hold and enjoy the Premises for the term aforesaid.

18. Common Areas and Parking. In addition to the use of the Premises during the Lease Term, subject to the terms of any applicable ground lease or any applicable declaration of easements, covenants, conditions and restrictions, Tenant shall have the right to non-exclusive use of the Common Areas, in common with Landlord, other Tenants, and the agents, employees and invitees of same. Tenant shall also have the right to use, in common with all other tenants and occupants of the Building, all Common Areas as hereinafter defined. "**Common Areas**" shall mean and include all entrances, lobbies, corridors, stairways, stairwells, public restrooms, elevators, parking areas, loading and unloading areas, trash areas, roadways, walkways, sidewalks, driveways, and landscaped areas, and other areas located in, on, adjacent to or under the Building or the Land and intended for the collective use of all tenants and occupants. Tenant shall have the non-exclusive use of parking areas adjacent to the Facility and located on the Land. Landlord shall have the right, without obligation, from time to time, to change the number, size, location, shape and arrangement of parking areas and other Common Areas, restrict parking of lessees or their guests to designated areas, designate loading or handicap loading areas, and to change the level or grade of parking. Except as otherwise specifically provided herein, all access roads; courtyards, and other areas, facilities or improvements furnished by Landlord are for the general and nonexclusive use in common of all occupants and invitees of the Landlord and those persons invited upon the land upon which the Facility is situated and shall be subject to the exclusive control and management of Landlord, and Landlord shall have the right, without obligation, to establish, modify and enforce such rules and regulations which the Landlord may deem reasonable

and/or necessary. Unless as otherwise provided, Tenant's use of the parking area, as herein set forth, shall be in common with other lessees of the Facility and other parties permitted by Landlord to use the parking area, and no specific designated parking spaces will be assigned to Tenant unless otherwise agreed by Landlord and Tenant in writing. The parking rights herein granted shall not be deemed a lease but shall be construed as a license granted by Landlord to Tenant for the term of this Lease.

19. Alterations. After Tenant has taken possession of the Premises, Tenant will make no structural alterations in or additions or improvements to the Premises without first obtaining the written consent of Landlord, in its reasonable discretion, who shall have the right to approve contractor and the plans for any such work. Tenant and Tenant's contractors and subcontractors shall comply with all rules, regulations and construction requirements promulgated from time to time by Landlord and pertaining to construction activities in, on or about the Premises and/or the Facility ("Landlord's Construction Requirements"). In the event that Landlord grants written consent to Tenant for the performance of approved additions or improvements to the Premises, all such additions or improvements to the Premises shall be made by Tenant at the expense of Tenant. Landlord agrees to provide reasonable access to portions of the Building outside of the Premises as necessary to make Tenant's improvements to the Premises.

All additions and improvements made in the Premises on Tenant's behalf (except movable office furniture, dental equipment (such as dental chairs, x-ray equipment, etc) and fixtures) shall become the property of Landlord immediately upon completion thereof; provided, however, that Landlord by giving written notice to Tenant not less than two (2) months prior to the expiration of this Lease, or any continuance or renewal thereof, may require Tenant to restore the Premises to the same condition in which they are at the commencement of this Lease. All alterations, additions or improvements made by Landlord at Tenant's request, shall be at Tenant's expense. Any charges coming due to Landlord for repairs, improvements, additions or alterations hereunder shall be payable within thirty (30) days after Landlord shall render and issue a statement therefor; and if Tenant fails to pay such charges within the thirty (30) day period, Landlord shall have the same rights and remedies with respect to said charges as it has with respect to the Rent.

Any construction or mechanic's lien (or any notice preliminary to lien) filed against the Premises or any part of the Facility, for any work performed or materials claimed to have been furnished to Tenant shall be discharged of record (or paid if notice is served) by Tenant in accordance with Section 20 hereof.

20. Liens. Tenant shall not permit any construction lien or other lien or claim for lien of any mechanic, laborer or supplier or any other lien to be filed against the Facility, the land on which the Facility is located, the Premises, or any part thereof, arising out of work performed, or alleged to have been performed, by or at the direction of or on behalf of Tenant. If any such lien or claim for lien is filed, Tenant within thirty (30) days either shall (a) have such lien or claim for lien released of record or (b) deliver to Landlord either: (i) a bond in form, content, amount and issued by surety reasonably satisfactory to Landlord, and recorded in the register of deeds of the county in which the lien was recorded in accordance with T.C.A. § 66-11-142, indemnifying Landlord and other designated by Landlord against all costs and liabilities resulting from such lien or claim for lien and the foreclosure or attempted foreclosure thereof, or (ii) endorsements to the title policies of Landlord and Landlord's mortgagee insuring over such liens reasonably

satisfactory to Landlord and Landlord's mortgagee, respectively. If Tenant fails to have such lien or claim for lien so released or to deliver such bond or title endorsement to Landlord, Landlord, without investigating the validity of such lien, may pay or discharge the same, and Tenant shall reimburse Landlord upon demand for the amount so paid by Landlord, including Landlord's expenses and attorneys' fees.

21. Notices. All notices required by this Lease shall be in writing and shall be delivered by hand, certified mail or express mail either to Tenant or Landlord at the addresses listed in the Summary of Terms. Any party may change its address for purposes of notice by delivering written notice to the other party in accordance with the provisions of this paragraph.

Unless otherwise expressly provided herein, all notices, to be effective, shall be in writing (including by facsimile), and shall be deemed received (a) if personally delivered, then on the date of delivery, (b) if sent by overnight, express carrier, then on the next federal banking day immediately following the date sent, or (c) if sent by certified mail, then on the earlier of the third federal banking day following the day sent or when actually received, or (d) in the case of facsimile notice, when sent and electronically confirmed. All notices delivered pursuant to this Section shall also be sent via email to the email address provided to one another by Tenant and Landlord.

22. Insurance and Indemnity.

(a) It is understood and agreed that Tenant, at its sole cost and expense, shall keep in force at all times during the term of this Lease, with companies with a Best's Rating of at least A- VIII or better (except as otherwise provided below), licensed or authorized to do business in the state in which the Facility is located, (i) commercial general liability insurance, insuring against claims for bodily injury, personal and advertising injury and property damage, occurring upon, in or about the Premises, the Facility, (including, without limitation, bodily injury, death or property damage resulting directly or indirectly from any change, alteration, improvement or repair thereof) with limits not less than \$1,000,000.00 per occurrence and \$1,000,000 annual aggregate on a per location basis, such coverage shall include contractual liability, be on an occurrence basis not claims made, contain a standard separation of insureds provision and contain an exception to any pollution exclusion which insures damage or injury arising out of heat, smoke or fumes from a hostile fire; (ii) if Tenant owns any automobiles that will be at the Building, then business auto liability with limits not less than \$1,000,000 each accident for bodily injury and property damage claims arising out of Tenant's ownership, maintenance or use of "any auto"; (iii) workers compensation insurance in statutory limits (including employers liability insurance); (iv) all risk property insurance covering all of Tenant's personal property, inventory, equipment, fixtures, alterations and improvements at the Premises, whether installed by Landlord or Tenant, up to the replacement value of such property. Any deductibles selected by Tenant shall be the sole responsibility of Tenant.

(b) All liability insurance policies referred to herein (except employers' liability) shall name Landlord, its investment manager, property manager and any other parties designated in writing by Landlord or Landlord's agent as an additional insured, and shall provide that the same may not be canceled or altered below the required coverages except upon thirty (30) days prior written notice to Landlord. All insurance maintained by Tenant shall be primary and

non-contributory to any insurance maintained by Landlord or additional insureds. Tenant shall obtain and deliver to Landlord a certificate evidencing the naming of Landlord as an additional insured as soon as it is available. All property insurance shall name Landlord as loss payee as respects Landlord's interest in any alterations or improvements. Tenant shall provide certificate(s) of all such insurance to Landlord upon commencement of the Term and not more than thirty (30) days after any renewal date for such insurance and upon request from time to time. The limits of such insurance shall not, under any circumstances, limit the liability of Tenant hereunder. If Tenant fails to insure or fails to furnish any such insurance certificate, Landlord shall have the right, but not be required to, from time to time to effect such insurance for the benefit of Tenant or Landlord or both of them, and Tenant shall pay to Landlord on written demand, as additional rent, all premiums paid by Landlord. If Tenant uses the Premises for purposes other than medical, dental clinic or school or business offices and Landlord determines in its reasonable judgment that Tenant's use of the Premises creates greater risks than the parties originally contemplated, then Landlord may require Tenant to increase the coverage limits to amounts comparable to the limits carried by others using space for the same purposes and require additional insurance coverage comparable to the coverage carried by others using space for the same purposes.

(c) Notwithstanding anything to the contrary in this Lease, Landlord and Tenant each waives all rights to recovery, claims or causes of action against the other and the other's agents, trustees, officers, directors and employees on account of any property loss or damage which may occur to the Premises, the Building or any improvements thereto or to any personal property of such party to the extent such property loss or damage is caused by a peril which is required to be insured against under a property insurance policy pursuant to this Lease, regardless of the cause or origin (including negligence of the other party). Landlord and Tenant each covenants to the other that, to the fullest extent permitted by law, no property insurer shall hold any right of subrogation against the other party. Tenant covenants to Landlord that all policies of insurance maintained by Tenant respecting property damage shall permit such waiver of subrogation, and Tenant agrees to advise all of its insurers in writing of the waiver.

(d) Tenant shall indemnify and hold harmless Landlord and any mortgagee of the Facility (or of the underlying land) from and against any and all claims (other than claims arising solely from the negligence or willful misconduct of Landlord or its employees or agents) arising from (i) the Tenant's use and occupancy of the Premises (including but not limited to statutory liability and liability under worker's compensation laws), (ii) any breach or default in the performance of any obligation on the Tenant's part to be performed under the terms of this lease, (iii) any act or negligence of the Tenant, or any partner, officer, agent, employee, guest, or invitee of the Tenant, and (iv) all costs, attorney's fees, expenses and liabilities incurred in or about any such claim or any action or proceeding brought thereon, and, in any case, action or proceeding brought against the Landlord or any mortgagee of the Facility (or of the underlying land), by reason of any such claim. The Tenant, upon notice from the Landlord or any mortgagee of the Facility (or of the underlying land), shall defend the same at the Tenant's expense by counsel approved in writing by the Landlord. Landlord shall indemnify and hold harmless Tenant from and against any and all claims arising from the gross negligence or willful misconduct of Landlord, its employees, agents, contractors or invitees in, upon, or about the Premises or Facility.

23. Use Restrictions.

(a) Tenant and any other individual or entity occupying or using the Premises agree to use the Premises at all times for the medical office uses set forth in the Summary of Terms and for no other purpose. The foregoing sentence shall not be construed as a covenant of continuous operation.

(b) Tenant shall be responsible, at its sole cost and expense, for the safe and complete disposal of all items, instruments or things which are utilized by Tenant, its agents or employees, in the treatment of patients or other individuals treated upon the demised premises, including, but not limited to: needles, syringes, bandages, medical instruments, tissues, containers, receptacles, swabs, etc., as well as any and all potentially, possibly or actually contaminated, hazardous, diseased, infected or infectious material, substance or thing utilized or brought upon the premises by Tenant or others. All such disposal shall comply fully with all applicable laws and regulations.

(c) In the event the installation of any radiological equipment is permitted by the Landlord, which permission will not be unreasonably withheld, then the installation and maintenance of such equipment must comply with the minimum protective safety standards as prescribed by the Board of Health of the State of Tennessee, and all expenses for such compliance shall be paid by the Tenant.

(d) Tenant and each individual conducting the practice of medicine in the Premises agree not to allow the Premises to be used for the performance of abortions, euthanasia, or direct surgical sterilizations.

(e) Tenant shall indemnify, defend and hold Landlord harmless from and against all liability, expense and loss resulting from Tenant's violation of this Lease, including any violation of any laws, ordinances and regulations applicable to the use and occupancy of the Premises, whether from negligence or willful act of Tenant or any person on the Premises by license or invitation of Tenant, or occupying under Tenant.

24. Miscellaneous.

(a) The failure of Landlord or Tenant to enforce in any one or more instances any term, condition, rule, regulation or covenant as to which the other party shall breach or be in default, shall not be deemed to waive the right of such party to enforce the same or any subsequent breach or default notwithstanding that such party had knowledge of such breach or default at the time of the receipt of any rent or other sums by such party, whether the same be that originally reserved or that which may be payable under any of the covenants or agreements herein contained, or any portion thereof. No waiver or modification of this Lease or any release or surrender of the same shall be claimed by either party unless such waiver or modification, or release or surrender, be in writing, signed by the other party.

(b) Each provision hereof shall be binding upon Landlord and Tenant, and as the case may be, (i) Landlord's successors and assigns; (ii) Tenant's legatees, executors, and administrators if Tenant is an individual; (iii) Tenant's successors if Tenant is a corporation; and

(iv) Tenant's assigns. Each provision hereof shall inure to the benefit of Landlord and Tenant, and as the case may be, (i) Landlord's successors and assigns; (ii) Tenant's legatees, executors, and administrators if Tenant is an individual; (iii) Tenant's successors if Tenant is a corporation; and (iv) Tenant's assigns.

(c) The parties hereto agree that whenever the word "Tenant" and/or "party" is used herein, it shall be construed to mean Tenants and/or parties, if there be more than one, and generally, feminine or neuter pronouns shall be substituted for those of the masculine form and vice versa, and the plural is to be substituted for the singular number in any place or places herein in which the context shall require such substitution.

(d) If there is more than one entity or person which or who are the Tenants under this Lease, the obligations imposed upon Tenant under this Lease shall be joint and several.

(e) Landlord, during the entire term of this Lease, shall have the right to change the number and name of the Facility at any time without liability to Tenant.

(f) Tenant acknowledges and agrees that it has not relied upon any statements, representations, agreements or warranties, except such as are expressed in this Lease.

(g) This Lease shall be governed by and construed in accordance with the laws of the State of Tennessee without regard to its conflict of laws provisions. Tenant will not interpose any counterclaim of any kind in any action or proceeding by Landlord to recover possession of the Premises based on nonpayment of rent except for 'compulsory' counterclaims, if any, which would be lost if not raised at such action or proceeding and could not be brought in a separate action or proceeding.

(h) This Lease may be executed in counterparts, each of which shall be deemed an original, but all of which when taken together shall constitute one and the same instrument. To facilitate the execution of this Lease, each of the parties hereto may execute and exchange by telephone facsimile counterparts of the signature pages, with each facsimile being deemed an "original" for all purposes. Each of the undersigned parties authorizes the assembly of one or more original copies of this Lease through the combination of the several executed counterpart signature pages with one or more bodies of this Lease, including the Exhibits, if any, to this Lease, such that this Lease shall consist of the body of the Lease, counterpart signatures pages which collectively will contain the signatures of the undersigned parties hereto, and the Exhibits, if any, to this Lease. Each such compilation of this Lease shall constitute an original of this Lease.

(i) This Lease, together with any written modifications or amendments hereto, hereinafter entered into, shall constitute the entire agreement between the parties and shall supersede any prior agreements or understandings if any, whether written or oral, which the parties may have had relating to the subject matter hereof. Landlord and Tenant expressly agree that there are and shall be no implied warranties of merchantability, habitability, fitness for a particular purpose or warranty of any kind arising out of this Lease and that there are no warranties which extend beyond those expressly set forth in this Lease. It is likewise agreed that this Lease may not be altered, waived, amended or extended except by an instrument in writing signed by both Landlord and Tenant.

25. Security Deposit. It is agreed that Tenant, concurrently with the execution of this Lease, has deposited with Landlord, and will keep on deposit at all times during the Term hereof, the Security Deposit, the receipt of which is hereby acknowledged, as security for the payment by Tenant of the rent and all other sums herein agreed to be paid and for the faithful performance of all the terms, conditions and covenants of this Lease. If, at any time during the term hereof, Tenant shall be in default in the performance of any provisions of this Lease, Landlord shall have the right, but shall not be obligated, to use the Security Deposit, or so much thereof as necessary, in payment of any rent in default, reimbursement of any expense incurred by Landlord, and in payment of any damages incurred by the Landlord by reason of Tenant's default. In such event, Tenant shall, on written demand of Landlord, forthwith remit to Landlord a sufficient amount in cash to restore the Security Deposit to its original amount. In the event the Security Deposit has not been utilized as aforesaid, the Security Deposit, or as much thereof as has not been utilized for such purposes, shall be refunded to Tenant, without interest, within sixty (60) days after the termination of this Lease upon full performance of this Lease by Tenant and vacation of the Premises by Tenant. Landlord shall have the right to commingle the Security Deposit with other funds of Landlord. Landlord may deliver the Security Deposit to any purchaser of Landlord's interest in the Premises in the event such interest is sold or transferred, and thereupon Landlord shall be discharged from further liability with respect to such deposit. If the claims of Landlord exceed the amount of the Security Deposit, Tenant shall remain liable for the balance of such claims.

26. No Security Interest. Landlord hereby waives any right it may have at law or in equity to any landlord's lien on or right to distrain for Tenant's work papers, client files or other client data, computer data, software or media, accounting or other records, furniture, movable equipment, trade fixtures and other personal property.

27. Holding Over. Should Tenant, with Landlord's written consent, hold over after the termination of this Lease and continue to pay rent, Tenant shall become a lessee from month to month only upon each and all of the terms herein provided as may be applicable to such month to month tenancy and any such holding over shall not constitute an extension of this Lease. During such holding over, Tenant shall pay monthly rent equal to one hundred fifty percent (150%) of the last monthly rental rate and the other monetary charges as provided herein and, in addition, Tenant will pay Landlord all damages sustained by reason of Tenant's holding over. Such tenancy shall continue until terminated by Landlord, with at least 30 days prior written notice to Tenant, or until Tenant shall have given to Landlord at least thirty (30) days written notice prior to the last day of the calendar month intended as the date of termination of such month to month tenancy.

28. Surrender and Notice. Upon the expiration or earlier termination of this Lease, Tenant shall promptly quit and surrender to Landlord the Premises broom clean, in good order and condition, ordinary wear and tear and loss by fire or other casualty excepted, and Tenant shall remove all of its movable furniture and other effects and such alterations, additions and improvements as Landlord shall require Tenant to remove pursuant to Section 19 hereof. In the event Tenant fails to so vacate the Premises on a timely basis as required, Tenant shall be responsible to Landlord for all costs and damages, including, but not limited to, any amounts required to be paid to third parties who were to have occupied the Premises, incurred by Landlord as a result of such failure, plus interest thereon at rate equal to the prime loan rate for the most recent week for which such an average rate has been published by the board of governors Federal Reserve plus four percent (4%), not to exceed twenty-four percent (24%), on all amounts not paid

by Tenant within five (5) days of demand until paid in full. No act or thing done by Landlord, its agents or employees during the Lease Term will be deemed an acceptance of a surrender of the Premises, and no agreement to accept a surrender of the Premises will be valid, unless in writing signed by Landlord. The delivery of keys to any of Landlord's agents or employees will not operate as a termination of this Lease or a surrender of the Premises.

29. Brokerage. Tenant represents and warrants that it has dealt with no broker in the negotiation of this Lease other than the Broker(s) of Record set forth in the Summary of Terms. Other than the Broker(s) of Record, Tenant acknowledges and agrees that Landlord shall have no obligation for payment of any brokerage fee or similar compensation to any person with whom Tenant has dealt or may in the future deal with respect to leasing of any additional or expansion space in the Facility or renewals or extensions of this Lease. Tenant hereby agrees to indemnify and hold the Landlord harmless of and from any and all loss, costs, damages or expenses (including, without limitation, all attorneys' fees and disbursements) by reason of any claim of or liability to any broker or person claiming through Tenant and arising out of or in connection with the negotiation, execution and delivery of this Lease, other than the Broker(s) of Record. Additionally, in the event any claim shall be made against Landlord by any broker (other than the Broker(s) of Record) who shall claim to have negotiated this Lease on behalf of Tenant or to have introduced Tenant to the Facility or to Landlord, Tenant shall be liable for payment of all reasonable attorneys' fees, costs and expenses incurred by Landlord in defending against the same, and in the event such broker shall be successful in any such action, Tenant shall, in addition, make payment to such broker.

30. Taxes. Tenant shall be liable for and shall pay before delinquency any liability in connection with all taxes levied against any personal property, fixtures, machinery, equipment, apparatus, systems and appurtenances placed by or on behalf of Tenant in or about or utilized by Tenant in, upon or in connection with the Premises ("Equipment Taxes"). If any Equipment Taxes are levied against Landlord or Landlord's property or if the assessed value of Landlord's property is increased by the inclusion therein of a value placed upon such personal property, fixtures, machinery equipment, apparatus, systems or appurtenances of Tenant, and if Landlord, after written notice to Tenant, pays the Equipment Taxes or taxes based upon such an increased assessment (which Landlord shall have the right to do regardless of the validity of such levy, but under proper protest if requested by Tenant prior to such payment and if payment under protest is permissible), Tenant shall pay to Landlord upon demand, as hereunder, the taxes so levied against Landlord or the proportion of such taxes resulting from such increase in the assessment.

31. Estoppel Certificates. Tenant agrees to furnish from time to time, upon thirty (30) days prior request of Landlord or Landlord's mortgagee, a statement certifying, if applicable, that Tenant is in possession of the Premises; that the Premises are acceptable; that all work required to be performed by Landlord has been completed in accordance with the provisions of the Lease; that Landlord has no current obligation to reimburse the Tenant for tenant improvement work, money amount or similar amount under the Lease; and this Lease is in full force and effect; that the Lease is unmodified; that Tenant claims no present charge, lien or claim of offset against rent; that the rent is paid for the current month but is not prepaid for more than one month and will not be prepaid for more than one month in advance; that there is no existing default by reason of some act or omission of Landlord; and such other matters as may be reasonably required by Landlord or Landlord's mortgagee.

32. Intentionally Omitted.

33. Rights Reserved to Landlord. Landlord shall have the following rights without liability to Tenant for damage or injury to property, person or business (all claims for damage being hereby waived and released), and without effecting an eviction or disturbance of Tenant's use or possession of the Premises or giving rise to any claim for setoffs or abatement of rent: (i) to decorate, remodel, repair, alter or otherwise prepare the Premises for re-occupancy during the last six (6) months of the Term hereof (or any Renewal Term, if exercised) if, during or prior to such time, Tenant has vacated the Premises, or at any time after Tenant abandons the Premises; and (ii) to grant to anyone the exclusive right to conduct any business or render any service in the Facility, provided such exclusive right shall not operate to exclude Tenant from the use expressly permitted by this Lease.

34. WAIVER OF TRIAL BY JURY AND COUNTERCLAIMS. LANDLORD AND TENANT AGREE THAT THEY SHALL, AND THEY HEREBY DO, WAIVE TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM BROUGHT BY EITHER OF THE PARTIES HERETO AGAINST THE OTHER ON ANY MATTERS WHATSOEVER ARISING OUT OF, OR IN ANY WAY CONNECTED WITH, THIS LEASE. IF LANDLORD COMMENCES ANY SUMMARY PROCEEDING FOR NON-PAYMENT OF RENT OR ADDITIONAL RENT, TENANT WILL NOT INTERPOSE ANY COUNTERCLAIM IN SUCH PROCEEDING UNLESS SUCH COUNTERCLAIM ARISES OUT OF, OR IS IN ANY WAY CONNECTED WITH THIS LEASE.

35. Force Majeure. Wherever there is provided in this Lease a time limitation for performance by Landlord or Tenant (other than payment of rent by Tenant) of any obligation including, but not limited to, obligations related to construction, repair, maintenance or service, the time provided for shall be extended for as long as and to the extent that delay in compliance with such limitation is due to an act of God, governmental control or other factors beyond the reasonable control of Landlord.

36. Liability of Landlord. Landlord's liability under this Lease shall be limited to Landlord's interest in the Facility (or to the proceeds thereof) and no other property or other assets of Landlord shall be subject to levy, execution or other enforcement procedure for the satisfaction of Tenant's remedies under or with respect to this Lease, the relationship of Landlord and Tenant hereunder or Tenant's use and occupancy of the Premises. Nothing contained in this paragraph shall be construed to permit Tenant to offset against rents due a successor landlord, a judgment (or other judicial process) requiring the payment of money by reason of any default of a prior landlord, except as otherwise specifically set forth herein.

37. Intentionally Omitted.

38. Access. Except as otherwise provided in this Lease, Tenant shall be granted access to the Facility twenty-four (24) hours per day, seven (7) days per week, every day of the year.

39. Recordation. Tenant agrees not to record this Lease or any memorandum hereof but Landlord may record this Lease or a memorandum thereof, at its sole election. Upon expiration of earlier termination of this Lease, Tenant will, promptly upon Landlord's written request,

execute, acknowledge and deliver to Landlord a recordable deed quit-claiming to Landlord all interest of Tenant in the Premises, the Facility and this Lease.

41. Signage. Landlord shall provide to Tenant standard signage in the building directory. In addition, Landlord will provide standard building signage at the entry of the Premises. All other signage shall be subject to the prior written approval of Landlord in its sole discretion, and shall be provided at Tenant's sole cost and expense.

42. Healthcare Regulatory Matters. (a) Landlord represents and warrants to Tenant that Landlord (i) is not currently excluded, debarred or otherwise ineligible to participate in Medicare or any federal health care program under section 1128 and 1128A of the Social Security Act or as defined in 42 U.S.C. § 1320a-7b(f) (the "**Federal Health Care Programs**"); (ii) has not been convicted of a criminal offense related to the provision of healthcare items or services but has not yet been excluded, debarred, or otherwise declared ineligible to participate in any Federal Health Care Program; and (iii) is not under investigation or otherwise aware of any circumstances which may result in Tenant being excluded from participation in any Federal Health Care Program. The foregoing representation shall be an ongoing representation and warranty during the term of the Lease and Landlord shall immediately notify Tenant of any change in the status of the representation and warranty set forth in this Section, at which time Tenant will have the right to immediately terminate the Lease.

(b) Upon the written request of the Secretary of the U.S. Department of Health and Human Services, the U.S. Comptroller General of the Government Accounting Office, or their authorized representatives, Landlord shall make available the Lease and all books, documents, and records necessary to certify the nature and extent of Landlord's costs with respect to the Lease and the Premises for a period of four (4) years after performing its duties hereunder. If the Landlord carries out any of its duties under the Lease through a subcontract worth \$10,000 or more over a 12-month period, the subcontract will also contain an access clause to permit access by the Secretary, Comptroller General, and their authorized representatives to such subcontractor's books and records.

(c) Landlord and Tenant enter into the Lease with the intent of conducting their relationship and implementing the agreements contained herein in full compliance with applicable federal, state and local law, including without limitation, the Medicare/Medicaid Anti-Kickback statute (the "**Anti-Kickback Law**") and Section 1877 of the Social Security Act (the "**Stark Law**"), as amended. Notwithstanding any unanticipated effect of any of the provisions of the Lease, neither party will intentionally conduct itself under the terms of the Lease in a manner that would constitute a violation of the Anti-Kickback Law or the Stark Law. Without limiting the generality of the foregoing, Landlord and Tenant expressly agree that nothing contained in the Lease shall require either party to refer any patients to the other, or to any affiliate or subsidiary of the other.

(d) If any legislation, regulation or government policy is passed or adopted, the effect of which would cause either party to be in violation of such laws due to the existence of any provision of the Lease, then Landlord and Tenant agree to negotiate in good faith for a period of ninety (90) days to modify the terms of the Lease to comply with applicable law. Should the

parties hereto fail to agree upon modified terms to the Lease within this time, then either Landlord or Tenant may immediately terminate the Lease by giving written notice to the other party.

(e) For purposes of this Section of the Lease, “protected health information”, or “PHI” shall have the meaning defined by the Standards for Privacy of Individually Identifiable Health Information, 45 C.F.R. Part 160 and Subparts A and E of Part 164 (the “**Privacy Standards**”), as promulgated by the Department of Health and Human Services (“HHS”) pursuant to the Administrative Simplification provisions of the Health Insurance Portability and Accountability Act of 1996 (“**HIPAA**”). The parties agree that neither the Landlord nor its contractors, subcontractors or agents shall need access to, nor shall they use or disclose, any PHI of Tenant. However, in the event PHI is disclosed by Tenant or its agents to Landlord, its, contractors, subcontractors or agents, regardless as to whether the disclosure is inadvertent or otherwise, Landlord agrees to take reasonable steps to maintain, and to require its contractors, subcontractors and agents to maintain, the privacy and confidentiality of such PHI. The parties agree that the foregoing does not create, and is not intended to create, a “business associate” relationship between the parties as that term is defined by the Privacy Standards.

[SIGNATURE PAGE TO FOLLOW]

IN WITNESS WHEREOF, each individual party hereto has hereunto signed his or her name and affixed his or her seal, and each corporate party hereto has caused its name to be signed and its corporate seal to be affixed by its duly authorized officers.

WITNESSES FOR TENANT:

Print Name: _____

Print Name: _____

TENANT:

**THE INDUSTRIAL DEVELOPMENT
BOARD OF THE CITY OF KINGSPORT,
TENNESSEE**

By: _____
Name: _____
Title: _____
Date: _____

WITNESSES FOR LANDLORD:

Print Name: _____

Print Name: _____

LANDLORD:

**AW SEVIER CENTER, LLC, a Delaware
limited liability company**

By: _____
Name: Brian K. Waxman
Title: President
Date: _____

EXHIBIT A
(THE PREMISES)



EXHIBIT A-1

(THE LAND)

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE COUNTY OF SULLIVAN, STATE OF TENNESSEE, AND IS DESCRIBED AS FOLLOWS:

Tract 1:

Description of that certain tract or parcel of land situated in the Eleventh (11th) Civil District, the City of Kingsport, Sullivan County, Tennessee, and being more particularly bounded and described as follows, to-wit:

BEGINNING at an iron rod being the point of intersection of the southwestern right of way line of W. Sevier Avenue and the northwestern right of way line of Broad Street; thence leaving the right of way line of W. Sevier Avenue with the right of way line of Broad Street, South 70 deg. 41 min. 20 sec. West, a distance of 162.04 feet to an iron rod being the northeast right of way line of a 15-foot wide city alley; thence leaving the right of way line of Broad Street with the northeastern right of way line of a 15-foot wide city alley with a curve to the Left, a Radius of 1440.00 feet, an Arc Length of 379.89 feet, a Chord Bearing of North 50 deg. 17 min. 10 sec. West, and a Chord Distance of 378.79 feet to an iron rod being a common corner with Lot 26, City Block 57, John Edward Palmer, et ux; thence leaving the northeastern right of way line of a 15-foot-wide city alley with the line of Lot 26, John Edward Palmer, North 32 deg. 09 min. 22 sec. East, a distance of 150.00 feet to an iron rod on the southwestern right of way line of W. Sevier Avenue; thence leaving the line of Lot 26, John Edward Palmer with the southwestern right of way line of W. Sevier Avenue with a curve to the Right, a Radius of 1590.00 feet, an Arc Length of 483.88 feet, a Chord Bearing of South 49 deg. 07 min. 32 sec. East, and a Chord Distance of 482.02 feet to the point of BEGINNING, containing 1.487 acres, more or less, and being a part of the Deed recorded in Deed Book 848C at Page 613 from Gordon Tyrone Allen Bellamy, et ux, to Holston Valley Health Care, Inc. parcel three through seven being Lots 19 through 23 respectfully, having a tax identification number of 046H/P/046H/022.00; Deed Book 1058C at Page 124 from Billy Wallace Green, Lot 24, having a tax identification number of 046H/P/046H/017.00; and Deed Book 780C at Page 196 from Harriet Irene Close Broome, et vir, Lot 25, having a tax identification number of 046H/P/046H/016.00, and being all of Lots 19 through 25 of City Block 57 as shown on a map titled "ALTA/ACSM Land Title Survey for _____", by John R. Mize, RLS, Mize & Associates Surveyors, Blountville, Tennessee, dated March 3, 2021.

Tract 2:

Description of that certain tract or parcel of land situated in the Eleventh (11th) Civil District, the City of Kingsport, Sullivan County, Tennessee, and being more particularly bounded and described as follows, to-wit:

BEGINNING at an iron rod being the point of intersection of the southwestern right of way line of a 15-foot wide City Alley and the northwestern right of way line of Broad Street, being located South 70 deg. 41 min. 20 sec. West, a distance of 178.40 feet from the intersection point of the southwestern right of way line of W. Sevier Avenue and the northwestern right of way line of Broad Street, a common corner of Lot 18, City Block 57; thence with the northwestern right of way line of Broad Street, South 70 deg. 41 min. 20 sec. West, a distance of 78.75 feet to an iron rod, a common corner with Richard L. Starnes; thence leaving the northwestern right of way line of Broad Street with the line of Richard L. Starnes, North 27 deg. 57 min. 55 sec. West, a distance of 80.22 feet to an iron rod on the line of Lot 17 and Lot 18, Block 57; thence leaving the line of Richard L. Starnes with a new line crossing Lot 17, and Lot 16, City Block 57 with a curve to the Left, a Radius of 1378.00 feet, an Arc Length of 131.72 feet, a Chord Bearing of North 50 deg. 16 min. 09 sec. West, and a Chord Distance of 131.67 feet to an iron rod on the line of Lot 14 and Lot 15, City Block 57; thence with the line of Lot 15, North 36 deg. 59 min. 33 sec. East, a distance of 47.00 feet to an iron rod on the southwestern right of way line of a 15-foot-wide City Alley; thence leaving the line of Lot 15 with the southwestern right of way line of a 15-foot wide City Alley, with a curve to the Right, a Radius of 1425.00 feet, an Arc Length of 249.15 feet, a Chord Bearing of South 47 deg. 59 min. 55 sec. East, and a Chord Distance of 248.83 feet to the point of BEGINNING, containing 0.279 acres, more or less, and being a part of the deed recorded in Deed Book 1019C at Page 372 from Eleanor Bridwell Pecktal, to Holston Valley Health Care, Inc., Lot 18, Block 57, having a tax identification number of 046J/P/046H/023.00; and a part of Deed Book 848C at Page 613 from Gordon Tyrone Allen Bellamy, et ux, to Holston Valley Health Care, Inc. being Lot 17 and Lot 16, having a tax identification number of 0461/P/046H/025.00 and 0461/P/046H/026.00 respectfully, as shown on a map titled "ALTA/ACSM Land Title Survey for _____", by John Mize, RLS, Mize & Associates Surveyors, Blountville, Tennessee, dated March 3, 2021.

EXHIBIT B

TENANT IMPROVEMENTS

1. Tenant, at Tenant's expense, may make certain interior leasehold improvements to the Premises in accordance with and pursuant to plans and specifications ("Plans") prepared by Tenant's architect and approved in writing in advance by Landlord ("Tenant Improvements"). Tenant shall construct all improvements installed in accordance with said Plans. All Tenant Improvements made to the Premises shall be the property of Landlord during the Term of this Lease and shall remain the property of Landlord upon termination of this Lease (but specifically excluding trade fixtures and dental equipment such as dental chairs, x-ray equipment and like equipment even if affixed to the Premises) Tenant expressly acknowledges and agrees that Tenant will not permit the imposition of liens and/or other encumbrances against the Facility with respect to the Tenant Improvements. All such contractors, subcontractors, and materialmen shall be licensed and insured, and shall otherwise execute any documents reasonably requested by Landlord with respect to the release of Landlord and the Premises from any liability in connection with the Tenant Improvements to be completed by Tenant. Tenant and Tenant's contractors and subcontractors shall comply with Landlord's Construction Requirements (as defined in Section 19 of the Lease). Tenant shall indemnify, defend and otherwise hold Landlord harmless from any damages and/or claims incurred by Tenant arising out of the Tenant Improvements to be completed.

2. Landlord will provide a Tenant Improvement Allowance of \$177,000.00 (\$25.00/SF), relative to the Tenant Improvements ("TI Allowance"), which TI Allowance shall be paid to Tenant within ten (10) days of Landlord's receipt of the "TI Completion Notice" (as hereinafter defined). Tenant shall be responsible for paying the cost of the Tenant Improvements in excess of the TI Allowance ("Tenant's TI Share"). In the event the cost of Tenant Improvements is less than the TI Allowance, Tenant will not be entitled to offset or otherwise apply the unused portion of the TI Allowance against any other sum owed to Landlord. Upon Tenant's receipt of same, Tenant shall provide Landlord with a contractor's bid (the "Bid") for the construction of the Tenant Improvements. Upon completion of construction of the Tenant Improvements, Tenant shall deliver written notice to Landlord indicating that the Tenant Improvements have been completed (the "TI Completion Notice"), which notice shall include: (i) copies of paid invoices for the Tenant Improvements, (ii) a copy of a Certificate of Occupancy for the Premises (or other local governmental equivalent), (iii) a Final Contractors Affidavit and Release of Lien from the general contractor, and (iv) Lien Waivers from any applicable subcontractors

3. Prior to forwarding any monies, Landlord or its designated agent shall inspect the completed improvements, at Landlord's expense, and to the extent such improvements are unsatisfactory, Tenant shall correct same prior to payment.

EXHIBIT C

RULES AND REGULATIONS

(a) The sidewalks, entrances, halls, passages, elevators and stairways shall not be obstructed by Tenant or used by him for any other purpose than for ingress and egress to and from the Premises. Fire escapes are to be kept free from obstructions at all times.

(b) Landlord, its agents and employees, shall be permitted in the Premises at all reasonable hours for any reasonable purpose, including construction renovation of office space above, below or adjacent to Tenant's space.

(c) Landlord shall provide mini-blinds for all outside windows and these shall not be removed or in any way altered by Tenant. Outside windows shall not be covered or obstructed by Tenant.

