



**BOARD OF MAYOR AND ALDERMEN
WORK SESSION**

~~Monday, February 16, 2015, 4:30 p.m.~~
Tuesday, February 17, 2015, 12:00 p.m.
Council Room, 2nd Floor, City Hall

The time of the meeting has changed due to the weather and road conditions.

Board of Mayor and Aldermen

Mayor Dennis R. Phillips, Presiding
Vice Mayor Mike McIntire
Alderman John Clark
Alderman Colette George

Alderman Andy Hall
Alderman Tom C. Parham
Alderman Tom Segelhorst

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
Craig Dye, Fire Chief
Morris Baker, Community Services Director
Lynn Tully, Development Services Director
Tim Whaley, Community and Government Relations Director
George DeCroes, Human Resources Director

1. Call to Order
2. Roll Call
3. May Election – Jason Booher
4. Transit Update – Chris McCartt
5. Work Session Tickler
6. Review of Items on February 17, 2015 Business Meeting Agenda
7. Adjourn

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.



Work Session Tickler February 16, 2015

Special Projects

Brickyard Park Ball Fields

David Mason

The Ballpark construction contract with Denark Construction includes alternates 2 & 3 plus change order No. 1 for a total contact amount of \$3,732,038. Work continues on the interior of the concession stand. Area drains are being installed in the plaza area in preparation for concrete paving. The weather was clear long enough for the fields to dry and allow for topsoil installation on Fields 2 and 3 before raining again on Feb. 9th. When the fields have dried again, topsoil installation will continue on Fields 4 and 1, and Fields 2 and 3 will be raked and prepped for sod. Infield mix has also been delivered and stockpiled on 3 fields to be spread after topsoil is complete.

Chris McCartt will provide an update to the Board at each meeting regarding progress, budget, etc. and will be available to answer questions as needed.

Installing Topsoil Field 2.



Installing Topsoil Field 3.



Fire Training Ground

Chief Dye

(No updates.)

The Burn Building/Training Tower is out to bid, they will have been opened January 29th. So we will have already done so by the time you read this. Hopefully we will have good news.

Plans are to add storage facilities, classroom facilities, etc. Several props will be on concrete slabs and we are looking where to place them. These will be for vehicle extrication, special rescue, such as cutting concrete, steel, etc.



Carousel

Morris Baker

Engage Kingsport, Inc. (a 501 (c) 3 nonprofit) is leading construction of the Roundhouse and gift shop buildings. They hold the contract with GRC who is the General Contractor. Once construction is completed, Engage Kingsport volunteers will be working to assemble to Carousel Frame inside the Roundhouse.



Engage Kingsport and the Office of Cultural Arts are very near launching a Kickstarter campaign (Feb. 14 – March 14) and actively seeking the remainder of sponsorships for the Carousel. The Carousel Fine Craft Show Brass Ring Gala will be March 20 at which time the Roundhouse will be showcased with the pieces carved inside. The frame will begin to be assembled the following week.

WTP Raw Water Transmission and Intake Replacement Design

Niki Ensor

Engineer: CDM Smith **Tunnel Alignment** (right)

Construction Schedule:
March 2015 – January 2017

Project Update: (No changes.)

Plans and specifications have been submitted to Regulatory and funding agencies for approval. Received TVA 26a permit.



Legal

Risk Management

Terri Evans

Kingsport Employee Wellness

The Kingsport Employee Wellness Center opened 6/26/13. Calendar year 2014 utilization is 95.5%, and of those, 55.2% were active employees, 4.6% were retirees, 35.5% were dependents, 0.3% were Workers Compensation visits, 0.2% were extended patient visits, and 4.2% were no-shows. Our no-show target is below 5%.

Beginning January, 2015, the school system became self-funded, allowing their employees to utilize the Kingsport Employee Wellness Center. There are more than 72 hours available for 20 minute appointments, including Saturdays, to serve both the school department and the general government employees, with additional hours in upcoming weeks as part-time providers can be scheduled. Utilization January 2 through February 9, 2015, is 101.9%, and of those, 20% were government active, 32.7% were school active, 3% were government retirees, 3.7% were school retirees, 15.2% were government dependents, 20.3% were school dependents, .5% were extended patient visits, and 4.5% were no-shows. Utilization increases with the inclusion of new members as they are asked to make two, back-to-back appointments for their initial visit. We expect utilization to level out by mid-February and will re-evaluate center hours at that time.

Worker's Compensation

There were two recordable cases in December, both of which were medical treatment only. In January there were seven recordable cases; one lost time, four with restricted duty and one with lost time.

Sourmash Property

Joe May

Tennessee Code Annotated Section 67-5-2415 governs notice to taxpayers of suits to enforce tax liens by sale of the property. A Guardian ad litem had been appointed by the Court to represent the interest of any unknown parties who may have a claim to the Sourmash property -- and therefore a legal right to have Notice of any sale and an opportunity to be heard. Amongst other things, his role was to determine whether the identity and whereabouts of such persons could be ascertained by reasonable diligence. He reported that he was able to identify certain persons; however, based upon his extensive research, it appeared that the only such person still living was a surviving aunt and the unidentifiable issue by representation of the taxpayer's numerous deceased relatives. At the end of last month, a hearing was held before the Court at which the Chancellor received the Report of the court-appointed Guardian ad litem and ultimately granted a Default Judgment against the unknown heirs of deceased taxpayer Edward Williams; and ordered that personal service of a Notice be had upon the only identifiable person who may have a claim to the Sourmash property. All other requirements of Notice and opportunity to be heard have been accomplished and this final step in the legal process will be to effect service of a Notice upon her in Lombard, Illinois, and give her thirty days in which to act to claim her interest or be forever barred.

Sourmash Property continued

The request for assistance made to the local authorities in Lombard to accomplish service was unsuccessful. That local government did not have anyone on staff knowledgeable in such matters who might be of assistance. A commercial entity will be identified and engaged to perform this service.

It is anticipated that this can be accomplished during February.

Budget Office

Judy Smith

Financial Comments

Local Option Sales Tax revenue for the month of December was \$1,845,794 which was \$21,751 over budget and \$184,416 above last year's actual. The Year to Date Total is \$126,720 over budget and \$486,588 over last year which is a 5.77% increase over last year's actual for the second quarter.



AGENDA

BOARD OF MAYOR AND ALDERMEN

BUSINESS MEETING

Tuesday, February 17, 2015

~~Large Courtroom~~ **Council Room** – 2nd Floor, City Hall

~~7:00 p.m.~~ **2:00 p.m.**

The time of the meeting has changed due to the weather and road conditions.

Board of Mayor and Aldermen

Mayor Dennis R. Phillips, Presiding
Vice Mayor Mike McIntire
Alderman John Clark
Alderman Colette George

Alderman Andy S. Hall
Alderman Tom C. Parham
Alderman Tom Segelhorst

City Administration

Jeff Fleming, City Manager
Chris McCartt, Assistant City Manager for Administration
Ryan McReynolds, Assistant City Manager for Operations
J. Michael Billingsley, City Attorney
James Demming, City Recorder/Chief Financial Officer
David Quillin, Police Chief
Craig Dye, Fire Chief
Morris Baker, Community Services Director
Lynn Tully, Development Services Director
Tim Whaley, Community & Government Relations Director
George DeCroes, Human Resources Director

I. CALL TO ORDER

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

II.B. INVOCATION – ~~Pastor Ed Clevinger, Grace Covenant Church~~

III.A. ROLL CALL

IV. RECOGNITIONS & PRESENTATIONS

None

V. APPROVAL OF MINUTES

1. Work Session – February 2, 2015
2. Business Meeting – February 3, 2015

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. Amend Zoning of the Rock Springs Road South Property, Located Between Rock Springs Road and Interstate 81 (AF: 33-2015) (Ken Weems)
 - Ordinance – First Reading
2. Agreement with TDOT Related to the Lynn Garden Drive Signal System Project and Appropriation of Funds (AF: 42-2015) (Ryan McReynolds)
 - Resolution
 - Ordinance
3. Budget Ordinance to Transfer Funds for the Wilcox Court Intersection Improvements Project (AF: 49-2015) (Ryan McReynolds)
 - Ordinance

C. BUSINESS MATTERS REQUIRING FINAL ADOPTION

1. Amend the FY15 Operating Budgets and Various Projects (AF: 20-2015) (Jeff Fleming)
 - Ordinance – **Second Reading and Final Adoption**

D. OTHER BUSINESS

1. Bid for the Purchase of Various Water and Sewer Maintenance Items to Consolidated Pipe & Supply, Southern Pipe & Supply & HD Supply Waterworks (AF 36-2015) (Chris McCartt / Ryan McReynolds)
 - Resolution
2. Bid for the Purchase of One (1) Rubber Tire Wheel Loader to ASC Construction Equipment, Inc. (AF: 37-2015) (Chris McCartt, Ryan McReynolds and Steve Hightower)
 - Resolution

3. Agreements with the Lynn Garden Optimist Club and the Lynn View Pee Wee Football Organization (AF: 41-2015) (Morris Baker)
 - Resolution – Lynn Garden Optimist Club
 - Resolution – Lynn View Pee Wee Football
4. Property Acquisition for the Kingsport City School System (AF: 44-2015) (David Frye)
 - Resolution
5. Lease Amendment with Congressman Phil Roe for Office Space at the Kingsport Center for Higher Education (AF: 02-2015) (Morris Baker)
 - Resolution
6. Bid for School Nutrition Grocery and Beverage Items (AF: 46-2015) (Jennifer Walker)
 - Resolution
7. An Amendment to Add Kingsport City School Sites to the Current City of Kingsport Agreement with EnerNOC (AF: 47-2015) (Bill Shedden)
 - Resolution
8. Private Act from the Tennessee General Assembly Amending the Parts of the City Charter (AF: 35-2015) (Mike Billingsley)
 - Resolution

E. APPOINTMENTS

1. Appointment to the Visitor Enhancement Program Advisory Board (AF: 48-2015) (Mayor Phillips)
 - Appointment

VII. CONSENT AGENDA
None

VIII. COMMUNICATIONS

- A. City Manager
- B. Mayor and Board Members
- C. Visitors
- D. City Recorder, Acknowledgement of report on debt obligation for the issuance of \$17,695,000 General Obligation Refunding Bonds Series 2015

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

Minutes of the Regular Work Session of the
Board of Mayor and Aldermen, City of Kingsport, Tennessee
Monday, February 2, 2015, 4:30 PM
Council Room – City Hall

PRESENT: Board of Mayor and Aldermen

Mayor Dennis Phillips

Vice-Mayor Mike McIntire

Alderman John Clark

Alderman Colette George

Alderman Tom C. Parham

(arrived at 5:00 p.m.)

Alderman Tom Segelhorst

City Administration

Jeff Fleming, City Manager

J. Michael Billingsley, City Attorney

James H. Demming, City Recorder

1. **CALL TO ORDER:** 4:30 p.m. by Mayor Phillips.
2. **ROLL CALL:** By Deputy City Recorder Marshall. Absent: Alderman Andy Hall
3. **NETWORKS UPDATE.** Mr. Clay Walker, the CEO of NETWORKS, presented details on the 2014 year end totals and the annual report. He discussed the goals for the upcoming year and answered questions from the board.
4. **DOWNTOWN DOG PARK UPDATE.** Ms. Sherri Mosley, Executive Director of the Downtown Kingsport Association, gave a presentation on this item noting the name of the facility will be "The Barking Lot" and will hopefully open in the spring. She stated a lot has been acquired and clean-up has been scheduled. Ms. Mosley pointed out that several donations have already been made, but there is still a need for a fence and sod. She asked the community for sponsorships and help with fundraising efforts.

NOTE: Item VI.D.6 from the regular business meeting agenda was discussed at this time. The regular work session agenda resumed thereafter.

5. **WORK SESSION TICKLER.** Assistant City Manager for Administration Chris McCartt gave a status update on Brickyard Park, pointing out the wayfare signage is going up. Community Services Director Morris Baker provided details on the progress of the carousel, noting the goal for opening is still May. The mayor asked for someone to provide a formal update at the next work session. City Attorney Billingsley gave information on the school employees' use of the clinic, noting increased hours and a new expansion. Mayor Phillips commented on a letter he received from a citizen regarding a sewer tap expense.

6. **REVIEW OF AGENDA ITEMS ON THE FEBRUARY 3, 2015 REGULAR BUSINESS MEETING AGENDA.** City Manager Fleming, members of staff and community members gave a summary or presentation for each item on the proposed agenda. Those items the Board discussed at greater length or which received specific questions or concerns included:

Minutes of the Regular Work Session of the Board of Mayor and Aldermen of Kingsport, Tennessee, Monday, February 2, 2015

VI.A.1 Amend Zoning of the Rock Springs Road South Property Located Between Rock Springs Road and Interstate 81 (AF: 33-2015). City Planner Ken Weems provided details on this item, noting the request was to restore the previous zoning designation in order to build a commercial showroom for cabinets. He stated there was only one phone call received by the planning department to ask for more information.

VI.D.1 Bid for the Purchase of Seven (7) Police Pursuit Package Sedans to Auto World of Big Stone Gap, Inc. (AF: 25-2015). Mayor Phillips pointed out that staff asked for 24 bidders to submit and only received three bids for this item and the next.

VI.D.2 Bid for the Purchase of Three (3) Police Street Package Sedans to Auto World of Big Stone Gap, Inc. (AF: 26-2015). See Item VI.D.1.

VI.D.3 Bid for the Purchase of Two (2) Cab/Chassis with Rear Loader Refuse Trucks to Worldwide Equipment, Inc. (AF: 30-2015). Assistant City Manager Ryan McReynolds provided information on these new vehicles, noting they are in the fleet fund. Fleet Manager Steve Hightower answered further questions.

VI.D.4 Bid for the Purchase of Two (2) Automated Recycling Trucks to Worldwide Equipment, Inc. (AF: 31-2015). See Item VI.D.4.

VI.D.6 Intent of the Board Supporting the Efforts of the Governor and the Proposed Insure Tennessee Plan (AF: 34-2015). Mayor Phillips discussed this item, noting the local hospitals are asking the BMA to support the Governor's bill. He stated their concern is when the federal government stops providing and they want to be protected to avoid layoffs. Mr. Monty McLaurin from Indian Path Medical Center and Mr. Tim Attebery from Holston Valley Medical Center gave further details. Discussion followed.

VI.D.12 Fleet Maintenance Department to Provide Repair and Maintenance Services for the Sullivan County, Bluff City and City of Kingsport Animal Shelter Vehicles (AF: 27-2015). City Manager Fleming gave details on this item, stating the shelter will pay fleet to service their vehicles.

BOARD COMMENT. None.

PUBLIC COMMENT. None.

8. ADJOURN. Seeing no other matters presented for discussion at this work session, Mayor Phillips adjourned the meeting at 5:47 p.m.

ANGELA MARSHALL
Deputy City Recorder

DENNIS R. PHILLIPS
Mayor

Minutes of the Regular Business Meeting of the
Board of Mayor and Aldermen of the City of Kingsport, Tennessee
Tuesday, February 3, 2015, 7:00 PM
Large Court Room – City Hall

PRESENT:

Board of Mayor and Aldermen

Mayor Dennis R. Phillips, Presiding

Alderman John Clark

Alderman Colette George

Vice-Mayor Mike McIntire

Alderman Tom C. Parham

Alderman Tom Segelhorst

City Administration

Jeff Fleming, City Manager

J. Michael Billingsley, City Attorney

James Demming, City Recorder/Chief Financial Officer

- I. **CALL TO ORDER:** 7:00 p.m., by Mayor Dennis R. Phillips.
- II.A. **PLEDGE OF ALLEGIANCE TO THE FLAG:** Mr. Ernie Rumsby.
- II.B. **INVOCATION:** Minister Penny Hagy – Evangel Family Worship Center.
- III. **ROLL CALL:** By City Recorder Demming. Absent: Alderman Andy Hall.
- IV. **RECOGNITIONS AND PRESENTATIONS.** Mr. Baxter Hood and Mr. Ernie Rumsby provided details on the Liberty Celebration and presented a donation check to the city to assist with the Veteran's Memorial.
- V. **APPROVAL OF MINUTES.**

Motion/Second: Parham/Segelhorst, to approve minutes for the following meetings:

A. January 20, 2015 Regular Work Session

B. January 20, 2015 Regular Business Meeting

Approved: All present voting "aye."

VI. COMMUNITY INTEREST ITEMS.

AA. PUBLIC HEARINGS.

1. **Amend Zoning of the Rock Springs Road South Property Located Between Rock Springs Road and Interstate 81 (AF: 33-2015) (Ken Weems).** City Planner Weems presented this item stating the property owner has requested to change the zone back to its original designation to accommodate a cabinet showroom. After much discussion and statements from the public, this agenda item was deferred to the next Regular Business Meeting on February 17 to give board members a chance to visit the property.

**Minutes of the Regular Business Meeting of the Board of Mayor and Aldermen
of the City of Kingsport, Tennessee, Tuesday, February 3, 2015**

PUBLIC COMMENT ON ITEM VI.AA.1. Mr. Frederick Adkins and Mr. Brad Killen, both of Rock Springs Road, spoke in opposition of this item, stating it would detract from the value of the homes. They also stated they were told this property would remain residential when they purchased their homes. Mr. Danny Karst, property owner, gave details on the nature of the business and the reasoning behind the change.

Motion/Second: McIntire/Segelhorst, to defer:

AN ORDINANCE TO FURTHER AMEND THE ZONING CODE, TEXT AND MAP, TO REZONE PROPERTY ADJACENT TO ROCK SPRINGS ROAD FROM R-1B, RESIDENTIAL DISTRICT TO B-4P, PLANNED BUSINESS DISTRICT IN THE 14TH CIVIL DISTRICT OF SULLIVAN COUNTY; TO FIX A PENALTY FOR THE VIOLATION OF THIS ORDINANCE; AND TO FIX THE EFFECTIVE DATE OF THIS ORDINANCE

Passed: All present voting "aye."

A. PUBLIC COMMENT. Mayor Phillips 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. Amend FY15 Operating Budgets and Various Projects
(AF: 20-2015) (Jeff Fleming).

Motion/Second: McIntire/Parham, to pass:

AN ORDINANCE TO AMEND VARIOUS OPERATING BUDGETS AND PROJECTS FOR THE YEAR ENDING JUNE 30, 2015; AND TO FIX THE EFFECTIVE DATE OF THIS ORDINANCE

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

C. BUSINESS MATTERS REQUIRING FINAL ADOPTION. None.

D. OTHER BUSINESS.

1. Bid for the Purchase of Seven (7) Police Pursuit Package Sedans to Auto World of Big Stone Gap, Inc. (AF: 25-2015) (Chris McCartt/Steve Hightower).

Motion/Second: Segelhorst/McIntire, to pass:

Resolution No. 2015-117, A RESOLUTION AWARDED THE BID FOR THE PURCHASE OF SEVEN POLICE PURSUIT PACKAGE SEDANS TO AUTO WORLD OF BIG STONE GAP, INC. AND AUTHORIZING THE CITY MANAGER TO EXECUTE A PURCHASE ORDER FOR THE SAME

Passed: All present voting "aye."

**Minutes of the Regular Business Meeting of the Board of Mayor and Aldermen
of the City of Kingsport, Tennessee, Tuesday, February 3, 2015**

2. Bid for the Purchase of Three (3) Police Street Package Sedans to Auto World of Big Stone Gap, Inc. (AF: 26-2015) (Chris McCartt/Steve Hightower).

Motion/Second: Segelhorst/Clark, to pass:

Resolution No. 2015-118, A RESOLUTION AWARDED THE BID FOR THE PURCHASE OF THREE POLICE STREET PACKAGE SEDANS TO AUTO WORLD OF BIG STONE GAP, INC. AND AUTHORIZING THE CITY MANAGER TO EXECUTE A PURCHASE ORDER FOR THE SAME

Passed: All present voting "aye."

3. Bid for the Purchase of Two (2) Cab/Chassis with Rear Loader Refuse Trucks to Worldwide Equipment, Inc. (AF: 30-2015) (Chris McCartt/Ryan McReynolds & Steve Hightower).

Motion/Second: McIntire/Parham, to pass:

Resolution No. 2015-119, A RESOLUTION AWARDED THE BID FOR THE PURCHASE OF TWO CAB/CHASSIS WITH REAR LOADER REFUSE TRUCKS TO WORLDWIDE EQUIPMENT, INC. AND AUTHORIZING THE CITY MANAGER TO EXECUTE PURCHASE ORDERS FOR THE SAME

Passed: All present voting "aye."

4. Bid for the Purchase of Two (2) Automated Recycling Trucks to Worldwide Equipment, Inc. (AF: 31-2015) (Chris McCartt/Ryan McReynolds & Steve Hightower).

Motion/Second: Segelhorst/Clark, to pass:

Resolution No. 2015-120, A RESOLUTION AWARDED THE BID FOR THE PURCHASE OF TWO AUTOMATED RECYCLING TRUCKS TO WORLDWIDE EQUIPMENT, INC. AND AUTHORIZING THE CITY MANAGER TO EXECUTE PURCHASE ORDERS FOR THE SAME

Passed: All present voting "aye."

5. Agreement with TDOT Related to Safe Routes to School (Andrew Jackson Elementary) Amendment 4 (AF: 28-2015) (Ryan McReynolds).

Motion/Second: Parham/McIntire, to pass:

Resolution No. 2015-121, A RESOLUTION APPROVING AMENDMENT NUMBER 4 TO THE SAFE ROUTES TO SCHOOL CONTRACT NO. 100189 WITH THE STATE OF TENNESSEE DEPARTMENT OF TRANSPORTATION EXTENDING THE COMPLETION DEADLINE AND AUTHORIZING THE MAYOR TO EXECUTE THE AMENDMENT AND ALL OTHER DOCUMENTS NECESSARY AND PROPER TO EFFECTUATE THE PURPOSE OF THE AMENDMENT

Passed: All present voting "aye."

**Minutes of the Regular Business Meeting of the Board of Mayor and Aldermen
of the City of Kingsport, Tennessee, Tuesday, February 3, 2015**

6. Intent of the Board Supporting the Efforts of the Governor and the Proposed Insure Tennessee Plan (AF: 34-2015) (Mayor Phillips). The Mayor commented Kingsport has been asked by the local hospitals to ask the legislators to support the Governor's proposed Insure Tennessee Plan. He stated it will offer immediate relief to the hospitals, with the understanding the federal government will reimburse the state. Alderman Parham stated he supported the process, but with the complexity of the bill he was unsure of the product at this time and he would be abstaining from the vote. Alderman Clark pointed out the importance of showing support as these two hospitals affect thousands of jobs in the community. He noted it is not a final approval for the bill but it does address the needs of Tennessee.

Motion/Second: McIntire/Segelhorst, to pass:

Resolution No. 2015-122, A RESOLUTION EXPRESSING THE INTENT OF THE BOARD TO SUPPORT THE IMPLEMENTATION OF THE INSURE TENNESSEE PROGRAM PROPOSED BY GOVERNOR BILL HASLAM

Passed: All present voting "aye" except Parham "abstained."

7. Notice to the Sullivan County Election Commission to Conduct City Elections for the Board of Mayor and Aldermen and Board of Education (AF: 43-2015) (Mike Billingsley).

Motion/Second: Segelhorst/George, to pass:

Resolution No. 2015-123, A RESOLUTION AUTHORIZING THE CITY MANAGER TO NOTIFY THE SULLIVAN COUNTY ELECTION COMMISSION TO HOLD CITY ELECTIONS FOR THE OFFICES OF MAYOR, ALDERMEN AND BOARD OF EDUCATION

Passed: All present voting "aye."

8. Amend the Grocery Agreement with Gordon Food Service That Expires on February 28, 2015 (AF: 40-2015) (Jennifer Walker).

