



AGENDA

BOARD OF MAYOR AND ALDERMEN WORK SESSION

**Monday, September 17, 2018, 4:30 p.m.
City Hall, 225 W. Center St., Council Room, 2nd Floor**

Board of Mayor and Aldermen

Mayor John Clark, Presiding
Vice Mayor Mike McIntire
Alderman Jennifer Adler
Alderman Joe Begley

Alderman Betsy Cooper
Alderman Colette George
Alderman Tommy Olterman

Leadership Team

Jeff Fleming, City Manager
Chris McCartt, Assistant City Manager for Administration
Ryan McReynolds, Assistant City Manager for Operations
J. Michael Billingsley, City Attorney
Jim Demming, City Recorder/Chief Financial Officer
David Quillin, Police Chief

Scott Boyd, Fire Chief
Lynn Tully, Development Services Director
George DeCroes, Human Resources Director
Heather Cook, Marketing and Public Relations Director

1. Call to Order
2. Roll Call
3. Neighborhood Commission Quarterly Report – Margot Seay
4. Aerospace Park – Mark Canty
5. Review of Items on September 18, 2018 Business Meeting Agenda
6. Adjourn

Next Work Session, Oct. 1: CareHere; KEDB/NETWORKS

Citizens wishing to comment on agenda items please come to the podium and state your name and address. Please limit your comments to five minutes. Thank you.

BMA Report, September 17, 2018



Kingsport Employee Wellness, George DeCroes

	01/01/2018 – 08/31/2018	09/01/2018 – 09/11/2018
Total Utilization	92.7%	90.7%
City – Active Employees	61.0%	69.8%
City – Dependents	30.8%	23.3%
City – Retirees	2.5%	0.6%
Extended-Patient Services/Other	0.5%	1.5%
Work Comp	0.5%	0.3%
No Show	4.7%	4.5%

Worker's Compensation, Terri Evans

For the month of August 2018, the city had eight (8) recordable worker's compensation claims that involved lost time or restricted duty. Of the eight (8) claims involved two (2) were lost time and six (6) were restricted duty.

City of Kingsport

Project Status in Pictures



1 Carousel Park

The concrete curb is in place to hold the synthetic playground surface around the playground equipment.

2 KATS Transit Center

The sprinkler system has been installed and the crew is currently placing exterior weather barrier.

3 West Lynn Garden Paving

Asphalt and resurfacing on side streets in the Midfield Lynn Garden area continues.

4 Main Street Boring

Sub-surface exploration to determine the road subgrade will take place along Main Street.

5 DBHS Renovations

The electrical grounding is being installed while fireline and waterlines have been tied into existing lines.

Status Updates on Active Projects sorted by Cost

Estimated Cost	Project Owner	Project Manager	Project Name	Project #	Completion Date	CurrentStatus
\$7,500,000.00	Ryan McReynolds	Thompson, Michael	SR 347 (Rock Springs Road) [State & MTPO funded]	No City Funds	12/31/2020	Preliminary design plans are near completion. A public design meeting is being planned for Fall 2018.
\$6,600,000.00	Niki Ensor	Niki Ensor	Water & Wastewater Facilities SCADA/Telemetry Project	WA1700/ SW1700/ SW1603	4/1/2019	8/16/18 - Held 60% plans review for WTP and SLS. Continue to work on radio pathway study for remote water sites.
\$4,400,000.00	Niki Ensor	Niki Ensor	WWTP Electrical Improvements	SW1800	9/1/2019	Working towards 90% design.
\$4,186,000.00	Chris McCartt	Melton, Dawn	New KATS Transit Center	GP1718	1/18/2019	Sprinklers being installed and testing to be done this week.
\$3,867,000.00	Chad Austin	Hank Clabaugh	Border Regions Sewer Extensions		2/17/2020	Met with Tri Cities Crossing owner on September 4th. Field survey has started.
\$3,750,000.00	Niki Ensor	Niki Ensor	Chemical Feed Design	WA1403	4/1/2019	90% design complete. Project is on hold until funding becomes available.
\$3,740,000.00	Niki Ensor	Niki Ensor	West Kingsport Forcemain and Pump Station Improvements	SW1708	6/1/2019	Continue to work on two easements. Meeting with property owner on 8/22/18.
\$3,300,000.00	Michael Thompson	Thompson, Michael	Indian Trail Drive Extension	GP1615	6/30/2021	Still awaiting RPAI (East Stone Commons Owner) coordination with designer on access needs.
\$1,700,000.00	Michael Thompson	Thompson, Michael	Main Street Rebuild [City & MTPO Funded]	GP1516	4/1/2020	Preliminary plans comments returned from TDOT and addressed. Work continues towards Right of Way Plans submission (70%).
\$1,405,205.65	Public Works	Clabaugh, Hank	2018 Contracted Paving - Area 10: West Lynn Garden		11/16/2018	Signalized intersections milled and new loops installed. Paving underway.
\$1,300,000.00	Chad Austin	Pamela Gilmer	Phase 4 Water Improvements		8/19/2019	Plans submitted to water department for review. SCHD to review before TDEC submittal.
\$961,140.00	Michael Thompson	Elsa, Tim	Stone Drive - Phase 2 (SR 1, US 11W) Sidewalk Improvements from Stonebrook Place Pvt. Dr. to Lynn Garden Drive [95% State Funded 5% City]	GP1725	8/31/2020	Under TDOT design review.
\$940,000.00	Kitty Frazier	Clabaugh, Hank	Kingsport Greenbelt - Eastern Extension - Phase 1 [Fed. Grant & City funded]	GP1529	11/1/2019	ROW certification approved 8/10/2018. Specification updates approved. Awaiting TIP Adjustment approval and then Notice to Proceed for Construction phase.
\$697,475.00	Michael Thompson	Thompson, Michael	Stone Drive - Phase 1 (SR 1, US 11W) Sidewalk Improvements from Stonebrook Place Pvt. Dr. to American Way [95% State Funded 5% City]	GP1623	12/7/2019	Value Engineering underway to meet funding availability.
\$668,835.40	Public Works	Clabaugh, Hank	2018 Contracted Paving - Main Roads: Ridgefields, Ft Robinson, Rivermont		11/16/2018	Contract is working its way through the signature phase.

Wednesday, September 12, 2018

Text in blue denotes changes in the past two weeks. Red box denotes past due, yellow box denotes due within 30 days, green denotes due more than 30 days

Estimated Cost	Project Owner	Project Manager	Project Name	Project #	Completion Date	CurrentStatus
\$619,720.46	Michael Thompson	Thompson, Michael	Signalization of the SR 126 (Memorial Blvd. at Island Road Intersection [State & MTPO Funded]	MPO15A	11/12/2018	Contractor is working on curb, paving driveways, and placed asphalt binder for roadway widening.
\$577,000.00	Niki Ensor	Sam Chase	Tri-County Tank Replacement Project	WA1705	2/22/2019	NTP is 8/27.18. E like Greene on site 9/4/18 to start demo.
\$420,000.00	Rob Cole	Harris, David	Bays Mountain Dam Rehabilitation (2017-C28)	GP1711	12/22/2018	Grouting and repointing and Butress repair work continues.
\$415,000.00	Chad Austin	Chris Alley	SR 93- Fall Branch section (TDOT)		12/31/2020	Project moved to 2019; "B Date" package due 9/26/2018; TDOT Letting Date: December 2018
\$365,167.20	Chad Austin	Hank Clabaugh	Border Regions Area 3 Water Upgrades	WA1806	11/25/2018	Contractor began work on September 4th. Two crews working. One on Cox Hollow Road and one on Fordtown Road.
\$352,000.00	Chad Austin	Chris Alley	SR 93- Horse Creek/Derby Drive Section (TDOT)		12/31/2021	Project moved to 2020; "B Date" package due 9/25/2019; TDOT Letting Date: December 2019
\$350,000.00	Rob Cole	Austin, Chad	Bays Mountain Septic System Upgrades	GP1704	4/26/2019	Working with consultant on alternatives to upgrade sewer system.
\$288,000.00	Chris McCartt	Hickman, Mike	Carousel Park		10/31/2018	Ready for equipment installation, seeding/sodding.
\$278,000.00	David Edwards	David Edwards	Bloomington Culvert Replacement		4/1/2019	Awaiting ARAP approval from TDEC
\$246,225.00	Tim Elsea	Elsea, Tim	Lynn Garden Signal System [MTPO & City funded]	MPO15C	9/25/2018	Contractor is finishing up the splicing and will be adding guy wires to poles where fiber crosses roadway.
\$230,000.00	Chris McCart	Hickman, Mike	Library Colonnade Expansion	GP1807	10/15/2018	Final trimwork underway. Shelving to be installed this week.
\$208,682.50	Tim Elsea	Gilmer, Pamela	Indian Trail Drive at Stone Drive Intersection Improvements	2017-C14		Summers-Taylor low bidder. Contract preparation underway.
\$50,000.00	David Edwards	David Edwards	Main St. & Sullivan St. System Upgrades		9/14/2018	Construction underway.
\$20,970.00	David Edwards	David Edwards	Millye St. Drainage Improvements			Executed contract with Zane Brooks. Awaiting pre-construction meeting.
	Niki Ensor	Niki Ensor	SLS Rehab and Replacement	SW1702	3/31/2019	6/15/18 - Entered into an agreement with LDA Engineers for design.

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AGENDA

BOARD OF MAYOR AND ALDERMEN

BUSINESS MEETING

Tuesday, September 18, 2018, 7:00 p.m.
City Hall, 225 W. Center St., Courtroom, 2nd Floor

Board of Mayor and Aldermen

Mayor John Clark, Presiding
Vice Mayor Mike McIntire
Alderman Jennifer Adler
Alderman Joe Begley

Alderman Betsy Cooper
Alderman Colette George
Alderman Tommy Olterman

City Administration

Jeff Fleming, City Manager
Chris McCartt, Assistant City Manager for Administration
Ryan McReynolds, Assistant City Manager of Operations
J. Michael Billingsley, City Attorney
James Demming, City Recorder/Chief Financial Officer
David Quillin, Police Chief
Scott Boyd, Fire Chief
Lynn Tully, Development Services Director
George DeCroes, Human Resources Director
Heather Cook, Marketing and Public Relations Director

I. CALL TO ORDER

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

II.B. INVOCATION – Mark Stayton, Associate Minister, Kingsport Community Church

III. ROLL CALL

IV.A. RECOGNITIONS & PRESENTATIONS

1. Food City (Mayor Clark)
2. National Good Neighbors Week (Vice Mayor McIntire)
3. Keep Kingsport Beautiful Beautification Awards (Robin Cleary)

IV.B. APPOINTMENTS

1. Appointment to the Neighborhood Advisory Commission (AF: 221-2018) (Mayor Clark)
 - Appointment
2. Appointment to the Kingsport Higher Education Commission (AF: 222-2018) (Mayor Clark)
 - Appointment

V. APPROVAL OF MINUTES

1. Work Session – September 4, 2018
2. Business Meeting – September 4, 2018

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. Establish a Percentage Based Card Processing Fee for Accepting Credit or Debit Cards in Payment of Property Taxes and Amend Revenue and Expense Budgets of the General Fund to Reflect Collection and Appropriate Funds for the Payment of the Increased Merchant Fees (AF: 225-2018) Jim Demming, Lisa Winkle
 - Resolution
 - Ordinance – First Reading
2. Enter into an Agreement with TDOT and Sign All Applicable Documents for the State Route 126 (Memorial Boulevard) Improvements (AF: 224-2018) (Ryan McReynolds, Chad Austin)
 - Resolution
 - Ordinance – First Reading

C. BUSINESS MATTERS REQUIRING FINAL ADOPTION

1. Vacate a Portion of Cleek Road Right-of-Way (AF: 212-2018) (Jessica Harmon)
 - Ordinance – **Second Reading & Final Adoption**
2. Appropriate Funding from the Criminal Forfeiture Fund (AF: 214-2018) (David Quillin)
 - Ordinance – **Second Reading & Final Adoption**

D. OTHER BUSINESS

1. Agreement with Davis Vision for Employee Vision Insurance (AF: 217-2018) (George DeCroes)
 - Resolution
2. Agreement with Delta Dental of Tennessee for Employee Dental Insurance (AF: 215-2018) (George DeCroes)
 - Resolution
3. Amendment to the Contract between the City of Kingsport and Advanced Disposal Services (AF: 220-2018) (Ryan McReynolds)
 - Resolution
4. Purchase 1828 Ryder Drive from and Enter Lease Agreement with Kingsport Economic Development Board (AF: 210-2018) (Chris McCartt)
 - Resolution
5. Authorizing Application for TDOT “Transportation Alternative” Funds for Further Development of the Kingsport Greenbelt (AF: 216-2018) (Chris McCartt)
 - Resolution
6. Authorizing FY18 Community Development Partner Agreements (AF: 219-2018) (Lynn Tully)
 - Resolution
7. Approving a Project Development and Energy Services Agreement with Ameresco, Inc. for the City Schools (AF: 223-2018) (David Frye, Bill Shedden)
 - Resolution

VII. CONSENT AGENDA

None

VIII. COMMUNICATIONS

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

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

IX. ADJOURN



AGENDA ACTION FORM

Appointment to the Neighborhood Advisory Commission

To: Board of Mayor and Aldermen
 From: Jeff Fleming, City Manager

Action Form No.: AF-221-2018
 Work Session: September 17, 2018
 First Reading: N/A

Final Adoption: September 18, 2018
 Staff Work By: Committee
 Presentation By: Mayor Clark

Recommendation:

Approve appointment.

Executive Summary:

It is recommended to appoint Shannon Morelock to the Neighborhood Advisory Commission replacing the late Jennifer Egan.

Shannon's recommendation was collected from the Serve Kingsport volunteer process open to all residents of Kingsport.

If approved by the Board of Mayor and Aldermen, Shannon will fulfill the unexpired term effective immediately that will expire December 31, 2020.

Attachments:

1. Bio

	Y	N	O
Adler	—	—	—
Begley	—	—	—
Cooper	—	—	—
George	—	—	—
McIntire	—	—	—
Olterman	—	—	—
Clark	—	—	—

Shannon Morelock – Green Acres

My name is Shannon Morelock. I was born right here in Kingsport Tennessee, in July 9th 1963.

My childhood residence was 1621 Newbern Rd. I attended Andrew Johnson Elementary School, Ross N Robinson Middle School, and Kingsport Dobyns Bennett High school. During the summers, I worked on family farm in Sullivan Gardens, Slip-knot Belting, and Browns Custom shop in downtown Kingsport. I graduated from ETSU and the University of Tennessee.

Upon graduation, I served in your United States Air Force as a combat controller. Serving in Desert Storm and numerous other military campaigns, I earned a Presidential Citation for Valor.

My professional career has been in the medical sales field for over 20 years.

I presently reside at 2212 Montrose Ave, along with my son Gabriel Morelock. He plays travel baseball for the Tribe.

In the past, I have been an Ambassador for the Chamber of Commerce, a DKA steering committee member, on Board of directors for the American Heart Association and have helped coach for Kingsport Parks and Recreation.

My heart took its first beat in Kingsport TN, and it has never left my hometown!!



AGENDA ACTION FORM

Appointment to the Kingsport Higher Education Commission

To: Board of Mayor and Aldermen
 From: Jeff Fleming, City Manager 

Action Form No.: AF-222-2018
 Work Session: September 17, 2018
 First Reading: N/A

Final Adoption: September 18, 2018
 Staff Work By: Committee
 Presentation By: Mayor Clark

Recommendation:

Approve appointment.

Executive Summary:

It is recommended to appoint Dr. MaryLee Davis to the Kingsport Higher Education Commission replacing Tim Attebery.

Dr. Davis' recommendation was collected from the Serve Kingsport volunteer process open to all residents of Kingsport.

If approved by the Board of Mayor and Aldermen, Dr. Davis will fulfill an unexpired term that is effective immediately and will expire March 31, 2019.

Attachments:

1. Bio

	Y	N	O
Adler	—	—	—
Begley	—	—	—
Cooper	—	—	—
George	—	—	—
McIntire	—	—	—
Olterman	—	—	—
Clark	—	—	—

Dr. MaryLee Davis
3616 Hemlock Park Drive
Kingsport, TN 37663

davism1@msu.edu

423-239-6251

I grew up in Kingsport, attended Kingsport City Schools, and later taught in the Kingsport school system. Kingsport provided me with the foundation for my life, my career in Higher Education and Public Policy, and the leadership/civic opportunities I have had.

After receiving a Master's Degree from at UTK in College Student Personnel, I moved to Michigan where I completed a Ph.D. in Higher Education Administration and then began my career at Michigan State University working in executive management positions in government affairs and advocacy roles for the university and was the Professor in the College of Education in the Department of

Minutes of the Regular Work Session of the
Board of Mayor and Aldermen, City of Kingsport, Tennessee
Tuesday, September 4, 2018, 4:00 PM
Council Room – City Hall

PRESENT: Board of Mayor and Aldermen

Mayor John Clark

Vice-Mayor Mike McIntire

Alderman Jennifer Adler

Alderman Joe Begley

Alderman Colette George

Alderman Tommy Olterman

City Administration

Jeff Fleming, City Manager

J. Michael Billingsley, City Attorney

James H. Demming, City Recorder

1. **CALL TO ORDER:** 4:00 p.m. by Mayor Clark.
2. **ROLL CALL:** By Deputy City Recorder Angie Marshall. Absent: Alderman Betsy Cooper
3. **MEADOWVIEW CONFERENCE RESORT & CONVENTION CENTER.** Ms. Ramona Jackson provided the annual update for Meadowview, highlighting revenues from the banquet and local catering services as well as the golf course. Mayor Clark pointed out the yearly deficit for the city's operational expenses in comparison to the significant profit made by Eastman and asked for equalization to allow the city to break even. CeeGee McCord commented on the contributions Eastman has made at Meadowview over the years. Discussion followed.
4. **REVIEW OF AGENDA ITEMS ON THE SEPTEMBER 4, 2018 REGULAR BUSINESS MEETING AGENDA.** City Manager Fleming and members of staff gave a summary or presentation for each item on the proposed agenda. The following items were discussed at greater length or received specific questions or concerns.

VI.C.1 Amend Zoning of Parcels along Hemlock Lane and Memorial Court (AF: 200-2018). City Manager Fleming provided details on this item. Alderman George reminded the board she would be abstaining from this vote at the business meeting.

VI.D.2 Memorandum of Understanding - Engineering and Design Agreement with Kingsport Power Company (dba AEP) for Relocation of the Existing Line Associated with Main Street Redevelopment (AF: 184-2018). Assistant City Manager for Operations Ryan McReynolds asked the board for direction on how to proceed with this item, noting there were two options to consider once the MOU was passed. Option one being to move the lines to the Brickyard site for 3.3 million dollars. Option two is to clean the lines up and keep them on Main Street at cost of 2.2 million dollars. He noted there was also an option three being doing nothing. Staff recommended Option One. There was considerable discussion on this item. Bob Feathers, Anne Greenfield and Julie Gunn all commented in favor of doing something to improve the existing situation.

**Minutes of the Regular Work Session of the Board of Mayor and Aldermen of
Kingsport, Tennessee, Tuesday, September 4, 2018**

5. **ADJOURN.** Seeing no other matters presented for discussion at this work session, Mayor Clark adjourned the meeting at 5:43 p.m.

ANGELA MARSHALL
Deputy City Recorder

JOHN CLARK
Mayor

Minutes of the Regular Business Meeting of the
Board of Mayor and Aldermen of the City of Kingsport, Tennessee
Tuesday, September 4, 2018, 7:30 PM
Large Court Room – City Hall

PRESENT:

Board of Mayor and Aldermen

Mayor John Clark, Presiding

Vice Mayor Mike McIntire

Alderman Jennifer Adler

Alderman Joe Begley

Alderman Colette George

Alderman Tommy Olterman

City Administration

Jeff Fleming, City Manager

J. Michael Billingsley, City Attorney

James Demming, City Recorder/Chief Financial Officer

I. **CALL TO ORDER:** 7:30 p.m., by Mayor John Clark.

II.A. **PLEDGE OF ALLEGIANCE TO THE FLAG:** Katy Beverly.

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

III. **ROLL CALL:** By City Recorder Demming. Absent: Betsy Cooper.

IV.A. **RECOGNITIONS AND PRESENTATIONS.** None.

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

1. **Appointment to the Kingsport Higher Education Commission** (AF: 209-2018) (Mayor Clark).

Motion/Second: Adler/McIntire, to approve:

APPOINTMENT OF MR. MILES BURDINE TO SERVE ON THE **KINGSPORT HIGHER EDUCATION COMMISSION** FULFILLING THE UNEXPIRED TERM OF PARKER SMITH EFFECTIVE IMMEDIATELY AND EXPIRING ON NOVEMBER 30, 2020.

Passed: All present voting “aye.”

2. **Appointment/Reappointments to the Bays Mountain Park Commission** (AF: 213-2018) (Mayor Clark).

Motion/Second: McIntire/George, to approve:

APPOINTMENT OF MR. WOODY REEVES AND REAPPOINTMENT OF MS. ROBIN KERKHOFF AND MR. RUSS BROGDEN TO SERVE THREE-YEAR TERMS ON THE **BAYS MOUNTAIN PARK COMMISSION** EFFECTIVE IMMEDIATELY AND EXPIRING JULY 31, 2021. IN ADDITION, DARLENE CALTON SERVES AS THE SULLIVAN COUNTY COMMISSION REPRESENTATIVE AND SINCE RE-ELECTED TO HER

**Minutes of the Regular Business Meeting of the Board of Mayor and Aldermen
of the City of Kingsport, Tennessee, Tuesday, September 4, 2018**

SEAT SHE WILL REMAIN ON THE BAYS MOUNTAIN PARK COMMISSION. DON COLEMAN IS THE NEW BAYS MOUNTAIN PARK ASSOCIATION PRESIDENT WHO WILL REPLACE AMY SKELTON ON THE BAYS MOUNTAIN PARK COMMISSION.

Passed: All present voting "aye."

V. APPROVAL OF MINUTES.

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

- A. August 20, 2018 Regular Work Session
- B. August 21, 2018 Regular Business Meeting

Approved: All present voting "aye."

VI. COMMUNITY INTEREST ITEMS.

A. PUBLIC HEARINGS.

- 1. **Vacate a Portion of Cleek Road Right-of-Way** (AF: 212-2018)
(Jessica Harmon).

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

Motion/Second: McIntire/George, to pass:

AN ORDINANCE TO VACATE A PORTION OF CLEEK ROAD RIGHT-OF-WAY SITUATED IN THE CITY, TENTH CIVIL DISTRICT OF SULLIVAN COUNTY; AND TO FIX THE EFFECTIVE DATE OF THIS ORDINANCE

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

PUBLIC COMMENT. Mayor Clark 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. **Appropriate Funding from the Criminal Forfeiture Fund** (AF: 214-2018) (David Quillin).

Motion/Second: George/Adler, to pass:

AN ORDINANCE TO AMEND THE CRIMINAL FORFEITURE FUND BUDGET FOR THE YEAR ENDING JUNE 30, 2019; 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, September 4, 2018**

C. BUSINESS MATTERS REQUIRING FINAL ADOPTION.

1. Amend Zoning of Parcels Located Along Hemlock Lane and Memorial Court (AF: 200-2018) (Ken Weems).

Motion/Second: Olterman/McIntire, to pass:

ORDINANCE NO. 6758, AN ORDINANCE TO FURTHER AMEND THE ZONING CODE, TEXT AND MAP, TO REZONE PROPERTY LOCATED ALONG HEMLOCK LANE AND MEMORIAL COURT FROM R-1C, RESIDENTIAL DISTRICT TO B-3, HIGHWAY ORIENTED BUSINESS DISTRICT IN THE 11TH CIVIL DISTRICT OF SULLIVAN COUNTY; TO FIX A PENALTY FOR THE VIOLATION OF THIS ORDINANCE; AND TO FIX THE EFFECTIVE DATE OF THIS ORDINANCE

Passed on second reading in a roll call vote: Clark, Begley, McIntire and Olterman voting “aye”, Adler voting “nay” and George “abstaining.”

D. OTHER BUSINESS.

1. Contractual Agreement with the Tennessee Department of Transportation for Reimbursement of Capital Expenses (AF: 208-2018) (Chris McCartt).

Motion/Second: McIntire/George, to pass:

Resolution No. 2019-042, A RESOLUTION APPROVING A GRANT CONTRACT WITH THE TENNESSEE DEPARTMENT OF TRANSPORTATION FOR REIMBURSEMENT OF CAPITAL EXPENSES FOR THE CITY TRANSIT OPERATION AND AUTHORIZING THE MAYOR TO EXECUTE THE AGREEMENT AND ALL OTHER DOCUMENTS NECESSARY AND PROPER TO EFFECTUATE THE PURPOSE OF THE AGREEMENT

Passed: All present voting “aye.”

2. Memorandum of Understanding - Engineering and Design Agreement with Kingsport Power Company (dba AEP) for Relocation of the Existing Line Associated with Main Street Redevelopment (AF: 184-2018) (Ryan McReynolds). Alderman Begley made a motion but there was not second. This resolution did not pass. Mayor Clark stated he felt this was a disaster to not move forward, noting if the city won't provide funding for improvement then private investors won't either.

3. Accept Deeds and Deeds of Easement (AF: 211-2018) (Mike Billingsley).

4.

Motion/Second: Olterman/McIntire, to pass:

Resolution No. 2019-043, 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 KINGSFORT, A MUNICIPAL CORPORATION OF THE STATE OF TENNESSEE, TITLE TO THE PROPERTY DESCRIBED IN SUCH DEEDS, DEEDS OF EASEMENT, AND OTHER MUNIMENT OF

**Minutes of the Regular Business Meeting of the Board of Mayor and Aldermen
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TITLE, LOCATED IN THE 10TH, 12TH AND 14TH CIVIL DISTRICTS OF SULLIVAN
COUNTY, TENNESSEE

Passed: All present voting “aye.”

VII. CONSENT AGENDA. None. *(These items are considered under one motion.)*

VIII. COMMUNICATIONS.

A. CITY MANAGER. Mr. Fleming stated he had just been notified Clay Walker’s
mother passed away unexpectedly and offered condolences.

B. MAYOR AND BOARD MEMBERS. Alderman Olterman congratulated Dobyns
Bennett, Sullivan Central, Sullivan South and Sullivan North on their football
victories. Alderman George and Alderman Adler stated Alderman Cooper was
in everyone’s thoughts and prayers tonight. Vice-Mayor McIntire recognized
several grants that were recently received by the Transit department, Parks
and Recreation and Keep Kingsport Beautiful. He also commented on the
volunteer breakfast and the staff service awards.

C. VISITORS. None.

IX. ADJOURN. Seeing no other business for consideration at this meeting, Mayor Clark
adjourned the meeting at 8:07 p.m.


ANGELA MARSHALL
Deputy City Recorder

JOHN CLARK
Mayor



AGENDA ACTION FORM

Establish a Percentage Based Card Processing Fee for Accepting Credit or Debit Cards in Payment of Property Taxes and Amend Revenue and Expense Budgets of the General Fund to Reflect Collection and Appropriate Funds for the Payment of the Increased Merchant Fees

To: Board of Mayor and Aldermen
From: Jeff Fleming, City Manager 

Action Form No.: AF-225-2018
Work Session: September 17, 2018
First Reading: September 18, 2018

Final Adoption: October 2, 2018
Staff Work By: Jim Demming / Lisa Winkle
Presentation By: Jim Demming / Lisa Winkle

Recommendation:

Approve the Resolution and Ordinance.

Executive Summary:

The BMA has previously approved acceptance of credit and debit cards for various charges ranging from utility bills to concession stands at DB. Payments made over the phone or on the internet are charged a flat \$3.00 convenience fee. Although credit card companies allow collection of a convenience fee for payments made over the phone or on the internet, they do not allow collection of convenience fees, processing fees or transaction fees for MOST face to face transactions.

To help governments remain whole, credit card companies do allow a charge for processing credit or debit cards when the payment is for taxes even if the payment is made in person.

Due to citizens requesting the option to pay property taxes by credit or debit cards, we are requesting the BMA to establish a Card Processing Fee of 2.75% to offset the merchant processing fees we will be charged for processing the credit or debit card transactions. This requested fee is in line with similar fees charged by the State of Tennessee and Sullivan County.

This Ordinance will allow the City to cover the costs of accepting credit or debit cards for property taxes and have that charge paid by the citizens using the service.

Attachments:

1. Resolution
2. Ordinance

	Y	N	O
Adler	—	—	—
Begley	—	—	—
Cooper	—	—	—
George	—	—	—
McIntire	—	—	—
Olterman	—	—	—
Clark	—	—	—

RESOLUTION NO. _____

A RESOLUTION TO AMEND RESOLUTION NO. 2018-193 RATES, FEES AND CHARGES THEREIN ESTABLISHING FEES FOR USE OF CREDIT AND DEBIT CARDS FOR PAYMENT OF CONVENIENCE CHARGES FOR UTILITY SERVICE

WHEREAS, by Resolution No. 2018-193, the Board of Mayor and Aldermen of the City of Kingsport, Tennessee set the rates, fees and charges as set by the Kingsport Code of Ordinances; and

WHEREAS, it is now deemed advisable to amend Resolution No. 2018-193 with a supplement to set fees under Chapter 2 – Administration; and

WHEREAS, various fees and charges provided for in the City's Code of Ordinances must be set and amended by resolution of the Board of Mayor and Aldermen.

NOW, THEREFORE, BE IT RESOLVED by the Board of Mayor and Aldermen of the City of Kingsport, Tennessee as follows:

SECTION I. That effective September 18, 2018, Resolution 2018-193 is amended as follows:

Chapter 2 - Administration

- A. Returned check handling charge \$30.00
- B. Kingsport City Flag Cost + \$5.00
- C. City Court costs (per case) \$60.00
 - (a) State Litigation fee \$13.75
 - (b) Local Litigation fee \$13.75
- D. Public Records
 - 1. Code of Ordinances
 - (a) 2012 Code of Ordinances (hard copy) \$188.00
 - (b) 2012 Code of Ordinances (hard copy in binder with tabs) \$293.00
 - (c) Each Supplement to the 2012 Code of Ordinances (hard copy) \$63.81
 - (d) Each Supplement to the 2012 Code of Ordinances (hard copy in binder with tabs) \$60.00
 - 2. Copy/Duplication
 - (a) Per page – black and white (more than 10 pages) \$0.15
 - (b) Per page – color (more than 10 pages) \$0.50
 - (c) Audiotape \$5.00
 - (d) Compact Disc \$5.00
 - (e) Digital Video Disc \$5.00
 - (f) Cost of labor, in excess of one hour, spent locating, retrieving, redacting and reproducing requested records.
- E. Credit and Debit Card Transactions and Convenience Fees
 - 1. Payment transactions made via Interactive Voice Response (IVR) systems, internet, kiosk, or other automated methods \$3.00
 - (a) Transaction Limit on Utility Payments made by Credit or Debit Cards utilizing one of the methods above \$500.00
 - 2. Payment transactions made "face-to-face" \$0.00

- (a) Transaction Limit on Utility Payments made by Credit or Debit Cards face-to-face".....\$2,500.00
 - 3. Payment transactions made via internet through Kingsport Public Library payment systems..... \$0.50
- F. Property Taxes Paid with Credit and Debit Card Transactions, including real or personal
 - 1. Card Processing Fee for Property taxes paid with a Debit or Credit Card. 2.75%
- G. Engineering
 - 1. Pick-up fee for project bid documents for City-associated projects (nonrefundable).
 - (a) Construction plans, specifications, bid form and associated documents \$50.00

SECTION II. That this resolution shall become effective September 18, 2018 and remain in force and effect until such time as it is revoked, further amended, or superseded.

Adopted this 18th day of September 2018.

JOHN CLARK, MAYOR

ATTEST:

JAMES H. DEMMING, CITY RECORDER

APPROVED AS TO FORM:

J. MICHAEL BILLINGSLEY, CITY ATTORNEY

ORDINANCE NO. _____

AN ORDINANCE TO AMEND THE GENERAL FUND BUDGET BY APPROPRIATING CREDIT CARD PROCESSING FEES FOR THE YEAR ENDING JUNE 30, 2019; 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 amended by appropriating funds received from credit card processing in the amount of \$75,000.

<u>Account Number/Description:</u>	<u>Budget</u>	<u>Incr/<Decr></u>	<u>New Budget</u>
<u>Fund 110: General Fund</u>			
<u>Revenues:</u>	\$	\$	\$
110-0000-368-7900 Card Processing Fee	0	75,000	75,000
<i>Totals:</i>	0	75,000	75,000
<u>Expenditures:</u>	\$	\$	\$
110-2001-421-4071 Merchant Account Fees	42,800	75,000	117,800
<i>Totals:</i>	42,800	75,000	117,800

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.

JOHN CLARK, Mayor

ATTEST:

ANGIE MARSHALL
Deputy City Recorder

APPROVED AS TO FORM:

J. MICHAEL BILLINGSLEY, City Attorney

PASSED ON 1ST READING: _____

PASSED ON 2ND READING: _____



AGENDA ACTION FORM

Enter into an Agreement with TDOT and Sign All Applicable Documents for the State Route 126 (Memorial Boulevard) Improvements

To: Board of Mayor and Aldermen
 From: Jeff Fleming, City Manager

Action Form No.: AF-224-2018
 Work Session: September 17, 2018
 First Reading: September 18, 2018

Final Adoption: October 2, 2018
 Staff Work By: C. Alley
 Presentation By: R. McReynolds/C. Austin

Recommendation: Approve the Resolution and Ordinance.

Executive Summary:

The Tennessee Department of Transportation (TDOT) is planning to realign approximately 4.1 miles of State Route 126 from the intersection of East Center Street to the intersection with Cooks Valley Road, as well as numerous side streets, to improve safety along the route. This project has been in the planning stages for several years with TDOT.

This project will impact approximately 38,000 linear feet of waterline and approximately 19,000 linear feet of sewer. TDOT's scheduled bid letting for this project is currently set for December 11, 2020. This project is eligible for Chapter 86 reimbursement from TDOT, with a reimbursement cap of \$1.75 million for each utility (Water and Sewer would each have their own individual cap). The total estimated cost for engineering and construction is \$4.25 million for Water and \$3.10 million for Sewer. The intent is for this work to be included in TDOT's construction project.

TDOT must approve our consultant since they have to provide plans per TDOT regulations. We have enlisted Barge Design Solutions to be our consultant on this project. TDOT requires the City to pay Barge Design Solutions for their services, and then they will reimburse the City. The engineering for the project will cost \$706,445 (\$412,744 Water and \$293,701 Sewer).

A budget ordinance is included to pay the engineering upfront costs.

Attachments:

1. Resolution
2. Budget Ordinance
3. TDOT Chapter 86 Certification Documents
4. Location Map

Funding source appropriate and funds are available: 

	Y	N	O
Adler	—	—	—
Begley	—	—	—
Cooper	—	—	—
George	—	—	—
McIntire	—	—	—
Olterman	—	—	—
Clark	—	—	—

RESOLUTION NO. _____

A RESOLUTION APPROVING AN AGREEMENT WITH THE
TENNESSEE DEPARTMENT OF TRANSPORTATION FOR THE
STATE ROUTE 126, MEMORIAL BOULEVARD
IMPROVEMENTS, AND AUTHORIZING THE MAYOR TO
EXECUTE THE AGREEMENT AND ALL OTHER DOCUMENTS
NECESSARY AND PROPER TO EFFECTUATE THE PURPOSE
OF THE AGREEMENT

WHEREAS; the Tennessee Department of Transportation (TDOT) is planning to realign approximately 4.1 miles of State Route 126 (Memorial Boulevard) from the intersection of East Center Street to the intersection with Cooks Valley Road, as well as numerous side streets, to improve safety along the route; and

WHEREAS, TDOT's scheduled bid letting for this project is currently set for December 11, 2020; and

WHEREAS, this project will impact approximately 38,000 linear feet of city waterlines and approximately 19,000 linear feet of city sewer lines; and

WHEREAS, the total estimated cost for engineering and construction is \$4.25 million for water line relocation and \$3.10 million for sewer line relocation; and

WHEREAS, this project is eligible for Chapter 86 reimbursement from TDOT, with a reimbursement cap of \$1.75 million for each utility (water and sewer would each have their own individual cap); and

WHEREAS, TDOT must approve the city's consultant engineer since the plans must be provided pursuant to TDOT regulations, and the city has enlisted Barge Design Solutions to be the city's Consulting Engineer on this project; and

WHEREAS, the engineering cost by Barge Design Solutions is estimated to be \$412,744.00 for water relocations and \$293,701.00 for sewer relocations for a total estimated cost of \$706,445.00; and

WHEREAS, the city will be reimbursed the cost for the service provided by the firm of Barge Design Solutions by the state; and

WHEREAS, a Memorandum of Understanding for Consulting Engineering Services is required by TDOT; and

Now therefore,

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

SECTION I. That a Tennessee Department of Transportation's Memorandum of Understanding for Consulting Engineering Services with Barge Design Services for the State Route 126 (Memorial Drive) waterline and sewer line relocations 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, Tennessee Department of Transportation's Memorandum of Understanding for Consulting Engineering Services with Barge Design Services for the State Route 126 (Memorial Drive) waterline and sewer line relocations and all other documents necessary and proper, and to take such acts as necessary, to effectuate the purpose of the memorandum or this resolution, said memorandum set out as follows:

**Memorandum of Understanding
(For Consultant Engineering Services)**

It is agreed hereto by and between the parties as follows:

The Utility and Consultant shall follow the procedures for the "Use of Consultant Engineers by Utilities" as outlined in the current issue of the Department's Standard "Utility Procedures Manual", Section 2.1 and 2.2.

All plans and adjustments, reallocations or locations of utilities within highway rights-of-way will conform to the current issue of the Department's "Rules and Regulations for Accommodating Utilities Within Highway Rights-of-way" and amendments thereto.

If the Engineer finds that it is necessary to increase the ceiling amount of the estimated engineering fee, or any part thereof, the Utility shall make a written request to the State setting forth the anticipated overrun by category of engineering services and the reasons for the overrun, subject to the approval of the State prior to incurring such costs. The profit figure as shown on the engineer's estimate will not be changed unless the scope of the work is changed. No increase shall be binding upon the State unless written prior approval is given by the State.

The plans and estimate shall be completed and submitted for review and approval in accordance with the State's project schedule. Failure of the Utility and/or the Consultant Engineer to meet the State's schedule shall result in damages assessed against the Utility in the amount of \$200.00 per working day.

The standard Certification of Consultant Form, the estimate of engineering fees and a statement of the scope of work involved are attached hereto and made a part of this memorandum
[Acknowledgements Deleted for Inclusion in this Resolution]

SECTION III. That the mayor is further authorized to make such changes approved by the mayor and the city attorney to the memorandum that do not substantially alter the material provisions of the memorandum, 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 18th day of September, 2018.

JOHN CLARK, MAYOR

ATTEST:

JAMES H. DEMMING, CITY RECORDER

APPROVED AS TO FORM:

J. MICHAEL BILLINGSLEY, CITY ATTORNEY

ORDINANCE NO. _____

PRE-FILED
CITY RECORDER

AN ORDINANCE TO AMEND THE WATER AND SEWER PROJECT FUND BUDGETS BY APPROPRIATING TENNESSEE DEPARTMENT OF TRANSPORTATION (TDOT) FUNDS TO THE MEMORIAL BOULEVARD IMPROVEMENT PROJECTS (WA1908 AND SW1908); AND TO FIX THE EFFECTIVE DATE OF THIS ORDINANCE

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

SECTION I. That the Water Fund project budget be amended by appropriating TDOT funds in the amount of \$412,744 to the Memorial Boulevard Improvements project (WA1908) and that the Sewer Fund project budget be amended by appropriating TDOT funds in the amount of \$293,701 to the Memorial Boulevard Improvements project (SW1908).

Account Number/Description:**Water Project Fund:451****Memorial Boulevard Improvements (WA1908)****Revenues**

451-0000-332-9000 Dep.t of Transportation

Totals:**Expenditures:**

451-0000-605-2023 Arch/Eng/Landscaping

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

0

412,744

412,744

0**412,744****412,744**

0

412,744

412,744

0**412,744****412,744****Account Number/Description:****Sewer Project Fund:452****Memorial Boulevard Improvements (SW1908)****Revenues**

452-0000-332-9000 Dept. of Transportation

Totals:**Expenditures:**

452-0000-605-2023 Arch/Eng/Landscaping

Totals:

0

293,701

293,701

0**293,701****293,701**

0

293,701

293,701

0**293,701****293,701**

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.

JOHN CLARK, Mayor

ATTEST:

JAMES H. DEMMING
City Recorder

APPROVED AS TO FORM:

J. MICHAEL BILLINGSLEY, City AttorneyPASSED ON 1ST READING: _____
PASSED ON 2ND READING: _____



Exhibit A
Scope of Services
Memorial Boulevard (State Route 126)
Water and Sanitary Sewer Line Relocation Project
(TDOT Project STP-126(16))
for
The City of Kingsport

PROJECT DESCRIPTION

The Memorial Boulevard (State Route 126) Water and Sewer Line Relocation Project (Project) consists of engineering design for the relocation of the following infrastructure in support of the Tennessee Department of Transportation (TDOT) roadway project – STP-126 (16):

- 38,000-feet of 12-inch, 8-inch, and 2-inch waterlines
- 19,000-feet of 10-inch and 8-inch sanitary sewer lines

SCOPE OF SERVICES

SURVEYING AND ENGINEERING FOR TDOT A-DATE SUBMITTAL:

Field Survey

Barge Design Solutions (Barge) will provide field surveying of City of Kingsport's existing water and sewer infrastructure impacted by the TDOT project. The survey will provide Subsurface Utility Engineering (SUE) Level B standards and be tied to TDOT control. Sanitary sewer manhole elevations and inverts will be obtained, and routing will be confirmed. Waterlines will be surveyed based on utility locates provided by the City of Kingsport. Surface features (e.g. water meters, valves and hydrants) will be obtained for the water system.

A-Date Drawings

Barge will develop a conceptual layout for the relocated utilities and will submit to the City of Kingsport (Owner) for review. Barge will conduct two meetings with the Owner to review the draft schematic A-Date drawings. Barge will address comments from the Owner, finalize the schematic drawings and submit to the Owner. The Owner will submit the A-Date drawings to TDOT for review and approval. One meeting with TDOT will be held to discuss the A Date submittal. Any comments received from TDOT will be addressed during for the TDOT B-Date Submittal.

Deliverables: Draft and final schematic design drawings; Separate packages will be submitted for each TDOT utility contract (i.e. water and sanitary sewer)

Meeting: Two (2) meetings with the City of Kingsport and one (1) meeting with TDOT to review the draft schematic drawings

Utility Engineering and Relocation Estimate with Opinion of Probable Construction Cost

Barge will prepare an opinion of probable construction cost (OPCC) for both in-kind replacement and replacement including betterment. Barge will complete TDOT's Utility Engineering and Relocation Estimate (Form 2015-16XLS) to document the utility relocation estimate and submit it to the Owner. Form 2015-16XLS includes the Schedule of Calendar Days and Chapter 86 certification which must be executed by the City of Kingsport for reimbursement.

OPCC developed for this level of design are typically categorized as a Class IV Estimate by the American Association of Cost Engineers. These costs will be developed using information from previous projects of similar scope, equipment suppliers, Barge's records, and other similar sources. At this level, the cost estimate will be prepared without the benefit of detailed drawings and is normally expected to be accurate within a range of +40 percent to -20 percent. The final cost of the project will depend on actual labor and material costs, competitive market conditions, final project scope, implementation schedule, and other variable factors. Therefore, the construction costs may vary from the estimates developed as part of this task.