(d) No sign, advertisement or notice shall be inscribed, painted or affixed on any part of the outside or inside of the Facility, except (i) on the doors of the Premises, and then only such color, style, size and material as Landlord shall determine; and (ii) otherwise as Landlord shall approve in writing, and then only in such place or places, in such manner, and under such conditions as Landlord shall prescribe, and at Tenant's expense. At the expiration of this Lease, Tenant agrees to remove all such signs at its own expense. No additional lock or locks shall be placed upon any door in the Premises without the written consent of Landlord.

(e) Tenant shall not do or permit anything to be done in the Premises, or bring or keep anything therein, which will increase the rate of fire insurance of the Facility, or on the property kept therein, or obstruct or interfere with the rights of other Tenants, or in any way injure or annoy them, or do or permit to be done anything in conflict with the regulations of the Fire Department, or with any insurance policy upon said Facility or any part thereof, or with any rules established by the Board of Health, or with the laws or ordinances of the city, county and state in which the Premises are located, or of the United States of America.

(f) Landlord shall have the right to prescribe the weight, size and proper location of safes and other weighty articles and equipment before the same are admitted into the Facility, and any damage done to the Facility in the putting in or out of such articles, or during the time they are in or on the Premises, shall be made good by Tenant. No machinery of any kind will be allowed to be operated on the Premises without the written consent of Landlord, ordinary office equipment and dental clinic equipment excepted. All persons employed in the moving of safes, furniture or other bulky articles in and out of the Facility must be acceptable to Landlord, and such work is to be done only at the time designated by Landlord.

(g) No carpet, rug or other article shall be hung or shaken out of any window or door, and nothing shall be thrown, swept or dropped by Tenant, its agents, employees or visitors out of the windows or doors, or into the halls or passages, or upon the stairways, or into the court of the Facility; nor shall animals or birds be brought or kept in or about the Facility.

(h) Landlord will equip all electric fixtures provided by Landlord in the Premises with necessary electric lamps; but Tenant shall pay for replacing all lamps which may be negligently broken during the continuance of this Lease, Landlord furnishing such renewals at retail cost.

(i) If Tenant desires telegraphic, telephonic, or other connections by wire, Landlord will direct the electricians as to where and how the wires are to be introduced and, without such direction, no boring, cutting, or attaching of wires to the outside or inside of the Facility will be permitted.

(j) For protection against the elements, and to preserve efficient air-conditioning during business hours, both when supplying cooled air and also when supplying heated air, at such times lessees must keep all windows closed and keep the light control curtains either open or closed as directed by Landlord.

(k) No structural alterations of any kind shall be made to any part of the Premises by Tenant, without the written consent of Landlord. No painting, alteration or decoration of any kind shall be made by Tenant to any part of the Facility, other than the Premises, without the written consent of Landlord.

(l) All glass, locks and trimmings in and about the Premises shall be kept intact and uninjured, and whenever any breakage shall occur Landlord shall be immediately notified and the same shall be promptly replaced or repaired by Landlord, but is caused by the negligence of Tenant, Tenant shall bear the expense of same.

(m) Tenant shall not use any method of heating or cooling other than that provided for by Landlord herein, without the written consent of Landlord.

(n) No tradesman or other solicitor shall have the right or privilege to enter the Facility for the purpose of soliciting, selling, or delivering any article or commodity unless he or they be first approved and continue to be approved by Landlord who reserves the right to revoke such approval at any time.

(o) Nothing shall be placed on the outside of the Facility or on the windows, windowsills, or projections.

(p) Before all persons leave the Premises at the close of business, Tenant must see that the doors are securely locked and the lights extinguished. No lessee or agent, employee or visitor of Tenant, or other persons, shall go upon the roof of the Facility without the written consent of Landlord.

(q) The entire Facility shall be smoke-free. Tenant shall not permit its employees or agents to smoke in any area within the Facility. Smoking will not be permitted in the exterior Common Areas of the Facility unless Landlord specifically designates a portion or portions of the exterior Common Areas where smoking is to be permitted, in which case smoking will be permitted only in those portions of the exterior Common Areas specifically designated by Landlord. Such designation of smoking areas (if any) is intended as an accommodation on the part of the Landlord and may be changed or eliminated at any time by Landlord with or without prior notice from Landlord.

EXHIBIT D

PROHIBITED COMPETITIVE SERVICES

Prohibitive Competitive Services are any services competitive with those offered at the hospital facilities owned by Ground Lessor and include, but are not limited to:

1. Acute inpatient care;
2. Inpatient skilled nursing facility/transitional care services;
3. Inpatient sub-acute services;
4. Invasive cardiology (including cardiac physiology and cardiac catheterization);
5. Inpatient surgery;
6. Outpatient/ambulatory surgery center and all surgical procedures requiring anesthesia (other than services that are routinely performed in a typical physician office in the applicable jurisdiction, as solely determined by Seller in good faith);
7. Occupational medicine;
8. Urgent care/emergency services;
9. Diagnostic imaging (including but not limited to MRI, CT, PET/CT, fluoroscopy, digital radiography, mammography and breast diagnostics, and nuclear medicine testing) (other than X-Ray and ultrasound diagnostic Services that are routinely performed in a typical physician office in the applicable jurisdiction, as solely determined by Seller in good faith);
10. Physical therapy;
11. Respiratory therapy;
12. Inpatient or outpatient birthing services;
13. Home health services;
14. Oncology center;
15. Inhalation therapy;
16. Laboratory;
17. Reference laboratory;
18. Gastroenterology laboratory;
19. Radiation therapy;
20. Pharmacy;
21. Blood draw station (other than services that are routinely performed in a typical physician office in the applicable jurisdiction, exclusively by the physician and his or her staff and not by a third party subleasing space or under contract with the physician in connection with the physician, and solely for the regular patients of such physician in connection with other medical professional services provided by such physician, as solely determined by Seller in good faith);
22. Anatomic pathology; or
23. Any other inpatient service or new medical procedure or modality, whether inpatient or outpatient, and whether or not offered at or by the Hospital, but not identified above (other than services that are routinely performed in a typical physician office in the applicable jurisdiction, as solely determined by Seller in good faith).

Any and all non-clinical administrative functions related to a service listed above.

ADDENDUM

ADDITIONAL LEASE TERMS

1. OPTIONS TO RENEW

Provided that the Lease has been in full force and effect and Tenant is in good standing and not in default hereunder, Tenant shall have three (3) successive options to renew the Lease for periods of five (5) years each to commence on the date immediately following the expiration of the Lease. Tenant's option to renew shall be exercised, if at all, by providing written notice to Landlord no later than one hundred and eighty (180) days prior to expiration of the Lease. Upon providing such notice, the Lease shall be deemed to be renewed and the term extended without the need for execution of any further lease or instrument. Rent shall continue to adjust annually, as provided for in the Lease (i.e. Annual Escalations as provided in Paragraph L. of the Summary of Terms), and all other terms of the Lease shall govern and apply to such renewal term.

2. RIGHT OF FIRST REFUSAL TO LEASE SPACE IN BUILDING

Throughout the Term of the Lease, Tenant shall have a continuous Right of First Refusal ("**ROFR**") to lease additional office space in the Building ("**ROFR Space**"). The ROFR granted herein shall not be applicable to lease renewals with existing tenants of the Building. In the event that Landlord has received an acceptable offer for any ROFR Space, Landlord shall provide Tenant with written notice of said offer (the "**ROFR Notice**"), together with a certified copy of said offer and Tenant shall have fifteen (15) days after receipt of the ROFR Notice (the "**ROFR Period**") to exercise the ROFR by delivering written notice thereof to Landlord (the "**ROFR Exercise Notice**") prior to the expiration of the ROFR Period. In the event Tenant fails to exercise the ROFR prior to the expiration of the ROFR Period, Landlord shall have the right to lease the ROFR Space to the offering tenant upon the terms set forth in the ROFR Notice. In the event Tenant exercises the ROFR during the ROFR Period, Tenant shall lease the ROFR Space from Landlord upon the same terms and conditions set forth in this Lease, subject to the following:

- i) The lease term shall be co-terminous with this Lease, subject to there being at least three (3) years remaining on the Term of this Lease.
- ii) The base rental rate per rentable square foot and escalation structure shall be the greater of the third-party offer set forth in the ROFR Notice or Tenant's then current Base Rent.
- iii) The tenant improvement allowance shall be the prorated Tenant Improvement Allowance as offered in this Lease.

Notwithstanding the foregoing, the parties acknowledge and agree that the ROFR granted to Tenant herein is subject and subordinate to the rights of the Ground Lessor under Section 5(k) of the Ground Lease, which rights include (i) a right of first offer for any available space in the Building (the "**Ground Lessor ROFO**"), and (ii) a 15 day right of first refusal to lease any available space in the Building on the same terms and conditions as any prospective tenant (the "**Ground Lessor ROFR**"). Accordingly, any space in the Building leased to Ground Lessor pursuant to the Ground Lessor ROFO shall not be considered ROFR Space for the purposes of this Section 2. Further, following Tenant's delivery of any ROFR Exercise Notice, Tenant's

ability to lease any ROFR Space shall be subject to the Ground Lessor's waiver of the Ground Lessor ROFR.

3. RIGHT OF FIRST REFUSAL TO PURCHASE BUILDING AND LEASEHOLD INTEREST IN LAND.

Throughout the Term of the Lease (the "**Purchase ROFR Period**"), Tenant shall have a right of first refusal to purchase the Building (which for the purposes hereof includes the Landlord's leasehold interest in the Land pursuant to the Ground Lease), in accordance with the following terms and provisions (the "**Purchase ROFR**"):

- (i) If during the Purchase ROFR Period, Landlord receives a good faith written offer to purchase the Building made by a party unrelated to Tenant (a "**Written Offer**") that Landlord wishes to accept, then Landlord will immediately provide Tenant with a copy of the Written Offer. Tenant shall have fifteen (15) days after receipt of the Written Offer to exercise the Purchase ROFR by delivering to Landlord written notice that Tenant has elected to exercise the Purchase ROFR (the "**Purchase ROFR Exercise Notice**"). If Tenant timely delivers to Landlord the Purchase ROFR Exercise Notice, then the parties shall execute and deliver to each other as soon as reasonably possible after the delivery of the Purchase ROFR Exercise Notice a purchase agreement prepared by Landlord's counsel that contains the terms and conditions set forth in the Written Offer and Landlord shall convey the Building to Tenant on the terms and conditions set forth in such purchase agreement;
- (ii) If, after receipt of a Written Offer, Tenant fails to timely exercise the Purchase ROFR in strict accordance with the terms of this Section 3, then: (i) such failure shall be conclusively deemed to be and constitute a rejection of the Written Offer by Tenant and a waiver of the Purchase ROFR; (ii) Tenant shall, within ten (10) days of Landlord's request, provide written evidence of the same; (iii) Landlord shall thereafter have the right to sell the Building to the offeror (or its affiliate) on substantially the same terms and conditions as are set forth in the Written Offer (for purposes of this clause (ii), an offer will be financially substantially the same as the Written Offer if the purchase price is at least 95% of the Purchase Price set forth in the Written Offer). Notwithstanding the foregoing, if (i) Landlord and the offeror (or its affiliate) desire to reduce the purchase price in the Written Offer by more than five percent (5%) or (ii) Tenant does not (or is deemed to not) exercise its right to purchase the Premises hereunder and Landlord fails to close on the purchase with the offeror (or affiliate) on substantially the same terms and conditions as are set forth in the Written Offer, then Landlord must follow the process set forth above as a condition precedent to any transfer of the Premises to others.
- (iii) Notwithstanding anything herein to the contrary: (i) in the event that an Event of Default exists at the time Landlord receives a Written Offer, then Tenant shall not have the right to exercise the Purchase ROFR and purchase the Building in accordance with this Section 3; (ii) the Purchase ROFR provided herein shall have no application to the sale or conveyance of the Building to any person or entity that is in any way related to or affiliated with Landlord, including, without limitation,

any current manager or member of Landlord, any person or entity currently having a financial or ownership interest in Landlord or any of its members or managers, together with any family members or trusts for the benefit of any of the foregoing, and any entity which is under common control with Landlord, and (iii) the parties acknowledge and agree that the Purchase ROFR granted to Tenant herein is subject and subordinate to the thirty (30) day right of first refusal to purchase the Building in favor of the Ground Lessor pursuant to Section 5(j) of the Ground Lease (the "**Ground Lessor Purchase ROFR**"), and following Tenant's delivery of any Purchase ROFR Exercise Notice, Tenant's ability to purchase the Building shall be subject to the Ground Lessor's waiver of the Ground Lessor Purchase ROFR.

4. RESERVED PARKING SPACES

Throughout the Term of the Lease, at no additional cost to Tenant, Tenant shall have the right to the exclusive use of up to ten (10) parking spaces within the Common Areas in a location reasonably determined by Landlord.

5. OPTION TO PURCHASE.

The Tenant at any time during the initial six year Term of this Lease shall have the option (the "**Purchase Option**") to purchase from Landlord all (and not less than all) of the real property interests held by Landlord and described in Schedule 1 attached hereto and made a part hereof (collectively, the "**Option Property**") upon the terms and conditions hereinafter set forth. Such Purchase Option shall be exercised by Tenant, if at all, by delivering to Landlord written notice of the exercise of such Purchase Option ("**Purchase Option Exercise Notice**"), which notice must be delivered to Landlord prior to the expiration of the initial six year Term. In the event Tenant timely delivers a Purchase Option Exercise Notice, Landlord shall sell, and the Company shall purchase, the Option Property at the price and in the manner provided for in this Section 5. The closing on the Purchase Option ("**Closing**") shall take place on the date and time selected by the Tenant (the "**Closing Date**"), but in no event shall the Closing Date be earlier than thirty (30) days nor more than ninety (90) days after Landlord's receipt of the Purchase Option Exercise Notice. In the event Tenant delivers a Purchase Option Exercise Notice and fails to close on the purchase of the Option Property on or before the Closing Date, the Purchase Option shall terminate and be of no further force or effect. Closing shall be conducted upon the terms and conditions below:

Purchase Price. For purposes of the Purchase Option, the purchase price of the Option Property shall be determined as follows: Landlord and Tenant shall each select a properly licensed commercial real estate appraiser with at least five years' experience in the valuation of commercial property in the Sullivan County, Tennessee area. The two appraisers so selected shall then select a third appraiser who shall be similarly qualified and the third appraiser so selected shall perform an appraisal of the Option Property. The Purchase Price of the Option Property shall be the greater of the appraised value of the Option Property as determined by the third appraiser or \$3,750,000.00. The expense of each of the appraisers shall be paid by the Tenant.

Title. Tenant, at Tenant's sole cost and expense, shall be able to obtain prior to Closing of the Option Property, a current title commitment for an Owner's Policy of title insurance for the Option Property at standard rates (the "**Title Binder**") issued by Fidelity National Title

Insurance Company (the "**Title Company**") or other title insurance company reasonably acceptable to Tenant.

Closing Costs. At Closing, Landlord agrees to pay any costs required to perfect title resulting from liens or judgments placed against the Option Property by Landlord. Tenant shall pay for all closing fees, preparation of the Deed and any recording taxes and fees incurred for recording the deed and any mortgage, and shall pay any mortgage recording tax and the premium for the Owner's Policy of title insurance. Except as otherwise provided herein, each party shall pay its own legal fees and expenses incurred hereunder without any claim against the other.

Marketability of Title. The following provisions shall govern marketability of title:

(i) At Closing, Landlord shall cause good and marketable fee simple title to the Option Property to be conveyed to Tenant by Special Warranty Deed (the "**Deed**"). "Good and marketable" title as used herein shall mean ownership which, when acquired by Tenant, will be insurable by the Title Company under the Title Company's standard ALTA Form B 1992 Revised title insurance policy at standard rates and is free and clear of all liens and encumbrances, other than customary utility easements and property taxes for the current year and those permitted exceptions identified on Schedule 2 attached hereto and made a part hereof (collectively, the "**Permitted Exceptions**").

(ii) If Landlord shall be unable through the exercise of Landlord's good faith efforts (which shall include the payment of money with respect to any existing deeds of trust to secure debt, mortgages, liens or other matters that can be removed by payment of money) to cure any objectionable matter properly raised by Tenant hereunder, either Tenant shall have the right to withdraw its Purchase Option Exercise Notice by giving written notice of such cancellation to the Landlord, whereupon all liability by reason of this Purchase Option shall cease; provided, however, if either party secures a binder for title insurance prior to Closing in respect of any valid objection raised by Tenant in the amount of the Purchase Price, insuring title as provided in this Section 5 and containing standard exceptions and Permitted Exceptions only, then the Purchase Option shall remain and continue in full force and effect.

(iii) Notwithstanding any provision to the contrary, Tenant shall have the continuing right to accept title in whatever state it may be without any reduction in the Purchase Price. Accordingly, from and after delivery of a Purchase Option Exercise Notice and through the date of Closing, Landlord shall not cause or suffer any Option Property to be further encumbered. The foregoing shall not prohibit Landlord from further encumbering the Property in any manner that does not render title unmarketable, nor shall it prohibit Landlord from entering into leases of medical office space in the Building on commercially reasonable terms.

Deliveries at Closing.

(i) At Closing, Landlord shall deliver to Tenant the following for the Option Property:

(a) duly executed and acknowledged special warranty Deed as to the Building and improvements only located on the Land;

(b) An assignment and assumption of Landlord's leasehold interest in the Land, as ground lessee under the Ground Lease;

(c) An assignment and assumption agreement, pursuant to which Landlord shall assign to Tenant all of Landlord's right, title and interest, as Landlord, under any leases of space in the Building.

(d) affidavits or other certificates or documents reasonably required by the Tenant, any title insurance company issuing a policy of title insurance in connection with the transaction contemplated by this Agreement, if any, or Tenant's lender, if any, in order to insure title in the condition required by this Agreement;

(e) all other certificates, documents or instruments reasonably requested and as required by this Agreement to effectuate the terms and conditions hereof.

(ii) At Closing, Tenant shall deliver to Landlord:

(a) the Purchase Price for the Option Property with adjustments as set forth herein;

(b) counterparts of the instruments referenced in (i)(a) and (i)(b) above.

(c) such other certificates, documents and instruments reasonably requested by Landlord or as required by this Agreement to effectuate the terms and conditions hereof.

Closing Adjustments and Prorations. All real property taxes for the current tax year shall be prorated (employing a three hundred sixty-five (365) day year) between Tenant and Landlord as of the date of Closing based upon the most recent rate applied to the most recent assessed valuation of the Option Property. If such assessment is not available for the year in question, taxes shall be prorated based on last year's assessment and assumed by Tenant. All special assessments, or past due property taxes, levied against the Option Property shall be paid in full by Landlord on or before Closing; provided, however, if any such assessments are capable of being paid in installments, Landlord shall only be responsible for paying installments due prior to the Closing Date. Rents, ground rents, utility charges and similar items shall be prorated as of the date of Closing. All security deposits held by Landlord shall be delivered to Tenant at closing.

Property Sold As-Is. In the event Tenant exercises the Purchase Option, Tenant acknowledges and agrees that Tenant would be purchasing the Option Property in its "AS IS" condition and specifically and expressly without any warranties, representations or guarantees, either express or implied, of any kind, nature, or type whatsoever from or on behalf of the Landlord. Without in any way limiting the generality of the immediately preceding sentence, Tenant further acknowledges and agrees that Seller has not made, will not and does not make any warranties and representations, whether express or implied, with respect to the Option Property, the value, profitability, developability, or marketability thereof, or of any of the appurtenances, facilities, improvements, or equipment thereon; and upon the Closing, Tenant shall be deemed to have made such legal, factual and other

inquiries and investigations as Tenant deems necessary, desirable or appropriate with respect to the Option Property.

Rights of Ground Lessor. Notwithstanding anything herein to the contrary: (i) in the event that an Event of Default exists at the time Landlord receives the Purchase Option Exercise Notice, then Tenant shall not have the right to exercise the Purchase Option; and (ii) the parties acknowledge and agree that the Purchase Option granted to Tenant herein is subject and subordinate to the Ground Lessor Purchase ROFR, and following Tenant's delivery of any Purchase Option Exercise Notice, Tenant's ability to purchase the Option Property shall be subject to the Ground Lessor's waiver of the Ground Lessor Purchase ROFR.

Schedule 1 to Addendum

Description of Option Property

1. Leasehold Estate

Leasehold estate created by Ground Lease dated September 12, 2008, between Wellmont Health System, as landlord, and as G&E Healthcare REIT- Mountain Empire, a Delaware limited liability company LLC (now known as HTA - Mountain Empire, LLC), as tenant, as evidenced by Memorandum of Ground Lease dated September 12, 2008, of record in Book 2703C, page 849, Register of Deeds for Sullivan County at Blountville, Tennessee, demising the land described in Exhibit A; Leasehold Estate under Ground Lease assigned to AW Sevier Center, LLC, a Delaware limited liability company, pursuant to Assignment and Assumption of Ground Lease dated May 26, 2021, of record in Book 3447, page 44, Register of Deeds for Sullivan County, Tennessee.

2. Fee Estate in Improvements

Fee Simple Interest in Improvements located on the land described in Exhibit A-1, created pursuant to Special Warranty Deed dated May 26, 2021, from HTA - Mountain Empire, LLC to AW Sevier Center, LLC, of record in Book 3447, page 51, Register of Deeds for Sullivan County, Tennessee.

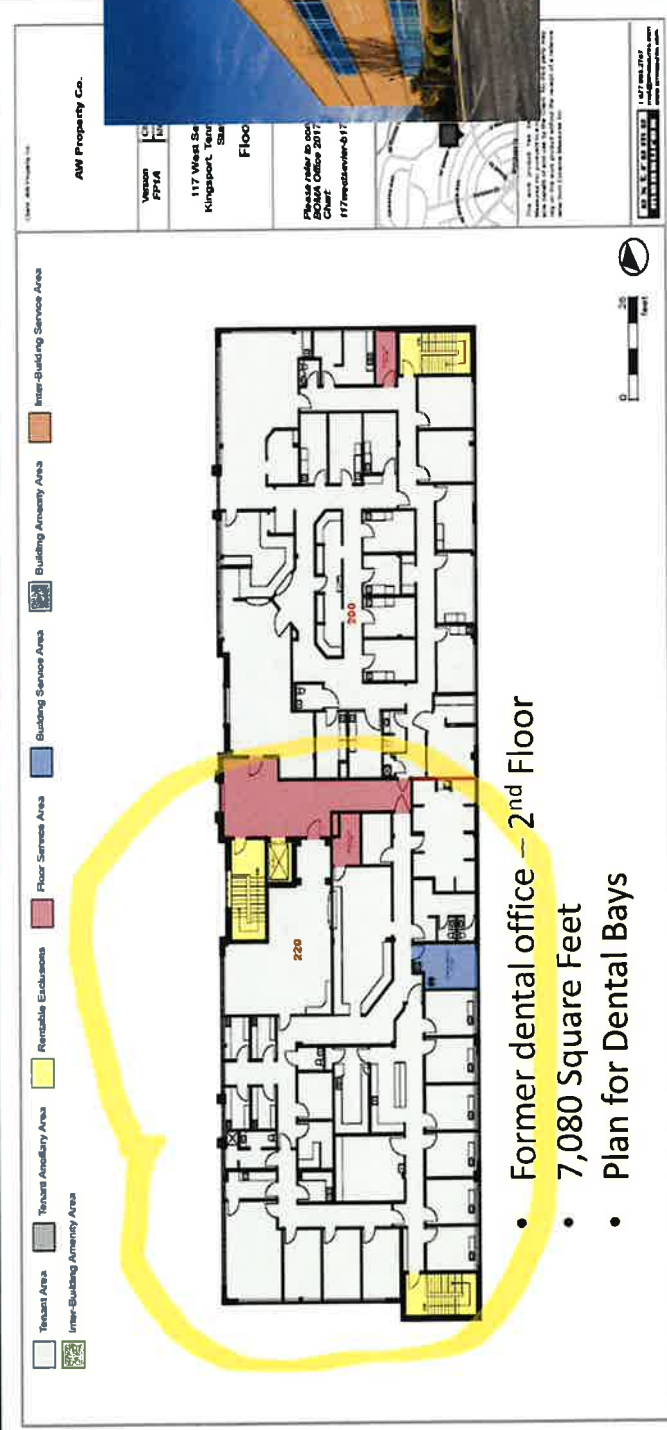
Schedule 2 to Addendum

Permitted Exceptions

1. Rights or tenants under unrecorded leases.
2. Sullivan County and City of Kingsport, Tennessee taxes for the year of closing and subsequent years, which are not yet due or payable.
3. Electrical utility easement to Kingsport Power Company of record in Deed Book 943-C, page 610.
4. Setback requirements and other matters shown on survey by Mize & Associates dated March 3, 2021.
5. Terms, conditions and provisions set forth in that certain by Ground Lease dated September 12, 2008, between Wellmont Health System, as landlord, and as G&E Healthcare REIT- Mountain Empire, a Delaware limited liability company LLC (now known as HTA - Mountain Empire, LLC), as tenant, as evidenced by Memorandum of Ground Lease dated September 12, 2008, of record in Book 2703C, page 849, Register of Deeds for Sullivan County at Blountville, Tennessee, demising the land described in Exhibit A; Leasehold Estate under Ground Lease assigned to AW Sevier Center, LLC, a Delaware limited liability company, pursuant to Assignment and Assumption of Ground Lease dated May 26, 2021, of record in Book 3447, page 44, Register of Deeds for Sullivan County, Tennessee.



Clinic Location: 111 West Sevier Ave., Suite 220
Kingsport, TN
Campus of Holston Valley Medical Center



EAST TENNESSEE STATE
UNIVERSITY

UT THE UNIVERSITY OF TENNESSEE
HEALTH SCIENCE CENTER



AGENDA ACTION FORM

Approve and Award Purchase of IBM Client Relationship Agreement and Cloud Services Agreement Utilizing National Cooperative Purchasing Alliance Purchasing Agreement

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

Action Form No.: AF-379-2022
 Work Session: December 19, 2022
 First Reading: N/A

Final Adoption: December 20, 2022
 Staff Work By: Floyd Bailey
 Presentation By: Floyd Bailey

Recommendation:

Approve the Resolution.

Executive Summary:

It is the recommendation of the committee to purchase the IBM Cloud Pak for Business Automation as a Service. This is a purchase made on the National Cooperative Purchasing Alliance (NCPA). It is a twelve-month renewable contract in the amount of \$92,400.00. This solution will facilitate the automation of business processes across all departments.

Funding is allocated in Information Technology Account Number # 11010134042057

Attachments:

1. Resolution
2. Quote
3. National Cooperative Purchasing Alliance

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
Cooper	—	—	—
Duncan	—	—	—
George	—	—	—
Montgomery	—	—	—
Olterman	—	—	—
Phillips	—	—	—
Shull	—	—	—

RESOLUTION NO. _____

A RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE A PURCHASE ORDER TO INTERNATIONAL BUSINESS MACHINES FOR THE ACQUISITION OF IBM CLOUD PAK FOR BUSINESS AUTOMATION UNDER THE TERMS OF NATIONAL PURCHASING ALLIANCE CONTRACT NUMBER 01-67

WHEREAS, the city would like to acquire IBM Cloud Pak for Business Automation as a service; and

WHEREAS, the city is a member of National Cooperative Purchasing Alliance (NCPA), a cooperative purchasing group, which allows the city to purchase goods and services directly from holders of contracts with the network without conducting the bidding process, as authorized by T.C.A. Section 12-3-1205; and

WHEREAS, the IBM Cloud Pak for Business Automation software is available pursuant to National Purchasing Alliance Contract Number 01-67; and

WHEREAS, to acquire the software as a service the city will need to submit a purchase order to IBM; and

WHEREAS, the subscription will be for a term of 12 months in the amount of \$92,400.00 with a renewal option for additional 12 month terms; and

WHEREAS, funding is available in # 11010134042057.

Now therefore,

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

SECTION I. That the city manager is authorized to execute a purchase order to International Business Machines for the purchase of the IBM Cloud Pak for Business Automation in the amount of \$92,1400.00.

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 20th day of December, 2022.

PATRICK W. SHULL, MAYOR

ATTEST:

ANGELA MARSHALL, DEPUTY CITY RECORDER

APPROVED AS TO FORM:

RODNEY B. ROWLETT, III, CITY ATTORNEY



IBM Quotation

Attn: Floyd Bailey
CITY OF KINGSPORT
415 Broad Street
KINGSPORT TN 37660-4285
UNITED STATES

IBM Site Number: 3909651
IBM Customer Number: 4915715
Reference IBM's NCPA contract number (01-67)

Dear Floyd Bailey

Thank you for being an IBM Client. We are delighted to provide this quote for IBM offerings.

Worldwide, companies like yours are increasingly demanding more from their information technology infrastructure, increased flexibility, scalability and agility to meet changing business needs. At the same time, they want reduced cost, rapid deployment and investment recovery.

Over the years, our products, services and solutions capabilities have given our Clients the reliability, availability, security, and manageability to improve operations and achieve efficiency while accommodating growth at reduced cost. These characteristics have been and will remain fundamental to the IBM portfolio.

Unless specifically agreed herein or in another signed agreement in writing between you and IBM, the licenses for the Programs and S&S acquired under this Quote / Agreement may not be used to settle or resolve any software license non-compliance by you that occurred prior to the Start Date of this Agreement. Further, unless otherwise agreed to by the parties in writing, the licenses for the Programs and S&S acquired under this Quote / Agreement may not be used as authorization to deploy the Programs prior to the date of your order against this Quote / Agreement. For more information about eligibility and reporting requirements for sub-capacity licensing, please visit <https://www.ibm.com/software/passportadvantage/subcaplicensing.html> and for more information about eligibility and reporting requirements for container licensing, please visit: <https://www.ibm.com/software/passportadvantage/containerlicenses.html>.

This quotation is valid from 22-Nov-2022 and will expire on 31-Dec-2022.
We look forward to your order.

If you need assistance with placing your order or wish to discuss your quotation, please contact the IBM Representative noted below.

Yours sincerely,

ROSIBELL MIDDLETON
Phone Number: 1 703-568-1040
Fax Number:
E-mail Address: rosimidd@us.ibm.com



IBM Quotation

Quotation Information

Number: **19406596**
Effective Date: **22-Nov-2022**
Expiration Date: **31-Dec-2022**

Customer Information

Attn: **Floyd Bailey**
CITY OF KINGSPORT
415 Broad Street
KINGSPORT TN 37660-4285
UNITED STATES
IBM Site Number: **3909651**
IBM Customer Number: **4915715**

Summary

Current Transaction:

As a Service	92,400.00
Total	92,400.00 USD

Current Transaction

As a Service **92,400.00 USD**

IBM Cloud Pak for Business Auto as a Service

IBM Cloud Pak for Business Automation as a Service Thousand FlexPoint per Month

Subscription Part#: **D21Y5LL**
Overage Part#: **D21Y6LL**
Billing: **Annual**
Unit Price: **8,400.00**

Committed Term: **12 Months**
Renewal Type: **Autorenew for 12 Months**
Renewal Term Price Change: **Increase 5.000 % at time of first renewal period and then every 12 Months**

Item	Quantity	Month	Subscription Rate	Item Price	Overage Rate
1	11	1-12	92,400.00	92,400.00	875.00
Subtotal				92,400.00 USD	

IBM Cloud Pak for Business Agreement

as a Service Thousand FlexPoint Service Level

Subscription Part#: **D21YFLL**
Billing: **Upfront**
Unit Price: **Tiered**

Committed Term: **12 Months**
Renewal Type: **Autorenew for 12 Months**
Renewal Term Price Change: **Increase 5.000 % at time of first renewal period and then every 12 Months**

Item	Quantity	Month	Subscription Rate	Item Price
2	1 1-12	0.00	0.00	Subtotal 0.00 USD

3 reference IBM's NCPA contract number (01-67)

Notes

International Business Machines Corporation

International Business Machines Corporation, 1 North Castle Drive, Armonk, NY 10504



Applicable tax will be recalculated at the time of order processing.

IBM acceptance of the order is subject to credit approval.

Upon placing your order, please supply a Purchase Order or, if not PO driven, a signed Firm Order Letter. The Purchase Order value must cover the applicable charges for a minimum of one year. If the Total Term is less than one year, the Purchase Order value must cover the Total Commit Value.



PAYMENT SCHEDULE PAGE

This is an estimate of payments, final determination of billing dependent on order date.

Month	Setup Products and Services	Subscription	Total
1	0.00	92,400.00	92,400.00
Total in USD	0.00	92,400.00	92,400.00

International Business Machines Corporation

International Business Machines Corporation, 1 North Castle Drive, Armonk, NY 10504



IBM Terms and Conditions

IBM International Passport Advantage Express Agreement

The quote or order to which this document relates is governed by the terms of the Passport Advantage Express Agreement and its associated attachment(s).

IBM Terms for IBM Cloud Offerings

The referenced Cloud Services are governed by the terms of the IBM International Passport Advantage Express Agreement, its associated attachment(s), and the referenced Transaction Documents. Your order and use of the Cloud Services are your acceptance of the prices and terms referenced in this document, except to the extent superseded by a written amendment or agreement signed by both of us.

Final coverage dates for offerings listed are provided in your Proof of Entitlement.

Transaction Documents

IBM Terms of Use - General Terms for IBM Cloud Offerings at: <https://www.ibm.com/software/sla/sladb.nsf/sla/tou-gen-terms>

Service Description(s) for ordered Cloud Services:

IBM DIGITAL BUSINESS AUTOMATION ON CLOUD

<https://www.ibm.com/support/customer/csol/terms/?id=i126-8250>

Please read all terms for each of the above referenced Transaction Document(s) to ensure you are agreeing to the most recent version of the document. If you have any trouble with the link provided, please copy and paste the appropriate URL in your browser's navigation bar.

Billing and Provisioning

At time of acceptance of this quote either by Purchase Order or Firm Order Letter, IBM will begin billing for the SaaS Subscription(s) as indicated above. When IBM is ready to provision the SaaS Subscription(s) in the quote IBM will use information provided by the Client, as well as default technical data to configure the clients SaaS Subscription for access. IBM will notify the Client with details on the provisioning on the date in which the Client can access the SaaS and the term for the SaaS will begin on the date indicated. If provisioning information needs to be updated please refer to the IBM Software as a Service (SaaS) Support Handbook.

Please work with your IBM Sales Representative or your IBM Business Partner to complete the provisioning data at or prior to time of order.

Unless specifically agreed herein or in another signed agreement in writing between you and IBM, the licenses for the Programs and S&S acquired under this Quote / Agreement may not be used to settle or resolve any software license non-compliance by you that occurred prior to the Start Date of this Agreement. Further, unless otherwise agreed to by the parties in writing, the licenses for the Programs and S&S acquired under this Quote / Agreement may not be used as authorization to deploy the Programs prior to the date of your order against this Quote / Agreement. For more information about eligibility and reporting requirements for sub-capacity licensing, please visit <https://www.ibm.com/software/passportadvantage/subcaplicensing.html> and for more information about eligibility and reporting requirements for container licensing, please visit: <https://www.ibm.com/software/passportadvantage/containerlicenses.html>.

If you have any trouble with the link(s) provided, please copy and paste the appropriate URL in your browser's navigation bar.

Useful/Important Web resources:

Passport Advantage information, customer secure site access, training, etc.: www.ibm.com/software/passportadvantage

IBM's International Program License Agreement and product License Information documents:

www.ibm.com/software/sla IBM Software Support Web site: <https://www.ibm.com/software/support/handbook.html> IBM

Customer Number: 4915715

NCPA Administration Agreement

This Administration Agreement is made as of December 7, 2016, by and between National Cooperative Purchasing Alliance ("NCPA") and International Business Machines Corporation ("Vendor").

Recitals

WHEREAS, Region 14 ESC has entered into a certain Master Agreement dated December 7, 2016, referenced as Contract Number 01-67, by and between Region 14 ESC and Vendor, as may be amended from time to time in accordance with the terms thereof (the "Master Agreement"), for the purchase of Technology Solutions;

WHEREAS, said Master Agreement provides that any state, city, special district, local government, school district, private K-12 school, technical or vocational school, higher education institution, other government agency or nonprofit organization (hereinafter referred to as "public agency" or collectively, "public agencies") may purchase products and services at the prices indicated in the Master Agreement;

WHEREAS, NCPA has the administrative and legal capacity to administer purchases under the Master Agreement to public agencies;

WHEREAS, NCPA serves as the administrative agent for Region 14 ESC in connection with other master agreements offered by NCPA;

WHEREAS, Region 14 ESC desires NCPA to proceed with administration of the Master Agreement;

WHEREAS, NCPA and Vendor desire to enter into this Agreement to make available the Master Agreement to public agencies on a national basis;

NOW, THEREFORE, in consideration of the payments to be made hereunder and the mutual covenants contained in this Agreement, NCPA and Vendor hereby agree as follows:

General Terms and Conditions

- The Master Agreement, attached hereto and incorporated herein by reference, and the terms and conditions contained therein shall apply to this Agreement except as may be expressly changed or modified by this Agreement.
- The IBM Client Relationship Agreement (CRA) and the IBM Cloud Services Agreement (CSA) - for Cloud specific offerings are attached hereto and incorporated herein by reference, and the terms and conditions contained in said documents shall apply to this Agreement, except as may be expressly changed or modified by this Agreement
- NCPA shall be afforded all of the rights, privileges and indemnifications afforded to Region 14 ESC under the Master Agreement, and such rights, privileges and indemnifications shall accrue and apply with equal effect to NCPA under this Agreement including, but not limited to, the Vendor's obligation to provide appropriate insurance and certain indemnifications to Region 14 ESC.
- Vendor shall perform all duties, responsibilities and obligations required under the Master Agreement in the time and manner specified by the Master Agreement.