Motion/Second: Segelhorst/Clark, to pass:

Resolution No. 2015-124, A RESOLUTION APPROVING AMENDMENT 2 TO THE ADDENDUM TO AGREEMENT WITH GORDON FOOD SERVICE TO INCREASE THE AMOUNT OF THE CONTRACT FOR THE KINGSFORT CITY SCHOOLS NUTRITION DEPARTMENT; AUTHORIZING THE MAYOR TO EXECUTE THE AMENDMENT; AND ALL OTHER DOCUMENTS NECESSARY AND PROPER TO EFFECTUATE THE PURPOSE OF THE AMENDMENT

Passed: All present voting "aye."

9. Bid for the Purchase of Two (2) 41-Passenger School Buses to Mid-South Bus Center (AF: 38-2015) (Steve Hightower).

**Minutes of the Regular Business Meeting of the Board of Mayor and Aldermen
of the City of Kingsport, Tennessee, Tuesday, February 3, 2015**

Motion/Second: Parham/McIntire, to pass:

Resolution No. 2015-125, A RESOLUTION AWARDDING THE BID FOR THE PURCHASE OF TWO 41 PASSENGER SCHOOL BUSES TO MID-SOUTH BUS CENTER AND AUTHORIZING THE CITY MANAGER TO EXECUTE A PURCHASE ORDER FOR THE SAME

Passed: All present voting "aye."

10. Bid for the Purchase of Three (3) 72-Passenger School Buses to Mid-South Bus Center (AF: 39-2015) (Steve Hightower).

Motion/Second: Segelhorst/McIntire, to pass:

Resolution No. 2015-126, A RESOLUTION AWARDDING THE BID FOR THE PURCHASE OF THREE 72 PASSENGER SCHOOL BUSES TO MID-SOUTH BUS CENTER AND AUTHORIZING THE CITY MANAGER TO EXECUTE A PURCHASE ORDER FOR THE SAME

Passed: All present voting "aye."

11. Receive Four Burn Cell Buildings Donated from Donan Solutions Inc. Valued at Approximately \$3,000.00 (AF: 29-2015) (Chief Dye).

Motion/Second: Segelhorst/Clark, to pass:

Resolution No. 2015-127, A RESOLUTION ACCEPTING A DONATION OF FOUR BURN CELLS BY DONAN SOLUTIONS, INC., TO THE KINGSFORT FIRE DEPARTMENT FOR BURN CELL TRAINING

Passed: All present voting "aye."

12. Fleet Maintenance Department to Provide Repair and Maintenance Services for the Sullivan County, Bluff City and City of Kingsport Animal Shelter Vehicles (AF: 27-2015) (Chris McCartt).

Motion/Second: Parham/Segelhorst, to pass:

Resolution No. 2015-128, A RESOLUTION APPROVING AN AGREEMENT WITH THE SULLIVAN COUNTY, BLUFF CITY, AND CITY OF KINGSFORT ANIMAL SHELTER FOR REPAIR AND MAINTENANCE SERVICES OF THE ANIMAL SHELTER VEHICLES, 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."

E. APPOINTMENTS/REAPPOINTMENTS.

1. Appointment to the Kingsport Economic Development Board (AF: 32-2015) (Mayor Phillips).

**Minutes of the Regular Business Meeting of the Board of Mayor and Aldermen
of the City of Kingsport, Tennessee, Tuesday, February 3, 2015**

Motion/Second: Parham/Segelhorst, to approve:

APPOINTMENT OF MR. LARRY ESTEPP TO SERVE ON THE **KINGSPORT
ECONOMIC DEVELOPMENT BOARD** TO COMPLETE THE UNEXPIRED TERM OF
MR. CHARLIE FLOYD. THE APPOINTMENT IS EFFECTIVE IMMEDIATELY AND
WILL EXPIRE ON JANUARY 31, 2020.

Passed: All present voting "aye."

VII. CONSENT AGENDA. None.

VIII. COMMUNICATIONS.

A. CITY MANAGER. Mr. Fleming commented on the Main Street annual report, highlighting the many downtown investments that have been made and the significant taxable value that has been added. Mr. Fleming also discussed the award presented by the U.S. Tennis Association.

B. MAYOR AND BOARD MEMBERS. Alderman George thanked the Liberty Celebration group for their efforts and for the donation. She also thanked Clay Walker of NETWORKS and Sherri Mosley of DKA for their presentations at the work session. Alderman Segelhorst echoed these sentiments and encouraged everyone to support the veteran's memorial. Alderman Clark commented on the great teamwork between the public and private sector in Kingsport. Alderman Parham thanked the Fire Department regarding a recent call at his home.

C. VISITORS. None.

IX. ADJOURN. Seeing no other business for consideration at this meeting, Mayor Phillips adjourned the meeting at 8:00 p.m.


ANGELA MARSHALL
Deputy City Recorder

DENNIS R. PHILLIPS
Mayor



AGENDA ACTION FORM

Amend Zoning of the Rock Springs Road South Property, Located Between Rock Springs Road and Interstate 81

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

Action Form No.: AF-33-2015
 Work Session: February 16, 2015
 First Reading: February 17, 2015

Final Adoption: March 3, 2015
 Staff Work By: Ken Weems
 Presentation By: Ken Weems

Recommendation:

- ~~Hold public hearing.~~
- Approve ordinance amending the zoning ordinance to rezone parcels from R-1B, Residential District to B-4P, Planned Business District.

Executive Summary:

This is an owner-requested rezoning of approximately 4.6 acres/ a total of 6 parcels located off Rock Springs Road from R-1B to B-4P. The purpose of the rezoning request is to allow construction of a commercial showroom for cabinets on the property. As of January 26, 2015, the Planning Department has received one call about the rezoning from an adjacent property owner. The adjacent property owner was calling for information purposes and was neither for nor against the rezoning request. During their January 2015 regular meeting, the Kingsport Regional Planning Commission voted 7-1 to send a favorable recommendation for the rezoning to the Board of Mayor and Aldermen. The Notice of Public Hearing was published on January 19, 2015.

Attachments:

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

	<u>Y</u>	<u>N</u>	<u>O</u>
Clark	—	—	—
George	—	—	—
Hall	—	—	—
McIntire	—	—	—
Parham	—	—	—
Segelhorst	—	—	—
Phillips	—	—	—



AGENDA ACTION FORM

Amend Zoning of the Rock Springs Road South Property, Located Between Rock Springs Road and Interstate 81

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

Action Form No.: AF-33-2015
 Work Session: February 2, 2015
 First Reading: February 3, 2015

Final Adoption: February 17, 2015
 Staff Work By: Ken Weems
 Presentation By: Ken Weems

Recommendation:

- Hold public hearing.
- Approve ordinance amending the zoning ordinance to rezone parcels from R-1B, Residential District to B-4P, Planned Business District.

Executive Summary:

This is an owner-requested rezoning of approximately 4.6 acres/ a total of 6 parcels located off Rock Springs Road from R-1B to B-4P. The purpose of the rezoning request is to allow construction of a commercial showroom for cabinets on the property. As of January 26, 2015, the Planning Department has received one call about the rezoning from an adjacent property owner. The adjacent property owner was calling for information purposes and was neither for nor against the rezoning request. During their January 2015 regular meeting, the Kingsport Regional Planning Commission voted 7-1 to send a favorable recommendation for the rezoning to the Board of Mayor and Aldermen. The Notice of Public Hearing was published on January 19, 2015.

Attachments:

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

	<u>Y</u>	<u>N</u>	<u>O</u>
Clark	—	—	—
George	—	—	—
Hall	—	—	—
McIntire	—	—	—
Parham	—	—	—
Segelhorst	—	—	—
Phillips	—	—	—

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 February 3, 2015 to consider the rezoning for a portion of parcel 1 of tax maps 119I and 119P located along Rock Springs Road from R-1B District to B-4P District. The regular business meeting will begin at 7:00 p.m. in the large courtroom located on the second floor of City Hall, at 225 W. Center Street, Kingsport, Tennessee.

The property proposed for rezoning is generally described as follows:

BEGINNING at a point, said point being the western corner of parcel 84, Tax Map 119P, in common with the northern right-of-way of Interstate 81; thence in a northeasterly direction, following the northern right-of-way of Interstate 81, approximately 629 feet to a point, said point lying on the boundary of parcel 1 in common with the northern right-of-way of Interstate 81; thence in a northwesterly direction, approximately 378 feet to a point, said point lying on the boundary of parcel 1 in common with the southern right-of-way of Rock Springs Road; thence in a southwesterly direction, following the southern right-of-way of Rock Springs Road, approximately 587 feet to a point, said point being the northern corner of parcel 84 in common with the southern right-of-way of Rock Springs Road; thence in a southeasterly direction, approximately 278 feet to the point of BEGINNING, and being a portion of parcel 1, Tax Maps 119P and 119I as shown on the March 2011 Sullivan County Tax Maps.

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

CITY OF KINGSPORT
Angie Marshall, Deputy City Clerk
PIT: 1/19/15

ORDINANCE NO. _____

AN ORDINANCE TO FURTHER AMEND THE ZONING CODE, TEXT AND MAP, TO REZONE PROPERTY ADJACENT TO ROCK SPRINGS ROAD FROM R-1B, RESIDENTIAL DISTRICT TO B-4P, PLANNED BUSINESS DISTRICT IN THE 14TH CIVIL DISTRICT OF SULLIVAN COUNTY; TO FIX A PENALTY FOR THE VIOLATION OF THIS ORDINANCE; AND TO FIX THE EFFECTIVE DATE OF THIS ORDINANCE

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

SECTION I. That the zoning code, text, and map, be and the same is hereby further amended to rezone property adjacent to Rock Springs Road from R-1B, Residential District to B-4P, Planned Business District in the 14th Civil District of Sullivan County; said area to be rezoned being further and more particularly described as follows:

BEGINNING at a point, said point being the western corner of parcel 84, Tax Map 119P, in common with the northern right-of-way of Interstate 81; thence in a northeasterly direction, following the northern right-of-way of Interstate 81, approximately 629 feet to a point, said point lying on the boundary of parcel 1 in common with the northern right-of-way of Interstate 81; thence in a northwesterly direction, approximately 378 feet to a point, said point lying on the boundary of parcel 1 in common with the southern right-of-way of Rock Springs Road; thence in a southwesterly direction, following the southern right-of-way of Rock Springs Road, approximately 587 feet to a point, said point being the northern corner of parcel 84 in common with the southern right-of-way of Rock Springs Road; thence in a southeasterly direction, approximately 278 feet to the point of BEGINNING, and being a portion of parcel 1, Tax Maps 119P and 119I as shown on the March 2011 Sullivan County Tax Maps.

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

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

DENNIS R. PHILLIPS
Mayor

ATTEST:

JAMES H. DEMMING
City Recorder

APPROVED AS TO FORM:

J. MICHAEL BILLINGSLEY
City Attorney

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

Kingsport Regional Planning Commission
Rezoning Report

File Number 14-101-00015

Rock Springs Road South Rezoning

Property Information			
Address		2705 Rock Springs Road, Kingsport, TN 37664	
Tax Map, Group, Parcel		119I, B, parcels 1, 1.05, 1.10, 1.15, 1.25, and 1.50	
Civil District		14	
Overlay District		Not applicable	
Land Use Designation		Retail	
Acres		4.6 acres +/-	
Existing Use	vacant land	Existing Zoning	R-1B
Proposed Use	Commercial showroom	Proposed Zoning	B-4P
Owner /Applicant Information			
Name: Carla Karst Address: PO Box 5607 City: Kingsport State: TN Zip Code: 37664 Email: wendy@trulifehomes.com Phone Number: (423) 765-2663		Intent: <i>To rezone from R-1B to B-4P to allow a commercial showroom use on the property.</i>	
Planning Department Recommendation			
<p>The Kingsport Planning Division recommends approval for the following reasons:</p> <ul style="list-style-type: none"> • <i>The Future Land Use Plan recommends retail use on the property proposed for rezoning.</i> • <i>The rezoning site was originally zoned B-4P by the City when it was annexed by the City in August of 2009.</i> <p>Staff Field Notes and General Comments:</p> <ul style="list-style-type: none"> • <i>The rezoning area was rezoned from B-4P to R-1B in July of 2013. At the time, the owner was planning to develop the site as single family.</i> • <i>A successful rezoning back to B-4P will effectively reverse the rezoning that occurred in July of 2013, changing the zoning back to what the property was zoned upon annexation.</i> • <i>The developer wants to build a single building that will accommodate a commercial showroom for cabinets. The developer performs local work in the Kingsport area. This commercial aspect will be accompanied by subordinate office and storage uses in the same building.</i> 			
Planner:	Ken Weems	Date:	December 22, 2014
Planning Commission Action		Meeting Date:	January 15, 2015
Approval:			
Denial:		Reason for Denial:	
Deferred:		Reason for Deferral:	

Kingsport Regional Planning Commission

Rezoning Report

File Number 14-101-00015

PROPERTY INFORMATION

ADDRESS	2705 Rock Springs Road, Kingsport, TN 37664
DISTRICT	14
OVERLAY DISTRICT	Not Applicable
EXISTING ZONING	R-1B (Residential)
PROPOSED ZONING	B-4P (Planned Business District)
ACRES	4.6 +/-
EXISTING USE	vacant land
PROPOSED USE	commercial showroom

PETITIONER

ADDRESS PO Box 5607, Kingsport, TN 37664

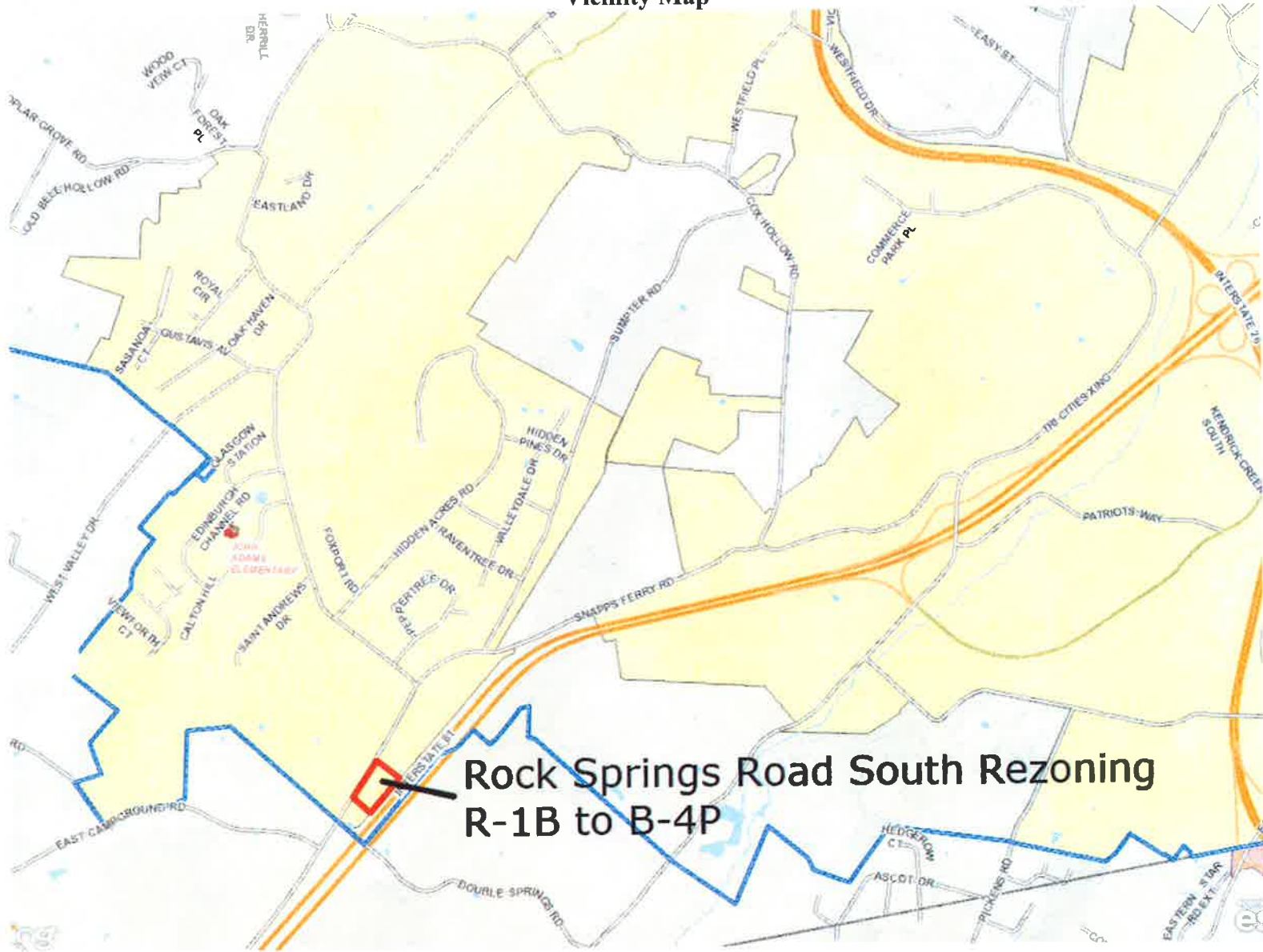
REPRESENTATIVE

PHONE (423) 765-2663

INTENT

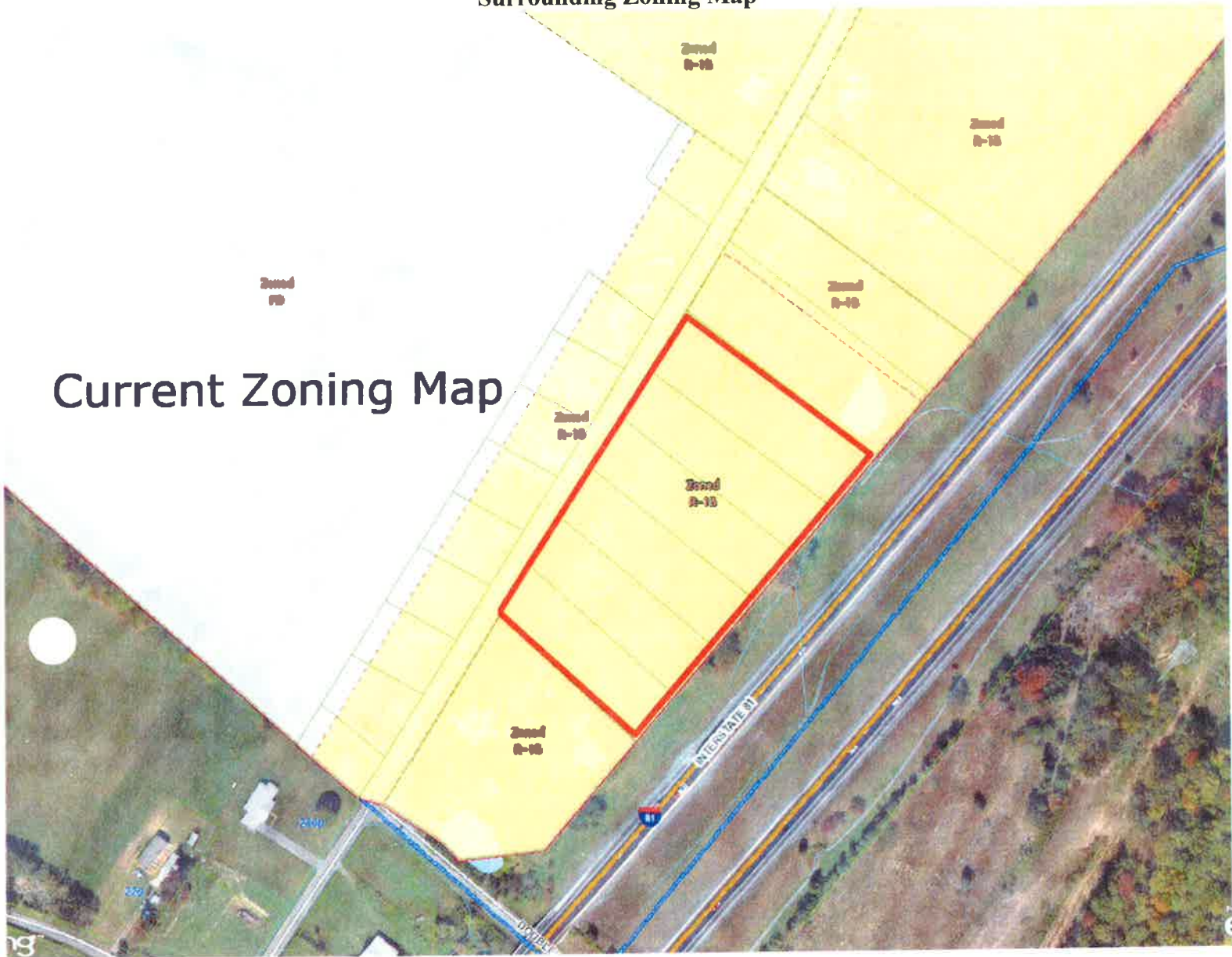
To rezone from R-1B to B-4P to allow a commercial showroom use on the property.

Vicinity Map

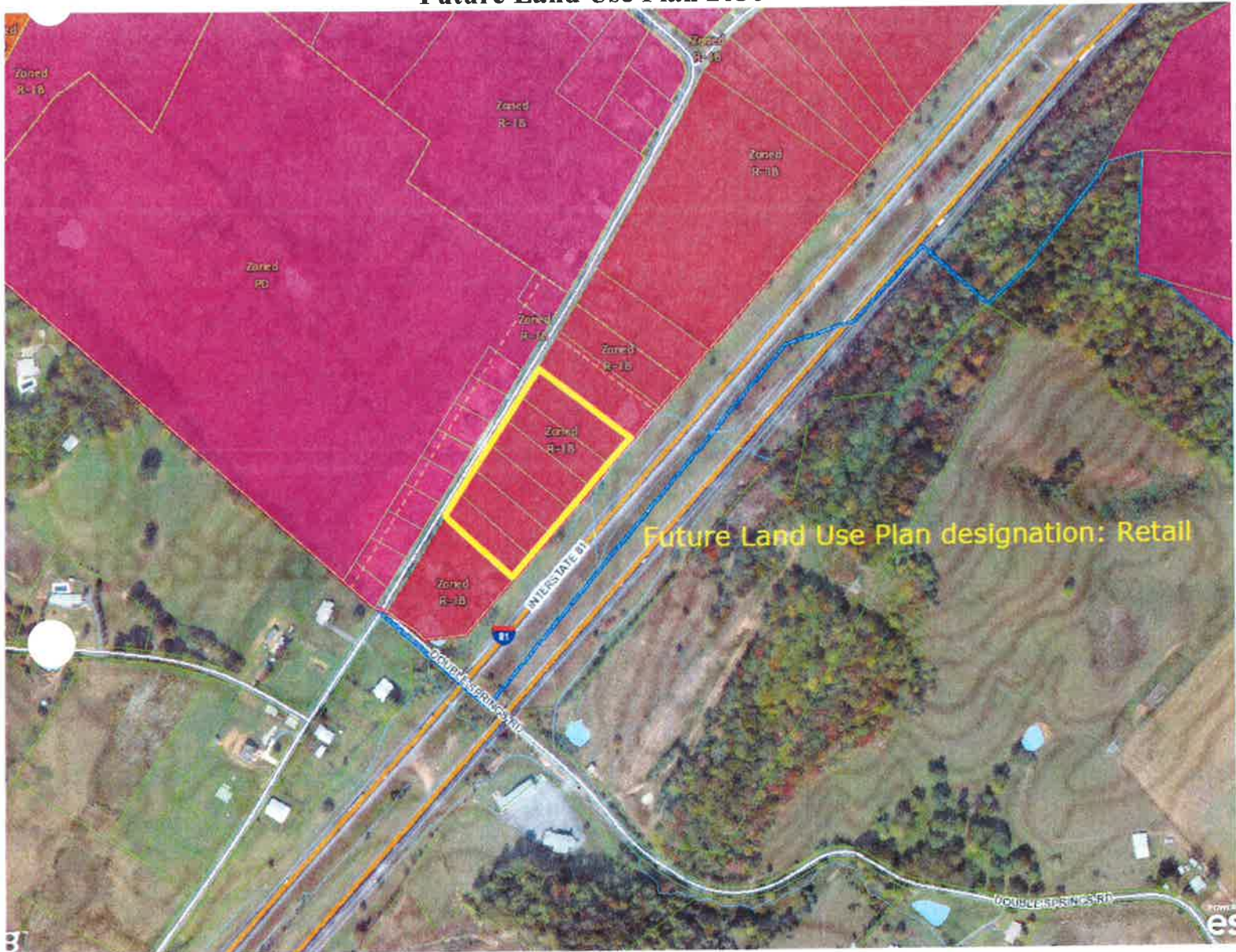


Surrounding Zoning Map

Current Zoning Map



Future Land Use Plan 2030



File Number 14-101-00015

This aerial map displays a proposed rezoning site, outlined in yellow, located in Kingsport, Tennessee. The site is situated near the intersection of Kingsport Road and Interstate 75. The map includes labels for 'KINGSFORT', 'REZONING SITE R-1B to B-4P', 'INTERSTATE 75', and 'Sullivan County'. The map is powered by Esri.