Deliverables: TDOT Utility Engineering and Relocation Estimate (Form 2015-16XLS) for each utility contract

ENGINEERING FOR TDOT B-DATE SUBMITTAL:

Detailed Design Services

Barge will prepare draft final plans for the Project. The Scope of Services assumes the Project will be included in the bid documents for the TDOT roadway project and will not be bid separately. Barge will submit draft final plans to the Owner. Barge will conduct four (4) meetings with the Owner to review the draft final plans. Upon addressing comments received from the Owner, Barge will prepare plans for the Owner to submit to TDOT. Barge will attend three (3) utility deconfliction meetings with the Owner and TDOT to review the plans. Barge will prepare final plans after addressing comments received from TDOT.

Deliverables: Draft and final drawings in PDF and DGN format; Separate packages will be submitted for each TDOT utility contract (i.e. water and sanitary sewer)

Meetings: Four (4) meetings to review the draft final drawings and specifications with the Owner, and three (3) utility deconfliction meetings to review the drawings and specifications with TDOT

Master Consultant Excel Spreadsheet and Updated Opinion of Probable Construction Costs

Barge will update the OPCC and complete TDOT's Master Consultant Excel Spreadsheet (MCES) to document the utility relocation estimate and submit it to the Owner.

OPCC developed for this level of design are typically categorized as a Class I Estimate by the American Association of Cost Engineers. These costs will be developed using information from previous projects of similar scope, equipment suppliers, Barge's records, and other similar sources. At this level, the cost estimate will be prepared with the benefit of detailed drawings and is normally expected to be accurate within a range of +10 percent to -5 percent. The final cost of the project will depend on actual labor and material costs, competitive market conditions, final project scope, implementation schedule, and other variable factors. Therefore, the construction costs may vary from the estimates developed as part of this task.

Deliverables: Master Consultant Excel Spreadsheet (MCES) for each utility contract

Constructability Reviews

Barge will support the Owner and TDOT prior to the bidding of the Project. Barge will attend three (3) TDOT Constructability Reviews. Barge's input will be required in response to requests for information and clarification. Advertising the project, sending the invitation to bid to prospective bidders, and making the plans and specifications available to bidders is not included in the Barge's Scope of Services and will be provided by TDOT.

Deliverables: MCES and sealed construction drawings in PDF and DGN format based on comments received during Constructability Reviews; Separate packages will be submitted for each TDOT utility contract (i.e. water and sanitary sewer)

Meetings: Three (3) Constructability Review meetings to review the draft final drawings with TDOT.

ASSUMPTIONS AND EXCLUSIONS

- Barge shall not be responsible for Value Engineering and by the contractor, nor shall the Barge be responsible for contractor phasing that is different from TDOT traffic phasing plans.
- Barge shall not be responsible for the acts or omissions of the contractor, or of any subcontractor or supplier, or any of the contractor's or subcontractor's or supplier's agents or employees or any other persons (except the Barge's employees or agents) at the site or otherwise furnishing or performing any of the contractor's work.
- The Project will be bid with the roadway project and not as a stand-alone project.
- It is assumed that all utility line relocations associated with this project will be located within TDOT rights of way.
- It is assumed that there will be no new water booster pumping station or sewer lift station will be required as a part of this utility relocation project or modifications to existing water booster stations or sewer lift stations.

The following services are not included in the Scope of Services but can be provided by Barge upon authorization of Owner and agreement on compensation to Barge.

- Preparation of Easements
- Preparation of specifications. City of Kingsport Standard Specifications and Details will be utilized and referenced on the plans.
- Preparation of Storm Water Pollution Prevention Plan (SWPPP) or Aquatic Resource Alteration Plan (ARAP). Waterlines and sanitary sewer lines will be included in the TDOT roadway project and fall within the limits of the TDOT roadway construction SWPPP and ARAP.
- Assistance responding to RFI's, addenda preparation, etc. during Bidding Phase for construction project.
- Construction Administration during construction phase:
 - Submittal and Shop Drawing Review

- Requests for Information, Change Order Preparation and Changes to the Contract
- Review of Payments to the Contractor
- Pre-Construction and Progress Meeting Attendance
- Site Visits for Engineering Interpretations, Clarifications, and Project Coordination
- Substantial and Final Completion Observation
- Resident Project Representation
- As-built field surveys of the contractor's finished work.
- Services related to development of Owner's project financing and/or budget.
- Services related to procurement or management of third party contractors
- Services necessary due to the default of the Contractor.
- Services related to damages caused by fire, flood, earthquake or other acts of God.
- Services related to Owner's operation and use of the completed project other than as specifically provided in the Scope of Services.
- Services related to warranty claims, enforcement and inspection.
- Services for the investigation and analysis of contractor claims; preparation of reports on contractor claims; provision of professional claims analysis services; participation in litigation or alternative dispute resolution of claims.
- Preparation for and serving as a witness in connection with any public or private hearing or other forum related to the project.
- Services supporting Owner in public relations activities.
- Site visits for functional testing.
- Services to support, prepare, document, bring, defend, or assist in litigation undertaken or defended by Owner.
- Services resulting from significant changes in the scope, extent, or character of the portions of the Project designed or specified by Barge or its design requirements including, but not limited to, changes in size, complexity, Owner's schedule, character of construction, or method of financing; design changes initiated by Owner after Owner's acceptance of milestone deliverables; and revising previously accepted Drawings, Specifications, or Contract Documents when such revisions are required by changes in Laws and Regulations enacted subsequent to the Effective Date of this Agreement or are due to any other causes beyond Barge's control.

COMPENSATION

As compensation for providing the professional engineering and related services associated with the project, Owner shall compensate Barge in accordance with this Agreement and the Hourly Billing Rate Schedule (Exhibit B). The budget is broken down based on the scope of services for water and sewer separately to align with TDOT's reimbursement per utility. TDOT distinguishes the City of Kingsport's water and sewer separately for the purposes of reimbursement:

Engineering Services per Utility	Fee
Water Engineering Services	\$412,744
Sewer Engineering Services	\$293,701
Total Engineering Services	\$706,445

Barge will keep Owner informed of progress so that the budget and/or work effort can be adjusted if deemed necessary. Barge is not obligated to incur costs beyond the indicated budgets, as may be adjusted, nor is Owner obligated to pay Barge beyond these limits. When any budget has been increased, Barge's excess costs expended prior to such increase will be allowable to the same extent as if such costs had been incurred after the approved increase.



EXHIBIT B

SCHEDULE STANDARD CHARGES

COST MULTIPLIER BASIS

The method is consistent with the compensation in TDOT's Estimate of Engineering Cost Spreadsheet.

Personnel: The sum of the following in accordance with Tennessee Department of Transportation reimbursement practices for work on state highway related contracts:

- Base Charge including overhead: 2.9740 times the unburdened payroll cost of employees for time properly chargeable to the work.
- Profit Charge: 0.3055 ($2.35 \times 13\%$) times the unburdened payroll cost of employees for time properly chargeable to the work.

The total charges for personnel working on the project will equal a total of 3.2795 times the unburdened payroll cost of employees for time properly chargeable to the work.

Outside services contracted for a specific project, such as professional and technical consultants, laboratory testing, reproduction, photography, etc., will be invoiced at the amount of the subcontractor's statement plus 10 percent.

Other expenses which are properly chargeable to the work will be invoiced as follows:

- a. Travel by company or private vehicle at the TDOT approved standard mileage rate.
- b. In-house printing, reproduction, and photography charges at commercial rates.
- c. Travel and living expenses for all personnel when required to be away from headquarters in connection with the work at cost in accordance with the State of Tennessee Travel Regulations.

Invoices will be issued monthly.



UTILITY ENGINEERING AND RELOCATION ESTIMATE

UTILITY INFORMATION

Utility Name: City of Kingsport (WATER)
Utility Address: 1113 Konnarock Road
City, State: Kingsport, TN Zip Code: 37664
Phone: 423-224-2546
Contact Name: Chris Alley, PE
Email: ChrisAlley@KingsportTN.gov

CONSULTANT INFORMATION

Consultant Name: Barge Design Solutions, Inc.
Consultant Address: Four Sheridan Square, Suite 100
Kingsport, TN Zip Code: 37660
Phone: 865-637-2810
Contact Name: Andrew Clark, PE
Email: andrew.clark@bargedesign.com

TDOT PROJECT INFORMATION

Project Description: SR-126, From East Center Street in Kingsport to East of
Cooks Valley Road
Federal Project No.: STP-126(16)
State Project No.: 82085-2237-14
County(ies): Sullivan

Revision 07/03/2015



ESTIMATE OF ENGINEERING COST

TDOT Project Number(s): STP-126(16) 82085-2237-14
Utility Name & Address:
City of Kingsport (SEWER)
1113 Konnarock Road
Kingsport, TN 37664

County(ies): Sullivan
Consultant Name & Address:
Barge Design Solutions, Inc.
Four Sheridan Square, Suite 100
Kingsport, TN 37660

CONSULTANT ENGINEERING ESTIMATE

Place an "X" in the appropriate box:

☒ Standard Contract

☐ Continuing Contract (attach copy of Contract for TDOT verification)

I. ENGINEERING SERVICES		PRE-CONSTRUCTION		CONSTRUCTION		CONSTRUCTION INSPECTION	
Classification	Rate/Hr	Hours	Total	Hours	Total	Hours	Total
Principal	\$ 61.80	100	\$ 6,180.00		\$ -		\$ -
Project Manager	\$ 67.47	160	\$ 10,795.20		\$ -		\$ -
Quality Control Manager			\$ -		\$ -		\$ -
Design Engineer	\$ 34.76	24	\$ 834.24		\$ -		\$ -
Designer / Senior Designer	\$ 47.00	1379	\$ 64,813.00		\$ -		\$ -
Estimator			\$ -		\$ -		\$ -
Technician	\$ 28.07	40	\$ 1,122.80		\$ -		\$ -
Draftsperson	\$ 34.25	0	\$ -		\$ -		\$ -
Draftsperson	\$ 29.00	1084	\$ 31,436.00		\$ -		\$ -
Administrative		0	\$ -		\$ -		\$ -
Licensed Surveyor	\$ 38.25	80	\$ 3,060.00		\$ -		\$ -
Field Surveyor	\$ 23.50	180	\$ 4,230.00		\$ -		\$ -
Rod Person	\$ 15.50	180	\$ 2,790.00		\$ -		\$ -
	\$ -		\$ -		\$ -		\$ -
Total Engineering Services		3227	\$ 125,261.24	0	\$ -	0	\$ -
II. REIMBURSABLE EXPENSES		Quantity	Total	Quantity	Total	Quantity	Total
Transportation / Mile:	\$ 0.47	X 4000	\$ 1,880.00		\$ -		\$ -
Meals / Day:		X	\$ -		\$ -		\$ -
Lodging / Day:		X	\$ -		\$ -		\$ -
Printing / Shipping:			\$ 70.00		\$ -		\$ -
Other (Specify):					\$ -		\$ -
Other (Specify):					\$ -		\$ -
Total Reimbursable Expenses			\$ 1,950.00		\$ -		\$ -
III. INDIRECT / OVERHEAD EXPENSES							
Indirect/Overhead Rate (not to exceed 145%):		197.40%	\$ 247,265.69	125.00%	\$ -	125.00%	\$ -
IV. PROFIT: (2.35x(1,2,3)x ALLOWABLE RATE)							
Allowable Rate (Maximum of 13%):		13.00%	\$ 38,267.31	10.00%	\$ -	10.00%	\$ -

(Expenses for Sections III and IV only apply to Consultant Engineering Services without a Continuing Contract agreement with the Utility)

TOTAL ENGINEERING / SURVEY COST:		INSPECTION (Standard)		INSPECTION (Continuing)	
Standard Consultant: (I+II+III+IV) =	\$ 412,744.24	Private:	#DIV/0!	Private:	#DIV/0!
Continuing Contract: (I+II) =	\$ -	Public:	#DIV/0!	Public:	#DIV/0!

TOTAL COST (Engineering and Inspection)

Standard Consultant: #DIV/0!
Continuing Contract: #DIV/0!

IN-HOUSE ENGINEERING ESTIMATE

I. ENGINEERING SERVICES		PRE-CONSTRUCTION		CONSTRUCTION		CONSTRUCTION INSPECTION	
Classification	Rate/Hr	Hours	Total	Hours	Total	Hours	Total
Project Manager			\$ -		\$ -		\$ -
Engineer			\$ -		\$ -		\$ -
Draftsperson			\$ -		\$ -		\$ -
Administrative			\$ -		\$ -		\$ -
Field Inspector			\$ -		\$ -		\$ -
Licensed Surveyor			\$ -		\$ -		\$ -
Rod Person			\$ -		\$ -		\$ -
	\$ -		\$ -		\$ -		\$ -
Total Engineering Services		0	\$ -	0	\$ -	0	\$ -
II. REIMBURSABLE EXPENSES		Quantity	Total	Quantity	Total	Quantity	Total
Transportation / Mile:		X	\$ -		\$ -		\$ -
Meals / Day:		X	\$ -		\$ -		\$ -
Lodging / Day:		1 X	\$ -		\$ -		\$ -
Printing / Shipping:			\$ -		\$ -		\$ -
Other (Specify):			\$ -		\$ -		\$ -
Other (Specify):			\$ -		\$ -		\$ -
Total Reimbursable Expenses			\$ -		\$ -		\$ -
III. INDIRECT / OVERHEAD EXPENSES							
Indirect/Overhead Rate (not to exceed 145%):		125.00%	\$ -	125.00%	\$ -	125.00%	\$ -

TOTAL ENGINEERING COST: \$ -

TOTAL INSPECTION COST:

Private: #DIV/0!
Public: #DIV/0!



UTILITY ENGINEERING AND RELOCATION ESTIMATE

UTILITY INFORMATION

Utility Name: City of Kingsport (SEWER)
Utility Address: 1113 Konnarock Road
City, State: Kingsport, TN Zip Code: 37664
Phone: 423-224-2546
Contact Name: Chris Alley, PE
Email: ChrisAlley@KingsportTN.gov

CONSULTANT INFORMATION

Consultant Name: Barge Design Solutions, Inc.
Consultant Address: Four Sheridan Square, Suite 100
Kingsport, TN Zip Code: 37660
Phone: 865-637-2810
Contact Name: Andrew Clark, PE
Email: andrew.clark@bargedesign.com

TDOT PROJECT INFORMATION

Project Description: SR-126, From East Center Street in Kingsport to East of
Cooks Valley Road
Federal Project No.: STP-126(16)
State Project No.: 82085-2237-14
County(ies): Sullivan

Revision 07/03/2015



ESTIMATE OF ENGINEERING COST

TDOT Project Number(s): STP-126(16) 82085-2237-14
Utility Name & Address:
City of Kingsport (SEWER)
1113 Konnarock Road
Kingsport, TN 37664

County(ies): Sullivan
Consultant Name & Address:
Barge Design Solutions, Inc.
Four Sheridan Square, Suite 100
Kingsport, TN 37660

CONSULTANT ENGINEERING ESTIMATE

Place an "X" in the appropriate box:

☒ Standard Contract

☐ Continuing Contract (attach copy of Contract for TDOT verification)

I. ENGINEERING SERVICES

Classification	Rate/Hr	PRE-CONSTRUCTION		CONSTRUCTION		CONSTRUCTION INSPECTION	
		Hours	Total	Hours	Total	Hours	Total
Principal	\$ 76.22	48	\$ 3,658.56		\$ -		\$ -
Project Manager	\$ 67.47	263	\$ 17,744.61		\$ -		\$ -
Quality Control Manager	\$ 77.51	64	\$ 4,960.64		\$ -		\$ -
Design Engineer	\$ 34.76	570	\$ 19,813.20		\$ -		\$ -
Designer / Senior Designer	\$ 47.00	69	\$ 3,243.00		\$ -		\$ -
Estimator	\$ 40.69	20	\$ 813.80		\$ -		\$ -
Technician	\$ 28.07	175	\$ 4,912.25		\$ -		\$ -
Draftsperson	\$ 34.25	646	\$ 22,125.50		\$ -		\$ -
Draftsperson	\$ 29.00	2	\$ 58.00		\$ -		\$ -
Administrative	\$ 33.22	46	\$ 1,528.12		\$ -		\$ -
Licensed Surveyor	\$ 38.25	83	\$ 3,174.75		\$ -		\$ -
Field Surveyor	\$ 23.50	181	\$ 4,253.50		\$ -		\$ -
Rod Person	\$ 15.50	181	\$ 2,805.50		\$ -		\$ -
	\$ -		\$ -		\$ -		\$ -
Total Engineering Services		2348	\$ 89,091.43	0	\$ -	0	\$ -

II. REIMBURSABLE EXPENSES

Cost/Unit	Quantity	Total	Quantity	Total	Quantity	Total
Transportation / Mile:	\$ 0.47 X 3085	\$ 1,449.95		\$ -		\$ -
Meals / Day:	X	\$ -		\$ -		\$ -
Lodging / Day:	X	\$ -		\$ -		\$ -
Printing / Shipping:		\$ 75.05		\$ -		\$ -
Other (Specify):						
Other (Specify):						
Total Reimbursable Expenses		\$ 1,525.00		\$ -		\$ -

III. INDIRECT / OVERHEAD EXPENSES

Indirect/Overhead Rate (not to exceed 145%):	197.40%	\$ 175,866.48	125.00%	\$ -	125.00%	\$ -
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IV. PROFIT: (2.35x(1,2,3) ALLOWABLE RATE)

Allowable Rate (Maximum of 13%):	13.00%	\$ 27,217.43	10.00%	\$ -	10.00%	\$ -
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(Expenses for Sections III and IV only apply to Consultant Engineering Services without a Continuing Contract agreement with the Utility)

TOTAL ENGINEERING / SURVEY COST:

Standard Consultant: (I+II+III+IV) =	\$ 293,700.34
Continuing Contract: (I+II) =	\$ -

INSPECTION (Standard)

Private:	#DIV/0!	Private:	#DIV/0!
Public:	#DIV/0!	Public:	#DIV/0!

INSPECTION (Continuing)

TOTAL COST (Engineering and Inspection)

Standard Consultant:	#DIV/0!
Continuing Contract:	#DIV/0!

IN-HOUSE ENGINEERING ESTIMATE

I. ENGINEERING SERVICES

Classification	Rate/Hr	PRE-CONSTRUCTION		CONSTRUCTION		CONSTRUCTION INSPECTION	
		Hours	Total	Hours	Total	Hours	Total
Project Manager			\$ -		\$ -		\$ -
Engineer			\$ -		\$ -		\$ -
Draftsperson			\$ -		\$ -		\$ -
Administrative			\$ -		\$ -		\$ -
Field Inspector			\$ -		\$ -		\$ -
Licensed Surveyor			\$ -		\$ -		\$ -
Rod Person			\$ -		\$ -		\$ -
	\$ -		\$ -		\$ -		\$ -
Total Engineering Services		0	\$ -	0	\$ -	0	\$ -

II. REIMBURSABLE EXPENSES

Cost/Unit	Quantity	Total	Quantity	Total	Quantity	Total
Transportation / Mile:	X	\$ -		\$ -		\$ -
Meals / Day:	X	\$ -		\$ -		\$ -
Lodging / Day:	1 X	\$ -		\$ -		\$ -
Printing / Shipping:						
Other (Specify):						
Other (Specify):						
Total Reimbursable Expenses		\$ -		\$ -		\$ -

III. INDIRECT / OVERHEAD EXPENSES

Indirect/Overhead Rate (not to exceed 145%):	125.00%	\$ -	125.00%	\$ -	125.00%	\$ -
--	---------	------	---------	------	---------	------

TOTAL ENGINEERING COST:

\$ -

TOTAL INSPECTION COST:

Private:	#DIV/0!
Public:	#DIV/0!



Certification of Consultant

I hereby certify that I am the Vice President and duly authorized
(title)
representative of the firm of Barge Design Solutions, Inc.
(firm name)
whose address is 520 West Summit Hill Drive, Suite 1202 Knoxville, TN 37902
(firm address)
and

That, except as expressly stated and described herein, neither I nor the firm of
Barge Design Solutions, Inc. has, in connection with its contract with
(firm name)
City of Kingsport, entered
(utility name)
into pursuant to provisions of an agreement between the aforementioned utility and the
State of Tennessee, as a part of Federal-aid project STP-126(16)
(project number)

(a) employed or retained for a commission, percentage, brokerage,
contingent fee, or other consideration, any firm, company, or person, other than a bona
fide employee working solely for me or the aforementioned firm, to solicit or secure the
contract, or

(b) agreed, as an expense or implied condition for obtaining the award of the
contract, to employ or retain the services of any firm, company, or person in connection
with the carrying out of the contract, or

(c) paid, or agreed to pay, to any firm, company, or organization, or person,
other than a bona fide employee working solely for me or the aforementioned firm, any
fee, contribution, donation, or consideration of any kind for, or in connection with,
procuring or carrying out the contract.

(Statement and explanation of exception, if any):

None

I acknowledge that this certificate is to be furnished to the State highway
Department and the Federal Highway Administration, U.S. Department of
Transportation, in connection with the aforementioned project involving participation of
Federal-aid highway funds, and is subject to applicable State and Federal laws, both
criminal and civil.

09/06/18

(Date)

Andrew Clark



(Signature)



Memorandum of Understanding (For Consultant Engineering Services)

It is agreed hereto by and between the parties as follows:

The Utility and Consultant shall follow the procedures for the "Use of Consultant Engineers by Utilities" as outlined in the current issue of the Department's Standard "Utility Procedures Manual", Section 2.1 and 2.2.

All plans and adjustments, reallocations or locations of utilities within highway rights-of-way will conform to the current issue of the Department's "Rules and Regulations for Accommodating Utilities Within Highway Rights-of-way" and amendments thereto.

If the Engineer finds that it is necessary to increase the ceiling amount of the estimated engineering fee, or any part thereof, the Utility shall make a written request to the State setting forth the anticipated overrun by category of engineering services and the reasons for the overrun, subject to the approval of the State prior to incurring such costs. The profit figure as shown on the engineer's estimate will not be changed unless the scope of the work is changed. No increase shall be binding upon the State unless written prior approval is given by the State.

The plans and estimate shall be completed and submitted for review and approval in accordance with the State's project schedule. Failure of the Utility and/or the Consultant Engineer to meet the State's schedule shall result in damages assessed against the Utility in the amount of \$200.00 per working day.

The standard Certification of Consultant Form, the estimate of engineering fees and a statement of the scope of work involved are attached hereto and made a part of this memorandum.

City of Kingsport

Utility

By: _____ Date: _____

Utility Signature

Barge Design Solutions, Inc.

Consultant Engineer

By: **Andrew Clark** _____ Date: **09/06/18**

Digitally signed by Andrew Clark
DN: c=US, e=andrew.clark@bwsr.net, o=Barge Waggoner Sumner and
Cannon, Inc., ou=Water Services, cn=Andrew Clark
Date: 2018.09.07 12:02:25-0400

Consultant Signature

Approved: _____ Date: _____

State Utilities Office



CAD Plan files Disclaimer and Limitation of Liability Agreement

The Tennessee Department of Transportation (TDOT) is committed to providing electronic access to files. TDOT does not possess a staff that is available to provide technical support to outside parties who receive CAD files. It is important, therefore, that all potential users of these files read the following disclaimer and accept its terms as prerequisite to the use of the files.

1. TDOT makes no warranty of any kind, express or implied, with respect to the file(s) subject to this agreement, and specifically makes no warranty that said file(s) shall be fit for any particular purpose. Furthermore, any description of said file(s) shall not be deemed to create an express warranty that such file(s) shall conform to said description.
2. Receiver assumes all risk and liability for any losses, damages, claims or expenses resulting from the use or possession of any file(s) furnished by TDOT pursuant to this agreement.
3. Receiver agrees to indemnify, defend and hold harmless to the extent permitted by law TDOT, its officers, agents, and employees from and against any and all claims, suits, losses, damages and costs, including reasonable attorney's fees, arising from or by reason of receiver's use or possession with respect to any of the file(s) furnished by TDOT pursuant to this agreement, and such indemnification shall survive acceptance of said file(s) by receiver.
4. All design files are MicroStation™ drawing files (*.dgn). Receiver agrees that TDOT cannot provide the files in other file formats, and agrees to accept the file(s) in the format provided. Receiver agrees that TDOT cannot be held responsible for problems arising from files which have been converted for use in non-native applications (e.g. MicroStation design files to Autocad).
5. Since revisions or additions to the design file(s) may occur at any time, the receiver agrees to indemnify, defend and hold harmless to the extent permitted by law TDOT, its officers, agents, and employees from and against any and all claims, suits, losses, damages or costs, including reasonable attorney's fees, arising from the use of outdated design files, and such indemnification shall survive acceptance of said file(s) by receiver.
6. The design files are copyrighted by the Tennessee Department of Transportation and may not be resold.
7. Receiver agrees to provide TDOT with electronic files for utility relocation plans concerning the subject project.
8. These terms and conditions constitute the complete and final agreement of the parties hereto.
9. The undersigned is authorized by _____ Barge Design Solutions, Inc. to execute this agreement on its behalf. (Firm/Agency)

I accept the aforementioned terms and conditions.

Project: SR-126, From East Center Street in Kingsport to East of Cooks Valley Road – TDOT Project Number – 82085-2237-14

File (s): All pertinent project related files

Andrew Clark

Digitally signed by Andrew Clark
DN: cn=Andrew Clark, o=Barge Design Solutions, Inc., ou=Engineering, email=andrew.clark@bdsinc.net, c=US

Barge Design Solutions, Inc.

09/06/18

Signature (Receiver)

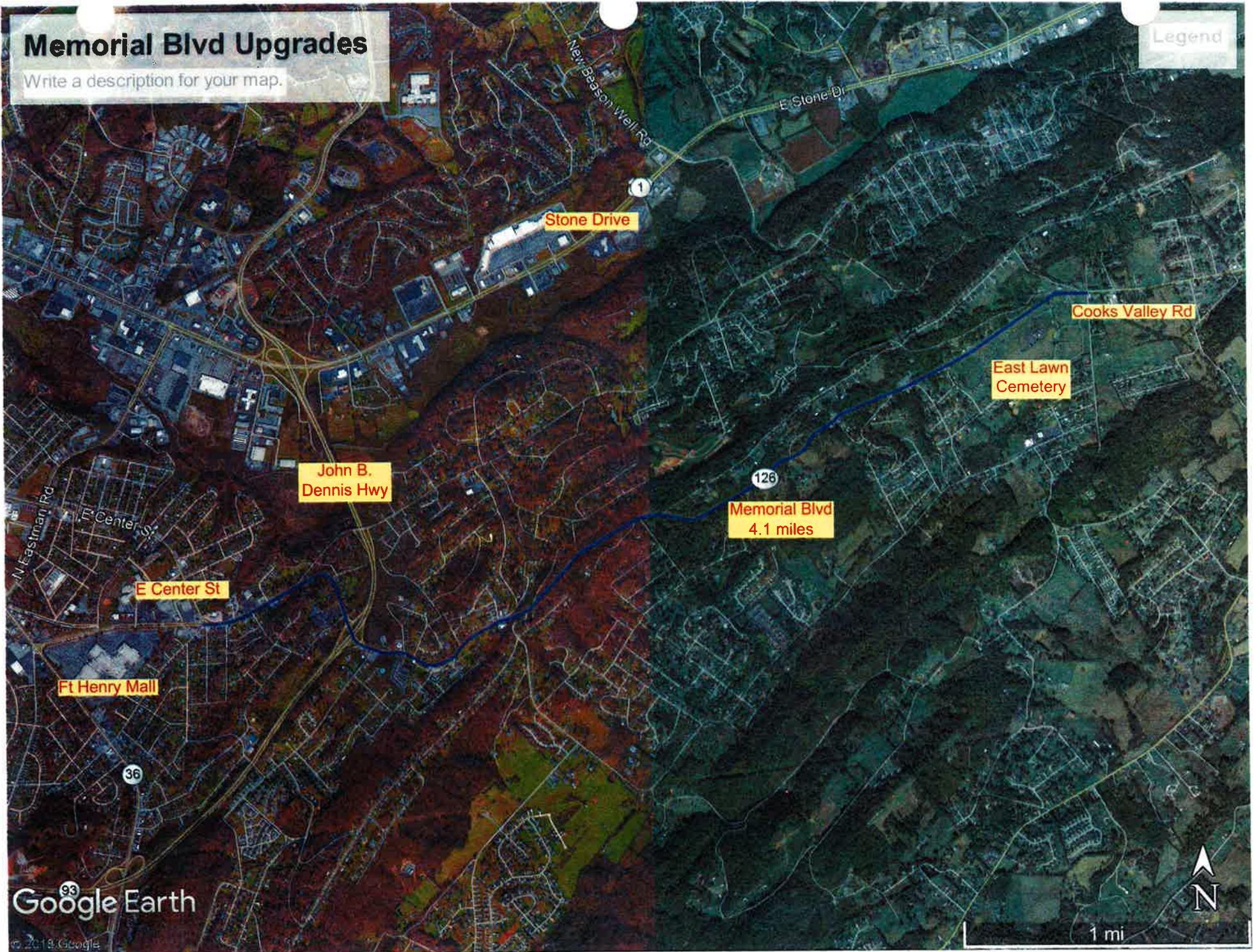
Firm /Agency

Date

Memorial Blvd Upgrades

Write a description for your map.

Legend





AGENDA ACTION FORM

Vacate a Portion of Cleek Road Right-of-Way

To: Board of Mayor and Aldermen
 From: Jeff Fleming, City Manager

Action Form No.: AF-212-2018
 Work Session: September 4, 2018
 First Reading: September 4, 2018

Final Adoption: September 18, 2018
 Staff Work By: Jessica Harmon
 Presentation By: Jessica Harmon

Recommendation:

- ~~Hold public hearing~~
- Approve Ordinance vacating a portion of Cleek Road right-of-way

Executive Summary:

This is a request, from the owners of the Cleek Farm, to vacate a portion of Cleek Road right-of-way. The area of request is approximately 6,055 square feet and includes the old road bed for Cleek Road before the road was realigned. The Major Street and Road Plan calls for Cleek Road to have an 80-foot right-of-way. The area of request is outside of that 80 feet. City Departments as well as Local Utility Providers have reviewed the request. City staff sees no future use for this property. The only utility located within the area is the anchors for the AEP Power Poles located along Cleek Road. The owners of the property have worked with AEP to secure an easement for these anchors. During their August 2018 regular meeting, the Kingsport Regional Planning Commission voted unanimously to send a favorable recommendation for the vacating to the Board of Mayor and Aldermen. The Notice of Public Hearing was published on August 20, 2018.

Attachments:

1. Notice of Public Hearing
2. Ordinance
3. Legal Description
4. Staff Report

	Y	N	O
Adler	—	—	—
Begley	—	—	—
Cooper	—	—	—
George	—	—	—
McIntire	—	—	—
Olterman	—	—	—
Clark	—	—	—



AGENDA ACTION FORM

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3. Legal Description
4. Staff Report

	Y	N	O
Adler	—	—	—
Begley	—	—	—
Cooper	—	—	—
George	—	—	—
McIntire	—	—	—
Olterman	—	—	—
Clark	—	—	—

NOTICE OF PUBLIC HEARING

NOTICE IS HEREBY GIVEN to all citizens of the City of Kingsport, Tennessee, to all persons interested, and the public at large that the City of Kingsport Board of Mayor and Aldermen will conduct a Public Hearing during its regular business meeting on Tuesday, September 4, 2018, to consider the vacating of a portion of Cleek Road right-of-way. The regular business meeting will begin at 7:00 p.m. in the large courtroom located on the second floor of City Hall, at 225 W. Center Street, Kingsport, Tennessee.

The property proposed for vacating is generally described as follows:

BEGINNING at a rebar set on a curve in the northeasterly sideline of Cleek Road (the new roadbed as it exists in 2018), 40 feet radially from the centerline of said road, and distant about 815 feet southeasterly along said sideline from its intersection with the southerly sideline of East Stone Drive (US Highway 11-W); thence with the boundary of a portion of the old abandoned Cleek Road roadbed, the following six calls: (1) crossing part of the old roadbed diagonally to its northeasterly sideline, N57°42'00"E a distance of 44.53 feet to a point, (2) along said northeasterly sideline of the old roadbed, with a non-tangent curve turning to the right with an arc length of 164.36 feet, with a radius of 140.00 feet, with a chord bearing of S57°52'02"E, with a chord length of 155.08 feet to the PT, (3) continuing with said northeasterly sideline of the old roadbed, S24°14'06"E a distance of 71.09 feet to a point on the northeasterly sideline of the new roadbed, 40 feet radially from the centerline of said New roadbed, (4) with the northeasterly sideline of said new roadbed, along a non-tangent curve turning to the left with an arc length of 75.74 feet, with a radius of 440.08 feet, with a chord bearing of N47°36'35"W, with a chord length of 75.65 feet to a point on the southwesterly sideline of the old roadbed, (5) with said southwesterly sideline of the old roadbed and the northeasterly sideline of the new roadbed, a non-tangent curve that is NOT concentric with the centerline of said new roadbed, turning to the left with an arc length of 145.99 feet, with a radius of 110.00 feet, with a chord bearing of N61°23'48"W, with a chord length of 135.51 feet, to a point that is again 40 feet radially from the centerline of said new roadbed, and (6) with the northeasterly sideline of the new roadbed, a non-tangent curve turning to the left with an arc length of 24.53 feet, with a radius of 440.08 feet, with a chord bearing of N71°50'59"W, with a chord length of 24.53 feet to the point of BEGINNING, having an area of 6,055 square feet (0.139 acres)

All interested persons are invited to attend this meeting and public hearing. A detailed map and description is on file in the offices of the City Manager, Kingsport Library, and Planning Office for inspection. Additional information concerning this proposal may be obtained by contacting the Kingsport Planning Division of the Development Services Department, telephone 423-343-9783.

CITY OF KINGSPORT
Angie Marshall, Deputy City Clerk
P1T: 08/20/18

ORDINANCE NO. _____

AN ORDINANCE TO VACATE A PORTION OF CLEEK ROAD
RIGHT-OF-WAY SITUATED IN THE CITY, TENTH CIVIL
DISTRICT OF SULLIVAN COUNTY; AND TO FIX THE
EFFECTIVE DATE OF THIS ORDINANCE

WHEREAS, after due investigation and careful consideration at a meeting held on August 16, 2018, the Kingsport Regional Planning Commission has determined that the public interest of the city is best served and warrants vacating the portion of Cleek Road right-of-way described herein, and that no future use of the same for right-of-way purposes is reasonably anticipated; and

WHEREAS, as a result of its action at the meeting held on August 16, 2018, the Kingsport Regional Planning Commission recommends to the board of mayor and aldermen to vacate for the right-of-way described herein.

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

SECTION I. The city hereby vacates and closes to public use a portion of Cleek Road right-of-way within the City of Kingsport, 10th Civil District of Sullivan County, Tennessee, which for purposes of this vacation is further described as follows:

BEGINNING at a rebar set on a curve in the northeasterly sideline of Cleek Road (the new right-of-way as it exists in 2018), 40 feet radially from the centerline of said right-of-way, and distant about 815 feet southeasterly along said sideline from its intersection with the southerly sideline of East Stone Drive (US Highway 11-W); thence with the boundary of a portion of the old abandoned Cleek Road right-of-way, the following six calls: (1) crossing part of the old right-of-way diagonally to its northeasterly sideline, N57°42'00"E a distance of 44.53 feet to a point, (2) along said northeasterly sideline of the old right-of-way, with a non-tangent curve turning to the right with an arc length of 164.36 feet, with a radius of 140.00 feet, with a chord bearing of S57°52'02"E, with a chord length of 155.08 feet to the PT, (3) continuing with said northeasterly sideline of the old right-of-way, S24°14'06"E a distance of 71.09 feet to a point on the northeasterly sideline of the new right-of-way, 40 feet radially from the centerline of said New right-of-way, (4) with the northeasterly sideline of said new right-of-way, along a non-tangent curve turning to the left with an arc length of 75.74 feet, with a radius of 440.08 feet, with a chord bearing of N47°36'35"W, with a chord length of 75.65 feet to a point on the southwesterly sideline of the old right-of-way, (5) with said southwesterly sideline of the old right-of-way and the northeasterly sideline of the new right-of-way, a non-tangent curve that is NOT concentric with the centerline of said new right-of-way, turning to the left with an arc length of 145.99 feet, with a radius of 110.00 feet, with a chord bearing of N61°23'48"W, with a chord length of 135.51 feet, to a point that is again 40 feet radially from the centerline of said new right-of-way, and (6) with the northeasterly sideline of the new right-of-way, a non-tangent curve turning to the left with an arc length of 24.53 feet, with a radius of 440.08 feet, with a chord bearing of N71°50'59"W, with a chord length of 24.53 feet to the point of BEGINNING, having an area of 6,055 square feet (0.139 acres), as shown on a drawing entitled Division of A Part of the C & M Cleek Family General Partnership Property, prepared by Daniel I. Saxon, RLS #334.

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.

JOHN CLARK, MAYOR

ATTEST:

JAMES H. DEMMING, CITY RECORDER

APPROVED AS TO FORM:

J. MICHAEL BILLINGSLEY, CITY ATTORNEY

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

PROPOSED LEGAL DESCRIPTION
30' WIDE OLD CLEEK ROAD RIGHT-OF-WAY TO BE VACATED BY CITY OF KINGSPORT, TN
6,055 SQ FT (0.139 ACRES)

BEGINNING at a rebar set on a curve in the northeasterly sideline of Cleek Road (the new right-of-way as it exists in 2018), 40 feet radially from the centerline of said right-of-way, and distant about 815 feet southeasterly along said sideline from its intersection with the southerly sideline of East Stone Drive (US Highway 11-W); thence with the boundary of a portion of the old abandoned Cleek Road right-of-way, the following six calls: (1) crossing part of the old right-of-way diagonally to its northeasterly sideline, N57°42'00"E a distance of 44.53 feet to a point, (2) along said northeasterly sideline of the old right-of-way, with a non-tangent curve turning to the right with an arc length of 164.36 feet, with a radius of 140.00 feet, with a chord bearing of S57°52'02"E, with a chord length of 155.08 feet to the PT, (3) continuing with said northeasterly sideline of the old right-of-way, S24°14'06"E a distance of 71.09 feet to a point on the northeasterly sideline of the new right-of-way, 40 feet radially from the centerline of said New right-of-way, (4) with the northeasterly sideline of said new right-of-way, along a non-tangent curve turning to the left with an arc length of 75.74 feet, with a radius of 440.08 feet, with a chord bearing of N47°36'35"W, with a chord length of 75.65 feet to a point on the southwesterly sideline of the old right-of-way, (5) with said southwesterly sideline of the old right-of-way and the northeasterly sideline of the new right-of-way, a non-tangent curve that is NOT concentric with the centerline of said new right-of-way, turning to the left with an arc length of 145.99 feet, with a radius of 110.00 feet, with a chord bearing of N61°23'48"W, with a chord length of 135.51 feet, to a point that is again 40 feet radially from the centerline of said new right-of-way, and (6) with the northeasterly sideline of the new right-of-way, a non-tangent curve turning to the left with an arc length of 24.53 feet, with a radius of 440.08 feet, with a chord bearing of N71°50'59"W, with a chord length of 24.53 feet to the point of BEGINNING, having an area of 6,055 square feet (0.139 acres), as shown on a drawing entitled Division of A Part of the C & M Cleek Family General Partnership Property, prepared by Daniel I. Saxon, RLS #334.



Property Information	Right-of-Way Vacating		
Address	Cleek Road		
Tax Map, Group, Parcel	R-O-W adjacent to Sullivan County Tax Map 47, Parcel 60		
Civil District	10 th Civil District		
Overlay District	N/A		
Land Use Designation	Residential		
Acres	+/- .14acres		
Applicant #1 Information		Surveyor Information	
Name: C & M Cleek Family General Partnership Address: 1101 New Beason Well Rd City: Kingsport State: TN Zip Code: 37660 Email: rzvanover@charter.net Phone Number:		Name: Dan Saxon Address: 129 Otari St. City: Kingsport State: TN Zip Code: 37664 Email: n/a Phone Number: (423) 245-9926	
Planning Department Recommendation			
<p>(Approve, Deny, or Defer)</p> <p>The Kingsport Planning Division recommends abandonment of a portion of the old Cleek Road right-of-way adjacent to Tax Map 47 Parcel 60:</p> <ul style="list-style-type: none"> Request reviewed by all city departments & utility providers AEP anchors are located in the area of request <p>Staff Field Notes and General Comments:</p> <p>The applicants for this request are the adjacent property owners to the subject area. The requested vacating area consists of 6,055 square feet of the old 30' Cleek Road right-of-way. The road was realigned and this portion of right-of-way was not needed for the new road construction. AEP anchors lie within this area of request. An Easement between AEP and the owners to maintain the anchors and guy wires has been established.</p>			
Planner:	Harmon	Date: 8/3/18	
Planning Commission Action		Meeting Date:	August 16, 2018
Approval:			
Denial:		Reason for Denial:	
Deferred:		Reason for Deferral:	

PROPERTY INFORMATION**Right-of-Way Vacating****ADDRESS****Cleek Road****DISTRICT, LAND LOT****Sullivan County****10th Civil District, TM 47 Parcel 60****OVERLAY DISTRICT****R-1B****PROPOSED ZONING****No Change****ACRES +/- 0.14****EXISTING USE Vacant****PROPOSED USE Residential****PETITIONER 1: C & M Cleek General Family Partnership**
1101 New Beason Well Rd. Kingsport, TN 37660**INTENT**

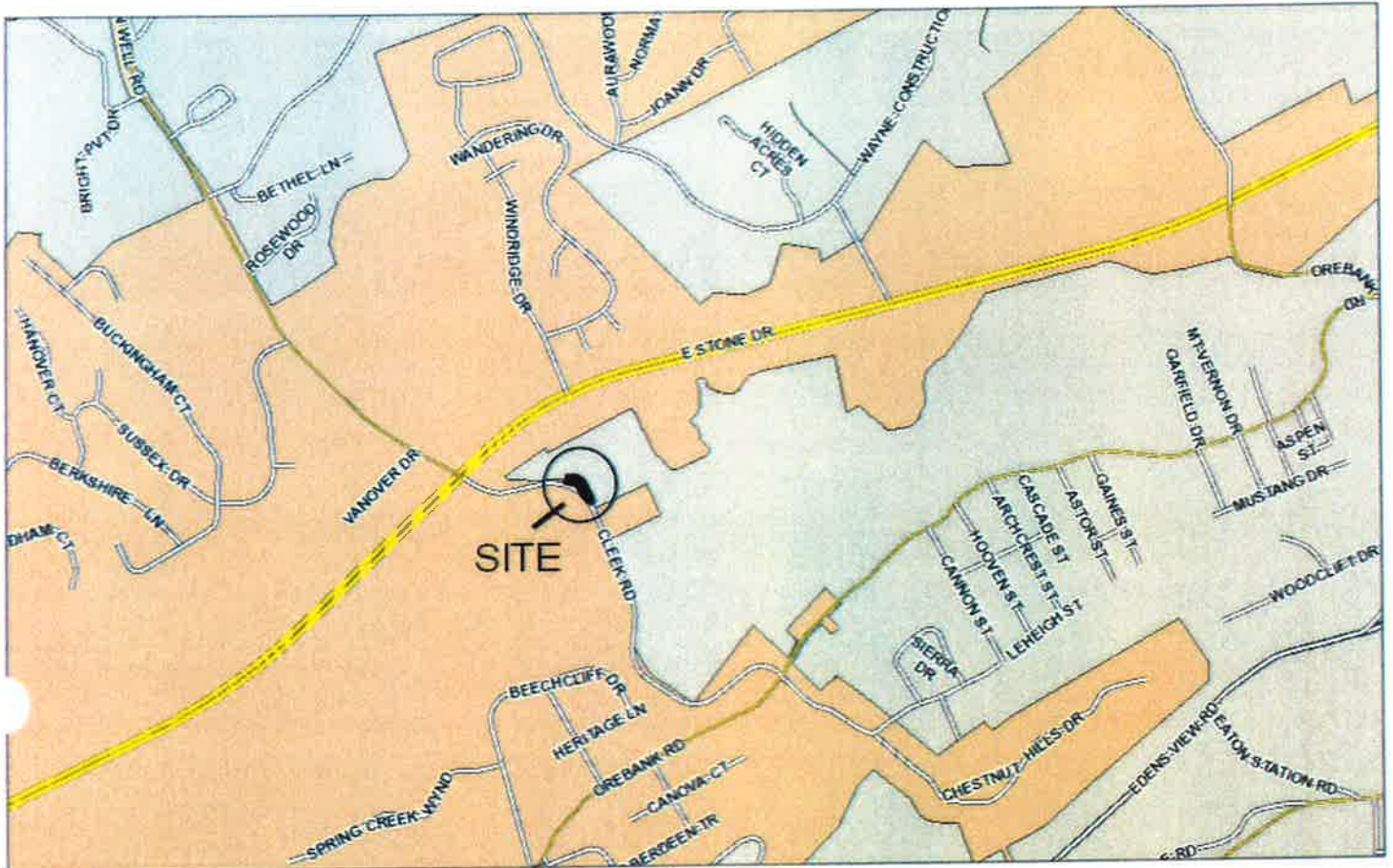
The applicant is requesting that the portion of the old Cleek Road right-of-way located in front of their property be vacated by the City of Kingsport. The purpose for the request is to eliminate the large curve in the property line and create a smooth front for driveway access for a new single family home that is proposed to be constructed.