- NCPA shall perform all of its duties, responsibilities, and obligations as administrator of purchases under the Master Agreement as set forth herein, and Vendor acknowledges that NCPA shall act in the capacity of administrator of purchases under the Master Agreement.
- With respect to any purchases made by Region 14 ESC or any Public Agency pursuant to the Master Agreement, NCPA (a) shall not be construed as a dealer, re-marketer, representative, partner, or agent of any type of Vendor, Region 14 ESC, or such Public Agency, (b) shall not be obligated, liable or responsible (i) for any orders made by Region 14 ESC, any Public Agency or any employee of Region 14 ESC or Public Agency under the Master Agreement, or (ii) for any payments required to be made with respect to such order, and (c) shall not be obligated, liable or responsible for any failure by the Public Agency to (i) comply with procedures or requirements of applicable law, or (ii) obtain the due authorization and approval necessary to purchase under the Master Agreement. NCPA makes no representations or guaranties with respect to any minimum purchases required to be made by Region 14 ESC, any Public Agency, or any employee of Region 14 ESC or Public Agency under this Agreement or the Master Agreement.
- The Public Agency participating in the NCPA contract and Vendor may enter into a separate supplemental agreement to further define the level of service requirements over and above the minimum defined in this contract, i.e. invoice requirements, ordering requirements, specialized delivery, etc. Any supplemental agreement developed as a result of this contract is exclusively between the Public Agency and Vendor. NCPA, its agents, members and employees shall not be made party to any claim for breach of such agreement.

Term of Agreement

- This Agreement shall be in effect so long as the Master Agreement remains in effect, provided, however, that the obligation to pay all amounts owed by Vendor to NCPA through the termination of this Agreement and all indemnifications afforded by Vendor to NCPA shall survive for two (2) years after the expiration of term of this Agreement.

Fees and Reporting

- Vendor shall electronically provide NCPA with a detailed quarterly report showing the dollar volume of all sales under the contract for the previous month or quarter. Reports shall be sent via e-mail to NCPA offices at reporting@ncpa.us. Reports are due on the fifteenth (15th) day after the close of the previous month or quarter. It is the responsibility of the vendor to collect and compile all sales under the contract from participating members and submit one (1) report. The report shall include at least the following information, as listed in the example below:

Vendor Name:

NCPA Reporting Quarter:

Entity Name	Zip Code	State	PO or Job #	Sale Amount

Total

- All Purchase Orders provided to IBM from Public Agencies must reference the NCPA Contract number.

- The NCPA Contract number on the Purchase Order will serve to validate the eligibility of the sale amount reported, and validate the payment of the administrative fee based on the sale amount(s) reported.
- Vendor shall pay to NCPA a quarterly administrative fee based upon the total purchase price paid to Vendor for the sale of products and services pursuant to the Master Agreement based upon the fee schedule below.

Annual Sales Through Contract	Administrative Fee
All Sales	1%

- Supplier shall maintain an accounting of all purchases made by Public Agencies under the Master Agreement. NCPA and Region 14 ESC reserve the right to audit the accounting for a period of four (4) years from the date NCPA receives the accounting. In the event of such an audit, the requested materials shall be provided at the location designated by Region 14 ESC or NCPA. In the event such audit reveals an underreporting of Contract Sales and a resulting underpayment of administrative fees, Vendor shall promptly pay NCPA the amount of such underpayment.

General Provisions

- This Agreement supersedes any and all other agreements, either oral or in writing, between the parties hereto with respect to the subject matter hereof, and no other agreement, statement, or promise relating to the subject matter of this Agreement which is not contained herein shall be valid or binding.
- Vendor agrees to allow NCPA to use its name and logo within website, marketing materials and advertisement. Any use of NCPA name and logo or any form of publicity regarding this contract by Vendor must have prior approval from NCPA.
- If any action at law or in equity is brought to enforce or interpret the provisions of this Agreement or to recover any administrative fee and accrued interest, the prevailing party shall be entitled to reasonable attorney's fees and costs in addition to any other relief to which such party may be entitled.
- Neither this Agreement nor any rights or obligations hereunder shall be assignable by Vendor without prior written consent of NCPA. Any assignment without such consent will be void.
- This Agreement and NCPA's rights and obligations hereunder may be assigned at NCPA's sole discretion, to an existing or newly established legal entity that has the authority and capacity to perform NCPA's obligations hereunder
- All written communications given hereunder shall be delivered to the addresses as set forth below.


National Cooperative Purchasing Alliance (NCPA):

NCPA
P.O. Box 701362
Houston, TX 77007
Attn: Matthew Mackel
mmackel@ncpa.us
Phone: 888-543-6515
Website: www.ncpa.us


International Business Machines (IBM) Corporation:

IBM Corporation
1177 S. Belt Line Road
Coppell, TX 75019
Attn: Alan Ernst
aernst@us.ibm.com
Phone: 972-906-5045

National Cooperative Purchasing Alliance:

Name: Matthew Mackel
Title: Director, Business Development
Address: PO Box 701273
Houston, TX 77270
Signature: 
Date: December 7, 2016

Vendor: International Business Machines Corporation

Name: Eric Rice
Title: Public Sector Contracts Sales Manager
Address: 7100 Highlands Pkwy
Smyrna, GA 30082
Signature: 
Date: December 9, 2016

Master Agreement

The IBM Client Relationship Agreement (CRA) and Cloud Services Agreement (CSA) provides the basis for the terms and conditions governing the purchase of products and services from IBM under this contract. The CRA and CSA are incorporated by reference and attached to the NCPA Administrative Agreement.

Customer Support

- The Vendor shall provide timely and accurate technical advice and sales support. The vendor shall respond to such requests within one (1) working day after receipt of the request.

Disclosures

- Vendor affirms that he/she has not given, offered to give, nor intends to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor or service to a public servant in connection with this Agreement, except as otherwise allowed for and provided for under the laws governing the applicable public servant.

Funding Out Clause

- If the term of this Agreement extends into fiscal years subsequent to that in which it is approved, such continuation of the Agreement is contingent on the appropriation of funds for such purpose by the appropriate legislative body. If funds to effect such continued payment are not appropriated, Vendor agrees to take back any affected deliverables furnished under this Agreement, terminate any services supplied to the purchasing entity under this Agreement, and relieve the purchasing entity of any further obligation therefore. The purchasing entity agrees: 1) to make a best efforts attempt to obtain appropriate funds for payment under the Agreement; 2) that if such funding is not made available, deliverables shall be returned to the Vendor in substantially the same condition in which delivered to the purchasing entity, subject to normal wear and tear; and 3) to pay for packing, crating and transportation to Vendor's nearest facility and for reimbursement to the Vendor for expenses incurred for their assistance in such packing and crating (if applicable).

Shipments (if applicable)

- Unless otherwise arranged between the purchasing entity and Vendor, all products shall be shipped within seven (7) business days after receipt of a valid purchase order, based on product availability, by a reliable and insured shipping company. If a product cannot be shipped within that time, Vendor shall notify the entity placing the order as to why the product has not shipped and shall provide an estimated shipping date.

Tax Exempt Status

- Vendor shall include appropriate sales and use taxes as part of the invoice and as applicable to the purchasing entity.

Payments

- The purchasing entity using the contract will make payments directly to the Vendor.

Pricing

IBM Products and Offerings currently available through this contract include the following:

- IBM Hardware and Maintenance - Storage, Tape, and Servers
- IBM Software Products and Software Subscription and Support-Entitled Software Products
- IBM Cloud Offerings:
 - Infrastructure as a Service (IaaS)
 - Platform as a Service (PaaS)
 - Software as a Service (SaaS)
- IT Professional Services - fixed price and hourly rate services
- Value Added Product and Services Bundles:
 - Passive Optical Network (PON) Bundle
 - IBM AppleCare for Enterprise
 - IBM MobileFirst Managed Mobility services for Apple OS

Pricing for this contract will be based on a quantity of one, unless otherwise noted. Additional discounting may be available in accordance with the specific scope of the purchasing entities request and/or when promotions permit.

Pricing will only be adjusted by the mutual agreement of the parties.

- All pricing shall include the administrative fee to be remitted to NCPA by the Vendor. It is the Vendor's responsibility to keep all pricing up to date and on file with NCPA.
- For the IBM Cloud Offerings, the pricing on file with the NCPA is and will remain non-binding initial estimates, and should be used for guidance only. There are many scope variables associated with Cloud offerings that can result in the estimate being lower or higher. It is IBM's intent to work with the individual purchasing entity to offer a best and final price at a transactional level.

- For hardware and software orders, all deliveries shall be freight prepaid, F.O.B. destination and shall be included in all pricing offered unless otherwise clearly stated in writing in the Transaction Document.

For Vendor services the pricing contained herein is exclusive of any travel and living expenses, other reasonable expenses incurred in connection with the Services, and any applicable taxes.

Warranty

- Product and Service warranty is as provided for in the IBM Client Relationship Agreement or IBM Cloud Services Agreement.

Indemnity

- Vendor shall indemnify and hold harmless Region 14 ESC, by defending its participants, administrators and employees from and against all third party claims for damages on account of any bodily injury to persons (including death), or damage to real property or tangible personal property for which Vendor is legally liable to that third party and pay all costs, damages and attorney's fees that a court finally awards or that are included in a settlement approved by Vendor, provided that Region 14 ESC shall promptly notify Vendor in writing of the claim, and allow Vendor to control the defense and will cooperate with Vendor in the defense and any related settlement negotiations.

Certificates of Insurance

- Certificates of insurance shall be delivered to the Public Agency, if required, prior to commencement of work. The insurance company shall be licensed in the applicable state in which work is being conducted. The Vendor shall give the purchasing entity a notice prior to any cancellation of policies in accordance with the terms and conditions of the applicable policy provisions. The Vendor shall require all subcontractors performing any work to maintain coverage in accordance with Vendor's standard agreements with such subcontractors.

Legal Obligations

- Vendor shall be aware of and comply with all local, state, and federal laws applicable to Vendor as a provider of information technology products/services under this contract.

Force Majeure

- If by reason of Force Majeure, either party hereto shall be rendered unable wholly or in part to carry out its obligations under this Agreement then such

party shall give notice and full particulars of Force Majeure in writing to the other party within a reasonable time after occurrence of the event or cause relied upon, and the obligation of the party giving such notice, so far as it is affected by such Force Majeure, shall be suspended during the continuance of the inability then claimed, except as hereinafter provided, but for no longer period, and such party shall endeavor to remove or overcome such inability with all reasonable dispatch.

- The term Force Majeure as employed herein, shall mean acts of God, strikes, lockouts, or other industrial disturbances, act of public enemy, orders of any kind of government of the United States or any civil or military authority; insurrections; riots; epidemics; landslides; lighting; earthquake; fires; hurricanes; storms; floods; washouts; droughts; arrests; restraint of government and people; civil disturbances; explosions, breakage or accidents to machinery, pipelines or canals, or other causes not reasonably within the control of the party claiming such inability. It is understood and agreed that the settlement of strikes and lockouts shall be entirely within the discretion of the party having the difficulty, and that the above requirement that any Force Majeure shall be remedied with all reasonable dispatch shall not require the settlement of strikes and lockouts by acceding to the demands of the opposing party or parties when such settlement is unfavorable in the judgment of the party having the difficulty.

Miscellaneous

- Either party may cancel this contract in whole or in part by providing written notice. The cancellation will take effect 30 business days after the other party receives the notice of cancellation. After the 30th business day all work will cease following completion of any final purchase order.
- Vendor will be reimbursed for any products and services Vendor delivers through the date of termination, as well as any reimbursable expenses Vendor incurs. Vendor may also seek reimbursement of any applicable adjustment or termination charges and for expenses Vendor incurs as a result of such termination (which Vendor will take reasonable steps to mitigate), all in accordance with the provisions of the contract.

Contract Administration

- The contract will be administered by Region 14 ESC. The National Program will be administered by NCPA on behalf of Region 14 ESC.

Contract Term

- The contract term will be for one (1) year starting from the date specified on the

NCPA Administrative Agreement. The contract may be renewed for up to four (4) additional one-year terms, based upon the mutual agreement of the parties.

Contract Waiver

- Any waiver of any provision of this contract shall be in writing and shall be signed by the duly authorized agent of Region 14 ESC. The waiver by either party of any term or condition of this contract shall not be deemed to constitute waiver thereof nor a waiver of any further or additional right that such party may hold under this contract.

Products and Services additions

- Products and Services may be added to the resulting contract during the term of the contract by written amendment duly executed by the parties, to the extent that those products and services are within the scope of the original RFP.

Client Relationship Agreement

Using this agreement, Client may order Programs, Cloud and other Services, Machines and Appliances (collectively IBM Products) and third party products and services (Non-IBM Products) available from IBM. Details regarding products, offerings or orders are provided in Attachments and Transaction Documents (TDs). This agreement and applicable Attachments and TDs are the complete agreement (Agreement) regarding transactions under this Agreement.

Programs

A **Program** is an IBM-branded computer program and related material available for license from IBM subject to the payment of charges. Program details are described in an Attachment called License Information (LI). Programs do not include Machine Code or Project Materials. Programs are copyrighted and licensed (not sold). When IBM accepts an order for a Program, IBM grants Client a nonexclusive license to: a) use the Program only up to its authorizations and subject to its LI; b) make and install copies to support such authorized use; and c) make a backup copy. Programs may be used by Client, its authorized employees and contractors only within Client's Enterprise, and not to provide hosting or timesharing services to any third party. Client may not sublicense, assign, or transfer the license for any Program. Additional rights may be available from IBM for additional fees or under different terms. IBM does not grant unrestricted rights to use the Program nor has Client paid for all of the economic value of the Program. Certain Programs may contain third party code licensed under separate agreements identified in the LI.

The license granted for a Program is subject to Client:

- reproducing copyright notices and other markings;
- ensuring anyone who uses the Program does so only for Client's authorized use and complies with the license;
- not reverse assembling, reverse compiling, translating, or reverse engineering the Program; and
- not using any of the elements of the Program or related licensed material separately from the Program.

The metric applicable to a Program license is specified in an Attachment or TD. All licenses on a server or capacity based metric must be licensed to the full capacity of the server on which the Program is installed, unless sub-capacity usage is available from IBM and Client complies with the applicable sub-capacity requirements.

Services - Cloud Services

A **Cloud Service** is an IBM branded offering hosted or managed by IBM and made available via a network. Each Cloud Service is described in an Attachment or TD called a Service Description. Cloud Services are designed to be available 24/7, subject to maintenance. Client will be notified of scheduled maintenance. Technical support and service level commitments, if applicable, are specified in an Attachment or TD.

When IBM accepts Client's order, IBM provides Client the authorizations specified in the TD. The term, including any renewal term, for a Cloud Service is described in an Attachment or TD.

IBM will provide the facilities, personnel, equipment, software, and other resources necessary to provide the Cloud Services and generally available user guides and documentation to support Client's use of the Cloud Service. Client will provide hardware, software and connectivity to access and use the Cloud Service, including any required Client-specific URL addresses and associated certificates.

An Attachment or TD may have additional Client responsibilities.

Client may access a Cloud Service only to the extent of authorizations acquired by Client. Client is responsible for use of Cloud Services by any user who accesses the Cloud Service with Client's account credentials. A Cloud Service may not be used in any jurisdiction for unlawful, obscene, offensive or fraudulent content or activity, such as advocating or causing harm, interfering with or violating the integrity or security of a network or system, evading filters, sending unsolicited, abusive or deceptive messages, viruses or harmful code, or violating third party rights. If there is a complaint or notice of violation, use may be suspended until resolved, and terminated if not resolved promptly. Unless expressly provided in a TD, Client is not authorized to use a Cloud Service to provide hosting or timesharing services to any third party.

Data Protection for Cloud Services

Each Cloud Service is designed to protect content that Client inputs into the Cloud Service. Except for account data, Client is the sole controller for any personal data included in the content, and appoints IBM as a processor to process such personal data (as those terms are defined in EU Directive 95/46/EC). Except as otherwise specified in an Attachment or TD, IBM will treat content as confidential by not disclosing content other than to IBM employees and contractors for use only to the extent needed to deliver the Cloud Service. IBM will return or destroy it upon the expiration or cancellation of the Cloud Service, or earlier upon Client's request. IBM may charge for certain activities performed at Client's request (such as delivering content in a specific format). Content is not subject to any separate confidentiality agreement between the parties.

The Attachment or TD for each Cloud Service describes the security functions and features of the Cloud Service. By using the Cloud Service Client acknowledges that it meets Client's requirements and processing instructions. IBM will provide Client notice of any unauthorized third party access to Client's content of which IBM becomes aware and will use reasonable efforts to remediate identified security vulnerabilities. If Client's content is lost or damaged, IBM will assist Client in restoring it to the Cloud Service from Client's last available backup copy in compatible format.

IBM may use processors and subprocessors (including personnel and resources) in locations worldwide to deliver the Cloud Services. IBM may transfer Client's personal data across country borders including outside the European Economic Area (EEA). A list of countries where content may be processed for a Cloud Service is available at www.ibm.com/cloud/datacenters or as described in the Attachment or TD. A list of subprocessors is available upon request.

Upon request by either party, IBM, Client or their affiliates will enter into additional agreements required by law for the protection of personal data included in content such as the standard unmodified EU Model Clauses agreement pursuant to EC Decision 2010/87/EU with optional clauses

removed. The parties agree (and will procure that their respective affiliates agree) that such additional agreements will be subject to the terms of the Agreement.

IBM, its affiliates, and their third party suppliers may process, store, and use account data wherever they do business to enable product features, administer use, personalize experience, and otherwise support or improve use of the Cloud Service. Account data is all information (which may be further described in an Attachment or TD) about Client or its users provided to or collected by IBM (including through tracking and other technologies, such as cookies) which is processed in accordance with the IBM Online Privacy Statement available at www.ibm.com/privacy/details/us/en/.

Changes to Cloud Services

IBM may modify a Cloud Service, without degrading its functionality or security features. Any change that affects the commercial terms (e.g. charges) of the Cloud Service will not be effective until the next agreed renewal or extension.

IBM may withdraw a Cloud Service on 12 months' notice, unless otherwise stated in an Attachment or TD. IBM will either continue to provide the Cloud Service for the remainder of Client's unexpired term or work with Client to migrate to another IBM Service.

Suspension of Cloud Services

IBM may suspend, revoke or limit Client's use of a Cloud Service if IBM determines there is a material breach of Client's obligations, a security breach, or violation of law. Charges will continue to accrue for the Cloud Service during any suspension. If the cause of the suspension can reasonably be remedied, IBM will provide notice of the actions Client must take to reinstate the Cloud Service. If Client fails to take such actions within a reasonable time, IBM may terminate the Cloud Service.

Services – Other Services

IBM provides consulting, installation, customization and configuration, maintenance, and other services as detailed in an Attachment or TD. Client will own the copyright in works of authorship that IBM develops for Client under a Statement of Work (SOW) (Project Materials). Project Materials exclude works of authorship delivered to Client, but not created, under the SOW, and any modifications or enhancements of such works made under the SOW (Existing Works). Some Existing Works are subject to a separate license agreement (Existing Licensed Works). A Program is an example of an Existing Licensed Work and is subject to the Program terms. IBM grants Client an irrevocable (subject to Client's payment obligations), nonexclusive, worldwide license to use, execute, reproduce, display, perform and prepare derivatives of Existing Works that are not Existing Licensed Works. IBM retains an irrevocable, nonexclusive, worldwide, paid-up license to use, execute, reproduce, display, perform, sublicense, distribute, and prepare derivative works of Project Materials.

Either party may terminate a Service if a material breach concerning the Service is not remedied within a reasonable time. IBM will provide at least 90 days' notice prior to withdrawal of Service. Client will pay charges for Services provided through the effective date of termination. If Client terminates without cause or IBM terminates for breach, Client will meet all minimum commitments and pay

termination or adjustment charges specified in the SOW or TD and any additional costs IBM reasonably incurs because of early termination, such as costs relating to subcontracts or relocation. IBM will take reasonable steps to mitigate any such additional costs.

Machines and Appliances

A **Machine** is an IBM-branded device including its features, upgrades, and accessories. An **Appliance** is a Program and Machine combination designed for a particular function. Unless otherwise provided, terms that apply to a Program apply to the Program component of an Appliance and terms that apply to a Machine apply to the Machine component of an Appliance. Client may not use or transfer an Appliance's Program component independently of the Appliance.

When IBM accepts Client's order, IBM transfers title to Machines and non-IBM machines to Client or Client's lessor upon payment of all amounts due, except in the United States where title transfers upon shipment. IBM bears risk of loss until delivery to the carrier for shipment. IBM pays for insurance on Client's behalf until delivery to Client's location. Client must report any loss in writing to IBM within 10 business days of delivery and follow the claim procedure. Additional charges may apply for IBM installation more than six months after shipment. Client must follow instructions provided to install Client set up Machines.

Machines and parts removed or exchanged for upgrade, warranty service, or maintenance are IBM property and must be returned to IBM promptly. A replacement assumes the warranty or maintenance status of the replaced part. A Machine may include parts that are not new and in some instances Machines may have been previously installed. Regardless, IBM's warranty terms apply. Client will promptly install or allow IBM to install mandatory engineering changes. Client may only acquire Machines for use within Client's Enterprise in the country where acquired and not for resale, lease, or transfer. Lease-back financing is permitted.

Machine Code and Built in Capacity

Machines may include **Machine Code (MC)** and **Built in Capacity (BIC)**. MC is computer instructions, fixes, replacements and related materials, such as data and passwords relied on, provided, used with or generated by MC, that permit the operation of the machine's processors, storage or other functionality. MC is copyrighted and licensed (not sold). IBM only provides copies, fixes or replacements for MC for Machines under warranty or IBM maintenance, or under a separate written agreement which may be subject to additional charges. Client agrees that all copies, fixes or replacements for MC will be obtained solely as authorized by IBM. IBM grants Client a nonexclusive license to use MC only (i) on the Machine for which IBM provided it, and (ii) to access and use BIC only to the extent paid for by Client, activated by IBM and subject to the Attachment called IBM Authorized Use Table for Machines (AUT) available from IBM and at http://www.ibm.com/systems/support/machine_warranties/machine_code/aut.html. BIC is computing resource (e.g., processors, storage and other functionality) that IBM provides for a Machine. Use of BIC may be restricted by contract, technological or other measures. Client agrees to IBM's implementation of technological and other measures that restrict, monitor and report on use of BIC or MC, and to install any changes IBM provides. Client may not alter, reverse assemble, reverse compile, translate or reverse

engineer the MC, or circumvent or interfere, by any means, with IBM's contractual, technological or other measures that restrict, monitor or report on use of BIC or MC. While Client's license to MC is in effect, Client may transfer possession of the entire MC along with all of Client's rights and obligations only with corresponding transfer of the Machine and a hardcopy of this MC license, and only if the transferee agrees to the terms of this MC license. Client's MC license terminates immediately upon transfer. This Agreement governs MC and BIC on Machines acquired from another party. Use of BIC in excess of authorizations from IBM is subject to additional charges.

Warranties and Post Warranty Support

IBM warrants that Programs used in their specified operating environment conform to their official published specifications. The warranty period for a Program (not the Program component of an Appliance) is one year, or the initial license term if less than one year, unless another warranty period is specified in an Attachment or TD. During the Program warranty period, IBM provides Software Subscription and Support (S&S), entitling Client to defect correction information, restrictions, bypasses, and new releases and versions IBM makes generally available. Unless Client elects to discontinue S&S, annual S&S automatically renews at then-current charges until S&S for a version or release is withdrawn. If Client elects to continue S&S for a Program at a designated Client site, Client must maintain S&S for all uses and installations of the Program at that site.

IBM warrants that it provides Cloud and other Services using commercially reasonable care and skill in accordance with the applicable Attachment or TD, including any completion criteria, and that Project Materials will comply with the Attachment or TD at the time of delivery. The warranty for a Service ends when the Service ends.

IBM warrants that Machines used in their specified operating environment conform to their official published specifications. For a Machine or Appliance, the warranty period is specified in the Attachment or TD. During its warranty period, IBM will repair or exchange the Machine without charge, as specified in the Attachment. Warranty does not apply to Machines that Client did not allow IBM to install as required by the TD. Client may purchase warranty service upgrades and post warranty support where available. For Appliances, post warranty support includes maintenance and S&S.

If a Machine or Program does not function as warranted during its warranty period and IBM is unable to repair or replace it with a functional equivalent, Client may return it to IBM for a refund of the amount Client paid (for recurring charges, up to twelve months' charges) and Client's license or right to use it terminates.

IBM does not warrant uninterrupted or error-free operation of an IBM Product or that IBM will correct all defects or prevent third party disruptions or unauthorized third party access to an IBM Product. These warranties are the exclusive warranties from IBM and replace all other warranties, including the implied warranties or conditions of satisfactory quality, merchantability, non-infringement, and fitness for a particular purpose. IBM warranties will not apply if there has been misuse, modification, damage not caused by IBM, failure to comply with instructions provided by IBM, or if otherwise stated in an Attachment or TD. Non-IBM Products are sold under the Agreement as-is,

without warranties of any kind. Third parties may provide their own warranties to Client.

Charges, Taxes, Payment and Verification

Client agrees to pay all applicable charges specified by IBM, charges for use in excess of authorizations, any customs or other duty, tax, levy, or fee imposed by any authority resulting from Client's acquisitions under the Agreement, and any late payment fees. Amounts are due upon receipt of the invoice and payable within 30 days of the invoice date to an account specified by IBM. Prepaid Services must be used within the applicable period. IBM does not give credits or refunds for any prepaid, one-time charges, or other charges already due or paid.

Client agrees to: i) pay withholding tax directly to the appropriate government entity where required by law; ii) furnish a tax certificate evidencing such payment to IBM; iii) pay IBM only the net proceeds after tax; and iv) fully cooperate with IBM in seeking a waiver or reduction of such taxes and promptly complete and file all relevant documents. Where taxes are based upon the location(s) receiving the benefit of the Cloud Service, Client has an ongoing obligation to notify IBM of such location(s) if different than Client's business address listed in the applicable Attachment or TD.

IBM may change recurring charges, labor rates and minimum commitments on three months' notice. A change applies on the invoice date or the first day of the charging period on or after the effective date IBM specifies in the notice. IBM may change one-time charges without notice. However, a change to a one-time charge does not apply to an order if i) IBM receives the order before the announcement date of the increase and ii) within three months after IBM's receipt of the order, the product is shipped or made available to Client.

Client will i) maintain, and provide upon request, records, system tools output, and access to Client's premises, as reasonably necessary for IBM and its independent auditor to verify Client's compliance with the Agreement, including MC and Program licenses and metrics, such as sub-capacity usage, and ii) promptly order and pay for required entitlements (including associated S&S or maintenance) at IBM's then current rates and for other charges and liabilities determined as a result of such verification, as IBM specifies in an invoice. These compliance verification obligations remain in effect during the term of any TD and for two years thereafter.

Liability and Indemnity

IBM's entire liability for all claims related to the Agreement will not exceed the amount of any actual direct damages incurred by Client up to the amounts paid (if recurring charges, up to 12 months' charges apply) for the product or service that is the subject of the claim, regardless of the basis of the claim. This limit applies collectively to IBM, its subsidiaries, contractors, and suppliers. IBM will not be liable for special, incidental, exemplary, indirect, or economic consequential damages, or lost profits, business, value, revenue, goodwill, or anticipated savings.

The following amounts, if a party is legally liable for them, are not subject to the above cap: i) third party payments referred to in the paragraph below; ii) damages for body injury (including death); iii) damages to real property and

tangible personal property; and iv) damages that cannot be limited under applicable law.

If a third party asserts a claim against Client that an IBM Product acquired under the Agreement infringes a patent or copyright, IBM will defend Client against that claim and pay amounts finally awarded by a court against Client or included in a settlement approved by IBM, provided that Client promptly (i) notifies IBM in writing of the claim, (ii) supplies information requested by IBM, and (iii) allows IBM to control, and reasonably cooperates in, the defense and settlement, including mitigation efforts.

IBM has no responsibility for claims based, in whole or part, on Non-IBM Products, items not provided by IBM, or any violation of law or third party rights caused by Client's content, materials, designs, specifications, or use of a non-current version or release of an IBM Product when an infringement claim could have been avoided by using a current version or release.

Termination

Either party may terminate this agreement i) without cause on at least one month's notice to the other after expiration or termination of its obligations under the Agreement; or ii) immediately for cause if the other is in material breach of the Agreement, provided the one who is not complying is given notice and reasonable time to comply. Failure to pay is a material breach. Any terms that by their nature extend beyond the Agreement termination remain in effect until fulfilled, and apply to successors and assignees. Termination of this agreement does not terminate TDs, and provisions of this agreement and Attachments as they relate to such TDs remain in effect until fulfilled or otherwise terminated in accordance with their terms. IBM may terminate Client's license to use a Program or MC if Client fails to comply with the Agreement. Client will promptly destroy all copies of the Program or MC after either party has terminated the license.

Governing Laws and Geographic Scope

Each party is responsible for complying with: i) laws and regulations applicable to its business and content, and ii) import, export and economic sanction laws and regulations, including those of the United States that prohibit or restrict the export, re-export, or transfer of products, technology, services or data, directly or indirectly, to or for certain countries, end uses or end users. Client is responsible for its use of IBM and Non-IBM Products.

Both parties agree to the application of the laws of the country where the transaction is performed (or for Cloud Services, the laws of the state of New York, United States, to the Agreement, without regard to conflict of law principles. The rights and obligations of each party are valid only in the country where the transaction is performed or, if IBM agrees, the country where the product is placed in productive use, except all licenses are valid as specifically granted. If any provision of the Agreement is invalid or unenforceable, the remaining provisions remain in full force and effect. Nothing in the Agreement affects statutory rights of consumers that cannot be waived or limited by contract. The United Nations Convention on Contracts for the International Sale of Goods does not apply to transactions under the Agreement.

General

Parties will not disclose confidential information without a separate, signed confidentiality agreement. If confidential information is exchanged in connection with the Agreement,

the applicable confidentiality agreement is incorporated into, and subject to, this agreement.

Client accepts an Attachment or TD by ordering, enrolling, using, or making a payment for, the product, offering or service. Since this agreement may apply to many future orders, IBM may modify this agreement by providing Client at least three months' written notice. Changes are not retroactive; they apply, as of the effective date, only to new orders, ongoing services that do not expire, and renewals. For transactions with a defined renewable contract period, Client may request that IBM defer the change effective date until the end of the current contract period. Client accepts changes by placing new orders or continuing use after the change effective date or allowing transactions to renew after receipt of the change notice. Except as provided above, all changes to the agreement must be in writing accepted by both parties. If there is a conflict, an Attachment or TD prevails over the terms of this agreement.

IBM is an independent contractor, not Client's agent, joint venturer, partner, or fiduciary, and does not undertake to perform any of Client's regulatory obligations, or assume any responsibility for Client's business or operations. Each party is responsible for determining the assignment of its personnel and contractors, and for their direction, control, and compensation.

IBM maintains a robust set of business conduct and related guidelines covering conflicts of interest, market abuse; anti-bribery & corruption; and fraud. IBM and its personnel comply with such policies and require contractors to have similar policies.

IBM Business Partners are independent from IBM and unilaterally determine their prices and terms. IBM is not responsible for their actions, omissions, statements, or offerings.

Client is responsible for obtaining all necessary permissions to use, provide, store and process content in Cloud, other Services, maintenance, or Program support, and grants IBM permission to do the same. Client is responsible for adequate content back-up. Some of Client's content may be subject to governmental regulation or may require security measures beyond those specified by IBM for an offering. Client will not input or provide such content unless IBM has first agreed in writing to implement additional required security measures.

IBM and its affiliates, and their subcontractors, may process and store business contact information of Client personnel in connection with the performance of this Agreement wherever they do business. IBM may use personnel and resources in locations worldwide and third party suppliers to support the delivery of products and services.

Neither party may assign the Agreement, in whole or in part, without the prior written consent of the other. Assignment of IBM rights to receive payments and by IBM in conjunction with the sale of the portion of IBM's business that includes a product or service is not restricted.

The Agreement applies to IBM and Client (the signatories below) and their respective Enterprise companies who avail themselves of the Agreement. The signatories shall coordinate the activities of Enterprise companies under the Agreement. Enterprise companies include (i) companies within the same country that Client or IBM control (by owning greater than 50% of the voting shares), and (ii) any other entity that controls, is controlled by or is under

common control as Client or IBM and has signed a participation Attachment.

All notices under the Agreement must be in writing and sent to the address below, unless a party designates in writing a different address. The parties consent to the use of electronic means and facsimile transmissions for communications as a signed writing. Any reproduction of the Agreement made by reliable means is considered an original. The Agreement supersedes any course of dealing, discussions or representations between the parties.

No right or cause of action for any third party is created by the Agreement or any transaction under it. Neither party will bring a legal action arising out of or related to the Agreement more than two years after the cause of action arose. Neither party is responsible for failure to fulfill its non-monetary obligations due to causes beyond its control. Each party will allow the other reasonable opportunity to comply before it claims the other has not met its obligations. Where approval, acceptance, consent, access, cooperation or similar action by either party is required, such action will not be unreasonably delayed or withheld.

Agreed to:

Client Company Name:

By 

Authorized signature

Title: Director, Business Development

Name (type or print): Matthew Mackel

Date: December 7, 2016

Client number: 1432687

Enterprise number: _____

Client address: PO Box 701273

Houston, TX 77270

Agreed to:

International Business Machines Corporation

By 

Authorized signature

Title: IBM Public Sector Contacts Sales Manager

Name (type or print): Eric Rice

Date: December 9, 2016

Agreement number: _____

IBM address: 7100 Highlands Pkwy

Smyrna, GA 30082

Client participates in PA by submitting an enrollment form and an order, subject to acceptance by IBM. Client enrolls an initial Client site (referred to as the Originating Site) and may add additional authorized Client sites (referred to as Additional Sites). A site can be a physical location or organizational unit in Client's Enterprise and is designated through the PA enrollment process. For purposes of PA only (not for other products ordered under the CRA), Enterprise companies do not require a separate participation Attachment.

IBM identifies IBM Products and Non-IBM Products that are eligible for PA (called Eligible Products or EPs), and assigns each EP a point value.

Relationship Suggested Volume Pricing (RSVP) and Suggested Volume Pricing (SVP)

An RSVP level is determined by aggregating points for all EPs ordered during Client's PA Term (as described below). The point value of Client's initial EP order determines Client's initial RSVP level. Client may attain a higher RSVP Level by placing additional EP orders. The higher RSVP level will apply to orders placed after the higher RSVP level is attained, for the remainder of Client's PA Term. An SVP level is also calculated for each EP order, and is based on the point value for a single order. If the SVP level for a particular order is higher than Client's current RSVP level, the SVP level will apply to that order.

RSVP/SVP Level Table:

RSVP/SVP Level	BL	D	E	F	G	H
Points	<500	500	1,000	2,500	5,000	10,000

PA Term

The initial PA Term commences with Client's first order after enrollment and continues until the last day of the twelfth full month thereafter (i.e., the initial PA term includes 12 full months, plus if the order was not placed on the first day of a month, the remainder of the first month). The PA Term is a measurement period, not the contract duration. On the first day of the month following the end of the prior PA Term (the PA Anniversary), the next 12 month PA Term begins. For each PA Term after the initial PA Term, Client's RSVP Level is reset on the PA Anniversary, based on EP acquired by all participating Client sites during the prior PA Term. The RSVP Level for a new PA Term will not be lowered by more than one level below Client's RSVP level at the end of the prior PA Term. However, if Client does not place any new PA orders (or have outstanding quotes) for any Originating or Additional Sites for a 2-year period and allows S&S on Programs previously ordered under PA to lapse, Client's RSVP level will be reset and Client's prior points will not be taken into account in establishing a new RSVP level. Client may be required to re-enroll in PA.

S&S and Selected Support

Selected Support may be available for certain IBM non-warranted programs and Non-IBM Products, until withdrawn. S&S and Selected Support include assistance with routine, short duration installation and usage questions. Selected Support does not include new versions, releases, updates, restrictions or bypasses, however assistance with designing and developing applications may be available, although additional charges may apply. Like S&S, annual Selected Support automatically renews at then current charges unless Client elects to discontinue Selected Support. If S&S or Selected Support for a version or release is withdrawn by IBM, Client must upgrade to a supported version or release to continue receiving support. If Client renewed support prior to notice of withdrawal, IBM may either continue to provide support until the end of the current term or provide Client a prorated refund.

If Client elects to continue S&S or Selected Support, Client must maintain it for all program uses and installations at a Client site. If Client requests to renew expiring S&S at a lesser quantity of program uses and installations than the expiring quantity, Client must provide a report that verifies current program usage and installation, and may be required to provide other compliance verification information.

If Client allows S&S or Selected Support to lapse, Client may no longer access any associated benefits for that Client Site, including fixes, releases, versions or other materials that were available but not installed prior to the lapse. After the lapse, reinstatement charges at then current rates will apply, and renewal pricing will not be available.

Sub-Capacity Usage

IBM designates certain EPs as eligible for sub-capacity usage. Sub-capacity usage is based on the machine's processor capacity made available to the EP as measured by a tool that IBM provides.

To qualify for sub-capacity usage, Client must: 1) install and configure IBM's license management tool within 90 days of first use in an eligible environment, 2) run the tool continuously after installation and promptly install any tool updates, 3) generate system reports quarterly using the tool, retain them for at least two years, provide them to IBM upon request, and adhere to the compliance verification requirements in the CRA, and 4) meet IBM's operating system, processor technology, and virtualization environment requirements for sub-capacity usage. Client may not modify, alter, circumvent or interfere, by any means, with the tool or the output it generates. Exceptions to running the tool may be available if Client's environment meets certain qualifications established by IBM. If Client does not comply with the sub-capacity usage qualifications, charges based on full capacity of the machine will apply.

Fixed Term, Token and Monthly Licenses

IBM designates certain EPs as Fixed Term Licenses (FTLs), Token Licenses (TLs), or Monthly Licenses (MLs). The license term for an FTL, TL or ML is specified in a TD and begins on the date Client's order is accepted by IBM. The term for an FTL or TL automatically renews at then current charges, unless Client provides written notice of termination

prior to expiration of the term. For an ML, Client selects a renewal option at the time of order. IBM assigns a Token value to each EP available for TL. If Client selects TL for one or more EPs, Client must acquire sufficient Tokens to support Client's peak concurrent use of those of EPs.