West View



South View (Towards I-81)



North View (Towards John Adams Elementary)



East View



Kingsport Regional Planning Commission

Rezoning Report

File Number 14-101-00015

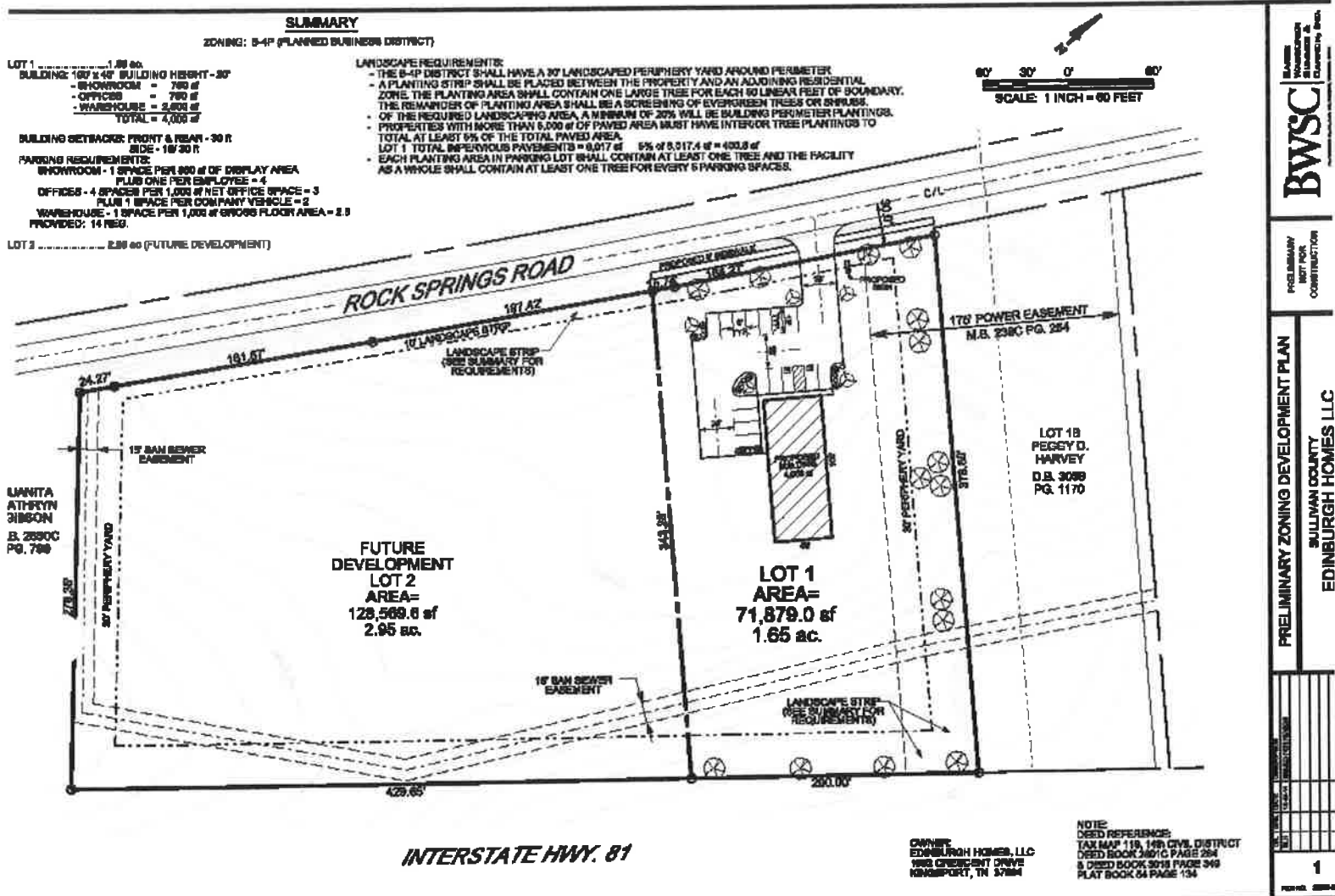
Location	Parcel / Zoning Petition	Zoning / Name	History Zoning Action Variance Action
North, East, Northwest	1	<u>Zone: City R-1B</u> Use: single family residential	Property annexed in 2009
Further North and Northwest	2	<u>Zone: City PD</u> Use: vacant property	Property annexed in 2009
East	3	<u>Zone: City R-1B</u> Use: single family	Property annexed in 2009
Further East	4	<u>Zone: County A-1</u> Use: I-81 right-of-way	n/a
Southeast and South	5	<u>Zone: County A-1</u> Use: I-81 right-of-way	n/a
Further South	6	<u>Zone: County A-1</u> Use: I-81 right-of-way	n/a
West	7	<u>Zone: City R-1B</u> Use: single family residential	Property annexed in 2009

EXISTING USES LOCATION MAP

The map displays an aerial view of a rural area with a red-outlined polygon indicating the project site. The polygon is divided into seven numbered sections (1-7). Section 1 is a small area at the top left of the polygon. Section 2 is a large area to the left of the polygon. Section 3 is a small area at the top right of the polygon. Section 4 is a large area to the right of the polygon. Section 5 is a small area at the bottom right of the polygon. Section 6 is a small area at the bottom left of the polygon. Section 7 is a small area at the bottom center of the polygon. The map also shows Interstate 91, a railroad, and various zoning areas labeled 'Zoned R-1B'. The map is titled 'EXISTING USES LOCATION MAP'.

Rezoning Report

Site Plan



Based on the applicant's site plan submitted to the Planning Department on December 15, 2014, Staff offers the following considerations:

DEVELOPMENT STANDARDS – B-4P

District

- Lot area: 25,000 sq. ft.
- Lot frontage: 50ft
- Front yard: 30 ft.
- Side yard: 15 ft.

- Rear yard: 30 feet
- Lot coverage: 30% maximum
- Parking for showroom, office, and accessory storage: 12 (14 supplied)

The ZDP indicates compliance with the development standards in a B-4P District

Parking Requirements

The site plan indicates a total of 14 regular parking spaces. The minimum requirement for the development is 12 parking spaces.

Property Features

The rezoning/development site lies on the southern side of Rock Springs Road, between the existing residential site to the north and Interstate 81 to the south. The topography of the site gently slopes to the southwestern corner of the rezoning area.

Standards of Review

Planning Staff shall, with respect to each zoning application, investigate and make a recommendation with respect to factors 1 through 10, below, as well as any other factors it may find relevant.

1. **Whether or not the proposal will permit a use that is suitable in view of the use and development of adjacent and nearby Property?** The proposal will permit commercial development that will be suitable in regards to abutting residential zones and uses. The B-4P requirements offer a more aesthetically pleasing environment than generally found in other business zones.
2. **Whether or not the proposal will adversely affect the existing use or usability of adjacent or nearby property?** The adjacent and nearby property will not be adversely affected by the proposal. The Future Land Use Plan designates this property as favorable for retail use.
3. **Whether the property to be affected by the proposal has a reasonable economic use as currently zoned?** The property has a reasonable economic use as currently zoned. There is also a reasonable economic use for the proposed zone.
4. **Whether the proposal will result in a use which will or could cause an excessive or burdensome use of existing streets, transportation facilities, utilities or schools?** The proposal will not cause a burdensome use of existing streets, transportation facilities, or schools.

5. **Whether the proposal is in conformity with the policies and intent of the land use plan?**

Proposed use: The use of the rezoning site as a commercial showroom is compliant with the land use plan as a retail use.

The Future Land Use Plan Map recommends retail use.

6. **Whether there are other existing or changed conditions affecting the use and development of the property which gives supporting grounds for either approval or disapproval of the proposal?** The existing conditions support approval of the proposed rezoning. The property, when originally annexed in 2009, was found to be a suitable site for B-4P zoning.
7. **Whether the zoning proposal will permit a use which can be considered environmentally adverse to the natural resources, environment and citizens of the City of Kingsport?** There are no adverse uses proposed.
8. **Whether the change will create an isolated district unrelated to similar districts:** The proposal will create an isolated commercial district. The rezoning will be an initial step towards realizing a continuous retail district between Rocks Springs Road, Shipley Ferry Road, and I-81. The Future Land Use Plan recommends retail use for this area from the current Urban Growth Boundary to Tri-Cities Crossing.
9. **Whether the present district boundaries are illogically drawn in relation to existing conditions?** The present district boundaries are appropriately drawn as is.
10. **Whether the change will constitute a grant of special privilege to an individual as contrasted to the general welfare?** The change will not allow a special privilege to an individual as contrasted to the general welfare. A rezoning to a B-4P district will further the realization of the Future Land Use Plan.

CONCLUSION

Staff recommends APPROVAL to rezone from R-1B to B-4P. The rezoning request is compliant with the 2030 Future Land Use Plan as a retail use.



AGENDA ACTION FORM

Agreement with TDOT Related to the Lynn Garden Drive Signal System Project and Appropriation of Funds

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

Action Form No.: AF-42-2015
 Work Session: February 16, 2015
 First Reading: February 17, 2015

Final Adoption: March 3, 2015
 Staff Work By: Tim Elsea
 Presentation By: Ryan McReynolds

Recommendation: Approve the resolution and ordinance.

Executive Summary:

Plans will be submitted to TDOT for installation of necessary components interconnecting seven (7) signals along SR-36, Lynn Garden Drive. The improvements include construction of a signal sub-system to coordinate the traffic signals, signal hardware/software upgrades, and potentially multi-directional cameras. The new interconnect will splice into existing fiber infrastructure that ultimately returns to a central downtown location.

Entering into the Local Agency Project Agreement with TDOT is for the purpose of providing an understanding between the TDOT and the City of their respective obligations related to this project. Funding for this project is reflected in Exhibit "A" of the Agreement and identified as Federal (100%) and Local (0%).

The estimated cost for this project is \$221,800.00; and a project completion date of on or before 01/31/2020. Funding will be provided by the Kingsport Metropolitan Transportation Planning Organization (MTPO) Surface Transportation Program (STP) funds. A budget ordinance appropriating available funds to MPO15C in the estimated amount of \$221,800.00 is requested.

It is also requested to enter into the Local Agency Project Agreement with TDOT – Agreement Number: 150002; Project Identification Number: 121579.00; Federal Project Number: STP-M-36(63); State Project Number: 82LPLM-F3-060.

Attachments:

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

Funding source appropriate and funds are available: js

	Y	N	O
Clark	—	—	—
George	—	—	—
Hall	—	—	—
McIntire	—	—	—
Parham	—	—	—
Segelhorst	—	—	—
Phillips	—	—	—

RESOLUTION NO. _____

A RESOLUTION APPROVING AGREEMENT 150002 WITH THE STATE OF TENNESSEE DEPARTMENT OF TRANSPORTATION FOR THE LYNN GARDEN SIGNAL SYSTEM PROJECT, AND AUTHORIZING THE MAYOR TO EXECUTE THE AGREEMENT AND ALL OTHER DOCUMENTS NECESSARY AND PROPER TO EFFECTUATE THE PURPOSE OF THE AGREEMENT

WHEREAS, the traffic signals on Lynn Garden Drive need to be updated; and

WHEREAS, the plans for the updating will be submitted to Tennessee Department of Transportation (TDOT) for installation of necessary components interconnecting seven (7) signals along SR-36, Lynn Garden Drive; and

WHEREAS, the improvements include construction of a signal sub-system to coordinate the traffic signals, signal hardware/software upgrades, and potentially multi-directional cameras and the new interconnect will splice into existing fiber infrastructure that ultimately returns to a central downtown location; and

WHEREAS, the funding for this project is 100% federal, paid as reimbursement following expenditure; and

WHEREAS, initial project funding will be provided by the Kingsport Metropolitan Transportation Planning Organization (MTPO) Surface Transportation Program (STP) by budget ordinance appropriating available funds to MPO15C in the estimated amount of \$221,800.00.

Now therefore,

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

SECTION I. That an agreement with the Tennessee Department of Transportation for the Lynn Garden Drive Signal System Project, is approved.

SECTION II. That the mayor, or in his absence, incapacity, or failure to act, the vice-mayor, is authorized and directed to execute, in a form approved by the city attorney and subject to the requirements of Article X, Section 10 of the Charter of the City of Kingsport, the agreement with the Tennessee Department of Transportation for the Lynn Garden Drive Signal System Project 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:

Agreement Number: 150002
Project Identification Number: 121579.00
Federal Project Number: STP-M-36(63)
State Project Number: 82LPLM-F3-060
State of Tennessee Department of Transportation
LOCAL AGENCY PROJECT AGREEMENT

THIS AGREEMENT, made and entered into this _____ day of _____, 2015, by and between the STATE OF TENNESSEE DEPARTMENT OF TRANSPORTATION, an agency of the State of Tennessee (hereinafter called the "Department") and the City of Kingsport (hereinafter called the "Agency") for the purpose of providing an understanding between the parties of their respective obligations related to the management of the project described as:

A. PURPOSE OF AGREEMENT

A.1 Purpose:

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

A.2 Modifications and Additions:

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

B. ACCOMPLISHMENT OF PROJECT

B.1 General Requirements:

	Responsible Party	Funding Provided by Agency or Project.
a)		
Environmental Clearance by:	Agency	Project
Preliminary Engineering by:	Agency	Project
Right-of-Way by:	Agency	Agency
Utility Coordination by:	Agency	Agency
Construction by:	Agency	Project

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

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

B.2 Completion Date:

a) The Agency agrees to complete the herein assigned phases of the Project on or before 1/31/2020. If the Agency does not complete the herein described phases of the Project within this time period, this Agreement will expire on the last day of scheduled completion as provided in this paragraph unless an extension of the time period is requested by the Agency and granted in writing by the Department prior to the expiration of the Agreement. An extension of the term of this Agreement will be effected through an amendment to the Agreement. Expiration of this Agreement will be considered termination of the Project. The cost of any work performed after the expiration date of the Agreement will not be reimbursed by the Department.

B.3 Environmental Regulations:

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

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

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

B.4 Plans and Specifications

a) In the event that the Agency is made responsible for the Preliminary Engineering in Section B.1.(a) of this Agreement and federal and/or state funding is providing reimbursement, except as otherwise authorized in writing by the Department, the Agency shall not execute an agreement for the Preliminary Engineering phase of the Project without the written approval of the Department. Failure to obtain such written approval shall be sufficient cause for nonpayment by the Department.

b) In the event that this Agreement involves constructing and equipping of facilities on the State Highway System and/or is a Project with Federal participation and the Agency is made

responsible for Preliminary Engineering in section B.1.(a) of this Agreement, the Agency shall submit to the Department for approval all appropriate plans and specifications covering the Project. The Department will review all plans and specifications and will issue to the Agency written approval with any approved portions of the Project and comments or recommendations covering any remainder of the Project deemed appropriate.

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

c) In the event that this Agreement involves the use of State Highway Right-of-Way, the Agency shall submit a set of plans to the TDOT Traffic Engineer responsible for the land in question. These plans shall be sufficient to establish the proposed Project and its impact on the State Highway Right-of-Way.

B.5 Right-of-Way

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

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

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

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

B.6 Approval of the Construction Phase

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

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

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

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

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

B.7 Detours

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

B.8 Utilities

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

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

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

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

B.9 Railroad

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

C. PAYMENT TERMS AND CONDITIONS

C.1 Total Cost:

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

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

C.2 Eligible Costs:

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

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

C.3 Limits on Federal and State Participation:

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

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

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

C.4 Payment Methodology:

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

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

amount charged under this agreement to date. Each invoice shall be accompanied by proof of payment in the form of a canceled check or other means acceptable to the Department.

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

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

C.5 The Department's Obligations:

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

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

1) **Misrepresentation:**

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

2) **Litigation:**

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

3) **Approval by Department:**

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

4) **Conflict of Interests:**

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

5) **Default:**

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

C.6 Final Invoices:

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

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

C.7 Offset:

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

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

C.8 Travel Compensation

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

D. STANDARD TERMS AND CONDITIONS.

D.1 Governing Law:

a) This Agreement shall be governed by and construed in accordance with the laws of the State of Tennessee. The Agency agrees that it will be subject to the exclusive jurisdiction of the courts

of the State of Tennessee in actions that may arise under this Agreement. The Agency acknowledges and agrees that any rights or claims against the State of Tennessee or its employees hereunder, and any remedies arising therefrom, shall be subject to and limited to those rights and remedies, if any, available under Tennessee Code Annotated, Sections 9-8-101 through 9-8-407.

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

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

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

D.3 State Law:

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

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

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

D.5 Appropriations of Funds:

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

D.6 Rights and Remedies Not Waived:

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

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

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

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

D.8 Independent Contractor:

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

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

D.9 Maintenance:

a) Nothing contained herein shall be construed as changing the maintenance responsibility of either party for any part of the referenced project that lies on its system of highways. If the project

funded hereunder results in the installation of any traffic signal, lighting or other electrically operated device(s), then the Agency shall be solely responsible for and pay all costs associated with maintenance and operation of all electrically operated devices together with the related equipment, wiring and other necessary appurtenances, and the Agency shall furnish electrical current to all such devices which may be installed as part of the project. Additionally, the Agency shall be solely responsible for and pay all costs associated with the maintenance and operation of solar-powered devices, including, but not limited to, replacement of solar panels, batteries, lights and lenses.

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

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

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

a) DBE Policy:

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

b) DBE Obligation:

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

D.11 Tennessee Department of Transportation Debarment and Suspension:

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

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

a) Instructions for Certification - Primary Covered Transactions:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

D.13 Equal Employment Opportunity:

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

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

D.14 Title VI - Civil Rights Act of 1964:

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

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

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

D.16 Conflicts of Interest:

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

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

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

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

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

D.18 Restrictions on Lobbying (applies to federal aid projects): The Agency certifies, to the best of its knowledge and belief, that:

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

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

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

D.19 Records:

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

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

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

D.20 Inspection:

a) The Agency shall permit, and shall require its Contractor, subContractor or materials vendor to permit, the Department's authorized representatives and authorized agents of the Federal

Highway Administration to inspect all work, workmanship, materials, payrolls, records and to audit the books, records and accounts pertaining to the financing and development of the Project.

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

D.21 Annual Report and Audit:

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

b) All books of account and financial records shall be subject to annual audit by the Tennessee Comptroller of the Treasury or the Comptroller's duly appointed representative. When an audit is required, the Agency may, with the prior approval of the Comptroller, engage a licensed independent public accountant to perform the audit. The audit agreement between the Agency and the licensed independent public accountant shall be on an agreement form prescribed by the Tennessee Comptroller of the Treasury. Any such audit shall be performed in accordance with generally accepted government auditing standards, the provisions of OMB Circular A-133, if applicable, and the Audit Manual for Governmental Units and Recipients of Grant Funds published by the Tennessee Comptroller of the Treasury.

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

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

D.22 Termination for Convenience:

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

D.23 Termination for Cause:

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

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

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

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

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

D.25 Agreement Format:

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

D.26 Certification Regarding Third Party Contracts:

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

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

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

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

D.27 Amendment:

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

D.28 State Liability:

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

D.29 Force Majeure:

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

D.30 Required Approvals:

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

D.31 Estimated Cost:

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

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

D.32 Third Party Liability:

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

D.33 Deposits:

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

D.34 Department Activities:

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

D.35 Congestion Mitigation and Air Quality Requirement:

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

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

D.36 Investment of Public Funds:

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

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

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

D.37 Federal Funding Accountability and Transparency Act:

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

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

[Acknowledgements and Exhibits Deleted for Inclusion in this Resolution]

SECTION III. That the mayor is further authorized to make such changes approved by the mayor and the city attorney to the agreement set out herein that do not substantially alter the material provisions of the agreement, 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 17th day of February, 2015.

DENNIS R. PHILLIPS, MAYOR

ATTEST:

JAMES H. DEMMING, CITY RECORDER
APPROVED AS TO FORM:

J. MICHAEL BILLINGSLEY, CITY ATTORNEY

ORDINANCE NO. _____

AN ORDINANCE TO AMEND THE MPO FUND BUDGET BY
APPROPRIATING GRANT FUNDS RECEIVED FOR LYNN
GARDEN DRIVE SIGNALS; AND TO FIX THE EFFECTIVE DATE
OF THIS ORDINANCE

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

SECTION I. That the MPO Fund budget be amended by appropriating grant funds in the amount of \$221,800 to the Lynn Garden Drive Signal Project (MPO15C). The grant is funded by 100% federal funds.

<u>Account Number/Description:</u>	<u>Budget</u>	<u>Incr/<Decr></u>	<u>New Budget</u>
Fund 122: MPO Fund			
Lynn Garden Drive Signals (MPO15C)			
Revenues:	\$	\$	\$
122-0000-337-5213 FHWA/TN FHWA 100%	0	221,800	221,800
Totals:	0	221,800	221,800
Expenditures:			
122-0000-609-2023 Arch/Eng/Landscaping	0	41,800	41,800
122-0000-609-9003 Improvements	0	180,000	180,000
Totals:	0	221,800	221,800

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.

DENNIS R. PHILLIPS, Mayor

ATTEST:

APPROVED AS TO FORM:

ANGELA L. MARSHALL
Deputy City Recorder

J. MICHAEL BILLINGSLEY, City Attorney

PASSED ON 1ST READING: _____

PASSED ON 2ND READING: _____

Agreement Number: 150002

Project Identification Number: 121579.00

Federal Project Number: Pending

State Project Number: 82LPLM-F3-060

State of Tennessee Department of Transportation

LOCAL AGENCY PROJECT AGREEMENT

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

Lynn Garden Drive Signal System

A. PURPOSE OF AGREEMENT

A.1 Purpose:

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

A.2 Modifications and Additions:

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

B. ACCOMPLISHMENT OF PROJECT

B.1 General Requirements:

a)

	Responsible Party	Funding Provided by Agency or Project.
Environmental Clearance by:	Agency	Project
Preliminary Engineering by:	Agency	Agency
Right-of-Way by:	Agency	Agency
Utility Coordination by:	Agency	Agency
Construction by:	Agency	Project

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

B.2 Completion Date:

- a) The Agency agrees to complete the herein assigned phases of the Project on or before **1/31/2020**. If the Agency does not complete the herein described phases of the Project within this time period, this Agreement will expire on the last day of scheduled completion as provided in this paragraph unless an extension of the time period is requested by the Agency and granted in writing by the Department prior to the expiration of the Agreement. An extension of the term of this Agreement will be effected through an amendment to the Agreement. Expiration of this Agreement will be considered termination of the Project. The cost of any work performed after the expiration date of the Agreement will not be reimbursed by the Department.