The area requested to be vacated is approximately 6,055 square feet. This area is part of the old 30' road way that was left over after Cleek Road was realigned and an 80' right-of-way was established.

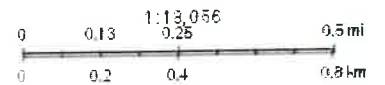
The request has been reviewed by all City Departments and Local Utility Providers. All City Departments have approved the request as there are no city utilities within the area. The only utility located on this portion of the right-of-way are anchors for AEP owned poles that are outside of the right-of-way. The anchors hold the guy wires. The property owner has executed an easement with AEP for the maintenance of the anchors and guy wires.

Staff recommends approval of the vacating of a portion of the old 30' Cleek Road right-of-way as city staff sees no future use for the property.

Location



7/30/2018, 2:27:02 PM

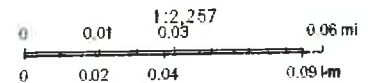


Web App Builder for ArcGIS

Zoning



7/30/2018, 2:34:24 PM



Web AppBuilder for ArcGIS

Future Land Use Plan



7/30/2018, 2:24:58 PM

Sullivan Co Parcel Data

Future Land Use

Agri/Vacant

Single Family

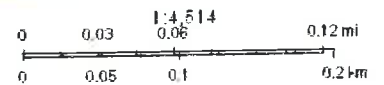
Multi-Family

Industrial

Retail/Commercial

Public

Utilities



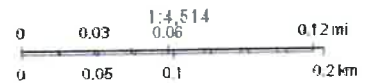
Web App Builder for ArcGIS

Aerial w/Utilities



7/30/2018, 2:22:49 PM

- Sullivan Co Parcel Data
- Sewer Mains
- Water Lines



Web App Builder for ArcGIS



RECOMMENDATION:

Staff recommends sending a favorable recommendation to the Board of Mayor and Alderman for the vacating of a portion of the old 30' Cleek Road right-of-way as city staff sees no future use for the property.



AGENDA ACTION FORM

Appropriate Funding from the Criminal Forfeiture Fund

To: Board of Mayor and Aldermen
From: Jeff Fleming, City Manager

Action Form No.: AF-214-2018
Work Session: September 4, 2018
First Reading: September 4, 2018

Final Adoption: September 18, 2018
Staff Work By: Commander J. Bellamy
Presentation By: Chief D. Quillin

Recommendation:

Approve the Ordinance to appropriate funding from the Criminal Forfeiture Fund in the amount of \$80,000.

Executive Summary:

The Criminal Forfeiture Fund was established for any revenue generated from the seizure of assets of a suspect where the criminal case was investigated by KPD utilizing federal authorities (i.e. DEA, FBI, IRS, etc). The equitable sharing is between the federal agency and the Kingsport Police Department based on the percentage of participation during the investigation. These funds can be used by a law enforcement agency for law enforcement purposes only. The proceeds from these assets are commonly used to fund police department expenditures which are not able to be budgeted through normal avenues. Distinct guidelines are established for expenditures by the Department of Justice.

A portion of these funds will be utilized to refurbish the explosive ordinance disposal robot. The current robot has long been discontinued and many components are no longer serviceable. The refurbishment process will bring the unit to current standards, providing many years of serviceable life and avoiding the need to purchase a new unit at a far greater cost. The remaining monies will be utilized for the purchase of an Unmanned Aircraft System/Drone fitted with a high resolution camera and a FLIR unit. The primary purpose of this equipment will be to locate lost/missing persons or suspects that may be hiding in outdoor terrain. Use of this equipment provides a significant enhancement to officer/citizen safety and operational efficiency. The anticipated cost of both projects is approximately \$80,000. All of the projects meet the established DOJ guidelines.

Attachments:

1. Ordinance

Funding source appropriate and funds are available:

	Y	N	O
Adler	—	—	—
Begley	—	—	—
Cooper	—	—	—
George	—	—	—
McIntire	—	—	—
Olterman	—	—	—
Clark	—	—	—



AGENDA ACTION FORM

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To: Board of Mayor and Aldermen
 From: Jeff Fleming, City Manager

Action Form No.: AF-214-2018
 Work Session: September 4, 2018
 First Reading: September 4, 2018

Final Adoption: September 18, 2018
 Staff Work By: Commander J. Bellamy
 Presentation By: Chief D. Quillin

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Attachments:

1. Ordinance

Funding source appropriate and funds are available: 

	Y	N	O
Adler	—	—	—
Begley	—	—	—
Cooper	—	—	—
George	—	—	—
McIntire	—	—	—
Olterman	—	—	—
Clark	—	—	—

ORDINANCE NO. _____

AN ORDINANCE TO AMEND THE CRIMINAL
FORFEITURE FUND BUDGET FOR THE YEAR
ENDING JUNE 30, 2019; AND TO FIX THE
EFFECTIVE DATE OF THIS ORDINANCE

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

SECTION I. That the Criminal Forfeiture Fund budget be amended by appropriating funds in the amount of \$80,000 from the Forfeited Assets to the Criminal Forfeiture Fund operating budget to refurbish the explosive ordinance disposal robot and to purchase an Unmanned Aircraft System/Drone.

<u>Account Number/Description:</u>	<u>Budget</u>	<u>Incr/<Decr></u>	<u>New Budget</u>
<u>Fund 126: Criminal Forfeiture Fund</u>			
<u>Revenues:</u>			
126-0000-392-0318 Forfeited Assets-Federal	0	80,000	80,000
<i>Totals:</i>	0	80,000	80,000
<u>Expenditures:</u>	\$	\$	\$
126-3021-442-9006 Purchases Over \$5,000	0	80,000	80,000
<i>Totals:</i>	0	80,000	80,000

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

JOHN CLARK, Mayor

ATTEST:

JAMES H. DEMMING
City Recorder

APPROVED AS TO FORM:

J. MICHAEL BILLINGSLEY, City Attorney

PASSED ON 1ST READING: _____

PASSED ON 2ND READING: _____



AGENDA ACTION FORM

Agreement with Davis Vision for Employee Vision Insurance

To: Board of Mayor and Aldermen
 From: Jeff Fleming, City Manager *JA*

Action Form No.: AF-217-2018
 Work Session: September 17, 2018
 First Reading: N/A

Final Adoption: September 18, 2018
 Staff Work By: Stacey Baumgardner
 Presentation By: George DeCroes

Recommendation:

Approve the Resolution.

Executive Summary:

The vision plan will be an optional benefit to offered to eligible full-time employees working under the authority of the board of mayor and aldermen an optional benefit of vision insurance paid fully by the participating employees. This is the first time we have offered this benefit to employees. This plan is similar to the Delta Dental Plan. Davis Vision was among several vendors reviewed and was selected based on cost, coverage provided and provider network. Davis Vision provides a four year rate guarantee.

Attachments:

1. Resolution
2. Declaration Page
3. Attachment showing Plan Design

	Y	N	O
Adler	—	—	—
Begley	—	—	—
Cooper	—	—	—
George	—	—	—
McIntire	—	—	—
Oltman	—	—	—
Clark	—	—	—

RESOLUTION NO. _____

A RESOLUTION APPROVING AN AGREEMENT WITH DAVIS VISION FOR EMPLOYEE PAID VISION INSURANCE AND AUTHORIZING THE MAYOR TO EXECUTE THE AGREEMENT AND ALL DOCUMENTS NECESSARY AND PROPER TO EFFECTUATE THE PURPOSE OF THE AGREEMENT OR THIS RESOLUTION

WHEREAS, the city would like to offer eligible full-time employees working under the authority of the board of mayor and aldermen an optional benefit of vision insurance paid fully by the participating employees; and

WHEREAS, Davis Vision has offered vision insurance to the city for the purpose stated above; and

WHEREAS, the insurance plan is fully funded by the employees; and

WHEREAS, Davis Vision will provide the same rate for four years for the employees.

Now therefore,

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

SECTION I. That the city manager is authorized and directed to offer vision insurance to eligible full-time employees, working under the authority of the board of mayor and aldermen, on the same basis the city offers dental insurance, provided it is fully paid for by the participating employee.

SECTION II. That an agreement with Davis Vision as a provider of vision insurance, that is fully paid by participating eligible employees is approved.

SECTION III. 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, an agreement and all documents necessary and proper to enter into the employee paid vision insurance through Davis Vision and to effectuate the purpose of the agreement 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 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 18th day of September, 2018.

JOHN CLARK, MAYOR

ATTEST:

JAMES H. DEMMING, CITY RECORDER

APPROVED AS TO FORM:

J. MICHAEL BILLINGSLEY, CITY ATTORNEY

Administered by:



Application for Group Vision Insurance

Please Type or Print – Must be completed in full. Indicate "N/A" or "none" if item does not apply.

Applicant				
Full Legal Name of Group (to appear on Policy) City Of Kingsport, Tennessee			Tax ID Number 62--6000323	
Key Contact Person Stacey Baumgardner		Business Telephone 423-229-9402	Fax Number 423-343-9788	
Email Address staceybaumgardner@KingsportTN.gov		Internet Address		
Street Address 225 West Center Street		City Kingsport	State TN	ZIP 37660
Delivery Address (if different from above) 301 Louis Street, Suite 303		City Kingsport	State TN	ZIP 37660
Nature of Business Municipality			SIC Code	
Type of Organization: <input type="checkbox"/> Corporation <input checked="" type="checkbox"/> Government <input type="checkbox"/> Partner <input type="checkbox"/> Franchise <input type="checkbox"/> Association <input type="checkbox"/> Other				
List Classes of Employees to Be Covered: Full time		Eligibility Waiting Period (new hires only): 30 days		
Are there any affiliates to be insured? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No If yes, list below; if additional space is needed, please attach a separate sheet.				
Full Legal Name of Affiliate		Nature of Business		
Address of Affiliate		City	State	ZIP
Requested Effective Date: January 1, 2019		Number of Eligible Employees: 736		
Will the requested insurance replace existing insurance? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		Is this a Section 125 plan? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No		

* Spouse may include domestic partner.

Fraud Notice (please read carefully)

Any person who knowingly and with intent to defraud or deceive any insurance company submits an insurance application or statement of claim containing any false, incomplete or misleading information may be subject to civil or criminal penalties, depending upon state law.

In Alabama, any person who knowingly presents a false or fraudulent claim for payment of a loss or benefit or who knowingly presents false information in an application for insurance is guilty of a crime and may be subject to restitution fines or confinement in prison, or any combination thereof.

In Arkansas, any person who knowingly presents a false or fraudulent claim for payment of a loss or benefit or knowingly presents false information in an application for insurance is guilty of a crime and may be subject to fines and confinement in prison.

In the District of Columbia, WARNING: It is a crime to provide false or misleading information to an insurer for the purpose of defrauding the insurer or any other person. Penalties include imprisonment and/or fines. In addition, an insurer may deny insurance benefits if false information materially related to a claim was provided by the applicant.

In Florida, any person who knowingly and with intent to injure, defraud, or deceive any insurer files a statement of claim or an application containing any false, incomplete, or misleading information is guilty of a felony of the third degree.

In Kentucky, any person who knowingly and with intent to defraud any insurance company or other person files an application for insurance containing any materially false information or conceals for the purpose of misleading, information concerning any fact material thereto commits a

fraudulent insurance act, which is a crime. Any application for insurance in writing by the applicant shall be altered solely by the applicant or by his written consent; except that insertions may be made by the insurer for administrative purposes only in such manner as to indicate clearly that such insertions are not to be ascribed to the applicant.

In New Jersey, any person who includes any false or misleading information on an application for insurance is subject to criminal and civil penalties.

In Ohio, any person who, with intent to defraud or knowing that he is facilitating a fraud against an insurer, submits an application or files a claim containing a false or deceptive statement is guilty of insurance fraud.

In Oklahoma, WARNING: Any person who knowingly, and with intent to injure, defraud or deceive any insurer, makes any claim for the proceeds of an insurance policy containing any false, incomplete or misleading information is guilty of a felony.

In Pennsylvania, any person who knowingly and with intent to defraud any insurance company or other person files an application for insurance or statement of claim containing any materially false information or conceals for the purpose of misleading, information concerning any fact material thereto commits a fraudulent insurance act, which is a crime and subjects such person to criminal and civil penalties.

In Rhode Island, any person who knowingly presents a false or fraudulent claim for payment of a loss or benefit or knowingly presents false information in an application for insurance is guilty of a crime and may be subject to fines and confinement in prison.

In Tennessee, it is a crime to knowingly provide false, incomplete, or misleading information to an insurance company for the purpose of defrauding the company. Penalties include imprisonment, fines, and denial of insurance benefits.

In Vermont, any person who knowingly and with intent to defraud any insurance company or other person files an application for insurance or a statement of claim containing any materially false information or conceals for the purpose of misleading, information concerning any fact material thereto may commit a fraudulent insurance act.

In Washington, it is a crime to knowingly provide false, incomplete, or misleading information to an insurance company for the purpose of defrauding the company. Penalties include imprisonment, fines, and denial of insurance benefits.

Applicant Agrees That

The insurance coverage requested and requested effective date must be approved by Davis Vision under its current rules and practices.

No insurance agent or broker has authority to guarantee acceptability of requested insurance coverage. All materials describing this coverage must be approved in writing by the administrator and carrier prior to distribution. Note: Coverage will not be in effect until notified in writing by Davis Vision. Do not cancel prior coverage until notified.

Premium rates quoted were based on the data submitted to Davis Vision. Final premium rates will be determined on the basis of the actual composition of the group of persons who become insured.

I represent that the statements contained in this application are true and complete to the best of my knowledge and belief, and I understand that they form the basis for Davis Vision's approval of the coverage requested.

Signature of Applicant's Authorized Representative

Date

Title

Print Name of Applicant's Authorized Representative

Signature of Witness and/or Agent

Location, City/State

Print Name of Witness and/or Agent

Agent License Number

This application must be accompanied by the Coverage Transmittal form and the proposal.

Administered by:

Davis Vision
175 East Houston Street
San Antonio, TX 78205
Tel: 800-328-4728
www.davisvision.com

Underwritten by:



P.O. Box 535050
Pittsburgh, PA 15230
Tel: 800-328-5433
hmig.com

**City of Kingsport - Vision Plan Comparison -
Prepared by: Mark III Employee Benefits - August 2018**

	Davis Vision	
Plan Design	In-Network	Out-of-Network
Eye Exam Frequency	every 12 months	every 12 months
Co-payment for eye exam	\$10.00	Reimbursed up to \$40
Co-payment for material	\$0.00	\$0.00
Frame frequency	every 12 months	every 12 months
Frame allowance	Up to \$150 retail or \$200 at Visionworks	up to \$50
Lens Frequency	every 12 months	every 12 months
Lens Allowance		
Single Vision	Covered in Full	Up to \$40
Bifocal	Covered in Full	Up to \$60
Trifocal	Covered in Full	Up to \$80
Progressive	Standard - \$50 copay Premium - \$90 copay Ultra - \$140 copay	Up to \$60
Optional "Add-Ons" Maximum Charge	Polycarbonate - \$30 Scratch Coating - \$0 Anti-Reflective-\$35-\$60 UV Coating - \$12	No Benefit
Contact lens allowance	Every 12 months, elective - up to \$150 (in lieu of glasses)	Every 12 months - elective - up to \$105
Contact Lens Fitting Fee	Up to \$60	Not Covered
Refractive Eye Surgery	Discount at Network Providers	Not Covered
Providers	Visit www.davisvision.com for a complete listing of providers	
Participation Requirement	None	
Bi-Weekly Rates (26 Pay)		
Employee	\$3.69	
Employee/Spouse	\$7.38	
Employee/Child(ren)	\$7.75	
Employee/Family	\$10.79	
Rate Guarantee	4 years	

- The Davis Vision plan will pay for safety glasses in lieu of eyeglasses.

This information is for comparison purposes only. Please refer to the carrier certificate/policy for a complete list of benefits, limitations and exclusions.



AGENDA ACTION FORM

Agreement with Delta Dental of Tennessee for Employee Dental Insurance

To: Board of Mayor and Aldermen
From: Jeff Fleming, City Manager

Action Form No.: AF-215-2018
Work Session: September 17, 2018
First Reading: N/A

Final Adoption: September 18, 2018
Staff Work By: Stacey Baumgardner
Presentation By: George DeCroes

Recommendation:

Approve the Resolution.

Executive Summary:

The dental plan is a fully employee paid benefit. Delta Dental of Tennessee has been the provider of this benefit since 2004. Rates are not increasing. Coverage remains the same. Delta Dental will hold rates for two years.

Attachments:

1. Resolution
2. Declaration Page

	<u>Y</u>	<u>N</u>	<u>O</u>
Adler	—	—	—
Begley	—	—	—
Cooper	—	—	—
George	—	—	—
McIntire	—	—	—
Olterman	—	—	—
Clark	—	—	—

RESOLUTION NO. _____

A RESOLUTION RENEWING THE AGREEMENT WITH DELTA DENTAL OF TENNESSEE FOR EMPLOYEE DENTAL INSURANCE AND AUTHORIZING THE MAYOR TO EXECUTE ALL DOCUMENTS NECESSARY AND PROPER RENEW THE EMPLOYEE PAID DENTAL INSURANCE AND ALL APPLICABLE DOCUMENTS TO EFFECTUATE THE PURPOSE OF THE AGREEMENT OR THIS RESOLUTION

WHEREAS, Delta Dental is a benefit offered to employees and since 2004 is paid for fully by the employees and the city; and

WHEREAS, the city desires to continue to provide dental insurance through Delta Dental to employees who qualify; and

WHEREAS, Delta Dental will provide the same rate for two years for the employees.

Now therefore,

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

SECTION I. That the renewal of the Delta Dental of Tennessee as a provider of dental insurance, which is fully paid by employees, 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, all documents necessary and proper to renew the employee paid dental insurance through Delta Dental of Tennessee and all applicable documents to effectuate the purpose of 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 18th day of September, 2018.

JOHN CLARK, MAYOR

ATTEST:

JAMES H. DEMMING, CITY RECORDER

APPROVED AS TO FORM:

J. MICHAEL BILLINGSLEY, CITY ATTORNEY



Delta Dental of Tennessee Declaration Page

Group Name: City Of Kingsport
Group Number: 1749
Group Address: 225 W Center St
City, State, Zip Code: Kingsport, TN 37660-4265
Contract Effective Date: January 1, 2019
Contract Renewal Date: January 1, 2021
Benefit Year: January 1 through December 31
Provider Network: Delta Dental PPO (Point-of-Service)

Eligibility Requirements

All permanent, full time EMPLOYEES who work a minimum of 30 hours per week who are hired on or prior to the EFFECTIVE DATE are eligible for enrollment on the EFFECTIVE DATE or when they have met the GROUP's eligibility requirements.

Employees are eligible on the first day of the month following 1 month of continuous employment.

The Dependent Age Limit under this Contract is to age: 26

Monthly Premiums

Subscriber only - \$29.82 per month per Subscriber
Subscriber and spouse - \$58.13 per month per Subscriber
Subscriber and child(ren) - \$65.46 per month per Subscriber
Subscriber, spouse and child(ren) - \$109.35 per month per Subscriber

These rates are contingent upon the enrollment of a minimum of 35 percent of the eligible members of the defined group and their eligible dependents with the full cost paid by the member.

This plan requires a minimum of 406 enrolled primary Subscribers. The GROUP will be billed for the greater of the actual number of Subscribers or the minimum number of Subscribers.

Premiums will be deemed delinquent if not paid as billed and received by the 5th of each month.



AGENDA ACTION FORM

Amendment to the Contract between the City of Kingsport and Advanced Disposal Services

To: Board of Mayor and Aldermen
 From: Jeff Fleming, City Manager *Jeff Fleming*

Action Form No.: AF-220-2018
 Work Session: September 17, 2018
 First Reading: N/A

Final Adoption: September 18, 2017
 Staff Work By: Ronnie Hammonds
 Presentation By: Ryan McReynolds

Recommendation:

Approve the Resolution.

Executive Summary:

On August 29, 2012 the City entered into an agreement with Advanced Disposal for the disposal of solid waste. The initial agreement was for a five year term, allowing for five consecutive one year renewals. This allows the City to dispose of solid waste at their facility at a cost of \$18.61 per ton. This is the second one year renewal which starts August 30, 2018 and expires on August 30, 2019.

Attachments:

1. Resolution
2. Amendment to Agreement
3. History

Funding source appropriate and funds are available: *gs*

	Y	N	O
Adler	—	—	—
Begley	—	—	—
Cooper	—	—	—
George	—	—	—
McIntire	—	—	—
Olterman	—	—	—
Clark	—	—	—

RESOLUTION NO. _____

A RESOLUTION APPROVING A SECOND AMENDMENT TO THE
AGREEMENT WITH ADVANCED DISPOSAL SERVICES;
AUTHORIZING THE MAYOR TO EXECUTE THE AMENDMENT;
AND ALL OTHER DOCUMENTS NECESSARY AND PROPER TO
EFFECTUATE THE PURPOSE OF THE AMENDMENT

WHEREAS, in August, 2012, the board approved a resolution authorizing the mayor to sign an agreement with Advanced Disposal Services for the disposal of solid waste; and

WHEREAS, the initial agreement was for a five year term, allowing for five consecutive one year renewals; and

WHEREAS, the city would like to amend the original agreement for a second time and renew the agreement for one year from August 30, 2018, to August 29, 2019, at a cost of \$18.61 per ton.

Now therefore,

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

SECTION I. That a Second Amendment to the agreement with Advanced Disposal Services for the disposal of solid waste is approved.

SECTION II. That the mayor, or in his absence, incapacity, or failure to act, the vice-mayor, is authorized to execute, in a form approved by the city attorney, and subject to the requirements of Article X, Section 10 of the Charter of the City of Kingsport, a Second Amendment to the agreement with Advanced Disposal Services for the disposal of solid waste and all other documents necessary and proper to effectuate the purpose of the agreement or this resolution, said amendment being generally as follows:

**SECOND AMENDMENT TO THE SOLID WASTE DISPOSAL SERVICES AGREEMENT
BETWEEN THE CITY OF KINGSFORT TENNESSEE AND ADVANCED DISPOSAL SERVICES
TENNESSEE, LLC**

This Second Amendment ("Amendment") to the Agreement for Solid Waste Disposal Services dated August 29, 2012 (the "Agreement") is made and entered into this ____ day of August 2018 (the "Effective Date") by and between the City of Kingsport, a political subdivision of the State of Tennessee ("City"), and Advanced Disposal Services Tennessee, LLC, a Delaware limited liability company ("Contractor"). Capitalized terms not defined herein shall have the meanings set forth in the Original Agreement.

WHEREAS, the City and Contractor entered into the Agreement which commenced on August 29, 2012 for landfill disposal capacity and the subsequent rates for the disposed material; as amended by the Second Amendment to Solid Waste Disposal Agreement dated August 29, 2017;

WHEREAS, the City and Contractor desire to extend the tenure of the Agreement on the terms and conditions set forth in this Second Amendment; so

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

1. Term. The agreement shall be extended for a period of one (1) year commencing August 30, 2018 and expiring August 29, 2019. There are three (3) remaining one year renewals pending, subject to the conditions stated in the original agreement.

2. Modification of Agreement. Except as expressly set forth herein or as necessary to carry out the terms of this Second Amendment, no amendment of the terms of the Original Agreement is intended hereby and the Agreement and all its terms and conditions shall remain in full force and effect.

3. Cooperation among the Parties. Whenever consent, action or inaction is required, such Consent, action or inaction will not be unreasonably withheld by either party.
4. Severability. The invalidity of one or more of the phrases, sentences, clauses or Sections contained in this Agreement shall not affect the validity of the remaining portion of the Agreement so long as the material purposes of this Agreement can be determined and effectuated.
5. Entirety. This Second Amendment together with the Agreement including any Exhibits attached thereto contains the entire agreement between the parties as to the matters contained therein. Any oral representations or modifications concerning the Agreement shall be of no force and effect.

IN WITNESS WHEREOF, the parties hereto have caused this Second Amendment to be executed on this ____ day of August 2018.

[Acknowledgements Deleted for Inclusion in this Resolution]

SECTION III. That the mayor is further authorized to make such changes approved by the mayor and the city attorney to the amendment/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 18th day of September, 2018.

JOHN CLARK, MAYOR

ATTEST:

JAMES H. DEMMING, CITY RECORDER

APPROVED AS TO FORM:

J. MICHAEL BILLINGSLEY, CITY ATTORNEY

**SECOND AMENDMENT TO THE SOLID WASTE DISPOSAL SERVICES AGREEMENT
BETWEEN THE CITY OF KINGSFORT TENNESSEE AND ADVANCED DISPOSAL SERVICES
TENNESSEE, LLC**

This Second Amendment ("Amendment") to the Agreement for Solid Waste Disposal Services dated August 29, 2012 (the "Agreement") is made and entered into this ____ day of August 2018 (the "Effective Date") by and between the City of Kingsport, a political subdivision of the State of Tennessee ("City"), and Advanced Disposal Services Tennessee, LLC, a Delaware limited liability company ("Contractor"). Capitalized terms not defined herein shall have the meanings set forth in the Original Agreement.

WHEREAS, the City and Contractor entered into the Agreement which commenced on August 29, 2012 for landfill disposal capacity and the subsequent rates for the disposed material; as amended by the Second Amendment to Solid Waste Disposal Agreement dated August 29, 2017;

WHEREAS, the City and Contractor desire to extend the tenure of the Agreement on the terms and conditions set forth in this Second Amendment; so

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

1. Term. The agreement shall be extended for a period of one (1) year commencing August 30, 2018 and expiring August 29, 2019. There are three (3) remaining one year renewals pending, subject to the conditions stated in the original agreement.

2. Modification of Agreement. Except as expressly set forth herein or as necessary to carry out the terms of this Second Amendment, no amendment of the terms of the Original Agreement is intended hereby and the Agreement and all its terms and conditions shall remain in full force and effect.

3. Cooperation among the Parties. Whenever consent, action or inaction is required, such Consent, action or inaction will not be unreasonably withheld by either party.

4. Severability. The invalidity of one or more of the phrases, sentences, clauses or Sections contained in this Agreement shall not affect the validity of the remaining portion of the Agreement so long as the material purposes of this Agreement can be determined and effectuated.

5. Entirety. This Second Amendment together with the Agreement including any Exhibits attached thereto contains the entire agreement between the parties as to the matters contained therein. Any oral representations or modifications concerning the Agreement shall be of no force and effect.

(Signatures on following page)

IN WITNESS WHEREOF, the parties hereto have caused this Second Amendment to be executed on this ____ day of August 2017.

CITY OF KINGSPORT, a political subdivision of the
State of Tennessee

Witness

By: _____
Name: _____
Title: _____

Notary Public

Attest: _____

**ADVANCED DISPOSAL SERVICES
TENNESSEE, LLC**, a Delaware limited liability
company

Witness

By: _____
Name: _____
Title: _____

Notary Public

Attest: _____

MEMORANDUM

September 10, 2018

TO: File

FROM: Ronnie Hammonds, Streets and Sanitation Manager

SUBJECT: History of Advance Disposal Garbage Disposal Contract

In 2012 the Public Works Department began looking at alternative ways to dispose of the collected household refuse (commonly known as garbage). We were paying \$37.28 per ton to Sullivan County to dump the collected household refuse at the Transfer Station off Brookside Lane. We decided to go out for bids to see if there was a lower cost alternative. We asked for bids for a five (5) year base bid with five (5) consecutive one (1) year renewals with the agreement of both parties.

We received bids from four (4) separate entities. These were Sullivan County (to continue to use the Transfer Station, Waste Management to haul to their Iris Glen Landfill, Republic Services to haul to their Hawkins County Landfill, and Advance Disposal to haul to their newly opened Sullivan County Landfill.

The bid from Sullivan County was to continue with the same tipping fee. Waste Management was for approximately \$38 per ton tipping fee and the other two bids were very competitive with the bid from Republic Services having an escalator clause for each year after the initial one year bid. The bid from Advanced Disposal was calculated to be the most appropriate to the city. Their bid was for \$16.86 per ton excluding environmental fees of an additional \$1. 86 per ton. The three bids other than Sullivan County required an additional employee and truck to be used to make up for the time off route. This was used in the calculations to figure the best bid.

In the first year of the contract we hauled 18,584.02 tons of material to Advanced Disposal. This resulted in a savings of approximately \$339,485 which includes wages of an employee for a year and depreciation of a truck for a year.

Since the beginning of the contract in September of 2012 through August of this year we have hauled 115,326.54 tons of material to the Advance Disposal Landfill. This has resulted in a savings over the way we used to do business of \$1,944,967.95 (this includes cost for the employee and truck) over the six years of the contract.



AGENDA ACTION FORM

Purchase 1828 Ryder Drive from and Enter Lease Agreement with Kingsport Economic Development Board

To: Board of Mayor and Aldermen
From: Jeff Fleming, City Manager 

Action Form No.: AF-210-2018
Work Session: September 17, 2018
First Reading: N/A

Final Adoption: September 18, 2018
Staff Work By: McCart/Billingsley
Presentation By: McCart

Recommendation:

Approve the Resolution.

Executive Summary:

Earlier this year the Kingsport Board of Mayor and Aldermen requested the Kingsport Economic Development Board (KEDB) buy 1828 Ryder Drive so that the property could be leased until such time that the Indian Trail road extension would require it to be demolished.

Approval of this resolution provides funding in the amount of \$451,857.00 to acquire 1828 Ryder Drive from KEDB. Funding for this acquisition comes from the Indian Trail road project. Additionally, this resolution authorizes the Mayor to enter into a lease agreement with KEDB in order to allow them to lease the property on a short-term basis.

KEDB is presently working with NETWorks to market the site.

Attachments:

1. Resolution
2. Location Map

Funding source appropriate and funds are available: 

	Y	N	O
Adler	—	—	—
Begley	—	—	—
Cooper	—	—	—
George	—	—	—
McIntire	—	—	—
Olterman	—	—	—
Clark	—	—	—

RESOLUTION NO. _____

A RESOLUTION APPROVING THE PURCHASE OF REAL PROPERTY LOCATED AT 1828 RYDER DRIVE FROM THE KINGSPORT ECONOMIC DEVELOPMENT BOARD; APPROVING A PURCHASE AGREEMENT FOR THE PROPERTY; APPROVING A LEASE AGREEMENT WITH THE KINGSPORT ECONOMIC DEVELOPMENT BOARD; AND AUTHORIZING THE MAYOR TO EXECUTE THE AGREEMENTS AND ALL OTHER DOCUMENTS NECESSARY AND PROPER TO EFFECTUATE THE PURPOSE OF THE AGREEMENT

WHEREAS, earlier this year, the Kingsport Economic Development Board (KEDB) purchased property located at 1828 Ryder Drive for the purpose of securing the property for the Indian Trail Road Extension Project; and

WHEREAS, the city would now like to purchase that property located at 1828 Ryder Drive for the completion of the Indian Trail road extension project and lease the property back to KEDB for a short time; and

WHEREAS, funding for the purchase in the amount of \$451,857.00 is available in the Indian Trail road project.

Now therefore,

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

SECTION I. That the purchase of property located at 1828 Ryder Drive from the Kingsport Economic Development Board and a purchase agreement for the same is approved.

SECTION II. That the lease agreement with the Kingsport Economic Development Board for the property located at 1828 Ryder Drive is approved.

SECTION III. That the mayor, or in his absence, incapacity, or failure to act, the vice-mayor, is authorized and directed to execute, in a form approved by the city attorney and subject to the requirements of Article X, Section 10 of the Charter of the City of Kingsport, a lease agreement with Kingsport Economic Development Board for the property located at 1828 Ryder Drive and all other documents necessary and proper, and to take such acts as necessary, to effectuate the purpose of the agreement or this resolution.

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

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

ADOPTED this the 18th day of September, 2018.

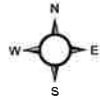
JOHN CLARK, MAYOR

ATTEST:

JAMES H. DEMMING, CITY RECORDER

APPROVED AS TO FORM:

J. MICHAEL BILLINGSLEY, CITY ATTORNEY



Legend



50 100 200 Feet

PROJECT
LOCATION

E STONE DR

E CENTER ST

PORT HENRY DR

N EASTMAN RD

MEMORIAL BLVD

RAMPA

JOHN B DENNIS HWY

RPA KINGSFORT EASTSTONE LLC
RETAIL PROPERTIES
OF AMERICA INC

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RETAIL PROPERTIES
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AGENDA ACTION FORM

Authorizing Application for TDOT "Transportation Alternative" Funds for Further Development of the Kingsport Greenbelt

To: Board of Mayor and Aldermen
From: Jeff Fleming, City Manager *COF*

Action Form No.: AF-216-2018
Work Session: September 17, 2018
First Reading: N/A

Final Adoption: September 18, 2018
Staff Work By: Bill Albright/Kitty Frazier
Presentation By: Chris McCart

Recommendation:
Approve the Resolution.

Executive Summary:
Over the past several years the City has been applying for and receiving federal funds through the Tennessee Department of Transportation for continued development of the "Greenbelt" walking and biking pathway. Once again TDOT is accepting applications until October 3, 2018 for new projects. For the Fiscal Year '19 application, the City's Greenbelt Advisory Committee is recommending that the City "re"apply for funds to continue building westward past the Rotherwood Mansion in Hawkins County (note; while the 'FY 18 application was not awarded TDOT has encouraged the City to re-apply). The "West End" section will begin at Rotherwood Drive (the current Greenbelt terminus) and extend along the south side of Netherland Inn Road to Lewis Lane next to the old National Guard Armory site. This will allow the Greenbelt to tie in with Stone Drive at a logical point, offering a signalized crossing area that makes accessibility easier from the Allandale Mansion area, nearby neighborhoods, apartment complexes, and businesses. It is recommended that the City apply for a construction grant of up to \$800,000 for this project, with the understanding that the estimated local share will be 20% (up to \$160,000) and the federal share 80%. In addition, the City will be responsible for other expenses, including environmental review, design/engineering and, if necessary, right-of-way acquisition, which are estimated to be up to \$250,000, depending on TDOT's approval of all proposed project items. Staff recommends the Board approve submittal of the TDOT "Transportation Alternative" grant application.

- Attachments:**
1. Resolution
2. Application Cover Page
3. Map

	Y	N	O
Adler	—	—	—
Begley	—	—	—
Cooper	—	—	—
George	—	—	—
McIntire	—	—	—
Olterman	—	—	—
Clark	—	—	—

RESOLUTION NO. _____

A RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE ALL DOCUMENTS NECESSARY AND PROPER TO APPLY FOR TRANSPORTATION ALTERNATIVE GRANT FUNDS FROM THE TENNESSEE DEPARTMENT OF TRANSPORTATION FOR GREENBELT DEVELOPMENT

WHEREAS, for the past several years the city has been applied and received federal funds through the Tennessee Department of Transportation for continued development of the Greenbelt walking and biking pathway; and

WHEREAS, the Tennessee Department of Transportation is once again accepting applications until October 3, 2018, for new projects; and

WHEREAS, the city would like to apply for funds to continue building the Greenbelt westward past the Rotherwood Mansion in Hawkins County, beginning at Rotherwood Drive (the current Greenbelt terminus) and extending along the south side of Netherland Inn Road to Lewis Lane next to the old National Guard Armory site; and

WHEREAS, the estimated construction cost of this new section is \$960,000.00, of which 80% or \$800,000.00 will be covered by the grant; and

WHEREAS, the matching funds will be 20% or \$160,000.00, and there will be additional expenses, including environmental review, design/engineering and, if necessary, right-of-way acquisition, estimated to be a total of \$250,000.00.

Now therefore,

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

SECTION I. That the mayor, or in his absence, incapacity, or failure to act, the vice mayor, is authorized 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 grant funds from the Tennessee Department of Transportation in the amount of \$800,000.00 for the Greenbelt project, which will require a 20% match of \$160,000.00 plus additional expenses estimated to be a total of \$250,000.00.

SECTION II. That the mayor is authorized and directed 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 18th day of September, 2018.

JOHN CLARK, MAYOR

ATTEST:

JAMES H. DEMMING, CITY RECORDER

APPROVED AS TO FORM:

J. MICHAEL BILLINGSLEY, CITY ATTORNEY

Kingsport Greenbelt – West End



City of Kingsport Tennessee



TDOT
Department of
Transportation

FY 2019 TRANSPORTATION ALTERNATIVES

APPLICATION (September 28, 2018)

TDOT - Transportation Alternatives Office
Suite 600 James K. Polk Building, 505 Deaderick Street
Nashville, Tennessee 37243-0341
Phone: 615-741-5314



Greenbelt West End Extension



Michelle Bradburn
MTPO Project 50669



West Stone Drive Trailhead Parking



Netherland Inn/Bays Cove Trail Intersection



Netherland Inn/Canongate Road Intersection



Netherland Inn/Rotherwood Drive Termini



AGENDA ACTION FORM

Authorizing FY18 Community Development Partner Agreements

To: Board of Mayor and Aldermen
 From: Jeff Fleming, City Manager 

Action Form No.: AF-219-2018
 Work Session: September 17, 2018
 First Reading: September 18, 2018

Final Adoption: September 18, 2018
 Staff Work By: Haga
 Presentation By: Lynn Tully, AICP

Recommendation:

Approve 2019 CDBG Partner Agreements Resolution.

Executive Summary:

At its business meeting on May 1, 2018, the Board of Mayor and Aldermen approved the Community Development program budget ordinance providing for the Community Development Program funded by the Department of Housing and Urban Development (HUD). The budget included a set aside of \$35,000 for Public Services programs, to be allocated at a later date to agencies by recommendation of the Community Development Advisory Committee. On August 28, 2018, the Community Development Advisory Committee reviewed agency applications and recommended allocations for Public Services partners funded under CDBG. The Advisory Committee's recommendations are as follows:

- \$10,000 – Learning Centers of KHRA
- \$11,000 – South Central Kingsport CDC
- \$ 7,000 – Sons and Daughters of Douglass
- \$ 7,000 – Help Our Potential Evolve (H.O.P.E.)

Attached is a resolution authorizing the Mayor to execute agreements with CDBG Public Service agencies. Also attached are the agreements providing CDBG funding.

Attachments:

1. CDBG Partner Authorizing Resolution
2. Partner Agreements

Funding source appropriate and funds are available: 

	Y	N	O
Adler	—	—	—
Begley	—	—	—
Cooper	—	—	—
George	—	—	—
McIntire	—	—	—
Olterman	—	—	—
Clark	—	—	—

RESOLUTION NO. _____

A RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE
AGREEMENTS WITH VARIOUS AGENCIES AND
ORGANIZATIONS FOR COMMUNITY DEVELOPMENT BLOCK
GRANT AND EMERGENCY SOLUTIONS GRANT FUNDING IN
FISCAL YEAR 2018-2019

WHEREAS, the City of Kingsport desires to enter into agreements for services in fiscal year 2018-2019 benefiting the general welfare of city residents with the Kingsport Housing and Redevelopment Authority for the Learning Center of KHRA; Help Our Potential Evolve, Inc.; Sons and Daughters of Douglass, Inc.; and South Central Kingsport Community Development, Inc.

Now therefore,

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

SECTION I. That the mayor, or in his absence, incapacity, or failure to act, the vice mayor, is authorized to execute, in a form approved by the city attorney, agreements for services in fiscal year 2018-2019 benefiting the general welfare of City of Kingsport residents with the Kingsport Housing and Redevelopment Authority for the Learning Center of KHRA; Help Our Potential Evolve, Inc.; Sons and Daughters of Douglass, Inc.; and South Central Kingsport Community Development, Inc.

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 18th day of September, 2018.

JOHN CLARK, MAYOR

ATTEST:

JAMES H. DEMMING, CITY RECORDER

APPROVED AS TO FORM:

J. MICHAEL BILLINGSLEY, CITY ATTORNEY

**GRANT CONTRACT
BETWEEN THE CITY OF KINGSFORT, TENNESSEE
AND
KINGSFORT HOUSING AND REDEVELOPMENT AUTHORITY**

This Grant Contract, by and between the City of Kingsport, hereinafter referred to as the "City" and Kingsport Housing and Redevelopment Authority, hereinafter referred to as the "Operating Agency", is for the provision of services to the homeless and those at risk for homelessness under the Community Development Block Grant Program ("CDBG"), as further described under "Scope of Services and Deliverables" (the "SCOPE OF SERVICES").

Operating Agency's address P. O. Box 44, Kingsport, TN 37662
Operating Agency's Edison Vendor ID # _____

A. SCOPE OF SERVICES AND DELIVERABLES:

- A.1. The Operating Agency shall provide all services and deliverables ("Scope") as required, described, and detailed in this Grant contract.
- A.2. To provide and operate public service activities to low and moderate income individuals and families within the city limits of Kingsport as specified in ATTACHMENT A: DESCRIPTION OF ACTIVITIES, ATTACHMENT B: IMPLEMENTATION PLAN, AND ATTACHMENT C: BUDGET.
- A.3. Incorporation of Additional Documents. Each of the following documents is included as part of this Grant Contract by reference or attachment. In the event of a discrepancy or ambiguity regarding the Operating Agency's duties, responsibilities, and performance hereunder, these terms shall govern or order of precedence below:
 - a. Title 24 Code of Federal Regulations, Part 570 and Part 91, of the Community Development Block Grant Program authorized by Title I of the Housing and Community Development Act of 1974 (42 USC 5301 et.seq.), as amended (the "Federal CDBG Regulations").
 - b. The United States Department of Housing and Urban Development CDBG Desk Guide for Program and Eligibility Policies and Procedures.
- A.4. Incorporation of Federal Award Identification Worksheet. The federal award identification worksheet, which appears as ATTACHMENT D, is incorporated in this Grant Contract.
- A.5. To comply with the Eligible Activity Requirements of 24 CFR 570, Subpart C, and Part 91 as applicable in accordance with the type of project assisted.
- A.6. To maintain records adequate to document compliance with 24 CFR 570, along with such other records the City and HUD determines necessary to enable the City and HUD to fulfill its responsibilities in the CDBG Program. All records will be retained for a three (3) year period in accordance with the requirements of 24 CFR Part 570.
- A.7. To furnish to the City all reports required to be filed in accordance with any directives of the City and within the time period prescribed by the City for such reports.

B. TERM OF GRANT CONTRACT:

- B.1. Grant Term. This Grant Contract shall be effective on July 1, 2018 ("Effective Date") and extend for a period of twelve (12) months after the Effective Date to June 30, 2019 ("Term"). The City shall have no obligation for goods or services provided by the Operating Agency prior to the Effective Date.