CEO Product Categories

Collections of EPs may be offered by IBM on a per user basis subject to a minimum initial user quantity (a CEO Product Category). For Client's first (primary) CEO Product Category, Client must acquire licenses for all users in their Enterprise who have been assigned a machine capable of accessing any Program in the CEO Product Category. For each additional (secondary) CEO Product Category, Client must meet the applicable minimum initial order quantity requirement.

All client access Programs (used on an end user device to access a Program on a server) must be acquired from the same CEO Product Category as the server Program they access.

Trade-ups

IBM may designate certain Programs as eligible for Trade Up at a reduced charge, if used to replace a specified Program or Non-IBM Product. To qualify, Client must terminate use of and uninstall the replaced product.

Relationship to CRA and Compliance Verification

Client's participation in PA is subject to the CRA. As an example, Client's usage of and payment for EPs, including S&S and maintenance, sub-capacity, FTL, TL, ML, CEO Product Categories, Trade Up, and other metrics, are subject to the compliance verification obligations in the CRA.

Client is responsible for retaining adequate records. If Client's records are inadequate to determine S&S or Selected Support charges, IBM's charges for any excess usage will include two years of associated maintenance and S&S or Selected Support.

General

With the exception of certain Programs that IBM designates as platform or operating system specific, Client may install and use Programs in any available national language for any platform or operating system available from IBM, up to Client's authorizations.

IBM may pro-rate charges for S&S, Selected Support, FTL, TL of six months or more, or other charges, to align with Client's PA Anniversary.

IBM may add or delete EPs (including in CEO Product Categories), change point values, or add or withdraw a license metric for an EP at any time. Changes apply only to new orders and renewals.

Non-IBM Products available under PA are provided by IBM as-is, without warranty of any kind. Third parties provide and license products and services directly to Client under their own agreements.

An EP may contain technical measures that disable or restrict its use after the end of a term or in excess of authorizations.

Cloud Services Agreement

Using this agreement, Client may order Cloud Services. This agreement and applicable Attachments and Transaction Documents (TDs) are the complete agreement (Agreement) regarding transactions under this Agreement.

Cloud Services

A Cloud Service is an IBM branded offering hosted or managed by IBM and made available via a network. Each Cloud Service is described in an Attachment or a TD, such as a Service Description. Cloud Services are designed to be available 24/7, subject to maintenance. Client will be notified of scheduled maintenance. Technical support and service level commitments, if applicable, are specified in an Attachment or TD.

Client accepts an Attachment or TD by ordering, enrolling, using, or making a payment for the Cloud Service. When IBM accepts Client's order, IBM provides Client the authorizations specified in the TD. The term, including any renewal term, for a Cloud Service is described in an Attachment or TD.

IBM will provide the facilities, personnel, equipment, software, and other resources necessary to provide the Cloud Services and generally available user guides and documentation to support Client's use of the Cloud Service. Client will provide hardware, software and connectivity to access and use the Cloud Service, including any required Client-specific URL addresses and associated certificates. An Attachment or TD may have additional Client responsibilities.

Client may access a Cloud Service only to the extent of authorizations acquired by Client. Client is responsible for use of Cloud Services by any user who accesses the Cloud Service with Client's account credentials. A Cloud Service may not be used in any jurisdiction for unlawful, obscene, offensive or fraudulent content or activity, such as advocating or causing harm, interfering with or violating the integrity or security of a network or system, evading filters, sending unsolicited, abusive or deceptive messages, viruses or harmful code, or violating third party rights. If there is a complaint or notice of violation, use may be suspended until resolved, and terminated if not resolved promptly. Unless expressly provided in an Attachment or TD, Client is not authorized to use a Cloud Service to provide hosting or timesharing services to any third party.

Data Protection

Each Cloud Service is designed to protect content that Client inputs into the Cloud Service. Except for account data, Client is the sole controller for any personal data included in the content, and appoints IBM as a processor to process such personal data (as those terms are defined in EU Directive 95/46/EC). Except as specified in an Attachment or TD, IBM will treat content as confidential by not disclosing content other than to IBM employees and contractors for use only to the extent needed to deliver the Cloud Service. IBM will return or destroy it upon the expiration or cancellation of the Cloud Service, or earlier upon Client's request. IBM may charge for certain activities performed at Client's request (such as delivering content in a specific format).

Client is responsible for obtaining all necessary permissions to use, provide, store and process content in the Cloud Service and grants IBM permission to do the same. Some of Client's content may be subject to governmental regulation or may require security measures beyond those specified by IBM for an offering. Client will not input or provide such content unless IBM has first agreed in writing to implement additional required security measures.

The Attachment or TD for each Cloud Service describes the security functions and features of the Cloud Service. By using the Cloud Service Client acknowledges that it meets Client's requirements and processing instructions. IBM will provide Client notice of any unauthorized third party access to Client's content of which IBM becomes aware and will use reasonable efforts to remediate identified security vulnerabilities. If Client's content is lost or damaged, IBM will assist Client in restoring it to the Cloud Service from the last available backup copy in compatible format.

IBM may use processors and subprocessors (including personnel and resources) in locations worldwide to deliver the Cloud Services. IBM may transfer Client's personal data across country borders including outside the European Economic Area (EEA). A list of countries where content may be processed for a Cloud Service is available at www.ibm.com/cloud/datacenters or as described in the Attachment or TD. A list of subprocessors is available upon request.

Upon request by either party, IBM, Client or their affiliates will enter into additional agreements required by law for the protection of personal data included in content, such as the standard unmodified EU Model Clauses agreement pursuant to EC Decision 2010/87/EU with optional clauses removed. The parties agree (and will procure that their respective affiliates agree) that such additional agreements will be subject to the terms of the Agreement.

IBM, its affiliates, and their third party suppliers may process, store and use account data wherever they do business to enable product features, administer use, personalize experience, and otherwise support or improve use of the Cloud Service. Account data is all information (which may be further described in an Attachment or TD) about Client or its users provided to or collected by IBM (including through tracking and other technologies, such as cookies) which is processed in accordance with the IBM Online Privacy Statement available at www.ibm.com/privacy/details/us/en/.

Changes

IBM may modify a Cloud Service, without degrading its functionality or security features. Any change that affects the commercial terms (e.g. charges) of the Cloud Service will not be effective until the next agreed renewal or extension.

IBM may withdraw a Cloud Service on 12 months' notice, unless otherwise stated in an Attachment or TD. IBM will either continue to provide the Cloud Service for the remainder of Client's unexpired term or work with Client to migrate to another IBM Service.

Since this agreement may apply to many future orders, IBM may modify this agreement by providing Client at least three months' written notice. Changes are not retroactive; they apply, as of the effective date, only to new orders, ongoing Cloud Services that do not expire, and renewals. For transactions with a defined renewable contract period, Client may request that IBM defer the change effective date until the end of the current contract period. Client accepts changes by placing new orders or continuing use after the change effective date or allowing transactions to renew after receipt of the change notice. Except as provided above, all changes to the Agreement must be in writing accepted by both parties. If

there is a conflict, an Attachment or TD prevails over the terms of this agreement.

Warranties

IBM warrants that it provides Cloud Services using commercially reasonable care and skill in accordance with the applicable Attachment or TD. The warranty for a Cloud Service ends when the Cloud Service ends.

IBM does not warrant uninterrupted or error-free operation of a Cloud Service or that IBM will correct all defects or prevent third party disruptions or unauthorized third party access. These warranties are the exclusive warranties from IBM and replace all other warranties, including the implied warranties or conditions of satisfactory quality, merchantability, non-infringement, and fitness for a particular purpose. IBM warranties will not apply if there has been misuse, modification, damage not caused by IBM, failure to comply with instructions provided by IBM, or if otherwise stated in an Attachment or TD. Non-IBM services are sold under the Agreement as-is, without warranties of any kind. Third parties may provide their own warranties to Client.

Charges, Taxes, and Payment

Client agrees to pay all applicable charges specified by IBM, charges for use in excess of authorizations, any customs or other duty, tax, levy, or fee imposed by any authority resulting from Client's acquisitions under the Agreement, and any late payment fees. Amounts are due upon receipt of the invoice and payable within 30 days of the invoice date to an account specified by IBM. Prepaid Services must be used within the applicable period. IBM does not give credits or refunds for any prepaid, one-time charges, or other charges already due or paid.

Client agrees to: i) pay withholding tax directly to the appropriate government entity where required by law; ii) furnish a tax certificate evidencing such payment to IBM; iii) pay IBM only the net proceeds after tax; and iv) fully cooperate with IBM in seeking a waiver or reduction of such taxes and promptly complete and file all relevant documents. Where taxes are based upon the location(s) receiving the benefit of the Cloud Service, Client has an ongoing obligation to notify IBM of such location(s) if different than Client's business address listed in the applicable Attachment or TD.

Liability and Indemnity

IBM's entire liability for all claims related to the Agreement will not exceed the amount of any actual direct damages incurred by Client up to the amounts paid (if recurring charges, up to 12 months' charges apply) for the service that is the subject of the claim, regardless of the basis of the claim. This limit applies collectively to IBM, its subsidiaries, contractors, and suppliers. IBM will not be liable for special, incidental, exemplary, indirect, or economic consequential damages, or lost profits, business, value, revenue, goodwill, or anticipated savings.

The following amounts, if a party is legally liable for them, are not subject to the above cap: i) third party payments referred to in the paragraph below; ii) damages for body injury (including death); iii) damages to real property and tangible personal property; and iv) damages that cannot be limited under applicable law.

If a third party asserts a claim against Client that an IBM Service acquired under the Agreement infringes a patent or copyright, IBM will defend Client against that claim and pay amounts finally awarded by a court against Client or included

in a settlement approved by IBM, provided that Client promptly (i) notifies IBM in writing of the claim, (ii) supplies information requested by IBM, and (iii) allows IBM to control, and reasonably cooperates in, the defense and settlement, including mitigation efforts.

IBM has no responsibility for claims based on non-IBM products and services, items not provided by IBM, or any violation of law or third party rights caused by Client's content, materials, designs, or specifications.

Termination

IBM may suspend, revoke or limit Client's use of a Cloud Service if IBM determines there is a material breach of Client's obligations, a security breach, or violation of law. If the cause of the suspension can reasonably be remedied, IBM will provide notice of the actions Client must take to reinstate the Cloud Service. If Client fails to take such actions within a reasonable time, IBM may terminate the Cloud Service.

Either party may terminate this agreement: i) without cause on at least one month's notice to the other after expiration or termination of its obligations under the Agreement; or ii) immediately for cause if the other is in material breach of the Agreement, provided the one who is not complying is given notice and reasonable time to comply. Failure to pay is a material breach. Any terms that by their nature extend beyond the Agreement termination remain in effect until fulfilled, and apply to successors and assignees. Termination of this agreement does not terminate TDs, and provisions of this agreement and Attachments as they relate to such TDs remain in effect until fulfilled or otherwise terminated in accordance with their terms.

Governing Laws and Geographic Scope

Each party is responsible for complying with: i) laws and regulations applicable to its business and content, and ii) import, export and economic sanction laws and regulations, including those of the United States that prohibit or restrict the export, re-export, or transfer of products, technology, services or data, directly or indirectly, to or for certain countries, end uses or end users. Client is responsible for its use of IBM and non-IBM products and services.

Both parties agree to the application of the laws of the State of New York, United States, without regard to conflict of law principles. The rights and obligations of each party are valid only in the country of Client's business address. If any provision of the Agreement is invalid or unenforceable, the remaining provisions remain in full force and effect. Nothing in the Agreement affects statutory rights of consumers that cannot be waived or limited by contract. The United Nations Convention on Contracts for the International Sale of Goods does not apply to transactions under the Agreement.

General

IBM is an independent contractor, not Client's agent, joint venturer, partner, or fiduciary, and does not undertake to perform any of Client's regulatory obligations, or assume any responsibility for Client's business or operations. Each party is responsible for determining the assignment of its personnel and contractors, and for their direction, control, and compensation.

IBM maintains a robust set of business conduct and related guidelines covering conflicts of interest, market abuse; anti-bribery & corruption; and fraud. IBM and its personnel comply with such policies and require contractors to have similar policies.

IBM Business Partners are independent from IBM and unilaterally determine their prices and terms. IBM is not

responsible for their actions, omissions, statements, or offerings.

Neither party may assign the Agreement, in whole or in part, without the prior written consent of the other. Assignment of IBM rights to receive payments and by IBM in conjunction with the sale of the portion of IBM's business that includes a service is not restricted.

The Agreement applies to IBM and Client and their respective Enterprise companies who avail themselves of the Agreement. The parties shall coordinate the activities of Enterprise companies under the Agreement. Enterprise companies include (i) companies within the same country that Client or IBM control (by owning greater than 50% of the voting shares), and (ii) any other entity that controls, is controlled by or is under common control with Client or IBM and has signed a participation Attachment.

All notices under the Agreement must be in writing and sent to the address below, unless a party designates in writing a

different address. The parties consent to the use of electronic means and facsimile transmissions for communications as a signed writing. Any reproduction of the Agreement made by reliable means is considered an original. The Agreement supersedes any course of dealing, discussions or representations between the parties.

No right or cause of action for any third party is created by the Agreement or any transaction under it. Neither party will bring a legal action arising out of or related to the Agreement more than two years after the cause of action arose. Neither party is responsible for failure to fulfill its non-monetary obligations due to causes beyond its control. Each party will allow the other reasonable opportunity to comply before it claims the other has not met its obligations. Where approval, acceptance, consent, access, cooperation or similar action by either party is required, such action will not be unreasonably delayed or withheld.



AGENDA ACTION FORM

Consideration of a Resolution Authorizing the Mayor to Enter into an Interlocal Agreement with The Interlocal Purchasing System (TIPS Cooperative Purchasing)

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

Action Form No.: AF-302-2022
 Work Session: December 19, 2022
 First Reading: N/A

Final Adoption: December 20, 2022
 Staff Work By: Committee
 Presentation By: David Frye

Recommendation:

Approve the Resolution.

Executive Summary:

The administration recommends entering into an Interlocal Agreement with The Interlocal Purchasing System (TIPS Purchasing Cooperative) in order to utilize pricing for school and city purchasing. Kingsport City Schools and City of Kingsport benefit by being able to make purchases utilizing this cooperative purchasing agreement with the confidence we are receiving competitive pricing knowing the products awarded have already been through the procurement process of the principal procurement agency. Utilizing cooperative purchasing agreements often leads to increased efficiency by decreasing the amount of time it takes from requisition entry to product/service receipt.

The Board of Education approved this motion on December 13, 2022.

Attachments:

1. Resolution
2. Agreement

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: *dw*

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

RESOLUTION NO. _____

A RESOLUTION APPROVING AN AGREEMENT WITH THE INTERLOCAL PURCHASING SYSTEM (TIPS PURCHASING COOPERATIVE) FOR COOPERATIVE PURCHASING AND AUTHORIZING THE MAYOR TO EXECUTE THE AGREEMENT AND ALL OTHER DOCUMENTS NECESSARY AND PROPER TO EFFECTUATE THE PURPOSE OF THE AGREEMENT

WHEREAS, the city would like to enter into an agreement with The Interlocal Purchasing System (TIPS) for cooperative purchasing; and

WHEREAS, T.C.A. § 12-3-1205(b)(1) authorizes any local government of the state may participate in a cooperative purchasing agreement with one or more out-of-state governmental entities to the extent allowed by the other state's laws for the procurement of goods, supplies, services, or equipment or with an agency of the United States, to the extent allowed by federal law, in accordance with an agreement entered into between or among the participants. Such goods, supplies, services, or equipment must be procured in a manner that constitutes competitive bidding and are advertised, evaluated, and awarded by a governmental entity and made available for use by other governmental entities.; and

WHEREAS, TIPS Purchasing Cooperative's lead agency is Region 8 Education Service Center in Texas; and

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

WHEREAS, the Board of Education approved this motion on December 13, 2022.

Now therefore,

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

SECTION I. That a cooperative purchasing agreement with TIPS Purchasing Cooperative 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 Interlocal Agreement of the Region 8 Education Service Center, and to execute any and all documents necessary and proper to effectuate the purpose of 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 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 20th day of December, 2022.

PATRICK W. SHULL, MAYOR

ATTEST:

ANGIE MARSHALL, DEPUTY CITY RECORDER

APPROVED AS TO FORM:

RODNEY B. ROWLETT, III, CITY ATTORNEY

INTERLOCAL AGREEMENT
Region 8 Education Service Center

CITY OF KINGSPORT, TENNESSEE
PUBLIC ENTITY (TIPS MEMBER)

Control Number (TIPS will Assign)

and

Region 8 Education Service Center
Pittsburg, Texas

225 - 950
Region 8 Texas County-District Number

The Texas Education Code §8.002 permits Regional Education Service Centers, at the direction of the Commissioner of Education, to provide services to assist school districts, colleges and universities in improving student performance and increasing the efficiency and effectiveness of school, college and university financial operations. Region 8 Education Service Center is an Education Service Center which is defined as a "political subdivision" in Texas Education Code 8.009 and falls under the definition of "Unit of State Government" in Chapter 2260 of the Texas Government Code.¹ Pursuant to Section 791 of the Texas Government Code (The Interlocal Cooperation Act) to increase the efficiency and effectiveness of local governments, Region 8 Education Service Center may enter into an interlocal agreement with any political subdivision or local government of this state or any other state to provide purchasing functions and services.²

Vision:

TIPS will continue to become the premier purchasing cooperative in North America through the qualifying and procurement of quality vendors and through serving all public entities and qualifying non-profits.

Purpose:

The purpose of this Agreement shall be to improve procurement process efficiencies and assist in achieving best value for the participating public entities through cooperative purchasing.

Duration:

This Agreement is effective immediately and shall be in effect for one (1) year and automatically renews for an additional year annually. The Agreement may be terminated without cause immediately if the public entity Member provides written notice of termination to Region 8 Education Service Center or if Region 8 Education Service Center provides the public entity Member Sixty (60) days prior written notice of termination.

Statement of Services to be Performed:

Region 8 Education Service Center, by this Agreement, agrees to provide cooperative purchasing services to the above-named public entity through a program known as The Interlocal Purchasing System ("TIPS") Program.

Role of the TIPS Purchasing Cooperative:

- Provide for the organizational structure of the program.
- Provide staff for efficient operation of the program.
- Promote marketing of the TIPS Program.
- Coordinate the Solicitation Process for all Vendor Awarded Contracts.
- Provide members with procedures for placing orders through TIPS PO System.

¹ Tex. Edu. Code Sec. 8.009; Tex. Gov. Code Sec. 2260.001.

² Tex. Gov. Code Chapter 791, The Interlocal Cooperation Act.

- Maintain filing system for Due Diligence Documentation.
- Collect fees from vendors as the method of financing this undertaking and supporting the operational costs of TIPS.

Role of the Public Entity:

- Commit to participate in the program by an authorized signature on membership forms.
- Designate and keep current a Primary Contact and Secondary Contact for entity.
- Commit to purchase products and services from TIPS Vendors when in the best interest of the entity.
- Submit Purchase Orders and/or Vendor Contracts through the TIPS PO System by emailing the pdf document to tipspo@tips-usa.com.
- Accept shipments of products ordered from Awarded Vendors.
- Process Payments to Awarded Vendors in a timely manner.
- Report all TIPS purchases to TIPS through TIPS authorized methods.
- Determine when a TIPS purchase is legal and appropriate under Federal, State, and Local law and policy before proceeding with a TIPS purchase.

General Provisions:

The Parties agree to comply fully with all applicable federal, state, and local statutes, ordinances, rules, and regulations in connection with the programs contemplated under this Agreement. This Agreement is subject to all applicable present and future valid laws governing such programs.

No joint agency or joint real property ownership is created by this Agreement.

This Agreement shall be governed by the law of the State of Texas and venue shall be in the county in which the administrative offices of RESC 8 are located which is Camp County, Texas.

This Agreement contains the entire agreement of the Parties hereto with respect to the matters covered by its terms, and it may not be modified in any manner without the express written consent of the Parties.

If any term(s) or provision(s) of this Agreement are held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions of this Agreement shall remain in full force and effect.

The Parties to this Agreement expressly acknowledge and agree that all monies paid pursuant to this Agreement shall be paid from legally appropriated and budgeted available funds for the current fiscal year of each such entity.

Before any party may resort to litigation, any claims, disputes or other matters in question between the Parties to this Agreement shall be submitted to nonbinding mediation. The site of the mediation shall be in Camp County, Texas or a site mutually agreed by the parties. The selection of the mediator shall be mutually agreed. The cost of mediation shall be shared equally.

No Party to this Agreement waives or relinquishes any immunity or defense on behalf of themselves, their directors, officers, employees, and agents as a result of its execution of this Agreement and performance of the functions and obligations described herein.

This Agreement may be negotiated and transmitted between the Parties by electronic means and the terms and conditions agreed to are binding upon the Parties.

Authorization:

Region 8 Education Service Center and The Interlocal Purchasing System (TIPS) Program have entered into an Agreement to provide cooperative purchasing opportunities to entities as outlined above through awarded vendor agreements procured by public solicitation in accordance with applicable Texas statutes.

This Interlocal Agreement process was approved by the governing boards of the respective parties at meetings that were posted and held in accordance with the respective state.

The individuals signing below are authorized to do so by the respective parties to this Agreement.

Membership Entity-**Region 8 Education Service Center**

By: _____
Authorized Signature

By: _____
Authorized Signature

Title: _____

Title: Executive Director, Texas Region 8 ESC

Date _____

Date _____

Public Entity Contact Information

Brent Morelock	brentmorelock@kingsporttn.gov		
Primary Purchasing Person's Name	Primary Person's Email Address		
415 Broad Street	Kingsport	TN	37660
Entity Address	City	State	Zip
Sandra Sloan	ssloan@k12k.com		
Secondary Person's Name	Secondary Person's Email Address		
(423) 229-9419	(423)224-2433		
Entity Phone Number	Entity Fax Number		

ATTEST:

ANGELA MARSHALL, DEPUTY CITY RECORDER

APPROVED AS TO FORM:

RODNEY B. ROWLETT, III, CITY ATTORNEY

ADDENDUM TO REGION 8 EDUCATION SERVICE CENTER INTERLOCAL AGREEMENT

This Addendum (herein "Addendum") amends the Region 8 Education Service Center Agreement, between the Region 8 Education Service Center principally located in Pittsburg, Texas its affiliates and subsidiaries (herein "Cooperative") and City of Kingsport (herein "City"). In consideration of using Cooperative's form agreement, the mutual promises set out herein, and other good and valuable consideration, the sufficiency of which is hereby acknowledged the Agreement is amended as follows:

1. **Precedence.** Notwithstanding any other provision in the Agreement, the language in this Addendum takes precedence over all other terms, conditions or language to the contrary or in conflict with the language herein, and the Agreement and this Addendum shall not be construed to create any ambiguity, it being the intent of the parties that this Addendum shall control. In the event of a conflict between this Addendum and the provisions of the Agreement, the provisions of this Addendum shall, to the extent of such conflict take precedence unless such document expressly states that it is amending this Addendum.
2. **Indemnity, Limitation of Liability and Disclaimer of Warranty.** Article II, Section 29 of the Tennessee Constitution prohibits cities from lending their credit to private entities and, therefore, prohibits an agreement by City to indemnify a third party or agree to a limitation of liability provision. Any indemnity or hold harmless provision contained in the Agreement requiring City to indemnify or hold harmless Cooperative or any other person or entity and any limitation of liability in favor of Cooperative is enforceable only to the extent permitted by Tennessee law, provided City's monetary limits of liability under any such provision is limited to the monetary limits of liability as provided for in the Tennessee Governmental Tort Liability Act, Tenn. Code Ann. § 29-20-101 *et seq.* No provision of this Agreement shall act or be deemed a waiver by City of any immunity, including its rights or privileges or of any provision of the Tennessee Governmental Tort Liability Act, Tenn. Code Ann. § 29-20-101 *et seq.*

Similarly, Article III, Section 52 of the Texas Constitution prohibits local government entities from creating a debt by or on behalf of the State of Texas and, therefore, prohibits any agreement by the entity to indemnify a third party. Any indemnity or hold harmless provision contained in the Agreement requiring Cooperative to indemnify or hold harmless City or any other person or entity is enforceable only to the extent permitted by Texas law. No provision of this Agreement shall act or be deemed a waiver by Cooperative of any immunity, rights, or privileges provided by law.

3. **Term.** City or Cooperative may terminate the Agreement and use of the service at any time for any reason. However, termination shall not take effect until ninety (90) days after written notice is delivered by the party terminating the agreement to the other party. Upon termination, the City shall make payment for any services provided prior to the date of termination. Notices to the City shall be sent to:

Office of the City Attorney
City of Kingsport
415 Broad Street, Ste. 333
Kingsport, TN 37660

4. **Name and Logo.** Cooperative shall not use City's name, its marks, or any of City logos in marketing or publicity materials or for marketing or publicity purposes without prior written authorization from City. Notwithstanding this marketing prohibition, the Parties agree that Cooperative is a public entity subject to the Texas Public Information Act and City's name may be released in response to a request for information which is acceptable and permitted.
5. **Governing Law.** The Agreement and the rights and obligations of the parties are governed by the laws of the state of Tennessee, without regard to its conflict of laws principles.
6. **Responsibility for Litigation Costs, Expenses and Payment of Attorney's Fees.** Article II, Section 29 of the

Tennessee Constitution prohibits cities from lending their credit to private entities and, therefore, prohibits an agreement by City to indemnify a third party or agree to a limitation of liability provision. This prohibition extends to contractual provisions for the payment of attorney's fees. In the event of litigation between City and Cooperative each party shall be solely and exclusively responsible for the payment of litigation costs, expenses and attorney's fees excepting those costs which may be awarded by a court of competent jurisdiction as specified by Tennessee law or applicable rules of civil procedure. Discretionary cost may be awarded by a court as permitted by Tennessee law, provided City does not waive its governmental immunity.

7. **Non-appropriation.** The Parties acknowledge that each Party is a governmental entity, and the validity of the Agreement is based upon the availability of public funding under each Party's authority. In the event that either Party fails to appropriate funds or make monies available for any fiscal year covered by the term of this Agreement for the services to be provided, this Agreement shall be terminated on the last day of the fiscal year for which funds were appropriated or monies made available for such purposes without liability to either Party, such termination shall not be a breach of this Agreement..
8. **Amendment.** This Addendum and the Agreement shall not be modified or altered other than by written agreement executed by both parties.
9. **Survival.** This Addendum shall survive the completion of or any termination of the Agreement or other document which may accompany the Agreement or be incorporated by reference.
10. **No Presumption Against Drafter.** This Addendum shall not be construed for or against any party because that party or that party's legal representative drafted any of its provisions. Accordingly, this Addendum shall be construed without regard to the rule that ambiguities in a document are to be construed against the draftsman. No inferences shall be drawn from the fact that the final, duly executed Addendum differs in any respect from any previous draft hereof.
11. **Counterparts.** This Addendum may be executed in one or more counterparts by City and Cooperative. If so executed, the signer shall deliver an original to the other party and the collective counterparts shall be treated as the fully executed document.
12. **Effective Date.** This Addendum shall be effective immediately after the Agreement is effective.

Region 8 Education Service Center

City of Kingsport, Tennessee

Signature

Patrick W. Shull, Mayor

Date

Date

Attest:

Printed Name

Angela Marshall, Deputy City Recorder

Approved as to form:

Title

Rodney B. Rowlett, III, City Attorney



AGENDA ACTION FORM

Consideration of a Resolution Authorizing the Mayor to Execute All Documents Necessary and Proper to Apply for and Receive a Grant for \$475,917.00 from the State of Tennessee Violent Crime Intervention Fund Grant for the Upcoming Year

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

Action Form No.: AF-372-2022
 Work Session: December 19, 2022
 First Reading: N/A

Final Adoption: December 20, 2022
 Staff Work By: Lt. Chris Tincher
 Presentation By: Deputy Chief Jason Bellamy

Recommendation:

Approve the resolution.

Executive Summary:

The Kingsport Police Department has an opportunity to receive funding from the State of Tennessee which allocated \$100 million dollars statewide to provide grant funds for local law enforcement agencies to implement evidence-based programs, technology, and/or strategies that will reduce violent crime. We have been notified that we are eligible for \$475,917.00 of these grant funds. The grant will be utilized to purchase equipment and/or technology improvements.

There are no matching fund requirements.

Attachments:

1. Resolution
2. Tennessee Grant Solicitation Packet

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: *JS*

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

RESOLUTION NO. _____

A RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE ALL DOCUMENTS NECESSARY AND PROPER TO APPLY FOR AND RECEIVE A STATE OF TENNESSEE VIOLENT CRIME INTERVENTION GRANT FOR THE KINGSPORT POLICE DEPARTMENT

WHEREAS, the city, through the Kingsport Police Department, would like to apply for a grant through the State of Tennessee Violent Crime Intervention Fund, which will provide funds to local law enforcement agencies to implement evidence-based programs, technology, and/or strategies that will reduce violent crime; and

WHEREAS, the maximum amount of the grant award is \$475,917.00, and there is no matching fund requirements.

Now therefore,

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

SECTION I. That the mayor, or in his absence, incapacity, or failure to act, the vice mayor, is authorized to execute, in a form approved by the city attorney, and subject to the requirements of Article X, Section 10 of the Charter of the City of Kingsport, all documents necessary and proper to apply for and receive grant funds from the State of Tennessee Violent Crime Intervention Fund in the amount of \$475,917.00 for the Kingsport Police Department.

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

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

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

ADOPTED this the 20th day of December, 2022.

PATRICK W. SHULL, MAYOR

ATTEST:

ANGELA MARSHALL, DEPUTY CITY RECORDER

APPROVED AS TO FORM:

RODNEY B. ROWLETT, III, CITY ATTORNEY

TENNESSEE
Grant Solicitation Packet



Fiscal Year 2023
Violent Crime Intervention Fund
State Funding

Re-released on: 11/04/2022
Intent to Apply due: 12/15/2022
Completed applications due: 01/16/2022

Prepared by:

State of Tennessee
Office of Criminal Justice Programs
Department of Finance and Administration
312 Rosa L. Parks Avenue
William R. Snodgrass Tennessee Tower, Suite 1800
Nashville, Tennessee 37243-1102

GRANT SOLICITATION CONTENTS

- 1. IMPORTANT INFORMATION**
- 2. APPLICATION PROCESS & INSTRUCTION &
APPLICATION COMPLETION CHECK-OFF LIST**
- 3. SCHEDULE OF EVENTS**
- 4. FUND SOURCE DESCRIPTIONS AND SPECIFIC REQUIREMENTS**
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- 6. REPORTING REQUIREMENTS**
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1. IMPORTANT INFORMATION

Introduction

Gov. Bill Lee and the General Assembly appropriated \$100 million in the State 2022-23 budget for the Violent Crime Intervention Fund (VCIF), which provides grant funds for local law enforcement agencies to implement evidence-based programs, technology, and strategies that will reduce violent crime in our communities.

Based on the guidance received from local stakeholders across the state, the Violent Crime Intervention Fund grants will support:

- Implementation of programming based on proven effective violent crime intervention models
- Hiring and training of specialized violent crime investigative units
- Purchase and application of new technology and equipment
- Law enforcement led partnerships with community organizations of their choice to directly disrupt or prevent violent crime

To support broader access to these funds the state has contracted with the [University of Tennessee Institute for Public Service](#) to provide technical assistance directly to law enforcement agencies seeking to apply. Applicants are **strongly encouraged** to work with the Institute to access training and technical assistance in crafting their VCIF grant project designs, submitting their applications, planning and implementing grant activities, and evaluating the impact of their programs.

A law enforcement agency receiving a grant is authorized to enter into a grant agreement or subcontract with a local governmental agency or a third-party nonprofit organization to provide programs and services; provided that a nonprofit organization has at least five (5) years' experience in providing programs and services focused on violent crime intervention. Those programs and services must be evidence-based or research-based and accompanied by monitoring and quality control procedures that ensure that such programs and services are delivered according to applicable standards.

For the purpose of providing violent crime intervention grants, "evidence-based" and "research-based" have the same meanings as defined in the Tennessee Code Annotated Section 37-5-121.

1.1. Eligibility

Eligible applicants include municipal and county local law enforcement agencies, including metropolitan governments seeking to address violent crime in their communities.

If an agency wishes to apply for VCIF Competitive Collaborative Enhancement Funds on behalf of a regional collaborative group, they must do so in a separate section of the application (see below for details). Applicants of Enhancement Funds must demonstrate a need for additional funding to support regional/multijurisdictional collaborative project that involves at least TWO law enforcement agencies. Letters of support are required from all partner law enforcement agencies and nonprofit agencies that will be a part of the collaborative regional response.

- 1.2. Agencies applying for funding must meet the criteria listed in section 4 of this solicitation. Agencies not able to demonstrate they meet these criteria must not apply.

1.3. Length and Amount of Project Support

Length:

Grant contracts will start no earlier than March 1, 2023 and will end June 30, 2025. Start date will be dependent upon local government agencies' internal contract acceptance processes.

Project Support:

A. Formula Based Grants:

Each law enforcement applicant should refer to the [funding formula plan](#) to determine their overall budget for programming to address violent crime in their respective communities. The funding amount is based on each agency's reported three-year average of reported violent crime.¹ Grant funding can support one or more of the following activities to address violent crime needs:

- Implementation of programming based on proven effective violent crime intervention models
- Hiring and training of specialized violent crime investigative units
- Purchase and application of new technology and equipment
- Law enforcement led partnerships with community organizations of their choice to directly disrupt or prevent violent crime

B. Competitive Collaborative Enhancement Grants:

Competitive Collaborative Enhancement funds may also be applied for (see instructions below). The state has allocated a maximum liability per contract not to exceed \$2,000,000 for agencies applying for enhancement funds to address regionally specific needs to combat violent crime through a regional/multi-jurisdictional approach that includes sharing of intelligence and resources to effectively respond to the violent crime problem. These projects should undertake evidence-based strategies that enhance community relationships, promote public safety, and hold violent offenders accountable.

1.4. Program Purpose

The purpose of the Violent Crime Intervention Fund (VCIF) grant program is to provide support to local law enforcement in developing and implementing proven public safety strategies to combat violent crime (including juvenile violent crime).

In addition to **VCIF formula funding**, the purpose of the **VCIF Competitive Collaborative Enhancement funding** is to support regional/multijurisdictional collaborative interventions that address violent crime.

Program Priorities include but are not limited to:

- Evidence-informed interventions that are shown to have demonstrated impact on violent crime within the community;
- Equipment purchases that enhance local law enforcement agencies' ability to safely and effectively investigate and prevent violent crime;
- Coordinated projects that engage community partners in identifying and implementing interventions to reduce or stop violent crime; and
- Training and technical assistance.

The grantee shall be required to participate in all OCJP designated Technical Assistance Provider trainings and activities.

1.5. Grant Solicitation Communications

The State has assigned the following Grant Solicitation identification titles that must be referenced in all communications regarding this Grant Solicitation:

- **Violent Crime Intervention Fund: Formula Based Grant**
- **Violent Crime Intervention Fund: Competitive Collaborative Enhancement Grant**

Prospective Applicants must direct communications concerning this Grant Solicitation to the following email designated and indicate which Grant Solicitation Title in the subject line:

Info.OCJP@tn.gov

1.6. Notice of Intent to Apply

Applicants should complete the [Intent to Apply](#) by the deadline detailed in the Grant Solicitation

¹ OCJP used the average of the past three years (2019, 2020, 2021) of TIBRS violent crime (inclusive definition, see Funding Plan Methodology) data as a point estimate for the total number of violent crimes per local law enforcement agency.

Section 3, Schedule of Events. Applicants must enter an Intent to Apply for each intended application submitted noting whether it is for the **Formula Based Grant** application or the **Competitive Collaborative Enhancement Grant** application.

Completion of the Intent to Apply form creates no obligation but is a prerequisite for applying and necessary to ensure receipt of any Grant Solicitation updates or other notices and communications relating to this Grant Solicitation.

1.7. **Application Deadline**

Applicant must ensure that the State receives an application no later than the application deadline time and date detailed in the Grant Solicitation Section 3, Schedule of Events. An Applicant must apply, as required, to this Grant Solicitation (including all attachments). The State will not accept late applications, and an Applicant's failure to submit its application by the deadline will result in disqualification of the application.

2. APPLICATION PROCESS AND INSTRUCTION

2.1. Scopes of Service

The Office of Criminal Justice Programs has provided a word document for use in constructing an application under this solicitation based on the various project types available. First select the proper **scope of service** from the list below and save the document to your computer with the grant solicitation identification title before completing it.

There are TWO different Violent Crime Intervention Fund scopes of service, depending on the type of project for which you are applying:

- **Formula Based Grants** is located at the following link: [Formula Scope](#). It contains definitions and instructions for completion.
- **Competitive Collaborative Enhancement Grants****: is located at the following link: [Enhancement Scope](#). It contains definitions and instructions for completion.

**Lead agencies submitting a Competitive Collaborative Enhancement Grant application are also eligible to submit the Formula Based Grant application for their agency.

Please use the [VCIF Abstract](#) to complete your Scope(s) document.

Each Scope of Services document contains the following headers and will be evaluated based upon the following criteria:

EVALUATION CATEGORY
Crime Data, Problem Statement, & Target Population
Purpose
Collaboration
Project Design & Timeline
Outputs
Data Collection
Accountability

The Scope of Service document(s) should be submitted with the application. See Sections 2.3 and 2.4 for information on how to submit your application.

2.2. Budget Summary and Line-Item Detail

Begin by saving this document to your computer with the **grant solicitation title** and then fill in the budget detail and the summary of this spreadsheet. Please use whole numbers.