B.3 Environmental Regulations:

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

B.4 Plans and Specifications

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

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

B.5 Right-of-Way

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

B.6 Approval of the Construction Phase

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

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

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

B.7 Detours

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

B.8 Utilities

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

B.9 Railroad

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

C. PAYMENT TERMS AND CONDITIONS

C.1 Total Cost:

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

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

C.2 Eligible Costs:

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

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

C.3 Limits on Federal and State Participation:

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

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

C.4 Payment Methodology:

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

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

C.5 The Department's Obligations:

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

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

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

- 1) **Misrepresentation:**
The Agency shall have made misrepresentation of a material nature in its application, or any supplement thereto or amendment thereof, or in or with respect to any document or data furnished therewith or pursuant hereto;
- 2) **Litigation:**
There is then pending litigation with respect to the performance by the Agency of any of its duties or obligations which may jeopardize or adversely affect the Project, this Agreement or payments to the Project;
- 3) **Approval by Department:**
The Agency shall have taken any action pertaining to the Project, which under this Agreement requires the approval of the Department or has made related expenditure or incurred related obligations without having been advised by the Department that same are approved;
- 4) **Conflict of Interests:**
There has been any violation of the conflict of interest provisions contained herein in D.16; or
- 5) **Default:**
The Agency has been determined by the Department to be in default under any of the provisions of the Agreement.

C.6 Final Invoices:

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

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

C.7 Offset:

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

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

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

C.8 Travel Compensation

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

D. STANDARD TERMS AND CONDITIONS

D.1 Governing Law:

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

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

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

D.3 State Law:

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

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

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

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

D.5 Appropriations of Funds:

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

D.6 Rights and Remedies Not Waived:

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

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

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

D.8 Independent Contractor:

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

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

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

D.9 Maintenance:

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

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

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

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

b) **DBE Obligation:**

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

D.11 Tennessee Department of Transportation Debarment and Suspension:

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

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

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

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

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

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

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

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

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

D.13 Equal Employment Opportunity:

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

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

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

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

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

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

D.16 Conflicts of Interest:

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

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

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

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

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

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

D.19 Records:

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

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

D.20 Inspection:

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

D.21 Annual Report and Audit:

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

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

D.22 Termination for Convenience:

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

D.23 Termination for Cause:

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

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

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

D.25 Agreement Format:

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

D.26 Certification Regarding Third Party Contracts:

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

D.27 Amendment:

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

D.28 State Liability:

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

D.29 Force Majeure:

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

D.30 Required Approvals:

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

D.31 Estimated Cost:

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

D.32 Third Party Liability:

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

D.33 Deposits:

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

D.34 Department Activities:

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

D.35 Congestion Mitigation and Air Quality Requirement:

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

D.36 Investment of Public Funds:

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

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

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

D.37 Federal Funding Accountability and Transparency Act:

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

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

CITY OF KINGSPORT

**STATE OF TENNESSEE
DEPARTMENT OF TRANSPORTATION**

By: _____	_____	By: _____	_____
Dennis Phillips	Date	John C. Schroer	Date
Mayor		Commissioner	

**APPROVED AS TO
FORM AND LEGALITY**

**APPROVED AS TO
FORM AND LEGALITY**

By: _____	_____	By: _____	_____
J.Michael Billingsly	Date	John Reinbold	Date
Attorney		General Counsel	

EXHIBIT "A"

AGREEMENT NUMBER: 150002**PROJECT IDENTIFICATION NUMBER: 121579.00****FEDERAL PROJECT NUMBER: PENDING****STATE PROJECT NUMBER: 82LPLM-F3-060**

PROJECT DESCRIPTION: LYNN GARDEN DRIVE SIGNAL SYSTEM-IMPROVEMENTS TO TRAFFIC SIGNALS INCLUDING CONSTRUCTION OF CLOSED-LOOP SIGNAL SUB-SYSTEM TO COORDINATE TRAFFIC SIGNALS, SIGNAL HARDWARE/SOFTWARE UPGRADES, MULTI-DIRECTION CAMERAS

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

TYPE OF WORK: ITS

PHASE	FUNDING SOURCE	FED %	STATE %	LOCAL %	ESTIMATED COST
PE-NEPA	STP	100	0	0	\$40,000.00
CONSTRUCTION	STP	100	0	0	\$180,000.00
TDOT ES	STP	100	0	0	\$1,800.00

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

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

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

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



AGENDA ACTION FORM

Budget Ordinance to Transfer Funds for the Wilcox Court Intersection Improvements Project

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

Action Form No.: AF-49-2015
 Work Session: February 16, 2015
 First Reading: February 17, 2015

Final Adoption: March 3, 2015
 Staff Work By: Tim Elsea
 Presentation By: Ryan McReynolds

Recommendation:

Approve the budget ordinance.

Executive Summary:

The proposed project will improve the turning radius into Wilcox Court for southbound traffic on Wilcox Drive (Highway 126). The majority of the Wilcox Court development is zoned M-1 and is intended to support light manufacturing and businesses that service manufacturing. The current turning radius is inadequate to accommodate the truck traffic that these type of businesses generate. Currently trucks have to swing wide into the opposite lane of Wilcox Court in order to enter. If a vehicle is positioned along Wilcox Court at the intersection of Wilcox Drive, trucks are basically stuck on Wilcox Drive creating an obstructed view of the traffic along Wilcox Drive and impeding the flow of traffic along Wilcox Drive. The proposed funds are currently in a project account intended to support the Wilcox Drive / Lincoln Street improvements. This project is in keeping with the intent of the account as it will create a safer thoroughfare for the travelling public and improve businesses' ability to serve local industry.

It is requested to transfer funding from GP1414 to GP1530 in the total amount of \$55,000.00 for this project.

Attachments:

1. Budget Ordinance

Funding source appropriate and funds are available: _____

	Y	N	O
Clark	—	—	—
George	—	—	—
Hall	—	—	—
McIntire	—	—	—
Parham	—	—	—
Segelhorst	—	—	—
Phillips	—	—	—

PRE-FILED CITY RECORDER

ORDINANCE NO. _____

AN ORDINANCE TO AMEND THE GENERAL PROJECT FUND BUDGET BY TRANSFERRING FUNDS FOR THE WILCOX COURT INTERSECTION IMPROVEMENT PROJECT; AND TO FIX THE EFFECTIVE DATE OF THIS ORDINANCE

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

SECTION I. That the General Project Fund budget be amended by transferring funds from the Lincoln Street Improvement project (GP1414) to the Wilcox Court Intersection Improvement Project (GP1530) in the amount of \$55,000.

Account Number/Description:
Fund 311: General Project Fund
Lincoln St. Improvements (GP1414)

Revenues:

311-0000-368-1040 Series 2011 GO Pub Imp
311-0000-368-1046 Bond Proceeds/2013B GO Imp Imp.
311-0000-368-2101 Premium From Bond Sale

Totals:

Expenditures:

311-0000-601-2023 Arch/Eng/Landscaping
311-0000-601-4041 Bond Sale Expense
311-0000-601-9001 Land

Totals:

<u>Budget</u>	<u>Incr/<Decr></u>	<u>New Budget</u>
\$	\$	\$
161345	(56,161)	105,184
98,655	(4,898)	93,757
0	6,059	6,059
260,000	(55,000)	205,000
15,000	0	15,000
0	1,161	1,161
245,000	(56,161)	188,839
260,000	(55,000)	205,000

Fund 311: General Project Fund
Wilcox Ct Intersection Imp. (GP1530)

Revenues:

311-0000-368-1040 Series 2011 GO Pub Imp

Totals:

Expenditures:

311-0000-601-2023 Arch/Eng/Landscaping
311-0000-601-9001 Land

Totals:

\$	\$	\$
0	55,000	55,000
0	55,000	55,000
0	10,000	10,000
0	45,000	45,000
0	55,000	55,000

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.

DENNIS R. PHILLIPS, Mayor

ATTEST:

APPROVED AS TO FORM:

ANGELA L. MARSHALL
Deputy City Recorder

J. MICHAEL BILLINGSLEY, City Attorney

PASSED ON 1ST READING: _____

PASSED ON 2ND READING: _____



AGENDA ACTION FORM

Amend the FY15 Operating Budgets and Various Projects

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

Action Form No.: AF-20-2015
Work Session: February 2, 2015
First Reading: February 3, 2015

Final Adoption: February 17, 2015
Staff Work By: Judy Smith
Presentation By: Jeff Fleming

Recommendation:

Approve the ordinance.

Executive Summary:


This ordinance is a cleanup ordinance for the various operating budgets and projects. The General Project Fund will be amended by transferring funds to the Library project in the amount of \$100,000 to replace windows at the Library, by transferring \$116,334 to the Jackson Elementary Safe Routes to Schools project to cover the local costs of the project, by transferring \$20,000 to the Greenbelt-East Ext. PH I, by transferring \$80,754 to the Farmers Market project, by transferring \$5,000 to the mowing project, by transferring \$5,804 to the Centennial project and by transferring \$14,079 to Fire Station #6 and to close the project.

The Water Fund will be amended by transferring funds from the Water Plant Budget in the amount of \$125,000 to the Water Pump Station Project (WA1506); and by transferring funds from the Water Systems Maintenance budget in the amount of \$576,056 to the Water Line Improvements project (WA1507).

The Sewer Fund will be amended by transferring funds from the Sewer Plant Budget in the amount of \$237,755 to the Pump Station Improvements project (SW1509) and by transferring funds from the Water Systems Maintenance budget in the amount of \$250,000 to the Sewer Line Improvements Project (SW1508).

Attachments:

1. Ordinance

Funding source appropriate and funds are available: 

	Y	N	O
Clark	—	—	—
George	—	—	—
Hall	—	—	—
McIntire	—	—	—
Parham	—	—	—
Segelhorst	—	—	—
Phillips	—	—	—

ORDINANCE NO. _____

AN ORDINANCE TO AMEND VARIOUS OPERATING BUDGETS AND PROJECTS FOR THE YEAR ENDING JUNE 30, 2015; AND TO FIX THE EFFECTIVE DATE OF THIS ORDINANCE

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

SECTION I. That the General Project Fund and General Project-Special Revenue Fund budgets be amended by transferring \$48,500 from the Property Acquisition project (GP1223) and \$51,500 from the Land Acquisition project (GP1515) to the Library Improvements Project (GP1400), by appropriating \$11,244 from donations to the Sidewalk Improvements project (GP1520), by transferring \$116,334 from the Rock Springs Road Improvement Phase 2 project (GP1304) to the Jackson Elementary Safe Routes (GP1104), by transferring \$20,000 from East Stone Common Greenbelt project (GP0600) to the Greenbelt-East Ext. PH 1 (GP1529), by transferring \$44,275 from the Riverwalk Project (GP0913) and from the Clinchfield Roller/Press Improvement project (GP1227) in the amount of \$36,479 to the Farmers Mkt Phase II project (GP1212), by transferring \$10,804 from the General Fund operating budget to the Mowing project (NC0911) in the amount of \$440, to the Mowing project (NC1505) in the amount of \$4,560 and \$5,804 to the Centennial project (NC1506), by transferring \$14,079 from the Fire Station 3 Improvements project (GP1210) to the Fire Station 6 project (GP1211) and that the Visitor's Enhancement Fund be amended by appropriating \$226,600 from the Visitor's Enhancement Fund balance for fencing for Parks and Recreation.

Section II. That the Water project Funds be amended by transferring funds from the Water Fund in the amount of \$576,056 to the Water Line Improvements project (WA1507) and to the Water Pump Station Improvements project (WA1506) in the amount of \$125,030 and that the Sewer Project Fund be amended by transferring funds from the Sewer Fund in the amount of \$237,755 to the Sewer Pump Station Improvements project (SW1509) and by transferring \$250,000 to the Sewer Line Improvements project (SW1508).

<u>Account Number/Description:</u>	<u>Budget</u>	<u>Incr/<Decr></u>	<u>New Budget</u>
<u>Fund 311: General Project Fund</u>			
<u>Property Acquisition (GP1223)</u>			
<u>Revenues:</u>	\$	\$	\$
311-0000-368-1041 Series 2012C GO Pub Imp	47,670	(46,170)	1,500
311-0000-368-2101 Premium From Bond Sale	5,141	(2,330)	2,811
<u>Totals:</u>	52,811	(48,500)	4,311
<u>Expenditures:</u>	\$	\$	\$
311-0000-601-4041 Bond Sale Expense	2,811	0	2,811
311-0000-601-9001 Land	50,000	(48,500)	1,500
<u>Totals:</u>	52,811	(48,500)	4,311

Fund 311: General Project Fund**Land Acquisitions (GP1515)****Revenues:**

311-0000-368-1047	2014A GO Bonds	\$	105,965	\$	(51,500)	\$	54,465
311-0000-368-2101	Premium From Bond Sale		11,096		0		11,096
Totals:			117,061		(51,500)		65,561

Expenditures:

311-0000-601-4041	Bond Sale Expense	\$	1,442	\$	0	\$	1,442
311-0000-601-9001	Land		115,619		(51,500)		64,119
Totals:			117,061		(51,500)		65,561

Fund 311: General Project Fund**Library Improvements (GP1400)****Revenues:**

311-0000-368-1046	2013B GO Pub Imp	\$	165,000	\$	(8,192)	\$	156,808
311-0000-368-1041	Series 2012C GO Pub Imp		0		46,170		46,170
311-0000-368-1047	2014A GO Bonds		0		51,500		51,500
311-0000-368-2101	Premium From Bond Sale		0		12,463		12,463
Totals:			165,000		101,941		266,941

Expenditures:

311-0000-601-2023	Arch/Eng/Landscaping	\$	165,000	\$	0	\$	165,000
311-0000-601-4041	Bond Sale Expense		0		1,941		1,941
311-0000-601-9003	Improvements		0		100,000		100,000
Totals:			165,000		101,941		266,941

Fund 311: General Project Fund**Sidewalk Improvements (GP1520)****Revenues:**

311-0000-364-2000	From Corporations	\$	0	\$	11,244	\$	11,244
311-0000-368-1047	2014 A GO Bonds		164,970		0		164,970
311-0000-368-2101	Premium From Bond Sale		17,275		0		17,275
Totals:			182,245		11,244		193,489

Expenditures:

311-0000-601-2023	Arch/Eng/Landscaping	\$	5,000	\$	0	\$	5,000
311-0000-601-4041	Bond Sale Expense		2,245		0		2,245
311-0000-601-9003	Improvements		175,000		11,244		186,244
Totals:			182,245		11,244		193,489

Fund 311: General Project Fund**Rock Springs Rd Improve PH2 (GP1304)****Revenues:**

	\$	\$	\$
311-0000-368-1035 2009 A GO Pub Imp	660,773	0	660,773
311-0000-368-1037 Series 2009D BABS GO	39,952	0	39,952
311-0000-368-1040 Series 2011 GO Pub Imp	852,691	(106,288)	746,403
311-0000-391-3300 Eastman Annex Fund	10,048	(10,046)	2
Totals:	1,563,464	(116,334)	1,447,130

Expenditures:

	\$	\$	\$
311-0000-601-2022 Construction Contracts	1,450,894	(92,648)	1,358,246
311-0000-601-2023 Arch/Eng/Landscaping	112,570	(23,686)	88,884
Totals:	1,563,464	(116,334)	1,447,130

Fund 311: General Project Fund**Jackson Elementary Safe Routes (GP1104)****Revenues:**

	\$	\$	\$
311-0000-331-3700 Dept of Transportation	170,304	0	170,304
311-0000-368-1040 Series 2011 GO Pub Imp	0	106,288	106,288
311-0000-391-3300 Eastman Annex Fund	0	10,046	10,046
Totals:	170,304	116,334	286,638

Expenditures:

	\$	\$	\$
311-0000-601-2022 Construction Contracts	21,500	0	21,500
311-0000-601-2023 Arch/Eng/Landscaping	39,324	0	39,324
311-0000-601-9001 Land	23,980	0	23,980
311-0000-601-9003 Improvements	85,500	116,334	201,834
Totals:	170,304	116,334	286,638

Fund 311: General Project Fund**East Stone Common Greenbelt (GP0600)****Revenues:**

	\$	\$	\$
311-0000-364-2000 From Corporations	100,000	(20,000)	80,000
311-0000-364-2030 From Non-Profit Groups	114,881	0	114,881
Totals:	214,881	(20,000)	194,881

Expenditures:

	\$	\$	\$
311-0000-601-2022 Construction Contracts	202,131	(34,141)	167,990
311-0000-601-2023 Arch/Eng/Landscaping	12,750	14,141	26,891
Totals:	214,881	(20,000)	194,881

Fund 311: General Project Fund
Greenbelt-East Ext. PH I (GP1529)

Revenues:

311-0000-364-2000 From Corporations

Totals:

\$	\$	\$
0	20,000	20,000
0	20,000	20,000

Expenditures:

311-0000-601-9003 Improvements

Totals:

\$	\$	\$
0	20,000	20,000
0	20,000	20,000

Fund 311: General Project Fund
Riverwalk (GP0913)

Revenues:

311-0000-331-3200 Fed. Rev. ARC

311-0000-368-1035 2009 A GO Pub Imp

311-0000-368-1037 Series 2009D BABS GO

311-0000-368-2101 Premium From Bond Sale

Totals:

\$	\$	\$
250,000	(74,844)	175,156
605,132	0	605,132
910,212	(44,275)	865,937
7,849	0	7,849
1,773,193	(119,119)	1,654,074

Expenditures:

311-0000-601-2020 Professional Consultant

311-0000-601-2022 Construction Contracts

311-0000-601-2023 Arch/Eng/Landscaping

311-0000-601-3020 Operating Supplies & Tools

311-0000-601-4041 Bond Sale Expense

311-0000-601-9001 Land

Totals:

\$	\$	\$
4,000	0	21,500
655,396	(66,000)	589,396
98,404	(53,119)	610,896
4,054	0	4,054
23,193	0	23,193
988,146	0	988,146
1,773,193	(119,119)	2,237,185

Fund 311: General Project Fund
Clfield/Roller/Press Impr. (GP1227)

Revenues:

311-0000-368-1035 2009 A GO Pub Imp

311-0000-368-1041 Series 2012C GO Pub Imp

311-0000-368-1046 Series 2013B GO Pub Imp

311-0000-368-2101 Premium From Bond Sale

Totals:

\$	\$	\$
40,000	0	40,000
28,447	0	28,447
500,000	(36,479)	463,521
3,427	0	3,427
571,874	(36,479)	535,395

Expenditures:

311-0000-601-2022 Construction Contracts

311-0000-601-2023 Arch/Eng/Landscaping

311-0000-601-9001 Land

311-0000-601-9003 Improvements

Totals:

\$	\$	\$
10,000	(5,428)	4,572
86,400	(30,104)	56,296
1,874	5,881	7,755
473,600	(6,828)	466,772
571,874	(36,479)	535,395

Fund 311: General Project Fund
Farmers Mkt. Phase II (GP1212)

Revenues:

311-0000-368-1037 2009 D (BABS) GO	\$ 0	\$ 44,275	\$ 44,275
311-0000-368-1040 Series 2011 GO Pub Imp	764,602	0	764,602
311-0000-368-1046 Series 2013B GO Pub Imp	0	36,479	36,479
311-0000-368-2101 Premium From Bond Sale	9,276	0	9,276
Totals:	773,878	80,754	854,632

Expenditures:

311-0000-601-2023 Arch/Eng/Landscaping	\$ 0	\$ 34,399	\$ 34,399
311-0000-601-4041 Bond Sale Expense	15,878	0	15,878
311-0000-601-9003 Improvements	758,000	46,355	804,355
Totals:	773,878	80,754	854,632

Fund 111: General Project-Special Rev. Fund
Mowing Project (NC0911)

Revenues:

111-0000-391-0100 From General Fund	\$ 10,000	\$ 440	\$ 10,440
Totals:	10,000	440	10,440

Expenditures:

111-0000-601-2022 Construction Contracts	\$ 10,000	\$ 440	\$ 10,440
Totals:	10,000	440	10,440

Fund 111: General Project-Special Rev. Fund
Mowing Project (NC1505)

Revenues:

111-0000-391-0100 From General Fund	\$ 0	\$ 4,560	\$ 4,560
Totals:	0	4,560	4,560

Expenditures:

111-0000-601-2022 Construction Contracts	\$ 0	\$ 4,560	\$ 4,560
Totals:	0	4,560	4,560

Fund 111: General Project-Special Rev. Fund
Centennial Project (NC1506)

Revenues:

111-0000-391-0100 From General Fund	\$ 0	\$ 5,804	\$ 5,804
Totals:	0	5,804	5,804

Expenditures:

111-0000-601-3010 Office Supplies	\$ 0	\$ 5,804	\$ 5,804
Totals:	0	5,804	5,804

Fund 110: General Fund**Expenditures:**

	\$	\$	\$
110-4810-481-9006 Purchases Over \$5,000	10,804	(10,804)	0
110-4804-481-7035 To General Proj-Special Rev	606,761	10,804	617,565
Totals:	617,565	0	617,565

Fund 135: Visitor's Enhancement Fund**Revenue:**

	\$	\$	\$
135-0000-392-0100 Fund Balance Appropriation	41,057	226,600	267,657
Totals:	41,057	226,600	267,657

Expenditures:

	\$	\$	\$
135-1015-405-3020 Operating Supplies & Tools	6,800	108,600	115,400
135-1015-405-9003 Improvements	0	45,000	45,000
135-1015-405-9006 Purchases Over \$5,000	4,730	65,000	69,730
135-4804-481-7039 Transfer to Aquatic Center	68,000	8,000	76,000
Totals:	4,730	226,600	306,130

Fund 419: Aquatic Center Fund**Revenue:**

	\$	\$	\$
419-0000-391-6900 From Visitor's Enhancement	168,000	8,000	176,000
Totals:	168,000	8,000	176,000

Expenditures:

	\$	\$	\$
419-5019-501-1010 Salaries	360,600	8,000	368,600
Totals:	360,600	8,000	368,600

Fund 311: General Project Fund**Fire Station 3 Improvements (GP1210)****Revenues:**

	\$	\$	\$
311-0000-368-1040 Series 2011 GO Pub Imp	396,955	(14,079)	382,876
311-0000-368-2101 Premium From Bond Sale	6,119	0	6,119
Totals:	403,074	(14,079)	388,995

Expenditures:

	\$	\$	\$
311-0000-601-2010 Advertising & Publication	166	0	166
311-0000-601-4041 Bond Sale Expense	10,474	0	10,474
311-0000-601-9003 Improvements	392,434	(14,079)	378,355
Totals:	403,074	(14,079)	388,995

Fund 311: General Project Fund
Fire Station 6 Improvements (GP1211)

Revenues:

311-0000-368-1037 Series 2009D (BABS) GO	\$ 100,002	\$ 0	\$ 100,002
311-0000-368-1040 Series 2011 GO Pub Imp	208,271	14,079	222,350
311-0000-368-2101 Premium From Bond Sale	1,224	0	1,224
Totals:	309,497	14,079	323,576

Expenditures:

311-0000-601-4041 Bond Sale Expense	\$ 2,095	\$ 0	\$ 2,095
311-0000-601-9003 Improvements	307,402	14,079	321,481
Totals:	309,497	14,079	323,576

Fund 411: Water Fund

Expenditures:

411-5003-501-3045 Repair/Maint Pump Stations	\$ 125,030	\$ (125,030)	\$ 0
411-5004-501-9021 New Water Dist. Lines WA01	15,000	(15,000)	0
411-5004-501-9022 Hydrants WA02	40,000	(40,000)	0
411-5004-501-9023 New Meters WA03	100,488	(100,488)	0
411-5004-501-9024 Replacement Meters WA04	50,000	(50,000)	0
411-5004-501-9025 Replace Dist Lines WA05	370,568	(370,568)	0
411-6996-696-7601 To Water Project Fund	0	701,086	701,086
Totals:	761,451	0	701,086

Fund 411: Water Project Fund
Water Line Improvements (WA1507)

Revenues:

451-0000-391-4500 From Water Fund	\$ 0	\$ 576,056	\$ 576,056
Totals:	0	576,056	576,056

Expenditures

451-0000-605-9021 New Water Dist. Lines WA01	\$ 0	\$ 15,000	\$ 15,000
451-0000-605-9022 Hydrants WA02	0	40,000	40,000
451-0000-605-9023 New Meters WA03	0	100,488	100,488
451-0000-605-9024 Replacement Meters WA04	0	50,000	50,000
451-0000-605-9025 Replace Dist Lines WA05	0	370,568	370,568
Totals:	0	576,056	576,056

Fund 411: Water Project Fund**Water Pump Station Improvements (WA1506)****Revenues:**

451-0000-391-4500 From Water Fund

Totals:

\$	\$	\$
0	125,030	125,030
0	125,030	125,030

Expenditures

451-0000-605-9019 Pump Stations

Totals:

\$	\$	\$
0	125,030	125,030
0	125,030	125,030

Fund 412: Sewer Project Fund**Sewer Pump Station Improvements (SW1509)****Revenues:**

452-0000-391-4200 From Sewer Fund

Totals:

\$	\$	\$
0	237,755	237,755
0	237,755	237,755

Expenditures

452-0000-605-9019 Pump Stations

Totals:

\$	\$	\$
0	237,755	237,755
0	237,755	237,755

Fund 412: Sewer Fund**Expenditures:**

412-5004-501-9026 Sewer Ext. SW01

412-5004-501-9027 Sewer Taps SW02

412-5004-501-9028 Sewer Repairs SW03

412-5003-501-3045 Repairs/Maint. Pump Stations

412-6996-696-7602 To Sewer Project Fund

Totals:

\$	\$	\$
30,000	(30,000)	0
20,000	(20,000)	0
200,000	(200,000)	0
237,755	(237,755)	0
920,000	487,755	1,407,755
1,407,755	0	1,407,755

Fund 412: Sewer Project Fund**Sewer Line Improvements (SW1508)****Revenues:**

452-0000-391-4500 From Sewer Fund

Totals:

\$	\$	\$
0	250,000	250,000
0	250,000	250,000

Expenditures

452-0000-606-9026 Sewer Ext. SW01

452-0000-606-9027 Sewer Taps SW02

452-0000-606-9028 Sewer Repairs SW03

Totals:

\$	\$	\$
0	30,000	30,000
0	20,000	20,000
0	200,000	200,000
0	250,000	250,000

SECTION III. 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.