C. PAYMENT TERMS AND CONDITIONS:

- C.1. Maximum Liability. In no event shall the maximum liability of the City under this Grant Contract exceed **Ten Thousand DOLLARS (\$10,000.00)** ("Maximum Liability"). The Grant Budget, attached and incorporated hereto as Attachment C, shall constitute the maximum amount due the Operating Agency under this Grant Contract. The Grant Budget line-items include, but are not limited to, all applicable taxes, fees, overhead, and all other direct and indirect costs incurred or to be incurred by the Operating Agency.
- C.2. Compensation Firm. The Maximum Liability of the City is not subject to escalation for any reason unless amended. The Grant Budget amounts are firm for the Term and are not subject to escalation for any reason unless amended, except as provided in Section C.6.
- C.3. Payment Methodology. The Operating Agency shall be reimbursed for actual, reasonable, and necessary costs based upon the Grant Budget, not to exceed the Maximum Liability established in Section C.1. Upon progress toward the completion of the Scope, as described in Section A of this Grant Contract, the Operating Agency shall submit invoices, in form and substance acceptable to the City, with all necessary supporting documentation, prior to any reimbursement of allowable costs.
- C.4. Travel Compensation. Reimbursement to the Operating Agency for travel, meals, or lodging shall be subject to amounts and limitations specified in the "City Comprehensive Travel Regulations", as they are amended from time to time, and shall be contingent upon and limited by the Grant Budget funding for said reimbursement.
- C.5. Invoice Requirements. The Operating Agency shall invoice the City based on an approved payment schedule, using the forms and all necessary supporting documentation specified by the HUD CDBG Requirements, and present such to:

City of Kingsport
Office of Housing and Community Development
201 W. Market Street, Kingsport, Tennessee 37660
Attention: Mark Haga

- C.6. Budget Line-items. Expenditures, reimbursements, and payments under this Grant Contract shall adhere to the Grant Budget. Reimbursable expenditures may NOT vary from the Grant Budget line item amount(s) detailed. Any change in Grant Budget line items shall require an amendment to the Grant Contract.
- C.7. Disbursement Reconciliation and Close Out. The Operating Agency shall submit any final invoice and a grant disbursement reconciliation report within forty-five (45) days of the Grant Contract end date, in form and substance acceptable to the City.
- a. If total disbursements by the City pursuant to this Grant Contract exceed the amounts permitted by Section C of this Grant Contract, the Operating Agency shall refund the difference to the City. The Operating Agency shall submit said refund with the final grant disbursement reconciliation report.

- b. The City shall not be responsible for the payment of any invoice submitted to the City after the grant disbursement reconciliation report. The City will not deem any Operating Agency costs submitted for reimbursement after the grant disbursement reconciliation report to be allowable and reimbursable by the City, and such invoices will NOT be paid.
 - c. The Operating Agency's failure to provide a final grant disbursement reconciliation report to the City as required shall result in the Operating Agency being deemed ineligible for reimbursement under this Grant Contract, and the Operating Agency shall be required to refund any and all payments by the city pursuant to this Grant Contract.
 - d. The Operating Agency must close out its accounting records at the end of the contract period in such a way that reimbursable expenditures and revenue collections are NOT carried forward.
- C.8. Indirect Cost. Should the Operating Agency request reimbursement for indirect costs, the Operating Agency must submit to the City a copy of the indirect cost rate approved by the cognizant federal agency or the cognizant state agency, as applicable. The Operating Agency will be reimbursed for indirect costs in accordance with the approved indirect cost rate and amounts and limitations specified in the attached Grant Budget. Once the Operating Agency makes an election and treats a given cost as direct or indirect, it must apply that treatment consistently and may not change during the Term. Any changes in the approved indirect cost rate must have prior approval of the cognizant federal agency or the cognizant state agency, as applicable. If the indirect cost rate is provisional during the Term, once the rate becomes final, the Operating Agency agrees to remit any overpayment of funds to the City, and subject to the availability of funds the City agrees to remit any underpayment to the Operating Agency.
- C.9. Cost Allocation. If any part of the costs to be reimbursed under this Grant Contract are joint costs involving allocation to more than one program or activity, such costs shall be allocated and reported in accordance with the provisions of City of Kingsport Departments of Finance and Administration Policies or any amendments or revisions made to this policy statement during the Term.
- C.10. Payment of Invoice. A payment by the City shall not prejudice the City's right to object to or question any reimbursement, invoice, or matter in relation thereto. A payment by the City shall not be construed as acceptance of any part of the work or service provided or as approval of any amount as an allowable cost.
- C.11. Non-allowable Costs. Any amounts payable to the Operating Agency shall be subject to reduction for amounts included in any invoice or payment that are determined by the City, on the basis of audits or monitoring conducted in accordance with the terms of this Grant Contract, to constitute non-allowable costs.
- C.12. City's Right to Set Off. The City reserves the right to deduct from amounts that are or shall become due and payable to the Operating Agency under this Grant Contract or any other contract between the Operating Agency and the City of Kingsport under which the Operating Agency has a right to receive payment from the City.

D. STANDARD TERMS AND CONDITIONS:

- D.1. Required Approvals. The City is not bound by this Grant Contract until it is signed by the parties and approved by appropriate officials in accordance with applicable Kingsport and Tennessee laws and regulations.

- D.2. Modification and Amendment. This Grant Contract may be modified only by a written amendment signed by all parties and approved by the officials who approved the Grant Contract and, depending upon the specifics of the Grant Contract as amended, any additional officials required by Kingsport and Tennessee laws and regulations.
- D.3. Termination for Convenience. The City may terminate this Grant Contract without cause for any reason. A termination for convenience shall not be a breach of the Grant Contract by the City. The City shall give the Operating Agency at least thirty (30) days written notice before the effective termination date. The Operating Agency shall be entitled to compensation for authorized expenditures and satisfactory services, in compliance with Federal CDBG Regulations, completed as of the termination date, but in no event shall the City be liable to the Operating Agency for compensation for any service that has not been rendered. The final decision as to the amount for which the City is liable shall be determined by the City. The Operating Agency shall not have any right to any actual general, special, incidental, consequential, or any other damages whatsoever of any description or amount for the City's exercise of its right to terminate for convenience.
- D.4. Termination for Cause. If the Operating Agency fails to properly perform its obligations under this Grant Contract in a timely or proper manner, or if the Operating Agency violates any terms of this Grant Contract ("Breach Condition"), the City shall have the right to immediately terminate the Grant Contract and withhold payments in excess of compensation for completed services or provided goods. Notwithstanding the above, the Operating Agency shall not be relieved of liability to the City for damages sustained by virtue of any Breach Condition and the City may seek other remedies allowed at law or in equity for breach of this Grant Contract. Upon such termination, the Operating Agency shall have no claim to any CDBG funds remaining under this Grant Contract.
- D.5. Subcontracting. The Operating Agency shall not assign this Grant Contract or enter into a subcontract for any of the services performed under this Grant Contract without obtaining the prior written approval of the City. If such subcontracts are approved by the City, each shall contain, at a minimum, sections of this Grant Contract pertaining to "Conflicts of Interest", "Lobbying", "Nondiscrimination", "Public Accountability", "Public Notice", and "Records" (as identified by the section headings). Notwithstanding any use of approved subcontractors, the Operating Agency shall remain responsible for all work performed.
- D.6. Conflicts of Interest. The Operating Agency warrants that no part of the total Grant Contract Amount shall be paid directly or indirectly to an employee or official of the City of Kingsport as wages, compensation, or gifts in exchange for acting as an officer, agent, employee, subcontractor, or consultant to the Operating Agency in connection with any work contemplated or performed relative to this Grant Contract.
- The Operating Agency acknowledges, understands, and agrees that this Grant Contract shall be null and void if the Operating Agency is, or within the past six months has been, an employee of the City of Kingsport or the U. S. Department of Housing and Urban Development or if the Operating Agency is an entity in which a controlling interest is held by an individual who is, or within the past six months has been, an employee of the City of Kingsport or the U. S. Department of Housing and Urban Development.
- D.7. Lobbying. The Operating Agency certifies, to the best of its knowledge and belief, that:
- a. No federally appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of

any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.

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

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

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

The City:

Mark A. Haga
City of Kingsport Office of Housing and Community Development
201 W. Market Street, Kingsport, Tennessee 37660
Telephone 423-229-9486
Email markhaga@kingsporttn.gov
Email pagejeffers@kingsporttn.gov

The Operating Agency:

Kingsport Housing and Redevelopment Authority

P. O. Box 44
Kingsport, TN 37662
Telephone 423-245-0135
Email

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

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

- D.9. **Subject to Funds Availability.** This Grant Contract is subject to the appropriation and availability of State or Federal funds. In the event that the funds are not appropriated or are otherwise unavailable, the City reserves the right to terminate this Grant Contract upon written notice to the Operating Agency. The City's right to terminate this Grant Contract due to lack of funds is not a breach of this Grant Contract by the City. Upon receipt of the written notice, the Operating Agency shall cease all work associated with the Grant Contract. Should such an event occur, the Operating Agency shall be entitled to compensation for all satisfactory and authorized services completed as of the termination date. Upon such termination, the Operating Agency shall have no right to recover from the City any actual, general, special, incidental, consequential, or any other damages whatsoever of any description or amount.

- D.10. Nondiscrimination. The Operating Agency agrees that no person shall be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination in the performance of this Grant Contract or in the employment practices of the Operating Agency 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 Operating Agency shall, upon request, show proof of such nondiscrimination and shall post in conspicuous places, available to all employees and applicants, notices of nondiscrimination.
- D.11. HIPAA Compliance. The City and the Operating Agency shall comply with obligations under the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), Health Information Technology for Economic and Clinical Health ("HITECH") Act and any other relevant laws and regulations regarding privacy (collectively the "Privacy Rules"). The obligations set forth in this Section shall survive the termination of the Grant Contract.
- a. The Operating Agency warrants to the City that it is familiar with the requirements of the Privacy Rules, and will comply with all applicable requirements in the course of this Grant Contract.
 - b. The Operating Agency warrants that it will cooperate with the City, including cooperation and coordination with City privacy officials and other compliance officers required by the Privacy Rules, in the course of performance of this Grant Contract so that both parties will be in compliance with the Privacy Rules.
 - c. The City and the Operating Agency will sign documents, including but not limited to business associate agreements, as required by the Privacy Rules and that are reasonably necessary to keep the City and the Operating Agency in compliance with the Privacy Rules. This provision shall not apply if information received or delivered by the parties under this Grant Contract is NOT "protected health information" as defined by the Privacy Rules, or if the Privacy Rules permit the parties to receive or deliver the information without entering into a business associate agreement or signing another document.
 - d. The Operating Agency will indemnify the City and hold it harmless for any violation by the Operating Agency or its subcontractors of the Privacy Rules. This includes the costs of responding to a breach of protected health information, the costs of responding to a government enforcement action related to the breach, and any fines, penalties, or damages paid by the City because of the violation.
- D.12. Public Accountability. If the Operating Agency is subject to Tenn. Code Ann. § 8-4-401 *et seq.*, or if this Grant Contract involves the provision of services to citizens by the Operating Agency on behalf of the City, the Operating Agency agrees to establish a system through which recipients of services may present grievances about the operation of the service program. The Operating Agency shall also display in a prominent place, located near the passageway through which public enters in order to receive Grant supported services, a sign at least eleven inches (11") in height and seventeen inches (17") inches in width stating:

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

The sign shall be on the form prescribed by the City. The City shall obtain copies of the sign from HUD, and upon request from the Operating Agency, provide Operating Agency with any necessary signs.

- D.13. Public Notice. All notices, informational pamphlets, press releases, research reports, signs, and similar public notices prepared and released by the Operating Agency in relation to this Grant Contract shall include the statement, "This project is funded under an agreement with the City of Kingsport and the U.S. Department of Housing and Urban Development." All notices by the Operating Agency in relation to this Grant Contract shall be approved by the City.
- D.14. Licensure. The Operating Agency and its employees and all sub-Operating Agencies shall be licensed pursuant to all applicable federal, state, and local laws, ordinances, rules, and regulations and shall upon request provide proof of all licenses.
- D.15. Records. The Operating Agency and any approved subcontractor shall maintain documentation for all charges under this Grant Contract. The books, records, and documents of the Operating Agency and any approved subcontractor, insofar as they relate to work performed or money received under this Grant Contract, shall be maintained for a period of five (5) full years from the date of the final payment and shall be subject to audit at any reasonable time and upon reasonable notice by the City of Kingsport and the U. S. Department of Housing and Urban Development, or their duly appointed representatives.

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

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

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

The Operating Agency 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 Operating Agency shall incorporate any additional Tennessee Comptroller of the Treasury directives into its internal control system.

- D.16. Monitoring. The Operating Agency's activities conducted and records maintained pursuant to this Grant Contract shall be subject to monitoring and evaluation by the City of Kingsport and the U. S. Department of Housing and Urban Development, or their duly appointed representatives.
- D.17. Progress Reports. The Operating Agency shall submit brief, periodic, progress reports to the City as requested.
- D.18. Reports. The Operating Agency shall submit all reports with form, substance and deadlines as specified in the Federal CDBG Regulations. The Operating Agency shall submit, within one (1) month of the conclusion of the Term, a CDBG annual report to the City.
- D.19. Audit Reports. For purpose of this Section, pass-through entity means a non-federal entity that provides a subaward to a subrecipient to carry out part of a federal program.

The Operating Agency shall provide audited financial statements to the City of Kingsport if during the Operating Agency's fiscal year, the Operating Agency (1) expends seven hundred fifty thousand dollars (\$750,000) or more in direct and indirect federal financial assistance and the City is a pass-through entity; (2) expends seven hundred fifty thousand dollars (\$750,000) or more in state funds from the State; or (3) expends seven hundred fifty thousand dollars (\$750,000) or more in federal financial assistance and state funds from the State, and the State is a pass-through entity. At least ninety (90) days before the end of its fiscal year, the Operating Agency shall complete ATTACHMENT E: NOTICE OF AUDIT to notify the City whether or not Operating Agency is subject to an audit. The Operating Agency should submit only one, completed document during the Operating Agency's fiscal year. Any Operating Agency that is subject to an audit and so indicates on Attachment E shall complete ATTACHMENT F: PARENT CHILD INFORMATION. If the Operating Agency is subject to an audit, Operating Agency shall obtain the Tennessee Comptroller's approval before engaging a licensed, independent public accountant to perform the audit. The Operating Agency may contact the Tennessee Comptroller for assistance identifying auditors.

All audits shall be performed in accordance with the Comptroller's requirements, as posted on its web site. When a federal single audit is required, the audit shall be performed in accordance with U.S. Office of Management and Budget's *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards*.

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

The audit contract between the Operating Agency and the Auditor shall be on a contract form prescribed by the Comptroller. The Operating Agency shall be responsible for payment of fees for an audit prepared by a licensed, independent public accountant. Payment of the audit fees by the Operating Agency shall be subject to the provision relating to such fees contained within the Grant Contract. The Operating Agency shall be responsible for reimbursing the Comptroller for any costs of an audit prepared by the Comptroller.

- D.20. Procurement. If other terms of this Grant Contract allow reimbursement for the cost of goods, materials, supplies, equipment, and/or services, such procurement(s) shall be made on a competitive basis, including the use of competitive bidding procedures, where practical. The Operating Agency shall maintain documentation for the basis of each procurement for which reimbursement is paid pursuant to this Grant Contract. In each instance where it is determined that use of a competitive procurement method is not practical, supporting documentation shall include a written justification for the decision and for use of a non-competitive procurement. If the Operating Agency is a subrecipient, the Operating Agency shall comply with 2 C.F.R. §§ 200.318-300.326 when procuring property and services under a federal award.

The Operating Agency shall obtain prior approval from the City before purchasing any equipment under this Grant Contract.

- D.21. Strict Performance. Failure by any party to this Grant Contract to insist in any one or more cases upon the strict performance of any of the terms, covenants, conditions, or provisions of this agreement shall not be construed as a waiver or relinquishment of any such term, covenant, condition, or provision. No term or condition of this Grant Contract shall be held to be waived, modified, or deleted except by a written amendment signed by the parties hereto.

- D.22. Independent Contractor. The parties shall not act as employees, partners, joint venturers, or associates of one another in the performance of this Grant Contract. The parties

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

The Operating Agency, being an independent contractor and not an employee of the City, agrees to carry adequate public liability and other appropriate forms of insurance, including adequate public liability and other appropriate forms of insurance on the Operating Agency's employees, and to pay all applicable taxes incident to this Grant Contract.

- D.23. City Liability. The City shall have no liability except as specifically provided in this Grant Contract.
- D.24. Force Majeure. "Force Majeure Event" means fire, flood, earthquake, elements of nature or acts of God, wars, riots, civil disorders, rebellions or revolutions, acts of terrorism or any other similar cause beyond the reasonable control of the Party except to the extent that the non-performing Party is at fault in failing to prevent or causing the default or delay, and provided that the default or delay cannot reasonably be circumvented by the non-performing Party through the use of alternate sources, workaround plans or other means. A strike, lockout or labor dispute shall not excuse either Party from its obligations under this Grant Contract. Except as set forth in this Section, any failure or delay by a Party in the performance of its obligations under this Grant Contract arising from a Force Majeure Event is not a default under this Grant Contract or grounds for termination. The non-performing Party will be excused from performing those obligations directly affected by the Force Majeure Event, and only for as long as the Force Majeure Event continues, provided that the Party continues to use diligent, good faith efforts to resume performance without delay. The occurrence of a Force Majeure Event affecting Operating Agency's representatives, suppliers, subcontractors, customers or business apart from the Grant Contract is not a Force Majeure Event under this Grant Contract. Operating Agency will promptly notify the City of any delay caused by a Force Majeure Event (to be confirmed in a written notice to the City within one (1) day of the inception of the delay) that a Force Majeure Event has occurred, and will describe in reasonable detail the nature of the Force Majeure Event. If any Force Majeure Event results in a delay in Operating Agency's performance longer than forty-eight (48) hours, the City may, upon notice to Operating Agency: (a) cease payment of the fees until Operating Agency resumes performance of the affected obligations; or (b) immediately terminate this Grant Contract or any purchase order, in whole or in part, without further payment except for fees then due and payable. Operating Agency will not increase its charges under this Grant Contract or charge the City any fees other than those provided for in the Grant Contract as the result of a Force Majeure Event.
- D.25. Tennessee Department of Revenue Registration. The Operating Agency shall comply with all applicable registration requirements contained in Tenn. Code Ann. §§ 67-6-601 – 608. Compliance with applicable registration requirements is a material requirement of this Grant Contract.
- D.26. Reserved.
- D.27. City Interest in Equipment or Motor Vehicles. The Operating Agency shall take legal title to all equipment or motor vehicles purchased totally or in part with funds provided under this Grant contract, subject to the City's, equitable interest therein, to the extent of its *pro rata* share, based upon, the City's, contribution to the purchase price. The term "equipment" shall include any article of nonexpendable, tangible, personal property having a useful life of more than one year and an acquisition costs which equals or

exceeds five thousand dollars (\$5,000). The term "motor vehicle" shall include any article of tangible personal property that is required to be registered under the "Tennessee Motor Vehicle Title and Registration Law", Tenn. Code Ann. Title 55, Chapters 1-6.

As authorized by the Tennessee Uniform Commercial Code, Tenn. Code Ann. Title 47, Chapter 9 and the "Tennessee Motor Vehicle Title and Registration Law," Tenn. Code Ann. Title 55, Chapters 1-6, the parties intend this Grant contract to create a security interest in favor of the City in the equipment or motor vehicles acquired by the Operating Agency pursuant to the provisions of this Grant contract. A further intent of this Grant contract is to acknowledge and continue the security interest in favor of the City in the equipment or motor vehicles acquired by the Operating Agency pursuant to the provisions of this program's prior year Grant contracts between the City, and the Operating Agency.

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

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

- a. Description of the equipment or motor vehicles;
- b. Manufacturer's serial number or other identification number, when applicable;
- c. Consecutive inventory equipment or motor vehicles tag identification;
- d. Acquisition date, cost, and check number;
- e. Fund source, State Grant number, or other applicable fund source identification;
- f. Percentage of state funds applied to the purchase;

- g. Location within the Operating Agency's operations where the equipment or motor vehicles is used;
 - h. Condition of the property or disposition date if Operating Agency no longer has possession;
 - i. Depreciation method, if applicable; and
 - j. Monthly depreciation amount, if applicable.
 - k. The Operating Agency shall tag equipment or motor vehicles with an identification number which is cross referenced to the equipment or motor vehicle item on the inventory control report. The Operating Agency shall inventory equipment or motor vehicles annually. The Operating Agency must compare the results of the inventory with the inventory control report and investigate any differences. The Operating Agency must then adjust the inventory control report to reflect the results of the physical inventory and subsequent investigation.
 - l. The Operating Agency shall submit its inventory control report of all equipment or motor vehicles purchased with funding through this Grant contract within thirty (30) days of its end date and in form and substance acceptable to the City. This inventory control report shall contain, at a minimum, the requirements specified above for inventory control. The Operating Agency shall notify the City, in writing, of any equipment or motor vehicle loss describing the reasons for the loss. Should the equipment or motor vehicles be destroyed, lost, or stolen, the Operating Agency shall be responsible to the City for the *pro rata* amount of the residual value at the time of loss based upon the City's original contribution to the purchase price.
 - m. Upon termination of the Grant contract, where a further contractual relationship is not entered into, or at another time during the term of the Grant contract, the Operating Agency shall request written approval from the City for any proposed disposition of equipment or motor vehicles purchased with Grant funds. All equipment or motor vehicles shall be disposed of in such a manner as the parties may agree from among alternatives approved by the Tennessee Department of General Services as appropriate and in accordance with any applicable federal laws or regulations.
- D.28. City, State and Federal Compliance. The Operating Agency shall comply with all applicable city, state, and federal laws, ordinances, rules and regulations in performance of this Grant Contract.
- D.29. Governing Law. This Grant Contract shall be governed by and construed in accordance with the laws of the State of Tennessee. The Operating Agency agrees that it will be subject to the exclusive jurisdiction of the courts of the State of Tennessee in actions that may arise under this Grant Contract. The Operating Agency acknowledges and agrees that any rights or claims against the City of Kingsport or its employees hereunder, and any remedies arising there from, shall be subject to and limited to those rights and remedies, if any, available under Tenn. Code Ann. § 29-20-101 *et seq.* and the sovereign immunity the city has through the State of Tennessee.
- D.30. Completeness. This Grant Contract is complete and contains the entire understanding between the parties relating to the subject matter contained herein, including all the terms and conditions of the parties' agreement. This Grant Contract supersedes any and all prior understandings, representations, negotiations, and agreements between the parties relating hereto, whether written or oral.

D.31. Severability. If any terms and conditions of this Grant Contract are held to be invalid or unenforceable as a matter of law, the other terms and conditions hereof shall not be affected thereby and shall remain in full force and effect. To this end, the terms and conditions of this Grant Contract are declared severable.

D.32. Headings. Section headings are for reference purposes only and shall not be construed as part of this Grant Contract.

E. SPECIAL TERMS AND CONDITIONS:

E.1. Conflicting Terms and Conditions. Should any of these special terms and conditions conflict with any other terms and conditions of this Grant Contract, the special terms and conditions shall control.

E.2. Debarment and Suspension. The Operating Agency certifies, to the best of its knowledge and belief, that it, its current and future principals, its current and future subcontractors and their principals:

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

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

E.3. Work Papers Subject to Review. The Operating Agency shall make all audit, accounting, or financial analysis work papers, notes, and other documents available for review by the City, the U. S. Department of Housing and Urban Development, or their respective representatives upon request, during normal working hours either while the analysis is in progress or subsequent to the completion of this Grant Contract.

E.4. Environmental Tobacco Smoke. Pursuant to the provisions of the federal "Pro-Children Act of 1994" and the Children's Act for Clean Indoor Air of 1995", Tenn. Code Ann. §§ 39-17-1601 through 1606, the Operating Agency shall prohibit smoking of tobacco products within any indoor premises in which services are provided to individuals under the age of eighteen (18) years. The Operating Agency shall post "no smoking" signs in appropriate, permanent sites within such premises. This prohibition shall be applicable during all

hours, not just the hours in which children are present. Violators of the prohibition may be subject to civil penalties and fines. This prohibition shall apply to and be a part of any subcontract related to this Grant Contract.

- E.5. Hold Harmless. To the extent permitted by State law, the Operating Agency agrees to indemnify and hold harmless the City of Kingsport, the U. S. Department of Housing and Urban Development, 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 Operating Agency, its employees, or any person acting for or on its or their behalf relating to this Grant Contract. The Operating Agency further agrees it shall be liable for the reasonable cost of attorneys and court costs for the City, the U. S. Department of Housing and Urban Development to enforce the terms of this Grant Contract.

In the event of any such suit or claim, the parties shall give each other immediate notice and provide all necessary assistance to respond. The failure of the City, the U. S. Department of Housing and Urban Development to give notice shall only relieve the Operating Agency of its obligations under this Section to the extent that the Operating Agency can demonstrate actual prejudice arising from the failure to give notice. This Section shall not grant the Operating Agency, through its attorney(s), the right to represent the City of Kingsport, the U. S. Department of Housing and Urban Development in any legal matter, as the right to represent the City and the State is governed by Tenn. Code Ann. § 8-6-106.

- E.6. Federal Funding Accountability and Transparency Act ("FFATA"). This Grant requires the Operating Agency to provide supplies or services that are funded in whole or in part by federal funds that are subject to FFATA. The Operating Agency is responsible for ensuring that all applicable requirements, including but not limited to those set forth herein, of FFATA are met and that the Operating Agency provides information to the City as required. The Operating Agency shall comply with the following:

a. Reporting of Total Compensation of the Operating Agency's Executives.

- (1) The Operating Agency shall report the names and total compensation of each of its five (5) most highly compensated executives for the Operating Agency's preceding completed fiscal year, if in the Operating Agency's preceding fiscal year it received:
 - i. 80 percent or more of the Operating Agency's annual gross revenues from federal procurement contracts and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR § 170.320 (and sub awards); and
 - ii. \$25,000,000 or more in annual gross annual revenues from federal procurement contracts (and subcontracts), and federal financial assistance subject to the Transparency Act (and sub awards); and
 - iii. The public does not have access to information about the compensation of the executives through periodic reports files under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. § 78m(a), 78o(d)) or § 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at <http://www.sec.gov/answers/execomp.htm>).

As defined in 2 CFR § 170.315. "Executive" means officers, managing partners, or any other employees in management positions.

- (2) Total compensation means the cash and noncash dollar value earned by the executive during the Operating Agency's preceding fiscal year and includes the following (for information see 17 § CFR 229.402(c)(2)):
- i. Salary and bonus.
 - ii. Awards of stock, stock options, and stock appreciation rights. Use the dollar amount recognized for financial statement reporting purposes with respect to the fiscal year in accordance with the Statement of Financial Accounting Standards No. 123 (Revised 2004) (FAS 123R), Shared Based Payments.
 - iii. Earnings for services under non-equity incentive plans. This does not include group life, health, hospitalization or medical reimbursement plans that do not discriminate in favor of executives, and are available generally to all salaried employees.
 - iv. Change in pension value. This is the change in present value of defined benefit and actuarial pension plans.
 - v. Above-market earnings or deferred compensation which is not tax qualified.
 - vi. Other compensation, if the aggregate value of all such other compensation (e.g. severance, termination payments, value of life insurance paid on behalf of the employee, perquisites of property) for the executive exceeds \$10,000.
- b. The Operating Agency must report executive total compensation described above to the City by the end of the month during which this Grant Contract is fully executed.
- c. If this Grant Contract is amended to extend the Term, the Operating Agency must submit an executive total compensation report to the City by the end of the month in which the amendment to this Grant Contract becomes effective.
- d. The Operating Agency will obtain a Data Universal Numbering System ("DUNS") number and maintain its DUNS number for the terms of this Grant Contract. More information about obtaining a DUNS Number can be found at: <http://fedgov.dnb.com/webform/>.

The Operating Agency's failure to comply with the above requirements is a material breach of this Grant Contract for which the City may terminate this Grant Contract for cause. The City will not be obligated to pay any outstanding invoice received from the Operating Agency unless and until the Operating Agency is in full compliance with the above requirements.

E.7. Training. The Operating Agency agrees to attend all training sessions regarding management of the CDBG Program which are scheduled by the City and HUD.

E.8. CDBG Program Requirements. Under this Grant Contract, Operating Agency is receiving an allocation or grant of Community Development Block Grant Program funds. The Operating Agency understands these funds are made available through the U.S. Department of Housing and Urban Development (HUD) and to facilitate the receipt of these funds the Operating Agency agrees and certifies to comply with all applicable HUD

requirements. Without limitations, Operating Agency specifically agrees and certifies as to the following:

- a. The Operating Agency will abide with all of the requirements of 24 CFR, Part 570 and Part 91, Community Development Block Grant Program.
 - b. The Operating Agency will comply with other applicable Federal requirements in 24 CFR, Part 570 and Part 91, as follows:
 1. 24 CFR 5.105(a). Section 3 Nondiscrimination and Equal Opportunity;
 2. 24 CFR 570 Subpart A, General Provisions;
 3. 24 CFR 570 Subpart C, Eligible Activities;
 4. 24 CFR 570 Subpart J, Grant Administration;
 5. 24 CFR 570 Subpart K, Other Program Requirements;
 6. 24 CFR 570 Subpart O, Performance Reviews;
 7. Title VI and Executive Order 13166 Affirmative Outreach
 - c. If the Operating Agency is primarily a religious organization, it agrees to use its funds to provide all eligible activities under this program in a manner that is free from religious influences as provided by 24 CFR 576.406.
 - d. The Operating Agency will comply with the uniform administrative requirements of 24 CFR Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Award, and the requirements of 24 CFR 576.407.
 - e. The Operating Agency will comply with the acquisition and relocation requirements of the Uniform Relocation Assistance and Real Estate Property Acquisition Policies Act of 1970, as amended, implementing regulations at 49 CFR, Part 24 and the requirements of 24 CFR 576.59.
 - f. The Operating Agency will comply with the requirements of the Residential Lead-Based Paint Hazard Reduction Act of 1992, implementing regulations at 24 CFR, Part 35, Subparts A, B, H, J, K, and M as applicable.
 - g. The Operating Agency will use CDBG funds pursuant to its or the City's Consolidated Plan approved by HUD and all requirements of 24 CFR, Part 570 and Part 91.
 - h. The Operating Agency will maintain adequate documentation to determine eligibility of persons served by the CDBG program.
 - i. The Operating Agency will develop and implement procedures to ensure the confidentiality of records pertaining to any individual fleeing domestic violence situations. In addition the address and location of family violence shelter facilities receiving ESG funding may not be publicly disclosed except with the written authorization of the person(s) responsible for the shelter facility's operation.
- E.9. Drug Free Workplace. The Operating Agency will or will continue to provide a drug-free workplace by:

- a. Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the Operating Agency's workplace and specifying the action that will be taken against employees for violation of such prohibition;
- b. Establishing an ongoing drug-free awareness program to inform employees about:
 - 1. The dangers of drug abuse in the workplace;
 - 2. The Operating Agency's policy of maintaining a drug-free workplace;
 - 3. Any drug counseling, rehabilitation and employee assistance programs; and
 - 4. The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace.
- c. Making it a requirement that each employee to be engaged in the performance of this Grant Contract be given a copy of the statement required by Paragraph E.10. (a);
- d. Notifying the employee in the statement required by Paragraph E.10(a) that, as a condition of employment under this Grant Contract, the employee will:
 - 1. Abide by the terms of the statement; and
 - 2. Notify the employees in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;
- e. Notifying the City in writing, within ten calendar days after receiving notice under Paragraph E.10(d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to every grant officer or other designee on whose grant activity the convicted employee was working, unless the Federal agency has designated a central point for the receipt of such notices. Notice shall include the identification number(s) of each affected grant.
- f. Taking one of the following actions, within thirty calendar days of receiving notice under Paragraph E.10(d)(2), with respect to any employee who is so convicted:
 - 1. Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirement of the Rehabilitation Act of 1973, as amended; or
 - 2. Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State or local health, law enforcement or the appropriate agency;
- g. Making a good faith effort to continue to maintain a drug-free workplace through implementation of Paragraphs E.10 (a), (b), (c), (d), (e) and (f).

E.10. Corrective Action. If the City takes any corrective or remedial action as outlined in 24 CFR § 570.910 that is the result of any action taken by the Operating Agency, the

Operating Agency will take any action required by the City to prevent a continuation of the deficiency, mitigate to the extent possible its adverse effects or consequences, and prevent its recurrence. These remedies could, among other actions, include repaying CDBG funds to the City.

IN WITNESS WHEREOF, the parties have by their duly authorized representatives set out their signatures.

CITY OF KINGSPORT

John Clark, Mayor

Date

ATTEST:

James H. Demming, City Recorder

Date

KINGSPORT HOUSING AND REDEVELOPMENT AUTHORITY

Terry Cunningham, Director

Date

APPROVED AS TO FORM:

Michael Billingsley, City Attorney

Date

ATTACHMENT A

2018 CDBG PROGRAM DESCRIPTION OF OPERATING AGENCY ACTIVITIES

OPERATING AGENCY: Kingsport Housing and Redevelopment Authority

I. The activities for the 2018 CDBG Project shall consist of the following:

A. Purpose of Project

In accordance with the application submitted by Kingsport Housing and Redevelopment Authority for 2018 CDBG funding, Learning Centers of KHRA's Learning Centers Program will provide school supplies/backpacks to low and moderate income children within and/or associated with public housing developments operated by KHRA. These funds will aid participants to be successful within the City of Kingsport's education system.

B. Method of Operation

The program will be available to tenants of Kingsport Public Housing facilities and low and very low-income persons. The program will be administered by **KHRA** and will provide staff support for record keeping, disbursement of funds and approval of participants.

ATTACHMENT B
2018 CDBG Program
IMPLEMENTATION PLAN FOR CDBG PROJECTS

OPERATING AGENCY: Kingsport Housing and Redevelopment Authority

I. The time table for completing the activities for the project shall be:

- | | | |
|----|--|---------------|
| 1. | Determination of status for Environmental Review | July 1, 2018 |
| 2. | Release of Funds | July 1, 2018 |
| 3. | Begin providing services to residents | July 1, 2018 |
| 4. | Contract complete | June 30, 2019 |

ATTACHMENT C

2018 CDBG PROGRAM

PROJECT BUDGET

OPERATING AGENCY: Kingsport Housing and Redevelopment Authority

CDBG funds will be used as follows:

Program Costs	\$10,000
TOTAL FOR GRANT	\$10,000

ATTACHMENT D

Federal Award Identification Worksheet

Operating Agency's name (must match registered name in DUNS)	Kingsport Housing and Redevelopment Authority
Operating Agency's DUNS number	
Federal Award Identification Number (FAIN)	B-18-MC-47-0004
Federal award date	July 1, 2018
CFDA number and name	14.218 Community Development Grant Program
Grant contract's begin date	July 1, 2018
Grant contract's end ate	June 30, 2019
Amount of federal funds obligated by this grant contract	\$10,000
Total amount of federal funds obligated to the Operating Agency	\$10,000
Total amount of the federal award to the City of Kingsport	\$392,052
Name of federal awarding agency	U.S. Department of Housing and Urban Development
Name and contact information for the federal awarding official	Mary C. Wilson, Director Community Planning and Development U.S. Department of Housing and Urban Development Knoxville Field Office 710 Locust Street, Third Floor Knoxville, TN 37902-2526
Is the federal award for research and development?	No
Indirect cost rate for the federal award (See 2 C.F.R. §200.331 for information on type of indirect cost rate)	To be determined by cost allocation plan approved by Operating Agency's cognizant agency

ATTACHMENT E

Notice of Audit Report

Check one of the two boxes below and complete the remainder of this document as instructed. Send completed documents as a PDF file to cpo.auditnotice@tn.gov. **The Operating Agency should submit only one, completed "Notice of Audit Report" document to the City during the Operating Agency's fiscal year.**

- ☐ _____ is subject to an audit for fiscal year 2018.
- ☐ _____ is not subject to an audit for fiscal year 2018.

Any Operating Agency that is subject to an audit must complete the information below.

Operating Agency's Edison Vendor ID Number: _____

Type of funds expended	Estimated amount of funds expended by end of Operating Agency's fiscal year
Federal pass-through funds	
a. Funds passed through the City of Kingsport	a. \$10,000
b. Funds passed through any other entity	b. \$0
Funds received directly from the federal government	\$
Non-federal funds received directly from the City of Kingsport	\$

Auditor's Name: _____

Auditor's address: _____

Auditor's phone number: _____

Auditor's email: _____

ATTACHMENT F

Parent Child Information

Send completed documents as a PDF file to cpo.auditnotice@tn.gov. ***The Operating Agency should submit only one, completed "Parent Child Information" document to the City during the Operating Agency's fiscal year if the Operating Agency indicates it is subject to an audit on the "Notice of Audit Report" document.***

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

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

Operating Agency's Edison Vendor ID number: _____

Is _____ a parent? Yes ☐ No ☐

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

Is _____ a child? Yes ☐ No ☐

If yes, complete the fields below.

Parent entity's name: _____

Parent entity's tax identification number: _____

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

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

Parent entity's contact information

Name of primary contact person: _____

Address: _____

Phone number: _____

Email address: _____

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

**GRANT CONTRACT
BETWEEN THE CITY OF KINGSPORT, TENNESSEE
AND
SOUTH CENTRAL KINGSPORT COMMUNITY DEVELOPMENT, Inc.**

This Grant Contract, by and between the City of Kingsport, hereinafter referred to as the "City" and South Central Kingsport Community Development, Inc., hereinafter referred to as the "Operating Agency", is for the provision of services to the homeless and those at risk for homelessness under the Community Development Block Grant Program ("CDBG"), as further described under "Scope of Services and Deliverables" (the "SCOPE OF SERVICES").

Operating Agency's address 1140 Martin Luther King Dr., Kingsport, TN 37660
Operating Agency's Edison Vendor ID # _____

A. SCOPE OF SERVICES AND DELIVERABLES:

- A.1. The Operating Agency shall provide all services and deliverables ("Scope") as required, described, and detailed in this Grant contract.
- A.2. To provide and operate public service activities to low and moderate income individuals and families within the city limits of Kingsport as specified in ATTACHMENT A: DESCRIPTION OF ACTIVITIES, ATTACHMENT B: IMPLEMENTATION PLAN, AND ATTACHMENT C: BUDGET.
- A.3. Incorporation of Additional Documents. Each of the following documents is included as part of this Grant Contract by reference or attachment. In the event of a discrepancy or ambiguity regarding the Operating Agency's duties, responsibilities, and performance hereunder, these terms shall govern or order of precedence below:
- a. Title 24 Code of Federal Regulations, Part 570 and Part 91, of the Community Development Block Grant Program authorized by Title I of the Housing and Community Development Act of 1974 (42 USC 5301 et.seq.), as amended (the "Federal CDBG Regulations").
 - b. The United States Department of Housing and Urban Development CDBG Desk Guide for Program and Eligibility Policies and Procedures.
- A.4. Incorporation of Federal Award Identification Worksheet. The federal award identification worksheet, which appears as ATTACHMENT D, is incorporated in this Grant Contract.
- A.5. To comply with the Eligible Activity Requirements of 24 CFR 570, Subpart C, and Part 91 as applicable in accordance with the type of project assisted.
- A.6. To maintain records adequate to document compliance with 24 CFR 570, along with such other records the City and HUD determines necessary to enable the City and HUD to fulfill its responsibilities in the CDBG Program. All records will be retained for a three (3) year period in accordance with the requirements of 24 CFR Part 570.
- A.7. To furnish to the City all reports required to be filed in accordance with any directives of the City and within the time period prescribed by the City for such reports.

B. TERM OF GRANT CONTRACT:

- B.1. Grant Term. This Grant Contract shall be effective on July 1, 2018 ("Effective Date") and extend for a period of twelve (12) months after the Effective Date to June 30, 2019 ("Term"). The City shall have no obligation for goods or services provided by the Operating Agency prior to the Effective Date.

C. PAYMENT TERMS AND CONDITIONS:

- C.1. Maximum Liability. In no event shall the maximum liability of the City under this Grant Contract exceed Eleven Thousand DOLLARS (\$11,000.00) ("Maximum Liability"). The Grant Budget, attached and incorporated hereto as Attachment C, shall constitute the maximum amount due the Operating Agency under this Grant Contract. The Grant Budget line-items include, but are not limited to, all applicable taxes, fees, overhead, and all other direct and indirect costs incurred or to be incurred by the Operating Agency.

- C.2. Compensation Firm. The Maximum Liability of the City is not subject to escalation for any reason unless amended. The Grant Budget amounts are firm for the Term and are not subject to escalation for any reason unless amended, except as provided in Section C.6.

- C.3. Payment Methodology. The Operating Agency shall be reimbursed for actual, reasonable, and necessary costs based upon the Grant Budget, not to exceed the Maximum Liability established in Section C.1. Upon progress toward the completion of the Scope, as described in Section A of this Grant Contract, the Operating Agency shall submit invoices, in form and substance acceptable to the City, with all necessary supporting documentation, prior to any reimbursement of allowable costs.

- C.4. Travel Compensation. Reimbursement to the Operating Agency for travel, meals, or lodging shall be subject to amounts and limitations specified in the "City Comprehensive Travel Regulations", as they are amended from time to time, and shall be contingent upon and limited by the Grant Budget funding for said reimbursement.

- C.5. Invoice Requirements. The Operating Agency shall invoice the City based on an approved payment schedule, using the forms and all necessary supporting documentation specified by the HUD CDBG Requirements, and present such to:

City of Kingsport
Office of Housing and Community Development
201 W. Market Street, Kingsport, Tennessee 37660
Attention: Mark Haga

- C.6. Budget Line-items. Expenditures, reimbursements, and payments under this Grant Contract shall adhere to the Grant Budget. Reimbursable expenditures may NOT vary from the Grant Budget line item amount(s) detailed. Any change in Grant Budget line items shall require an amendment to the Grant Contract.

- C.7. Disbursement Reconciliation and Close Out. The Operating Agency shall submit any final invoice and a grant disbursement reconciliation report within forty-five (45) days of the Grant Contract end date, in form and substance acceptable to the City.

- a. If total disbursements by the City pursuant to this Grant Contract exceed the amounts permitted by Section C of this Grant Contract, the Operating Agency shall refund the difference to the City. The Operating Agency shall submit said refund with the final grant disbursement reconciliation report.

- b. The City shall not be responsible for the payment of any invoice submitted to the City after the grant disbursement reconciliation report. The City will not deem any Operating Agency costs submitted for reimbursement after the grant disbursement reconciliation report to be allowable and reimbursable by the City, and such invoices will NOT be paid.
 - c. The Operating Agency's failure to provide a final grant disbursement reconciliation report to the City as required shall result in the Operating Agency being deemed ineligible for reimbursement under this Grant Contract, and the Operating Agency shall be required to refund any and all payments by the city pursuant to this Grant Contract.
 - d. The Operating Agency must close out its accounting records at the end of the contract period in such a way that reimbursable expenditures and revenue collections are NOT carried forward.
- C.8. Indirect Cost. Should the Operating Agency request reimbursement for indirect costs, the Operating Agency must submit to the City a copy of the indirect cost rate approved by the cognizant federal agency or the cognizant state agency, as applicable. The Operating Agency will be reimbursed for indirect costs in accordance with the approved indirect cost rate and amounts and limitations specified in the attached Grant Budget. Once the Operating Agency makes an election and treats a given cost as direct or indirect, it must apply that treatment consistently and may not change during the Term. Any changes in the approved indirect cost rate must have prior approval of the cognizant federal agency or the cognizant state agency, as applicable. If the indirect cost rate is provisional during the Term, once the rate becomes final, the Operating Agency agrees to remit any overpayment of funds to the City, and subject to the availability of funds the City agrees to remit any underpayment to the Operating Agency.
- C.9. Cost Allocation. If any part of the costs to be reimbursed under this Grant Contract are joint costs involving allocation to more than one program or activity, such costs shall be allocated and reported in accordance with the provisions of City of Kingsport Departments of Finance and Administration Policies or any amendments or revisions made to this policy statement during the Term.
- C.10. Payment of Invoice. A payment by the City shall not prejudice the City's right to object to or question any reimbursement, invoice, or matter in relation thereto. A payment by the City shall not be construed as acceptance of any part of the work or service provided or as approval of any amount as an allowable cost.
- C.11. Non-allowable Costs. Any amounts payable to the Operating Agency shall be subject to reduction for amounts included in any invoice or payment that are determined by the City, on the basis of audits or monitoring conducted in accordance with the terms of this Grant Contract, to constitute non-allowable costs.
- C.12. City's Right to Set Off. The City reserves the right to deduct from amounts that are or shall become due and payable to the Operating Agency under this Grant Contract or any other contract between the Operating Agency and the City of Kingsport under which the Operating Agency has a right to receive payment from the City.