Complete one budget page per each fiscal year of funding requested (FY2023 March – June 30, 2023; FY2024; and FY 2025 as applicable). You must complete a budget for each year of funding requested.

There is **no match required** for this grant: [Budget](#), [Budget Instructions](#)

Each fiscal year project budget consists of two components: the Summary Budget Amounts for the State and Line-Item total for each line item; and the Budget Narrative for each line item where narrative detail is required. All budgeted line items must be reasonable, necessary, and allocable directly to the project.

2.3. Application Submission

An Applicant must ensure that the State receives the application no later than the Application Deadline time and date detailed in the Grant Solicitation Section 3, Schedule of Events.

Applications must be sent to the following email address:

Info.OCJP@tn.gov

2.4. Application Requirements

- 2.4.1. The first step to the application process is to submit the Intent to Apply form through the following link: [Intent to Apply](#) by December 15, 2022 as your intent to apply for each grant application submitted (See Grant Solicitation Section 3, Schedule of Events). If your agency is applying for both the **Formula Based Grant** and the **Competitive Collaborative Enhancement Grant**, you would submit **TWO Intent to Apply forms**.

Intent to Apply must reference the grant solicitation identification title (See section 1.5.1). There is no obligation to apply for the funding upon completion of the Intent to Apply.

- 2.4.2. The next step is to create a Scope of Services by using the word forms document found at the links provided in 2.1 that correspond with the grant solicitation identification title.
- **Formula Based Grants** is located at the following link: [Formula Scope](#). It contains definitions and instructions for completion.
 - **Competitive Collaborative Enhancement Grants**: is located at the following link: [Enhancement Scope](#). It contains definitions and instructions for completion.

- 2.4.3. Next create a budget:

Complete one budget document per each fiscal year of grant funding requested.

For example, if the agency is applying for funding for FY 2023; FY 2024 and FY 2025; then three budgets would be required, each containing a summary page and a detail page for each year of funding.

No Match: [Budget](#), [Budget Instructions](#).

- 2.4.4. Submit approved cost allocation plan (if applicable).
- 2.4.5. Submit approved indirect cost rate (if applicable).
- 2.4.6. Attach Letters of Support or MOUs (Required for **Competitive Collaborative Enhancement Grant** applications).
- 2.4.7. Use the checklist in section 2.7 of this application and submit all required documents via e-mail to Info.OCJP@tn.gov.

2.5. Application Deadline

January 16, 2023

2.6. Response Preparation Costs

The State will not pay any costs associated with the preparation, submittal, or presentation of any application.

2.7. Application Completion Check-off List

(Retain for your own purposes)

To ensure compliance with funding consideration requirements, please read the entire solicitation.

- ☐ Intent to Apply completed and submitted online no later than December 15, 2023.
- ☐ Scope(s) of Service document(s) completed (Formula Scope; Enhancement Scope)
- ☐ Budgets completed on the excel spreadsheet (one for each fiscal year of funding requested)

Budget and Budget Instructions completed on the excel spreadsheet (one for each year of funding requested)
- ☐ Most recent approved Cost Allocation Plan (if applicable)
- ☐ Approved Indirect Cost Rate (if applicable)
- ☐ Attach Letters of Support or MOUs (Required for Competitive Collaborative Enhancement Grant applications)

Applications must be submitted in accordance with Section 2.4 no later than 4:30 pm central time, January 16, 2023.

If you have completed the above items and emailed to Info.OCJP@tn.gov with the grant solicitation description title in the subject line (see section 1.5.1. for a complete list), then your application is complete.

3. GRANT SOLICITATION SCHEDULE OF EVENTS

- 3.1. The following Grant Solicitation Schedule of Events represents the State's best estimate for this Grant Solicitation.

EVENT	TIME (central time zone)	DATE
1. Grant Solicitation Issued	4:30 p.m.	October 11, 2022
2. Notice of Intent to Apply Deadline	4:30 p.m.	December 15, 2022
3. Application Deadline	4:30 p.m.	January 16, 2023
4. Contract Start Date		March 2023

- 3.2. **The State reserves the right, at its sole discretion, to adjust the Grant Solicitation Schedule of Events as it deems necessary.** Any adjustment of the Schedule of Events shall constitute a Grant Solicitation update, and the State will communicate such to prospective Applicants from whom the State has received a Notice of Intent to Apply (refer to section 1.5).

4. FUND SOURCE DESCRIPTIONS AND SPECIFIC REQUIREMENTS

4.1. State Funding Program Requirements

4.1.1. Law Enforcement Agencies: In order for law enforcement agencies to qualify for grant funds, they must comply with the following:

- a. Fingerprint Reporting Requirement: The Agency shall ensure that they will comply with Tennessee Code Annotated (TCA) 38-3-122 and will submit all fingerprints taken to the Tennessee Bureau of Investigation (TBI).
- b. TIBRS Reporting Requirement: The Agency shall ensure that they comply with the rules and regulations of the Tennessee Bureau of Investigations (TBI) as empowered by Tennessee Code Annotated (TCA) 38-10-101 et seq. with regard to the Tennessee Incident Based Reporting System (TIBRS). The agency will at all times maintain TBI certification of their compliance with those rules and regulations.
- c. National Instant Criminal Background Check System (NICS) Reporting Requirement: The Agency shall ensure that they comply with Tennessee Code Annotated (TCA) 33-3-1115 with regard to NICS Reporting. The agency will at all times maintain compliance.
- d. Death in Custody Reporting Act (DICRA) Requirement: The Agency shall comply with PUBLIC LAW 113-242 by submitting all deaths in custody to the TBI.
- e. DNA and CODIS Requirements: The Agency shall ensure that they will comply with Tennessee Code Annotated (TCA) 40-35-321 regarding the collection of DNA.
- f. Use of Force Requirement: The Agency must have a certification from the Tennessee Association of Chiefs of Police regarding their Use of Force policies. The Agency must also comply with TCAs 38-3-121, 38-8-101, 38-8-113, 38-8-127:130, and 40-6-105.

4.1.2. Statewide Contracts and Cooperative Agreements: Agencies are strongly encouraged to utilize statewide contracts and cooperative agreements, to expedite the purchasing process. Equipment and technology purchases under this application will first identify products currently on state contract or local cooperative agreement as the first choice to allow for consistency across entities, enhanced data collection, and a uniform system of tracking violent criminals.

Radios purchased with grant funds must meet P25 CAP Encryption Requirements, which have no encryption, have AES 256 algorithm, and have AES 256 algorithm along with any other non-standard encryption algorithms. License Plate Readers may only be purchased with grant funds if they are to be installed on state right of ways and are approved by the Tennessee Department of Transportation, in accordance with Tenn. Code Ann. § 55-8-198.

Failure to comply with these requirements will result in a questioned cost and agencies will be required to pay back all cost not compliant with this section and certification.

4.1.3. Public or Nonprofit Organizations: Organizations must be operated by public or nonprofit organizations, or a combination of such organizations.

4.1.4. Evidence-Based Programming: Agencies should employ evidence-based programming in their grant project or use best practices (as identified in research) in the implementation of their proposed project. Websites such as www.CrimeSolutions.gov or <http://www.samhsa.gov/programs-campaigns> offer resources that applicants may use to find information about evidence-based programs in criminal justice, juvenile justice, and crime victim services. For the purpose of providing violent crime intervention grants, "evidence-based" and "research-based" have the same meanings as defined in the Tennessee Code Annotated Section 37-5-121.

4.1.5. Subject to Funds Availability: Funding is subject to the appropriation and availability of State funds. In the event that the funds are not appropriated or are otherwise unavailable, the State reserves the right to terminate this solicitation. Upon such termination, the Grantee shall have no right to

recover from the State any actual, general, special, incidental, consequential, or any other damages whatsoever of any description or amount.

- 4.1.6. Tennessee Department of Revenue Registration: Pursuant to Tennessee Code Annotated (TCA) 12-3-306 all sub-recipients must comply with the Retailers' Sales Tax Act compiled in TCA 67-6-8 101 et seq. All sub-recipients and therefore required to either register a sales and use account with the Department of Revenue or seek an exemption from the same. Information on the process can be found at: Sales and Use Registration.

Applications must include sales/use registration information or exemption letter. Requests for this registration or exemption should be initiated at least two (2) business days prior to application due date. (This does not apply to DTFs and State and Local Law Enforcement.)

- 4.1.7. High Risk Designation: Requirement to disclose whether recipient is designated "high risk" by a federal grant-making agency. If the recipient is designated "high risk" by a federal grant-making agency, currently or at any time during the course of the period of performance under this award, the recipient must disclose that fact and certain related information to the OCJP.

For purposes of this disclosure, high risk includes any status under which a federal awarding agency provides additional oversight due to the recipient's past performance, or other programmatic or financial concerns with the recipient. The recipient's disclosure must include the following: 1. The federal awarding agency that currently designates the recipient high risk, 2. The date the recipient was designated high risk, 3. The high-risk point of contact at that federal awarding agency (name, phone number, and email address), and 4. The reasons for the high-risk status, as set out by the federal awarding agency.

Applicants will be required to submit a High Risk Designation Certification if selected for funding.

4.2. Allowable Use of Funds

Please reference the Allowable Costs section of the OCJP Grants Manual for full explanations/restrictions regarding Allowable Costs.

- 4.2.1. General Salaries and Personnel Costs: Payment of personnel costs are allowable if costs are a part of an approved project and are necessary and incidental to project implementation and operation.

- 4.2.2. Space: The cost of space in privately - or publicly - owned buildings used for the benefit of the program is allowable subject to the conditions stated below:

- The total cost of space may not exceed the rental cost of comparable space and facilities in a privately owned building in the same locality.
- The cost of space procured for program usage may not be charged to the program for periods of non-occupancy, without authorization of OCJP.
- Rental Cost: The rental cost of space in a privately owned building is allowable. Rent cannot be paid if the building is owned by the grantee or if the grantee has a substantial financial interest in the property. However, the cost of ownership is an allowable expense. Similar costs for a publicly owned building are allowable where "rental rate" systems, or equivalent systems that adequately reflect actual costs, are employed. Such charges must be determined on the basis of actual cost (including depreciation-based on the useful life of the building, operation and maintenance, and other allowable costs). Where these costs are included in rental charges, they may not be charged elsewhere.
- Maintenance and Operation: The cost of utilities, insurance, security, janitorial services, elevator services, upkeep of grounds, normal repairs and alterations, and the like are allowable to the extent they are not otherwise included in rental or other charges for space.

- Occupancy of Space Under Rental-Purchase or a Lease with Option-to-Purchase Agreement: The cost of space procured under such arrangements is allowable when specifically approved by OCJP. This type of arrangement may require application of special matching share requirements under construction programs.
- Depreciation and Use Allowances on Publicly Owned Buildings: Depreciation or a use allowance on idle or excess facilities is NOT ALLOWABLE.

- 4.2.3. Professional Fees: If the implementing governmental agency or non-profit organization is entering into a subcontractual relationship with an entity that is providing project based professional services for the project, a subcontract will be required between the implementing agency and the subcontracting entity. Subrecipients should check the OCJP Grants Manual as many items in this line item require a pre-approved Subcontract. Enter the name of the individual or company being used, the number of hours or days for the fiscal year and the total cost. Consultant rates of payment are to be reasonable and consistent with fees for similar services in the marketplace. Individual consultant fees cannot exceed \$650 per day or \$81.25 per hour; this includes legal, medical, psychological, training, and accounting consultants.

A law enforcement agency receiving a grant is authorized to enter into a grant agreement or contract with a local governmental agency or a third-party nonprofit organization to provide programs and services, provided that a nonprofit organization must have at least five (5) years' experience in providing programs and services focused on violent crime intervention and those programs and services must be evidence-based or research-based and accompanied by monitoring and quality control procedures that ensure that such programs and services are delivered according to applicable standards.

Each law enforcement agency that approves a grant agreement or contract with an agency of local government or a third-party nonprofit organization to receive grant funds appropriated under Title 111-2 Item 3.5 shall provide to OCJP a quarterly report to the Speakers of each House of the General Assembly, the Chairs of the Finance, Ways and Means Committees of the Senate and the House of Representatives, and the Office of Legislative Budget Analysis identifying the name and location of each grant, recipient, the amount of the grant; and the purpose for which the funds are used.

For the purpose of providing violent crime intervention grants, "evidence-based" and "research-based" have the same meanings as defined in the Tennessee Code Annotated Section 37-5-121.

- Funds budgeted for professional consultant or subcontracting entity employees should be detailed under the "Professional Fee, Grant & Award" line of the budget.
- Speaker fees for Conferences must be detailed under the "Travel, Conferences & Meetings" line of the budget. All projects providing training instructors/speakers with state funds will need to submit a Notification of Speakers Agreement for each instructor/speaker 15 days prior to the training event. See Chapter IX. OCJP Grants Manual.

- 4.2.4. Publication of Documents and Electronic Media: Project directors are encouraged to make the results and accomplishments of their activities available to the public. A recipient/subrecipient who publicizes project activities and results shall adhere to the terms and conditions of the award as well as the following:

Responsibility for the direction of the project activity should not be ascribed to OCJP. The publication shall include the following statement: "This project is funded under an agreement with the State of Tennessee."

All materials publicizing or resulting from award activities shall contain an acknowledgement of OCJP assistance. An acknowledgement of support shall be made through use of the above statement or comparable footnote.

The OCJP Program Manager will verify the statement PRIOR to printing or publication.

A recipient/subrecipient is expected to publish or otherwise make widely available to the public, as

requested by OCJP, the results of work conducted or produced under an award.

All publication and distribution agreements with a publisher will include provisions giving the State of Tennessee a royalty-free, nonexclusive, and irrevocable license to reproduce, publish, or otherwise use and to authorize others to use the publication for government purposes.

Unless otherwise specified in the award, the recipient/subrecipient may copyright any books, publications, films, or other copyrightable material developed or purchased as a result of award activities. Copyrighted material shall be subject to the same provisions of the state government.

The recipient/subrecipient shall submit a publication and distribution plan to OCJP before materials developed under an award are commercially published or distributed. The plan shall include a description of the materials, the rationale for commercial publication and distribution, the criteria to be used in the selection of a publisher, and, to assure reasonable competition, the identification of firms that will be approached. Prior OCJP approval of this plan is required for publishing project activities and results when funds are used to pay for the publication.

4.2.5. Travel: Expenses and reimbursements for in-state and out-of-state travel must follow the most current comprehensive State of Tennessee Rules and Regulations [State of Tennessee Travel Rules and Regulations](#). OCJP requires prior approval for attendance at any out of state conference or training.

4.2.6. Equipment and Technology Purchases: Radios purchased with grant funds must meet P25 CAP Encryption Requirements, which have no encryption, have AES 256 algorithm, and have AES 256 algorithm along with any other non-standard encryption algorithms. License Plate Readers may only be purchased with grant funds if they are to be installed on state right of ways and are approved by the Tennessee Department of Transportation, in accordance with Tenn. Code Ann. § 55-8-198.

Failure to comply with these requirements will result in a questioned cost and agencies will be required to pay back all cost not compliant with this section and certification.

Additionally, agencies are strongly encouraged to utilize statewide contracts and cooperative agreements, to expedite the purchasing process. Equipment and technology purchases under this application will first identify products currently on state contract or local cooperative agreement as the first choice to allow for consistency across entities, enhanced data collection, and a uniform system of tracking violent criminals.

Preferred equipment includes, but is not limited to, the following:

- Shot Spotter Technology
- License plate readers (LPRs) on SWC450
- Pole cameras
- Video Analysis Software
- Body Armor for agency personnel and K-9s
- Body-worn cameras
- P25 Radios
- Statewide Communications Systems (TACN)

4.3. Unallowable Use of State Funds:

Please reference the [Unallowable Costs section of the OCJP Grants Manual](#) for full explanations and restrictions regarding Unallowable Costs.

4.3.1. Generic Unallowable Costs:

- Construction,
- Land acquisition (Purchase of real property),
- Any expenditures that reflect supplanting,
- Compensation of federal employees,
- Travel of federal employees,
- Bonuses or commissions,

- Military type equipment,
- Uniforms,
- Lobbying,
- Fundraising (including financial campaigns, endowment drives, solicitation of gifts and bequests, and similar expenses incurred solely to raise capital or obtain contributions),
- Corporate formation,
- Legal fees,
- Cost in applying for this grant,
- First class travel,
- Gift cards,
- Cost incurred outside the project period, and.
- Late fees

4.3.2. Program Income: Program Income is unallowable without prior approval. See the Program Income portion of the OCJP Grants Manual at the following link: [OCJP Grants Manual](#).

5. FINANCIAL REQUIREMENTS

- 5.1 OCJP grants are governed by the provisions of the Office of Management and Budget (OMB) Uniform Guidance applicable to financial assistance. The sub-recipient must follow [OMB Part 200 Uniform Administrative Requirements, Cost Principles, and Audit Requirements](#) (Uniform Guidance). Additional information and guidance are contained in the fund source chapters of the OCJP Grants Manual available from the Office of Criminal Justice Programs upon award of grant funds or by referring to the [OCJP Grants Manual](#). This policy manual provides information on allowed costs, methods of payment, audit requirements, accounting systems, and financial records. Specific requirements include:

- 5.1.1. [Accounting Systems](#): A grant accounting system must be in place and financial records must accurately account for funds awarded to them. The system must have a financial management module in place that is able to record and report on the receipt, obligation, and expenditure of grant funds. This includes ability to track grant funds separately from other funds. There should be a system in place that can accurately track employee's time charged to the grant. Accounting policies and procedures should be documented and in use, this includes payroll and purchasing policies that reflect good internal controls.
- 5.1.2. [Cost Allocation Plan](#): If any part of the costs to be reimbursed are joint costs involving allocation to more than one program or activity, a cost allocation plan must be submitted and approved by the subrecipient's cognizant agency. The subrecipient's cognizant agency is the agency whose funds comprise the greatest percentage of grant funds received by the Subrecipient. Cost Allocation Plans must comply with the applicable accounting and financial standards, either Financial Accounting Standards Board ("FASB") standards or Governmental Accounting Standards Board ("GASB") standards. Methods used for allocating costs may differ between Subrecipients. It should be noted that grantors are not required to fully fund the costs that are charged to a particular program under an approved Cost Allocation Plan if such costs are not allowable under the contract with the Subrecipient or exceed the prescribed funding percentage or budgets.

The requirements for the development and submission of indirect cost proposals and cost allocation plans are set out in Appendices III – VI of 2 C.F.R. Part 200, for subrecipients that are a state department, city, county (and subdivision thereof) and state college, university, and technology center. These subrecipients should follow the guidelines applicable to its type of organization.

[2 C.F.R. § 200, Appendix V for State/Local Government Central Service Cost Allocation Plans](#)

[2 C.F.R. § 200, Appendix VII for State/Local/Tribal Indirect Cost Proposals](#)

For additional information regarding cost allocation plans, please refer to [Chapter XVI – Cost Allocation](#) of the OCJP grants manual.

- 5.1.3. [Indirect Cost Rate](#): Should the subrecipient request reimbursement for indirect costs, the Subrecipient must submit to the State a copy of the indirect cost rate approved by the cognizant federal agency or the cognizant state agency, as applicable. The Subrecipient will be reimbursed for indirect costs in accordance with the approved indirect cost rate and amounts and limitations specified in the grant budget. Once the subrecipient makes an election and treats a given cost as direct or indirect, it must apply that treatment consistently and may not change during the contract period. Any changes in the approved indirect cost rate must have prior approval of the cognizant federal agency or the cognizant state agency, as applicable. If the indirect cost rate is provisional during the contract period, once the rate becomes final, the subrecipient agrees to remit any overpayment of funds to the State, and subject to the availability of funds the State agrees to remit any underpayment to the subrecipient.
- 5.1.4. [Reporting Irregularities](#): The subrecipient is responsible for promptly notifying OCJP and the State of Tennessee Comptroller of any illegal acts or irregularities and or proposed actual actions. Please notify the State of Tennessee Comptroller Hotline at 1-800-232-5454 of any irregularities that occur. Illegal acts include: conflicts of interest, falsification of records or reports, misappropriation of funds or other assets, and/or fraud, waste or abuse. For additional information, please refer to the Tennessee Comptroller of the Treasury website here: <http://www.comptroller.tn.gov/la/LGSfraudReporting.asp>.

6. REPORTING REQUIREMENTS

The sub-recipient must collect, maintain, and provide to OCJP, data that measure the performance and effectiveness of activities under this award, in the manner, and within the timeframes, specified in the program solicitation, or as otherwise specified by OCJP. Data collection supports compliance with the Government Performance and Results Act (GPRA) and the GPRA Modernization Act, and other applicable laws.

The data collected should support the information submitted on the reports and OCJP may periodically request to see the back-up data that supports the information submitted.

Any additional reports required will be determined by the scope of the project.

6.1 Programmatic Reporting

6.1.1. Reporting requirements will be determined based on your project design and the data that can be collected. Requirements will at a minimum include a semi-annual and annual report and a final report at the conclusion of the grant. At minimum, reports shall include: (a) the Grantee's name; (b) the Grant Contract's Edison identification number, Term, and total amount; (c) a narrative section that describes the program's goals, outcomes, successes, and setbacks, whether the Grantee used benchmarks or indicators to determine progress, and whether any proposed activities were not completed; and (d) other relevant details requested by the Grantor State Agency. Annual and final report documents to be completed by the Grantee shall appear on the Grantor State Agency's website or as an attachment to the Grant Contract.

6.1.2. Each law enforcement agency that approves a grant agreement or contract with an agency of local government or a third-party nonprofit organization to receive grant funds appropriated under Title 111-2 Item 3.5 shall provide quarterly report to the Speakers of each House of the General Assembly, the Chairs of the Finance, Ways and Means Committees of the Senate and the House of Representatives, and the Office of Legislative Budget Analysis identifying the name and location of each grant, recipient, the amount of the grant; and the purpose for which the funds are used.

6.2 Fiscal Reporting

Sub-recipient agencies must request reimbursement at least once per quarter based on expenditures incurred. However, it is recommended that agencies invoice monthly when monthly expenditures are incurred.

6.2.1. Invoice for Reimbursement (Non-state Agencies): The invoice is used to request monthly reimbursement. It is **strongly recommended** that agencies invoice monthly when monthly expenditures are incurred. However, subrecipient agencies can invoice quarterly. If invoicing quarterly, agencies **MUST request reimbursement 30 days after the end of each quarter for all the expenses incurred during the quarter in its entirety**. Funds can only be distributed to sub-recipients upon receipt of a properly prepared and signed invoice. The invoices are emailed to the Office of Business and Finance of the Department of Finance and Administration.

6.2.2. Project Equipment Summary Report: This report is completed on an annual basis, if equipment or "Sensitive Minor Equipment" (see [OCJP Grants Manual Chapter X](#)-Property and Equipment for definition) is purchased with grant funds during the current fiscal year. It is due to OCJP no later than thirty (30) calendar days past the end of the State fiscal year or July 31st. For new projects, the Project Equipment Summary Report should list new or start-up equipment purchases. For multi-year projects, the Project Equipment Summary Report should specifically identify any purchases that have been made for equipment, either totally or in part with grant money, since the last fiscal year. This report is available for online submission at https://stateoftennessee.formstack.com/forms/project_equipment_summary_report.

6.3 Fiscal and Program Monitoring

The Office of Criminal Justice Programs program managers and fiscal monitors provide routine program and fiscal monitoring of all OCJP contracts. This monitoring provides program and fiscal contract compliance review, much needed information on how the program is actually being implemented and assists in identifying sub-recipients experiencing problems requiring corrective action. If through monitoring a problem area is identified and corrective action is requested, OCJP sub-recipients must adhere to the corrective action requirements identified in the [OCJP Grants Manual Chapter XIX. D](#) within the time period required.

7. APPLICATION EVALUATION

7.1 Review and Evaluation of Proposals

Each application will be rated, utilizing a "weighted" review tool, based on the applicant agency's ability to provide a logical description of how their project theoretically works to benefit the target group. The project description must tie goals, objectives, activities, and outputs together in a logical fashion. Applications will be reviewed for financial and programmatic completeness by OCJP staff with expertise in grant requirements and program design. The applications will be rated, and funding will be determined through a competitive review process by a review team of professionals knowledgeable in applicable subject material. Grants will be awarded based on current funding patterns, the availability of funds, and the above cited criteria.

All competitive applications will undergo a final review by OCJP Staff and applicants will be notified of approval or denial. If an application is approved, the contract between the state and the sub-recipient will be emailed with the approval letter. The contract **must** be signed by the Authorized Official and returned to the Office of Criminal Justice Programs for approval by the Commissioner of Finance and Administration. After the Commissioner approves the contract, an executed original contract will be emailed to the sub-recipient.

7.2 Grant Solicitation Update

The State at its sole discretion may update this Grant Solicitation, in writing, at any time prior to contract award. However, prior to any such update, the State will consider whether it would negatively impact the ability of potential Applicants to meet the response deadline and revise the Grant Solicitation Schedule of Events if deemed appropriate. If a Grant Solicitation update is issued, the State will convey it to potential Applicants who submitted a Notice of Intent to Apply (refer to Grant Solicitation Section 1.5). A response must address the final Grant Solicitation (including its attachments) as updated.



AGENDA ACTION FORM

Consideration of a Resolution Renewing the Award for Generator Services

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

Action Form No.: AF-370-2022
 Work Session: December 19, 2022
 First Reading: N/A

Final Adoption: December 20, 2022
 Staff Work By: Committee
 Presentation By: R. McReynolds

Recommendation:

Approve the Resolution.

Executive Summary:

Proposals were opened on January 5, 2022, for Generator Services for City of Kingsport and Kingsport City Schools. The advertisement for the Request for Proposals was published in the Kingsport Times News on December 19, 2021, and placed on our website for 17 calendar days. The City's Request for Proposal included a renewal option clause which allows the City to renew the award for an additional 12-month period if costs are acceptable to both parties with BMA approval.

It is the recommendation of the committee to renew the award for generator services with Nixon Power Services. Nixon Power Services has 15 Kohler trained and certified technicians that live and work in this area. They also have an office with a warehouse located in Blountville. The total annual service cost is projected to be \$63,412.00.

Funding is identified in various City and Schools accounts.

Attachments:

1. Resolution
2. Bid Opening Minutes
3. Nixon Letter
4. Recommendation Memos

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
Cooper	—	—	—
Duncan	—	—	—
George	—	—	—
Montgomery	—	—	—
Olterman	—	—	—
Phillips	—	—	—
Shull	—	—	—

RESOLUTION NO. _____

A RESOLUTION RENEWING THE AWARD OF BID FOR GENERATOR SERVICES TO NIXON POWER SERVICES AND AUTHORIZING THE MAYOR TO SIGN THE ALL DOCUMENTS NECESSARY AND PROPER TO EFFECTUATE THE PURPOSE OF THE RENEWAL

WHEREAS, on January 5, 2022, the board approved the bid award of for generator services for the city and Kingsport City Schools to Nixon Power Services; and

WHEREAS, the bid included a renewal option clause that allows the city to renew the award for an additional 12 month period, if costs are acceptable to both parties, with board approval; and

WHEREAS, staff recommends renewing the bid for an additional 12 months at the projected cost of \$63,412.00; and

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

Now therefore,

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

SECTION I. That the renewal for of the award of bid for generator services to Nixon Power Services renewed for 12 months at the projected cost of \$63,412.00, is approved.

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

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

ADOPTED this the 20th day of December, 2022.

PATRICK W. SHULL, MAYOR

ATTEST:

ANGELA MARSHALL, DEPUTY CITY RECORDER

APPROVED AS TO FORM:

RODNEY B. ROWLETT, III, CITY ATTORNEY

MINUTES
BID OPENING
January 5, 2022
4:00 P.M.

Present: Brent Morelock, Procurement Manager; Olivia Nickens, Procurement Specialist

The Bid Opening was held in the Conference Room 436, 4th Floor, City Hall.

The Procurement Manager opened with the following bids:

GENERATOR SERVICES FOR CITY OF KINGSPORT AND KINGSPORT CITY SCHOOLS	
Vendor:	
Taylor Sudden Service, Inc.	
Cummins Sales and Service	
PowerSecure, Inc.	
Clarke Power Services, Inc.	
Nixon Power Services LLC	

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



Emergency Standby Power System

Date: Year 2023

CUSTOMER # 1500218

Customer Name: City of Kingsport TN

Customer

Address: 415 Broad Street Kingsport TN
37660

To whom it may concern,

It is our privilege at Nixon Power Services LLC. to be the provider of generator services for **City of Kingsport** and their various locations. Our scope includes regular preventative maintenance, inspections, repairs and testing for all systems regarding emergency power generation. Nixon Power Services Company is also the source for any new equipment, parts or consultation regarding the function, performance or any requested upgrades to existing emergency power generation systems. We also provide a range of emergency generator rental services for any of your needs. Our service department is open **24 hours a day - 7 days a week**, and can be reached on multiple platforms including **1-800-766-4966**. We at Nixon Power Services appreciate the opportunity to be of service to **City of Kingsport** and will continue to strive for excellence in our day to day operations in these matters.

*We have a 4 hour emergency call out time frame

*We have 15 technicians that report to the Blountville TN office and live in that area . All of our technicians are Kohler trained and certified .

*We are willing to waive the 25.00 technology fee on all service call outs / repairs for the City of Kingsport

*Our Blountville office has a warehouse – We keep in stock all normal batteries , oil, coolant , clamps extra parts that are normal replacement parts (not engine specific) for short turn around repair times .

*Hourly pricing matrix specific to the City of Kingsport is below.

LABOR STD		\$125.00
LABOR OT		\$187.50
LABOR DBL (Sunday and Holiday)		\$250.00
Mileage (per mile)		\$1.50

*Nixon Power Services has been in business for over 100 years

For your convenience , I have listed important contact numbers and information below .



Important contact numbers

Rental Manager Rhonda George 704-587-5829

Sales Manager Keith Kraemer 615-406-8541

Service Sales Manager Marcus Gipson 980-275-9478

Blv Service Manager Akeshia Lambert 423-254-6758

Thank you so much for the opportunity to continue serving the City of Kingsport – and its communities. We really appreciate this privilege .

_I am happy to assist with any questions , concerns or comments that you all have at any time.

Best Regards

Dana Barker



Dana Barker

Service Agreement Administrator

1515 JP Hennessy Drive

La Vergne, TN 37086

Phone: 615-244-0650 ext. 2323 | Direct: 615-664-1491 | Mobile: 615-946-5627

dbarker@nixonpower.com

Visit us online @ www.nixonpower.com

Proudly serving our customers for over 100 years!

To: Nikisha Eichmann
From: Karl Berry
Date: 12/1/22
Re: Generator Service Provider Renewal Recommendation

Comments: Nikisha

I recommend we stay with Nixon for generator services for 2023. I am pleased with the services we are receiving from them and their pricing is very good. I can count on their quick service time and not having services delayed for extended amounts of time. We have had no issues or complaints regarding any of the services they provide.

Thank You,

Karl Berry

Facility Maintenance Superintendent

City of Kingsport

MEMORANDUM

TO: Purchasing

FROM: David Sewell
Maintenance Director

DATE: December 1, 2022

SUBJECT: Recommendation to Renew Agreement with Nixon for Generator Services

I recommend the agreement with Nixon Power Services, LLC, be renewed. We have years of great experience dealing with them. We have always received quality work from them. They are local to the area, having a warehouse in Blountville, Tennessee, and have local technicians for a quick response time.

In my opinion, it is in the best interest of City of Kingsport to renew the agreement with Nixon Power Services, LLC.



AGENDA ACTION FORM

Consideration of a Resolution Authorizing an Application to Receive the Tennessee Agriculture Enhancement Program Grant

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

Action Form No.: AF-368-2022
 Work Session: December 19, 2022
 First Reading: N/A

Final Adoption: December 20, 2022
 Staff Work By: Kristie Leonard
 Presentation By: Michael T. Borders

Recommendation:

Approve the Resolution.

Executive Summary:

The Tennessee Department of Agriculture makes Tennessee Agricultural Enhancement Program grants available to local farmers markets to assist with marketing for the purpose of increasing income to Tennessee farmers. This is a reoccurring grant opportunity that the Kingsport Farmers Market applies for and receives annually.

The grant funds can be used for activities such as advertising, social media promotions, material development, conferences, and Farmers Market Memberships. The Kingsport Farmers Market is applying for the maximum grant amount of \$1,500.

Attachments:

1. Resolution
2. Contract

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
Cooper	—	—	—
Duncan	—	—	—
George	—	—	—
Montgomery	—	—	—
Olterman	—	—	—
Phillips	—	—	—
Shull	—	—	—

RESOLUTION NO. _____

A RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE ALL DOCUMENTS NECESSARY AND PROPER TO APPLY FOR AND RECEIVE A TENNESSEE AGRICULTURE ENHANCEMENT PROGRAM GRANT FROM THE TENNESSEE DEPARTMENT OF AGRICULTURE FOR THE FARMERS MARKET

WHEREAS, the city, on behalf of its Kingsport Farmers Market, would like to apply for a Tennessee Agriculture Enhancement Program Grant through the Tennessee Department of Agriculture, which will assist with marketing efforts for the Kingsport Farmers Market during fiscal year 2023; and

WHEREAS, the maximum amount of the grant award is \$1,500.00, and there is no match required.

Now therefore,

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

SECTION I. That the mayor, or in his absence, incapacity, or failure to act, the vice mayor, is authorized to execute, in a form approved by the city attorney, and subject to the requirements of Article X, Section 10 of the Charter of the City of Kingsport, all documents necessary and proper to apply for and receive a Tennessee Agriculture Enhancement Program Grant through the Tennessee Department of Agriculture in the amount of \$1,500.00.

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

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

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

ADOPTED this the 20th day December, 2022.

PATRICK W. SHULL, MAYOR

ATTEST:

ANGELA MARSHALL, DEPUTY CITY RECORDER

APPROVED AS TO FORM:

RODNEY B. ROWLETT, III, CITY ATTORNEY

AG GROWTH INITIATIVE - FARMERS MARKETS

Funded by TAEP

AGREEMENT & PAYMENT REQUEST

Deadline: April 15, 2023

		PARTICIPANT (ORGANIZATION/FARMERS MARKET)			
ID	1562	NAME	City of Kingsport		
DGA	76261				
INVOICE #	AG123-FM-	MARKET NAME/DBA	Kingsport Farmers Market		
DEPARTMENT	32501	MAILING ADDRESS	415 Broad Street Kingsport TN 37660		
PROGRAM	610750				
ACCOUNT	71302000				
ORGANIZATION CONTACT INFORMATION AND REPRESENTATIVE INFORMATION					
COUNTY	82000	PHONE	(423) 224-2821	EMAIL	kristieleonard@kingsporttn.gov
LOCATION	MAIN	NAME	Kristie Leonard		
ADDRESS	1	PHONE	(423) 224-2821	EMAIL	kristieleonard@kingsporttn.gov

☒ Farmers Market listing on PickTNProducts.org is correct.

☐ Farmers Market listing on PickTNProducts.org is not correct. Corrections are attached.

AGREEMENT PERIOD: OCTOBER 1, 2022 – APRIL 15, 2023

The maximum amount which can be authorized to reimburse costs associated with promoting, marketing, and improving farmers markets, when approved by the Tennessee Department of Agriculture:

\$1500.00

INSTRUCTIONS:

Review Terms & Conditions on reverse, then sign and date in the shaded box to the right, print name and title below signature.