ATTEST:

DENNIS PHILLIPS, Mayor

APPROVED AS TO FORM:

JAMES H. DEMMING, City Recorder

J. MICHAEL BILLINGSLEY, City Attorney

PASSED ON 1ST READING:

PASSED ON 2ND READING:



AGENDA ACTION FORM

Amend the FY15 Operating Budgets and Various Projects

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

Action Form No.: AF-20-2015
 Work Session: February 2, 2015
 First Reading: February 3, 2015

Final Adoption: February 17, 2015
 Staff Work By: Judy Smith
 Presentation By: Jeff Fleming

Recommendation:

Approve the ordinance.

Executive Summary:


This ordinance is a cleanup ordinance for the various operating budgets and projects. The General Project Fund will be amended by transferring funds to the Library project in the amount of \$100,000 to replace windows at the Library, by transferring \$116,334 to the Jackson Elementary Safe Routes to Schools project to cover the local costs of the project, by transferring \$20,000 to the Greenbelt-East Ext. PH I, by transferring \$80,754 to the Farmers Market project, by transferring \$5,000 to the mowing project, by transferring \$5,804 to the Centennial project and by transferring \$3,644 to Fire Station #6 and to close the project.

The Water Fund will be amended by transferring funds from the Water Plant Budget in the amount of \$125,000 to the Water Pump Station Project (WA1506); and by transferring funds from the Water Systems Maintenance budget in the amount of \$576,056 to the Water Line Improvements project (WA1507).

The Sewer Fund will be amended by transferring funds from the Sewer Plant Budget in the amount of \$237,755 to the Pump Station Improvements project (SW1509) and by transferring funds from the Water Systems Maintenance budget in the amount of \$250,000 to the Sewer Line Improvements Project (SW1508).

Attachments:

1. Ordinance

Funding source appropriate and funds are available: 

	<u>Y</u>	<u>N</u>	<u>O</u>
Clark	—	—	—
George	—	—	—
Hall	—	—	—
McIntire	—	—	—
Parham	—	—	—
Segelhorst	—	—	—
Phillips	—	—	—

ORDINANCE NO. _____

AN ORDINANCE TO AMEND VARIOUS OPERATING BUDGETS AND PROJECTS FOR THE YEAR ENDING JUNE 30, 2015; AND TO FIX THE EFFECTIVE DATE OF THIS ORDINANCE

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

SECTION I. That the General Project Fund and General Project-Special Revenue Fund budgets be amended by transferring \$48,500 from the Property Acquisition project (GP1223) and \$51,500 from the Land Acquisition project (GP1515) to the Library Improvements Project (GP1400), by appropriating \$8,200 from donations to the Sidewalk Improvements project (GP1520), by transferring \$116,334 from the Rock Springs Road Improvement Phase 2 project (GP1304) to the Jackson Elementary Safe Routes (GP1104), by transferring \$20,000 from Cleek Road Phase 2 (GP1300) to the Greenbelt-East Ext. PH 1 (GP1529), by transferring \$44,275 from the Riverwalk Project (GP0913) and from the Clinchfield Roller/Press Improvement project (GP1227) in the amount of \$36,479 to the Farmers Mkt Phase II project (GP1212), by transferring \$10,804 from the General Fund operating budget to the Mowing project (NC0911) in the amount of \$440, to the Mowing project (NC1505) in the amount of \$4,560 and \$5,804 to the Centennial project (NC1506), by transferring \$10,000 from the Fire Station 3 Improvements project (GP1210) to the Fire Station 6 project (GP1211) and that the Visitor's Enhancement Fund be amended by appropriating \$30,000 from the Visitor's Enhancement Fund balance for fencing for Parks and Recreation.

Section II. That the Water project Funds be amended by transferring funds from the Water Fund in the amount of \$576,056 to the Water Line Improvements project (WA1507) and to the Water Pump Station Improvements project (WA1506) in the amount of \$125,030 and that the Sewer Project Fund be amended by transferring funds from the Sewer Fund in the amount of \$237,755 to the Sewer Pump Station Improvements project (SW1509) and by transferring \$250,000 to the Sewer Line Improvements project (SW1508) .

<u>Account Number/Description:</u>	<u>Budget</u>	<u>Incr/<Decr></u>	<u>New Budget</u>
<u>Fund 311: General Project Fund</u>			
<u>Property Acquisition (GP1223)</u>			
<u>Revenues:</u>	\$	\$	\$
311-0000-368-1041 Series 2012C GO Pub Imp	47,670	(46,170)	1,500
311-0000-368-2101 Premium From Bond Sale	5,141	(2,330)	2,811
<i>Totals:</i>	52,811	(48,500)	4,311
<u>Expenditures:</u>	\$	\$	\$
311-0000-601-4041 Bond Sale Expense	2,811	0	2,811
311-0000-601-9001 Land	50,000	(48,500)	1,500
<i>Totals:</i>	52,811	(48,500)	4,311

Fund 311: General Project Fund**Land Acquisitions (GP1515)****Revenues:**

	\$	\$	\$
311-0000-368-1047 2014A GO Bonds	105,965	(51,500)	54,465
311-0000-368-2101 Premium From Bond Sale	11,096	0	11,096
Totals:	117,061	(51,500)	65,561

Expenditures:

	\$	\$	\$
311-0000-601-4041 Bond Sale Expense	1,442	0	1,442
311-0000-601-9001 Land	115,619	(51,500)	64,119
Totals:	117,061	(51,500)	65,561

Fund 311: General Project Fund**Library Improvements (GP1400)****Revenues:**

	\$	\$	\$
311-0000-368-1046 2013B GO Pub Imp	165,000	0	165,000
311-0000-368-1041 Series 2012C GO Pub Imp	0	48,500	48,500
311-0000-368-1047 2014A GO Bonds	0	51,500	51,500
311-0000-368-2101 Premium From Bond Sale	0	10,133	10,133
Totals:	165,000	110,133	275,133

Expenditures:

	\$	\$	\$
311-0000-601-2023 Arch/Eng/Landscaping	165,000	0	165,000
311-0000-601-4041 Bond Sale Expense	0	1,941	1,941
311-0000-601-9003 Improvements	0	108,192	108,192
Totals:	165,000	110,133	275,133

Fund 311: General Project Fund**Sidewalk Improvements (GP1520)****Revenues:**

	\$	\$	\$
311-0000-364-2000 From Corporations	0	8,200	8,200
311-0000-368-1047 2014 A GO Bonds	164,970	0	164,970
311-0000-368-2101 Premium From Bond Sale	17,275	0	17,275
Totals:	182,245	8,200	190,445

Expenditures:

	\$	\$	\$
311-0000-601-2023 Arch/Eng/Landscaping	5,000	0	5,000
311-0000-601-4041 Bond Sale Expense	2,245	0	2,245
311-0000-601-9003 Improvements	175,000	8,200	183,200
Totals:	182,245	8,200	190,445

Fund 311: General Project Fund
Rock Springs Rd Improve PH2 (GP1304)

Revenues:

	\$	\$	\$
311-0000-368-1035 2009 A GO Pub Imp	660,773	0	660,773
311-0000-368-1037 Series 2009D BABS GO	39,952	0	39,952
311-0000-368-1040 Series 2011 GO Pub Imp	852,691	(106,288)	746,403
311-0000-391-3300 Eastman Annex Fund	10,048	(10,046)	2
Totals:	1,563,464	(116,334)	1,447,130

Expenditures:

	\$	\$	\$
311-0000-601-2022 Construction Contracts	1,450,894	(92,648)	1,358,246
311-0000-601-2023 Arch/Eng/Landscaping	112,570	(23,686)	88,884
Totals:	1,563,464	(116,334)	1,447,130

Fund 311: General Project Fund
Jackson Elementary Safe Routes (GP1104)

Revenues:

	\$	\$	\$
311-0000-331-3700 Dept of Transportation	170,304	0	170,304
311-0000-368-1040 Series 2011 GO Pub Imp	0	106,288	106,288
311-0000-391-3300 Eastman Annex Fund	0	10,046	10,046
Totals:	170,304	116,334	286,638

Expenditures:

	\$	\$	\$
311-0000-601-2022 Construction Contracts	21,500	0	21,500
311-0000-601-2023 Arch/Eng/Landscaping	39,324	0	39,324
311-0000-601-9001 Land	23,980	0	23,980
311-0000-601-9003 Improvements	85,500	116,334	201,834
Totals:	170,304	116,334	286,638

Fund 311: General Project Fund
Cleek Road Phase 2 (GP1300)

Revenues:

	\$	\$	\$
311-0000-368-1037 Series 2009D (BABS) GO	315,195	0	315,195
311-0000-368-1040 Series 2011 GO Pub Imp	2,670,000	(20,000)	2,650,000
Totals:	2,985,195	(20,000)	2,965,195

Expenditures:

	\$	\$	\$
311-0000-601-2020 Professional Consultant	88	0	88
311-0000-601-2023 Arch/Eng/Landscaping	177,953	0	177,953
311-0000-601-9001 Land	7,736	0	7,736
311-0000-601-9003 Improvements	2,799,418	(20,000)	2,779,418
Totals:	2,985,195	(20,000)	2,965,195

Fund 311: General Project Fund
Greenbelt-East Ext. PH I (GP1529)

Revenues:

311-0000-368-1040 Series 2011 GO Pub Imp

Totals:

\$	\$	\$
0	20,000	20,000
0	20,000	20,000

Expenditures:

311-0000-601-9003 Improvements

Totals:

\$	\$	\$
0	20,000	20,000
0	20,000	20,000

Fund 311: General Project Fund
Riverwalk (GP0913)

Revenues:

311-0000-331-3200 Fed. Rev. ARC

311-0000-368-1035 2009 A GO Pub Imp

311-0000-368-1037 Series 2009D BABS GO

311-0000-368-2101 Premium From Bond Sale

Totals:

\$	\$	\$
250,000	(74,844)	175,156
605,132	0	605,132
910,212	(44,275)	865,937
7,849	0	7,849
1,773,193	(119,119)	1,654,074

Expenditures:

311-0000-601-2020 Professional Consultant

311-0000-601-2022 Construction Contracts

311-0000-601-2023 Arch/Eng/Landscaping

311-0000-601-3020 Operating Supplies & Tools

311-0000-601-4041 Bond Sale Expense

311-0000-601-9001 Land

Totals:

\$	\$	\$
4,000	0	21,500
655,396	(66,000)	589,396
98,404	(53,119)	610,896
4,054	0	4,054
23,193	0	23,193
988,146	0	988,146
1,773,193	(119,119)	2,237,185

Fund 311: General Project Fund
Cifield/Roller/Press Impr. (GP1227)

Revenues:

311-0000-368-1035 2009 A GO Pub Imp

311-0000-368-1041 Series 2012C GO Pub Imp

311-0000-368-1046 Series 2013B GO Pub Imp

311-0000-368-2101 Premium From Bond Sale

Totals:

\$	\$	\$
40,000	0	40,000
28,447	0	28,447
500,000	(36,479)	463,521
3,427	0	3,427
571,874	(36,479)	535,395

Expenditures:

311-0000-601-2022 Construction Contracts

311-0000-601-2023 Arch/Eng/Landscaping

311-0000-601-9001 Land

311-0000-601-9003 Improvements

Totals:

\$	\$	\$
10,000	(5,428)	4,572
86,400	(30,104)	56,296
1,874	5,881	7,755
473,600	(6,828)	466,772
571,874	(36,479)	535,395

Fund 311: General Project Fund**Farmers Mkt. Phase II (GP1212)****Revenues:**

311-0000-368-1037 2009 D (BABS) GO	\$ 0	\$ 44,275	\$ 44,275
311-0000-368-1040 Series 2011 GO Pub Imp	764,602	0	764,602
311-0000-368-1046 Series 2013B GO Pub Imp	0	36,479	36,479
311-0000-368-2101 Premium From Bond Sale	9,276	0	9,276
Totals:	773,878	80,754	854,632

Expenditures:

311-0000-601-2023 Arch/Eng/Landscaping	\$ 0	\$ 34,399	\$ 34,399
311-0000-601-4041 Bond Sale Expense	15,878	0	15,878
311-0000-601-9003 Improvements	758,000	46,355	804,355
Totals:	773,878	80,754	854,632

Fund 111: General Project-Special Rev. Fund**Mowing Project (NC0911)****Revenues:**

111-0000-391-0100 From General Fund	\$ 10,000	\$ 440	\$ 10,440
Totals:	10,000	440	10,440

Expenditures:

111-0000-601-2022 Construction Contracts	\$ 10,000	\$ 440	\$ 10,440
Totals:	10,000	440	10,440

Fund 111: General Project-Special Rev. Fund**Mowing Project (NC1505)****Revenues:**

111-0000-391-0100 From General Fund	\$ 0	\$ 4,560	\$ 4,560
Totals:	0	4,560	4,560

Expenditures:

111-0000-601-2022 Construction Contracts	\$ 0	\$ 4,560	\$ 4,560
Totals:	0	4,560	4,560

Fund 111: General Project-Special Rev. Fund**Centennial Project (NC1506)****Revenues:**

111-0000-391-0100 From General Fund	\$ 0	\$ 5,804	\$ 5,804
Totals:	0	5,804	5,804

Expenditures:

111-0000-601-3010 Office Supplies	\$ 0	\$ 5,804	\$ 5,804
Totals:	0	5,804	5,804

Fund 110: General Fund**Expenditures:**

110-4810-481-9006 Purchases Over \$5,000
 110-4804-481-7035 To General Proj-Special Rev
Totals:

\$	\$	\$
10,804	(10,804)	0
606,761	10,804	617,565
617,565	0	617,565

Fund 135: Visitor's Enhancement Fund**Revenue:**

135-0000-392-0100 Fund Balance Appropriation
Totals:

41,057	30,000	71,057
41,057	30,000	71,057

Expenditures:

135-1015-405-9006 Purchases Over \$5,000
Totals:

\$	\$	\$
4,730	30,000	34,730
4,730	30,000	34,730

Fund 311: General Project Fund**Fire Station 3 Improvements (GP1210)****Revenues:**

311-0000-368-1040 Series 2011 GO Pub Imp
 311-0000-368-2101 Premium From Bond Sale
Totals:

\$	\$	\$
396,955	(10,000)	386,955
6,119	0	6,119
403,074	(10,000)	393,074

Expenditures:

311-0000-601-2010 Advertising & Publication
 311-0000-601-4041 Bond Sale Expense
 311-0000-601-9003 Improvements
Totals:

\$	\$	\$
166	0	166
10,474	0	10,474
392,434	(10,000)	382,434
403,074	(10,000)	393,074

Fund 311: General Project Fund**Fire Station 6 Improvements (GP1211)****Revenues:**

311-0000-368-1037 Series 2009D (BABS) GO
 311-0000-368-1040 Series 2011 GO Pub Imp
 311-0000-368-2101 Premium From Bond Sale
Totals:

\$	\$	\$
100,002	0	100,002
208,271	10,000	218,271
1,224	0	1,224
309,497	10,000	319,497

Expenditures:

311-0000-601-4041 Bond Sale Expense
 311-0000-601-9003 Improvements

Totals:

\$	\$	\$
2,095	0	2,095
307,402	10,000	317,402
309,497	10,000	319,497

Fund 411: Water Fund**Expenditures:**

411-5003-501-4035 Repair/Maint Pump Stations
 411-5004-501-9021 New Water Dist. Lines WA01
 411-5004-501-9022 Hydrants WA02
 411-5004-501-9023 New Meters WA03
 411-5004-501-9024 Replacement Meters WA04
 411-5004-501-9025 Replace Dist Lines WA05
 411-6996-696-7601 To Water Project Fund

Totals:

\$	\$	\$
125,030	(125,030)	0
15,000	(15,000)	0
40,000	(40,000)	0
100,488	(100,488)	0
50,000	(50,000)	0
370,568	(370,568)	0
0	701,086	701,086
761,451	0	701,086

Fund 411: Water Project Fund**Water Line Improvements (WA1507)****Revenues:**

451-0000-391-4500 From Water Fund

Totals:

\$	\$	\$
0	576,056	576,056
0	576,056	576,056

Expenditures

451-0000-605-9021 New Water Dist. Lines WA01
 451-0000-605-9022 Hydrants WA02
 451-0000-605-9023 New Meters WA03
 451-0000-605-9024 Replacement Meters WA04
 451-0000-605-9025 Replace Dist Lines WA05

Totals:

\$	\$	\$
0	15,000	15,000
0	40,000	40,000
0	100,488	100,488
0	50,000	50,000
0	370,568	370,568
0	576,056	576,056

Fund 411: Water Project Fund**Water Pump Station Improvements (WA1506)****Revenues:**

451-0000-391-4500 From Water Fund

Totals:

\$	\$	\$
0	125,030	125,030
0	125,030	125,030

Expenditures

451-0000-605-9019 Pump Stations

Totals:

\$	\$	\$
0	125,030	125,030
0	125,030	125,030

Fund 412: Sewer Project Fund**Sewer Pump Station Improvements (SW1509)**

Revenues:

451-0000-391-4500 From Water Fund

Totals:

\$	\$	\$
0	237,755	237,755
0	237,755	237,755

Expenditures

451-0000-605-9019 Pump Stations

Totals:

\$	\$	\$
0	237,755	237,755
0	237,755	237,755

Fund 412: Sewer Fund**Expenditures:**

412-5004-501-9026 Sewer Ext. SW01

412-5004-501-9027 Sewer Taps SW02

412-5004-501-9028 Sewer Repairs SW03

412-5003-501-3045 Repairs/Maint. Pump Stations

412-6996-696-7602 To Sewer Project Fund

Totals:

\$	\$	\$
30,000	(30,000)	0
20,000	(20,000)	0
200,000	(200,000)	0
237,755	(237,755)	0
920,000	487,755	1,407,755
1,407,755	0	1,407,755

Fund 412: Sewer Project Fund**Sewer Line Improvements (SW1508)****Revenues:**

451-0000-391-4500 From Water Fund

Totals:

\$	\$	\$
0	250,000	250,000
0	250,000	250,000

Expenditures

412-5004-501-9026 Sewer Ext. SW01

412-5004-501-9027 Sewer Taps SW02

412-5004-501-9028 Sewer Repairs SW03

Totals:

\$	\$	\$
0	30,000	30,000
0	20,000	20,000
0	200,000	200,000
0	250,000	250,000

SECTION III. 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.

DENNIS PHILLIPS, Mayor

ATTEST:

APPROVED AS TO FORM:

JAMES H. DEMMING, City Recorder

J. MICHAEL BILLINGSLEY, City Attorney

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



AGENDA ACTION FORM

Bid for the Purchase of Various Water and Sewer Maintenance Items to Consolidated Pipe & Supply, Southern Pipe & Supply & HD Supply Waterworks

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

Action Form No.: AF-36-2015
 Work Session: February 16, 2015
 First Reading: N/A

Final Adoption: February 17, 2015
 Staff Work By: Committee
 Presentation By: McCart / McReynolds

Recommendation: Approve the resolution.

Executive Summary:

Bids were opened on January 22, 2015 for the purchase of various water & sewer maintenance inventory items stocked at the Water & Sewer Department warehouse located @ 1213 Konnarock Road. The bid was issued to secure pricing for a twelve month time frame and included a total of 634 items to be purchased on an as needed basis.

The bid invitation was publicly advertised on December 28, 2014 in the Kingsport Times News and downloadable bid documents were posted on the Purchasing Department's website for a time period of 26 calendar days. Bids were received from 14 vendors and low bids from three of those vendors were in excess of \$50,000.00 for various items. As a result of those three bidders offering pricing on various items in excess of \$50,000.00 BMA approval is required for those bids only. Thirteen bidders are to be awarded purchase orders as a result of their replies to this bid.

The bid from Consolidated Pipe & Supply, Inc. offered low pricing for various items totaling \$136,151.26. The bid from Southern Pipe & Supply, Inc. offered low pricing for various items totaling \$135,893.29. The bid from HD Supply Waterworks, Inc. offered low pricing for various items totaling \$144,566.81.

The City is not required to purchase any of the items from this bid unless and until those items are needed as defined by the requirements of the bid. The City reserves the right to determine the low bidder either on the basis of the individual items or on the basis of all items included in its Invitation to Bid.

Funding is identified in account number 41100001410000.