D. STANDARD TERMS AND CONDITIONS:

- D.1. Required Approvals. The City is not bound by this Grant Contract until it is signed by the parties and approved by appropriate officials in accordance with applicable Kingsport and Tennessee laws and regulations.

- D.2. Modification and Amendment. This Grant Contract may be modified only by a written amendment signed by all parties and approved by the officials who approved the Grant Contract and, depending upon the specifics of the Grant Contract as amended, any additional officials required by Kingsport and Tennessee laws and regulations.
- D.3. Termination for Convenience. The City may terminate this Grant Contract without cause for any reason. A termination for convenience shall not be a breach of the Grant Contract by the City. The City shall give the Operating Agency at least thirty (30) days written notice before the effective termination date. The Operating Agency shall be entitled to compensation for authorized expenditures and satisfactory services, in compliance with Federal CDBG Regulations, completed as of the termination date, but in no event shall the City be liable to the Operating Agency for compensation for any service that has not been rendered. The final decision as to the amount for which the City is liable shall be determined by the City. The Operating Agency shall not have any right to any actual general, special, incidental, consequential, or any other damages whatsoever of any description or amount for the City's exercise of its right to terminate for convenience.
- D.4. Termination for Cause. If the Operating Agency fails to properly perform its obligations under this Grant Contract in a timely or proper manner, or if the Operating Agency violates any terms of this Grant Contract ("Breach Condition"), the City shall have the right to immediately terminate the Grant Contract and withhold payments in excess of compensation for completed services or provided goods. Notwithstanding the above, the Operating Agency shall not be relieved of liability to the City for damages sustained by virtue of any Breach Condition and the City may seek other remedies allowed at law or in equity for breach of this Grant Contract. Upon such termination, the Operating Agency shall have no claim to any CDBG funds remaining under this Grant Contract.
- D.5. Subcontracting. The Operating Agency shall not assign this Grant Contract or enter into a subcontract for any of the services performed under this Grant Contract without obtaining the prior written approval of the City. If such subcontracts are approved by the City, each shall contain, at a minimum, sections of this Grant Contract pertaining to "Conflicts of Interest", "Lobbying", "Nondiscrimination", "Public Accountability", "Public Notice", and "Records" (as identified by the section headings). Notwithstanding any use of approved subcontractors, the Operating Agency shall remain responsible for all work performed.
- D.6. Conflicts of Interest. The Operating Agency warrants that no part of the total Grant Contract Amount shall be paid directly or indirectly to an employee or official of the City of Kingsport as wages, compensation, or gifts in exchange for acting as an officer, agent, employee, subcontractor, or consultant to the Operating Agency in connection with any work contemplated or performed relative to this Grant Contract.

The Operating Agency acknowledges, understands, and agrees that this Grant Contract shall be null and void if the Operating Agency is, or within the past six months has been, an employee of the City of Kingsport or the U. S. Department of Housing and Urban Development or if the Operating Agency is an entity in which a controlling interest is held by an individual who is, or within the past six months has been, an employee of the City of Kingsport or the U. S. Department of Housing and Urban Development.

- D.7. Lobbying. The Operating Agency certifies, to the best of its knowledge and belief, that:
- a. No federally appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of

any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.

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

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

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

The City:

Mark A. Haga
City of Kingsport Office of Housing and Community Development
201 W. Market Street, Kingsport, Tennessee 37660
Telephone 423-229-9486
Email markhaga@kingsporttn.gov
Email pagejeffers@kingsporttn.gov

The Operating Agency:

South Central Kingsport Community Development, Inc.
1140 Martin Luther King Drive
Kingsport, TN 37660
Telephone 423-677-9779
Email

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

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

- D.9. **Subject to Funds Availability.** This Grant Contract is subject to the appropriation and availability of State or Federal funds. In the event that the funds are not appropriated or are otherwise unavailable, the City reserves the right to terminate this Grant Contract upon written notice to the Operating Agency. The City's right to terminate this Grant Contract due to lack of funds is not a breach of this Grant Contract by the City. Upon receipt of the written notice, the Operating Agency shall cease all work associated with the Grant Contract. Should such an event occur, the Operating Agency shall be entitled to compensation for all satisfactory and authorized services completed as of the termination date. Upon such termination, the Operating Agency shall have no right to recover from the City any actual, general, special, incidental, consequential, or any other damages whatsoever of any description or amount.

- D.10. Nondiscrimination. The Operating Agency agrees that no person shall be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination in the performance of this Grant Contract or in the employment practices of the Operating Agency 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 Operating Agency shall, upon request, show proof of such nondiscrimination and shall post in conspicuous places, available to all employees and applicants, notices of nondiscrimination.
- D.11. HIPAA Compliance. The City and the Operating Agency shall comply with obligations under the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), Health Information Technology for Economic and Clinical Health ("HITECH") Act and any other relevant laws and regulations regarding privacy (collectively the "Privacy Rules"). The obligations set forth in this Section shall survive the termination of the Grant Contract.
- a. The Operating Agency warrants to the City that it is familiar with the requirements of the Privacy Rules, and will comply with all applicable requirements in the course of this Grant Contract.
 - b. The Operating Agency warrants that it will cooperate with the City, including cooperation and coordination with City privacy officials and other compliance officers required by the Privacy Rules, in the course of performance of this Grant Contract so that both parties will be in compliance with the Privacy Rules.
 - c. The City and the Operating Agency will sign documents, including but not limited to business associate agreements, as required by the Privacy Rules and that are reasonably necessary to keep the City and the Operating Agency in compliance with the Privacy Rules. This provision shall not apply if information received or delivered by the parties under this Grant Contract is NOT "protected health information" as defined by the Privacy Rules, or if the Privacy Rules permit the parties to receive or deliver the information without entering into a business associate agreement or signing another document.
 - d. The Operating Agency will indemnify the City and hold it harmless for any violation by the Operating Agency or its subcontractors of the Privacy Rules. This includes the costs of responding to a breach of protected health information, the costs of responding to a government enforcement action related to the breach, and any fines, penalties, or damages paid by the City because of the violation.
- D.12. Public Accountability. If the Operating Agency is subject to Tenn. Code Ann. § 8-4-401 *et seq.*, or if this Grant Contract involves the provision of services to citizens by the Operating Agency on behalf of the City, the Operating Agency agrees to establish a system through which recipients of services may present grievances about the operation of the service program. The Operating Agency shall also display in a prominent place, located near the passageway through which public enters in order to receive Grant supported services, a sign at least eleven inches (11") in height and seventeen inches (17") inches in width stating:

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

The sign shall be on the form prescribed by the City. The City shall obtain copies of the sign from HUD, and upon request from the Operating Agency, provide Operating Agency with any necessary signs.

- D.13. Public Notice. All notices, informational pamphlets, press releases, research reports, signs, and similar public notices prepared and released by the Operating Agency in relation to this Grant Contract shall include the statement, "This project is funded under an agreement with the City of Kingsport and the U.S. Department of Housing and Urban Development." All notices by the Operating Agency in relation to this Grant Contract shall be approved by the City.
- D.14. Licensure. The Operating Agency and its employees and all sub-Operating Agencies shall be licensed pursuant to all applicable federal, state, and local laws, ordinances, rules, and regulations and shall upon request provide proof of all licenses.
- D.15. Records. The Operating Agency and any approved subcontractor shall maintain documentation for all charges under this Grant Contract. The books, records, and documents of the Operating Agency and any approved subcontractor, insofar as they relate to work performed or money received under this Grant Contract, shall be maintained for a period of five (5) full years from the date of the final payment and shall be subject to audit at any reasonable time and upon reasonable notice by the City of Kingsport and the U. S. Department of Housing and Urban Development, or their duly appointed representatives.

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

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

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

The Operating Agency 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 Operating Agency shall incorporate any additional Tennessee Comptroller of the Treasury directives into its internal control system.

- D.16. Monitoring. The Operating Agency's activities conducted and records maintained pursuant to this Grant Contract shall be subject to monitoring and evaluation by the City of Kingsport and the U. S. Department of Housing and Urban Development, or their duly appointed representatives.
- D.17. Progress Reports. The Operating Agency shall submit brief, periodic, progress reports to the City as requested.
- D.18. Reports. The Operating Agency shall submit all reports with form, substance and deadlines as specified in the Federal CDBG Regulations. The Operating Agency shall submit, within one (1) month of the conclusion of the Term, a CDBG annual report to the City.
- D.19. Audit Reports. For purpose of this Section, pass-through entity means a non-federal entity that provides a subaward to a subrecipient to carry out part of a federal program.

The Operating Agency shall provide audited financial statements to the City of Kingsport if during the Operating Agency's fiscal year, the Operating Agency (1) expends seven hundred fifty thousand dollars (\$750,000) or more in direct and indirect federal financial assistance and the City is a pass-through entity; (2) expends seven hundred fifty thousand dollars (\$750,000) or more in state funds from the State; or (3) expends seven hundred fifty thousand dollars (\$750,000) or more in federal financial assistance and state funds from the State, and the State is a pass-through entity. At least ninety (90) days before the end of its fiscal year, the Operating Agency shall complete ATTACHMENT E: NOTICE OF AUDIT to notify the City whether or not Operating Agency is subject to an audit. The Operating Agency should submit only one, completed document during the Operating Agency's fiscal year. Any Operating Agency that is subject to an audit and so indicates on Attachment E shall complete ATTACHMENT F: PARENT CHILD INFORMATION. If the Operating Agency is subject to an audit, Operating Agency shall obtain the Tennessee Comptroller's approval before engaging a licensed, independent public accountant to perform the audit. The Operating Agency may contact the Tennessee Comptroller for assistance identifying auditors.

All audits shall be performed in accordance with the Comptroller's requirements, as posted on its web site. When a federal single audit is required, the audit shall be performed in accordance with U.S. Office of Management and Budget's *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards*.

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

The audit contract between the Operating Agency and the Auditor shall be on a contract form prescribed by the Comptroller. The Operating Agency shall be responsible for payment of fees for an audit prepared by a licensed, independent public accountant. Payment of the audit fees by the Operating Agency shall be subject to the provision relating to such fees contained within the Grant Contract. The Operating Agency shall be responsible for reimbursing the Comptroller for any costs of an audit prepared by the Comptroller.

- D.20. Procurement. If other terms of this Grant Contract allow reimbursement for the cost of goods, materials, supplies, equipment, and/or services, such procurement(s) shall be made on a competitive basis, including the use of competitive bidding procedures, where practical. The Operating Agency shall maintain documentation for the basis of each procurement for which reimbursement is paid pursuant to this Grant Contract. In each instance where it is determined that use of a competitive procurement method is not practical, supporting documentation shall include a written justification for the decision and for use of a non-competitive procurement. If the Operating Agency is a subrecipient, the Operating Agency shall comply with 2 C.F.R. §§ 200.318-300.326 when procuring property and services under a federal award.

The Operating Agency shall obtain prior approval from the City before purchasing any equipment under this Grant Contract.

- D.21. Strict Performance. Failure by any party to this Grant Contract to insist in any one or more cases upon the strict performance of any of the terms, covenants, conditions, or provisions of this agreement shall not be construed as a waiver or relinquishment of any such term, covenant, condition, or provision. No term or condition of this Grant Contract shall be held to be waived, modified, or deleted except by a written amendment signed by the parties hereto.
- D.22. Independent Contractor. The parties shall not act as employees, partners, joint venturers, or associates of one another in the performance of this Grant Contract. The parties

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

The Operating Agency, being an independent contractor and not an employee of the City, agrees to carry adequate public liability and other appropriate forms of insurance, including adequate public liability and other appropriate forms of insurance on the Operating Agency's employees, and to pay all applicable taxes incident to this Grant Contract.

D.23. City Liability. The City shall have no liability except as specifically provided in this Grant Contract.

D.24. Force Majeure. "Force Majeure Event" means fire, flood, earthquake, elements of nature or acts of God, wars, riots, civil disorders, rebellions or revolutions, acts of terrorism or any other similar cause beyond the reasonable control of the Party except to the extent that the non-performing Party is at fault in failing to prevent or causing the default or delay, and provided that the default or delay cannot reasonably be circumvented by the non-performing Party through the use of alternate sources, workaround plans or other means. A strike, lockout or labor dispute shall not excuse either Party from its obligations under this Grant Contract. Except as set forth in this Section, any failure or delay by a Party in the performance of its obligations under this Grant Contract arising from a Force Majeure Event is not a default under this Grant Contract or grounds for termination. The non-performing Party will be excused from performing those obligations directly affected by the Force Majeure Event, and only for as long as the Force Majeure Event continues, provided that the Party continues to use diligent, good faith efforts to resume performance without delay. The occurrence of a Force Majeure Event affecting Operating Agency's representatives, suppliers, subcontractors, customers or business apart from the Grant Contract is not a Force Majeure Event under this Grant Contract. Operating Agency will promptly notify the City of any delay caused by a Force Majeure Event (to be confirmed in a written notice to the City within one (1) day of the inception of the delay) that a Force Majeure Event has occurred, and will describe in reasonable detail the nature of the Force Majeure Event. If any Force Majeure Event results in a delay in Operating Agency's performance longer than forty-eight (48) hours, the City may, upon notice to Operating Agency: (a) cease payment of the fees until Operating Agency resumes performance of the affected obligations; or (b) immediately terminate this Grant Contract or any purchase order, in whole or in part, without further payment except for fees then due and payable. Operating Agency will not increase its charges under this Grant Contract or charge the City any fees other than those provided for in the Grant Contract as the result of a Force Majeure Event.

D.25. Tennessee Department of Revenue Registration. The Operating Agency shall comply with all applicable registration requirements contained in Tenn. Code Ann. §§ 67-6-601 – 608. Compliance with applicable registration requirements is a material requirement of this Grant Contract.

D.26. Reserved.

D.27. City Interest in Equipment or Motor Vehicles. The Operating Agency shall take legal title to all equipment or motor vehicles purchased totally or in part with funds provided under this Grant contract, subject to the City's, equitable interest therein, to the extent of its *pro rata* share, based upon, the City's, contribution to the purchase price. The term "equipment" shall include any article of nonexpendable, tangible, personal property having a useful life of more than one year and an acquisition costs which equals or

exceeds five thousand dollars (\$5,000). The term "motor vehicle" shall include any article of tangible personal property that is required to be registered under the "Tennessee Motor Vehicle Title and Registration Law", Tenn. Code Ann. Title 55, Chapters 1-6.

As authorized by the Tennessee Uniform Commercial Code, Tenn. Code Ann. Title 47, Chapter 9 and the "Tennessee Motor Vehicle Title and Registration Law," Tenn. Code Ann. Title 55, Chapters 1-6, the parties intend this Grant contract to create a security interest in favor of the City in the equipment or motor vehicles acquired by the Operating Agency pursuant to the provisions of this Grant contract. A further intent of this Grant contract is to acknowledge and continue the security interest in favor of the City in the equipment or motor vehicles acquired by the Operating Agency pursuant to the provisions of this program's prior year Grant contracts between the City, and the Operating Agency.

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

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

- a. Description of the equipment or motor vehicles;
- b. Manufacturer's serial number or other identification number, when applicable;
- c. Consecutive inventory equipment or motor vehicles tag identification;
- d. Acquisition date, cost, and check number;
- e. Fund source, State Grant number, or other applicable fund source identification;
- f. Percentage of state funds applied to the purchase;

- g. Location within the Operating Agency's operations where the equipment or motor vehicles is used;
 - h. Condition of the property or disposition date if Operating Agency no longer has possession;
 - i. Depreciation method, if applicable; and
 - j. Monthly depreciation amount, if applicable.
 - k. The Operating Agency shall tag equipment or motor vehicles with an identification number which is cross referenced to the equipment or motor vehicle item on the inventory control report. The Operating Agency shall inventory equipment or motor vehicles annually. The Operating Agency must compare the results of the inventory with the inventory control report and investigate any differences. The Operating Agency must then adjust the inventory control report to reflect the results of the physical inventory and subsequent investigation.
 - l. The Operating Agency shall submit its inventory control report of all equipment or motor vehicles purchased with funding through this Grant contract within thirty (30) days of its end date and in form and substance acceptable to the City. This inventory control report shall contain, at a minimum, the requirements specified above for inventory control. The Operating Agency shall notify the City, in writing, of any equipment or motor vehicle loss describing the reasons for the loss. Should the equipment or motor vehicles be destroyed, lost, or stolen, the Operating Agency shall be responsible to the City for the *pro rata* amount of the residual value at the time of loss based upon the City's original contribution to the purchase price.
 - m. Upon termination of the Grant contract, where a further contractual relationship is not entered into, or at another time during the term of the Grant contract, the Operating Agency shall request written approval from the City for any proposed disposition of equipment or motor vehicles purchased with Grant funds. All equipment or motor vehicles shall be disposed of in such a manner as the parties may agree from among alternatives approved by the Tennessee Department of General Services as appropriate and in accordance with any applicable federal laws or regulations.
- D.28. City, State and Federal Compliance. The Operating Agency shall comply with all applicable city, state, and federal laws, ordinances, rules and regulations in performance of this Grant Contract.
- D.29. Governing Law. This Grant Contract shall be governed by and construed in accordance with the laws of the State of Tennessee. The Operating Agency agrees that it will be subject to the exclusive jurisdiction of the courts of the State of Tennessee in actions that may arise under this Grant Contract. The Operating Agency acknowledges and agrees that any rights or claims against the City of Kingsport or its employees hereunder, and any remedies arising there from, shall be subject to and limited to those rights and remedies, if any, available under Tenn. Code Ann. § 29-20-101 *et seq.* and the sovereign immunity the city has through the State of Tennessee.
- D.30. Completeness. This Grant Contract is complete and contains the entire understanding between the parties relating to the subject matter contained herein, including all the terms and conditions of the parties' agreement. This Grant Contract supersedes any and all prior understandings, representations, negotiations, and agreements between the parties relating hereto, whether written or oral.

- D.31. Severability. If any terms and conditions of this Grant Contract are held to be invalid or unenforceable as a matter of law, the other terms and conditions hereof shall not be affected thereby and shall remain in full force and effect. To this end, the terms and conditions of this Grant Contract are declared severable.
- D.32. Headings. Section headings are for reference purposes only and shall not be construed as part of this Grant Contract.

E. SPECIAL TERMS AND CONDITIONS:

- E.1. Conflicting Terms and Conditions. Should any of these special terms and conditions conflict with any other terms and conditions of this Grant Contract, the special terms and conditions shall control.
- E.2. Debarment and Suspension. The Operating Agency certifies, to the best of its knowledge and belief, that it, its current and future principals, its current and future subcontractors and their principals:
- a. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal or state department or agency;
 - b. Have not within a three (3) year period preceding this the date of this Grant Contract been convicted of, or had a civil judgment rendered against them from commission of fraud, or a criminal offence in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or grant under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification, or destruction of records, making false statements, or receiving stolen property;
 - c. Are not presently indicted or otherwise criminally or civilly charged by a government entity (federal, state, or local) with commission of any of the offenses detailed in section b. of this certification; and
 - d. Have not within a three (3) year period preceding the date of this Grant Contract had one or more public transactions (federal, state, or local) terminated for cause or default.

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

- E.3. Work Papers Subject to Review. The Operating Agency shall make all audit, accounting, or financial analysis work papers, notes, and other documents available for review by the City, the U. S. Department of Housing and Urban Development, or their respective representatives upon request, during normal working hours either while the analysis is in progress or subsequent to the completion of this Grant Contract.
- E.4. Environmental Tobacco Smoke. Pursuant to the provisions of the federal "Pro-Children Act of 1994" and the Children's Act for Clean Indoor Air of 1995", Tenn. Code Ann. §§ 39-17-1601 through 1606, the Operating Agency shall prohibit smoking of tobacco products within any indoor premises in which services are provided to individuals under the age of eighteen (18) years. The Operating Agency shall post "no smoking" signs in appropriate, permanent sites within such premises. This prohibition shall be applicable during all

hours, not just the hours in which children are present. Violators of the prohibition may be subject to civil penalties and fines. This prohibition shall apply to and be a part of any subcontract related to this Grant Contract.

- E.5. Hold Harmless. To the extent permitted by State law, the Operating Agency agrees to indemnify and hold harmless the City of Kingsport, the U. S. Department of Housing and Urban Development, 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 Operating Agency, its employees, or any person acting for or on its or their behalf relating to this Grant Contract. The Operating Agency further agrees it shall be liable for the reasonable cost of attorneys and court costs for the City, the U. S. Department of Housing and Urban Development to enforce the terms of this Grant Contract.

In the event of any such suit or claim, the parties shall give each other immediate notice and provide all necessary assistance to respond. The failure of the City, the U. S. Department of Housing and Urban Development to give notice shall only relieve the Operating Agency of its obligations under this Section to the extent that the Operating Agency can demonstrate actual prejudice arising from the failure to give notice. This Section shall not grant the Operating Agency, through its attorney(s), the right to represent the City of Kingsport, the U. S. Department of Housing and Urban Development in any legal matter, as the right to represent the City and the State is governed by Tenn. Code Ann. § 8-6-106.

- E.6. Federal Funding Accountability and Transparency Act ("FFATA"). This Grant requires the Operating Agency to provide supplies or services that are funded in whole or in part by federal funds that are subject to FFATA. The Operating Agency is responsible for ensuring that all applicable requirements, including but not limited to those set forth herein, of FFATA are met and that the Operating Agency provides information to the City as required. The Operating Agency shall comply with the following:

a. Reporting of Total Compensation of the Operating Agency's Executives.

- (1) The Operating Agency shall report the names and total compensation of each of its five (5) most highly compensated executives for the Operating Agency's preceding completed fiscal year, if in the Operating Agency's preceding fiscal year it received:
 - i. 80 percent or more of the Operating Agency's annual gross revenues from federal procurement contracts and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR § 170.320 (and sub awards); and
 - ii. \$25,000,000 or more in annual gross annual revenues from federal procurement contracts (and subcontracts), and federal financial assistance subject to the Transparency Act (and sub awards); and
 - iii. The public does not have access to information about the compensation of the executives through periodic reports files under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. §78m(a), 78o(d)) or § 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at <http://www.sec.gov/answers/execomp.htm>).

As defined in 2 CFR § 170.315. "Executive" means officers, managing partners, or any other employees in management positions.

- (2) Total compensation means the cash and noncash dollar value earned by the executive during the Operating Agency's preceding fiscal year and includes the following (for information see 17 § CFR 229.402(c)(2)):
- i. Salary and bonus.
 - ii. Awards of stock, stock options, and stock appreciation rights. Use the dollar amount recognized for financial statement reporting purposes with respect to the fiscal year in accordance with the Statement of Financial Accounting Standards No. 123 (Revised 2004) (FAS 123R), Shared Based Payments.
 - iii. Earnings for services under non-equity incentive plans. This does not include group life, health, hospitalization or medical reimbursement plans that do not discriminate in favor of executives, and are available generally to all salaried employees.
 - iv. Change in pension value. This is the change in present value of defined benefit and actuarial pension plans.
 - v. Above-market earnings or deferred compensation which is not tax qualified.
 - vi. Other compensation, if the aggregate value of all such other compensation (e.g. severance, termination payments, value of life insurance paid on behalf of the employee, perquisites of property) for the executive exceeds \$10,000.
- b. The Operating Agency must report executive total compensation described above to the City by the end of the month during which this Grant Contract is fully executed.
- c. If this Grant Contract is amended to extend the Term, the Operating Agency must submit an executive total compensation report to the City by the end of the month in which the amendment to this Grant Contract becomes effective.
- d. The Operating Agency will obtain a Data Universal Numbering System ("DUNS") number and maintain its DUNS number for the terms of this Grant Contract. More information about obtaining a DUNS Number can be found at: <http://fedgov.dnb.com/webform/>.

The Operating Agency's failure to comply with the above requirements is a material breach of this Grant Contract for which the City may terminate this Grant Contract for cause. The City will not be obligated to pay any outstanding invoice received from the Operating Agency unless and until the Operating Agency is in full compliance with the above requirements.

- E.7. Training. The Operating Agency agrees to attend all training sessions regarding management of the CDBG Program which are scheduled by the City and HUD.
- E.8. CDBG Program Requirements. Under this Grant Contract, Operating Agency is receiving an allocation or grant of Community Development Block Grant Program funds. The Operating Agency understands these funds are made available through the U.S. Department of Housing and Urban Development (HUD) and to facilitate the receipt of these funds the Operating Agency agrees and certifies to comply with all applicable HUD

requirements. Without limitations, Operating Agency specifically agrees and certifies as to the following:

- a. The Operating Agency will abide with all of the requirements of 24 CFR, Part 570 and Part 91, Community Development Block Grant Program.
 - b. The Operating Agency will comply with other applicable Federal requirements in 24 CFR, Part 570 and Part 91, as follows:
 - 1. 24 CFR 5.105(a). Section 3 Nondiscrimination and Equal Opportunity;
 - 2. 24 CFR 570 Subpart A, General Provisions;
 - 3. 24 CFR 570 Subpart C, Eligible Activities;
 - 4. 24 CFR 570 Subpart J, Grant Administration;
 - 5. 24 CFR 570 Subpart K, Other Program Requirements;
 - 6. 24 CFR 570 Subpart O, Performance Reviews;
 - 7. Title VI and Executive Order 13166 Affirmative Outreach
 - c. If the Operating Agency is primarily a religious organization, it agrees to use its funds to provide all eligible activities under this program in a manner that is free from religious influences as provided by 24 CFR 576.406.
 - d. The Operating Agency will comply with the uniform administrative requirements of 24 CFR Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Award, and the requirements of 24 CFR 576.407.
 - e. The Operating Agency will comply with the acquisition and relocation requirements of the Uniform Relocation Assistance and Real Estate Property Acquisition Policies Act of 1970, as amended, implementing regulations at 49 CFR, Part 24 and the requirements of 24 CFR 576.59.
 - f. The Operating Agency will comply with the requirements of the Residential Lead-Based Paint Hazard Reduction Act of 1992, implementing regulations at 24 CFR, Part 35, Subparts A, B, H, J, K, and M as applicable.
 - g. The Operating Agency will use CDBG funds pursuant to its or the City's Consolidated Plan approved by HUD and all requirements of 24 CFR, Part 570 and Part 91.
 - h. The Operating Agency will maintain adequate documentation to determine eligibility of persons served by the CDBG program.
 - i. The Operating Agency will develop and implement procedures to ensure the confidentiality of records pertaining to any individual fleeing domestic violence situations. In addition the address and location of family violence shelter facilities receiving ESG funding may not be publicly disclosed except with the written authorization of the person(s) responsible for the shelter facility's operation.
- E.9. Drug Free Workplace. The Operating Agency will or will continue to provide a drug-free workplace by:

- a. Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the Operating Agency's workplace and specifying the action that will be taken against employees for violation of such prohibition;
 - b. Establishing an ongoing drug-free awareness program to inform employees about:
 1. The dangers of drug abuse in the workplace;
 2. The Operating Agency's policy of maintaining a drug-free workplace;
 3. Any drug counseling, rehabilitation and employee assistance programs; and
 4. The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace.
 - c. Making it a requirement that each employee to be engaged in the performance of this Grant Contract be given a copy of the statement required by Paragraph E.10.(a);
 - d. Notifying the employee in the statement required by Paragraph E.10(a) that, as a condition of employment under this Grant Contract, the employee will:
 1. Abide by the terms of the statement; and
 2. Notify the employees in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;
 - e. Notifying the City in writing, within ten calendar days after receiving notice under Paragraph E.10(d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to every grant officer or other designee on whose grant activity the convicted employee was working, unless the Federal agency has designated a central point for the receipt of such notices. Notice shall include the identification number(s) of each affected grant.
 - f. Taking one of the following actions, within thirty calendar days of receiving notice under Paragraph E.10(d)(2), with respect to any employee who is so convicted:
 1. Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirement of the Rehabilitation Act of 1973, as amended; or
 2. Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State or local health, law enforcement or the appropriate agency;
 - g. Making a good faith effort to continue to maintain a drug-free workplace through implementation of Paragraphs E.10 (a), (b), (c), (d), (e) and (f).
- E.10. Corrective Action. If the City takes any corrective or remedial action as outlined in 24 CFR § 570.910 that is the result of any action taken by the Operating Agency, the

Operating Agency will take any action required by the City to prevent a continuation of the deficiency, mitigate to the extent possible its adverse effects or consequences, and prevent its recurrence. These remedies could, among other actions, include repaying CDBG funds to the City.

IN WITNESS WHEREOF, the parties have by their duly authorized representatives set out their signatures.

CITY OF KINGSPORT

John Clark, Mayor

Date

ATTEST:

James H. Demming, City Recorder

Date

SOUTH CENTRAL KINGSPORT COMMUNITY DEVELOPMENT, Inc.

Kenneth Calvert, President

Date

APPROVED AS TO FORM:

Michael Billingsley, City Attorney

Date

ATTACHMENT A

2018 CDBG PROGRAM DESCRIPTION OF OPERATING AGENCY ACTIVITIES

OPERATING AGENCY: South Central Kingsport Community Development, Inc.

I. The activities for the 2018 CDBG Project shall consist of the following:

A. Purpose of Project

In accordance with the application submitted by South Central Kingsport CDC for 2018 CDBG funding, the South Central Kingsport CDC Promoting Community Quality of Life project will advance the lives of low and moderate income residents in the city of Kingsport, with special emphasis on citizens residing in the area designated as South Central Kingsport. These include:

- Educational and employment readiness for low and moderate income persons seeking employment;
- Cultural enrichment for low and moderate income minority youth, adults, and seniors; and
- Community involvement and development.

B. Method of Operation

The programs will be available to residents of the South Central Kingsport Neighborhood consisting primarily of Block Group 2 and portion of Block Group 1 of Census tract 402 and a portion of Census Tract 407. The programs will be administered by South Central, which will provide staff support for record keeping, disbursement of funds and approval of participants.

ATTACHMENT B
2018 CDBG Program
IMPLEMENTATION PLAN FOR CDBG PROJECTS

OPERATING AGENCY: South Central Kingsport Community Development, Inc.

I. The time table for completing the activities for the project shall be:

- | | | |
|----|--|---------------|
| 1. | Determination of status for Environmental Review | July 1, 2018 |
| 2. | Release of Funds | July 1, 2018 |
| 3. | Begin providing services to residents | July 1, 2018 |
| 4. | Contract complete | June 30, 2019 |

ATTACHMENT C

2018 CDBG PROGRAM

PROJECT BUDGET

OPERATING AGENCY: South Central Kingsport Community Development, Inc.

CDBG funds will be used as follows:

Program Costs	\$11,000
TOTAL FOR GRANT	\$11,000

ATTACHMENT D

Federal Award Identification Worksheet

Operating Agency's name (must match registered name in DUNS)	South Central Kingsport Community Development, Inc.
Operating Agency's DUNS number	
Federal Award Identification Number (FAIN)	B-18-MC-47-0004
Federal award date	July 1, 2018
CFDA number and name	14.218 Community Development Grant Program
Grant contract's begin date	July 1, 2018
Grant contract's end ate	June 30, 2019
Amount of federal funds obligated by this grant contract	\$11,000
Total amount of federal funds obligated to the Operating Agency	\$11,000
Total amount of the federal award to the City of Kingsport	\$392,052
Name of federal awarding agency	U.S. Department of Housing and Urban Development
Name and contact information for the federal awarding official	Mary C. Wilson, Director Community Planning and Development U.S. Department of Housing and Urban Development Knoxville Field Office 710 Locust Street, Third Floor Knoxville, TN 37902-2526
Is the federal award for research and development?	No
Indirect cost rate for the federal award (See 2 C.F.R. §200.331 for information on type of indirect cost rate)	To be determined by cost allocation plan approved by Operating Agency's cognizant agency

ATTACHMENT E

Notice of Audit Report

Check one of the two boxes below and complete the remainder of this document as instructed. Send completed documents as a PDF file to cpo.auditnotice@tn.gov. **The Operating Agency should submit only one, completed "Notice of Audit Report" document to the City during the Operating Agency's fiscal year.**

- ☐ _____ is subject to an audit for fiscal year 2018.
- ☐ _____ is not subject to an audit for fiscal year 2018.

Any Operating Agency that is subject to an audit must complete the information below.

Operating Agency's Edison Vendor ID Number: _____

Type of funds expended	Estimated amount of funds expended by end of Operating Agency's fiscal year
Federal pass-through funds	
a. Funds passed through the City of Kingsport	a. \$11,000
b. Funds passed through any other entity	b. \$0
Funds received directly from the federal government	\$
Non-federal funds received directly from the City of Kingsport	\$

Auditor's Name: _____

Auditor's address: _____

Auditor's phone number: _____

Auditor's email: _____

ATTACHMENT F

Parent Child Information

Send completed documents as a PDF file to cpo.auditnotice@tn.gov. ***The Operating Agency should submit only one, completed "Parent Child Information" document to the City during the Operating Agency's fiscal year if the Operating Agency indicates it is subject to an audit on the "Notice of Audit Report" document.***

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

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

Operating Agency's Edison Vendor ID number: _____

Is _____ a parent? Yes ☐ No ☐

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

Is _____ a child? Yes ☐ No ☐

If yes, complete the fields below.

Parent entity's name: _____

Parent entity's tax identification number: _____

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

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

Parent entity's contact information

Name of primary contact person: _____

Address: _____

Phone number: _____

Email address: _____

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

**GRANT CONTRACT
BETWEEN THE CITY OF KINGSPORT, TENNESSEE
AND
SONS AND DAUGHTERS OF DOUGLASS, Inc.**

This Grant Contract, by and between the City of Kingsport, hereinafter referred to as the "City" and Sons and Daughters of Douglass, Inc., hereinafter referred to as the "Operating Agency", is for the provision of services to the homeless and those at risk for homelessness under the Community Development Block Grant Program ("CDBG"), as further described under "Scope of Services and Deliverables" (the "SCOPE OF SERVICES").

Operating Agency's address 301 Louis Street, Kingsport, TN

Operating Agency's Edison Vendor ID # 26-2297598

A. SCOPE OF SERVICES AND DELIVERABLES:

- A.1. The Operating Agency shall provide all services and deliverables ("Scope") as required, described, and detailed in this Grant contract.
- A.2. To provide and operate public service activities to low and moderate income individuals and families within the city limits of Kingsport as specified in ATTACHMENT A: DESCRIPTION OF ACTIVITIES, ATTACHMENT B: IMPLEMENTATION PLAN, AND ATTACHMENT C: BUDGET.
- A.3. Incorporation of Additional Documents. Each of the following documents is included as part of this Grant Contract by reference or attachment. In the event of a discrepancy or ambiguity regarding the Operating Agency's duties, responsibilities, and performance hereunder, these terms shall govern or order of precedence below:
- a. Title 24 Code of Federal Regulations, Part 570 and Part 91, of the Community Development Block Grant Program authorized by Title I of the Housing and Community Development Act of 1974 (42 USC 5301 et.seq.), as amended (the "Federal CDBG Regulations").
 - b. The United States Department of Housing and Urban Development CDBG Desk Guide for Program and Eligibility Policies and Procedures.
- A.4. Incorporation of Federal Award Identification Worksheet. The federal award identification worksheet, which appears as ATTACHMENT D, is incorporated in this Grant Contract.
- A.5. To comply with the Eligible Activity Requirements of 24 CFR 570, Subpart C, and Part 91 as applicable in accordance with the type of project assisted.
- A.6. To maintain records adequate to document compliance with 24 CFR 570, along with such other records the City and HUD determines necessary to enable the City and HUD to fulfill its responsibilities in the CDBG Program. All records will be retained for a three (3) year period in accordance with the requirements of 24 CFR Part 570.
- A.7. To furnish to the City all reports required to be filed in accordance with any directives of the City and within the time period prescribed by the City for such reports.

B. TERM OF GRANT CONTRACT:

- B.1. Grant Term. This Grant Contract shall be effective on July 1, 2018 ("Effective Date") and extend for a period of twelve (12) months after the Effective Date to June 30, 2019 ("Term"). The City shall have no obligation for goods or services provided by the Operating Agency prior to the Effective Date.

C. PAYMENT TERMS AND CONDITIONS:

- C.1. Maximum Liability. In no event shall the maximum liability of the City under this Grant Contract exceed Seven Thousand DOLLARS (\$7,000.00) ("Maximum Liability"). The Grant Budget, attached and incorporated hereto as Attachment C, shall constitute the maximum amount due the Operating Agency under this Grant Contract. The Grant Budget line-items include, but are not limited to, all applicable taxes, fees, overhead, and all other direct and indirect costs incurred or to be incurred by the Operating Agency.

- C.2. Compensation Firm. The Maximum Liability of the City is not subject to escalation for any reason unless amended. The Grant Budget amounts are firm for the Term and are not subject to escalation for any reason unless amended, except as provided in Section C.6.

- C.3. Payment Methodology. The Operating Agency shall be reimbursed for actual, reasonable, and necessary costs based upon the Grant Budget, not to exceed the Maximum Liability established in Section C.1. Upon progress toward the completion of the Scope, as described in Section A of this Grant Contract, the Operating Agency shall submit invoices, in form and substance acceptable to the City, with all necessary supporting documentation, prior to any reimbursement of allowable costs.

- C.4. Travel Compensation. Reimbursement to the Operating Agency for travel, meals, or lodging shall be subject to amounts and limitations specified in the "City Comprehensive Travel Regulations", as they are amended from time to time, and shall be contingent upon and limited by the Grant Budget funding for said reimbursement.

- C.5. Invoice Requirements. The Operating Agency shall invoice the City based on an approved payment schedule, using the forms and all necessary supporting documentation specified by the HUD CDBG Requirements, and present such to:

City of Kingsport
Office of Housing and Community Development
201 W. Market Street, Kingsport, Tennessee 37660
Attention: Mark Haga

- C.6. Budget Line-items. Expenditures, reimbursements, and payments under this Grant Contract shall adhere to the Grant Budget. Reimbursable expenditures may NOT vary from the Grant Budget line item amount(s) detailed. Any change in Grant Budget line items shall require an amendment to the Grant Contract.

- C.7. Disbursement Reconciliation and Close Out. The Operating Agency shall submit any final invoice and a grant disbursement reconciliation report within forty-five (45) days of the Grant Contract end date, in form and substance acceptable to the City.

- a. If total disbursements by the City pursuant to this Grant Contract exceed the amounts permitted by Section C of this Grant Contract, the Operating Agency shall refund the difference to the City. The Operating Agency shall submit said refund with the final grant disbursement reconciliation report.

- b. The City shall not be responsible for the payment of any invoice submitted to the City after the grant disbursement reconciliation report. The City will not deem any Operating Agency costs submitted for reimbursement after the grant disbursement reconciliation report to be allowable and reimbursable by the City, and such invoices will NOT be paid.
 - c. The Operating Agency's failure to provide a final grant disbursement reconciliation report to the City as required shall result in the Operating Agency being deemed ineligible for reimbursement under this Grant Contract, and the Operating Agency shall be required to refund any and all payments by the city pursuant to this Grant Contract.
 - d. The Operating Agency must close out its accounting records at the end of the contract period in such a way that reimbursable expenditures and revenue collections are NOT carried forward.
- C.8. Indirect Cost. Should the Operating Agency request reimbursement for indirect costs, the Operating Agency must submit to the City a copy of the indirect cost rate approved by the cognizant federal agency or the cognizant state agency, as applicable. The Operating Agency will be reimbursed for indirect costs in accordance with the approved indirect cost rate and amounts and limitations specified in the attached Grant Budget. Once the Operating Agency makes an election and treats a given cost as direct or indirect, it must apply that treatment consistently and may not change during the Term. Any changes in the approved indirect cost rate must have prior approval of the cognizant federal agency or the cognizant state agency, as applicable. If the indirect cost rate is provisional during the Term, once the rate becomes final, the Operating Agency agrees to remit any overpayment of funds to the City, and subject to the availability of funds the City agrees to remit any underpayment to the Operating Agency.
- C.9. Cost Allocation. If any part of the costs to be reimbursed under this Grant Contract are joint costs involving allocation to more than one program or activity, such costs shall be allocated and reported in accordance with the provisions of City of Kingsport Departments of Finance and Administration Policies or any amendments or revisions made to this policy statement during the Term.
- C.10. Payment of Invoice. A payment by the City shall not prejudice the City's right to object to or question any reimbursement, invoice, or matter in relation thereto. A payment by the City shall not be construed as acceptance of any part of the work or service provided or as approval of any amount as an allowable cost.
- C.11. Non-allowable Costs. Any amounts payable to the Operating Agency shall be subject to reduction for amounts included in any invoice or payment that are determined by the City, on the basis of audits or monitoring conducted in accordance with the terms of this Grant Contract, to constitute non-allowable costs.
- C.12. City's Right to Set Off. The City reserves the right to deduct from amounts that are or shall become due and payable to the Operating Agency under this Grant Contract or any other contract between the Operating Agency and the City of Kingsport under which the Operating Agency has a right to receive payment from the City.

D. STANDARD TERMS AND CONDITIONS:

- D.1. Required Approvals. The City is not bound by this Grant Contract until it is signed by the parties and approved by appropriate officials in accordance with applicable Kingsport and Tennessee laws and regulations.

- D.2. Modification and Amendment. This Grant Contract may be modified only by a written amendment signed by all parties and approved by the officials who approved the Grant Contract and, depending upon the specifics of the Grant Contract as amended, any additional officials required by Kingsport and Tennessee laws and regulations.
- D.3. Termination for Convenience. The City may terminate this Grant Contract without cause for any reason. A termination for convenience shall not be a breach of the Grant Contract by the City. The City shall give the Operating Agency at least thirty (30) days written notice before the effective termination date. The Operating Agency shall be entitled to compensation for authorized expenditures and satisfactory services, in compliance with Federal CDBG Regulations, completed as of the termination date, but in no event shall the City be liable to the Operating Agency for compensation for any service that has not been rendered. The final decision as to the amount for which the City is liable shall be determined by the City. The Operating Agency shall not have any right to any actual general, special, incidental, consequential, or any other damages whatsoever of any description or amount for the City's exercise of its right to terminate for convenience.
- D.4. Termination for Cause. If the Operating Agency fails to properly perform its obligations under this Grant Contract in a timely or proper manner, or if the Operating Agency violates any terms of this Grant Contract ("Breach Condition"), the City shall have the right to immediately terminate the Grant Contract and withhold payments in excess of compensation for completed services or provided goods. Notwithstanding the above, the Operating Agency shall not be relieved of liability to the City for damages sustained by virtue of any Breach Condition and the City may seek other remedies allowed at law or in equity for breach of this Grant Contract. Upon such termination, the Operating Agency shall have no claim to any CDBG funds remaining under this Grant Contract.
- D.5. Subcontracting. The Operating Agency shall not assign this Grant Contract or enter into a subcontract for any of the services performed under this Grant Contract without obtaining the prior written approval of the City. If such subcontracts are approved by the City, each shall contain, at a minimum, sections of this Grant Contract pertaining to "Conflicts of Interest", "Lobbying", "Nondiscrimination", "Public Accountability", "Public Notice", and "Records" (as identified by the section headings). Notwithstanding any use of approved subcontractors, the Operating Agency shall remain responsible for all work performed.
- D.6. Conflicts of Interest. The Operating Agency warrants that no part of the total Grant Contract Amount shall be paid directly or indirectly to an employee or official of the City of Kingsport as wages, compensation, or gifts in exchange for acting as an officer, agent, employee, subcontractor, or consultant to the Operating Agency in connection with any work contemplated or performed relative to this Grant Contract.