PARTICIPANT ACCEPTANCE SIGNATURE

SIGN

DATE

NAME

TITLE

DO NOT WRITE BELOW THIS LINE

STATE AUTHORIZATION SIGNATURE AND DATE

SERVICE DATE

AMOUNT APPROVED

IMPORTANT: SEE TERMS AND CONDITIONS ON REVERSE

Submit form and attachments to: Rachel L Sullivan, TN Department of Agriculture, PO Box 40627, Nashville TN 37204 OR rachel.l.sullivan@tn.gov

TERMS & CONDITIONS OF AGREEMENT & PAYMENT AUTHORIZATION

1. The BUYER (award recipient) 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 BUYER (award recipient) in connection with any work contemplated or performed relative to this Authorization.
2. Notwithstanding the foregoing, the BUYER (award recipient) may be an employee of the State of Tennessee, PROVIDED THAT the BUYER (award recipient) is not employed in one of the following Department of Agriculture positions: Commissioner, Deputy Commissioner, Assistant Commissioner, Assistant Commissioner equivalent including Agriculture Quality and Standards Manager and State Forester, State Veterinarians, Staff Veterinarians, General Council, Executive Administrative Assistant, Environmental Program Manager 2, or an employee having direct oversight or supervisory duties in the approval or administration of award payments, and is not a member of said individuals' immediate household.
3. The STATE may terminate this agreement without cause for any reason, and such termination shall not be deemed a breach of contract by the STATE.
4. The STATE shall have no liability except as specifically provided in this agreement.
5. The BUYER (award recipient) agrees, warrants, and assures that no person shall be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination in the performance of the authorized service or in the employment practices of the BUYER (award recipient) on the grounds of disability, age, race, color, religion, sex, national origin, or any other classification protected by Federal, Tennessee state constitutional, or statutory law.
6. The BUYER (award recipient) agrees to indemnify and hold harmless the State of Tennessee as well as its officers, agents, and employees from and against any and all claims, liabilities, losses, and causes of action which may arise, accrue, or result to any person, firm, corporation, or other entity which may be injured or damaged as a result of acts, omissions, or negligence on the part of the BUYER (award recipient), its employees, or any person acting for or on its or their behalf relating to this purchase. The BUYER (award recipient) further agrees it shall be liable for the reasonable cost of attorneys for the STATE in the event such service is necessitated to enforce the terms of this purchase or otherwise enforce the obligations of the BUYER (award recipient) to the STATE.
7. This agreement shall be governed by and construed in accordance with the laws of the State of Tennessee. The BUYER (award recipient) 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 Buyer acknowledges and agrees that any rights or claims against the State of Tennessee or its employees hereunder, and any remedies arising there from, shall be subject to and limited to those rights and remedies, if any, available under *Tennessee Code Annotated*, Sections 9-8-101 through 9-8-407.
8. This agreement is complete and contains the entire understanding between the parties relating to the subject matter contained herein, including all the terms and conditions of the parties' agreement. This agreement supersedes any and all prior understandings, representations, negotiations, and agreements between the parties relating hereto, whether written or oral.
9. The BUYER (award recipient) shall take legal title to all equipment and to all motor vehicles, hereinafter referred to as "equipment," purchased totally or in part with funds provided under this agreement, subject to the STATE'S equitable interest therein, to the extent of its *pro rata* share, based upon the STATE'S contribution to the purchase price. "Equipment" shall be defined as an article of nonexpendable, tangible, personal property having a useful life of more than one year and an acquisition cost of which equals or exceeds \$5,000.00.
10. The BUYER (award recipient) will submit reports as required by the STATE, to document agricultural and economic impacts of grant funds.
11. The BUYER (award recipient) signature below certifies that he/she has complied with all requirements of this program, as outlined in 2019 TAEP Application and reimbursement instructions, incorporated herein by reference, and shall utilize funds to be received in the manner authorized by the STATE.
12. The BUYER (award recipient) will submit an invoice and supporting documentation to evidence BUYER (award recipient) payment for qualified purchases in form and substance acceptable to the STATE to effect payment. Such documentation may include but shall not be limited to:
 - a sale or lease receipt with date of purchase/lease, name of seller/lessor, and description of item(s) purchased;
 - a photograph of equipment or facilities purchased and/or installed;
 - a copy of marketing materials purchased with the assistance of awarded funding, and a signed statement from media attesting to advertising activities completed;
 - a copy of certificate from training or educational activity showing successful completion.
13. Iran Divestment Act. The requirements of Tenn. Code Ann. § 12-12-101, *et seq.*, addressing contracting with persons as defined at Tenn. Code Ann. §12-12-103(5) that engage in investment activities in Iran, shall be a material provision of this Grant Contract. The Grantee certifies, under penalty of perjury, that to the best of its knowledge and belief that it is not on the list created pursuant to Tenn. Code Ann. § 12-12-106.
14. The BUYER's (award recipient) activities conducted and records maintained pursuant to this agreement shall be subject to monitoring and evaluation by the State, the Comptroller of the Treasury, or their duly appointed representatives.



AGENDA ACTION FORM

A Resolution to Ratify Mayor's Signature for Authorization to Renew the License to Receive Funding from the USDA for SNAP (Supplemental Nutrition Assistance Program) at the Kingsport Farmers Market

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

Action Form No.: AF-371 -2022
 Work Session: December 19, 2022
 First Reading: N/A

Final Adoption: December 20, 2022
 Staff Work By: Kristie Leonard
 Presentation By: Michael T. Borders

Recommendation:

Approve the Resolution.

Executive Summary:

The City of Kingsport Farmers Market participates in the Supplemental Nutrition Assistance Program (SNAP) through the United States department of Agriculture (USDA). Participating in this program allows SNAP participants to use their benefits at the Kingsport Farmers Market making the market more accessible to lower income customers. Last market season \$6,000 of SNAP benefits were used at the farmers market.

America's farmers markets and direct marketing farmers are a great source of fresh fruits, vegetables, and other healthy foods. The USDA has made it a priority to expand access to such food for SNAP participants.

The Farmers Market must renew its license with USDA to continue offering this program every 5 years. There is no match by the City and all SNAP benefits are reimbursed to the City.

Attachments:

1. Resolution
2. Supplemental Information

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: *aw*

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

RESOLUTION NO. _____

A RESOLUTION RATIFYING THE MAYORS SIGNATURE ON ALL DOCUMENTS NECESSARY AND PROPER TO REAUTHORIZE THE SUPPLEMENTAL NUTRITION ASSISTANCE PROGRAM AT THE FARMERS MARKET FACILITY; AND AUTHORIZING THE MAYOR TO EXECUTE ALL DOCUMENTS NECESSARY AND PROPER TO APPLY FOR AND RECEIVE FUNDING FROM THE UNITED STATES DEPARTMENT OF AGRICULTURE FOR SUPPLEMENTAL NUTRITION ASSISTANCE PROGRAM AT THE KINGSFORT FARMERS MARKET

WHEREAS, since 2018, the city, through its Kingsport Farmers Market, has provided a Supplemental Nutrition Assistance Program (SNAP) through the United States Department of Agriculture (USDA) which allows eligible citizens to acquire fresh fruits and vegetables and participate in fresh food at the Kingsport Farmers Market; and

WHEREAS, the USDA requires the city to renew the license every five years; and

WHEREAS, the renewal application was due on December 2, 2022, and the mayor executed the renewal letter and the Supplemental Nutrition Assistance Program Reauthorization Application for Stores on December 2, 2022; and

WHEREAS, there is no match necessary and any SNAP benefits paid out to customers of the market are reimbursed in full to the city.

Now therefore,

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

SECTION I. That the renewal letter and the Supplemental Nutrition Assistance Program Reauthorization Application for Stores submitted on December 2, 2022, for the Supplemental Nutrition Assistance Program through the United States Department of Agriculture is ratified, including the execution of the same by Mayor Patrick W. Shull.

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, all documents necessary and proper to apply for and receive funds from the United States Department of Agriculture for the Supplemental Nutrition Assistance Program at the Kingsport Farmers Market, to deliver the documents and take any and all action as may be required on the part of the city to carry out, give effect to, and consummate the transactions contemplated by the documents and this resolution.

SECTION III. That the mayor is authorized to execute any and all documents including those necessary and proper to demonstrate the city's compliance with the program or funding requirements established by the United States Department of Agriculture relative to the Supplemental Nutrition Assistance Program.

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 public as well as allow

citizens to participate in the SNAP program the recreational and nutritional benefits of the Kingsport Farmers Market.

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

ADOPTED this the 20th day of December, 2022.

PATRICK W. SHULL, MAYOR

ATTEST:

ANGELA MARSHALL, DEPUTY CITY RECORDER

APPROVED AS TO FORM:

RODNEY B. ROWLETT, III, CITY ATTORNEY



November 30, 2022

Attn: David Gahm
USDA, Food and Nutrition Service
PO Box 7228
Falls Church, VA 22040

This letter is to confirm that by way of Resolution Number 2018-111, approved by the Board of Mayor and Aldermen of the City of Kingsport, Tennessee, that Patrick W. Shull, duly elected Mayor of City of Kingsport, has been authorized to sign as the Responsible Official, the Certification and Signature Statement which accompanies our renewal application to continue the USDA Supplemental Nutrition Assistance Program (SNAP) benefits at the Kingsport Farmers Market.

This letter and Resolution shall also confirm that the City of Kingsport, Tennessee owns the Kingsport Farmers Market property and further manages and operates the Kingsport Farmers Market, located at 308 Clinchfield Street, Kingsport, Tennessee, 37660.

A certified copy of Resolution Number 2018-111 accompanies this letter of confirmation and was approved by the City of Kingsport Board of Mayor and Aldermen on the 6th of February, 2018.

The Kingsport Farmers Market includes at least 30 farm vendors that sell their product seasonally at the market.

Thank you for considering our SNAP Benefits application renewal. Should you require any additional information, please contact Kristie Leonard at 423-224-2821 or KristieLeonard@KingsportTN.gov.

Sincerely,

A handwritten signature in black ink that reads "Patrick W. Shull". The signature is written in a cursive, flowing style.

Patrick W. Shull
Mayor



RESOLUTION NO. 2018-111

A RESOLUTION AUTHORIZING THE CITY MANAGER TO IMPLEMENT POLICIES AND PROCEDURES FOR THE OPERATION OF A SEASONAL FARMERS MARKET AT THE FARMERS MARKET FACILITY AND TO DEVELOP APPLICATIONS AND AGREEMENTS FOR THAT OPERATION; AUTHORIZING THE CITY MANAGER TO EXECUTE ALL DOCUMENTS NECESSARY AND PROPER TO FACILITATE THE CITY'S OPERATION OF THE FARMERS MARKET WITH VENDORS; APPROVING THE SUPPLEMENTAL NUTRITION ASSISTANCE PROGRAM AT THE FARMERS MARKET FACILITY; AND AUTHORIZING THE MAYOR TO EXECUTE ALL DOCUMENTS NECESSARY AND PROPER TO APPLY FOR AND RECEIVE FUNDING FROM THE UNITED STATES DEPARTMENT OF AGRICULTURE FOR SUPPLEMENTAL NUTRITION ASSISTANCE PROGRAM AT THE KINGSPORT FARMERS MARKET

WHEREAS, the city will be handling all aspects of the Kingsport Farmers Market including implementing policies and procedures, rules and regulations and developing applications and agreements for vendors of the seasonal farmers market; and

WHEREAS, the city has learned about a Supplemental Nutrition Assistance Program (SNAP) through the United States Department of Agriculture (USDA) which will allow eligible citizens to acquire fresh fruits and vegetables and participate in fresh food at the Kingsport Farmers Market; and

WHEREAS, the city, through the Kingsport Farmer's Market, would like to apply for a funding from the USDA for the SNAP program; and

WHEREAS, there is no match necessary and any SNAP benefits paid out to customers of the market are reimbursed in full to the city.

Now therefore,

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

SECTION I. That the city manager is authorized to implement policies, procedures, rules and regulations for the operation of a seasonal farmers market at the Kingsport Farmers Market Facility and develop applications and agreements for that operation.

SECTION II. That the city manager is authorized to execute all documents necessary and proper to facilitate the city's operation of the Kingsport Farmers Market with vendors of the seasonal farmers market.

SECTION III. That the implementation of the United States Department of Agriculture (USDA) for Supplemental Nutrition Assistance Program (SNAP) at the Kingsport Farmers Market is approved.

SECTION IV. That the mayor, or in his absence, incapacity, or failure to act, the vice mayor, is authorized to execute, in a form approved by the city attorney, and subject to the requirements of Article X, Section 10 of the Charter of the City of Kingsport, all documents necessary and proper to apply for and receive funds from the United States Department of Agriculture (USDA) for Supplemental Nutrition Assistance Program (SNAP) at the Kingsport Farmer's Market.

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

SECTION VI. That the board finds that the actions authorized by this resolution are for a public purpose and will promote the health, comfort and prosperity of the public as well as allow eligible citizens of SNAP to participate in the recreational and nutritional benefits of the Kingsport Farmers Market.


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

ADOPTED this the 6th day of February, 2018.

ATTEST:


ANGELA MARSHALL
Deputy City Recorder




JOHN CLARK, Mayor

APPROVED AS TO FORM:


J. MICHAEL BILLINGSLEY, City Attorney

Form FNS-252-R US Department of Agriculture Food and Nutrition Service	SUPPLEMENTAL NUTRITION ASSISTANCE PROGRAM REAUTHORIZATION APPLICATION FOR STORES	OMB APPROVED NO. 0584-0008 Expiration Date: 01/31/2024
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Reauthorization Customer Number: NONE

1 Store Name: City Of Kingsport Tennessee	2 Legal Business Name (If different from store name)	3 Is this store still open for business? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
--	--	---

4 Store Operations: [Store Address] 308 Clinchfield St Kingsport, TN 37660-3604

4a Is this the current store location? If No, enter current store location address. ☒ Yes ☐ No

Store Location Address (do not enter P.O. Box here):		Additional Address (Bldg #, Unit #, Stall #, etc.):	
Street Number: 308	Street Name: Clinchfield Street		
City: Kingsport		State: TN	Zip Code: 37660

4b Owner or Store Email Address: KristieLeonard@KingsportTN.gov

4c Enter the current store telephone number: (423) - 224 - 2821

4d Alternate telephone number: () - -

5 Store Hours and Days of Operation:

Is this store open 7 days a week, 24 hours per day? ☐ Yes ☒ No

If No, Indicate operating hours:

	Opening Time	Select AM or PM	Closing Time	Select AM or PM
Monday:		<input type="checkbox"/> AM <input type="checkbox"/> PM		<input type="checkbox"/> AM <input type="checkbox"/> PM
Tuesday:		<input type="checkbox"/> AM <input type="checkbox"/> PM		<input type="checkbox"/> AM <input type="checkbox"/> PM
Wednesday:	7	<input checked="" type="checkbox"/> AM <input type="checkbox"/> PM	1	<input type="checkbox"/> AM <input checked="" type="checkbox"/> PM
Thursday:		<input type="checkbox"/> AM <input type="checkbox"/> PM		<input type="checkbox"/> AM <input type="checkbox"/> PM
Friday:		<input type="checkbox"/> AM <input type="checkbox"/> PM		<input type="checkbox"/> AM <input type="checkbox"/> PM
Saturday:		<input type="checkbox"/> AM <input type="checkbox"/> PM		<input type="checkbox"/> AM <input type="checkbox"/> PM
Sunday:		<input type="checkbox"/> AM <input type="checkbox"/> PM		<input type="checkbox"/> AM <input type="checkbox"/> PM

6 How many cash registers are at this store? 1

7 Are optical scanners used at this store? ☐ Yes ☒ No

8 Answer the following questions regarding staple food varieties that you have currently and on a continuous basis in your store. Enter the number of varieties for each staple food category if less than 10. Check "10+" if the number of varieties for each staple food category is equal to or greater than 10.

- 8a Indicate the number of varieties in the Breads and/or Cereals staple food category (Examples: rice, pasta, flour, pita, tortilla, etc.) that you have currently and on a continuous basis in your store: _____ OR ☒ 10+
- 8b Indicate the number of varieties in the Dairy products staple food category (Examples: soymilk, butter, yogurt, infant formula, etc.) that you have currently and on a continuous basis in your store: _____ OR ☐ 10+
- 8c Indicate the number of varieties in the Meat, Poultry, and/or Fish staple food category (Examples: beef, pork, eggs, tuna, etc.) that you have currently and on a continuous basis in your store: 5 OR ☐ 10+
- 8d Indicate the number of varieties in the Vegetables and/or Fruits staple food category (Examples: apple, tomato, peach, carrot, etc.) that you have currently and on a continuous basis in your store: _____ OR ☒ 10+

9 Answer the following questions regarding stocking units of staple food varieties that you have currently and on a continuous basis in your store:

- 9a Do you have at least three stocking units of at least three varieties in the Breads and/or Cereals category (Examples: 3 bags of rice, 3 boxes of pasta, 3 packages of bread, etc.)? ☒ Yes ☐ No
- 9b Do you have at least three stocking units of at least three varieties in the Dairy products category (Examples: 3 cartons of soymilk, 3 cans of infant formula, 3 packages of cheese, etc.)? ☒ Yes ☐ No
- 9c Do you have at least three stocking units of at least three varieties in the Meat, Poultry, and/or Fish category (Examples: 3 cans of tuna, 3 cartons of eggs, 3 packages of ground beef, etc.)? ☒ Yes ☐ No
- 9d Do you have at least three stocking units of at least three varieties in the Vegetables and/or Fruits category (Examples: 3 apples, 3 cans of peaches, 3 packages of lettuce, etc.)? ☒ Yes ☐ No

10 Answer the following questions regarding perishable foods that you have currently and on a continuous basis in your store:

- 10a Do you have at least one variety of perishable foods in the Breads and/or Cereals category (Examples: bread, pita, etc.)? ☒ Yes ☐ No
- 10b Do you have at least one variety of perishable foods in the Dairy products category (Examples: refrigerated cow's milk, refrigerated butter, etc.)? ☐ Yes ☒ No
- 10c Do you have at least one variety of perishable foods in the Meat, Poultry, and/or Fish category (Examples: fresh eggs, frozen chicken, etc.)? ☒ Yes ☐ No
- 10d Do you have at least one variety of perishable foods in the Vegetables and/or Fruits category (Examples: fresh apples, frozen broccoli, etc.)? ☒ Yes ☐ No

11 Total Retail Sales: Enter the total retail sales from all products you sell at this location (both food and nonfood products and services) and indicate the tax year corresponding to your sales figures. If you sell products wholesale to other businesses, do not include those sales.

Total Retail Sales: _____ **In tax year 20** _____

11a Enter the total retail sales percentage for each sales category for products you sell at this store location (e.g., if 25% of total retail sales comes from accessory foods, enter 25% where indicated). If you do not sell items in a category, enter "0" (e.g., if the store does not sell nonfood items, enter 0). If you do not have the actual total retail sales percentage(s) for one or more of the sales categories below, provide your best estimate.

Sales Category	% Total
Staple Foods (Examples: rice, milk, beef, apples, etc.)	70
Accessory Foods (Examples: chips, candy, snack foods, soft drinks, condiments, etc.)	0
Hot Foods (Examples: hot coffee, hot soup, hot pizza, etc.)	20
Cold Foods Prepared on Site (Only include items intended for immediate consumption or carryout. Examples: sandwiches, fresh salads, salad bars, etc.)	10
Nonfood Items (Examples: household supplies, tobacco products, gasoline, alcohol, pet foods, lottery, etc.)	0
Total Sales Percentage (total must equal 100%)	100

11b Do you sell gasoline?

☐ Yes ☒ No

12 Owners/Officers. FNS records show the following persons are primary owners or officers of a private corporation that owns the store. Is each person listed still an owner/officer? Check Yes or No for each person. Spousal information is no longer required for businesses located in community property states. If a spouse of an owner or officer is listed and this person is not an owner or officer, check "No" for that person.

N/A ☐ Yes ☐ No ☐ Yes ☐ No
☐ Yes ☐ No ☐ Yes ☐ No

12a Are there any primary owners/officers that are not listed here?

☐ Yes ☐ No

If Yes, go to 12b to enter information about these persons. See instructions for more information about this question.

12b If you answered Yes to Question 12a, enter information for up to two additional owners/officers here. Make a copy of this page if you need to enter additional owner/officer information, and attach it to this application. Do not enter any information if your store is owned by a publicly-held corporation or government agency. Do not enter information for persons listed above.

(1) Print name exactly as it appears on the social security card:

First Name:		Middle Name:		Last Name:	
Street Number:		Street Name:		Additional Address (Bldg #, Unit #, Stall #, etc.):	
City:		State:		Zip Code:	
				If foreign address, add country:	
Social Security Number:		Date of Birth: (MM/DD/YYYY)		Business Title: (owner, partner, etc.)	
				Email Address:	

(2) Print name exactly as it appears on the social security card:

First Name:		Middle Name:		Last Name:	
Street Number:		Street Name:		Additional Address (Bldg #, Unit #, Stall #, etc.):	
City:		State:		Zip Code:	
				If foreign address, add country:	
Social Security Number:		Date of Birth: (MM/DD/YYYY)		Business Title: (owner, partner, etc.)	
				Email Address:	

13 Answer the questions for all officers, owners, partners, members, and/or managers.

13a Has any officer, owner, partner, member, and/or manager ever been denied, withdrawn, disqualified, suspended, or been fined for Supplemental Nutrition Assistance Program (SNAP), WIC, business, alcohol, tobacco, lottery, and/or health violations?

☐ Yes ☒ No

13b If Yes, provide an explanation:

13c Has any officer, owner, partner, member, and/or manager currently or ever been suspended or debarred from conducting business with or participating in any program administered by the federal government?

☐ Yes ☒ No

13d If Yes, provide an explanation:

0636685

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13e Is any officer, owner, partner, and/or member currently receiving assistance through the Supplemental Nutrition Assistance Program?

☐ Yes ☒ No

13f If Yes, has the officer, owner, partner, and/or member reported this store ownership to their SNAP caseworker?

☐ Yes ☐ No

13g If No, provide an explanation:

13h Has any officer, owner, partner and/or member ever been disqualified from receiving assistance through the Supplemental Nutrition Assistance Program for an intentional program violation (IPV) or fraud?

☐ Yes ☒ No

13i If Yes, provide an explanation:

13j Does any officer, owner, partner, and/or member currently own any other SNAP authorized stores?

☐ Yes ☒ No

13k If Yes, how many currently authorized SNAP stores do you own?

14 Was any officer, owner, partner, member, and/or manager convicted of any crime after June 1, 1999?

☐ Yes ☒ No

14a If Yes, provide an explanation:

15 What is the name, phone number, and mailing address of the company that provides your EBT equipment services?

Equipment Provider Name:

Elavon

Equipment Provider Phone Number:

(865) 403 - 8053

Equipment Provider Mailing Address:

Street Number:

7300

Street Name:

Chapman Hwy

Additional Address (Bldg #, Unit #, Stall #, etc.):

City:

Knoxville

State:

TN

Zip Code:

37920

If foreign address, add Country:

16 Provide the name and address of the financial institution (bank) that you use for SNAP payment deposits:

Financial Institution Name:

First Horizon Bank

Financial Institution Mailing Address:

Street Number:

235

Street Name:

E. Center Street

Additional Address (Bldg #, Unit #, Stall #, etc.):

City:

Kingsport

State:

TN

Zip Code:

37660

If foreign address, add Country:

17 Do you have a website for your store? If yes, provide website address: www.kingsportfarmersmarket.org

18 If you have additional information or comments you would like to provide to FNS (such as any store name change, updated mailing address, new or updated email address for each owner or officer listed in question 12, or any special circumstances that FNS should know, etc.), please provide the information here:

PENALTY WARNING STATEMENT - The Food and Nutrition Service can deny or withdraw your approval to accept Supplemental Nutrition Assistance Program benefits if you provide false information or try to hide information we ask you to give us. In addition, if false information is provided or information is hidden from the Food and Nutrition Service, the owners of the firm may be liable for a \$10,000 fine or imprisoned for as long as five years, or both (7 U.S.C. 2024(f) and 18 U.S.C. 1001).

I have read, understand, and agree with the conditions of participation outlined in the Privacy Act, Use and Disclosure, Penalty Warning and Certification Statements, and agree to comply with all statutory and regulatory requirements associated with participation in the Supplemental Nutrition Assistance Program. I am an owner/officer or authorized to complete the application for the store.

Printed Name: Patrick Wesley Skull Business title: Mayor
First Name Middle Name Last Name (owner, officer, manager, etc.)

Signature: [Signature] Date: 12/2/22 (423) 229-9412
Phone number where you can be reached

ATTEST:

DEPUTY CITY RECORDER

APPROVED AS TO FORM:

CITY ATTORNEY

KEEP THIS PAGE FOR YOUR RECORDS

PRIVACY ACT STATEMENT - Authority: Section 9 of the Food and Nutrition Act of 2008, as amended, (7 U.S.C. 2018); section 205(c)(2)(C) of the Social Security Act (42 U.S.C. 405(c)(2)(C)); and section 6109(f) of the Internal Revenue Code of 1986 (26 U.S.C. 6109(f)), authorizes collection of the information on this application.

- Information is collected primarily for use by the Food and Nutrition Service in the administration of the Supplemental Nutrition Assistance Program;
- Additional disclosure of this information may be made to other Food and Nutrition Service programs and to other federal, state or local agencies and investigative authorities when the Supplemental Nutrition Assistance Program becomes aware of a violation or possible violation of the Food and Nutrition Act of 2008, as explained in the next section called "Use and Disclosure";
- Section 278.1(b) of the Supplemental Nutrition Assistance Program regulations provides for the collection of each owner's Social Security Number (SSN), Employee Identification Number (EIN) and tax information;
- The use and disclosure of SSNs and EINs obtained by applicants is covered in the Social Security Act and the Internal Revenue Code. In accordance with the Social Security Act and the Internal Revenue Code, applicant social security numbers and employer identification numbers may be disclosed only to other federal agencies authorized to have access to social security numbers and employer identification numbers and maintain these numbers in their files, and only when the Secretary of Agriculture determines that disclosure would assist in verifying and matching such information against information maintained by such other agency [42 U.S.C. 405(c)(2)(C)(III); 26 U.S.C. 6109(f)];
- Furnishing the information on this form, including your SSN, ITIN, and EIN, is voluntary but failure to do so will result in withdrawal of store authorization to accept SNAP benefits;
- The Food and Nutrition Service may provide you with an additional statement reflecting any additional uses of the information furnished on this form.

USE AND DISCLOSURE - Routine Uses: We may use the information you give us in the following ways:

- We may disclose information to the Department of Justice (DOJ), a court or other tribunal, or another party before such tribunal when the USDA is involved in a lawsuit or has an interest in litigation and it has been determined that the use of such information is relevant and necessary and the disclosure is compatible with the purpose for which the information was collected;
- In the event that the information in our system indicates a violation of the Food and Nutrition Act or any other federal or state law whether civil or criminal or regulatory in nature, and whether arising by general statute, or by regulation, rule, or order issued pursuant thereto, we may disclose the information you give us to the appropriate agency, whether federal or state, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, or rule, regulation or order issued pursuant thereto;
- We may use your information, including SSNs, ITINs, and EINs, to collect and report on delinquent debt and may disclose the information to other federal and state agencies, as well as private collection agencies, for purposes of claims collection actions including, but not limited to, the Treasury Department for administrative or tax offset and referral to the Department of Justice for litigation. (Note: SSNs, ITINs, and EINs will only be disclosed to federal agencies authorized to possess such information);
- We may disclose information to other federal and state agencies to verify the information reported by applicants and participating firms, and to assist in the administration and enforcement of the Food and Nutrition Act, as well as other federal and state laws. (Note: SSNs, ITINs, and EINs will only be disclosed to federal agencies authorized to possess such information);
- We may disclose information to other federal and state agencies to respond to specific requests from such federal and state agencies for the purpose of administering the Food and Nutrition Act as well as other federal and state laws;
- We may disclose information to other federal and state agencies for the purpose of conducting computer matching programs;
- We may disclose information (excluding EINs, ITINs, and SSNs) to private entities having contractual agreements with us for designing, developing, and operating our systems, and for verification and computer matching purposes;
- We may disclose information to the Internal Revenue Service for the purpose of reporting delinquent retailer and wholesaler monetary penalties of \$600 or more for violations committed under the SNAP. We will report each delinquent debt to the Internal Revenue Service on Form 1099-C (Cancellation of Debt). We will report these debts to the Internal Revenue Service under the authority of the Income Tax Regulations (26 CFR Parts 1 and 602) under section 6050P of the Internal Revenue Code (26 U.S.C. 6050P);
- We may disclose information to state agencies that administer the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC), authorized under Section 17 of the Child Nutrition Act of 1986 (CNA) (42 U.S.C. 1786), for purposes of administering that Act and the regulations issued under that Act;
- Disclosures pursuant to 5 U.S.C. 552 (a)(b)(12). We may disclose information to "consumer reporting agencies" as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f)) or the Debt Collection Act of 1982 (31 U.S.C. 3711(d)(4));
- We may disclose information to the public when a retailer has been disqualified or otherwise sanctioned for violations of the Program after the time for administrative and judicial appeals has expired. This information is limited to the name and address of the store, the owner(s) name(s) and information about the sanction itself. The purpose of such disclosure is to assist in the administration and enforcement of the Food and Nutrition Act and Supplemental Nutrition Assistance Program regulations.

KEEP THIS PAGE FOR YOUR RECORDS

CERTIFICATION AND SIGNATURE - By signing the application for reauthorization you are confirming your understanding of and agreement with the following:

- I am an owner of this firm; or am authorized to represent the firm regarding this reauthorization.
- I have provided truthful and complete information on this form and on any documents provided to the Food and Nutrition Service;
- If I provide false information, my authorization to accept Supplemental Nutrition Assistance Program (SNAP) benefits may be withdrawn;
- Any information I have provided or will provide may be verified and shared by the USDA as described in the Privacy Act and Use and Disclosure statement.
- SNAP training materials are available on request from the Food and Nutrition Service. Owners/Officers must ensure that the training materials are reviewed by all firm's owners and all employees (whether paid or unpaid, new, full-time or part-time), and that all employees will follow SNAP regulations.
- Violations of program rules can result in administrative actions such as fines, sanctions, withdrawal or disqualification from the Supplemental Nutrition Assistance Program; Violations of the Supplemental Nutrition Assistance Program rules can also result in federal, state and/or local criminal prosecution and sanctions.
- Owners/Officers are responsible for violations of the Supplemental Nutrition Assistance Program regulations, including those committed by any of the firm's employees, paid or unpaid, new, full-time or part-time. These include violations such as, but not limited to:
 - Trading cash for Supplemental Nutrition Assistance Program benefits (i.e., trafficking);
 - Accepting Supplemental Nutrition Assistance Program benefits as payment for ineligible items;
 - Accepting Supplemental Nutrition Assistance Program benefits as payment on credit accounts or loans;
 - Knowingly accepting Supplemental Nutrition Assistance Program benefits from people not authorized to use them;
- Disqualification from the WIC Program may result in Supplemental Nutrition Assistance Program disqualification, and a disqualification from the Supplemental Nutrition Assistance Program may result in WIC Program disqualification;
- In accordance with federal law and U.S. Department of Agriculture policy, no customer may be discriminated against on the grounds of race, color, national origin, sex, age, religion, political beliefs, or disability. Supplemental Nutrition Assistance Program customers must be treated in the same manner as non-Supplemental Nutrition Assistance Program customers;
- Participation can be withdrawn if the firm violates any laws or regulations issued by federal, state or local agencies, including civil rights laws and their implementing regulations;
- Changes in the firm's ownership, address, type of business and operation must be reported to the Food and Nutrition Service.
- If your store is disqualified or fined for violating Program rules, FNS may publicly disclose your store's name and address, owners' names, and the penalty.

Supplemental Nutrition Assistance Program authorization may not be transferred to new owners, partners, or corporations. An unauthorized individual or firm accepting or redeeming Supplemental Nutrition Assistance Program benefits is subject to substantial fines and administrative sanctions.

Instructions for Form FNS-252-R Supplemental Nutrition Assistance Program Reauthorization Application for Stores



United States Department of Agriculture
Food and Nutrition Service

General Instructions

Filing Requirements: The Supplemental Nutrition Assistance Program (SNAP) regulations require the Food and Nutrition Service (FNS) to periodically reauthorize stores for continued eligibility. Failure to cooperate may result in the withdrawal of your store. The information you provide on the FNS-252-R will be used by FNS to update our records and determine your store's continued eligibility to accept SNAP benefits. FNS may contact you for additional information or visit your store as part of this review.

How to Apply?

Apply Online: If you've been notified to apply online for reauthorization, follow the instructions on the letter you received.

Apply by Mail: You must complete the reauthorization application, Form FNS-252-R and attach any required documents requested by FNS to the application. Form FNS-252-R is not considered a valid application unless you sign and date it.

Where to Mail Form FNS-252-R? You must send Form FNS-252-R to the FNS mailing address listed on the cover letter included with the paper reauthorization application.

Reminders

You must answer all of the questions on Form FNS-252-R, with the following exceptions:

- Question 2;
- If the store is no longer in business, skip questions 4 through 18;
- If store is owned by a publicly-held corporation or government agency, skip question 12.

Specific Instructions. This reauthorization application is pre-printed with information about your store currently on file with FNS. Review the preprinted information and check either Yes or No if the information we have on file is still correct. You will also be required to give answers about current store operations. Enter new or changed information in the spaces provided. Print or type your answers so they are clear and legible.

Question 1 - Store Name: Review the name of your store as it appears in FNS records and enter the most commonly referred to name of your business (e.g., the doing business as name, trade name, etc.). If the most commonly referred to name of your business is the same as what is currently displayed for Question 1, keep the pre-filled store name as is.

Question 2 - Legal Business Name: If your legal business name (e.g., Joe's Enterprise, LLC) is different from your store name, enter it in question 2.

Question 3 - Store Still in Business: Check Yes or No. If No, skip questions 4 through 18. Sign, date, and mail Form FNS-252-R. Stores not in business will be withdrawn from the program.



If the name of the store has changed, make a pen-and-ink correction.

Question 4 - Store Operations:

Question 4a - Store Address: Check Yes or No whether the store address is correct. If No, enter the new address for the store. If you notice a minor error in the current address, check Yes, but make a pen-and-ink correction.

Question 4b - Email Address: Enter the owner or store email address where you want to receive Supplemental Nutrition Assistance Program official correspondence.

Question 4c - Store Telephone Number: Enter the current store telephone number.

Question 4d - Alternate Telephone Number: Enter an alternate telephone number, such as a cellular number, including area code. We may use the alternate telephone number to contact you during a disaster situation. The alternate telephone number cannot be the same as the store telephone number.

Question 5 - Store Hours and Days of Operation:

Check the box to indicate if your store is open 7 days a week, 24 hours per day. If No, enter the opening and closing time for each day your store is open for business and indicate AM or PM.

Question 6 - Number of Cash Registers: Enter the current number of cash registers at this store used for accepting payment for retail purchases.

Question 7 - Optical Scanners: Select "Yes" or "No" to indicate if optical scanners are used at your store.

Question 8-10: Staple Food Varieties & Depth of Stock:

Please answer the questions regarding staple food varieties and the depth of stock that you have currently and on a continuous basis in your store. Additional information related to staple food varieties and minimum stocking requirements can be found online at: <https://www.fns.usda.gov/snap/retailer/training>.

For each question, check only Yes or No.

Staple Foods: Staple food means those food items intended for home preparation and consumption in each of the following food categories: meat, poultry, or fish; bread or cereals; vegetables or fruits; and dairy products. A list of examples of staple foods can be found online at: <https://www.fns.usda.gov/snap/retailer/training>.

Variety: Variety means different kinds of products in each of the four staple food categories. A list of examples of acceptable varieties in each of the staple food categories can be found online at: <https://www.fns.usda.gov/snap/retailer/training>.

Stocking Unit: A stocking unit is a can, bunch, box, bag, or package for the product as typically sold. A list of examples of stocking units can be found online at: <https://www.fns.usda.gov/snap/retailer/training>.

Perishable Foods: Perishable foods are items which are either frozen staple food items or fresh, unrefrigerated or refrigerated staple food items that will spoil or suffer significant deterioration in quality within 2-3 weeks.

Question 11 - Retail Sales: Enter the total retail sales for each kind of product you sell at this store location as reported to the Internal Revenue Service in the most recent tax year. Enter the tax year for these sales.

Question 11a: If you do not sell items in a category, enter "0" (e.g., if the store does not sell gasoline, enter 0).

Question 11b: Select "Yes" or "No" to indicate if your store sells gasoline.

Hot Foods and Cold Foods Prepared on Site: Total retail sales percentages for these categories should only include prepared foods that are consumed on the premises or sold for carryout (i.e., foods not intended for home preparation or consumption).

Question 12 - Owner/Officer Information: All persons currently in FNS files as the primary owners/officers are listed. Check No, for each person who is **not** currently an owner/officer.

The term owner/officer includes owners, officers, members, partners, and primary shareholders. Spousal information is no longer required for businesses located in community property states (AZ, CA, ID, LA, NM, TX, WA, and WI). If this store is owned by a non-profit organization, enter information for the primary officers. If the store is owned by a publicly-held corporation or government agency, skip question 12.

Question 12a - Additional Persons: Are there persons not listed who are owners/officers? If Yes, go to question 12b to enter additional persons who are owners/officers or their spouses.

If there are more than two new primary owners/officers to report, make blank copies of question 12b and enter the additional person(s) information, and attach it to this application.

Question 12b - New Owner, Partner, Officer, Member, Information: Enter the first name, middle name, and last name of each person exactly as it appears on their social security card. Enter the home address, social security number, (or individual tax identification number, as an alternative to SSNs), and date of birth for each person, and business title for each added person. Do not enter any information or return this page to FNS if the store is owned by a publicly-held corporation or government agency.

Email Address: Enter the email address for all owners/officers here (optional).

Questions 13 and 14 - Ownership Questions: For each question, check only one box.

Question 13b, 13d or 14a: If you answer "Yes" to either question 13a, 13c or 14, provide an explanation.

Question 13g: If you answer "No" to question 13f, provide an explanation.

Question 13i: If you answer "Yes" to question 13h, provide an explanation.

Question 13k: If you answer "Yes" to question 13j, enter the number of currently authorized SNAP stores under your ownership.

Question 15 - EBT Provider Information: Enter the Name, Phone Number and Address of the company that provides your EBT equipment and services.

Question 16 - Financial Institution Name and Address: Provide the name and address of the financial institution that you use for SNAP payment deposits (i.e. what is your bank?).

Question 17 - Store Website: If you have a public website for your store, please enter the full website address.

Question 18 - Additional Information or Comments: Enter any additional information or comments you would like to provide to FNS, such as Store name change, updated mailing address, new or updated email address for each owner or officer listed in question 12, or any special circumstances that FNS should know.

Name and Signature - Before you sign Form FNS-252-R, read the attached Privacy Act Statement, Use and Disclosure Statement, Penalty Warning Statement, and Certification and Signature Acknowledgment.

Print your full name and business title. Sign and date in the space provided. Provide a phone number where we can call you if we have questions about the information you provided. Mail the form in accordance with *Where to Mail Form FNS-252-R* section in the General Instructions.

Privacy Act and Paperwork Reduction Notice

Public reporting burden for this collection of information is estimated to vary from 1 to 90 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. **An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.** Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to: U.S. Department of Agriculture, Food and Nutrition Service, Office of Policy Support, 1320 Braddock Place, 5th floor, Alexandria, VA 22314. Attn: PRA. Do not return the completed form to this address. Instead, see Where to Mail Form FNS-252-R section of these instructions.

To file a complaint of Discrimination, write to the USDA, Director, Office of Adjudication, 1400 Independence Ave, SW, Washington, DC 20250-9410. Do not send the completed application form to this address.