Attachments:

1. Resolution
2. Bid Opening Minutes available for review @ <http://purchasing.kingsporttn.gov/list2>
3. Bid Award Summary

Funding source appropriate and funds are available: JS

	<u>Y</u>	<u>N</u>	<u>O</u>
Clark	—	—	—
George	—	—	—
Hall	—	—	—
McIntire	—	—	—
Parham	—	—	—
Segelhorst	—	—	—
Phillips	—	—	—

RESOLUTION NO. _____

A RESOLUTION AWARDDING THE BID FOR PURCHASE OF VARIOUS WATER AND SEWER MAINTENANCE ITEMS TO CONSOLIDATED PIPE & SUPPLY, INC., SOUTHERN PIPE & SUPPLY AND HD SUPPLY WATERWORKS AND AUTHORIZING THE CITY MANAGER TO EXECUTE PURCHASE ORDERS FOR THE SAME

WHEREAS, bids were opened January 22, 2015 for the purchase of various water and sewer maintenance inventory items stocked at the Water and Sewer Department located at 1213 Konnarock Road; and

WHEREAS, upon review of the bids, the board finds that Southern Pipe & Supply, HD Supply Waterworks and Consolidated Pipe & Supply, Inc. are the lowest responsible compliant bidders meeting specifications for the particular grade or class of material, work or services desired and is in the best interest and advantage to the city, and the City of Kingsport desires to purchase various water and sewer maintenance inventory items as set out in the Water/Sewer Maintenance bid opening minutes, available for review at <http://purchasing.kingsporttn.gov/list2>, from Southern Pipe & Supply at an amount up to \$135,893.29, HD Supply Waterworks at a an amount up to \$144,566.81, and Consolidated Pipe & Supply, Inc. at an amount up to \$136,151.26; and

WHEREAS, funding is identified in account number 41100001410000;

Now therefore,

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

SECTION I. That the bid for purchase of water and sewer maintenance inventory items as set out in the "Water/Sewer Maintenance Items Award Summary Bid Opening Date January 22, 2015" attached hereto as Exhibit A and further detailed in the "Various Water/Sewer Items-Bid Opening date January 22, 2015", available for review at <http://purchasing.kingsporttn.gov/list2>, for use by the Water and Sewer Department is awarded to Southern Pipe & Supply, at an amount up to \$135,893.29, and the city manager is authorized and directed to execute a purchase order for same.

SECTION II. That the bid for purchase of water and sewer maintenance inventory items as set out in the "Water/Sewer Maintenance Items Award Summary Bid Opening Date January 22, 2015" attached hereto as Exhibit A and further detailed in the "Various Water/Sewer Items-Bid Opening date January 22, 2015", available for review at <http://purchasing.kingsporttn.gov/list2>, for use by the Water and Sewer Department is awarded to HD Supply Waterworks at an amount up to \$144,566.81, and the city manager is authorized and directed to execute a purchase order for same.

SECTION III. That the bid for purchase of water and sewer maintenance inventory items as set out in the "Water/Sewer Maintenance Items Award Summary Bid Opening Date January 22, 2015" attached hereto as Exhibit A and further detailed in the "Various Water/Sewer Items-Bid Opening date January 22, 2015", available for review at <http://purchasing.kingsporttn.gov/list2>, for use by the Water and Sewer Department is awarded to

Consolidated Pipe & Supply, Inc. at an amount up to \$136,151.26 and the city manager is authorized and directed to execute a purchase order for same.

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 February, 2014.

DENNIS R. PHILLIPS, MAYOR

ATTEST:

JAMES H. DEMMING, CITY RECORDER

APPROVED AS TO FORM:

J. MICHAEL BILLINGSLEY, CITY ATTORNEY

Water Sewer Maintenance Items Award Summary
Bid Opening Date January 22, 2015

Vendor Name	Purchase Order Number	Amount
Consolidated Pipe & Supply	R03558	\$136,151.26
Southern Pipe & Supply	R03555	\$135,893.29
Ferguson Enterprises	R03557	\$13,780.27
HD Supply Waterworks	R03556	\$144,566.81
G & C Supply	R03559	\$48,438.92
Hayes Pipe Supply	R03560	\$47,263.40
CMC Supply	R03561	\$2,420.82
Advanced Safety & Supply	R03562	\$5,628.93
Northern Safety & Industrial	R03563	\$4,146.28
Hagemeyer North America	R03564	\$1,253.37
Little Acorn Oil	R03565	\$1,643.68
General Rubber	R03566	\$5,428.44
Control Equipment	R03567	\$1,885.50
Hajoca	Unable to consider Bid, Bid not signed	



AGENDA ACTION FORM

Bid for the Purchase of One (1) Rubber Tire Wheel Loader to ASC Construction Equipment, Inc.

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

Action Form No.: AF-37-2015
 Work Session: February 16, 2015
 First Reading: N/A

Final Adoption: February 17, 2015
 Staff Work By: Committee
 Presentation By: McCartt, McReynolds, Hightower

Recommendation:

Approve the resolution.

Executive Summary:

Bids were opened on January 28, 2015 for the purchase of one Rubber Tire Wheel Loader for use by the Public Works Department. The advertisement for the Invitation to Bid was published in the Kingsport Times News on January 11, 2015 and placed on our website for 18 calendar days. It is the recommendation of the committee to accept the apparent low compliant bid from ASC Construction Equipment, Inc. for one each Volvo L70H as follows:

	\$138,856.00	Unit Price
Less	<u>\$12,000.00</u>	Trade-In allowance for Equipment # 1382
	\$126,856.00	Total Price

This unit is a Fleet Replacement.

Funding is identified in Account # 51150085019010

Attachments:

1. Resolution
2. Bid Opening Minutes
3. Recommendation Memo w/ photo

Funding source appropriate and funds are available: JS

	Y	N	O
Clark	—	—	—
George	—	—	—
Hall	—	—	—
McIntire	—	—	—
Parham	—	—	—
Segelhorst	—	—	—
Phillips	—	—	—

RESOLUTION NO. _____

A RESOLUTION AWARDING THE BID FOR THE PURCHASE OF
ONE RUBBER TIRE WHEEL LOADER TO ASC CONSTRUCTION
EQUIPMENT, INC. AND AUTHORIZING THE CITY MANAGER
TO EXECUTE A PURCHASE ORDER FOR THE SAME

WHEREAS, bids were opened January 28, 2015 for the purchase of one rubber tire wheel loader for use by the Public Works Department; and

WHEREAS, the city will receive \$12,000.00 for a trade-in allowance for vehicle #1382; and

WHEREAS, upon review of the bids, the board finds ASC Construction Company, Inc. is the lowest responsible compliant bidder meeting specifications for the particular grade or class of material, work or service desired and is in the best interest and advantage to the city, and the City of Kingsport desires to purchase one (1) Volvo L70H rubber tire wheel loader from ASC Construction Company, Inc., at a total purchase cost of \$126,856.00 which includes the deduction of the \$12,000.00 trade-in allowance; and

WHEREAS, funding is identified in account #51150085019010.

Now therefore,

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

SECTION I. That the bid for the purchase of one (1) Volvo L70H rubber tire wheel loader at a total purchase cost of \$126,856.00, which includes the deduction of the \$12,000.00 trade-in allowance, is awarded to ASC Construction Company, Inc., and the city manager is authorized and directed to execute a purchase order for same.

SECTION II. That the board finds that the actions authorized by this resolution are for a public purpose and will promote the health, comfort and prosperity of the 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 17th day of February, 2015.

DENNIS R. PHILLIPS, MAYOR

ATTEST:

JAMES H. DEMMING, CITY RECORDER
APPROVED AS TO FORM:

J. MICHAEL BILLINGSLEY, CITY ATTORNEY

MINUTES
BID OPENING
January 28, 2015
4:00 P.M.

Present: Sandy Crawford, Procurement Manager; and Brent Morelock, Assistant Procurement Manager

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

The Procurement Manager opened with the following bids:

RUBBER TIRE WHEEL LOADER					
Vendor:	Qty.:	Unit Cost:	Trade-In Equipment #1382:	Delivery Time:	Make/Model
ASC Construction Equipment	1	\$138,856.00	\$12,000.00	90 Days	Volvo L70H
Heavy Machines	1	\$140,900.00	\$10,000.00	5 Days	Kawasaki 6727
Nortrax	N/A	No Bid	N/A	N/A	N/A
Stowers Machinery	1	\$145,000.00	\$17,000.00	90 Days	Caterpillar 924K
Contractors Machinery	1	\$144,633.00	\$ 8,000.00	140 Days	Case 621RXT
Power Equipment	1	\$158,355.00	\$ 7,000.00	30 Days	2015 Komatsu WA2807

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



FLEET MAINTENANCE DIVISION
City of Kingsport, Tennessee

To: Brent Morelock, Assistant Procurement Manager
From: Steve Hightower, Fleet Manager
Greg Willis, Streets Supervisor
Date: January 29, 2015
Re: Wheel Loader Purchase Recommendation

This will confirm our review and recommendation to purchase the low compliant bid of the following vendor. It is further recommended to accept the Trade-In Offering of \$12,000.

<u>Item</u>	<u>Quantity</u>	<u>Description</u>	<u>Award to Vendor</u>	<u>Fuel Economy</u>
1	1	Volvo L70H	ASC Construction Equipment	2.0 GPH

Low Compliant Bidder

Fuel Economy Improvement and Trade In Information 0%

The unit being replaced has a similar fuel economy rating so no fuel economy improvements will be realized.

One (1) **Fleet Replacement:**

Fleet Unit:	1382 - 1998 Dresser Wheel Loader – Age: 17 Years	2.8 GPH
	Trade Offering: \$12,000	

Origin Information

1. New Unit Origin of Manufacture:
 - a. Wheel Loader Mfg.— Shippensburg, PA
 - i. 73% Domestic/ 27% Foreign Materials
2. New Unit Purchase Dealer:
 - a. Wheel Loader – ASC Construction Equipment – Knoxville, TN

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

Thank you

Delivery Compliance

Delivery and Compliance to Specifications expectations have been added to insure prompt delivery of any vehicle or piece of equipment purchased by the City of Kingsport. Failure of the awarded vendor to deliver on time or correct pre acceptance inspection deficiencies within the allotted time results in a monetary penalty assessed on a daily basis. This process will insure the departments receive their replacement units in a timely manner. Specified time allotted for delivery is 90 days and 15 days to correct inspection deficiencies with a \$50 dollar a day penalty assessed.



Picture for demonstration purposes only and is not the exact product being purchased

From: Willis, Greg
Sent: Thursday, January 29, 2015 2:42 PM
To: Hightower, Steve
Cc: Willis, Greg
Subject: Wheeled Loader Bids

Steve I have reviewed the wheeled loader bids and recommend that we go with the low bid by ASC Construction Equipment (Volvo). The bid was \$138,856.00 with a \$12,000.00 trade in that brings the total to 126,856.00



AGENDA ACTION FORM

Agreements with the Lynn Garden Optimist Club and the Lynn View Pee Wee Football Organization

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

Action Form No.: AF-41-2015
 Work Session: February 16, 2015
 First Reading: N/A

Final Adoption: February 17, 2015
 Staff Work By: Baker, Frazier & Lawson
 Presentation By: Morris Baker

Recommendation:

Approve the resolution.

Executive Summary:

The Board of Mayor and Alderman have passed an agreement the past 4 years with the Lynn Garden Optimist Club and the Lynn View Pee Wee Football League outlining the use of the Athletic Fields and Concessions at Lynn View for youth football and baseball. City Parks and Recreation Staff worked with both groups to come to understandings pertaining to facility use and cooperation. The Optimist Club will continue to conduct the baseball and softball programs, while the Pee Wee Football group will conduct the youth football and cheerleading programs. The Agreements allow the groups to utilize the Lynn View athletic fields during their seasons and continue to provide quality services to the citizens of Kingsport.

Attachments:

1. Resolution for the Lease and Concession Agreement for Lynn Garden Optimist Club
2. Resolution for the Lease and Concession Agreement for the Lynn View Pee Wee Football

	Y	N	O
Clark	—	—	—
George	—	—	—
Hall	—	—	—
McIntire	—	—	—
Parham	—	—	—
Segelhorst	—	—	—
Phillips	—	—	—

RESOLUTION NO. _____

A RESOLUTION AUTHORIZING THE MAYOR EXECUTE
AGREEMENTS WITH THE LYNN GARDEN OPTIMIST CLUB
RELATED TO THE USE OF THE ATHLETIC FIELDS AND
CONCESSION STAND OPERATIONS AT THE LYNN VIEW
COMMUNITY CENTER

WHEREAS, the City of Kingsport purchased the Lynn View Community Center and Athletic Fields from Sullivan County in 2009; and

WHEREAS, on July 6, 2010 the board approved an agreement between the City and the Optimist Club for the use of the athletic fields by the Club for its youth football and softball programs and a concession lease agreement for the youth of the community; and

WHEREAS, the Optimist Club will provide baseball and softball programs for the youth of the community; and

WHEREAS, the football program and concession for that program will be operated by Lynn View Pee Wee Football by a separate agreement with the city;

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, an agreement, substantially in the form as hereinafter set out, with such changes therein as shall be approved by the mayor in consultation with the city attorney along with all other documents necessary and proper to effectuate the purpose of the agreement, for the use of the Lynn Garden Community Center and athletic fields located at 257 Walker Street by the Lynn Garden Optimist Club for the purpose of youth baseball programs, the agreement being as follows:

AGREEMENT
BETWEEN
CITY OF KINGSPORT, TENNESSEE
AND
LYNN GARDEN OPTIMIST CLUB

THIS AGREEMENT made by and entered into as of this 23rd day of February, 2015 by and between the CITY OF KINGSPORT, hereinafter called "CITY", and the LYNN GARDEN OPTIMIST CLUB, (LGOC), hereinafter called "LGOC".

WITNESSETH

WHEREAS, the CITY does not provide a recreational youth SPORTS program at the Lynn View Athletic Fields for the citizens of KINGSPORT; and

WHEREAS, LGOC is a non-profit organization organized to promote youth sports activities through the operation in the Lynn Garden community; and

WHEREAS, LGOC has provided for several years a youth sports program including baseball and softball; and

WHEREAS, the CITY and LGOC wish to formalize an agreement for the utilization of CITY facilities for the purpose of providing a recreational youth sports program; and

WHEREAS, the CITY is the owner of the public park amenities located at 257 Walker Street, and hereafter referred to as the "Facilities"; and

WHEREAS, LGOC and the CITY desire to enter this Agreement for the purpose of evidencing the Agreement of the parties with regard to the use of the Facilities by LGOC and respective obligations contained herein;

NOW, THEREFORE, the premises considered, the parties agree as follows:

I. Term

This Agreement shall be for a term of four (4) months beginning on the date of the execution hereof. Note that there are multiple users of the facilities, and refer to Section III on Use of Facilities for priorities set during term. This agreement may be terminated with or without cause by either party by giving sixty (60) days written notice to the other party.

II. Option to Renew

This Agreement may be renewed at the option but not the obligation of the parties for an additional term, conditioned upon the following:

1. If not in violation of any obligation hereunder, LGOC shall be given the option to renew the Agreement for a like term upon conditions set forth by the City. If LGOC should desire to renew this agreement, it shall do so by giving written notice to City prior to December 1 for the following year.

2. That LGOC shall provide the following information at least 30 days prior to the start of the Spring season:

- Current by-laws for organization
- Proposed budget for upcoming year
- List of current officers and board members with addresses, phone numbers and e-mail (if applicable). CITY is to be notified of changes within two weeks of appointment
- List of officers, recreation program personnel, field coordinators, competitive coaches and Board of Directors members
- List of designated personnel who have facility keys & access.
- Annual calendar including all events

3. LGOC shall provide financial reports of all expenditures and revenues within 90 days after the completion of each playing season.

4. LGOC must comply with the new Tennessee State Law regarding concussions. The new legislation, [Public Chapter 148](#) has three key components:

- To inform and educate coaches, youth athletes and their parents and require them to sign a concussion information form before competing.
- To require removal of a youth athlete who appears to have suffered a concussion from play or practice at the time of the suspected concussion.
- To require a youth athlete to be cleared by a licensed health care professional before returning to play or practice.

The City of Kingsport has developed policies and procedures to insure compliance.

In the event the above information is not timely furnished, this Agreement and/or any extension thereof shall be automatically cancelled without further notice.

III. Use of Facilities

1. LGOC will be the primary youth baseball and softball provider in the Lynn Garden community for the City of Kingsport during the period of March 1, 2015 to June 30, 2015. LGOC shall have the primary right to use the CITY'S Sports Facilities in the Lynn Garden community, as assigned by CITY, during LGOC'S regular Spring recreational seasons, league playoffs and make-up games, and one tournament, without assignment of any associated facility rental fees. At any time the facilities are not being used by LGOC, City may use the facilities for its Parks and Recreation program.

Special Note: There is a 2 week overlap between the end of the baseball/softball season and the beginning of the Pee Wee Football season. Both groups are to work cooperatively to make the transition as smooth as possible. The football cheerleaders are to practice at the Community center during this 2 week overlap or at the upper baseball field.

In addition, the LGOC agrees to work cooperatively with the City on scheduling Special Events such as the Funfest Block Party, Alumni Reunions, and others deemed appropriate for the benefit of the community.

2. LGOC may use a meeting room located at the CITY's Lynn View Community Center for official LGOC monthly board meetings during the term of this Agreement. Scheduling these meetings are to be done through the CITY'S Parks and Recreation Program Coordinator. The CITY will provide space at Lynn View for one end of the year banquet. The reservation of these dates must be made two months in advance and are subject to availability.

3. LGOC may not make any additions and/or alterations to the facility buildings, equipment, grounds, and/or furnishing without written consent from the city of Kingsport.

4. LGOC understands and agrees that at times weather, electrical storms, scheduled maintenance and/or field conditions may result in City denying the use of certain fields on dates for which approval has been granted. LGOC shall use appropriate judgment in insuring the safety of the participants.

5. CITY shall at all times have the right to inspect its Facilities being used by LGOC and all LGOC sponsored activities related to the use of such facilities.

6. If LGOC should desire to use CITY facilities for additional tournaments or special events or programs, LGOC shall make a request to the CITY in accordance with the guidelines established for assigning and scheduling of activities at City sports facilities. Any and all additions, tournaments or special programs shall not be included in this Agreement, but shall require a separate written agreement between the parties.

7. Lynn Garden Optimist Baseball/Softball group will have 5 volunteers designated for the Lynn View Block Party to be held on July, 9 2015 from 4-8pm.

IV. Obligation of the City

CITY agrees to:

1. Provide the following maintenance and oversight for the Sports Fields at Lynn View.

- Perform general maintenance and repairs to the facilities.
- Work with LGOC on maintenance items that could improve operations. At the end of every year the Parks and Recreation Program Coordinator will sit down with each group to discuss future possibilities and maintenance issues for the next year.
- Provide LGOC with contact information for after-hour and everyday needs.
- Determine all rental fees and rules for usage of facility.
- Establish all rules to include facility safety, signage as appropriate, emergency notification process, traffic control, and environmental regulations.
- Establish policy for field lighting usage.
- Provide a plan for and approve all capital improvements with input from LGOC.
- Provide for insurance on buildings.
- Line fields as needed for events and activities assigned to user groups other than LGOC.
- Provide equipment (mower & trimmer) to mow field space within the perimeter fence of the baseball fields. The City will provide an annual maintenance check on the equipment. LGOC is to provide ongoing maintenance to the equipment between March 1 and June 30 of current contract year.
- The City will continue to pay the utilities for the 2015 season. This will be reviewed again after the year and a determination from year to year will be made on what best suits the City and the LGOC.

2. Reserve the right to utilize the Facilities when LGOC league activities are not scheduled. If Facilities are abandoned, the Agreement is terminated. "Abandonment" shall be defined as no competitive play taking place on allocated field(s) during the entire term of the Agreement.

3. Assist LGOC with distribution of information and refer interested parties to LGOC when necessary.

It is understood and agreed the CITY'S obligations under this Agreement will be performed as soon as, and to the extent that, budgeted funds are available for performance of its obligations. If City is unable to fulfill its obligations due to budget restraints, it will not be obligated to LGOC for any monetary damages.

The City and LGOC agree to work together to identify possible revenue sources that will help pay for utilities and maintenance costs.

V. Obligations of LGOC

Through their oversight of the Lynn Garden Baseball and Softball Boards, LGOC agrees to:

1. Provide to the citizens of Greater Kingsport a quality recreational youth sports program that operates with reasonable participant fees and associated services.

2. Background checks must be done on all coaches who are in a leadership role and are left alone with children. The City of Kingsport will provide the Background service that they use for Athletic programs, however the funds to pay for this service must be provided by the LGOC.

3. At no expense to the CITY, provide the following maintenance and repair:

- Maintain all baseball and softball equipment.
- LGOC shall be responsible for daily game day policing of all litter on their field(s) to include playing areas, bleachers, concession stands, offices, maintenance buildings, and adjacent grounds.
- Line all fields for LGOC league and tournament play. The LGOC is also responsible for the provision of the necessary materials to maintain the field and the field markings on a daily basis.

- Mow and trim field space within the perimeter fence of the baseball fields between March 1 and June 30 of current contract year. All mowing and trim after June 30 of current contract year will be responsibility of CITY and PeeWee football.
 - Monitor and clean restroom facility; stock supplies.
 - Adhere to City rules that pertain to field usage and provide input on overuse.
4. Furnish to the Kingsport Parks and Recreation Department calendar of events annually by April 1 for baseball/softball. The schedule may be updated and adjusted as the season progresses and will serve as a guide for maintenance of the Facilities. Any adjustments must be relayed to the Kingsport Parks and Recreation Department.
 5. Schedule and meet with the Kingsport Parks and Recreation Department prior to the season to discuss schedules, field playability and department guidelines and maintain regular communication with CITY staff.
 6. Provide the CITY with specified accident and Incident reports. The City of Kingsport will provide the appropriate forms to use.
 7. Sign a usage agreement annually with the City of Kingsport, Tennessee.
 8. Report any facility maintenance problems to City of Kingsport designated personnel. This must be done in writing by the baseball group and the LGOC. In order to correct those issues it must be made before November for the following year in order to make arrangements with the upcoming budget.
 9. Sign a lease agreement for concession rights and request approval by the CITY for any and all additional concession trailers and follow City, County, and State Health Codes.
 10. Signage or promotional items are to be done in conjunction with the Kingsport Parks and Recreation Manager. Any funds derived would go towards maintenance of the park area as determined by the Parks and Recreation Manager.
 11. Provide the City of Kingsport an agreed upon in-kind match per season for each registered player in the leagues that is a Non-Resident of the City of Kingsport. The in-kind match will be a value mutually agreed upon by the City and LGOC. The City and LGOC will agree on facility upgrade and/or facility improvements for the in-kind match.
 12. Maintain at least a 50% or greater number of City of Kingsport residents as registered participants. Verification of residency percentages shall be made annually to the City of Kingsport. The CITY and LGOC will utilize annual data to determine future percentage goals.
 13. Provide a responsible adult to be on-site at each and every activity scheduled on City facilities.
 14. Agree not to make any permanent changes to facilities or fields without the expressed prior written permission of the Kingsport Parks and Recreation Department.
 15. Adhere to facility rules and regulations which includes proper use and care of lights, grounds, keys, facilities, and amenities.
 16. Follow all Park rules that have been established in the City of Kingsport per code and ordinance as related to the facilities, general operating guidelines, etc.
 17. Assist the City of Kingsport in moving and relocating equipment within the park as necessary.
 18. Allow Ex-Officio representation by Kingsport Parks and Recreation on LGOC Board of Directors.
 19. Conduct only LGOC sanctioned and organized events and activities under the terms of this usage agreement. Personal use of the facility by LGOC members is outside the scope of this agreement.
 20. Not hold the City responsible for damage or loss to LGOC equipment located at the facility unless specifically caused by negligence on the part of the City.
 21. Provide Kingsport Parks and Recreation statistical data pertaining to participation and attendance at the CITY facility on a monthly basis.

VI. Assignment and Exclusivity

This Agreement is a privilege for the benefit of LGOC only and may not be assigned in whole or part by LGOC to any other person or entity. Both parties understand that LGOC'S use of the facility is nonexclusive.