The Operating Agency acknowledges, understands, and agrees that this Grant Contract shall be null and void if the Operating Agency is, or within the past six months has been, an employee of the City of Kingsport or the U. S. Department of Housing and Urban Development or if the Operating Agency is an entity in which a controlling interest is held by an individual who is, or within the past six months has been, an employee of the City of Kingsport or the U. S. Department of Housing and Urban Development.

- D.7. Lobbying. The Operating Agency certifies, to the best of its knowledge and belief, that:
- a. No federally appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of

any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.

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

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

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

The City:

Mark A. Haga
City of Kingsport Office of Housing and Community Development
201 W. Market Street, Kingsport, Tennessee 37660
Telephone 423-229-9486
Email markhaga@kingsporttn.gov
Email pagejeffers@kingsporttn.gov

The Operating Agency:

Sons and Daughters of Douglass, Inc.
301 Louis Street, Suite 104
Kingsport, TN 37660
Telephone 423-288-6040
Email

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

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

- D.9. Subject to Funds Availability. This Grant Contract is subject to the appropriation and availability of State or Federal funds. In the event that the funds are not appropriated or are otherwise unavailable, the City reserves the right to terminate this Grant Contract upon written notice to the Operating Agency. The City's right to terminate this Grant Contract due to lack of funds is not a breach of this Grant Contract by the City. Upon receipt of the written notice, the Operating Agency shall cease all work associated with the Grant Contract. Should such an event occur, the Operating Agency shall be entitled to compensation for all satisfactory and authorized services completed as of the termination date. Upon such termination, the Operating Agency shall have no right to recover from the City any actual, general, special, incidental, consequential, or any other damages whatsoever of any description or amount.

- D.10. Nondiscrimination. The Operating Agency agrees that no person shall be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination in the performance of this Grant Contract or in the employment practices of the Operating Agency 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 Operating Agency shall, upon request, show proof of such nondiscrimination and shall post in conspicuous places, available to all employees and applicants, notices of nondiscrimination.
- D.11. HIPAA Compliance. The City and the Operating Agency shall comply with obligations under the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), Health Information Technology for Economic and Clinical Health ("HITECH") Act and any other relevant laws and regulations regarding privacy (collectively the "Privacy Rules"). The obligations set forth in this Section shall survive the termination of the Grant Contract.
- a. The Operating Agency warrants to the City that it is familiar with the requirements of the Privacy Rules, and will comply with all applicable requirements in the course of this Grant Contract.
 - b. The Operating Agency warrants that it will cooperate with the City, including cooperation and coordination with City privacy officials and other compliance officers required by the Privacy Rules, in the course of performance of this Grant Contract so that both parties will be in compliance with the Privacy Rules.
 - c. The City and the Operating Agency will sign documents, including but not limited to business associate agreements, as required by the Privacy Rules and that are reasonably necessary to keep the City and the Operating Agency in compliance with the Privacy Rules. This provision shall not apply if information received or delivered by the parties under this Grant Contract is NOT "protected health information" as defined by the Privacy Rules, or if the Privacy Rules permit the parties to receive or deliver the information without entering into a business associate agreement or signing another document.
 - d. The Operating Agency will indemnify the City and hold it harmless for any violation by the Operating Agency or its subcontractors of the Privacy Rules. This includes the costs of responding to a breach of protected health information, the costs of responding to a government enforcement action related to the breach, and any fines, penalties, or damages paid by the City because of the violation.
- D.12. Public Accountability. If the Operating Agency is subject to Tenn. Code Ann. § 8-4-401 *et seq.*, or if this Grant Contract involves the provision of services to citizens by the Operating Agency on behalf of the City, the Operating Agency agrees to establish a system through which recipients of services may present grievances about the operation of the service program. The Operating Agency shall also display in a prominent place, located near the passageway through which public enters in order to receive Grant supported services, a sign at least eleven inches (11") in height and seventeen inches (17") inches in width stating:

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

The sign shall be on the form prescribed by the City. The City shall obtain copies of the sign from HUD, and upon request from the Operating Agency, provide Operating Agency with any necessary signs.

- D.13. Public Notice. All notices, informational pamphlets, press releases, research reports, signs, and similar public notices prepared and released by the Operating Agency in relation to this Grant Contract shall include the statement, "This project is funded under an agreement with the City of Kingsport and the U.S. Department of Housing and Urban Development." All notices by the Operating Agency in relation to this Grant Contract shall be approved by the City.
- D.14. Licensure. The Operating Agency and its employees and all sub-Operating Agencies shall be licensed pursuant to all applicable federal, state, and local laws, ordinances, rules, and regulations and shall upon request provide proof of all licenses.
- D.15. Records. The Operating Agency and any approved subcontractor shall maintain documentation for all charges under this Grant Contract. The books, records, and documents of the Operating Agency and any approved subcontractor, insofar as they relate to work performed or money received under this Grant Contract, shall be maintained for a period of five (5) full years from the date of the final payment and shall be subject to audit at any reasonable time and upon reasonable notice by the City of Kingsport and the U. S. Department of Housing and Urban Development, or their duly appointed representatives.

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

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

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

The Operating Agency 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 Operating Agency shall incorporate any additional Tennessee Comptroller of the Treasury directives into its internal control system.

- D.16. Monitoring. The Operating Agency's activities conducted and records maintained pursuant to this Grant Contract shall be subject to monitoring and evaluation by the City of Kingsport and the U. S. Department of Housing and Urban Development, or their duly appointed representatives.
- D.17. Progress Reports. The Operating Agency shall submit brief, periodic, progress reports to the City as requested.
- D.18. Reports. The Operating Agency shall submit all reports with form, substance and deadlines as specified in the Federal CDBG Regulations. The Operating Agency shall submit, within one (1) month of the conclusion of the Term, a CDBG annual report to the City.
- D.19. Audit Reports. For purpose of this Section, pass-through entity means a non-federal entity that provides a subaward to a subrecipient to carry out part of a federal program.

The Operating Agency shall provide audited financial statements to the City of Kingsport if during the Operating Agency's fiscal year, the Operating Agency (1) expends seven hundred fifty thousand dollars (\$750,000) or more in direct and indirect federal financial assistance and the City is a pass-through entity; (2) expends seven hundred fifty thousand dollars (\$750,000) or more in state funds from the State; or (3) expends seven hundred fifty thousand dollars (\$750,000) or more in federal financial assistance and state funds from the State, and the State is a pass-through entity. At least ninety (90) days before the end of its fiscal year, the Operating Agency shall complete ATTACHMENT E: NOTICE OF AUDIT to notify the City whether or not Operating Agency is subject to an audit. The Operating Agency should submit only one, completed document during the Operating Agency's fiscal year. Any Operating Agency that is subject to an audit and so indicates on Attachment E shall complete ATTACHMENT F: PARENT CHILD INFORMATION. If the Operating Agency is subject to an audit, Operating Agency shall obtain the Tennessee Comptroller's approval before engaging a licensed, independent public accountant to perform the audit. The Operating Agency may contact the Tennessee Comptroller for assistance identifying auditors.

All audits shall be performed in accordance with the Comptroller's requirements, as posted on its web site. When a federal single audit is required, the audit shall be performed in accordance with U.S. Office of Management and Budget's *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards*.

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

The audit contract between the Operating Agency and the Auditor shall be on a contract form prescribed by the Comptroller. The Operating Agency shall be responsible for payment of fees for an audit prepared by a licensed, independent public accountant. Payment of the audit fees by the Operating Agency shall be subject to the provision relating to such fees contained within the Grant Contract. The Operating Agency shall be responsible for reimbursing the Comptroller for any costs of an audit prepared by the Comptroller.

- D.20. Procurement. If other terms of this Grant Contract allow reimbursement for the cost of goods, materials, supplies, equipment, and/or services, such procurement(s) shall be made on a competitive basis, including the use of competitive bidding procedures, where practical. The Operating Agency shall maintain documentation for the basis of each procurement for which reimbursement is paid pursuant to this Grant Contract. In each instance where it is determined that use of a competitive procurement method is not practical, supporting documentation shall include a written justification for the decision and for use of a non-competitive procurement. If the Operating Agency is a subrecipient, the Operating Agency shall comply with 2 C.F.R. §§ 200.318-300.326 when procuring property and services under a federal award.

The Operating Agency shall obtain prior approval from the City before purchasing any equipment under this Grant Contract.

- D.21. Strict Performance. Failure by any party to this Grant Contract to insist in any one or more cases upon the strict performance of any of the terms, covenants, conditions, or provisions of this agreement shall not be construed as a waiver or relinquishment of any such term, covenant, condition, or provision. No term or condition of this Grant Contract shall be held to be waived, modified, or deleted except by a written amendment signed by the parties hereto.

- D.22. Independent Contractor. The parties shall not act as employees, partners, joint venturers, or associates of one another in the performance of this Grant Contract. The parties

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

The Operating Agency, being an independent contractor and not an employee of the City, agrees to carry adequate public liability and other appropriate forms of insurance, including adequate public liability and other appropriate forms of insurance on the Operating Agency's employees, and to pay all applicable taxes incident to this Grant Contract.

D.23. City Liability. The City shall have no liability except as specifically provided in this Grant Contract.

D.24. Force Majeure. "Force Majeure Event" means fire, flood, earthquake, elements of nature or acts of God, wars, riots, civil disorders, rebellions or revolutions, acts of terrorism or any other similar cause beyond the reasonable control of the Party except to the extent that the non-performing Party is at fault in failing to prevent or causing the default or delay, and provided that the default or delay cannot reasonably be circumvented by the non-performing Party through the use of alternate sources, workaround plans or other means. A strike, lockout or labor dispute shall not excuse either Party from its obligations under this Grant Contract. Except as set forth in this Section, any failure or delay by a Party in the performance of its obligations under this Grant Contract arising from a Force Majeure Event is not a default under this Grant Contract or grounds for termination. The non-performing Party will be excused from performing those obligations directly affected by the Force Majeure Event, and only for as long as the Force Majeure Event continues, provided that the Party continues to use diligent, good faith efforts to resume performance without delay. The occurrence of a Force Majeure Event affecting Operating Agency's representatives, suppliers, subcontractors, customers or business apart from the Grant Contract is not a Force Majeure Event under this Grant Contract. Operating Agency will promptly notify the City of any delay caused by a Force Majeure Event (to be confirmed in a written notice to the City within one (1) day of the inception of the delay) that a Force Majeure Event has occurred, and will describe in reasonable detail the nature of the Force Majeure Event. If any Force Majeure Event results in a delay in Operating Agency's performance longer than forty-eight (48) hours, the City may, upon notice to Operating Agency: (a) cease payment of the fees until Operating Agency resumes performance of the affected obligations; or (b) immediately terminate this Grant Contract or any purchase order, in whole or in part, without further payment except for fees then due and payable. Operating Agency will not increase its charges under this Grant Contract or charge the City any fees other than those provided for in the Grant Contract as the result of a Force Majeure Event.

D.25. Tennessee Department of Revenue Registration. The Operating Agency shall comply with all applicable registration requirements contained in Tenn. Code Ann. §§ 67-6-601 – 608. Compliance with applicable registration requirements is a material requirement of this Grant Contract.

D.26. Reserved.

D.27. City Interest in Equipment or Motor Vehicles. The Operating Agency shall take legal title to all equipment or motor vehicles purchased totally or in part with funds provided under this Grant contract, subject to the City's, equitable interest therein, to the extent of its *pro rata* share, based upon, the City's, contribution to the purchase price. The term "equipment" shall include any article of nonexpendable, tangible, personal property having a useful life of more than one year and an acquisition costs which equals or

exceeds five thousand dollars (\$5,000). The term "motor vehicle" shall include any article of tangible personal property that is required to be registered under the "Tennessee Motor Vehicle Title and Registration Law", Tenn. Code Ann. Title 55, Chapters 1-6.

As authorized by the Tennessee Uniform Commercial Code, Tenn. Code Ann. Title 47, Chapter 9 and the "Tennessee Motor Vehicle Title and Registration Law," Tenn. Code Ann. Title 55, Chapters 1-6, the parties intend this Grant contract to create a security interest in favor of the City in the equipment or motor vehicles acquired by the Operating Agency pursuant to the provisions of this Grant contract. A further intent of this Grant contract is to acknowledge and continue the security interest in favor of the City in the equipment or motor vehicles acquired by the Operating Agency pursuant to the provisions of this program's prior year Grant contracts between the City, and the Operating Agency.

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

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

- a. Description of the equipment or motor vehicles;
- b. Manufacturer's serial number or other identification number, when applicable;
- c. Consecutive inventory equipment or motor vehicles tag identification;
- d. Acquisition date, cost, and check number;
- e. Fund source, State Grant number, or other applicable fund source identification;
- f. Percentage of state funds applied to the purchase;

- g. Location within the Operating Agency's operations where the equipment or motor vehicles is used;
 - h. Condition of the property or disposition date if Operating Agency no longer has possession;
 - i. Depreciation method, if applicable; and
 - j. Monthly depreciation amount, if applicable.
 - k. The Operating Agency shall tag equipment or motor vehicles with an identification number which is cross referenced to the equipment or motor vehicle item on the inventory control report. The Operating Agency shall inventory equipment or motor vehicles annually. The Operating Agency must compare the results of the inventory with the inventory control report and investigate any differences. The Operating Agency must then adjust the inventory control report to reflect the results of the physical inventory and subsequent investigation.
 - l. The Operating Agency shall submit its inventory control report of all equipment or motor vehicles purchased with funding through this Grant contract within thirty (30) days of its end date and in form and substance acceptable to the City. This inventory control report shall contain, at a minimum, the requirements specified above for inventory control. The Operating Agency shall notify the City, in writing, of any equipment or motor vehicle loss describing the reasons for the loss. Should the equipment or motor vehicles be destroyed, lost, or stolen, the Operating Agency shall be responsible to the City for the *pro rata* amount of the residual value at the time of loss based upon the City's original contribution to the purchase price.
 - m. Upon termination of the Grant contract, where a further contractual relationship is not entered into, or at another time during the term of the Grant contract, the Operating Agency shall request written approval from the City for any proposed disposition of equipment or motor vehicles purchased with Grant funds. All equipment or motor vehicles shall be disposed of in such a manner as the parties may agree from among alternatives approved by the Tennessee Department of General Services as appropriate and in accordance with any applicable federal laws or regulations.
- D.28. City, State and Federal Compliance. The Operating Agency shall comply with all applicable city, state, and federal laws, ordinances, rules and regulations in performance of this Grant Contract.
- D.29. Governing Law. This Grant Contract shall be governed by and construed in accordance with the laws of the State of Tennessee. The Operating Agency agrees that it will be subject to the exclusive jurisdiction of the courts of the State of Tennessee in actions that may arise under this Grant Contract. The Operating Agency acknowledges and agrees that any rights or claims against the City of Kingsport or its employees hereunder, and any remedies arising there from, shall be subject to and limited to those rights and remedies, if any, available under Tenn. Code Ann. § 29-20-101 *et seq.* and the sovereign immunity the city has through the State of Tennessee.
- D.30. Completeness. This Grant Contract is complete and contains the entire understanding between the parties relating to the subject matter contained herein, including all the terms and conditions of the parties' agreement. This Grant Contract supersedes any and all prior understandings, representations, negotiations, and agreements between the parties relating hereto, whether written or oral.

- D.31. Severability. If any terms and conditions of this Grant Contract are held to be invalid or unenforceable as a matter of law, the other terms and conditions hereof shall not be affected thereby and shall remain in full force and effect. To this end, the terms and conditions of this Grant Contract are declared severable.
- D.32. Headings. Section headings are for reference purposes only and shall not be construed as part of this Grant Contract.

E. SPECIAL TERMS AND CONDITIONS:

- E.1. Conflicting Terms and Conditions. Should any of these special terms and conditions conflict with any other terms and conditions of this Grant Contract, the special terms and conditions shall control.
- E.2. Debarment and Suspension. The Operating Agency certifies, to the best of its knowledge and belief, that it, its current and future principals, its current and future subcontractors and their principals:
- a. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal or state department or agency;
 - b. Have not within a three (3) year period preceding this the date of this Grant Contract been convicted of, or had a civil judgment rendered against them from commission of fraud, or a criminal offence in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or grant under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification, or destruction of records, making false statements, or receiving stolen property;
 - c. Are not presently indicted or otherwise criminally or civilly charged by a government entity (federal, state, or local) with commission of any of the offenses detailed in section b. of this certification; and
 - d. Have not within a three (3) year period preceding the date of this Grant Contract had one or more public transactions (federal, state, or local) terminated for cause or default.

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

- E.3. Work Papers Subject to Review. The Operating Agency shall make all audit, accounting, or financial analysis work papers, notes, and other documents available for review by the City, the U. S. Department of Housing and Urban Development, or their respective representatives upon request, during normal working hours either while the analysis is in progress or subsequent to the completion of this Grant Contract.
- E.4. Environmental Tobacco Smoke. Pursuant to the provisions of the federal "Pro-Children Act of 1994" and the Children's Act for Clean Indoor Air of 1995", Tenn. Code Ann. §§ 39-17-1601 through 1606, the Operating Agency shall prohibit smoking of tobacco products within any indoor premises in which services are provided to individuals under the age of eighteen (18) years. The Operating Agency shall post "no smoking" signs in appropriate, permanent sites within such premises. This prohibition shall be applicable during all

hours, not just the hours in which children are present. Violators of the prohibition may be subject to civil penalties and fines. This prohibition shall apply to and be a part of any subcontract related to this Grant Contract.

- E.5. Hold Harmless. To the extent permitted by State law, the Operating Agency agrees to indemnify and hold harmless the City of Kingsport, the U. S. Department of Housing and Urban Development, 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 Operating Agency, its employees, or any person acting for or on its or their behalf relating to this Grant Contract. The Operating Agency further agrees it shall be liable for the reasonable cost of attorneys and court costs for the City, the U. S. Department of Housing and Urban Development to enforce the terms of this Grant Contract.

In the event of any such suit or claim, the parties shall give each other immediate notice and provide all necessary assistance to respond. The failure of the City, the U. S. Department of Housing and Urban Development to give notice shall only relieve the Operating Agency of its obligations under this Section to the extent that the Operating Agency can demonstrate actual prejudice arising from the failure to give notice. This Section shall not grant the Operating Agency, through its attorney(s), the right to represent the City of Kingsport, the U. S. Department of Housing and Urban Development in any legal matter, as the right to represent the City and the State is governed by Tenn. Code Ann. § 8-6-106.

- E.6. Federal Funding Accountability and Transparency Act ("FFATA"). This Grant requires the Operating Agency to provide supplies or services that are funded in whole or in part by federal funds that are subject to FFATA. The Operating Agency is responsible for ensuring that all applicable requirements, including but not limited to those set forth herein, of FFATA are met and that the Operating Agency provides information to the City as required. The Operating Agency shall comply with the following:

a. Reporting of Total Compensation of the Operating Agency's Executives.

- (1) The Operating Agency shall report the names and total compensation of each of its five (5) most highly compensated executives for the Operating Agency's preceding completed fiscal year, if in the Operating Agency's preceding fiscal year it received:
 - i. 80 percent or more of the Operating Agency's annual gross revenues from federal procurement contracts and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR § 170.320 (and sub awards); and
 - ii. \$25,000,000 or more in annual gross annual revenues from federal procurement contracts (and subcontracts), and federal financial assistance subject to the Transparency Act (and sub awards); and
 - iii. The public does not have access to information about the compensation of the executives through periodic reports files under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. §78m(a), 78o(d)) or § 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at <http://www.sec.gov/answers/execomp.htm>).

As defined in 2 CFR § 170.315. "Executive" means officers, managing partners, or any other employees in management positions.

- (2) Total compensation means the cash and noncash dollar value earned by the executive during the Operating Agency's preceding fiscal year and includes the following (for information see 17 § CFR 229.402(c)(2)):
- i. Salary and bonus.
 - ii. Awards of stock, stock options, and stock appreciation rights. Use the dollar amount recognized for financial statement reporting purposes with respect to the fiscal year in accordance with the Statement of Financial Accounting Standards No. 123 (Revised 2004) (FAS 123R), Shared Based Payments.
 - iii. Earnings for services under non-equity incentive plans. This does not include group life, health, hospitalization or medical reimbursement plans that do not discriminate in favor of executives, and are available generally to all salaried employees.
 - iv. Change in pension value. This is the change in present value of defined benefit and actuarial pension plans.
 - v. Above-market earnings or deferred compensation which is not tax qualified.
 - vi. Other compensation, if the aggregate value of all such other compensation (e.g. severance, termination payments, value of life insurance paid on behalf of the employee, perquisites of property) for the executive exceeds \$10,000.
- b. The Operating Agency must report executive total compensation described above to the City by the end of the month during which this Grant Contract is fully executed.
- c. If this Grant Contract is amended to extend the Term, the Operating Agency must submit an executive total compensation report to the City by the end of the month in which the amendment to this Grant Contract becomes effective.
- d. The Operating Agency will obtain a Data Universal Numbering System ("DUNS") number and maintain its DUNS number for the terms of this Grant Contract. More information about obtaining a DUNS Number can be found at: <http://fedgov.dnb.com/webform/>.

The Operating Agency's failure to comply with the above requirements is a material breach of this Grant Contract for which the City may terminate this Grant Contract for cause. The City will not be obligated to pay any outstanding invoice received from the Operating Agency unless and until the Operating Agency is in full compliance with the above requirements.

- E.7. Training. The Operating Agency agrees to attend all training sessions regarding management of the CDBG Program which are scheduled by the City and HUD.
- E.8. CDBG Program Requirements. Under this Grant Contract, Operating Agency is receiving an allocation or grant of Community Development Block Grant Program funds. The Operating Agency understands these funds are made available through the U.S. Department of Housing and Urban Development (HUD) and to facilitate the receipt of these funds the Operating Agency agrees and certifies to comply with all applicable HUD

requirements. Without limitations, Operating Agency specifically agrees and certifies as to the following:

- a. The Operating Agency will abide with all of the requirements of 24 CFR, Part 570 and Part 91, Community Development Block Grant Program.
 - b. The Operating Agency will comply with other applicable Federal requirements in 24 CFR, Part 570 and Part 91, as follows:
 - 1. 24 CFR 5.105(a). Section 3 Nondiscrimination and Equal Opportunity;
 - 2. 24 CFR 570 Subpart A, General Provisions;
 - 3. 24 CFR 570 Subpart C, Eligible Activities;
 - 4. 24 CFR 570 Subpart J, Grant Administration;
 - 5. 24 CFR 570 Subpart K, Other Program Requirements;
 - 6. 24 CFR 570 Subpart O, Performance Reviews;
 - 7. Title VI and Executive Order 13166 Affirmative Outreach
 - c. If the Operating Agency is primarily a religious organization, it agrees to use its funds to provide all eligible activities under this program in a manner that is free from religious influences as provided by 24 CFR 576.406.
 - d. The Operating Agency will comply with the uniform administrative requirements of 24 CFR Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Award, and the requirements of 24 CFR 576.407.
 - e. The Operating Agency will comply with the acquisition and relocation requirements of the Uniform Relocation Assistance and Real Estate Property Acquisition Policies Act of 1970, as amended, implementing regulations at 49 CFR, Part 24 and the requirements of 24 CFR 576.59.
 - f. The Operating Agency will comply with the requirements of the Residential Lead-Based Paint Hazard Reduction Act of 1992, implementing regulations at 24 CFR, Part 35, Subparts A, B, H, J, K, and M as applicable.
 - g. The Operating Agency will use CDBG funds pursuant to its or the City's Consolidated Plan approved by HUD and all requirements of 24 CFR, Part 570 and Part 91.
 - h. The Operating Agency will maintain adequate documentation to determine eligibility of persons served by the CDBG program.
 - i. The Operating Agency will develop and implement procedures to ensure the confidentiality of records pertaining to any individual fleeing domestic violence situations. In addition the address and location of family violence shelter facilities receiving ESG funding may not be publicly disclosed except with the written authorization of the person(s) responsible for the shelter facility's operation.
- E.9. Drug Free Workplace. The Operating Agency will or will continue to provide a drug-free workplace by:

- a. Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the Operating Agency's workplace and specifying the action that will be taken against employees for violation of such prohibition;
 - b. Establishing an ongoing drug-free awareness program to inform employees about:
 1. The dangers of drug abuse in the workplace;
 2. The Operating Agency's policy of maintaining a drug-free workplace;
 3. Any drug counseling, rehabilitation and employee assistance programs; and
 4. The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace.
 - c. Making it a requirement that each employee to be engaged in the performance of this Grant Contract be given a copy of the statement required by Paragraph E.10.(a);
 - d. Notifying the employee in the statement required by Paragraph E.10(a) that, as a condition of employment under this Grant Contract, the employee will:
 1. Abide by the terms of the statement; and
 2. Notify the employees in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;
 - e. Notifying the City in writing, within ten calendar days after receiving notice under Paragraph E.10(d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to every grant officer or other designee on whose grant activity the convicted employee was working, unless the Federal agency has designated a central point for the receipt of such notices. Notice shall include the identification number(s) of each affected grant.
 - f. Taking one of the following actions, within thirty calendar days of receiving notice under Paragraph E.10(d)(2), with respect to any employee who is so convicted:
 1. Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirement of the Rehabilitation Act of 1973, as amended; or
 2. Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State or local health, law enforcement or the appropriate agency;
 - g. Making a good faith effort to continue to maintain a drug-free workplace through implementation of Paragraphs E.10 (a), (b), (c), (d), (e) and (f).
- E.10. Corrective Action. If the City takes any corrective or remedial action as outlined in 24 CFR § 570.910 that is the result of any action taken by the Operating Agency, the

Operating Agency will take any action required by the City to prevent a continuation of the deficiency, mitigate to the extent possible its adverse effects or consequences, and prevent its recurrence. These remedies could, among other actions, include repaying CDBG funds to the City.

IN WITNESS WHEREOF, the parties have by their duly authorized representatives set out their signatures.

CITY OF KINGSPORT

John Clark, Mayor

Date

ATTEST:

James H. Demming, City Recorder

Date

SONS AND DAUGHTERS OF DOUGLASS, Inc.

Douglas S. Releford, President

Date

APPROVED AS TO FORM:

Michael Billingsley, City Attorney

Date

ATTACHMENT A

2018 CDBG PROGRAM DESCRIPTION OF OPERATING AGENCY ACTIVITIES

OPERATING AGENCY: Sons and Daughters of Douglass, Inc.

I. The activities for the 2018 CDBG Project shall consist of the following:

A. Purpose of Project.

Sons and Daughters will provide Advocacy and Education Services for low and moderate income, minority children in the school system of the City. The goal of the project is to encourage low/mod income and minority students to excel in basic education and to better equip them for success. These funds will enable this program to provide material support necessary provide advocacy and education services.

B. Method of Operation.

The program will be available to residents of Kingsport, consisting primarily of low and very low-income, minority persons. The program will be administered by Sons and Daughters and will provide funding to purchase school supplies and other educational materials for eligible students in the City's education system.

ATTACHMENT B

2018 CDBG Program IMPLEMENTATION PLAN FOR CDBG PROJECTS

OPERATING AGENCY: Sons and Daughters of Douglass, Inc.

I. The time table for completing the activities for the project shall be:

- | | | |
|----|--|---------------|
| 1. | Determination of status for Environmental Review | July 1, 2018 |
| 2. | Release of Funds | July 1, 2018 |
| 3. | Begin providing services to homeless | July 1, 2018 |
| 4. | Contract complete | June 30, 2019 |

ATTACHMENT C

2018 CDBG PROGRAM

PROJECT BUDGET

OPERATING AGENCY: Sons and Daughters of Douglass, Inc.

CDBG funds will be used as follows:

Supplies	\$7,000
TOTAL FOR GRANT	\$7,000

ATTACHMENT D

Federal Award Identification Worksheet

Operating Agency's name (must match registered name in DUNS)	Sons and Daughters of Douglass, Inc.
Operating Agency's DUNS number	
Federal Award Identification Number (FAIN)	B-18-MC-47-0004
Federal award date	July 1, 2018
CFDA number and name	14.218 Community Development Grant Program
Grant contract's begin date	July 1, 2018
Grant contract's end ate	June 30, 2019
Amount of federal funds obligated by this grant contract	\$7,000
Total amount of federal funds obligated to the Operating Agency	\$7,000
Total amount of the federal award to the City of Kingsport	\$392,052
Name of federal awarding agency	U.S. Department of Housing and Urban Development
Name and contact information for the federal awarding official	Mary C. Wilson, Director Community Planning and Development U.S. Department of Housing and Urban Development Knoxville Field Office 710 Locust Street, Third Floor Knoxville, TN 37902-2526
Is the federal award for research and development?	No
Indirect cost rate for the federal award (See 2 C.F.R. §200.331 for information on type of indirect cost rate)	To be determined by cost allocation plan approved by Operating Agency's cognizant agency

ATTACHMENT E

Notice of Audit Report

Check one of the two boxes below and complete the remainder of this document as instructed. Send completed documents as a PDF file to cpo.auditnotice@tn.gov. **The Operating Agency should submit only one, completed "Notice of Audit Report" document to the City during the Operating Agency's fiscal year.**

- ☐ _____ is subject to an audit for fiscal year 2018.
- ☐ _____ is not subject to an audit for fiscal year 2018.

Any Operating Agency that is subject to an audit must complete the information below.

Operating Agency's Edison Vendor ID Number: _____

Type of funds expended	Estimated amount of funds expended by end of Operating Agency's fiscal year
Federal pass-through funds	
a. Funds passed through the City of Kingsport	a. \$7,000
b. Funds passed through any other entity	b. \$0
Funds received directly from the federal government	\$
Non-federal funds received directly from the City of Kingsport	\$

Auditor's Name: _____

Auditor's address: _____

Auditor's phone number: _____

Auditor's email: _____

ATTACHMENT F

Parent Child Information

Send completed documents as a PDF file to cpo.auditnotice@tn.gov. **The Operating Agency should submit only one, completed "Parent Child Information" document to the City during the Operating Agency's fiscal year if the Operating Agency indicates it is subject to an audit on the "Notice of Audit Report" document.**

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

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

Operating Agency's Edison Vendor ID number: _____

Is _____ a parent? Yes ☐ No ☐

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

Is _____ a child? Yes ☐ No ☐

If yes, complete the fields below.

Parent entity's name: _____

Parent entity's tax identification number: _____

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

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

Parent entity's contact information

Name of primary contact person: _____

Address: _____

Phone number: _____

Email address: _____

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

**GRANT CONTRACT
BETWEEN THE CITY OF KINGSPORT, TENNESSEE
AND
HELP OUR POTENTIAL EVOLVE, Inc.**

This Grant Contract, by and between the City of Kingsport, hereinafter referred to as the "City" and Help Out Potential Evolve, Inc., hereinafter referred to as the "Operating Agency", is for the provision of services to the homeless and those at risk for homelessness under the Community Development Block Grant Program ("CDBG"), as further described under "Scope of Services and Deliverables" (the "SCOPE OF SERVICES").

Operating Agency's address 1201 N. Wilcox Dr., Kingsport, TN
Operating Agency's Edison Vendor ID # 46-1500067

A. SCOPE OF SERVICES AND DELIVERABLES:

- A.1. The Operating Agency shall provide all services and deliverables ("Scope") as required, described, and detailed in this Grant contract.
- A.2. To provide and operate public service activities to low and moderate income individuals and families within the city limits of Kingsport as specified in ATTACHMENT A: DESCRIPTION OF ACTIVITIES, ATTACHMENT B: IMPLEMENTATION PLAN, AND ATTACHMENT C: BUDGET.
- A.3. Incorporation of Additional Documents. Each of the following documents is included as part of this Grant Contract by reference or attachment. In the event of a discrepancy or ambiguity regarding the Operating Agency's duties, responsibilities, and performance hereunder, these terms shall govern or order of precedence below:
 - a. Title 24 Code of Federal Regulations, Part 570 and Part 91, of the Community Development Block Grant Program authorized by Title I of the Housing and Community Development Act of 1974 (42 USC 5301 et.seq.), as amended (the "Federal CDBG Regulations").
 - b. The United States Department of Housing and Urban Development CDBG Desk Guide for Program and Eligibility Policies and Procedures.
- A.4. Incorporation of Federal Award Identification Worksheet. The federal award identification worksheet, which appears as ATTACHMENT D, is incorporated in this Grant Contract.
- A.5. To comply with the Eligible Activity Requirements of 24 CFR 570, Subpart C, and Part 91 as applicable in accordance with the type of project assisted.
- A.6. To maintain records adequate to document compliance with 24 CFR 570, along with such other records the City and HUD determines necessary to enable the City and HUD to fulfill its responsibilities in the CDBG Program. All records will be retained for a three (3) year period in accordance with the requirements of 24 CFR Part 570.
- A.7. To furnish to the City all reports required to be filed in accordance with any directives of the City and within the time period prescribed by the City for such reports.

B. TERM OF GRANT CONTRACT:

- B.1. Grant Term. This Grant Contract shall be effective on July 1, 2018 ("Effective Date") and extend for a period of twelve (12) months after the Effective Date to June 30, 2019 ("Term"). The City shall have no obligation for goods or services provided by the Operating Agency prior to the Effective Date.

C. PAYMENT TERMS AND CONDITIONS:

- C.1. Maximum Liability. In no event shall the maximum liability of the City under this Grant Contract exceed Seven Thousand DOLLARS (\$7,000.00) ("Maximum Liability"). The Grant Budget, attached and incorporated hereto as Attachment C, shall constitute the maximum amount due the Operating Agency under this Grant Contract. The Grant Budget line-items include, but are not limited to, all applicable taxes, fees, overhead, and all other direct and indirect costs incurred or to be incurred by the Operating Agency.

- C.2. Compensation Firm. The Maximum Liability of the City is not subject to escalation for any reason unless amended. The Grant Budget amounts are firm for the Term and are not subject to escalation for any reason unless amended, except as provided in Section C.6.

- C.3. Payment Methodology. The Operating Agency shall be reimbursed for actual, reasonable, and necessary costs based upon the Grant Budget, not to exceed the Maximum Liability established in Section C.1. Upon progress toward the completion of the Scope, as described in Section A of this Grant Contract, the Operating Agency shall submit invoices, in form and substance acceptable to the City, with all necessary supporting documentation, prior to any reimbursement of allowable costs.

- C.4. Travel Compensation. Reimbursement to the Operating Agency for travel, meals, or lodging shall be subject to amounts and limitations specified in the "City Comprehensive Travel Regulations", as they are amended from time to time, and shall be contingent upon and limited by the Grant Budget funding for said reimbursement.

- C.5. Invoice Requirements. The Operating Agency shall invoice the City based on an approved payment schedule, using the forms and all necessary supporting documentation specified by the HUD CDBG Requirements, and present such to:

City of Kingsport
Office of Housing and Community Development
201 W. Market Street, Kingsport, Tennessee 37660
Attention: Mark Haga

- C.6. Budget Line-items. Expenditures, reimbursements, and payments under this Grant Contract shall adhere to the Grant Budget. Reimbursable expenditures may NOT vary from the Grant Budget line item amount(s) detailed. Any change in Grant Budget line items shall require an amendment to the Grant Contract.

- C.7. Disbursement Reconciliation and Close Out. The Operating Agency shall submit any final invoice and a grant disbursement reconciliation report within forty-five (45) days of the Grant Contract end date, in form and substance acceptable to the City.

- a. If total disbursements by the City pursuant to this Grant Contract exceed the amounts permitted by Section C of this Grant Contract, the Operating Agency shall refund the difference to the City. The Operating Agency shall submit said refund with the final grant disbursement reconciliation report.

- b. The City shall not be responsible for the payment of any invoice submitted to the City after the grant disbursement reconciliation report. The City will not deem any Operating Agency costs submitted for reimbursement after the grant disbursement reconciliation report to be allowable and reimbursable by the City, and such invoices will NOT be paid.
 - c. The Operating Agency's failure to provide a final grant disbursement reconciliation report to the City as required shall result in the Operating Agency being deemed ineligible for reimbursement under this Grant Contract, and the Operating Agency shall be required to refund any and all payments by the city pursuant to this Grant Contract.
 - d. The Operating Agency must close out its accounting records at the end of the contract period in such a way that reimbursable expenditures and revenue collections are NOT carried forward.
- C.8. Indirect Cost. Should the Operating Agency request reimbursement for indirect costs, the Operating Agency must submit to the City a copy of the indirect cost rate approved by the cognizant federal agency or the cognizant state agency, as applicable. The Operating Agency will be reimbursed for indirect costs in accordance with the approved indirect cost rate and amounts and limitations specified in the attached Grant Budget. Once the Operating Agency makes an election and treats a given cost as direct or indirect, it must apply that treatment consistently and may not change during the Term. Any changes in the approved indirect cost rate must have prior approval of the cognizant federal agency or the cognizant state agency, as applicable. If the indirect cost rate is provisional during the Term, once the rate becomes final, the Operating Agency agrees to remit any overpayment of funds to the City, and subject to the availability of funds the City agrees to remit any underpayment to the Operating Agency.
- C.9. Cost Allocation. If any part of the costs to be reimbursed under this Grant Contract are joint costs involving allocation to more than one program or activity, such costs shall be allocated and reported in accordance with the provisions of City of Kingsport Departments of Finance and Administration Policies or any amendments or revisions made to this policy statement during the Term.
- C.10. Payment of Invoice. A payment by the City shall not prejudice the City's right to object to or question any reimbursement, invoice, or matter in relation thereto. A payment by the City shall not be construed as acceptance of any part of the work or service provided or as approval of any amount as an allowable cost.
- C.11. Non-allowable Costs. Any amounts payable to the Operating Agency shall be subject to reduction for amounts included in any invoice or payment that are determined by the City, on the basis of audits or monitoring conducted in accordance with the terms of this Grant Contract, to constitute non-allowable costs.
- C.12. City's Right to Set Off. The City reserves the right to deduct from amounts that are or shall become due and payable to the Operating Agency under this Grant Contract or any other contract between the Operating Agency and the City of Kingsport under which the Operating Agency has a right to receive payment from the City.

D. STANDARD TERMS AND CONDITIONS:

- D.1. Required Approvals. The City is not bound by this Grant Contract until it is signed by the parties and approved by appropriate officials in accordance with applicable Kingsport and Tennessee laws and regulations.

- D.2. Modification and Amendment. This Grant Contract may be modified only by a written amendment signed by all parties and approved by the officials who approved the Grant Contract and, depending upon the specifics of the Grant Contract as amended, any additional officials required by Kingsport and Tennessee laws and regulations.
- D.3. Termination for Convenience. The City may terminate this Grant Contract without cause for any reason. A termination for convenience shall not be a breach of the Grant Contract by the City. The City shall give the Operating Agency at least thirty (30) days written notice before the effective termination date. The Operating Agency shall be entitled to compensation for authorized expenditures and satisfactory services, in compliance with Federal CDBG Regulations, completed as of the termination date, but in no event shall the City be liable to the Operating Agency for compensation for any service that has not been rendered. The final decision as to the amount for which the City is liable shall be determined by the City. The Operating Agency shall not have any right to any actual general, special, incidental, consequential, or any other damages whatsoever of any description or amount for the City's exercise of its right to terminate for convenience.
- D.4. Termination for Cause. If the Operating Agency fails to properly perform its obligations under this Grant Contract in a timely or proper manner, or if the Operating Agency violates any terms of this Grant Contract ("Breach Condition"), the City shall have the right to immediately terminate the Grant Contract and withhold payments in excess of compensation for completed services or provided goods. Notwithstanding the above, the Operating Agency shall not be relieved of liability to the City for damages sustained by virtue of any Breach Condition and the City may seek other remedies allowed at law or in equity for breach of this Grant Contract. Upon such termination, the Operating Agency shall have no claim to any CDBG funds remaining under this Grant Contract.
- D.5. Subcontracting. The Operating Agency shall not assign this Grant Contract or enter into a subcontract for any of the services performed under this Grant Contract without obtaining the prior written approval of the City. If such subcontracts are approved by the City, each shall contain, at a minimum, sections of this Grant Contract pertaining to "Conflicts of Interest", "Lobbying", "Nondiscrimination", "Public Accountability", "Public Notice", and "Records" (as identified by the section headings). Notwithstanding any use of approved subcontractors, the Operating Agency shall remain responsible for all work performed.
- D.6. Conflicts of Interest. The Operating Agency warrants that no part of the total Grant Contract Amount shall be paid directly or indirectly to an employee or official of the City of Kingsport as wages, compensation, or gifts in exchange for acting as an officer, agent, employee, subcontractor, or consultant to the Operating Agency in connection with any work contemplated or performed relative to this Grant Contract.

The Operating Agency acknowledges, understands, and agrees that this Grant Contract shall be null and void if the Operating Agency is, or within the past six months has been, an employee of the City of Kingsport or the U. S. Department of Housing and Urban Development or if the Operating Agency is an entity in which a controlling interest is held by an individual who is, or within the past six months has been, an employee of the City of Kingsport or the U. S. Department of Housing and Urban Development.

- D.7. Lobbying. The Operating Agency certifies, to the best of its knowledge and belief, that:
- a. No federally appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of

any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.

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

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

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

The City:

Mark A. Haga
City of Kingsport Office of Housing and Community Development
201 W. Market Street, Kingsport, Tennessee 37660
Telephone 423-229-9486
Email markhaga@kingsporttn.gov
Email pagejeffers@kingsporttn.gov

The Operating Agency:

Help Our Potential Evolve, Inc.

1201 N. Wilcox Dr., Suite B
Kingsport, TN 37660
Telephone 423-276-6541
Email

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

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

- D.9. Subject to Funds Availability. This Grant Contract is subject to the appropriation and availability of State or Federal funds. In the event that the funds are not appropriated or are otherwise unavailable, the City reserves the right to terminate this Grant Contract upon written notice to the Operating Agency. The City's right to terminate this Grant Contract due to lack of funds is not a breach of this Grant Contract by the City. Upon receipt of the written notice, the Operating Agency shall cease all work associated with the Grant Contract. Should such an event occur, the Operating Agency shall be entitled to compensation for all satisfactory and authorized services completed as of the termination date. Upon such termination, the Operating Agency shall have no right to recover from the City any actual, general, special, incidental, consequential, or any other damages whatsoever of any description or amount.

D.10. Nondiscrimination. The Operating Agency agrees that no person shall be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination in the performance of this Grant Contract or in the employment practices of the Operating Agency 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 Operating Agency shall, upon request, show proof of such nondiscrimination and shall post in conspicuous places, available to all employees and applicants, notices of nondiscrimination.

D.11. HIPAA Compliance. The City and the Operating Agency shall comply with obligations under the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), Health Information Technology for Economic and Clinical Health ("HITECH") Act and any other relevant laws and regulations regarding privacy (collectively the "Privacy Rules"). The obligations set forth in this Section shall survive the termination of the Grant Contract.

- a. The Operating Agency warrants to the City that it is familiar with the requirements of the Privacy Rules, and will comply with all applicable requirements in the course of this Grant Contract.
- b. The Operating Agency warrants that it will cooperate with the City, including cooperation and coordination with City privacy officials and other compliance officers required by the Privacy Rules, in the course of performance of this Grant Contract so that both parties will be in compliance with the Privacy Rules.
- c. The City and the Operating Agency will sign documents, including but not limited to business associate agreements, as required by the Privacy Rules and that are reasonably necessary to keep the City and the Operating Agency in compliance with the Privacy Rules. This provision shall not apply if information received or delivered by the parties under this Grant Contract is NOT "protected health information" as defined by the Privacy Rules, or if the Privacy Rules permit the parties to receive or deliver the information without entering into a business associate agreement or signing another document.
- d. The Operating Agency will indemnify the City and hold it harmless for any violation by the Operating Agency or its subcontractors of the Privacy Rules. This includes the costs of responding to a breach of protected health information, the costs of responding to a government enforcement action related to the breach, and any fines, penalties, or damages paid by the City because of the violation.

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

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

The sign shall be on the form prescribed by the City. The City shall obtain copies of the sign from HUD, and upon request from the Operating Agency, provide Operating Agency with any necessary signs.