CERTIFICATION AND SIGNATURE - By signing below, you are confirming your understanding of and agreement with the following:

- I am an owner of this firm; or am authorized to represent the firm regarding this reauthorization.
- I have provided truthful and complete information on this form and on any documents provided to the Food and Nutrition Service;
- If I provide false information, my authorization to accept Supplemental Nutrition Assistance Program (SNAP) benefits may be withdrawn;
- Any information I have provided or will provide may be verified and shared by the USDA as described in the Privacy Act and Use and Disclosure statement.
- SNAP training materials are available on request from the Food and Nutrition Service. Owners/Officers must ensure that the training materials are reviewed by all firm's owners and all employees (whether paid or unpaid, new, full-time, or part-time), and that all employees will follow SNAP regulations.
- Violations of program rules can result in administrative actions such as fines, sanctions, withdrawal or disqualification from the Supplemental Nutrition Assistance Program; Violations of the Supplemental Nutrition Assistance Program rules can also result in federal, state and/or local criminal prosecution and sanctions.
- Owners/officers are responsible for violations of the Supplemental Nutrition Assistance Program regulations, including those committed by any of the firm's employees, firm's employees (paid or unpaid, new, full-time, or part-time). These include violations such as, but not limited to:
 - Trading cash for Supplemental Nutrition Assistance Program benefits (i.e. trafficking);
 - Accepting Supplemental Nutrition Assistance Program benefits as payment for ineligible items;
 - Accepting Supplemental Nutrition Assistance Program benefits as payment on credit accounts or loans;
 - Knowingly accepting Supplemental Nutrition Assistance Program benefits from people not authorized to use them;
- Disqualification from the WIC Program may result in Supplemental Nutrition Assistance Program disqualification, and a disqualification from the Supplemental Nutrition Assistance Program may result in WIC Program disqualification;
- In accordance with federal law and U.S. Department of Agriculture policy, no customer may be discriminated against on the grounds of race, color, national origin, sex, age, religion, political beliefs, or disability. SNAP customers must be treated in the same manner as non-Supplemental Nutrition Assistance Program customers;
- Participation can be denied or withdrawn if my firm violates any laws or regulations issued by federal, state or local agencies, including civil rights laws and their implementing regulations;
- Changes in the firm's ownership, address, type of business, and operation must be reported to the Food and Nutrition Service.
- If your store is disqualified or fined for violating Program rules, FNS may publicly disclose your store's name and address, owners' names, and the penalty.

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I have read, understand, and agree with the conditions of participation outlined in the Privacy Act, Use and Disclosure, Penalty Warning and Certification Statements, and agree to comply with all statutory and regulatory requirements associated with participation in the Supplemental Nutrition Assistance Program.

x Patrick W. Skell
Signature
2 December 2022
Date Signed

x Patrick W. Skell
Print Name
Mayor
Print Title

MAIL YOUR COMPLETED APPLICATION TO THE RETAILER SERVICE CENTER (SEE FIRST PAGE OF INSTRUCTIONS).



APPROVED AS TO FORM:
Proctor B. Brantley III
CITY ATTORNEY



AGENDA ACTION FORM

Recommendation to Award the Bid of the DBHS Pool Improvements Project and Authorize the Mayor to Enter into Agreement with Preston Construction Company

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

Action Form No.: AF-369-2022
 Work Session: December 19, 2022
 First Reading: N/A

Final Adoption: December 20, 2022
 Staff Work By: Committee
 Presentation By: David Frye

Recommendation:

Approve the Resolution.

Executive Summary:

Bids were opened on December 6, 2022, for the Dobyns-Bennett High School Pool Improvements project. One bid was received. Preston Construction Company submitted the bid, which consisted of a base bid of \$2,315,000.00. Alternate No. 1 was for an extended warranty for the mechanical HVAC equipment. The bid amount for Alternate No. 1 was \$9,000.00 and the warranty was for three additional years. The administration recommends accepting both the base bid and Alternate No. 1.

The total cost of this project will be \$2,525,990.00 (detail given below). The portion of the project for the dehumidification system, \$694,000.00, will be paid with ESSER funds. The remainder will be from the Dobyns-Bennett Renovation Project GP2111.

Architect Fee	\$ 62,550.00
Construction Costs	2,324,000.00
6% Contingency	<u>139,440.00</u>
Total Costs	\$2,525,990.00

Brian Alderson, Senior Architect with Thompson & Litton, has recommended (see attached recommendation) that the Board of Education approve a motion to award a contract for the Dobyns-Bennett High School Pool Improvements Project to Preston Construction Company for the base bid and Alternate No. 1 in the amount of \$2,324,000.00 and authorize a 6% contingency of \$139,440.00.

Attachments:

1. Resolution
2. Recommendation Memo
3. Bid Tab

Funding source appropriate and funds are available: *fm*

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: *fm*

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

RESOLUTION NO. _____

A RESOLUTION AWARDDING THE BID FOR THE DOBYNS-BENNETT HIGH SCHOOL POOL IMPROVEMENTS PROJECT TO PRESTON CONSTRUCTION COMPANY AND AUTHORIZING THE MAYOR TO SIGN AN AGREEMENT FOR THE SAME AND ALL DOCUMENTS NECESSARY AND PROPER TO EFFECTUATE THE PURPOSE OF THE AGREEMENT.

WHEREAS, bids were opened on December 6, 2022 for the Dobyns-Bennett High School Pool Improvements Project; and

WHEREAS, upon review of the bids, the board finds Preston Construction Company is the lowest responsible compliant bidder meeting specifications for the particular grade or class of material, work or service desired and is in the best interest and advantage to the city, and the City of Kingsport desires to enter into a contract for the Dobyns-Bennett High School Pool Improvements Project to Preston Construction Company at an estimated construction cost of \$2,324,000.00, which includes a three year extended warranty on the mechanical HVAC portion; and

WHEREAS, a 6% contingency fund will be established in the amount of \$139,440.00; and

WHEREAS, a portion of this project, \$694,000.00, will be funded by the Elementary and Secondary School Emergency Relief Fund (ESSER) 3.0 and the remainder will come from the Dobyns-Bennett Renovation Project GP2111; and

WHEREAS, the Board of Education approved this motion on December 13, 2022.

Now therefore,

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

SECTION I. That the bid for the Dobyns-Bennett High School Pool Improvements Project, at an estimated cost of \$2,324,000.00 is awarded to Preston Construction Company and the mayor or in his absence, incapacity, or failure to act, the vice-mayor, is authorized and directed to execute, in a form approved by the city attorney and subject to the requirements of Article X, Section 10 of the Charter of the City of Kingsport, an agreement for the same and all documents necessary and proper, and to take such acts as necessary to effectuate the purpose of the agreement.

SECTION II. 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 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 public.

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

ADOPTED this the 20th day of December, 2022.

PATRICK W. SHULL, MAYOR

ATTEST:

ANGELA MARSHALL, DEPUTY CITY RECORDER

APPROVED AS TO FORM:

RODNEY B. ROWLETT, III, CITY ATTORNEY



**THOMPSON
& LITTON** EST.
1956
ENGINEERS ARCHITECTS

12 December 2022

Mr. David Fry
Chief Finance Officer
Kingsport City Schools
400 Clinchfield Street, Suite 200
Kingsport, TN 37660
423.378.2130

RE: Swimming Pool Renovation and Mechanical Upgrades for
Dobyns-Bennett High School
T&L Project #: 16053

Dear Mr. Fry:

Pursuant to our recent discussion at the above bid opening on Tuesday, December 6, 2022, I have spoken to Preston Construction, and they are currently reviewing their proposal to verify if there are any items which were missed in their bid.

I have requested that Preston Construction provide a Schedule of Values as I would like to review where the monies identified in the bid are located. I will provide it to you once I have a chance to review.

Lastly, I have requested that Preston Construction provide any possible value engineering items which they think could positively affect the \$2,315,000.00 bid cost. I will provide that information to you as well once we receive and have an opportunity to review.

Assuming that everything is in order with the above information, Thompson & Litton would recommend that the Kingsport City Schools move forward with Preston Construction to complete the above project.

If you have any questions, please let me know.

Thank you,

Brian C. Alderson, AIA, NCARB, LEED AP
Senior Architect

THOMPSON & LITTON
207 E. Main St., Suite 3C
Johnson City, Tennessee 37604

tel: 423.928.1175
cel: 423.571.2028

MINUTES BID OPENING

December 6, 2022

4:00 P.M.

Present: Brent Morelock, Procurement Manager; Sandra Sloan, Assistant Procurement Manager, Schools; Brian Alderson, Architect, Thompson & Litton; David Sewell, Maintenance Director, Schools; Brian Tate, Principal DBHS; David Frye, CFO, Schools

The Bid Opening was held in Conference Room 436, 4th Floor, City Hall

The Procurement Manager opened with the following bids:

Swimming Pool Renovation and Mechanical Upgrades for Dobyns-Bennett High School				
Vendor:	Lum Sum:	Mechanical HVAC as part of the Base Bid:	Alternate No. 1 - Extended HVAC Warranty	Length of the Extended HVAC Warranty
Preston Construction Co.	\$2,315,000.00	\$694,000.00	\$9,000.00	3 Years

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



AGENDA ACTION FORM

Consideration of a Resolution Authorizing A Change Order to a Purchase Order with Stowers Equipment and the City Manager to Execute

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

Action Form No.: AF-380-2022
 Work Session: December 19, 2022
 First Reading: N/A

Final Adoption: December 20, 2022
 Staff Work By: Committee
 Presentation By: Ryan McReynolds

Recommendation:

Approve the Resolution.

Executive Summary:

Bids were opened on December 21, 2021 for the rental of equipment that would be used to assist City crews as they pave select roadways during calendar year 2022. The equipment consisted of a large milling machine that removes the existing asphalt wearing surface before placing the new surface.

On January 18, 2022 the BMA entered into a rental agreement (AF-18-2022) with Stowers Machinery for a six month rental in the amount of \$111,600. Language in the agreement states the City will be responsible for any damages/repairs to the equipment. Damage incurred during the rental was a bent sheet metal guard on the conveyor. Stowers has submitted a final invoice requesting additional payment associated with repairs. The final total cost of the rental will now be \$114,834.58.

Funding is available and identified in NC2200.

Attachments:

1. Resolution
2. Picture

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: *Am*

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

RESOLUTION NO. _____

A RESOLUTION APPROVING A TO A CHANGE ORDER TO A RENTAL AGREEMENT WITH STOWERS MACHINERY CORPORATION FOR THE DAMAGE TO THE RENTAL EQUIPMENT AND AUTHORIZING THE MAYOR TO EXECUTE ALL DOCUMENTS NECESSARY AND PROPER TO EFFECTUATE THE CHANGE ORDER

WHEREAS, in January 2022, the city entered into a rental agreement with Stowers Machinery Corporation, for the rental of a Caterpillar PM312 Cold Planer for a six month rental in the amount of \$111,600.00 (Res. No. 2022-140)

WHEREAS, language in the agreement states the city will be responsible for any damages/repairs to the equipment; and

WHEREAS, there was damage incurred during the renting of the equipment and Stowers Machinery Corporation has submitted a final invoice in the amount of \$3,234.58; and

WHEREAS, resolution of this claim is appropriate to avoid a potential dispute between the parties which could result in litigation; and

WHEREAS, a change order to the rental agreement needs to be made, changing the total of the rental to \$114,834.58.

Now therefore,

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

SECTION I. That a change order to the contract with Stowers Machinery Corporation for the rental of a Caterpillar PM312 Cold Planer, by an addition in the amount of \$3,234.58, is approved.

SECTION II. That the Mayor, or in his absence, incapacity, or failure to act, the Vice Mayor, is authorized to execute, in a form approved by the City Attorney, the change order and all documents necessary and proper to effectuate the change order to the rental agreement with Stowers Machinery Corporation.

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

ADOPTED this the 20th day of December, 2022.

PATRICK W. SHULL, MAYOR

ATTEST:

ANGELA MARSHALL, DEPUTY CITY RECORDER

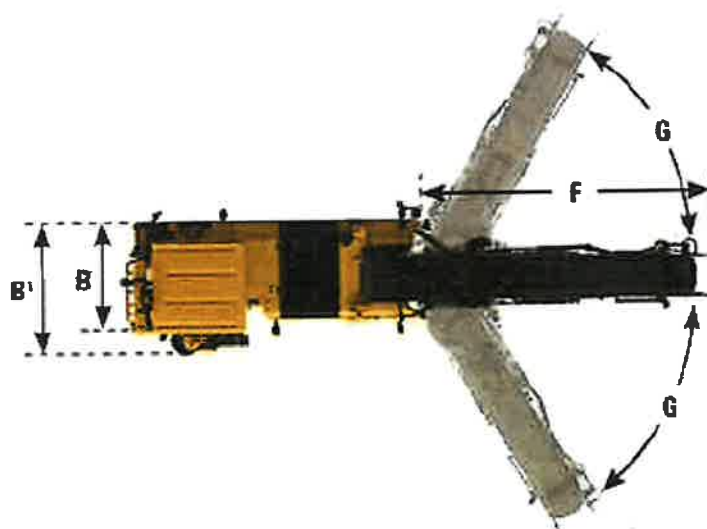
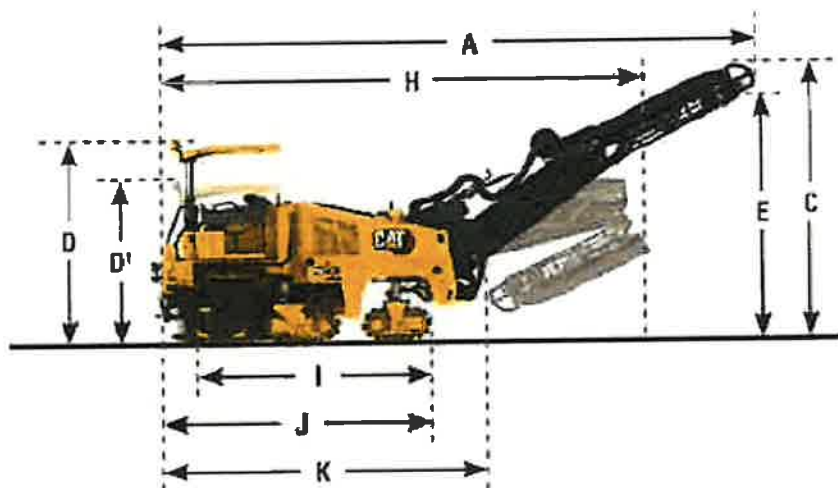
APPROVED AS TO FORM:

RODNEY B. ROWLETT, III, CITY ATTORNEY



Cat[®] PM312

Cold Planer





AGENDA ACTION FORM

Approve Application for Cement Hill Park to Be Accepted into Tennessee Department of Environment and Conservation's (TDEC) Voluntary Brownfield Agreement Program

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

Action Form No.: AF-383-2022
 Work Session: December 19, 2022
 First Reading: N/A

Final Adoption: December 20, 2022
 Staff Work By: John Rose & Bart Rowlett
 Presentation By: John Rose

Recommendation:

Approve the Resolution.

Executive Summary:

The Voluntary Brownfield Agreement provides guidance from TDEC for future land use. This guidance includes land use restrictions, land disturbance guidelines and approval of the City of Kingsport's proposed use. The application submittal includes work that has already been performed. S&ME has conducted soil testing, site assessment and other engineering work to facilitate applying for entry into the Voluntary Brownfield Agreement program.

Attachments:

1. Resolution
2. Voluntary Brownfield Agreement Application
3. Site Boundary

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: *aw*

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

RESOLUTION NO. _____

A RESOLUTION APPROVING AN APPLICATION TO THE TENNESSEE DEPARTMENT OF ENVIRONMENT AND CONSERVATION'S VOLUNTARY BROWNFIELD AGREEMENT PROGRAM FOR PROPERTY COMMONLY REFERRED TO AS CEMENT HILL AND AUTHORIZING THE MAYOR TO EXECUTE THE APPLICATION AND ALL OTHER DOCUMENTS NECESSARY AND PROPER TO EFFECTUATE THE PURPOSE OF THE APPLICATION

WHEREAS, the city acquired approximately 40 acres of property known as Cement Hill in a property swap in August 2020 (Res. 2021-031); and

WHEREAS, upon information and belief, the property known as Cement Hill contains or may contain environmental contaminants; and

WHEREAS, the Tennessee Department of Environment and Conservation (TDEC) has a Voluntary Brownfield Agreement which provides guidance from TDEC for future land use, which includes land use restrictions, land disturbance guidelines and approval of the city's proposed use; and

WHEREAS, an application has to be submitted to TDEC for this approval for the land commonly known as Cement Hill.

Now therefore,

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

SECTION I. That a Voluntary Brownfield Agreement Program Application with the Tennessee Department of Environment and Conservation(TDEC) for the land commonly known as Cement Hill, 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, Voluntary Brownfield Agreement Program Application with the Tennessee Department of Environment and Conservation(TDEC) for the land commonly known as Cement Hill, to deliver the application and take any and all action as may be required on the part of the city to carry out, give effect to, and consummate the transactions contemplated by the application and this resolution.

SECTION III. That the mayor is further authorized to make such changes approved by the mayor and the city attorney to the application that do not substantially alter the material provisions of the application, 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 20th day of December, 2022.

PATRICK W. SHULL, MAYOR

ATTEST:

ANGELA MARSHALL, DEPUTY CITY RECORDER

APPROVED AS TO FORM:

RODNEY B. ROWLETT, III, CITY ATTORNEY



**TENNESSEE DEPARTMENT OF ENVIRONMENT AND CONSERVATION
DIVISION OF REMEDIATION**

WILLIAM R. SNODGRASS TENNESSEE TOWER
312 ROSA L. PARKS AVENUE, 14TH FLOOR, NASHVILLE TN 37243

**VOLUNTARY PROGRAM APPLICATION (FOR USE BY VOLUNTARY
PARTIES AS DEFINED BY TCA 68-212)**

TDoR Site Number (to be completed by Division):

SITE NAME AND LOCATION

1. SITE NAME (legal, common or descriptive of site) Cement Hill		2. SITE STREET, ROUTE # or SPECIFIC LOCATION IDENTIFIER 300 West Industry Drive	
3. CITY Kingsport	4. STATE TN	5. ZIP CODE 37660	6. COUNTY 82 Sullivan <input type="checkbox"/>
7. LATITUDE 363232.40N	8. LONGITUDE 823352.32W	9. ACREAGE 40.00	10. DEED BOOK and PAGE/ PARCEL NUMBER(S) <small>Book 3484/pg1416 and Book 3508/pg 548 Tax Parcels 046P F 010.50 and 046P F 010.00</small>

CURRENT OWNER AND APPLICANT INFORMATION (Attach continuation sheet if needed)

11. PROPERTY OWNER (as of date of this application) City of Kingsport		18. APPLICANT NAME (as of date of this application) Patrick W. Shull	
12. CURRENT TENANT(S) (if different from owner) None currently		19. EMAIL ADDRESS PatShull@kingsporttn.gov	
13. OWNER'S ADDRESS 415 Broad Street		21. APPLICANT ADDRESS 415 Broad Street	
14. CITY Kingsport	15. STATE Tennessee	22. CITY Kingsport	23. STATE Tennessee
16. ZIP CODE 37660	17. TELEPHONE (XXX) XXX-XXXX (423) 229-9412	24. ZIP CODE 37660	25. TELEPHONE (XXX) XXX-XXXX (423) 229-9412

DESCRIPTION OF SITE'S OPERATIONAL HISTORY (Attach continuation sheet if needed)

26. CURRENT SITE ACTIVITY/PROPERTY USE: Recent environmental investigations have taken place, otherwise no activity.
27. PREVIOUS SITE ACTIVITY/PROPERTY USE: The site was part of a larger tract of land which has historically had several industries operate on and around the property and part of the property was also used for residential housing between 1920 to 1981. Cement kiln dust was dumped on the subject property and later capped in two areas on the property.
28. KNOWN OR POTENTIAL CONTAMINATION: Petroleum contamination is soils is present on the site. Cement kiln dust was dumped in two areas and later capped using soil and clarifier sludge from the prior owners of the property.
29. ENVIRONMENTAL SITE STUDIES COMPLETED TO DATE: (Mark all that apply) <input type="checkbox"/> NONE <input checked="" type="checkbox"/> PHASE I ASSESSMENT <input checked="" type="checkbox"/> PHASE II <input type="checkbox"/> SOIL MANAGEMENT PLAN <input checked="" type="checkbox"/> OTHER Boundary Survey

PERMIT / CONDITION AND DESCRIPTIVE INFORMATION

30. IS THE SITE REQUIRED TO BE INVESTIGATED OR REMEDIATED BY TDEC OR EPA AS A LICENSE OR PERMIT CONDITION, ENFORCEMENT ACTION, COMMISSIONER'S ORDER OR CONDITION OF ANY REGULATION? ☐ YES ☒ NO

31. DOES YOUR FACILITY HAVE NOW OR EVER HAD A TDEC LICENSE, SPECIAL COMPLIANCE PERMIT OR EPA PERMIT, OR OTHER AUTHORIZATION TO OPERATE? ☐ YES ☒ NO

PERMIT / CONDITION / AUTHORIZATION / LICENSE (If yes to either or both of the above questions, provide information requested.)
(Attach continuation sheet if needed)

32. TYPE	33. IDENTIFICATION #	34. DATE ISSUED	35. EXPIRATION DATE	36. COMMENTS

FUTURE INTENT (As of date of the application)

37. INTENDED SITE REUSE UPON PROGRAM COMPLETION (Mark all that apply)

☐ INDUSTRIAL ☐ COMMERCIAL ☐ RESIDENTIAL ☐ RETAIL ☐ MIXED USE ☐ OTHER

Recreation

38. IS THIS SITE BEING ADDRESSED AS A PART OF A U.S. EPA BROWNFIELDS GRANT? ☐ YES ☒ NO

39. IS THIS SITE PART OF AN ECONOMIC AND COMMUNITY DEVELOPMENT AGENCY PROJECT? ☐ YES ☒ NO

STATEMENT OF CERTIFICATION - TO BE COMPLETED BY APPLICANT OR APPLICANT'S REPRESENTATIVE

By signing this Application, the Voluntary Party acknowledges and agrees to the Division's Cost Recovery Schedule. All charges must be paid in order to remain in the Voluntary Oversight and Assistance Program.

I, _____, do hereby certify that the information included herein is, to the best of my knowledge and belief, accurate and complete.

(Signature of authorized individual)

(Date) (mm/dd/yyyy)

RELATIONSHIP OF SIGNATOR TO THE SITE (please check one)

☐ Property Owner ☐ Property Owner's Legal Representative ☒ Other _____
☐ Prospective Property Owner ☐ Prospective Property Owner's Legal Representative

UPON COMPLETION OF THIS APPLICATION, PLEASE SUBMIT BOTH THE APPLICATION AND PROGRAM ENTRY FEE TO:

TN DEPARTMENT OF ENVIRONMENT & CONSERVATION
DIVISION OF REMEDIATION
WILLIAM R. SNODGRASS TN TOWER
312 ROSA L. PARKS AVENUE, 14TH FLOOR
NASHVILLE, TN 37243
(615) 532-0900

TO BE COMPLETED BY DIVISION

Approval Date:
(mm/dd/yyyy) _____

Signature: _____

Assigned to: **Select**

VOLUNTARY PROGRAM COST RECOVERY ASSESSMENT SCHEDULE

Tennessee Code Annotated § 68-212-224 requires consideration of a fee to enroll in the Voluntary Program. This payment must accompany this application when it is signed on behalf of the Voluntary Party and returned to the Department. Pursuant to Tennessee Code Annotated 68-212-224(a)(3), all voluntary agreements or consent orders may provide for the reimbursement of the department's oversight costs.

The Commissioner has determined that the cost recovery assessments outlined below are appropriate for the reimbursement of the Department's oversight costs, including staff time for review, comment, and approval of work plans, reports or other documents submitted by parties enrolled in the Voluntary Oversight and Assistance Program. These cost recovery assessments shall be included in each Brownfield Voluntary Agreement to reimburse project manager time spent and any associated travel for field review of activities at voluntary sites.

Program Entry	\$3,000
Site Characterization	\$2,500
Remedial Action Work Plan	\$3,000
Risk Assessment Review	\$2,500
Beneficial Use Determination	\$2,500
Vapor Intrusion Evaluation/Mitigation	\$2,500
Brownfield Voluntary Agreement/Consent Order	\$4,000
Notice of Land Use Restrictions	\$1,000
Institutional and Engineering Controls Compliance	\$750

In addition to the fees identified previously, an annual longevity fee of \$4,000 will be charged to the Site on the anniversary of the date the site was accepted into the Voluntary Oversight and Assistance Program until a letter requiring no further action has been issued or the agreement has been terminated.

Cost Recovery Assessments must be paid in order to remain in the Voluntary Oversight and Assistance Program and to receive a letter of completion.

VOLUNTARY PROGRAM CONTACT INFORMATION

If you have any questions or need further information, please contact the Voluntary Oversight and Assistance Program at the above address or by calling (615) 532-0900.

Cement Hill – Designated Waste Areas –
Area A is on Domtar Property – Area B & C is on City of Kingsport Property.



FIGURE NO.

SCALE:

NOT TO SCALE

DATE

8-10-20

PROJECT NUMBER

4140-20-009

3A

PHOTOGRAPHIC LOCATION

PHASE I ESA – PORTION OF TAX PARCEL 046P F 010.20/001
100 WEST INDUSTRY DRIVE

KINGSPORT, SULLIVAN COUNTY, TENNESSEE





AGENDA ACTION FORM

Authorize the Mayor to Enter into a Lease Agreement with Congresswoman Diana Harshbarger for Office Space at the Kingsport Center for Higher Education

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

Action Form No.: AF-382-2022
 Work Session: December 19, 2022
 First Reading: N/A

Final Adoption: December 20, 2022
 Staff Work By: Jessica Harmon
 Presentation By: Chris McCart

Recommendation:

Approve the Resolution.

Executive Summary:

When the Kingsport Center for Higher Education was planned and constructed, a small space was set aside for lease to an external user. The space has a separate external entrance and parking (as well as internal access).

Congressman Roe subleased this space for approximately 10 years and Congresswoman Diana Harshbarger is finishing up her first 2-year lease in the space. She believes that keeping a consistent location is important for the constituents that she serves.

The attached lease agreement and resolution provide for the Congresswoman to lease the space from the City of Kingsport for a sum of \$22,248 per year (or \$1,854/month) for two years. This rate is the same that was executed in the previous lease agreement with Congresswoman Harshbarger. Northeast State has agreed to continue providing custodial services and general facilities maintenance for the office as part of its overall agreement to provide service to the entire Kingsport Center for Higher Education. There is no additional charge for this service.

Attachments:

1. Resolution
2. Lease Agreement

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: *WJ*

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

RESOLUTION NO. _____

A RESOLUTION APPROVING A DISTRICT OFFICE LEASE AGREEMENT WITH CONGRESSWOMAN DIANA HARSHBARGER FOR DISTRICT OFFICE SPACE AT THE KINGSPORT CENTER FOR HIGHER EDUCATION; AUTHORIZING AND DIRECTING THE MAYOR TO EXECUTE THE AGREEMENT; AND ALL OTHER DOCUMENTS NECESSARY AND PROPER TO EFFECTUATE THE PURPOSE OF THE AGREEMENT

WHEREAS, beginning in 2013 the board approved a lease agreement with then Congressman Phil Roe for office space at the Kingsport Center for Higher Education; and

WHEREAS, Congresswoman Diana Harshbarger has leased the space for the last 2 years, and would like to continue to lease it for an additional 2 years, so that the expiration date will be January 2, 2025; and

WHEREAS, the rent remains \$1,854.00 per month.

Now therefore,

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

SECTION I. That a lease agreement for the U.S. House of Representatives district office space with Congresswoman Diana Harshbarger at the Kingsport Center for Higher Education for a two year term is approved.

SECTION II. That the mayor, or in his absence, incapacity, or failure to act, the vice-mayor, is authorized and directed to execute, in a form approved by the city attorney, and subject to the requirements of Article X, Section 10 of the Charter of the City of Kingsport, an agreement with the U.S. House of Representatives for office space leased by Congresswoman Diana Harshbarger at the Kingsport Center for Higher Education for a two year term, and all other documents necessary and proper to effectuate the purpose of the agreement or this resolution, said agreement being generally as follows:

U.S. House of Representatives
Washington, D.C. 20515
District Office Lease Agreement
(Page 1 of 3 – 118th Congress)

Pursuant to 2 U.S.C.A. § 4313, and the Regulations of the Committee on House Administration (as modified from time to time by Committee Order) relating to office space in home districts, City of Kingsport, 415 Broad Street, Kingsport, TN, 37660

(Landlord's name) (Landlord's street address, city, state, ZIP code)

("Lessor"), and Congresswoman Diana Harshbarger, a Member/Member-Elect of the U.S. House of Representatives ("Lessee"), agree as follows:

1. **Location.** Lessor shall lease to Lessee 1,272 square feet of office space located at 205 Revere Street in the city, state and ZIP code of Kingsport, TN, 37660.

(Office city, state and ZIP)

2. **Lease Amenities.** Lessee shall be entitled to receive and Lessor shall be required to provide the amenities selected in Section A of the District Office Lease Attachment ("Attachment") accompanying this Lease.

3. **Term.** Lessee shall have and hold the leased premises for the period beginning January 3, 2023 and ending January 2, 2025. The term of this District Office Lease ("Lease") may not exceed two

(2) years and may not extend beyond January 2, 2025, which is the end of the constitutional term of the Congress to which the Member is elected.

4. **Rent.** The monthly rent shall be \$1,854, and is payable in arrears on or before the last day of each calendar month. Rent payable under this Lease shall be prorated on a daily basis for any fraction of a month of occupancy.

5. **Early Termination.** This Lease may be terminated by either party giving 30 days' prior written notice to the other party. The commencement date of such termination notice shall be the date such notice is delivered or, if mailed, the date such notice is postmarked.

6. **Payments.** During the term of this Lease, rent payments under Section 4 of this Lease shall be remitted to the Lessor by the Chief Administrative Officer of the U.S. House of Representatives (the "CAO") on behalf of the Lessee.

7. **District Office Lease Attachment for 118th Congress.** The District Office Lease Attachment attached hereto is incorporated herein by reference, and this Lease shall have no force or effect unless and until accompanied by an executed District Office Lease Attachment for the 118th Congress.

8. **Counterparts.** This Lease may be executed in any number of counterparts and by facsimile copy, each of which shall be deemed to be an original but all of which together shall be deemed to be one and the same instrument.

9. **Section Headings.** The section headings of this Lease are for convenience of reference only and shall not be deemed to limit or affect any of the provisions hereof.

10. **Modifications.** Any amendments, additions or modifications to this Lease inconsistent with Sections 1 through 9 above shall have no force or effect to the extent of such inconsistency.

11. **Other.** Additionally, the Lessor and the Lessee agree to the following:

IN WITNESS WHEREOF, the parties have duly executed this District Office Lease as of the later date written below by the Lessor or the Lessee.

U .S. House of Representatives
Washington, D.C. 20515
District Office Lease Attachment
(Page 2 of 5 - 118th Congress)
(Additional Terms and Conditions)
(Additional Lease Terms)

1. **Incorporated District Office Lease Attachment.** Lessor (Landlord) and Lessee (Member/Member-elect of the U.S. House of Representatives) agree that this District Office Lease Attachment ("Attachment") is incorporated into and made part of the Lease ("Lease") and, if applicable, District Office Lease Amendment ("Amendment") to which it is attached.

2. **Performance.** Lessor expressly acknowledges that neither the U.S. House of Representatives (the "House") nor its Officers are liable for the performance of the Lease. Lessor further expressly acknowledges that payments made by the Chief Administrative Officer of the House (the "CAO") to Lessor to satisfy Lessee's rent obligations under the Lease – which payments are made solely on behalf of Lessee in support of his/her official and representational duties as a Member of the House – shall create no legal obligation or liability on the part of the CAO or the House whatsoever. Lessee shall be solely responsible for the performance of the Lease and Lessor expressly agrees to look solely to Lessee for such performance.

3. **Modifications.** Any amendment to the Lease must be in writing and signed by the Lessor and Lessee. Lessor and Lessee also understand and acknowledge that the Administrative Counsel for the CAO ("Administrative Counsel") must review and give approval of any amendment to the Lease prior to its execution.

4. **Compliance with House Rules and Regulations.** Lessor and Lessee understand and acknowledge that the Lease shall not be valid, and the CAO will not authorize the disbursement of funds to the Lessor, until Administrative Counsel has reviewed the Lease to determine that it complies with the Rules of the House and the Regulations of the Committee on House Administration, and approved the Lease by signing the last page of this Attachment.

5. **Payments.** The Lease is a fixed term lease with monthly installments for which payment is due in arrears on or before the end of each calendar month. In the event of a payment dispute, Lessor agrees to contact the Office of Finance, U.S. House of Representatives, at 202-225-7474 to attempt to resolve the dispute before contacting Lessee.

6. **Void Provisions.** Any provision in the Lease purporting to require the payment of a security deposit shall have no force or effect. Furthermore, any provision in the Lease purporting to vary the dollar amount of the rent specified in the Lease by any cost of living clause, operating expense clause, pro rata expense clause, escalation clause, or any other adjustment or measure during the term of the Lease shall have no force or effect.

7. **Certain Charges.** The parties agree that any charge for default, early termination or cancellation of the Lease which results from actions taken by or on behalf of the Lessee shall be the sole responsibility of the Lessee and shall not be paid by the CAO on behalf of the Lessee.

8. **Death, Resignation or Removal.** In the event Lessee dies, resigns or is removed from office during the term of the Lease, the Clerk of the House may, at his or her sole option, either: (a) terminate the Lease by giving thirty (30) days' prior written notice to Lessor; or (b) assume the obligation of the Lease and continue to occupy the premises for a period not to exceed sixty (60) days following the certification of the election of the Lessee's successor. In the event the Clerk elects to terminate the Lease, the commencement date of such thirty (30) day termination notice shall be the date such notice is delivered to the Lessor or, if mailed, the date on which such notice is postmarked.

9. **Term.** The term of the Lease may not exceed the constitutional term of the Congress to which the Lessee has been elected. The Lease may be signed by the Member-elect before taking office. Should the Member-elect not take office to serve as a Member of the 118th Congress, the Lease will be considered null and void.

10. **Early Termination.** If either Lessor or Lessee terminates the Lease under the terms of the Lease, the terminating party agrees to promptly file a copy of any termination notice with the Office of Finance, U.S. House of Representatives, Attn: Kellie Wilson, via e-mail at FCLeasePayments@mail.house.gov, and with the Administrative Counsel by e-mail at leases@mail.house.gov.

11. **Assignments.** Lessor shall provide thirty (30) days prior written notice to Lessee before assigning any of its rights, interests or obligations under the Lease, in whole or in part, by operation of law or otherwise. Lessor shall promptly file a copy of any such assignment notice with Administrative Counsel by e-mail at leases@mail.house.gov. Lessee and the House shall not be responsible for any misdirected payments resulting from Lessor's failure to file an assignment notice in accordance with this section.

12. **Sale or Transfer of Leased Premises.** Lessor shall provide thirty (30) days prior written notice to Lessee in the event (a) of any sale to a third party of any part of the leased premises, or (b) Lessor transfers or otherwise disposes of any of the leased premises, and provide documentation evidencing such sale or transfer in such notice. Lessor shall promptly file a copy of any such sale or transfer notice with Administrative Counsel by e-mail at leases@mail.house.gov.

13. **Bankruptcy and Foreclosure.** In the event (a) Lessor is placed in bankruptcy proceedings (whether voluntarily or involuntarily), (b) the leased premises is foreclosed upon, or (c) of any similar occurrence, Lessor agrees to promptly notify Lessee in writing. Lessor shall also promptly file a copy of any such notice via e-mail with the Office of Finance, U.S. House of Representatives, Attn: Kellie Wilson, via e-mail at FCLeasePayments@mail.house.gov, and with Administrative Counsel by e-mail at leases@mail.house.gov.

14. **Estoppel Certificates.** Lessee agrees to sign an estoppel certificate relating to the leased premises (usually used in instances when the Lessor is selling or refinancing the building) upon the request of the Lessor. Such an estoppel certificate shall require the review of Administrative Counsel, prior to Lessee signing the estoppel certificate. Lessor shall promptly provide a copy of any such estoppel certificate to Administrative Counsel by e-mail at leases@mail.house.gov.

15. **Maintenance of Common Areas.** Lessor agrees to maintain in good order, at its sole expense, all public and common areas of the building including, but not limited to, all sidewalks, parking areas, lobbies, elevators, escalators, entryways, exits, alleys and other like areas.

16. **Maintenance of Structural Components.** Lessor also agrees to maintain in good order, repair or replace as needed, at its sole expense, all structural and other components of the premises including, but not limited to, roofs, ceilings, walls (interior and exterior), floors, windows, doors, foundations, fixtures, and all mechanical, plumbing, electrical and air conditioning/heating systems or equipment (including window air conditioning units provided by the Lessor) serving the premises.

17. **Lessor Liability for Failure to Maintain.** Lessor shall be liable for any damage, either to persons or property, sustained by Lessee or any of his or her employees or guests, caused by Lessor's failure to fulfill its obligations under Sections 15 and 16.

18. **Initial Alterations.** Lessor shall make any initial alterations to the leased premises, as requested by Lessee and subject to Lessor's consent, which shall not be unreasonably withheld. The cost of such initial alterations shall be included in the annual rental rate.

19. **Federal Tort Claims Act.** Lessor agrees that the Federal Tort Claims Act, 28 U.S.C. §§ 2671-80, satisfies any and all obligations on the part of the Lessee to purchase private liability insurance. Lessee shall not be required to provide any certificates of insurance to Lessor.

20. **Limitation of Liability.** Lessor agrees that neither Lessee nor the House nor any of the House's officers or employees will indemnify or hold harmless Lessor against any liability of Lessor to any third party that may arise during or as a result of the Lease or Lessee's tenancy.

21. **Compliance with Laws.** Lessor shall be solely responsible for complying with all applicable permitting and zoning ordinances or requirements, and with all local and state building codes, safety codes and handicap accessibility codes (including the Americans with Disabilities Act), both in the common areas of the building and the leased space of the Lessee.