VII. Insurance and Indemnification

LGOC shall at all times during the term of this Agreement maintain in effect general public liability insurance covering the LGOC program at the Facilities against claims for personal injury, death or damage to property to the limit of not less than one-million dollars (\$1,000,000.00). The CITY shall be named as an additional insured on such policy and shall be entitled to thirty (30) days notice of cancellation or changes of any kind regarding such insurance, and certificates of insurance shall be provided by LGOC to the CITY.

LGOC shall indemnify, defend and hold harmless the City of Kingsport, its officers, employees and agents from any and against any and all suits, actions, or claims of every kind or nature whatsoever, foreseen or unforeseen, known or unknown that arises out of, or is any way

related to the acts or the failure to act of LGOC or its agents, volunteers, or employees in the use of the Facilities arising out of obligations of LGOC as set forth in this Agreement.

VIII. Miscellaneous Provisions:

1. No modification of this Agreement shall be effective unless it is made in writing and is signed by the authorized representatives of the parties hereto.
2. This Agreement shall be construed under and in accordance with the laws of the State of Tennessee, and all obligations of the LGOC and the CITY created hereunder are performable in Sullivan County, Tennessee.
3. Nothing in this Agreement shall be construed to make the CITY or its respective agents or representatives liable in situations it is otherwise immune from liability.
4. In case any one or more of the provisions contained in this Agreement shall for any reason be held invalid, illegal or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision thereof and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.
5. Each party represents to the other that the individual signing this Agreement below has been duly authorized to do so by its respective governing body, and that this Agreement is binding and enforceable as to each party.

IN WITNESS WHEREOF, the parties have executed this Agreement on the day and year set forth below:

[Acknowledgements Deleted for Inclusion in this Resolution]

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

SECTION 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 concession lease agreement, substantially in the form as hereinafter set out, with such changes therein as shall be approved by the mayor in consultation with the city attorney along with all other documents necessary and proper to effectuate the purpose of the agreement, to provide concessions at the Lynn Garden Community Center and athletic fields located at 257 Walker Street by the Lynn Garden Optimist Club. The proposed agreement is as follows:

CONCESSION LEASE AGREEMENT

This Agreement made and entered into this 1st day of March, 2015 by and between the City of Kingsport, a municipal corporation of the State of Tennessee, party of the first part, hereinafter called the LESSOR, AND Lynn Garden Optimist Club, hereinafter called the CONCESSIONAIRE.

W-I-T-N-E-S-S-E-T-H

That for and in consideration of its maintenance assistance and league operations, the LESSOR does hereby lease unto the CONCESSIONAIRE for the period of March 1, 2015, through June 30, 2015 the concession rights for the sale of food, refreshments, confectionery and beverages at the fields at 257 Walker Street.

The CONCESSIONAIRE agrees to and shall abide by the following conditions:

The CONCESSIONAIRE will be responsible for furnishing all the equipment, food supplies or other items offered for sale, and any other incidentals necessary for the operation of the concession. He shall be responsible for the maintenance of his equipment to insure that it is in a safe and usable condition at all times. He shall provide at his own cost a sufficient number of employees to serve the public promptly and in a manner satisfactory to the Parks and Recreation Manager. The CONCESSIONAIRE agrees not to sublet or sublease in any form the concession rights as approved by the City. The LGOC has the rights to baseball concessions.

The Parks and Recreation Manager shall approve all items offered under this concession and shall approve all prices charged to the public. Any agreement of pouring rights must receive the approval of the Parks and Recreation Manager.

The CONCESSIONAIRE shall pay 0% of sales to the City of Kingsport.

The CONCESSIONAIRE shall agree to comply with and abide by all rules regulating the operation of the park and the hours of operation of the concession shall coincide with the hours of the park in agreement with the Parks and Recreation Manager.

The CONCESSIONAIRE shall furnish all labor and other materials necessary to maintain the concession in a clean, orderly and inviting condition that shall be satisfactory to the Parks and Recreation Manager; and this shall include the area immediately surrounding the concession area. In addition, at the end of each day, the CONCESSIONAIRE shall be responsible for keeping the designated eating and shelter area free of all trash and litter by placing it in a trash container.

The City will furnish lights, power, and water in such locations where these utilities now exist. All additional installations which require the use of these utilities shall be made and maintained at the expense of the CONCESSIONAIRE and upon the approval of the Parks and Recreation Manager.

Any alterations, repairs, or additions to the building area occupied by the CONCESSIONAIRE must be approved in advance by the Parks and Recreation Manager. The City shall make all ordinary and reasonable repairs to preserve the building occupied by the CONCESSIONAIRE.

It shall be the obligation of the CONCESSIONAIRE to secure or obtain all permits and licenses required by law for the operation of the concession and the sale of approved merchandise. The CONCESSIONAIRE shall comply with all ordinances of the City of Kingsport, Sullivan County, and the State of Tennessee, and shall comply with all applicable State and Federal rules and regulations concerning the serving of food, hours of work, pay and equal employment of personnel without discrimination as to race, color, age or sex.

The City shall have the right of inspection and audit at all times during regular business hours. A violation of any provisions of this contract shall work a forfeiture of this contract, and the City may take possession on a twenty-four (24) hour notice. The CONCESSIONAIRE may voluntarily terminate the contract upon five (5) days written notice to the City.

The CONCESSIONAIRE shall furnish all owners liability insurance, specifically naming the City of Kingsport as co-insured, to defend, indemnify and save harmless the City of Kingsport from any and all claims and suits for injury to persons or property arising out of the performance of this contract caused in any way by the acts or omissions of the CONCESSIONAIRE or the CONCESSIONAIRE'S agents, employees, or representatives during or in connection with this contract excepting bodily injury or death or property damage caused by the sole negligence of the City of Kingsport with the requisite certificate(s) of insurance in compliance herewith.

[Acknowledgements Deleted for Inclusion in this Resolution]

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

SECTION 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 17th day of February, 2015.

DENNIS R. PHILLIPS, MAYOR

ATTEST:

JAMES H. DEMMING, CITY RECORDER
APPROVED AS TO FORM:

J. MICHAEL BILLINGSLEY, CITY ATTORNEY

RESOLUTION NO. _____

A RESOLUTION AUTHORIZING THE MAYOR EXECUTE AGREEMENTS WITH LYNN VIEW PEE WEE FOOTBALL RELATED TO THE USE OF THE ATHLETIC FIELDS AND CONCESSION STAND OPERATIONS AT THE LYNN VIEW COMMUNITY CENTER

WHEREAS, the City of Kingsport purchased the Lynn View Community Center and Athletic Fields from Sullivan County in 2009; and

WHEREAS, on July 6, 2010 the board approved an agreement between the City and the Optimist Club for the use of the Club by the youth football program to allow the Lynn View Pee Wee Football to conduct football programs and a concession lease agreement for the youth of the community;

WHEREAS, the agreement with the Lynn Garden Optimist Club previously included the Lynn View Pee Wee Football; and

WHEREAS, by agreement of both the Lynn Garden Optimist Club and Lynn View Pee Wee Football, Lynn View Pee Wee Football has a separate lease agreement and concession agreement with the city for the use of the Lynn view Athletic fields.

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, an Agreement, substantially in the form as hereinafter set out, with such changes therein as shall be approved by the mayor in consultation with the city attorney along with all other documents necessary and proper to effectuate the purpose of the agreement, for the use of the Lynn Garden Community Center and athletic fields located at 257 Walker Street by the Lynn View Pee Wee Football for the purpose of youth football programs. The proposed agreement is as follows:

AGREEMENT
BETWEEN
CITY OF KINGSPORT, TENNESSEE
AND
LYNN VIEW PEE WEE FOOTBALL LEAGUE

THIS AGREEMENT made by and entered into as of this 23rd day of February, 2015 by and between the CITY OF KINGSPORT, hereinafter called "CITY", and the LYNN VIEW PEE WEE FOOTBALL LEAGUE, (LVPWFL), hereinafter called "LVPWFL".

WITNESSETH

WHEREAS, the CITY does not provide a recreational youth SPORTS program at the Lynn View Athletic Fields for the citizens of KINGSPORT; and

WHEREAS, LVPWFL is a non-profit organization organized to promote youth sports activities through the operation in the Lynn Garden community; and

WHEREAS, LVPWFL has provided for several years a youth sports program including baseball and softball; and

WHEREAS, the CITY and LVPWFL wish to formalize an agreement for the utilization of CITY facilities for the purpose of providing a recreational youth sports program; and

WHEREAS, the CITY is the owner of the public park amenities located at 257 Walker Street, and hereafter referred to as the "Facilities"; and

WHEREAS, LVPWFL and the CITY desire to enter this Agreement for the purpose of evidencing the Agreement of the parties with regard to the use of the Facilities by LVPWFL and respective obligations contained herein;

NOW, THEREFORE, the premises considered, the parties agree as follows:

I. Term

This Agreement shall be for a term of twelve (12) months beginning on the date of the execution hereof. Note that there are multiple users of the facilities, and refer to Section III on Use of Facilities for priorities set during term. This agreement may be terminated with or without cause by either party by giving sixty (60) days written notice to the other party.

II. Option to Renew

This Agreement may be renewed at the option but not the obligation of the parties for an additional term, conditioned upon the following:

1. If not in violation of any obligation hereunder, LVPWFL shall be given the option to renew the Agreement for a like term upon conditions set forth by the City. If LVPWFL should desire to renew this agreement, it shall do so by giving written notice to City prior to December 1 for the following year.

2. That LGOC shall provide the following information at least 30 days prior to the start of the Spring season:

- Current by-laws for organization
- Proposed budget for upcoming year
- List of current officers and board members with addresses, phone numbers and e-mail (if applicable). CITY is to be notified of changes within two weeks of appointment
- List of officers, recreation program personnel, field coordinators, competitive coaches and Board of Directors members
- List of designated personnel who have facility keys & access.
- Annual calendar including all events

3. LVPWFL shall provide financial reports of all expenditures and revenues within 90 days after the completion of each playing season.

4. LVPWFL must comply with the new Tennessee State Law regarding concussions. The new legislation, Public Chapter 148 has three key components:

1. To inform and educate coaches, youth athletes and their parents and require them to sign a concussion information form before competing.
2. To require removal of a youth athlete who appears to have suffered a concussion from play or practice at the time of the suspected concussion.
3. To require a youth athlete to be cleared by a licensed health care professional before returning to play or practice.

The City of Kingsport has developed policies and procedures to insure compliance.

In the event the above information is not timely furnished, this Agreement and/or any extension thereof shall be automatically cancelled without further notice.

III. Use of Facilities

1. LVPWFL will be the primary youth football provider in the Lynn Garden community for the City of Kingsport during the period of June 15, 2015 to Dec.1, 2015. LVPWFL shall have the primary right to use the CITY'S Sports Facilities in the Lynn Garden community, as assigned by CITY, during LVPWFL regular Spring recreational seasons, league playoffs and make-up games, and one tournament, without assignment of any associated facility rental fees. At any time the facilities are not being used by LVPWFL, City may use the facilities for its Parks and Recreation program.

Special Note: There is a 2 week overlap between the end of the baseball/softball season and the beginning of the Pee Wee Football season. Both groups are to work cooperatively to make the transition as smooth as possible. The football cheerleaders are to practice at the Community center during this 2 week overlap or at the upper baseball field.

In addition, the LVPWFL agrees to work cooperatively with the City on scheduling Special Events such as the Funfest Block Party, Alumni Reunions, and others deemed appropriate for the benefit of the community.

2. LVPWFL may use a meeting room located at the CITY's Lynn View Community Center for official LVPWFL monthly board meetings during the term of this Agreement. Scheduling these meetings are to be done through the CITY'S Parks and Recreation Program Coordinator. The CITY will provide space at Lynn View for one end of the year banquet. The reservation of these dates must be made two months in advance and are subject to availability.

3. LVPWFL may not make any additions and/or alterations to the facility buildings, equipment, grounds, and/or furnishing without written consent from the city of Kingsport.
4. LVPWFL understands and agrees that at times weather, electrical storms, scheduled maintenance and/or field conditions may result in City denying the use of certain fields on dates for which approval has been granted. LVPWFL shall use appropriate judgment in insuring the safety of the participants.
5. CITY shall at all times have the right to inspect its Facilities being used by LVPWFL and all LVPWFL sponsored activities related to the use of such facilities.
6. If LVPWFL should desire to use CITY facilities for additional tournaments or special events or programs, LVPWFL shall make a request to the CITY in accordance with the guidelines established for assigning and scheduling of activities at City sports facilities. Any and all additions, tournaments or special programs shall not be included in this Agreement, but shall require a separate written agreement between the parties.
7. LVPWFL will have 5 volunteers designated for the Lynn View Block Party to be held on July, 9 2015 from 4-8pm.

IV. Obligation of the City

CITY agrees to:

1. Provide the following maintenance and oversight for the Sports Fields at Lynn View.
 - Perform general maintenance and repairs to the facilities.
 - Work with LVPWFL on maintenance items that could improve operations. At the end of every year the Parks and Recreation Program Coordinator will sit down with each group to discuss future possibilities and maintenance issues for the next year.
 - Provide LVPWFL with contact information for after-hour and everyday needs.
 - Determine all rental fees and rules for usage of facility.
 - Establish all rules to include facility safety, signage as appropriate, emergency notification process, traffic control, and environmental regulations.
 - Provide 1 username/password for the Musco lights at the football stadium for use during extended hours of need.
 - Establish policy for field lighting usage.
 - Provide a plan for and approve all capital improvements with input from LVPWFL.
 - Provide for insurance on buildings.
 - Line fields as needed for events and activities assigned to user groups other than LVPWFL.
 - Provide equipment (mower & trimmer) to mow field space within the perimeter fence of the baseball fields. The City will provide an annual maintenance check on the equipment. LVPWFL is to provide ongoing maintenance to the equipment between June 15 and Dec 1 of current contract year.
 - The City will continue to pay the utilities for the 2015 season. This will be reviewed again after the year and a determination from year to year will be made on what best suits the City and the LVPWFL.
2. Reserve the right to utilize the Facilities when LVPWFL league activities are not scheduled. If Facilities are abandoned, the Agreement is terminated. "Abandonment" shall be defined as no competitive play taking place on allocated field(s) during the entire term of the Agreement.
3. Assist LVPWFL with distribution of information and refer interested parties to LVPWFL when necessary.

It is understood and agreed the CITY'S obligations under this Agreement will be performed as soon as, and to the extent that, budgeted funds are available for performance of its obligations. If City is unable to fulfill its obligations due to budget restraints, it will not be obligated to LVPWFL for any monetary damages.

The City and LVPWFL agree to work together to identify possible revenue sources that will help pay for utilities and maintenance costs.

V. Obligations of LVPWFL

Through their oversight of the Lynn View Pee Wee Football Board, LVPWFL agrees to:

1. Provide to the citizens of Greater Kingsport a quality recreational youth sports program that operates with reasonable participant fees and associated services.
2. Background checks must be done on all coaches who are in a leadership role and are left alone with children. The City of Kingsport will provide the Background service that they use for Athletic programs, however the funds to pay for this service must be provided by the LVPWFL.
3. At no expense to the CITY, provide the following maintenance and repair:
 - Maintain all Football equipment.

- LVPWFL shall be responsible for daily game day policing of all litter on their field(s) to include playing areas, bleachers, concession stands, offices, maintenance buildings, and adjacent grounds.
 - Line all fields for LVPWFL league and tournament play. The LVPWFL is also responsible for the provision of the necessary materials to maintain the field and the field markings on a daily basis.
 - Mow and trim field space within the perimeter fence of the football field and baseball lower field between June 15 and Dec.1 of current contract year. Monitor and clean restroom facility; stock supplies.
 - Adhere to City rules that pertain to field usage and provide input on overuse.
4. Furnish to the Kingsport Parks and Recreation Department calendar of events annually by May 1 for baseball/softball. The schedule may be updated and adjusted as the season progresses and will serve as a guide for maintenance of the Facilities. Any adjustments must be relayed to the Kingsport Parks and Recreation Department.
 5. Schedule and meet with the Kingsport Parks and Recreation Department prior to the season to discuss schedules, field playability and department guidelines and maintain regular communication with CITY staff.
 6. Provide the CITY with specified accident and Incident reports. The City of Kingsport will provide the appropriate forms to use.
 7. Sign a usage agreement annually with the City of Kingsport, Tennessee.
 8. Report any facility maintenance problems to City of Kingsport designated personnel. This must be done in writing by the baseball group and the LVPWFL. In order to correct those issues it must be made before November for the following year in order to make arrangements with the upcoming budget.
 9. Sign a lease agreement for concession rights and request approval by the CITY for any and all additional concession trailers and follow City, County, and State Health Codes.
 10. Signage or promotional items are to be done in conjunction with the Kingsport Parks and Recreation Manager. Any funds derived would go towards maintenance of the park area as determined by the Parks and Recreation Manager.
 11. Provide the City of Kingsport an agreed upon in-kind match per season for each registered player in the leagues that is a Non-Resident of the City of Kingsport. The in-kind match will be a value mutually agreed upon by the City and LVPWFL. The mowing of the facility has been used for the in kind match.
 12. Maintain at least a 50% or greater number of City of Kingsport residents as registered participants. Verification of residency percentages shall be made annually to the City of Kingsport. The CITY and LVPWFL will utilize annual data to determine future percentage goals.
 13. Provide a responsible adult to be on-site at each and every activity scheduled on City facilities.
 14. Agree not to make any permanent changes to facilities or fields without the expressed prior written permission of the Kingsport Parks and Recreation Department.
 15. Adhere to facility rules and regulations which includes proper use and care of lights, grounds, keys, facilities, and amenities.
 16. Follow all Park rules that have been established in the City of Kingsport per code and ordinance as related to the facilities, general operating guidelines, etc.
 17. Assist the City of Kingsport in moving and relocating equipment within the park as necessary.
 18. Allow Ex-Officio representation by Kingsport Parks and Recreation on LVPWFL Board of Directors.
 19. Conduct only LVPWFL sanctioned and organized events and activities under the terms of this usage agreement. Personal use of the facility by LVPWFL members is outside the scope of this agreement.
 20. Not hold the City responsible for damage or loss to LVPWFL equipment located at the facility unless specifically caused by negligence on the part of the City.
 21. Provide Kingsport Parks and Recreation statistical data pertaining to participation and attendance at the CITY facility on a monthly basis.

VI. Assignment and Exclusivity

This Agreement is a privilege for the benefit of LVPWFL only and may not be assigned in whole or part by LVPWFL to any other person or entity. Both parties understand that LVPWFL use of the facility is nonexclusive.

VII. Insurance and Indemnification

LVPWFL shall at all times during the term of this Agreement maintain in effect general public liability insurance covering the LVPWFL program at the Facilities against claims for personal

injury, death or damage to property to the limit of not less than one-million dollars (\$1,000,000.00). The CITY shall be named as an additional insured on such policy and shall be entitled to thirty (30) days notice of cancellation or changes of any kind regarding such insurance, and certificates of insurance shall be provided by LVPWFL to the CITY.

LVPWFL shall indemnify, defend and hold harmless the City of Kingsport, its officers, employees and agents from any and against any and all suits, actions, or claims of every kind or nature whatsoever, foreseen or unforeseen, known or unknown that arises out of, or is any way related to the acts or the failure to act of LVPWFL or its agents, volunteers, or employees in the use of the Facilities arising out of obligations of LVPWFL as set forth in this Agreement.

VIII. Miscellaneous Provisions:

1. No modification of this Agreement shall be effective unless it is made in writing and is signed by the authorized representatives of the parties hereto.

2. This Agreement shall be construed under and in accordance with the laws of the State of Tennessee, and all obligations of the LVPWFL and the CITY created hereunder are performable in Sullivan County, Tennessee.

3. Nothing in this Agreement shall be construed to make the CITY or its respective agents or representatives liable in situations it is otherwise immune from liability.

4. In case any one or more of the provisions contained in this Agreement shall for any reason be held invalid, illegal or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision thereof and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

5. Each party represents to the other that the individual signing this Agreement below has been duly authorized to do so by its respective governing body, and that this Agreement is binding and enforceable as to each party.

IN WITNESS WHEREOF, the parties have executed this Agreement on the day and year set forth below:

[Acknowledgements Deleted for Inclusion in this Resolution]

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

SECTION 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 concession lease agreement, substantially in the form as hereinafter set out, with such changes therein as shall be approved by the mayor in consultation with the city attorney along with all other documents necessary and proper to effectuate the purpose of the agreement, to provide concessions at the Lynn Garden Community Center and athletic fields located at 257 Walker Street by the Lynn View Pee Wee Football. The proposed agreement is as follows:

CONCESSION LEASE AGREEMENT

This Agreement made and entered into this 24th day of January, 2015 by and between the City of Kingsport, a municipal corporation of the State of Tennessee, party of the first part, hereinafter called the LESSOR, AND Lynn View Pee Wee Football League, hereinafter called the CONCESSIONAIRE.

W-I-T-N-E-S-S-E-T-H

That for and in consideration of its maintenance assistance and league operations, the LESSOR does hereby lease unto the CONCESSIONAIRE for the period of June 15, 2015, through Dec. 1, 2015 the concession rights for the sale of food, refreshments, confectionery and beverages at the fields at 257 Walker Street.

The CONCESSIONAIRE agrees to and shall abide by the following conditions:
The CONCESSIONAIRE will be responsible for furnishing all the equipment, food supplies or other items offered for sale, and any other incidentals necessary for the operation of the concession. He shall be responsible for the maintenance of his equipment to insure that it is in a safe and usable condition at all times. He shall provide at his own cost a sufficient number of employees to serve the public promptly and in a manner satisfactory to the Parks and Recreation

Manager. The CONCESSIONAIRE agrees not to sublet or sublease in any form the concession rights as approved by the City. The LVPWFL has the rights to football concessions.

The Parks and Recreation Manager shall approve all items offered under this concession and shall approve all prices charged to the public. Any agreement of pouring rights must receive the approval of the Parks and Recreation Manager.

The CONCESSIONAIRE shall pay 0% of sales to the City of Kingsport.

The CONCESSIONAIRE shall agree to comply with and abide by all rules regulating the operation of the park and the hours of operation of the concession shall coincide with the hours of the park in agreement with the Parks and Recreation Manager.

The CONCESSIONAIRE shall furnish all labor and other materials necessary to maintain the concession in a clean, orderly and inviting condition that shall be satisfactory to the Parks and Recreation Manager; and this shall include the area immediately surrounding the concession area. In addition, at the end of each day, the CONCESSIONAIRE shall be responsible for keeping the designated eating and shelter area free of all trash and litter by placing it in a trash container.

The City will furnish lights, power, and water in such locations where these utilities now exist. All additional installations which require the use of these utilities shall be made and maintained at the expense of the CONCESSIONAIRE and upon the approval of the Parks and Recreation Manager.

Any alterations, repairs, or additions to the building area occupied by the CONCESSIONAIRE must be approved in advance by the Parks and Recreation Manager. The City shall make all ordinary and reasonable repairs to preserve the building occupied by the CONCESSIONAIRE.

It shall be the obligation of the CONCESSIONAIRE to secure or obtain all permits and licenses required by law for the operation of the concession and the sale of approved merchandise. The CONCESSIONAIRE shall comply with all ordinances of the City of Kingsport, Sullivan County, and the State of Tennessee, and shall comply with all applicable State and Federal rules and regulations concerning the serving of food, hours of work, pay and equal employment of personnel without discrimination as to race, color, age or sex.

The City shall have the right of inspection and audit at all times during regular business hours. A violation of any provisions of this contract shall work a forfeiture of this contract, and the City may take possession on a twenty-four (24) hour notice. The CONCESSIONAIRE may voluntarily terminate the contract upon five (5) days written notice to the City.