- D.13. Public Notice. All notices, informational pamphlets, press releases, research reports, signs, and similar public notices prepared and released by the Operating Agency in relation to this Grant Contract shall include the statement, "This project is funded under an agreement with the City of Kingsport and the U.S. Department of Housing and Urban Development." All notices by the Operating Agency in relation to this Grant Contract shall be approved by the City.
- D.14. Licensure. The Operating Agency and its employees and all sub-Operating Agencies shall be licensed pursuant to all applicable federal, state, and local laws, ordinances, rules, and regulations and shall upon request provide proof of all licenses.
- D.15. Records. The Operating Agency and any approved subcontractor shall maintain documentation for all charges under this Grant Contract. The books, records, and documents of the Operating Agency and any approved subcontractor, insofar as they relate to work performed or money received under this Grant Contract, shall be maintained for a period of five (5) full years from the date of the final payment and shall be subject to audit at any reasonable time and upon reasonable notice by the City of Kingsport and the U. S. Department of Housing and Urban Development, or their duly appointed representatives.

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

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

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

The Operating Agency 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 Operating Agency shall incorporate any additional Tennessee Comptroller of the Treasury directives into its internal control system.

- D.16. Monitoring. The Operating Agency's activities conducted and records maintained pursuant to this Grant Contract shall be subject to monitoring and evaluation by the City of Kingsport and the U. S. Department of Housing and Urban Development, or their duly appointed representatives.
- D.17. Progress Reports. The Operating Agency shall submit brief, periodic, progress reports to the City as requested.
- D.18. Reports. The Operating Agency shall submit all reports with form, substance and deadlines as specified in the Federal CDBG Regulations. The Operating Agency shall submit, within one (1) month of the conclusion of the Term, a CDBG annual report to the City.
- D.19. Audit Reports. For purpose of this Section, pass-through entity means a non-federal entity that provides a subaward to a subrecipient to carry out part of a federal program.

The Operating Agency shall provide audited financial statements to the City of Kingsport if during the Operating Agency's fiscal year, the Operating Agency (1) expends seven hundred fifty thousand dollars (\$750,000) or more in direct and indirect federal financial assistance and the City is a pass-through entity; (2) expends seven hundred fifty thousand dollars (\$750,000) or more in state funds from the State; or (3) expends seven hundred fifty thousand dollars (\$750,000) or more in federal financial assistance and state funds from the State, and the State is a pass-through entity. At least ninety (90) days before the end of its fiscal year, the Operating Agency shall complete ATTACHMENT E: NOTICE OF AUDIT to notify the City whether or not Operating Agency is subject to an audit. The Operating Agency should submit only one, completed document during the Operating Agency's fiscal year. Any Operating Agency that is subject to an audit and so indicates on Attachment E shall complete ATTACHMENT F: PARENT CHILD INFORMATION. If the Operating Agency is subject to an audit, Operating Agency shall obtain the Tennessee Comptroller's approval before engaging a licensed, independent public accountant to perform the audit. The Operating Agency may contact the Tennessee Comptroller for assistance identifying auditors.

All audits shall be performed in accordance with the Comptroller's requirements, as posted on its web site. When a federal single audit is required, the audit shall be performed in accordance with U.S. Office of Management and Budget's *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards*.

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

The audit contract between the Operating Agency and the Auditor shall be on a contract form prescribed by the Comptroller. The Operating Agency shall be responsible for payment of fees for an audit prepared by a licensed, independent public accountant. Payment of the audit fees by the Operating Agency shall be subject to the provision relating to such fees contained within the Grant Contract. The Operating Agency shall be responsible for reimbursing the Comptroller for any costs of an audit prepared by the Comptroller.

- D.20. Procurement. If other terms of this Grant Contract allow reimbursement for the cost of goods, materials, supplies, equipment, and/or services, such procurement(s) shall be made on a competitive basis, including the use of competitive bidding procedures, where practical. The Operating Agency shall maintain documentation for the basis of each procurement for which reimbursement is paid pursuant to this Grant Contract. In each instance where it is determined that use of a competitive procurement method is not practical, supporting documentation shall include a written justification for the decision and for use of a non-competitive procurement. If the Operating Agency is a subrecipient, the Operating Agency shall comply with 2 C.F.R. §§ 200.318-300.326 when procuring property and services under a federal award.

The Operating Agency shall obtain prior approval from the City before purchasing any equipment under this Grant Contract.

- D.21. Strict Performance. Failure by any party to this Grant Contract to insist in any one or more cases upon the strict performance of any of the terms, covenants, conditions, or provisions of this agreement shall not be construed as a waiver or relinquishment of any such term, covenant, condition, or provision. No term or condition of this Grant Contract shall be held to be waived, modified, or deleted except by a written amendment signed by the parties hereto.
- D.22. Independent Contractor. The parties shall not act as employees, partners, joint venturers, or associates of one another in the performance of this Grant Contract. The parties

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

The Operating Agency, being an independent contractor and not an employee of the City, agrees to carry adequate public liability and other appropriate forms of insurance, including adequate public liability and other appropriate forms of insurance on the Operating Agency's employees, and to pay all applicable taxes incident to this Grant Contract.

D.23. City Liability. The City shall have no liability except as specifically provided in this Grant Contract.

D.24. Force Majeure. "Force Majeure Event" means fire, flood, earthquake, elements of nature or acts of God, wars, riots, civil disorders, rebellions or revolutions, acts of terrorism or any other similar cause beyond the reasonable control of the Party except to the extent that the non-performing Party is at fault in failing to prevent or causing the default or delay, and provided that the default or delay cannot reasonably be circumvented by the non-performing Party through the use of alternate sources, workaround plans or other means. A strike, lockout or labor dispute shall not excuse either Party from its obligations under this Grant Contract. Except as set forth in this Section, any failure or delay by a Party in the performance of its obligations under this Grant Contract arising from a Force Majeure Event is not a default under this Grant Contract or grounds for termination. The non-performing Party will be excused from performing those obligations directly affected by the Force Majeure Event, and only for as long as the Force Majeure Event continues, provided that the Party continues to use diligent, good faith efforts to resume performance without delay. The occurrence of a Force Majeure Event affecting Operating Agency's representatives, suppliers, subcontractors, customers or business apart from the Grant Contract is not a Force Majeure Event under this Grant Contract. Operating Agency will promptly notify the City of any delay caused by a Force Majeure Event (to be confirmed in a written notice to the City within one (1) day of the inception of the delay) that a Force Majeure Event has occurred, and will describe in reasonable detail the nature of the Force Majeure Event. If any Force Majeure Event results in a delay in Operating Agency's performance longer than forty-eight (48) hours, the City may, upon notice to Operating Agency: (a) cease payment of the fees until Operating Agency resumes performance of the affected obligations; or (b) immediately terminate this Grant Contract or any purchase order, in whole or in part, without further payment except for fees then due and payable. Operating Agency will not increase its charges under this Grant Contract or charge the City any fees other than those provided for in the Grant Contract as the result of a Force Majeure Event.

D.25. Tennessee Department of Revenue Registration. The Operating Agency shall comply with all applicable registration requirements contained in Tenn. Code Ann. §§ 67-6-601 – 608. Compliance with applicable registration requirements is a material requirement of this Grant Contract.

D.26. Reserved.

D.27. City Interest in Equipment or Motor Vehicles. The Operating Agency shall take legal title to all equipment or motor vehicles purchased totally or in part with funds provided under this Grant contract, subject to the City's, equitable interest therein, to the extent of its *pro rata* share, based upon, the City's, contribution to the purchase price. The term "equipment" shall include any article of nonexpendable, tangible, personal property having a useful life of more than one year and an acquisition costs which equals or

exceeds five thousand dollars (\$5,000). The term "motor vehicle" shall include any article of tangible personal property that is required to be registered under the "Tennessee Motor Vehicle Title and Registration Law", Tenn. Code Ann. Title 55, Chapters 1-6.

As authorized by the Tennessee Uniform Commercial Code, Tenn. Code Ann. Title 47, Chapter 9 and the "Tennessee Motor Vehicle Title and Registration Law," Tenn. Code Ann. Title 55, Chapters 1-6, the parties intend this Grant contract to create a security interest in favor of the City in the equipment or motor vehicles acquired by the Operating Agency pursuant to the provisions of this Grant contract. A further intent of this Grant contract is to acknowledge and continue the security interest in favor of the City in the equipment or motor vehicles acquired by the Operating Agency pursuant to the provisions of this program's prior year Grant contracts between the City, and the Operating Agency.

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

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

- a. Description of the equipment or motor vehicles;
- b. Manufacturer's serial number or other identification number, when applicable;
- c. Consecutive inventory equipment or motor vehicles tag identification;
- d. Acquisition date, cost, and check number;
- e. Fund source, State Grant number, or other applicable fund source identification;
- f. Percentage of state funds applied to the purchase;

- g. Location within the Operating Agency's operations where the equipment or motor vehicles is used;
 - h. Condition of the property or disposition date if Operating Agency no longer has possession;
 - i. Depreciation method, if applicable; and
 - j. Monthly depreciation amount, if applicable.
 - k. The Operating Agency shall tag equipment or motor vehicles with an identification number which is cross referenced to the equipment or motor vehicle item on the inventory control report. The Operating Agency shall inventory equipment or motor vehicles annually. The Operating Agency must compare the results of the inventory with the inventory control report and investigate any differences. The Operating Agency must then adjust the inventory control report to reflect the results of the physical inventory and subsequent investigation.
 - l. The Operating Agency shall submit its inventory control report of all equipment or motor vehicles purchased with funding through this Grant contract within thirty (30) days of its end date and in form and substance acceptable to the City. This inventory control report shall contain, at a minimum, the requirements specified above for inventory control. The Operating Agency shall notify the City, in writing, of any equipment or motor vehicle loss describing the reasons for the loss. Should the equipment or motor vehicles be destroyed, lost, or stolen, the Operating Agency shall be responsible to the City for the *pro rata* amount of the residual value at the time of loss based upon the City's original contribution to the purchase price.
 - m. Upon termination of the Grant contract, where a further contractual relationship is not entered into, or at another time during the term of the Grant contract, the Operating Agency shall request written approval from the City for any proposed disposition of equipment or motor vehicles purchased with Grant funds. All equipment or motor vehicles shall be disposed of in such a manner as the parties may agree from among alternatives approved by the Tennessee Department of General Services as appropriate and in accordance with any applicable federal laws or regulations.
- D.28. City, State and Federal Compliance. The Operating Agency shall comply with all applicable city, state, and federal laws, ordinances, rules and regulations in performance of this Grant Contract.
- D.29. Governing Law. This Grant Contract shall be governed by and construed in accordance with the laws of the State of Tennessee. The Operating Agency agrees that it will be subject to the exclusive jurisdiction of the courts of the State of Tennessee in actions that may arise under this Grant Contract. The Operating Agency acknowledges and agrees that any rights or claims against the City of Kingsport or its employees hereunder, and any remedies arising there from, shall be subject to and limited to those rights and remedies, if any, available under Tenn. Code Ann. § 29-20-101 *et seq.* and the sovereign immunity the city has through the State of Tennessee.
- D.30. Completeness. This Grant Contract is complete and contains the entire understanding between the parties relating to the subject matter contained herein, including all the terms and conditions of the parties' agreement. This Grant Contract supersedes any and all prior understandings, representations, negotiations, and agreements between the parties relating hereto, whether written or oral.

D.31. Severability. If any terms and conditions of this Grant Contract are held to be invalid or unenforceable as a matter of law, the other terms and conditions hereof shall not be affected thereby and shall remain in full force and effect. To this end, the terms and conditions of this Grant Contract are declared severable.

D.32. Headings. Section headings are for reference purposes only and shall not be construed as part of this Grant Contract.

E. SPECIAL TERMS AND CONDITIONS:

E.1. Conflicting Terms and Conditions. Should any of these special terms and conditions conflict with any other terms and conditions of this Grant Contract, the special terms and conditions shall control.

E.2. Debarment and Suspension. The Operating Agency certifies, to the best of its knowledge and belief, that it, its current and future principals, its current and future subcontractors and their principals:

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

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

E.3. Work Papers Subject to Review. The Operating Agency shall make all audit, accounting, or financial analysis work papers, notes, and other documents available for review by the City, the U. S. Department of Housing and Urban Development, or their respective representatives upon request, during normal working hours either while the analysis is in progress or subsequent to the completion of this Grant Contract.

E.4. Environmental Tobacco Smoke. Pursuant to the provisions of the federal "Pro-Children Act of 1994" and the Children's Act for Clean Indoor Air of 1995", Tenn. Code Ann. §§ 39-17-1601 through 1606, the Operating Agency shall prohibit smoking of tobacco products within any indoor premises in which services are provided to individuals under the age of eighteen (18) years. The Operating Agency shall post "no smoking" signs in appropriate, permanent sites within such premises. This prohibition shall be applicable during all

hours, not just the hours in which children are present. Violators of the prohibition may be subject to civil penalties and fines. This prohibition shall apply to and be a part of any subcontract related to this Grant Contract.

- E.5. Hold Harmless. To the extent permitted by State law, the Operating Agency agrees to indemnify and hold harmless the City of Kingsport, the U. S. Department of Housing and Urban Development, 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 Operating Agency, its employees, or any person acting for or on its or their behalf relating to this Grant Contract. The Operating Agency further agrees it shall be liable for the reasonable cost of attorneys and court costs for the City, the U. S. Department of Housing and Urban Development to enforce the terms of this Grant Contract.

In the event of any such suit or claim, the parties shall give each other immediate notice and provide all necessary assistance to respond. The failure of the City, the U. S. Department of Housing and Urban Development to give notice shall only relieve the Operating Agency of its obligations under this Section to the extent that the Operating Agency can demonstrate actual prejudice arising from the failure to give notice. This Section shall not grant the Operating Agency, through its attorney(s), the right to represent the City of Kingsport, the U. S. Department of Housing and Urban Development in any legal matter, as the right to represent the City and the State is governed by Tenn. Code Ann. § 8-6-106.

- E.6. Federal Funding Accountability and Transparency Act ("FFATA"). This Grant requires the Operating Agency to provide supplies or services that are funded in whole or in part by federal funds that are subject to FFATA. The Operating Agency is responsible for ensuring that all applicable requirements, including but not limited to those set forth herein, of FFATA are met and that the Operating Agency provides information to the City as required. The Operating Agency shall comply with the following:

a. Reporting of Total Compensation of the Operating Agency's Executives.

- (1) The Operating Agency shall report the names and total compensation of each of its five (5) most highly compensated executives for the Operating Agency's preceding completed fiscal year, if in the Operating Agency's preceding fiscal year it received:
 - i. 80 percent or more of the Operating Agency's annual gross revenues from federal procurement contracts and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR § 170.320 (and sub awards); and
 - ii. \$25,000,000 or more in annual gross annual revenues from federal procurement contracts (and subcontracts), and federal financial assistance subject to the Transparency Act (and sub awards); and
 - iii. The public does not have access to information about the compensation of the executives through periodic reports files under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. §78m(a), 78o(d)) or § 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at <http://www.sec.gov/answers/execomp.htm>).

As defined in 2 CFR § 170.315. "Executive" means officers, managing partners, or any other employees in management positions.

- (2) Total compensation means the cash and noncash dollar value earned by the executive during the Operating Agency's preceding fiscal year and includes the following (for information see 17 § CFR 229.402(c)(2)):
- i. Salary and bonus.
 - ii. Awards of stock, stock options, and stock appreciation rights. Use the dollar amount recognized for financial statement reporting purposes with respect to the fiscal year in accordance with the Statement of Financial Accounting Standards No. 123 (Revised 2004) (FAS 123R), Shared Based Payments.
 - iii. Earnings for services under non-equity incentive plans. This does not include group life, health, hospitalization or medical reimbursement plans that do not discriminate in favor of executives, and are available generally to all salaried employees.
 - iv. Change in pension value. This is the change in present value of defined benefit and actuarial pension plans.
 - v. Above-market earnings or deferred compensation which is not tax qualified.
 - vi. Other compensation, if the aggregate value of all such other compensation (e.g. severance, termination payments, value of life insurance paid on behalf of the employee, perquisites of property) for the executive exceeds \$10,000.
- b. The Operating Agency must report executive total compensation described above to the City by the end of the month during which this Grant Contract is fully executed.
- c. If this Grant Contract is amended to extend the Term, the Operating Agency must submit an executive total compensation report to the City by the end of the month in which the amendment to this Grant Contract becomes effective.
- d. The Operating Agency will obtain a Data Universal Numbering System ("DUNS") number and maintain its DUNS number for the terms of this Grant Contract. More information about obtaining a DUNS Number can be found at: <http://fedgov.dnb.com/webform/>.

The Operating Agency's failure to comply with the above requirements is a material breach of this Grant Contract for which the City may terminate this Grant Contract for cause. The City will not be obligated to pay any outstanding invoice received from the Operating Agency unless and until the Operating Agency is in full compliance with the above requirements.

- E.7. Training. The Operating Agency agrees to attend all training sessions regarding management of the CDBG Program which are scheduled by the City and HUD.
- E.8. CDBG Program Requirements. Under this Grant Contract, Operating Agency is receiving an allocation or grant of Community Development Block Grant Program funds. The Operating Agency understands these funds are made available through the U.S. Department of Housing and Urban Development (HUD) and to facilitate the receipt of these funds the Operating Agency agrees and certifies to comply with all applicable HUD

requirements. Without limitations, Operating Agency specifically agrees and certifies as to the following:

- a. The Operating Agency will abide with all of the requirements of 24 CFR, Part 570 and Part 91, Community Development Block Grant Program.
- b. The Operating Agency will comply with other applicable Federal requirements in 24 CFR, Part 570 and Part 91, as follows:
 1. 24 CFR 5.105(a). Section 3 Nondiscrimination and Equal Opportunity;
 2. 24 CFR 570 Subpart A, General Provisions;
 3. 24 CFR 570 Subpart C, Eligible Activities;
 4. 24 CFR 570 Subpart J, Grant Administration;
 5. 24 CFR 570 Subpart K, Other Program Requirements;
 6. 24 CFR 570 Subpart O, Performance Reviews;
 7. Title VI and Executive Order 13166 Affirmative Outreach
- c. If the Operating Agency is primarily a religious organization, it agrees to use its funds to provide all eligible activities under this program in a manner that is free from religious influences as provided by 24 CFR 576.406.
- d. The Operating Agency will comply with the uniform administrative requirements of 24 CFR Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Award, and the requirements of 24 CFR 576.407.
- e. The Operating Agency will comply with the acquisition and relocation requirements of the Uniform Relocation Assistance and Real Estate Property Acquisition Policies Act of 1970, as amended, implementing regulations at 49 CFR, Part 24 and the requirements of 24 CFR 576.59.
- f. The Operating Agency will comply with the requirements of the Residential Lead-Based Paint Hazard Reduction Act of 1992, implementing regulations at 24 CFR, Part 35, Subparts A, B, H, J, K, and M as applicable.
- g. The Operating Agency will use CDBG funds pursuant to its or the City's Consolidated Plan approved by HUD and all requirements of 24 CFR, Part 570 and Part 91.
- h. The Operating Agency will maintain adequate documentation to determine eligibility of persons served by the CDBG program.
- i. The Operating Agency will develop and implement procedures to ensure the confidentiality of records pertaining to any individual fleeing domestic violence situations. In addition the address and location of family violence shelter facilities receiving ESG funding may not be publicly disclosed except with the written authorization of the person(s) responsible for the shelter facility's operation.

E.9. Drug Free Workplace. The Operating Agency will or will continue to provide a drug-free workplace by:

- a. Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the Operating Agency's workplace and specifying the action that will be taken against employees for violation of such prohibition;
- b. Establishing an ongoing drug-free awareness program to inform employees about:
 1. The dangers of drug abuse in the workplace;
 2. The Operating Agency's policy of maintaining a drug-free workplace;
 3. Any drug counseling, rehabilitation and employee assistance programs; and
 4. The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace.
- c. Making it a requirement that each employee to be engaged in the performance of this Grant Contract be given a copy of the statement required by Paragraph E.10. (a);
- d. Notifying the employee in the statement required by Paragraph E.10(a) that, as a condition of employment under this Grant Contract, the employee will:
 1. Abide by the terms of the statement; and
 2. Notify the employees in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;
- e. Notifying the City in writing, within ten calendar days after receiving notice under Paragraph E.10(d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to every grant officer or other designee on whose grant activity the convicted employee was working, unless the Federal agency has designated a central point for the receipt of such notices. Notice shall include the identification number(s) of each affected grant.
- f. Taking one of the following actions, within thirty calendar days of receiving notice under Paragraph E.10(d)(2), with respect to any employee who is so convicted:
 1. Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirement of the Rehabilitation Act of 1973, as amended; or
 2. Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State or local health, law enforcement or the appropriate agency;
- g. Making a good faith effort to continue to maintain a drug-free workplace through implementation of Paragraphs E.10 (a), (b), (c), (d), (e) and (f).

E.10. Corrective Action. If the City takes any corrective or remedial action as outlined in 24 CFR § 570.910 that is the result of any action taken by the Operating Agency, the

Operating Agency will take any action required by the City to prevent a continuation of the deficiency, mitigate to the extent possible its adverse effects or consequences, and prevent its recurrence. These remedies could, among other actions, include repaying CDBG funds to the City.

IN WITNESS WHEREOF, the parties have by their duly authorized representatives set out their signatures.

CITY OF KINGSPORT

John Clark, Mayor

Date

ATTEST:

James H. Demming, City Recorder

Date

HELP OUR POTENTIAL EVOLVE, Inc.

Chaiba Bloomer, President

Date

APPROVED AS TO FORM:

Michael Billingsley, City Attorney

Date

ATTACHMENT A

2018 CDBG PROGRAM DESCRIPTION OF OPERATING AGENCY ACTIVITIES

OPERATING AGENCY: Help Our Potential Evolve, Inc.

I. The activities for the 2018 CDBG Project shall consist of the following:

A. Purpose of Project.

H.O.P.E. will expand its Youth Leadership Program to offer activities and events which increase personal and financial responsibility of low/mod income high school students in the Kingsport community, leading to greater awareness of, access to and success in education and employment.

B. Method of Operation.

The program will be available to residents of Kingsport, consisting primarily of low and very low-income, minority persons. The program will be administered by H.O.P.E. and will provide funding to purchase training materials for community service and leadership programs and transportation costs associated with delivering these programs.

ATTACHMENT B

2018 CDBG Program IMPLEMENTATION PLAN FOR CDBG PROJECTS

OPERATING AGENCY: Help Our Potential Evolve, Inc.

I. The time table for completing the activities for the project shall be:

- | | | |
|----|--|---------------|
| 1. | Determination of status for Environmental Review | July 1, 2018 |
| 2. | Release of Funds | July 1, 2018 |
| 3. | Begin providing services to homeless | July 1, 2018 |
| 4. | Contract complete | June 30, 2019 |

ATTACHMENT C

2018 CDBG PROGRAM

PROJECT BUDGET

OPERATING AGENCY: Help Our Potential Evolve, Inc.

CDBG funds will be used as follows:

Program Costs	\$7,000
TOTAL FOR GRANT	\$7,000

ATTACHMENT D

Federal Award Identification Worksheet

Operating Agency's name (must match registered name in DUNS)	Help Our Potential Evolve, Inc.
Operating Agency's DUNS number	
Federal Award Identification Number (FAIN)	B-18-MC-47-0004
Federal award date	July 1, 2018
CFDA number and name	14.218 Community Development Grant Program
Grant contract's begin date	July 1, 2018
Grant contract's end ate	June 30, 2019
Amount of federal funds obligated by this grant contract	\$7,000
Total amount of federal funds obligated to the Operating Agency	\$7,000
Total amount of the federal award to the City of Kingsport	\$392,052
Name of federal awarding agency	U.S. Department of Housing and Urban Development
Name and contact information for the federal awarding official	Mary C. Wilson, Director Community Planning and Development U.S. Department of Housing and Urban Development Knoxville Field Office 710 Locust Street, Third Floor Knoxville, TN 37902-2526
Is the federal award for research and development?	No
Indirect cost rate for the federal award (See 2 C.F.R. §200.331 for information on type of indirect cost rate)	To be determined by cost allocation plan approved by Operating Agency's cognizant agency

ATTACHMENT E

Notice of Audit Report

Check one of the two boxes below and complete the remainder of this document as instructed. Send completed documents as a PDF file to cpo.auditnotice@tn.gov. **The Operating Agency should submit only one, completed "Notice of Audit Report" document to the City during the Operating Agency's fiscal year.**

- ☐ _____ is subject to an audit for fiscal year 2018.
- ☐ _____ is not subject to an audit for fiscal year 2018.

Any Operating Agency that is subject to an audit must complete the information below.

Operating Agency's Edison Vendor ID Number: _____

Type of funds expended	Estimated amount of funds expended by end of Operating Agency's fiscal year
Federal pass-through funds	
a. Funds passed through the City of Kingsport	a. \$7,000
b. Funds passed through any other entity	b. \$0
Funds received directly from the federal government	\$
Non-federal funds received directly from the City of Kingsport	\$

Auditor's Name: _____

Auditor's address: _____

Auditor's phone number: _____

Auditor's email: _____

ATTACHMENT F

Parent Child Information

Send completed documents as a PDF file to cpo.auditnotice@tn.gov. ***The Operating Agency should submit only one, completed "Parent Child Information" document to the City during the Operating Agency's fiscal year if the Operating Agency indicates it is subject to an audit on the "Notice of Audit Report" document.***

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

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

Operating Agency's Edison Vendor ID number: _____

Is _____ a parent? Yes ☐ No ☐

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

Is _____ a child? Yes ☐ No ☐

If yes, complete the fields below.

Parent entity's name: _____

Parent entity's tax identification number: _____

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

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

Parent entity's contact information

Name of primary contact person: _____

Address: _____

Phone number: _____

Email address: _____

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



AGENDA ACTION FORM

Approving a Project Development and Energy Services Agreement with Ameresco, Inc. for the City Schools

To: Board of Mayor and Aldermen
 From: Jeff Fleming, City Manager

Action Form No.: AF-223-2018
 Work Session: September 17, 2018
 First Reading: N/A

Final Adoption: September 18, 2018
 Staff Work By: Committee
 Presentation By: D. Frye/Bill Shedden

Recommendation:

Approve the Resolution.

Executive Summary:

Kingsport City Schools is requesting approval of a Project Development and Energy Services Agreement with Ameresco, Inc. The agreement is on two phases. Phase 1 of the agreement is the development of the project, which includes performing an energy audit with the anticipation that improvements can be identified that will reduce energy cost in school facilities. It is anticipated that the energy savings over the term will be greater than the cost of the equipment installation.

During the Phase 1, Ameresco will assist Kingsport City Schools in obtaining sources for funding required to proceed to the next phase of the project. Phase 2 of the agreement is the installation of equipment, such as LED Lighting and or Solar Panels, to reduce utility cost as identified by the energy audit and as approved by Kingsport City Schools.

On May 1, 2018, the Board of Education approved the recommendation to enter into an agreement with Ameresco, Inc. It is now recommended that the Board of Mayor and Aldermen approve the resolution for to enter into an agreement with Ameresco, Inc. for the Kingsport City Schools to begin the development phase of the agreement.

Attachments:

1. Resolution

Funding source appropriate and funds are available: 

	Y	N	O
Adler	—	—	—
Begley	—	—	—
Cooper	—	—	—
George	—	—	—
McIntire	—	—	—
Olterman	—	—	—
Clark	—	—	—

RESOLUTION NO. _____

A RESOLUTION APPROVING A PROJECT DEVELOPMENT AND
ENERGY SERVICES AGREEMENT WITH AMERESCO, INC.,
AND AUTHORIZING THE MAYOR TO EXECUTE THE
AGREEMENT AND ALL OTHER DOCUMENTS NECESSARY
AND PROPER TO EFFECTUATE THE PURPOSE OF THE
AGREEMENT

WHEREAS, the Kingsport City Schools would like to enter into a Project Development and Energy Services Agreement with Ameresco, Inc.; and

WHEREAS, Phase 1 of the project is an energy audit to identify improvements that can be made to reduce energy costs in school facilities; and assistance in obtaining sources for funding required to proceed to the next phase of the project; and

WHEREAS, Phase 2 of the project, contingent of approval and funding involved, is the installation of equipment, such as LED lighting and or solar panels, to reduce utility cost as identified by the energy audit and as approved by Kingsport City Schools; and

WHEREAS, the terms are set out in the agreement below, and funds for Phase 1 of the agreement are allocated in account number 141-7650-871-0707.

Now therefore,

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

SECTION I. That a Project Development and Energy Services Agreement with Ameresco, Inc. is approved.

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

PROJECT DEVELOPMENT AND ENERGY SERVICES AGREEMENT

THIS PROJECT DEVELOPMENT AND ENERGY SERVICES AGREEMENT ("Agreement") is entered into as of the ____ day of ____, 2018, by and between the City of Kingsport, Tennessee, with a principal business address at 225 West Center Street, Kingsport, Tennessee 37660 ("**Customer**") for Kingsport City Schools and Ameresco, Inc. having its principal place of business at 111 Speen Street, Suite 410, Framingham, Massachusetts 01701 ("**Ameresco**"). Customer and Ameresco may be referred to herein individually as a "**Party**" and collectively as the "**Parties**".

WHEREAS, Ameresco desires to perform certain energy services including a detailed energy audit for Customer at facilities and sites deemed suitable by the Parties; and

WHEREAS, this Agreement is made pursuant to T.C.A. section 12-4-110; and

WHEREAS, this Agreement is in two phases, with phase one being the development of the work and phase two being the installation of equipment and related components for the work approved by Customer; and

WHEREAS, the purpose of the anticipated improvements contemplated by this Agreement is to reduce energy costs in school facilities; and

WHEREAS, Customer will, depending in part on the results of the energy audit by Ameresco, consider proceeding with equipment installation phase of the Agreement for implementation of one

(1) or more scopes of work (referred to below) identified by Ameresco as a result of its energy audit and development work under this Agreement.

NOW THEREFORE, in consideration of the mutual promises and agreements contained herein, the Parties hereto hereby agree as follows:

ARTICLE 1 DEVELOPMENT PHASE

1.1 Ameresco shall complete the following work in this energy audit and development phase (the "**Development Work**") in accordance with the Time Table set forth in Schedule 1 attached hereto:

- (a) Conduct an energy audit potentially on multiple Kingsport City Schools and City of Kingsport sites as agreed to by the parties;
- (b) Prepare and deliver to Customer a proposal (the "**Project Proposal**"), which shall include:
 - (i) The proposed scope of services for installation of certain energy efficiency improvements and renewable energy projects, which shall take into account Customer preferences for individual sites based on a scope of services and schedule mutually agreed to with the Customer;
 - (ii) The implementation price for the proposed scope of services (the "**Implementation Price**"); and
 - (iii) The estimated cost savings as a result of implementation of the proposed scope of services; and
- (c) If requested by Customer, Ameresco, at no cost, will assist Customer in obtaining sources of funding satisfactory to Customer and the parties agree that preceding past the thirty percent (30%) development schedule contemplated in Section 1.2 is contingent on Ameresco having identified available funding sources.

Ameresco's receipt of an executed copy of this Agreement shall be evidence of the Customer's agreement to the terms and conditions of this Agreement and its authorization of and notification to Ameresco to proceed with the Development Work. Ameresco will thereafter promptly initiate the Development Work.

Once Customer receives the completed Project Proposal it shall decide whether to proceed with some, all, or none of the Project Proposal. If Customer decides to proceed with the equipment installation phase with any part of the Project Proposal it will so advise Ameresco in writing by submitting a notice to proceed substantially in the form of Exhibit A attached hereto (the "**Notice to Proceed**") with the equipment installation phase for that part of the Project Proposal. The actual scope of services to be implemented as determined by Customer will be reduced to writing and included as Attachment B to the Notice to Proceed (the "**Scope of Services**"). For the sake of clarity, if Customer determines to proceed to the equipment installation phase with any part of the Project Proposal, then it will not owe any part of the Project Development Fee (as defined below) to Ameresco as the Implementation Price shall be all inclusive of design and development. If Customer determines not to proceed with any part of the Project Proposal this Agreement shall be terminated and Customer shall pay Ameresco for its development services the amounts based on a 30%, 60%, 90% development schedule and paid out as follows: 30% - \$0, 60% - \$40,000, 90% - \$80,000 in the aggregate (the "**Project Development Fee**"). The Project Development Fee shall be fully-earned, due and payable by Customer to Ameresco no later than six (6) months after the Customer notifies Ameresco in writing of Customer's determination not to proceed with the project at either 60% engineering review or 90% engineering review. Customer agrees to notify Ameresco within 30 days of receiving the 60% or 90% Project update and financial review of Customer's intent to proceed or not proceed with the project development. If the Customer provides a notice of intent to proceed with all or some of the project, at the 90% review, Ameresco agrees to provide Customer six (6) months to determine the funding source and to have the lenders approval – the money will be placed in project account at closing.

1.2 All amounts not paid to Ameresco on or before the due dates specified in the preceding sentence shall accrue interest at the Prime rate of interest as published in the Wall Street Journal for major banks, or such lower rate as is prescribed by applicable law. If Customer issues a Notice to Proceed with the equipment installation phase for any or all of the Project Proposal, Customer will not be billed the Project Development Fee due under this Agreement as the Implementation Price shall be all inclusive of design and development. In the unlikely event that Ameresco is unable to develop a project that is estimated to result in sufficient energy savings and/or avoided future capital or operational costs to the Customer so that the installation costs can be paid from said savings over a period not to exceed 22 years, then Customer would not be obligated to reimburse Ameresco the Project Development Fee; *provided, however*, that Ameresco will be deemed to have satisfied the requirements of this Section and earned the Project Development Fee should Ameresco's failure to develop a project with such a payback period result solely from either (a) a material adverse change in Customer's credit or bond rating, (b) an increase in interest rates due to conditions beyond the control or fault of Ameresco such that the costs associated with the Scope of Services increase, (c) a material change of project structure such as a Power Purchase Agreement (PPA) or (d) a

combination of the preceding clauses (a), (b) and (c). For the sake of clarity, provided Customer does not proceed with any part of the Project Proposal, Ameresco shall be entitled to the Project Development Fee if it delivers a Project Proposal for a project that is estimated to result in sufficient energy savings and/or avoided future capital or operational costs to Customer so that the installation costs can be paid from said savings over a period not to exceed 22 years without regard to whether the Time Table in Schedule 1 is met.

1.3 Customer hereby agrees to provide timely and complete access to all necessary property and energy consumption and cost records for the three (3) years preceding the commencement of the Development Work. Customer will make available the assistance of such personnel as may be necessary for Ameresco's performance of the Development Work hereunder. If, during the performance of the Development Work, Ameresco should conclude, as a result of its analysis of the data provided by Customer, that it is not able to develop a project consistent with the terms of this Agreement, as a result Ameresco may, by written notice to Customer, terminate this Agreement.

1.4 In no event shall Ameresco be liable for any special, consequential, incidental, punitive, exemplary or indirect damages in tort, contract or otherwise, including, without limitation, loss of profits, loss of use of the Facilities or other property, or business interruption, howsoever caused, in connection with the Development Work under this Article 1. However, Ameresco shall be liable for any damages incurred by Customer with respect to third party claims as a result of the negligence of Ameresco or its employees, sub-contractors or agents.

1.5 In the event Customer and Ameresco fail to proceed to phase two (equipment installation) as provided in Section 1.2 above, because Ameresco will not therefore be engaged to perform services in connection with the implementation of its recommendations, Ameresco will have no control over such implementation by Customer or any third party. Accordingly, Ameresco specifically and expressly disclaims all responsibility for the use of or reliance upon such documents or memoranda by Customer or any third party.

ARTICLE 2 EQUIPMENT INSTALLATION PHASE

2.1 Work: Upon Ameresco's receipt of a Notice To Proceed executed by Customer, Ameresco shall furnish all labor, materials and equipment and perform all work (the "**Work**") required for the completion of the Scope of Services, including installation of the energy conservation and facility improvement measures ("**ECM(s)**"), included in the Scope of Services, as such Scope of Services may be modified in accordance with the terms of this Agreement. Customer and Ameresco shall mutually plan the scheduling of the Work so as to minimize disruption of the daily routine of Customer's personnel and use of its facilities.

2.2 Asbestos and Lead Paint:

(a) Asbestos: Ameresco's Scope of Services is predicated on the viability of the Project without Ameresco's encountering or disturbing asbestos or being required to perform any asbestos abatement or taking any other action with respect to asbestos. Customer hereby represents and warrants to Ameresco that to its knowledge there is no asbestos or other hazardous material in any area wherein Ameresco shall be performing the Scope of Services. If: (a) Ameresco encounters any friable asbestos which is in the vicinity of the Project that is not identified in the Scope of Services, (b) Ameresco determines that its work will result in the disturbance of asbestos containing material, or (c) Ameresco determines that the presence of asbestos containing material may impede Ameresco's work, Ameresco shall notify Customer of the same and Customer shall: (x) at its cost, cause the asbestos to be lawfully removed, enclosed, encapsulated or otherwise abated in accordance with applicable laws, rules and regulations; (y) at its cost, provide written test reports showing that asbestos in that area has been properly removed, enclosed encapsulated or otherwise abated in accordance with applicable laws rules and regulations; or (z) abandon the Project and terminate this Agreement, which such termination shall not be a breach of this Agreement. If Ameresco cannot determine whether any particular material contains asbestos, Customer, upon Ameresco's written request, shall either: (i) at Customer's cost, lawfully perform tests or cause tests to be performed in order to determine whether such material contains asbestos and/or whether there are unacceptable levels of airborne particulate material containing asbestos and provide such test report to Ameresco; or (b) abandon the Project and terminate this Agreement, which such termination shall not be a breach of this Agreement. Under no circumstances shall Ameresco be required to handle asbestos. If Ameresco encounters asbestos that materially affects the Scope of Services or the Project schedule, Ameresco, at its option, may demobilize and cease construction in the area affected by the presence of asbestos until such time as Customer elects and performs one of the options afforded Customer as described in this Subsection. In addition to the options set out herein Customer may reduce the Scope of Services, with a corresponding adjustment in the Guaranteed Savings, as such term is defined in Section 2.7, so as to avoid the asbestos, and the Contract Cost, as such term is defined in Section 2.5, shall be reduced to reflect such reduction in the Scope of Services, all as mutually agreed. If Customer does not promptly take action, as provided herein, or

notifies Ameresco that it shall not take such action, Ameresco may, at its option, either remove the affected area from its Scope of Services (and make commensurate adjustments to its rights and obligations) or terminate this Agreement in its entirety. Customer shall be responsible for payment of the portion of Scope of Services implemented prior to termination. Customer shall be responsible for any and all costs (including termination) incurred by Ameresco that relate to the presence of asbestos.

(b) Lead Paint: Ameresco's Scope of Services is predicated on the viability of the Project without Ameresco's encountering or disturbing lead paint or being required to perform abatement or providing any notice or taking any other action with respect to lead paint. Customer hereby represents and warrants that to its knowledge there is no exposed lead paint in any area in which Ameresco shall be performing the Scope of Services. If Ameresco encounters lead paint in any area where it is to perform the Scope of Services, which performance would require disturbing lead paint, and Ameresco reasonably believes that such paint may be lead paint, Customer, upon Ameresco's written request, shall either (a) at Customer's cost, lawfully perform tests or cause tests to be performed in order to determine whether such paint contains lead and shall provide a test report to Ameresco; or (b) abandon the Project and terminate this Agreement, which such termination shall not be a breach of this Agreement. If such test report demonstrates the presence of lead paint or Ameresco reasonably believes that performing its services under this Agreement is likely to cause the disturbance of lead paint in such a manner as to require Ameresco to provide any notification or take any actions pursuant to any federal, state or local laws, rules, or regulations and Ameresco notifies Customer of the same, Customer shall: (x) at its cost, cause the lead paint to be lawfully removed, or otherwise abated in accordance with applicable laws, rules and regulations; or (y) abandon the Project and terminate this Agreement. In addition to the options set out herein Customer may reduce the Scope of Services, with a corresponding adjustment in the Guaranteed Savings, so as to avoid the lead paint, and the Contract Cost shall be reduced to reflect such reduction in the Scope of Services, all as mutually agreed. Under no circumstances, shall Ameresco be required to perform services which cause the disturbance of lead paint. If lead paint materially affects the Project Schedule, Ameresco, at its sole option, may demobilize and cease construction in the area affected by the presence of lead paint until such time as Customer has elected and performs one of the options afforded Customer as described in this Subsection. If Customer does not promptly take action as provided herein or notifies Ameresco that it shall not take such action, Ameresco may, at its sole option, either remove the affected area from its Scope of Services (and make commensurate adjustments to its rights and obligations) or terminate this Agreement in its entirety. Customer shall be responsible for payment of the portion of Scope of Services implemented prior to such termination. Customer shall be responsible for any and all costs (including termination) incurred by Ameresco that relate to the presence of lead paint.

2.3 Duties, Obligations and Responsibilities of Ameresco:

(a) All labor furnished under this Agreement shall be competent to perform the tasks undertaken, all materials and equipment provided shall be new and of appropriate quality and the completed work shall comply in all material respects with the requirements of this Agreement. Ameresco further agrees that it shall perform the work in a good and workmanlike manner, continuously and diligently in accordance with generally accepted standards of construction practice for construction of projects similar to the Project.

(b) Ameresco shall maintain the Project site in a reasonably clean condition during the performance of the Scope of Services. As part of the Scope of Services Ameresco shall (i) be responsible for the disposal of all non-hazardous equipment and materials which are rendered useless and removed as a result of the installation of the ECMs and (ii) cause all lamps which are classified as hazardous wastes by the rules and regulations of the U.S. Environmental Protection Agency (40 CFR Parts 260 through 279) and PCB-contaminated ballasts, if any, which have been rendered useless and removed as a result of the installation of the ECMs to be disposed of. All other existing PCB-contaminated ballasts, lamps and any other hazardous materials, however, shall remain the sole responsibility of Customer and Ameresco shall assume no liability whatsoever in connection with their removal, transportation and disposal. Ameresco will not use containers of Customer to dispose of any debris, trash, or excess material or equipment.

(c) Ameresco shall regularly clean the Project site of all debris, trash and excess material or equipment generated by Ameresco's construction work hereunder.

(d) Ameresco shall permit Customer or any of its representatives to enter upon the Project site to review or inspect construction work, provided, in each case, Customer and/or its representatives coordinate such review or inspection with Ameresco and agree to comply with all applicable federal, state and local safety laws, rules and regulations, including, without limitation, those promulgated by the U.S. Department of Labor Occupational Safety & Health Administration.

(e) Ameresco shall provide equipment manuals, as-built drawings and other appropriate

information regarding equipment installed hereunder to Customer at or about the time of delivery of the Delivery and Acceptance Certificate, as provided in Section 2.5.

(f) Ameresco shall provide the training to be described in Attachment H to the Notice to Proceed. Such training will be included in the Contract Cost, unless included as a separate cost in Attachment I to be included with the Notice to Proceed.

(g) Ameresco shall, at its expense, comply with and obtain all applicable licenses and permits required by federal, state and local laws in connection with the Work, including, but not limited to (i) the installation of the ECMs and (ii) the operation and/or maintenance of the ECMs (to the extent that Ameresco agrees to perform such operations and/or maintenance services). In the event that Ameresco cannot procure any such license or permit in light of a requirement that Customer is required to do so, the Parties shall work jointly to obtain such permit or license.