22. **Electronic Funds Transfer.** Lessor agrees to accept monthly rent payments by Electronic Funds Transfer and agrees to provide the Office of Finance, U.S. House of Representatives, with all banking information necessary to facilitate such payments.

23. **Refunds.** Lessor shall promptly refund to the CAO, without formal demand, any payment made to the Lessor by the CAO for any period for which rent is not owed because the Lease has ended or been terminated.

24. **Conflict.** Should any provision of this Attachment be inconsistent with any provision of the attached Lease or attached Amendment, the provisions of this Attachment shall control, and those inconsistent provisions of the Lease or the Amendment shall have no force and effect to the extent of such inconsistency.

25. **Construction.** Unless the clear meaning requires otherwise, words of feminine, masculine or neuter gender include all other genders and, wherever appropriate, words in the singular include the plural and vice versa.

26. **Fair Market Value.** The Lease or Amendment is entered into at fair market value as the result of a bona fide, arms-length, marketplace transaction. The Lessor and Lessee certify that the parties are not relatives nor have had, or continue to have, a professional or legal relationship (except as a landlord and tenant).

27. **District Certification.** The Lessee certifies that the office space that is the subject of the Lease is located within the district the Lessee was elected to represent unless otherwise authorized by Regulations of the Committee on House Administration.

28. **Counterparts.** This Attachment may be executed in any number of counterparts and by facsimile copy, each of which shall be deemed to be an original but all of which together shall be deemed to be one and the same instrument.

29. **Section Headings.** The section headings of this Attachment are for convenience of reference only and shall not be deemed to limit or affect any of the provisions hereof.

IN WITNESS WHEREOF, the parties have duly executed this District Office Lease Attachment as of the later date written below by the Lessor or the Lessee.

[Acknowledgements Deleted for Inclusion in this Resolution]

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

SECTION 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 20th day of December, 2022.

PATRICK W. SHULL, MAYOR

ATTEST:

ANGELA MARSHALL, DEPUTY CITY RECORDER

APPROVED AS TO FORM:

RODNEY B. ROWLETT, III, CITY ATTORNEY

District Office Lease – Instructions

NO LEASE OR ATTACHMENT CAN BE SIGNED BEFORE THEY HAVE BEEN APPROVED BY THE OFFICE OF ADMINISTRATIVE COUNSEL.

The term for a District Office Lease for the 118th Congress may not commence prior to January 3, 2023.

Members should endeavor to lease space through the last day of a congressional term rather than the last day of a calendar year. For the 118th Congress, leases should end on January 2, 2025, rather than December 31, 2024.

- The Member/Member-Elect is required to personally sign the documents.
- Prior to either party signing a Lease, the Member/Member-Elect must submit the proposed Lease, accompanied by the District Office Lease Attachment for the 118th Congress (“Attachment”), to the Office of Administrative Counsel (“Administrative Counsel”) via e-mail in PDF form (leases@mail.house.gov) or fax (202-226-0357) for review and approval.
- After the Lease or Amendment, accompanied by the Attachment are executed by both parties, a copy must be submitted to Administrative Counsel via e-mail in PDF form (leases@mail.house.gov) or fax (202-226-0357) for final approval.
- If approved, Administrative Counsel will notify the Office of Finance that monthly rental payments can begin. If changes are necessary, Administrative Counsel will contact the office of the Member/Member-Elect.
- The parties agree that any charges for default, early termination, or cancellation of the Lease or Amendment which result from actions taken by or on behalf of the Lessee shall be the Lessee’s sole responsibility and are not reimbursable from the Member’s Representational Allowance.

Instructions for completing the District Office Lease (“Lease”):

- Preamble — Insert:
 - Landlord’s name; Landlord’s address; and Member/Member-Elect’s name
- Section 1 — Insert:
 - Square footage of the leased office (if known)
 - Street address including city, state, and ZIP of the leased office
- Section 3 — Insert:
 - Date lease begins (must be on or after January 3, 2023)
 - Date lease ends (must be on or before January 2, 2025)
- Section 4 — Insert the amount of monthly rent. If there is no rent, insert “\$0.00”. If rent is not constant over the lease term, insert “See Section 11” and note any rent variations in Section 11.
- Section 5 — Insert the number of days’ notice required for either party to terminate the lease before the end of the term. If the lease may not terminate early, enter “N/A” in this blank.
- Section 11 — Insert any additional lease provisions.

Note: Sections 1-9, other than filling in the blanks, may not be altered or deleted.

U.S. House of Representatives

Washington, D.C. 20515

District Office Lease

(Page 1 of 3 – 118th Congress)

Pursuant to 2 U.S.C.A. § 4313, and the Regulations of the Committee on House Administration (as modified from time to time by Committee Order) relating to office space in home districts, _____
City of Kingsport, 415 Broad Street, Kingsport, TN, 37660
(Landlord's name) (Landlord's street address, city, state, ZIP code)

("Lessor"), and Congresswoman Diana Harshbarger, a Member/Member-Elect of the U.S. House of Representatives ("Lessee"), agree as follows:

- 1. Location.** Lessor shall lease to Lessee 1,272 square feet of office space located at 205 Revere Street
(Office street address)
in the city, state and ZIP code of Kingsport, TN, 37660.
(Office city, state and ZIP)
- 2. Lease Amenities.** Lessee shall be entitled to receive and Lessor shall be required to provide the amenities selected in Section A of the District Office Lease Attachment ("Attachment") accompanying this Lease.
- 3. Term.** Lessee shall have and hold the leased premises for the period beginning January 3, 2023 and ending January 2, 2025. The term of this District Office Lease ("Lease") may not exceed two (2) years and may not extend beyond January 2, 2025, which is the end of the constitutional term of the Congress to which the Member is elected.
- 4. Rent.** The monthly rent shall be \$1,854, and is payable in arrears on or before the last day of each calendar month. Rent payable under this Lease shall be prorated on a daily basis for any fraction of a month of occupancy.
- 5. Early Termination.** This Lease may be terminated by either party giving 30 days' prior written notice to the other party. The commencement date of such termination notice shall be the date such notice is delivered or, if mailed, the date such notice is postmarked.
- 6. Payments.** During the term of this Lease, rent payments under Section 4 of this Lease shall be remitted to the Lessor by the Chief Administrative Officer of the U.S. House of Representatives (the "CAO") on behalf of the Lessee.
- 7. District Office Lease Attachment for 118th Congress.** The District Office Lease Attachment attached hereto is incorporated herein by reference, and this Lease shall have no force or effect unless and until accompanied by an executed District Office Lease Attachment for the 118th Congress.
- 8. Counterparts.** This Lease may be executed in any number of counterparts and by facsimile copy, each of which shall be deemed to be an original but all of which together shall be deemed to be one and the same instrument.
- 9. Section Headings.** The section headings of this Lease are for convenience of reference only and shall not be deemed to limit or affect any of the provisions hereof.

U.S. House of Representatives

Washington, D.C. 20515

District Office Lease

(Page 2 of 3 – 118th Congress)

10. **Modifications.** Any amendments, additions or modifications to this Lease inconsistent with Sections 1 through 9 above shall have no force or effect to the extent of such inconsistency.
11. **Other.** Additionally, the Lessor and the Lessee agree to the following:

[Signature page follows.]

U.S. House of Representatives

Washington, D.C. 20515

District Office Lease

(Page 3 of 3 – 118th Congress)

IN WITNESS WHEREOF, the parties have duly executed this District Office Lease as of the later date written below by the Lessor or the Lessee.

City of Kingsport

Diana Harshbarger

Print Name of Lessor/Landlord/Company

Print Name of Lessee

By: _____

Lessee Signature

Lessor Signature

Name: Patrick W. Shull

Title: Mayor

Date

Date

This District Office Lease must be accompanied with an executed District Office Lease Attachment.

District Office Lease Attachment- Instructions

The District Office Lease Attachment (“Attachment”) must accompany *every* Lease or Amendment submitted for a Member/Member-elect’s District Office.

THE OFFICE OF ADMINISTRATIVE COUNSEL MUST APPROVE ANY LEASE, AMENDMENT, OR ATTACHMENT PRIOR TO SIGNATURE.

The term of a District Office Lease or Amendment for the 118th Congress may not commence prior to January 3, 2023.

Members should endeavor to lease space through the last day of a congressional term rather than the last day of a calendar year. For the 118th Congress, leases should end on January 2, 2025, not December 31, 2024.

- The Member/Member-elect is required to personally sign the documents.
- The Lessor must complete the amenities checklist in Section A (“Lease Amenities”), including both the “required amenities” and “optional amenities” portions.
- Section B (“Additional Lease Terms”) of the Attachment SHALL NOT have any provisions deleted or changed.
- Prior to either party signing a Lease or an Amendment, the Member/Member-elect must submit the proposed Lease or Amendment, accompanied by the Attachment, to the Office of Administrative Counsel (“Administrative Counsel”) via e-mail in PDF form (leases@mail.house.gov) or fax (202-226-0357) for review and approval.
- If Administrative Counsel determines that the proposed terms and conditions of the Lease or Amendment comply with applicable law and House Rules and Regulations, Administrative Counsel will notify the Member/Member-elect to proceed with the execution of the Lease or Amendment.
- Once signed by both parties, the Lease or the Amendment, accompanied by the Attachment, must be submitted to Administrative Counsel via e-mail in PDF form (leases@mail.house.gov) or fax (202-226-0357) for final approval.
- Without a properly signed and submitted Attachment, the Lease or Amendment cannot be approved by Administrative Counsel and payments will not be made.
- If approved, Administrative Counsel will notify the Office of Finance that monthly rental payments can begin. If changes are necessary, Administrative Counsel will contact the office of the Member/Member-elect.
- The parties agree that any changes for default, early termination, or cancellation of the Lease or Amendment which result from actions taken by or on behalf of the Lessee shall be the Lessee’s sole responsibility and are not reimbursable from the Members’ Representational Allowance.
- Lessor shall provide a copy of any assignment, estoppel certificate, notice of a bankruptcy or foreclosure, or notice of a sale or transfer of the leased premises to Administrative Counsel via e-mail in PDF form (leases@mail.house.gov).

District Office Lease Attachment

(Page 1 of 5 – 118th Congress)

Phone Number: (423) 354-5151 Email Address: sgstevenson@northeaststate.edu

District Office Lease Attachment
(Page 2 of 5 – 118th Congress)

SECTION B
(Additional Lease Terms)

1. **Incorporated District Office Lease Attachment.** Lessor (Landlord) and Lessee (Member/Member-elect of the U.S. House of Representatives) agree that this District Office Lease Attachment ("Attachment") is incorporated into and made part of the Lease ("Lease") and, if applicable, District Office Lease Amendment ("Amendment") to which it is attached.
2. **Performance.** Lessor expressly acknowledges that neither the U.S. House of Representatives (the "House") nor its Officers are liable for the performance of the Lease. Lessor further expressly acknowledges that payments made by the Chief Administrative Officer of the House (the "CAO") to Lessor to satisfy Lessee's rent obligations under the Lease – which payments are made solely on behalf of Lessee in support of his/her official and representational duties as a Member of the House – shall create no legal obligation or liability on the part of the CAO or the House whatsoever. Lessee shall be solely responsible for the performance of the Lease and Lessor expressly agrees to look solely to Lessee for such performance.
3. **Modifications.** Any amendment to the Lease must be in writing and signed by the Lessor and Lessee. Lessor and Lessee also understand and acknowledge that the Administrative Counsel for the CAO ("Administrative Counsel") must review and give approval of any amendment to the Lease prior to its execution.
4. **Compliance with House Rules and Regulations.** Lessor and Lessee understand and acknowledge that the Lease shall not be valid, and the CAO will not authorize the disbursement of funds to the Lessor, until Administrative Counsel has reviewed the Lease to determine that it complies with the Rules of the House and the Regulations of the Committee on House Administration, and approved the Lease by signing the last page of this Attachment.
5. **Payments.** The Lease is a fixed term lease with monthly installments for which payment is due in arrears on or before the end of each calendar month. In the event of a payment dispute, Lessor agrees to contact the Office of Finance, U.S. House of Representatives, at 202-225-7474 to attempt to resolve the dispute before contacting Lessee.
6. **Void Provisions.** Any provision in the Lease purporting to require the payment of a security deposit shall have no force or effect. Furthermore, any provision in the Lease purporting to vary the dollar amount of the rent specified in the Lease by any cost of living clause, operating expense clause, pro rata expense clause, escalation clause, or any other adjustment or measure during the term of the Lease shall have no force or effect.
7. **Certain Charges.** The parties agree that any charge for default, early termination or cancellation of the Lease which results from actions taken by or on behalf of the Lessee shall be the sole responsibility of the Lessee and shall not be paid by the CAO on behalf of the Lessee.
8. **Death, Resignation or Removal.** In the event Lessee dies, resigns or is removed from office during the term of the Lease, the Clerk of the House may, at his or her sole option, either: (a) terminate the Lease by giving thirty (30) days' prior written notice to Lessor; or (b) assume the obligation of the Lease and continue to occupy the premises for a period not to exceed sixty (60) days following the certification of the election of the Lessee's successor. In the event the Clerk elects to terminate the Lease, the commencement date of such thirty (30) day termination notice

District Office Lease Attachment

(Page 3 of 5 – 118th Congress)

shall be the date such notice is delivered to the Lessor or, if mailed, the date on which such notice is postmarked.

9. **Term.** The term of the Lease may not exceed the constitutional term of the Congress to which the Lessee has been elected. The Lease may be signed by the Member-elect before taking office. Should the Member-elect not take office to serve as a Member of the 118th Congress, the Lease will be considered null and void.
10. **Early Termination.** If either Lessor or Lessee terminates the Lease under the terms of the Lease, the terminating party agrees to promptly file a copy of any termination notice with the Office of Finance, U.S. House of Representatives, Attn: Kellie Wilson, via e-mail at FCLeasePayments@mail.house.gov, and with the Administrative Counsel by e-mail at leases@mail.house.gov.
11. **Assignments.** Lessor shall provide thirty (30) days prior written notice to Lessee before assigning any of its rights, interests or obligations under the Lease, in whole or in part, by operation of law or otherwise. Lessor shall promptly file a copy of any such assignment notice with Administrative Counsel by e-mail at leases@mail.house.gov. Lessee and the House shall not be responsible for any misdirected payments resulting from Lessor's failure to file an assignment notice in accordance with this section.
12. **Sale or Transfer of Leased Premises.** Lessor shall provide thirty (30) days prior written notice to Lessee in the event (a) of any sale to a third party of any part of the leased premises, or (b) Lessor transfers or otherwise disposes of any of the leased premises, and provide documentation evidencing such sale or transfer in such notice. Lessor shall promptly file a copy of any such sale or transfer notice with Administrative Counsel by e-mail at leases@mail.house.gov.
13. **Bankruptcy and Foreclosure.** In the event (a) Lessor is placed in bankruptcy proceedings (whether voluntarily or involuntarily), (b) the leased premises is foreclosed upon, or (c) of any similar occurrence, Lessor agrees to promptly notify Lessee in writing. Lessor shall also promptly file a copy of any such notice via e-mail with the Office of Finance, U.S. House of Representatives, Attn: Kellie Wilson, via e-mail at FCLeasePayments@mail.house.gov, and with Administrative Counsel by e-mail at leases@mail.house.gov.
14. **Estoppel Certificates.** Lessee agrees to sign an estoppel certificate relating to the leased premises (usually used in instances when the Lessor is selling or refinancing the building) upon the request of the Lessor. Such an estoppel certificate shall require the review of Administrative Counsel, prior to Lessee signing the estoppel certificate. Lessor shall promptly provide a copy of any such estoppel certificate to Administrative Counsel by e-mail at leases@mail.house.gov.
15. **Maintenance of Common Areas.** Lessor agrees to maintain in good order, at its sole expense, all public and common areas of the building including, but not limited to, all sidewalks, parking areas, lobbies, elevators, escalators, entryways, exits, alleys and other like areas.
16. **Maintenance of Structural Components.** Lessor also agrees to maintain in good order, repair or replace as needed, at its sole expense, all structural and other components of the premises including, but not limited to, roofs, ceilings, walls (interior and exterior), floors, windows, doors, foundations, fixtures, and all mechanical, plumbing, electrical and air conditioning/heating

District Office Lease Attachment

(Page 4 of 5 – 118th Congress)

systems or equipment (including window air conditioning units provided by the Lessor) serving the premises.

17. **Lessor Liability for Failure to Maintain.** Lessor shall be liable for any damage, either to persons or property, sustained by Lessee or any of his or her employees or guests, caused by Lessor's failure to fulfill its obligations under Sections 15 and 16.
18. **Initial Alterations.** Lessor shall make any initial alterations to the leased premises, as requested by Lessee and subject to Lessor's consent, which shall not be unreasonably withheld. The cost of such initial alterations shall be included in the annual rental rate.
19. **Federal Tort Claims Act.** Lessor agrees that the Federal Tort Claims Act, 28 U.S.C. §§ 2671-80, satisfies any and all obligations on the part of the Lessee to purchase private liability insurance. Lessee shall not be required to provide any certificates of insurance to Lessor.
20. **Limitation of Liability.** Lessor agrees that neither Lessee nor the House nor any of the House's officers or employees will indemnify or hold harmless Lessor against any liability of Lessor to any third party that may arise during or as a result of the Lease or Lessee's tenancy.
21. **Compliance with Laws.** Lessor shall be solely responsible for complying with all applicable permitting and zoning ordinances or requirements, and with all local and state building codes, safety codes and handicap accessibility codes (including the Americans with Disabilities Act), both in the common areas of the building and the leased space of the Lessee.
22. **Electronic Funds Transfer.** Lessor agrees to accept monthly rent payments by Electronic Funds Transfer and agrees to provide the Office of Finance, U.S. House of Representatives, with all banking information necessary to facilitate such payments.
23. **Refunds.** Lessor shall promptly refund to the CAO, without formal demand, any payment made to the Lessor by the CAO for any period for which rent is not owed because the Lease has ended or been terminated.
24. **Conflict.** Should any provision of this Attachment be inconsistent with any provision of the attached Lease or attached Amendment, the provisions of this Attachment shall control, and those inconsistent provisions of the Lease or the Amendment shall have no force and effect to the extent of such inconsistency.
25. **Construction.** Unless the clear meaning requires otherwise, words of feminine, masculine or neuter gender include all other genders and, wherever appropriate, words in the singular include the plural and vice versa.
26. **Fair Market Value.** The Lease or Amendment is entered into at fair market value as the result of a bona fide, arms-length, marketplace transaction. The Lessor and Lessee certify that the parties are not relatives nor have had, or continue to have, a professional or legal relationship (except as a landlord and tenant).
27. **District Certification.** The Lessee certifies that the office space that is the subject of the Lease is located within the district the Lessee was elected to represent unless otherwise authorized by Regulations of the Committee on House Administration.

District Office Lease Attachment

(Page 5 of 5 – 118h Congress)

28. **Counterparts.** This Attachment may be executed in any number of counterparts and by facsimile copy, each of which shall be deemed to be an original but all of which together shall be deemed to be one and the same instrument.
29. **Section Headings.** The section headings of this Attachment are for convenience of reference only and shall not be deemed to limit or affect any of the provisions hereof.

IN WITNESS WHEREOF, the parties have duly executed this District Office Lease Attachment as of the later date written below by the Lessor or the Lessee.

City of Kingsport
Print Name of Lessor/Landlord

Congresswoman Diana Harshbarger
Print Name of Lessee

By: _____
Lessor Signature
Name: Patrick W. Shull
Title: Mayor

Lessee Signature

Date

Date

From the Member's Office, who is the point of contact for questions?		
Name _____	Phone (____) _____	E-mail _____@mail.house.gov

This District Office Lease Attachment and the attached Lease or Amendment have been reviewed and are approved, pursuant to Regulations of the Committee on House Administration.

Signed _____ Date _____, 20____.
(Administrative Counsel)

U.S. House of Representatives
Substitute W-9 and ACH Vendor/Miscellaneous Payment Enrollment Form

Internal Revenue Code 6109, 31 U.S.C. 3322, 31 CFR 210 and the 1996 Debt Collection Improvement Act require all entities that do business with the United States Government to provide a Tax Identification Number (TIN) and Electronic Funds Transfer (EFT) information for payment. PL 93-579 protects your privacy and mandates that the information never be published or used for any other purpose than to pay you. *Please complete all sections below, sign and return via the email or fax number listed.*

RETURN FORM TO: VendorEFT@mail.house.gov

FAX NUMBER: **(202) 225-6914**

SECTION I UNITED STATES HOUSE OF REPRESENTATIVES INFORMATION

ADDRESS US HOUSE OF REPRESENTATIVES - ACCOUNTING, 3110 O'NEILL FEDERAL BUILDING, WASHINGTON, DC 20515
AGENCY IDENTIFIER 53-6002523 AGENCY LOCATION CODE 4832 TELEPHONE NUMBER (202) 226-2277

SECTION II PAYEE/COMPANY INFORMATION

NAME (AS SHOWN ON YOUR INCOME TAX RETURN) BUSINESS NAME/DISREGARDED ENTITY NAME or DBA , IF DIFFERENT THAN ABOVE <table border="1" style="width: 100%; border-collapse: collapse;"><tr><td style="width: 25%;">TYPE OF TAX IDENTIFICATION NUMBER <input type="checkbox"/> SOCIAL SECURITY NUMBER (or) <input type="checkbox"/> EIN</td><td style="width: 75%;">ENTER TAX IDENTIFICATION NUMBER ADDRESS/CITY/STATE/ZIP CONTACT PERSON NAME EMAIL <table border="1" style="width: 100%; border-collapse: collapse;"><tr><td style="width: 50%;">TELEPHONE NUMBER</td><td style="width: 50%;">FAX NUMBER</td></tr></table></td></tr></table>		TYPE OF TAX IDENTIFICATION NUMBER <input type="checkbox"/> SOCIAL SECURITY NUMBER (or) <input type="checkbox"/> EIN	ENTER TAX IDENTIFICATION NUMBER ADDRESS/CITY/STATE/ZIP CONTACT PERSON NAME EMAIL <table border="1" style="width: 100%; border-collapse: collapse;"><tr><td style="width: 50%;">TELEPHONE NUMBER</td><td style="width: 50%;">FAX NUMBER</td></tr></table>	TELEPHONE NUMBER	FAX NUMBER	CHECK APPROPRIATE BOX FOR FEDERAL TAX CLASSIFICATION (required) <table border="0" style="width: 100%;"><tr><td><input type="checkbox"/> Individual/ Sole Proprietor</td><td><input type="checkbox"/> C Corporation</td><td><input type="checkbox"/> S Corporation</td><td><input type="checkbox"/> Partnership</td><td><input type="checkbox"/> Trust/Estate</td></tr><tr><td colspan="4"><input type="checkbox"/> Limited Liability Company Enter tax classification (C=C corporation, S=S corporation, P= Partnership)</td><td>Exempt payee <input type="checkbox"/></td></tr><tr><td colspan="5"><input type="checkbox"/> OTHER (Other entities. Enter your business name below as shown on required federal tax documents "Name" line. This name should match the name shown on the charter or other legal document creating the entity. You may enter any business, trade, or DBA name on the "Business name/ disregarded entity name" line.)</td></tr></table> PURCHASE ORDER ADDRESS/CITY/STATE/ZIP EMAIL <table border="1" style="width: 100%; border-collapse: collapse;"><tr><td style="width: 50%;">TELEPHONE NUMBER</td><td style="width: 50%;">FAX NUMBER</td></tr></table>	<input type="checkbox"/> Individual/ Sole Proprietor	<input type="checkbox"/> C Corporation	<input type="checkbox"/> S Corporation	<input type="checkbox"/> Partnership	<input type="checkbox"/> Trust/Estate	<input type="checkbox"/> Limited Liability Company Enter tax classification (C=C corporation, S=S corporation, P= Partnership)				Exempt payee <input type="checkbox"/>	<input type="checkbox"/> OTHER (Other entities. Enter your business name below as shown on required federal tax documents "Name" line. This name should match the name shown on the charter or other legal document creating the entity. You may enter any business, trade, or DBA name on the "Business name/ disregarded entity name" line.)					TELEPHONE NUMBER	FAX NUMBER
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TELEPHONE NUMBER	FAX NUMBER																						
<input type="checkbox"/> Individual/ Sole Proprietor	<input type="checkbox"/> C Corporation	<input type="checkbox"/> S Corporation	<input type="checkbox"/> Partnership	<input type="checkbox"/> Trust/Estate																			
<input type="checkbox"/> Limited Liability Company Enter tax classification (C=C corporation, S=S corporation, P= Partnership)				Exempt payee <input type="checkbox"/>																			
<input type="checkbox"/> OTHER (Other entities. Enter your business name below as shown on required federal tax documents "Name" line. This name should match the name shown on the charter or other legal document creating the entity. You may enter any business, trade, or DBA name on the "Business name/ disregarded entity name" line.)																							
TELEPHONE NUMBER	FAX NUMBER																						
REMIT TO ADDRESS																							

SECTION III FINANCIAL INSTITUTION INFORMATION

BANK NAME (Branch City, State)	
ACH COORDINATOR NAME	TELEPHONE NUMBER
NINE-DIGIT ROUTING TRANSIT NUMBER _____	
DEPOSITOR ACCOUNT TITLE	
DEPOSITOR ACCOUNT NUMBER	LOCKBOX NUMBER
TYPE OF ACCOUNT <input type="checkbox"/> CHECKING <input type="checkbox"/> SAVINGS <input type="checkbox"/> LOCKBOX	

SECTION IV SOCIO-ECONOMIC INFORMATION

Type of Business	<input type="checkbox"/> Large Business-No Socio-Economic Designations <input type="checkbox"/> Minority <input type="checkbox"/> SmBusiness <input type="checkbox"/> Sm-Disadv/Minority <input type="checkbox"/> Sm-Disadv Only <input type="checkbox"/> SmMin Only		
Sm-Disadvantaged Business Prog	<input type="checkbox"/> 8 (a) Firm <input type="checkbox"/> HUBZone Program <input type="checkbox"/> HUBZone Eligible	<input type="checkbox"/> Emerging Small Business	<input type="checkbox"/> Women-Owned Business
Other Preference Programs	<input type="checkbox"/> Buy Indian <input type="checkbox"/> Directed to JWOD Non-Profit <input type="checkbox"/> No Preference/Not Listed <input type="checkbox"/> Small Business Set-Aside <input type="checkbox"/> Very Small Business Set-Aside		
Veteran Owned Status	<input type="checkbox"/> Non-Vet Owned SmBus <input type="checkbox"/> Other Vet Owned SmBus <input type="checkbox"/> Serv-Disabled Vet Other Bus <input type="checkbox"/> Serv-Disabled Vet Owned SB <input type="checkbox"/> Vet-Owned Other Bus		
Size of Business	<input type="checkbox"/> (A) 50 or less <input type="checkbox"/> (B) 51-100 <input type="checkbox"/> (C) 101-250 <input type="checkbox"/> (D) 251-500 <input type="checkbox"/> (E) 501-750 <input type="checkbox"/> (F) 751-1,000 <input type="checkbox"/> (G) Over 1,000 <input type="checkbox"/> (M) 1 million or less <input type="checkbox"/> (N) 1.1-2 million <input type="checkbox"/> (P) 2.1-3.5 million <input type="checkbox"/> (R) 3.1-5 million <input type="checkbox"/> (S) 5.1-10 million <input type="checkbox"/> (T) 10.1-17 million <input type="checkbox"/> (Z) Over 17 million		

SECTION V CERTIFICATION OF DATA BY PAYEE/COMPANY

NAME <u>Patrick W. Shull</u>	TITLE/POSITION
SIGNATURE	DATE
TELEPHONE NUMBER	

**Instructions for Completing
U.S. House of Representatives
Substitute W-9 and ACH Vendor/Miscellaneous Payment Enrollment Form**

Section I - Agency Information – Includes the name and address, agency identifier, agency location code and telephone number for the House of Representatives.

Section II - Payee/Company Information – Print or type the name of the payee/company and address that will receive payment, social security or taxpayer ID number, contact person name, telephone number and email of the payee/company. Print or type the purchase order and remit to addresses if different from the payee/company address. Check the appropriate boxes for federal tax classification.

Section III - Financial Institution Information – Print or type the name and address of the payee/company's financial institution who will receive the ACH payment, ACH coordinator name and telephone number, nine-digit routing transit number, depositor (payee/company) account title and account number. Check the appropriate box for type of account. Payee/Company may include a voided check with this form.

ACH Account Information Located on a Check or Deposit Ticket

<u>FINANCIAL INSTITUTION NAME</u>	name of the financial institution to which the payments are to be directed
<u>ROUTING TRANSIT NUMBER (RTN)</u>	financial institution's 9 digit routing transit number; <i>found on the bottom of a check or deposit ticket or from your Financial Institution</i>
<u>ACCOUNT TITLE</u>	employee's or vendor's name on the account
<u>ACCOUNT NUMBER</u>	account number at the financial institution

THOMAS B. ANDERSON
123 PLEASANT STREET
ANYWHERE, FL 12345

PAY TO THE ORDER OF \$

SUNTRUST
SunTrust Bank

ACH RT 081000104

101

06-10-00

VOID

12345678901

0101

1 2 3 4

1. Routing Transit Number (RTN) – nine digits located between two symbols. This number identifies the bank holding your account and check processing center.
2. Account number – this is your complete account number. Your account number can be up to 17 digits. Please include leading zeros.
3. ACH Routing Transit Number – Automated Clearing House routing number, use this number for your Routing Transit Number (RTN) if you bank with **SunTrust Bank**.
4. Check number – This information is not necessary - do not provide

Section IV - Socio-Economic Information – Check the boxes for each category, if applicable: type of business, small disadvantaged business program, HUBZone program, emerging small business, women-owned business, other preference programs, Veteran owned status and size of business. Detailed information related to Small Business programs can be found at <http://www.sba.gov/>.

Section V - Certification of Data By Payee/Company – Print or type the name, title/position and phone number of the Authorized official. The Authorized official must sign and date the form.



AGENDA ACTION FORM

Renewal of a Policy for Stop Loss Insurance Coverage with Voya ReliaStar Life Insurance Company

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

Action Form No.: AF-381-2022
Work Session: December 19, 2022
First Reading: N/A

Final Adoption: December 20, 2022
Staff Work By: Michael Wessely
Presentation By: Tyra Copas

Recommendation:

Approve the Resolution to remain with current Stop Loss carrier (VOYA) with the current specific and aggregate deductibles.

Executive Summary:

Voya submitted two renewal options with zero laser claims. The difference in the two options is in relation to the specific deductible (keep at \$150k or increase to \$175k). Increasing the specific deductible exposes the City to additional claim liability. A review of claims for the past 3 years shows the COK had twelve claims that exceeded the \$150k specific deductible (avg of 4 per year) and eight claims that exceeded the \$175k aggregate deductible (avg of 2.7 per year). Claims for 2022 indicate five claims exceeded the \$150k specific deductible of which four claims have exceeded the \$175k aggregate deductible.

Based on the proposed renewal options and the recent increase in the number of claims exceeding \$150k Human Resources is recommending and asking the board to approve remaining with option 1 for 2023. While this option represents a 16.6% increase in premiums, it keeps the City's exposure per claim at \$150k. Based on our average number of claims exceeding \$150k it would be less costly than raising the aggregate deductible to \$175k.

Attachments:

1. Resolution
2. Supplemental Information

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: *dw*

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

RESOLUTION NO. _____

A RESOLUTION AUTHORIZING THE RENEWAL OF A POLICY FOR STOP LOSS INSURANCE COVERAGE WITH VOYA RELIASTAR LIFE INSURANCE COMPANY AND AUTHORIZING THE MAYOR TO EXECUTE ALL AGREEMENTS FOR STOP LOSS INSURANCE AND ANY OTHER DOCUMENTS NECESSARY AND PROPER TO EFFECTUATE THE PURPOSE OF THE AGREEMENT OR THIS RESOLUTION

WHEREAS, in 2020, the city entered into an agreement for stop loss excess risk insurance for its self-funded health insurance plan with Voya's ReliaStar Life Insurance Company (Res. No. 2021-098); and

WHEREAS, the policy covered the period from January 1, 2021 through December 31, 2021 with an option to renew with no new individual adjusted deductibles; and

WHEREAS, the city's benefits coordinator, Mark Ill, obtained three options from Voya ReliaStar Life Insurance Company for renewal of the city's stop loss excess risk insurance, and based upon current data, claims, and the options provided the board finds it is in the best interest and advantage to the city to retain stop loss excess risk insurance with the same individual deductible of \$150,000.00 as established in the 2022 benefit year renewal.

Now therefore,

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

SECTION I. That the board approves and authorizes the renewal of the city's stop loss excess risk insurance with Voya's ReliaStar Life Insurance Company.

SECTION II. That the mayor, or in his absence, incapacity, or failure to act, the vice mayor is authorized and directed to execute, in a form approved by the city attorney, a contract for the renewal of the stop loss insurance coverage for the city's self-funded health insurance plan effective January 1, 2023, through December 31, 2023, to deliver the agreement and take any and all action as may be required on the part of the city to carry out, give effect to, and consummate the transactions contemplated by the agreement and 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 20th day of December, 2022.

PATRICK W. SHULL, Mayor

ATTEST:

ANGELA MARSHALL, Deputy City Recorder

APPROVED AS TO FORM:

RODNEY B. ROWLETT, III, City Attorney

City of Kingsport

Specific Stop Loss - 2023

	Voya Current	Voya Renewal Option 1	Voya Option 2
Coverages	Medical & Rx	Medical & Rx	Medical & Rx
Specific Deductible	\$150,000	\$150,000	\$175,000
Aggregating Specific	\$175,000	\$175,000	\$175,000
Policy Year Maximum	Unlimited	Unlimited	Unlimited
Lifetime Maximum	Unlimited	Unlimited	Unlimited
Enrollment			
Single	674	674	674
Family			
Premium			
Single	\$72.89	\$85.03	\$70.24
Family			
Estimated Monthly Premium	\$49,127.86	\$57,310.22	\$47,341.76
Estimated Annual Premium	\$589,534.32	\$687,722.64	\$568,101.12
Difference Monthly		\$8,182.36	-\$1,786.10
Difference Annually		\$98,188.32	-\$21,433.20
Percent Change		16.66%	-3.64%

Option 1 is the current benefit levels
 Option 2 raises the specific level from \$150k to \$175k

City of Kingsport

Aggregate Stop Loss 2023

	Voya Current	Voya Renewal Option 1	Voya Option 2
Individual Deductible	\$150,000	\$150,000	\$175,000
Aggregate Adjustment Corridor	125%	125%	125%
Maximum Annual Reimbursement	\$1,000,000	\$1,000,000	\$1,000,000
Covered Members	674	674	674
Composite Rate	\$2.62	\$2.75	\$3.05
Monthly Premium	\$1,765.88	\$1,853.50	\$2,055.70
Annual Premium	\$21,190.56	\$22,242.00	\$24,668.40
Difference Monthly		\$87.62	\$289.82
Difference Annually		\$1,051.44	\$3,477.84
Percent Change		4.96%	16.41%

Option 1 is the current benefit levels

Option 2 raises the specific level from \$150k to \$175k

CY 2022 Claims

Ending Date	Name	Specific Deductible	Claim Amount Paid	Amount Remaining to meet Specific Deductible	Amount Applied to Aggregate Deductible
10/31/22		150,000.00	515,335.19	-365,335.19	365,335.19
		150,000.00	258,502.91	-108,502.91	108,502.91
		150,000.00	707,727.94	-557,727.94	557,727.94
		150,000.00	198,060.48	-48,060.48	48,060.48
		150,000.00	146,619.50	3,380.50	
		150,000.00	133,599.95	16,400.05	
		150,000.00	110,687.11	39,312.89	
		150,000.00	105,141.95	44,858.05	
		150,000.00	103,339.14	46,660.86	
		150,000.00		150,000.00	
		150,000.00		150,000.00	
		150,000.00		150,000.00	
		150,000.00		150,000.00	
		150,000.00		150,000.00	
		150,000.00		150,000.00	
		150,000.00		150,000.00	
					1,079,626.52
			Aggregate Deductible		-175,000.00
			Total owed to COK		904,626.52
			Rembursements Received		0.00
			Remaining Amount Owed		904,626.52

Notes:

An increased aggregate to \$175k based on claim information thru October would result in a \$100k increase.

Wessely, Michael

From: Jon Manfull <jon@markiieb.com>
Sent: Tuesday, December 13, 2022 12:49 PM
To: Wessely, Michael
Cc: Brad Easterling
Subject: RE: Stop Loss
Attachments: City of Kingsport Reinsurance Comparison - Dec 2022.xlsx

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

Mike,

Here is a copy of the spreadsheet comparison and a list of the vendors below that were solicited for proposals. Based on the most recent claims report, we now have a cancer claimant that has over \$700k in paid claims alongside the other top claimant that has an ongoing condition and is over \$515k in claims for 2022. Through 10 months, the City has received over \$905k in stop loss reimbursements and paid in premiums of approximately \$512k.

Based on current claims conditions, the carriers below simply couldn't generate a competitive price position relative the Voya renewal.

- American Fidelity
- Anthem
- BCBST
- Berkley
- Berkshire Hathaway
- TMHCC
- Partners
- QBE
- Swiss Re
- Unum
- Evolution Risk Partners

To stay at the current benefit levels of \$175k aggregating specific and \$150k specific with Voya, we are looking at a 16.66% increase to this fixed cost, which we believe is a very fair renewal based on the response from the market.

Let me know if you have any questions or if you would like to discuss further.

Thanks again,

Jon

From: Wessely, Michael <MichaelWessely@KingsportTN.gov>
Sent: Tuesday, December 13, 2022 11:06 AM
To: Jon Manfull <jon@markiieb.com>
Subject: Stop Loss