2.4 Ownership of ECM(s): Ownership and title to each ECM or portion thereof, as applicable, shall automatically pass to Customer upon Ameresco's receipt of both (i) the executed Substantial Completion Certificate (Attachment D(3)) to the Notice to Proceed, or each Percent Complete Acknowledgement Certificate (Attachment D(2)) to the Notice to Proceed, (including Customer payment certification) delivered pursuant to Section 2.5 for such ECM or portion thereof, and (ii) the indefeasible payment in full of all of Customer's payment obligations to Ameresco pursuant to such Substantial Completion Certificate or Percent Complete Acknowledgement Certificate for such installed ECM or portion thereof. Prior to satisfaction of the conditions set forth in (i) and (ii) in the previous sentence with respect to an ECM or portion thereof, title to each ECM or portion thereof shall remain in the name of Ameresco. Upon delivery of the Substantial Completion Certificate and satisfaction of clause (ii) above for each ECM, Ameresco's interest in the related ECMs shall be released and terminated, in each case without further action on any Party's part.

2.5 Contract Cost; Monthly Progress Payments; Final Payment:

(a) Subject to the terms of this Agreement, Ameresco shall perform the Scope of Services at a total fixed contract cost to be set forth in the Notice to Proceed (subject to adjustment as provided in Section 2.9, the "**Contract Cost**").

(b) Upon execution and delivery by Customer to Ameresco of the Notice to Proceed Customer shall pay Ameresco ten percent (10%) of the Contract Cost for mobilization. Thereafter, Ameresco shall submit invoices to Customer for monthly progress payments to Ameresco based upon the percentage of the Project construction and equipment procurement completed at the end of each month, less retainage of five percent (5%), so that Ameresco is paid the percentage of the Contract Cost that is commensurate with the percentage of completion of the Scope of Services, less retainage of five percent (5%). The invoice will include a list in sufficient detail to reasonably identify construction and equipment procurement during the month. The Customer may require any additional information deemed necessary and appropriate to substantiate the payment request. Materials that are verified to be on the jobsite or other approved location for use in the Project may also be incorporated into the payment request. Within thirty (30) calendar days after receipt of the invoice Customer shall pay the undisputed amount to Ameresco. Customer shall not unreasonably withhold, condition or delay the execution and delivery of any Percent Complete Acknowledgement Certificate in the form attached as Attachment D(2) to the Notice to Proceed. Upon request the retainage, if any, shall be deposited in an interest-bearing account and the interest earned on the retainage shall be paid to Ameresco upon completion of the Project, pursuant to Tennessee Code Annotated section 66-34-103.

(c) Final payment of the Contract Cost, constituting the entire unpaid balance thereof, shall be made by the Customer to Ameresco when Ameresco has fully completed installation of the Scope of Services included with the Notice to Proceed, and a final certificate for payment has been submitted to and approved by the Customer. The final payment shall be made no later than thirty (30) days after 1) Ameresco certifies in writing that the Scope of Services is fully and finally completed; and 2) the Customer has agreed the Scope of Services is fully and finally completed, and has received a consent of surety and waiver of liens properly executed.

(d) Upon Substantial Completion of the installation of an ECM, Ameresco will deliver to Customer a Substantial Completion Certificate in the form of Attachment D(3) to the Notice to Proceed. Within ten (10) business days after receipt of each Substantial Completion Certificate, Customer shall complete, execute and deliver to Ameresco each such Substantial Completion Certificate. As used in this Agreement the term "**Substantial Completion**" shall mean that each subject ECM has been installed by Ameresco, and, if such ECM is equipment, such equipment is then operating in a manner such that Customer is deriving beneficial use thereof. A Delivery and Acceptance Certificate, in the form of Attachment D(1) to the Notice to Proceed, shall be executed by Customer upon Substantial Completion of the installation of the final ECM. Customer shall not unreasonably withhold, condition or delay the execution and delivery of any Substantial Completion Certificate or the Delivery and Acceptance Certificate. As a further condition of a determination of Substantial Completion: (1)

Ameresco shall certify that all remaining Scope of Services with respect to the applicable ECM, shall be completed within thirty (30) days; and (2) Customer must have received from Ameresco complete product data, operating and maintenance data, orientation, and training, along with use and occupancy permits, if required, all as set forth in the Scope of Services.

(e) Within thirty (30) calendar days following the first day of each Guarantee Year, as such term is defined in Section 2.7, Customer shall pay Ameresco the additional amounts to be set forth on Attachment I, Measurement and Verification Fee Schedule, to the Notice to Proceed as an annual fee for the M&V Services, as such term is defined in Section 2.7.

(f) All payments made by Customer under this Agreement shall be made in accordance with the provisions of any Prompt Payment Act applicable to Customer. All amounts not paid to Ameresco on or before the due dates specified in Subsections 2.5(b), 2.5(c) and 2.5(e), shall accrue interest at the Prime rate of interest as published in the Wall Street Journal for major banks, or such lower rate as is prescribed by applicable law.

2.6 **Term:** The term of this Agreement (the "**Term**"), shall begin on the date first above written and shall remain in effect through the "**Guarantee Period**" as such period is specified in Attachment C to the Notice to Proceed, unless terminated prior to such date, as provided for in this Agreement. At any time after the date of the Delivery and Acceptance Certificate, Customer may terminate this Agreement upon sixty (60) days prior written notice to Ameresco, provided that Customer has paid to Ameresco all amounts due as set forth in Section 2.5. Anything in this Agreement to the contrary notwithstanding, Customer shall not be relieved of its obligation to pay Ameresco when due all amounts which accrued prior to such termination.

2.7 **Savings Guarantee; M&V Services:** To the extent set forth in Attachment C to the Notice to Proceed, and solely in accordance with such Attachment C, Ameresco will guarantee that the "Annual Savings" (as defined below) to be achieved as a result of installation and operation of the ECMs shall equal or exceed the Guaranteed Savings (as defined in such Attachment C) over the "**Guarantee Period**" (to be specified in such Attachment C). To the extent provided for in Attachment G to the Notice to Proceed, Ameresco will supply such ongoing monitoring, measurement and verification services (the "**M&V Services**") during the Term at a cost to Customer as set forth in Section 2.5(e) and Attachment I to the Notice to Proceed.

For purposes of this Savings Guarantee, the following assumptions and provisions shall apply:

(a) Ameresco will guarantee that the Guaranteed Savings will be achieved by operation and beneficial use of all ECMs taken in the aggregate, but will not guarantee the savings amount achieved by each ECM individually.

(b) The total savings to be achieved by the combined ECMs, determined as provided in the M&V Plan, including any "**Agreed Upon Savings**" as such term is defined in the M&V Plan, shall be deemed the total "**Annual Savings**". Agreed Upon Savings amounts shall be deemed achieved upon Substantial Completion of the ECMs. Calculation of the Annual Savings, inclusive of Agreed Upon Savings, shall be performed under, and governed by, the methods, formulas, and procedures described in the Measurement and Verification Plan to be set forth in Attachment G to the Notice to Proceed (the "**M&V Plan**").

(c) As it relates to the Annual Savings and this Savings Guarantee, the term "**Guarantee Year**" shall mean the consecutive twelve (12) month period beginning with the first day of the month following the date of Substantial Completion of the ECMs, and each similar twelve (12) month period thereafter.

(d) Ameresco's obligations in respect of this Savings Guarantee will be subject to Customer performing all of its maintenance, repair, service and other obligations under this Agreement, including, without limitation, maintenance of the Standards of Service and Comfort to be set forth in Attachment J to the Notice to Proceed, if any, which may affect achievement of the Guaranteed Savings. If Customer fails to perform its obligations under this Agreement or interferes with, or permits any third party to take any action which, in the reasonable opinion of Ameresco, may prevent the achievement of the Guaranteed Savings under this Agreement, Ameresco may, after providing Customer thirty (30) days advance notice, adjust the Annual Savings amount during the period in which such savings were affected to reflect the impact such actions had on same. Ameresco's rights set forth herein shall not be in limitation of any other rights it is entitled to by law or under this Agreement. Any disputes regarding achievement of Guaranteed Savings or any M&V Report to be delivered pursuant to the M&V Plan shall be resolved in accordance with the dispute resolution provisions of Section 4.3.

2.8 **Right of Entry/Space; Storage:**

(a) During the Term of this Agreement, Customer shall provide Ameresco and its employees, agents and subcontractors access to Customer's facilities to be identified in Attachment A to the Notice to Proceed (the "**Property**"), subject to reasonable safety and security requirements applicable to each Property of Customer for the purpose of fulfilling Ameresco's obligations under

this Agreement. Customer shall reasonably cooperate in relocating occupants, staff, personnel, furniture and equipment and taking such other actions as may be necessary by Customer in order to prepare space for work by Ameresco to enable Ameresco to timely perform its obligations hereunder. Customer shall provide rent free space for the installation and operation of the ECM(s) and shall protect such items and equipment in the same careful manner that Customer protects its own property, provided Customer is not the insurer of such items and equipment until Substantial Completion.

(b) Customer shall provide rent free space for Ameresco, or any of its subcontractors, to mobilize and store supplies, tools and equipment during installation of the ECM(s) as available pursuant to this Agreement for which such storage space may be required, with locking capacity acceptable to Ameresco. Only Ameresco or any of Ameresco's subcontractors, and Customer's assigned personnel shall have access to storage.

(c) Ameresco shall conduct the background checks as required by T.C.A. section 49-5-413 (d). Ameresco will require anyone it uses on the Project who may have direct contact with school children or has access to the grounds of the school, including Ameresco's employees, agents, subcontractors, their employees or agents, vendors, their employees or agents, or those making deliveries on the school campus to comply fully with the requirements of T.C.A. section 49-5-413(d). The background checks must be completed prior to access to the grounds of the school. Ameresco shall prohibit any person mentioned in this subsection from coming in contact with school children or enter on the grounds of the school if the criminal history records check indicates that such individual has ever been convicted of any offense or similar offense as set out in T.C.A. section 49-5-413 (d). Ameresco shall be responsible for all expenses associated with the background checks.

2.9 Changes in Services:

(a) Notwithstanding anything in this Agreement to the contrary Changes in Services or Change Orders are governed by Kingsport City Code sections 2-514 – 517. All changes in the Scope of Services involving an increase in the Contract Cost, excepting minor changes for contingencies as provided in Kingsport City Code sections 2-514 - 517 or an extension in time of performance of this Agreement, must be approved by a majority vote of the Board of Mayor and Aldermen. Subject to the foregoing, the Scope of Services may be changed only by agreement of the Parties evidenced by execution of a "**Change Order**" substantially in the form attached as Attachment F to the Notice to Proceed, including the quantity, quality, dimensions, type or other characteristics of the ECMs. During the Term hereof, either Customer or Ameresco may suggest that other energy efficiency measures and facilities be added to the Scope of Services, in which case the Parties shall endeavor to agree upon any new ECMs to be installed and may either amend this Agreement or execute a Change Order for the installation of any such new ECMs. Nothing in this paragraph shall obligate either Party to proceed with installation of any ECMs which are not part of the original Scope of Services or evidenced by execution of a Change Order.

(b) Should Ameresco encounter subsurface or latent physical conditions at the site which differ materially from those indicated in the Scope of Services or from those ordinarily encountered and generally recognized as inherent in work of the character provided for in this Agreement, Ameresco shall promptly give written notice to Customer before any such condition is disturbed or further disturbed. No claim of Ameresco under this provision will be allowed unless Ameresco has given the required notice to Customer. Customer will promptly investigate and, if it is determined that the conditions materially differ from those which Ameresco should reasonably have been expected to discover or anticipate, Customer shall either (a) approve such changes in the Scope of Services as are necessary, with a corresponding adjustment in the Guaranteed Savings; or (b) abandon the Project and terminate this Agreement, provided that Customer has paid to Ameresco all amounts due as set forth in Section 2.5, including, without limitation, pro-rata portions thereof accrued under Subsections 2.5(b), 2.5(c) and 2.5(e) and pursuant to any Change Order. If such differing conditions cause an increase or decrease in Ameresco's cost or time of performance, and the Parties agree upon a change in the Scope of Services, the Parties shall negotiate an equitable adjustment to Ameresco's cost and/or time for performance, as the case may be and a Change Order shall be issued and executed by Customer to reflect such adjustment(s).

(c) If at any time prior to Substantial Completion of an ECM, Ameresco determines that an ECM is not commercially viable, Ameresco may, at its option, remove such ECM from the Scope of Services and from the Property. In such event, Ameresco shall refund to Customer the portion of the Contract Cost attributable to such ECM and the Annual Guaranteed Savings Amount will be reduced by an amount equal to the portion of the Annual Guaranteed Savings Amount attributable to such ECM.

(d) If Ameresco and Customer agree to an adjustment of the Contract Cost and the Project schedule established for the Scope of Services, such an agreement shall be effective immediately upon execution of a Change Order.

2.10 Warranties: Ameresco hereby agrees as follows:

(a) Ameresco warrants that development work is performed consistent with good engineering practices as practiced in the location of the Project and the Work, including and all materials and equipment to be installed under the Notice to Proceed shall be free from defects in materials and workmanship arising from normal usage on an ECM by ECM for a period of one (1) year from the date of Substantial Completion of such ECM. Ameresco shall, at its expense, correct such defects promptly after receipt of written notice from the Customer to do so unless the Customer has previously given Ameresco a written express acceptance of such condition. The Customer shall give such notice promptly after discovery of the condition. Any manufacturers' warranties which exceed this one (1) year period shall be assigned to Customer to the extent allowed by the manufacturer. This section does not apply in any way to the Savings Guarantee.

(b) EXCEPT AS PROVIDED IN THIS SECTION 2.10, AMERESCO MAKES NO WARRANTIES OR REPRESENTATIONS OF ANY KIND, WHETHER STATUTORY, WRITTEN, ORAL OR IMPLIED, INCLUDING WITHOUT LIMITATION, WARRANTIES AS TO THE VALUE, DESIGN, AND CONDITION OR FITNESS FOR USE OR PARTICULAR PURPOSE AND MERCHANTABILITY, REGARDING THE WORK, THE ECM(s) OR THE EQUIPMENT.

ARTICLE 3 CUSTOMER'S RESPONSIBILITIES

3.1 Operations: Customer shall operate all equipment installed hereunder in accordance with the manufacturer's recommendations and the manuals supplied to Customer by Ameresco.

3.2 Standards of Service and Comfort: Customer shall operate the ECMs and the Property in a manner that shall provide the Standards of Service and Comfort to be provided for in Attachment J to the Notice to Proceed.

3.3 Maintenance: Customer shall, at its expense, repair, operate and maintain the Property in good working condition during the Term of this Agreement. Subject to Ameresco's warranty obligations in Section 2.10, after the date of acceptance of each ECM, Customer shall maintain, repair and operate, at Customer's expense: (i) all equipment and other components included as part of such ECM, and (ii) all other equipment which is attached thereto and/or is integral to the proper functioning of such ECM.

3.4 Malfunctions: Customer shall notify Ameresco immediately in the event of any malfunction in the operation of the ECM(s) or the equipment installed hereunder.

3.5 Protection of ECMs: Except in the case of emergency, Customer shall not remove, move, alter, turn off or otherwise significantly alter the operation of the equipment installed hereunder or the operation of the ECMs, or any individual part thereof, without the prior approval of Ameresco, which approval shall not be unreasonably withheld. After receiving Ameresco's written approval, Customer shall proceed as instructed. Customer shall act reasonably to protect the ECMs from damage or loss, if, due to an emergency; it is not reasonable to notify Ameresco before acting. Customer agrees to protect and preserve the facility envelope and the operating condition of all ECMs, mechanical systems, and other energy consuming systems located on the Property.

3.6 Monitoring System: Customer shall not move, modify or otherwise alter the energy management system/building automation system (EMS/BAS), temporary data loggers, or any other data collection or measurement and verification system (collectively, the "**Monitoring System**") installed as part of the ECM(s) or any component thereof without the written consent of Ameresco unless such action is in accordance with operating manuals and procedures provided by Ameresco.

3.7 Adjustment to Baseline: If, in the reasonable opinion of Ameresco, Customer does not reasonably operate, maintain, repair or otherwise protect the ECMs and/or maintain the Property in good repair and good working condition, then Ameresco may equitably adjust the baseline, to be referenced in Attachment G to the Notice to Proceed, for any increased energy usages at the Property.

3.8 Changes to Property or Addition of Equipment: Customer shall notify Ameresco in writing at least thirty (30) days prior to making any changes to the Property that could reasonably be expected to affect the energy usage on the Property, such as changes in the hours or days or time of year that the Property is occupied or operated, the number of occupants, the activity conducted, the equipment, the facilities, the size of the Property etc. Customer shall also notify Ameresco regarding material increases over time in numbers and usage of "plug in" devices such as computers and printers. If Ameresco receives such notification or otherwise determines that such a change has occurred, it may make appropriate revisions to the Attachments to reflect any adjustment to the baseline or the Guaranteed Savings. Ameresco may also make retroactive adjustments to the baseline or calculation of Annual Savings if Customer has not provided timely notice and any payments shall be retroactively reconciled to reflect the changed baseline.

3.9 Energy Usage Data: Customer shall make available to Ameresco, on an ongoing basis for the Term of this Agreement, copies of all energy bills, energy usage data, and any and all other such data maintained by Customer, including remote access to the Monitoring System or Customer's network server for purposes of collecting such data, as may be requested by Ameresco, which are

required for it to perform all of its obligations under this Agreement.

3.10 Risk of Loss or Damage: Upon Substantial Completion of all ECM, Customer assumes all risk of loss of or damage to such ECM from any cause whatsoever, except due to the negligence or wrongful acts of Ameresco, its employees, agents, or subcontractors. In the event of loss or damage to any equipment installed hereunder, Customer shall promptly notify Ameresco and promptly return the same to good repair with the proceeds of any insurance received to the cost of such repair or demand that Ameresco perform such repair, in which case Ameresco shall promptly do so for such compensation to which the Parties agree. If Customer determines that any of the ECM(s) are lost, stolen, confiscated, destroyed or damaged beyond repair, Customer shall replace the same with like equipment in good repair in a timely fashion under the circumstances. If at any time after the date of the Delivery and Acceptance Certificate and after Customer's complete payment to Ameresco of the Contract Cost, as such amount may be modified from time to time in accordance with this Agreement, any fire, flood, other casualty, or condemnation renders a majority of the Property incapable of being occupied and renders the ECMs or the equipment installed hereunder inoperable and, in the case of a casualty, the affected portion of such ECMs or equipment is not reconstructed or restored within one hundred twenty (120) days from the date of such casualty, Ameresco and/or Customer may terminate this Agreement by delivery of a written notice to the other Party. Upon such termination, Customer shall pay Ameresco any amounts, or pro-rata portions thereof, under Subsections 2.5(b), 2.5(c) and 2.5(e) and any Change Order, which accrued prior to such termination. Ameresco may also make appropriate adjustments to the baseline or the Guaranteed Savings to reflect the impact of such casualty or condemnation, including corresponding revisions to the Attachments to the Notice to Proceed.

3.11 Telephone and Internet: Customer shall install and maintain telephone lines and pay all associated costs for the ECM(s) telephone lines or applicable energy management system communication systems. Ameresco may use Customer's LAN for the purposes of any energy management system that may be included in the Scope of Services.

3.12 Protection: Customer shall at all times act reasonably to protect the ECM(s) from loss or damage to the same extent and in the same manner in which it protects the Property, provided Customer is not the insurer of such items and equipment until Substantial Completion.

3.13 Alteration: Except in cases of emergency, Customer shall not move, alter or change the ECM(s) in any way that may cause a reduction in the level of efficiency or savings generated by the ECM or the equipment installed hereunder without obtaining Ameresco's written approval, which shall not be unreasonably withheld.

3.14 Fuel: Customer shall procure and pay for all energy, utilities and fuel for the operation of its Property.

ARTICLE 4 OTHER PROVISIONS

4.1 Defaults:

(a) By Customer: Customer shall be in default under this Agreement upon the occurrence of any of the following:

(i) Customer fails to pay when due any undisputed amount to be paid under this Agreement and such failure continues for a period of ten (10) business days after notice of overdue payment is delivered by Ameresco to Customer;

(ii) any representation or warranty made by Customer in this Agreement or in any writing delivered by Customer pursuant hereto proves at any time to have been false, misleading or erroneous in any material respect as of the time when made;

(iii) Customer fails to perform any of its material duties or obligations under this Agreement and fails to cure such failure and the effects of such failure within thirty (30) days of receipt of written notice of default, unless such failures and effects cannot be completely cured within thirty (30) days after said written notice, in which case a default shall exist only if Customer does not commence and diligently pursue to cure such failures and effects as soon as practicable;

(iv) Customer enters receivership, or makes an assignment for the benefit of creditors, whether voluntary or involuntary, or a petition is filed by or against Customer under any bankruptcy, insolvency or similar law and such petition is not dismissed within sixty (60) days; or

(v) Customer fails to cooperate in relocating occupants, staff, personnel, furniture and equipment or to take such other actions as may be necessary by Customer in order to prepare space for work by Ameresco as is reasonably requested by Ameresco in a timely manner in order to allow the Scope of Services to be accomplished hereunder.

(b) By Ameresco: Ameresco shall be in default under this Agreement upon the occurrence of either of the following:

(i) Ameresco fails to perform any of its material duties or obligations under this Agreement and fails to cure such failure or effects of such failure within thirty (30) days of receipt of written notice of default, unless such failure or effects of such failure cannot be completely cured within thirty (30)

days after said written notice, in which case a default shall exist only if Ameresco does not promptly commence and diligently pursue to cure such failure as soon as practicable; or

(ii) Ameresco goes into receivership, or makes an assignment for the benefit of creditors, whether voluntary or involuntary, or a petition is filed against Ameresco under any bankruptcy insolvency or similar law and such petition is not dismissed within sixty (60) days.

4.2 Remedies for Default:

If either Party defaults under this Agreement, the other Party may, subject to the dispute resolution procedures in Section 4.3 below:

- (a) bring actions for any remedies available at law or in equity or other appropriate proceedings for the recovery of damages, including amounts past due; and
- (b) with or without recourse to legal process, terminate this Agreement by delivering written notice of termination at least twenty (20) days prior to the requested termination date.

4.3 Dispute Resolution:

(a) Claims, disputes, or other matters in controversy (a "**Dispute**") arising out of or related to the Agreement or the Project shall be subject to informal dispute resolution and mediation as a condition precedent to any and all remedies at law or in equity. If during the term of this Agreement a Dispute arises concerning the Project or this Agreement, the Dispute shall initially be submitted to Customer's project representative and Ameresco's project manager for resolution by mutual agreement between the Parties. Any mutual determination by Customer's project representative and Ameresco's project manager will be final and binding upon the Parties. However, should Customer representative and Ameresco's project manager fail to arrive at a mutual decision as to the Dispute within ten (10) business days after notice to both individuals of such Dispute, such Dispute will be submitted to a representative from management of both Parties who shall meet in person or by phone within ten (10) business days after either Party gives the other Party written notice of the Dispute (the "**Dispute Notice**"). The Dispute Notice shall set forth in reasonable detail the aggrieved Party's position and its proposal for resolution of the Dispute. If the Dispute is not resolved within thirty (30) calendar days after the first meeting of the Parties, then the Parties shall endeavor to resolve the Dispute by mediation.

Requests for mediation shall be filed in writing with the other Party. The request may be made concurrently with the filing of any and all remedies at law or in equity but, in such event, mediation shall proceed in advance of any proceedings filed in a judicial forum, which shall be stayed pending mediation for a period of sixty (60) days from the date of filing, unless stayed for a longer period of time by agreement of the Parties or court order. Mediation shall be subject to and in accordance with the Rules of the Tennessee Supreme Court. Mediation shall be conducted by a mutually agreed upon mediator. In the event that the Parties are unable to agree on a mediator, then the Parties will request a court of competent jurisdiction to appoint a mediator.

(b) The Parties shall share the mediator's fee equally and, if any filing fee is required, shall share said fee equally. Mediation shall be held in Kingsport, Tennessee, unless another location is mutually agreed on by the Parties. Agreements reached in mediation shall be reduced to writing, considered for approval by the Customer's Board of Mayor and Aldermen, signed by the Parties if approved by the Board of Mayor and Aldermen, and, if signed, shall thereafter be enforceable as provided by the laws of the State of Tennessee.

(c) Notwithstanding any other provision in the Agreement or in any document forming a part hereof to the contrary, there shall be no mandatory arbitration for any dispute arising hereunder.

(d) Notwithstanding any other provision in the Agreement to the contrary if a claim or dispute arises between the Parties concerning any aspect of this Agreement and it cannot be resolved as set forth above, and subject to the stay provided for in Subsection 4.3(a), any Party may resort to resolution of the claim or dispute by litigation in the state courts for Kingsport, Sullivan County, Tennessee.

4.4 Insurance and Bonds:

(a) Ameresco shall purchase from and maintain in a company or companies lawfully authorized to do business in the State of Tennessee such insurance as will protect Ameresco from claims which may arise out of or result from Ameresco's operations under the Agreement and for which Ameresco may be legally liable, whether such operations be by Ameresco or by a subcontractor or by anyone directly employed by any of them. Specific lines of coverage and limits of liability provided by the Contractor shall be written in a comprehensive form satisfactory to the Customer in the following minimum requirements and insurance coverage shall include:

- (i) Workers' Compensation and Employer's Liability Insurance as required by applicable State law.
- (ii) Commercial General Liability Insurance, including contractual liability, Bodily Injury per person, \$1 million; Bodily Injury per occurrence, \$1 million; Property Damage per occurrence, \$1 million; Personal Injury per occurrence, \$1 million.
- (iii) Comprehensive Automobile Liability Insurance, including owned, non-owned and hired automotive equipment of, Bodily Injury per person, \$1 million; Bodily Injury per occurrence, \$1 million;

Property Damage per occurrence, \$1 million.

(iv) Property insurance written on a builder's risk "all-risk" or equivalent policy form in the amount of the initial Contract Cost, plus value of subsequent Change Orders, comprising total value for the entire Project at the site on a replacement cost basis without optional deductibles. Such property insurance shall be maintained, unless otherwise agreed in writing by all persons and entities who are beneficiaries of such insurance, until final payment of the Contract Cost has been made as provided in Section 2.5 or until no person or entity other than Customer has an insurable interest in the property required by this Section 4.4 to be covered, whichever is later. This insurance shall include interests of Customer, Ameresco, subcontractors and sub-subcontractors in the Project. Property insurance shall be on an "all-risk" or equivalent policy form and shall include, without limitation, insurance against the perils of fire (with extended coverage) and physical loss or damage including, without duplication of coverage, theft, vandalism, malicious mischief, collapse, earthquake, flood, windstorm, falsework, testing and startup, temporary buildings and debris removal, including demolition occasioned by enforcement of any applicable legal requirements, and shall cover reasonable compensation for Ameresco's services and expenses required as a result of such insured loss.

(b) All insurance required herein shall name Customer, its officers, employees, representatives or agents, as an additional insured, except Worker's Compensation insurance. All insurance required herein shall be primary insurance as respects Customer, its officers, employees, representatives or agents.

(c) Prior to commencing the Scope of Services, Ameresco shall provide Customer with certified copies of additional insured endorsement(s) complying with the coverage requirements herein. Should Ameresco fail to obtain, pay for, or maintain any required insurance, such shall constitute a material breach, and Customer may immediately terminate or suspend this Agreement. Upon written request of Customer, Ameresco agrees to provide certified copies of any or all insurance policies, including declaration pages, required herein, within thirty (30) days of such request.

(d) Ameresco shall furnish performance and payment bonds covering faithful performance of the Agreement and payment of the obligations arising thereunder. The performance bond and the payment bond must be in such form as the Customer may require and must be delivered to the Customer prior to execution of the Notice to Proceed by the Customer. The surety must be acceptable to Customer, as evidenced by Customer's execution of the Notice to Proceed, and must be approved to transact business in the State of Tennessee and the cost thereof shall be included in the Contract Cost. The amount of each bond shall be equal to one hundred percent (100%) of the Contract Cost as it may be from time to time modified by Change Orders. The bonds must meet all the requirements of Tennessee law. Bonds shall be executed on City of Kingsport Performance Bond "A" and Payment Bond "B", a copy of which is attached hereto as Exhibit B. Notwithstanding any provision to the contrary herein, any payment and performance bonds associated with this Agreement guarantee only the performance of the installation portion of this Agreement, and shall not be construed to guarantee the performance of: (1) any efficiency or energy savings guarantees, (2) any support or maintenance service agreement, or (3) any other guarantees or warranties with terms beyond one (1) year in duration from the completion of the installation portion of this Agreement.

(e) Without limiting any of its obligations or liabilities under this Agreement, Customer shall provide and maintain at its expense, insurance coverage consistent with the requirements of Subsection 3.10 above, and its obligations under this Agreement.

4.5 Indemnification and Limitation of Liability:

(a) Anything in this Agreement to the contrary notwithstanding, neither Party nor its respective officers, directors, agents, employees, parent, subsidiaries or affiliates or their affiliates' officers, directors, agents or employees shall be liable, irrespective of whether such claim of liability is based upon breach of warranty, tort, (including negligence, whether of any of the Parties to this Agreement or others), strict liability, contract, operation of law or otherwise, to any other Party, or its affiliates, officers, directors, agents, employees, successors or assigns, or their respective insureds, for incidental, delay, punitive or consequential damages connected with, related to or arising from performance or non-performance of this Agreement, or any action or inaction in connection therewith including claims in the nature of lost revenues, income or profits (other than payments expressly required and due under this Agreement), and increased expense of, curtailment, reduction in or loss of power generation production or equipment used therefor.

(b) Ameresco agrees to indemnify and hold Customer, its current and future members of the board of mayor and aldermen and board of education, and Customer's officers and employees, harmless from and against any and all third party claims for damages but only to the extent such damages arise by reason of bodily injury, death or damage to property caused by Ameresco's negligence or willful misconduct. To the extent that any such damages are covered by or under Ameresco's Commercial General Liability Insurance policy, Ameresco shall not be required to indemnify

Customer in excess of the proceeds of such policy. In no event, however, shall Ameresco be obligated to indemnify Customer to the extent that any such injury or damage is caused by the negligence of Customer or any entity for which Customer is legally responsible.

4.6 Agreement Interpretation: Each Party hereto has had ample opportunity to review and comment on this Agreement. This Agreement shall be read and interpreted according to its plain meaning and an ambiguity shall not be construed against either Party. The judicial rule of construction that a document should be more strictly construed against the draftsman thereof shall not apply to any provision of this Agreement.

4.7 Governing Law, Venue, Jurisdiction, Waiver of Jury Trial: 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. Mandatory and exclusive venue and jurisdiction for any disputes shall be in state courts for Kingsport, Sullivan County, Tennessee and the parties consent to such venue and jurisdiction. THE PARTIES WAIVE THEIR RIGHT TO A JURY TRIAL.

4.8 Privileged and Proprietary Information: Notwithstanding anything contained in this Agreement to the contrary the Agreement and any document or material in any format, including, but not limited to, paper, electronic, or virtual, that are public records pursuant to the Tennessee Open Records Act, set out in T. C. A. §10-7-503 et seq., are not confidential and are subject to disclosure in whole or in part, without regard to any provision contained in the Agreement declaring information confidential. Additionally, Customer must, upon proper request, release public documents and records as defined by T. C. A. §10-7-503 et seq., including, but not limited to, the Agreement and all records created and maintained related to the Agreement, without the requirement to disclose such request to Ameresco or providing Ameresco with notice or the time to obtain a protective order.

4.9 Severability: If any provision of this Agreement is found by any court of competent jurisdiction to be invalid or unenforceable, the invalidity of such provision shall not affect the other provisions of this Agreement, and all other provisions of this Agreement shall remain in full force and effect.

4.10 Assignments and Subcontracting:

(a) Ameresco may elect to use subcontractors in meeting its obligations hereunder. Nothing contained in this Agreement shall create any contractual relation between any subcontractor and Customer.

(b) Customer shall not assign, transfer, or otherwise dispose of this Agreement, the ECM(s), or any interest therein, or sublet or lend the ECM(s) or permit the ECM(s) to be used by anyone other than Customer and Customer's employees without the prior express written consent of Ameresco; provided that Customer may, without obtaining the consent of Ameresco, assign its rights in the ECMs to any financial institution, lender or investor in connection with a leasing or financing arrangement for funding of the Contract Cost. If Customer transfers ownership or its interest in the Property without the prior written consent of Ameresco, this Agreement shall terminate automatically.

(c) Ameresco shall not assign this Agreement in whole or in part to any other party without first obtaining the consent of Customer, which consent shall not be unreasonably withheld; provided that, Ameresco may assign, without obtaining the consent of Customer, its rights and obligations under this Agreement in whole or in part to any affiliated or associated company of Ameresco and its rights for payments only under this Agreement to any financial institution, lender or investor in connection with a credit facility to which Ameresco is a party.

4.11 Waiver: Any waiver of any provision of this Agreement shall be in writing and shall be signed by a duly authorized agent of Ameresco and Customer. The waiver by either Party of any term or condition of this Agreement shall not be deemed to constitute a continuing waiver thereof nor of any further or future waiver of any additional right that such Party may be entitled to under this Agreement.

4.12 Force Majeure: If either Party shall be unable to carry out any part of its obligations under this Agreement (except Customer's obligations to make payments when due), due to causes beyond its control ("**Force Majeure**"), including, but not limited to, an act of God, strikes, lockouts or other industrial disturbances acts of public enemies orders or restraints of any kind of the government of the United States or any state or any of their departments agencies or officials or any other civil governmental, military or judicial authority, war, blockage, insurrection, riot, sudden action of the elements, fire, explosion, flood, earthquake, storms, utility power outage, drought, landslide, or explosion or nuclear emergency, this Agreement shall remain in effect but the affected Party's obligations shall be suspended for a period equal to the disabling circumstances, provided that:

(a) the non-performing Party gives the other Party prompt written notice, unless such other Party would not be prejudiced by a delay in notification, describing the particulars of the event of Force Majeure, including the nature of the occurrence and its expected duration, and continues to furnish timely regular reports with respect thereto during the period of Force Majeure;

(b) the suspension of performance is of no greater scope and of no longer duration than is required by the event of Force Majeure;

(c) no obligations of either Party that arose before the event of Force Majeure causing the

suspension of performance are excused as a result of the event Force Majeure;

- (d) the non-performing Party uses reasonable efforts to remedy its inability to perform; and
- (e) the Term of this Agreement shall be extended for a period equal to the number of days that the event of Force Majeure prevented the non-performing Party from performing.

Any decision by Customer to close or change the use of the facilities or ECM's at the Property, except to the extent such closure or change is itself caused by Force Majeure, shall not constitute a Force Majeure excusing Customer's performance under this Agreement.

4.13 Contract Documents:

(a) Upon execution of this Agreement by both Parties, this Agreement and its Exhibits and Attachments, which are hereby incorporated herein by reference, shall constitute the entire Agreement between the Parties relating to the subject matter hereof, and shall supersede all requests for proposals, proposals, previous agreements, discussions, negotiations, correspondences, and all other communications, whether oral or written, between the Parties relating to the subject matter of this Agreement.

(b) This Agreement may not be modified or amended except in writing signed by the Parties.

(c) Headings are for the convenience of reference only and are not to be construed as a part of the Agreement.

4.14 Notices: All notices, requests, demands, elections and other communications under this Agreement, other than operational communications, shall be in writing and shall be deemed to have been duly given on the date when hand-delivered, or on the date of the confirmed facsimile transmission, or on the date received when delivered by courier that has a reliable system for tracking delivery, or six (6) business days after the date of mailing when mailed by United States mail, registered or certified mail, return receipt requested, postage prepaid. All notices shall be addressed to the following individuals:

(a) If to Customer:

Dawn Melton

Construction Project Manager City of Kingsport Department of Engineering

130 Shelby Street

Kingsport, Tennessee 37660

With a copy to:

City Attorney City of Kingsport

225 West Center Street Kingsport, Tennessee 37660

(b) If to Ameresco:

Ameresco, Inc.

150 North Michigan Avenue, Suite 420

Chicago, IL 60601

Attention: Louis P. Maltezos, Executive Vice President

With a copy to:

Ameresco, Inc.

111 Speen Street, Suite 410

Framingham, MA 01701, Attention: General Counsel

Either Party may from time to time change the individual(s) to receive notices and/or its address for notification purposes by giving the other Party written notice as provided above.

4.15 Ownership of Energy Audit Report and Proposals: Unless Customer wrongfully fails to pay Ameresco, Customer shall be deemed the owner of the Energy Audit Report and other proposals made by or for Ameresco for the Project, and Customer shall have and retain all rights therein. In the event Customer is adjudged to have failed to pay Ameresco therefor, ownership of Energy Audit Report or other proposals made by or for Ameresco for the Project, shall revert to Ameresco. Alternatively, provided Customer substantially performs its obligations under this Agreement, Ameresco grants Customer a perpetual license to use the Energy Audit Report and other proposals, made by or for Ameresco for the Project, and all rights therein, in any way Customer determines is necessary. Ameresco shall obtain similar licenses from its consultants. This Section 4.15 is subject to Section 1.5.

4.16 Representations and Warranties: Each Party warrants and represents to the other Party that:

- (a) it has all requisite power, authority, licenses, permits, and franchises, corporate or otherwise, to execute and deliver this Agreement and perform its obligations hereunder;
- (b) its execution, delivery, and performance of this Agreement have been duly authorized by, or are in accordance with, as to Ameresco, its organizing instruments and as to Customer, by all requisite action and are not in breach of any applicable law, code or regulation;
- (c) this Agreement has been duly executed and delivered by the signatories so authorized, and constitutes each Party's legal, valid and binding obligation;

(d) its execution, delivery, and performance of this Agreement shall not result in a breach or violation of, or constitute a material default under, any agreement, lease or instrument to which it is a party or by which it or its properties may be bound or affected;

(e) it has not received any notice, nor to the best of its knowledge is there pending or threatened any notice of any violation of any applicable laws, ordinances, regulations, rules, decrees, awards, permits or orders which would materially adversely affect its ability to perform hereunder; and

(f) the persons executing this Agreement are fully authorized by law to do so.

4.17 Additional Representations and Warranties of Customer: Customer hereby warrants and represents to Ameresco that:

(a) Customer has not entered into any other agreements or understandings for the Property with persons or entities other than Ameresco regarding the provision of the Scope of Services; and

(b) Customer has obtained all necessary governmental, legal, administrative and any other approval necessary for it to enter into and perform this Agreement.

4.18 Independent Contractor: Nothing in this Agreement shall be construed as reserving to Customer any right to exercise any control over or to direct in any respect the conduct or management of business or operations of Ameresco. The entire control or direction of such business and operations shall be in and shall remain in Ameresco, subject only to Ameresco's performance of its obligations under this Agreement. Neither Ameresco nor any person performing any duties or engaged in any work on the Property on behalf of Ameresco shall be deemed an employee or agent of Customer. Nothing in this Section shall be deemed to be a waiver of Customer's right to use the Property. Customer and Ameresco are independent of one another and shall have no other relationship relating to or arising out of this Agreement. Neither Party shall have or hold itself out as having the right or authority to bind or create liability for the other by its intentional or negligent act or omission, or to make any contract or otherwise assume any obligation or responsibility in the name of or on behalf of the other Party.

Notwithstanding anything to the contrary, Customer shall have the right to require Ameresco to remove any employee or subcontractor of Ameresco from any of Customer's properties or the Project upon written notice to Ameresco.

4.19 Negligent/Wrongful Acts: Neither Party to this Agreement shall be liable for any negligent or wrongful acts, either of commission or omission, chargeable to the other. This Agreement shall not be construed as seeking to either enlarge or diminish any obligation or duty owed by one Party against the other Party or against third parties.

4.20 Further Documents and Events: The Parties shall execute and deliver all documents and perform all further acts that may be reasonably necessary to effectuate the provisions of this Agreement. Customer shall execute all documents which may be reasonably required for Ameresco to obtain all licenses, permits and governmental approvals required by Ameresco for installation and operation of the ECM(s), provided Ameresco informs Customer of which instruments and documents are required from Customer, and Ameresco is solely responsible for confirming satisfaction of all technical requirements. Ameresco's obligations hereunder are also subject to obtaining all such licenses, permits and governmental approvals as are required to perform its obligations under this Agreement.

4.21 Taxes: As a tax-exempt entity, Customer shall not be responsible for sales or use taxes incurred for products or services. Customer shall supply Ameresco with its Sales and Use Tax Exemption Certificate upon Ameresco's request. Ameresco shall bear the burden of providing its suppliers with a copy of Customer's tax exemption certificate and Ameresco shall assume all liability for such taxes, if any, that should be incurred. Notwithstanding the foregoing, Customer shall pay (or, if applicable, reimburse Ameresco for the payment of) all property, sales taxes, use taxes or other fees and assessments associated with Scope of Services. Customer shall have no liability for taxes measured by the net income of Ameresco.

4.22 Third Party Beneficiaries: The Parties hereto do not intend to create any rights for, or grant any remedies to, any third party beneficiary of this Agreement.

4.23 Notifications of Governmental Action - Occupational Safety and Health: The Parties shall notify each other as promptly as is reasonably possible upon becoming aware of an inspection under, or any alleged violation of, the Occupational Safety and Health Act or any other provision of federal, state or local law, relating in any way to the undertakings of either Party under this Agreement.

4.24 Termination for Convenience:

(a) Customer shall take all necessary and timely action during the Term to obtain funds and maintain appropriations sufficient to satisfy its obligations under this Agreement.

(b) The foregoing notwithstanding, subsequent to the date of the Delivery and Acceptance Certificate, this Agreement may be terminated by Customer in accordance with the provisions of this Section 4.24. Customer shall provide notice to Ameresco of its election to terminate no later than thirty (30) days in advance of the end of the then current Guarantee Year. The termination shall

become effective on the last day of said Guarantee Year. The termination of this Agreement by Customer shall release Ameresco from its obligation to provide maintenance, monitoring and training services after the effective date of termination, as well as its obligation to provide the Savings Guarantee after the termination date; *provided, however*, that Customer is responsible for payment for maintenance, monitoring and training services performed in accordance with the terms of this Agreement prior to the termination date and Ameresco shall remain responsible for any Savings Shortfall (as defined in Attachment C to the Notice to Proceed) payments due Customer prior to the date of termination.

(c) If this Agreement is terminated pursuant to this Section 4.24, Customer and Ameresco agree that during the Term (as would otherwise have been in effect): (i) Customer shall not purchase, lease, rent, engage the services of an agent or independent contractor or otherwise pay for the use of a system or equipment performing functions or services similar to those performed by the ECMs installed pursuant to this Agreement and (ii) if Customer receives an appropriation of funds which permits Customer to purchase, lease, rent, engage the services of an agency or independent contractor, or otherwise pay for the use of a system or equipment performing functions or services similar to those performed by the ECMs installed pursuant to this Agreement, upon receipt of such funds such other obligations shall immediately be rescinded and Customer shall satisfy the Obligations then owed to Ameresco prior to Customer's appropriation of such funds for the purpose of paying any other payee(s).

4.25 References: Unless otherwise stated, all references to a particular Attachment or to Attachments herein are to the referenced Attachment or Attachments which are attached to this Agreement and all such referenced Attachments are incorporated by reference within this Agreement. All references herein to a Section shall refer to a Section of this Agreement unless this Agreement specifically provides otherwise.

4.26 No Fraud or Collusion: By execution of this Agreement, Ameresco certifies that no official or employee of Customer has any pecuniary interest in this Agreement or in the expected profits to arise hereunder, and this Agreement is made in good faith without fraud or collusion with any other person involved in the selection process.

4.27 Non-Discrimination: Ameresco agrees that it will not knowingly or discriminate against any employee or applicant for employment, to be employed in the performance of this Agreement, with respect to hiring, tenure, terms, conditions, or privileges of employment, or any matter directly or indirectly related to employment, because of age, sex, race, disability, color, religion, national origin, Vietnam era and military service, or ancestry, or other classification in accordance with applicable federal or state law.

IN WITNESS WHEREOF, the duly authorized officers or representatives of the Parties have set their hand under seal on the date first written above with the intent to be legally bound.

[Acknowledgements Deleted for Inclusion in this Resolution]

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

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

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

ADOPTED this the 18th day of September, 2018.

JOHN CLARK, MAYOR

ATTEST:

JAMES H. DEMMING, CITY RECORDER

APPROVED AS TO FORM:

J. MICHAEL BILLINGSLEY, CITY ATTORNEY