The CONCESSIONAIRE shall furnish all owners liability insurance, specifically naming the City of Kingsport as co-insured, to defend, indemnify and save harmless the City of Kingsport from any and all claims and suits for injury to persons or property arising out of the performance of this contract caused in any way by the acts or omissions of the CONCESSIONAIRE or the CONCESSIONAIRE'S agents, employees, or representatives during or in connection with this contract excepting bodily injury or death or property damage caused by the sole negligence of the City of Kingsport with the requisite certificate(s) of insurance in compliance herewith.

[Acknowledgements Deleted for Inclusion in this Resolution]

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

SECTION 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 17th day of February, 2015.

DENNIS R. PHILLIPS, MAYOR

ATTEST:

JAMES H. DEMMING, CITY RECORDER

APPROVED AS TO FORM:

J. MICHAEL BILLINGSLEY, CITY ATTORNEY



AGENDA ACTION FORM

Property Acquisition for the Kingsport City School System

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

Action Form No.: AF-44-2015
Work Session: February 16, 2015
First Reading: N/A

Final Adoption: February 17, 2015
Staff Work By: R. Trent, D. Frye
Presentation By: D. Frye

Recommendation:

Approve the resolution to approve the offer.

Executive Summary:

In order to fulfill the Kingsport Board of Education's long range facilities plans, it has requested that the Superintendent of Schools, Dr. Lyle Ailshie, take the steps necessary to purchase the property located at 2316 Overlook Road. An appraisal of the acquisition was prepared in accordance with the City of Kingsport's Real Property Acquisition Policies & Procedures and the property appraised for \$35,000.00. The owner of the property, Margie Mae Perry, is willing to sell the property to the city for the amount of \$38,500.00. A copy of the Purchase Agreement is contained in the attached resolution.

This project will be funded under #141-7650-871-0715.

Attachments:

1. Resolution
2. Map of 2316 Overlook Road

Funding source appropriate and funds are available: je

	Y	N	O
Clark	—	—	—
George	—	—	—
Hall	—	—	—
McIntire	—	—	—
Parham	—	—	—
Segelhorst	—	—	—
Phillips	—	—	—

RESOLUTION NO. _____

A RESOLUTION APPROVING AN OFFER FOR THE PURCHASE OF REAL PROPERTY LOCATED AT 2316 OVERLOOK ROAD; AUTHORIZING THE MAYOR TO MAKE CERTAIN CHANGES TO THE AGREEMENT, IF NECESSARY; AND AUTHORIZING THE MAYOR TO EXECUTE AN AGREEMENT AND ALL OTHER DOCUMENTS NECESSARY AND PROPER TO EFFECTUATE THE PURPOSE OF THIS RESOLUTION

WHEREAS, the city has the opportunity to purchase the real property located at 2316 Overlook Road to fulfill the Kingsport Board of Education's long range facility plans; and

WHEREAS, such acquisition would be in accordance with the city's acquisition policy.

Now therefore,

BE IT RESOLVED BY THE BOARD OF MAYOR AND ALDERMEN as follows:

SECTION I. That pursuant to the appraisal of property indicating the fair market value, an offer of \$38,500.00 is approved for the purchase of the property located at 2316 Overlook Road, subject to such conditions as set out in the Purchase Agreement below for use by the city school system.

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 Purchase Agreement for 2316 Overlook Road, 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 draft of the agreement being as follows:

AGREEMENT

THIS PURCHASE AGREEMENT (herein "Agreement") made and entered into on the date of the notary acknowledgment of the Seller's signature between **MARGIE MAE PERRY**, (hereinafter referred to as the "Seller"), and **THE CITY OF KINGSFORT, TENNESSEE**, a municipality organized under the laws of the State of Tennessee (hereinafter referred to as the "Buyer").

WITNESSETH:

FOR AND IN CONSIDERATION of the sum of Ten Dollars (\$10.00) and other good and valuable consideration, including specifically, without limitation, the receipt and sufficiency of which are hereby acknowledged, and in consideration of the mutual covenants contained herein, the parties hereby agree as follows:

1. SALE. Seller agrees to sell, convey, assign, transfer and deliver to Buyer, and Buyer agrees to purchase, acquire and take from Seller, subject to the terms and conditions of this Agreement all that real property situate, lying and located at 2316 Overlook Road, Kingsport, Sullivan County, Tennessee, known as Tax Map 047P; Group C; Parcel 023.00, more particularly described on Exhibit A attached hereto and hereby made a part hereof, together with all improvements and fixtures situated thereon, if any, and also together with all hereditments and appurtenances thereunto belonging or in any way appertaining (the "Real Property").

2. PURCHASE PRICE.

(a) **Amount.** The purchase price to be paid by Buyer to Seller for the Real Property shall be Thirty Eight Thousand Five Hundred and No/100 Dollars (\$38,500.00) (the "Purchase Price").

(b) **Terms of Payment.** Subject to the adjustment provided for herein the Purchase Price, less the prorated property taxes as of the date of closing, shall be paid by Buyer to Seller in cash or certified funds payable to Seller on the Closing Date.

3. CLOSING. The closing shall occur on or before May 1, 2015, (the "Closing Date"), at a time and location mutually agreed upon by the parties or, upon failure of the parties to agree, at a time and place specified by the Buyer (the "Closing"). Buyer and Seller agrees to deliver and execute such other documents as may be reasonable and necessary in the opinion of counsel for Seller and Buyer to consummate and close the purchase and sale contemplated herein pursuant to the terms and provisions hereof.

4. SURVEY. Immediately upon the execution of this Agreement, Buyer shall, at Buyer's cost, cause a survey and surveyor's certificate, in form sufficient to remove the survey exception from the title insurance binder as more specifically provided in Section 5 hereof, to be prepared on the Real Property by a licensed surveyor acceptable to Buyer. The survey shall be made in accordance with the Minimum Standard Detail Requirements for ALTA/ACSM Land Title surveys for a Class A survey. Such survey shall show the total area of the Real Property in square feet, easements, if any, location of adjoining streets and rights of way, building setback lines, and such other details as may be required by Buyer. Once prepared, the survey description will replace Exhibit A and will become a part of this Agreement identified as Exhibit A-1, and such survey description shall be insurable (and shall be insured) by the title insurance company. If the survey (i) is for good cause not acceptable to Buyer's title insurance company; or (ii) shows the dimensions of the Real Property to be other than as set forth on Exhibit A; or (iii) shows any materially adverse conditions or matters affecting the Real Property which are not approved by Buyer, then Buyer, within twenty (20) days from receipt of such survey, shall notify Sellers in writing of Buyer's objections to the survey and Seller shall thereupon have twenty (20) days to remove or cure such objections to the satisfaction of the Buyer and the title company. If Seller fails to satisfy such objections with the time specified, Buyer shall have the right to (i) terminate this Agreement; (ii) extend the time period for removing or curing any objectionable item by written notice to Sellers; or (iii) close this purchase and sale without reduction in the Purchase Price.

5. TITLE INSURANCE. Buyer, at its expense, shall secure an owner's title insurance commitment to issue a title insurance policy insuring Buyer's fee simple interest in the Real Property to the extent of the Purchase Price. The title insurance commitment will be issued by a reputable title insurance company chosen by Buyer and will contain exceptions only for real estate taxes and assessments for the current year which are not yet due and payable, and any other exceptions Buyer may approve in writing. If the commitment contains other exceptions, not acceptable to Buyer, then Buyer shall so notify Seller of such exceptions within twenty (20) days of Buyer's receipt of the commitment, and Seller shall have twenty (20) days from receipt of the Buyer's objections, to resolve such exceptions to the satisfaction of the Buyer. If Seller is unable to cure or resolve such exceptions to Buyer's satisfaction within the time specified, Buyer shall have the right to terminate this Agreement, extend the cure period, or proceed to close this Agreement. In the event Buyer elects to terminate this Agreement pursuant to this Section 5, then this Agreement shall be cancelled and thereafter neither Seller nor Buyer shall have any continuing obligation to each other under this Agreement.

6. DEED AND TITLE.

(a) Seller hereby agree to convey to Buyer a good and marketable fee simple title to the Real Property, without exceptions, except as expressly provided herein, by a good and valid general warranty deed, in statutory form, suitable for recordation. Title to the Real Property shall not be subject to any easements, encumbrances or other exceptions which Buyer, in its sole discretion, deems unacceptable.

(b) In the event, as of the Closing Date, Seller is unable to convey marketable title to the Real Property due to defects in Seller's title, or Seller is unable to convey title due to exceptions Buyer finds unacceptable, then Closing shall be postponed for a reasonable period of time not to exceed 30 days until Seller shall remove said title defects or exceptions. If Seller is unable to cure such title defects or exceptions within said 30 days, this Agreement shall be null and void and there shall be no further obligations between the parties. If Buyer shall waive such title defects or exceptions by so notifying the Seller in writing, or if Seller shall have cured such defects or exceptions, as provided herein, the obligations of the parties hereunder shall not be affected by reason thereof, there shall be no abatement or reduction of the Purchase Price, and this transaction shall be consummated in accordance with the terms and provisions of this Agreement,

except that such title defects or exceptions that are waived by Buyer, if any, shall be set forth as exceptions in the deed.

7. CONDITION OF PROPERTY. There has been no storage, disposal, treatment or release of hazardous substances during the period of Seller's ownership, and to the best of Seller's knowledge, the Real Property has not been used, and is not presently being used, and will not through the Closing Date, be used for the storage or disposal of hazardous substances. (The term "hazardous substances" shall have the broadest meaning given under applicable state and federal law, including without limitation that given in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. section 9601 et seq.) Seller is not aware of any facts, conditions or circumstances indicating any form of environmental contamination affecting any properties which are adjacent to the Real Property. There are no encumbrances, liens, or charges of any kind upon the Real Property that will not be satisfied and discharges in full by Seller and released at or before Closing in a form satisfactory to Buyer. There are no contracts, agreements, or arrangements relating to the use and operation of the Real Property not disclosed herein. Seller represents that there is no pending or threatened litigation that does or will materially and adversely affect the Real Property or its value.

8. CONDITIONS PRECEDENT.

Buyer's obligations pursuant to this Agreement are contingent upon and subject to the satisfaction, as of Closing, of each of the following conditions (any of which may be waived in whole or in part in writing by the Buyer at, or prior to Closing):

(1) The results of the title examination report and title insurance commitment described in Section 5 shall be acceptable to Buyer in its sole discretion as of Closing. There shall be no change in the matters reflected in the title insurance commitment described in Section 5 hereof, and there shall not exist any encumbrances or title defects affecting the Real Property not described in such title insurance commitment.

(2) All of the representations, warranties and conditions of Seller set forth in this Agreement shall be true and correct as of the date hereof, and as of the Closing Date, and Seller shall not, on or prior to Closing, have failed to meet, comply with or perform any conditions or obligations on Seller's part required by the terms of this Agreement.

(3) There shall be no change in the matters reflected in the survey described in Section 4 hereof, and there shall not exist any easement, right of way, encroachment, waterway, pond, flood plain, conflict, or a protrusion with respect to the Real Property not shown on the survey.

If any condition specified in this Section 8 is not fully satisfied by Closing, or any extension thereof pursuant to this Agreement, Buyer may, at its option, waive such unsatisfactory condition precedent and consummate this Agreement, or may terminate this Agreement by written notice to Seller, this Agreement shall be cancelled and thereafter neither Seller nor Buyer shall have any continuing obligation to each other under this Agreement. It shall be the right of the Buyer at its sole discretion and upon written notice to the Seller to terminate this Agreement at any time prior to the closing of the property if it shall deem the property not suitable for its needs, and upon such termination, this Agreement shall be cancelled and thereafter neither Seller nor Buyer shall have any continuing obligation to each other under this Agreement.

9. NOTICE. Any notice or demand on either party hereunder shall be deemed to have been given when mailed to the other party by Certified Mail, Return Receipt Requested, postage prepaid at the addresses set forth below:

SELLER:	Margie Mae Perry 2316 Overlook Road Kingsport, Tennessee 37664
BUYER:	City of Kingsport, Tennessee 225 West Center Street Kingsport, Tennessee 37660 Attention: J. Michael Billingsley

10. PRORATIONS. All real estate taxes and assessments shall be prorated as of the Closing Date, using for such purpose the rate and valuation shown on the latest available tax notice.

11. EXPENSES OF SELLER. In closing this transaction, Seller shall be charged with the following:

- (a) The cost of preparation of the warranty deed;
- (b) The fees and expenses of any attorney or other advisor engaged by Seller in connection with this transaction;

- (c) The commission or fees charged by any real estate broker or agent retained or used by the Seller in connection with this transaction; and
- (d) All expenses incurred in connection with the release of any prior existing indebtedness, including without limitation any prepayment penalties; and
- (e) Prorated taxes.

12. EXPENSES OF BUYER. In closing this transaction, Buyer shall be charged with the following:

- (a) The cost of any title search and title insurance policy;
- (b) The cost of recording the deed and any transfer tax associated with such deed;
- (c) Any fees charged in connection with any attorney or other advisor engaged by Buyer in connection with this transaction; and
- (d) The cost of the survey provided pursuant to Section 4.

13. RISK OF LOSS. The risk of loss or damage to any of the Real Property described above by fire, vandalism, or other casualty shall remain with the Seller until Closing. In the event of such loss before Closing, this Agreement shall be voidable at the option of Buyer. Should Buyer elect to continue with the purchase following such loss or damage before Closing, Buyer shall have the option to (a) negotiate an equitable reduction in the Purchase Price or (b) close this Agreement at the stated Purchase Price and accept all insurance funds and other monies payable to Seller regarding such loss or damage. If action is necessary to recover under any casualty policy, Seller shall cooperate with Buyer in bringing such action in Seller's name and Seller shall reimburse Buyer for the attorney's fees and other expenses incurred by Buyer to pursue such claim.

14. TIME IS OF THE ESSENCE. Time is of the essence to the performance of this Agreement.

15. MERGER CLAUSE. All understandings and agreements heretofore had between the parties are merged in this Agreement, which alone fully and completely expresses their agreement, and the same is entered into after full investigation, neither party relying upon any statement, representation, express or implied warranties, guarantees, promises, statements, "setups", representation, or information, not embodied in this Agreement, made by the other, or by any agent, employee, servant, or other person representing or purporting to represent the Sellers. This Agreement contains the full agreement between the parties and there are no other contracts, express or implied, which are not stated herein.

16. POSSESSION. Delivery of possession of the Real Property shall occur at Closing.

17. CAPTIONS. The section headings or captions appearing in this Agreement are for convenience only, are not a part of this Agreement and are not to be considered in interpreting this Agreement.

18. ENTIRE AGREEMENT; MODIFICATIONS. This written Agreement constitutes the entire and complete agreement between the parties hereto and supersedes any prior oral or written agreements between the parties with respect to the Real Property. It is expressly agreed that there are no verbal understandings or agreements which in any way change the terms, covenants and conditions herein set forth, and that no modification of this Agreement and no waiver of any of its terms and conditions shall be effective unless in writing and duly executed by the parties hereto.

19. CONTROLLING LAW; VENUE. This Agreement has been made and entered into under the laws of the State of Tennessee, and said laws shall control the interpretation thereof. Venue for any litigation concerning this Agreement shall be filed in the state or federal courts for Sullivan County, Tennessee.

20. BINDING EFFECT. All covenants, agreements, warranties and provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

21. FURTHER ACTS. Each party hereto agrees to do, execute, acknowledge and deliver all such further acts, assignments, transfers, assurances and instruments that may reasonably be required to fully effectuate the transactions contemplated in this Agreement.

IN WITNESS WHEREOF, the parties have hereunto set their hands in duplicate originals the day and year first written above.

[Acknowledgements Deleted for Inclusion in this Resolution]

EXHIBIT A

Description of Real Property

Situate, lying and being in the 11th Civil District of Sullivan County, Tennessee, and more particularly described as follows:

Parcel 1

BEGINNING at an iron pin on the northerly aide of Bloomingdale Avenue approximately 1 foot west of the southwesterly corner of the garage located on the property herein described and an agreed corner for the property herein described and Jen0 property. Thence a new line and parallel with the original lot line of Lots 14 and 15, N. 15° 15' E. 238.21 feet to a point on the line of Mettle Sue Arnold property. Thence with the said Arnold property S. 78° 22' E. 88.4 feet to a post on the line of the property of William L. Jones, an agreed corner. Thence with an agreed line between the property of said Jones and the property herein described S. 10° 33' W. 267.8 feet to an iron pin on the northerly side of Bloomingdale Avenue, an agreed corner, said iron pin being S. 34° 42' E. 16.4 feet from the southeasterly corner of the house on the property herein described. Thence with the northerly side of said Bloomingdale Avenue N. 74° 45' W. 106 feet to the point of BEGINNING, and being a portion of Lot 14 and parts of Lots 13 and 15 in Block 18 of the Kingsport Heights Addition to Kingsport, Tennessee.

Parcel 2

BEGINNING at a point on the northerly side of Bloomingdale Avenue approximately 1 foot west of the garage on the property above described, an agreed corner for the Jen0 property. Thence, a new line, being the fence line N. 4° 55' E. 257.6 feet to a post on the line of the Wright property, and an agreed corner. Thence a new line with Arnold property S. 78° 22' E. 41.6 feet to a point. Thence with the westerly line of the property first above described S. 15° 15' W. 238.21 feet to an iron pin on the northerly side of Bloomingdale Avenue, the point of BEGINNING, and being a portion of Lot 15 in Block 18 of Kingsport Heights Addition, to Kingsport, Tennessee. And being property shown on map of record in the Register's Office for Sullivan County at Blountville, Tennessee, in Deed Book 165 at page 500, and on survey by Hugh E. Alley, dated July 18, 1946, of record in said Register's Office in Map Book 2 at page 219; and being the same property conveyed to the Grantor and Grantee by Henry Gilreath and Mildred Gilreath, his wife, by deed of record in the Register's Office for Sullivan County at Blountville, Tennessee, in Deed Book 62C at page 624.

Tax Map 047P; Group C; Parcel 023.00

SECTION III. That the Mayor is further authorized to make such changes, approved by the mayor and 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 VI. That the board finds that the actions authorized by this resolution are for a public purpose and will promote the health, comfort and prosperity of the citizens of the city.

SECTION VII. That this resolution shall take effect immediately upon its adoption, the public welfare requiring it.

ADOPTED this the 17th day of February, 2015.

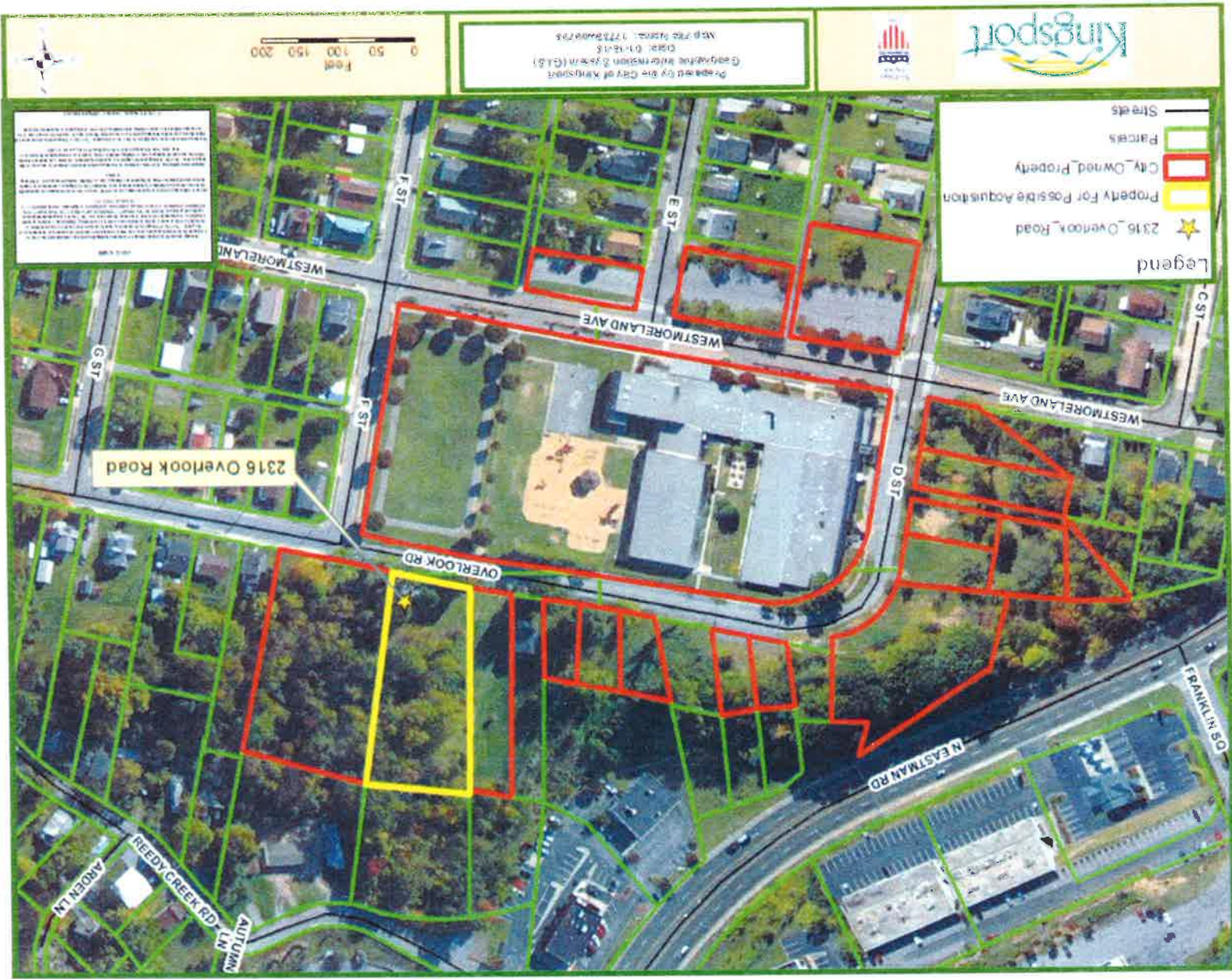
DENNIS R. PHILLIPS, MAYOR

ATTEST:

JAMES H. DEMMING, CITY RECORDER

APPROVED AS TO FORM:

J. MICHAEL BILLINGSLEY, CITY ATTORNEY





AGENDA ACTION FORM

Lease Amendment with Congressman Phil Roe for Office Space at the Kingsport Center for Higher Education

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

Jeff Fleming

Action Form No.: AF-02-2015
 Work Session: February 16, 2015
 First Reading: N/A

Final Adoption: February 17, 2015
 Staff Work By: Baker, Jeffers, Billingsley
 Presentation By: Morris Baker

Recommendation:

Approve the resolution.

Executive Summary:

When the Kingsport Center for Higher Education was planned and constructed, space was set aside for lease to an external user. The space has a separate external entrance and parking (as well as an internal access)

Congressman Roe subleases the space as his regional field office. The attached renewal lease amendment provide for the Congressman to lease the space from the City of Kingsport for a sum of \$22,248 per year (or \$1,854 / month) for an additional two years. This is the same terms as the last agreement. Northeast State provides custodial services and general facilities maintenance for the Congressman's office as part of its overall agreement to provide service to the entire Kingsport Center for Higher Education. There is no additional charge for this service.

Attachments:

1. Resolution
2. District Office Lease Amendment

	Y	N	O
Clark	—	—	—
George	—	—	—
Hall	—	—	—
McIntire	—	—	—
Parham	—	—	—
Segelhorst	—	—	—
Phillips	—	—	—

RESOLUTION NO. _____

A RESOLUTION APPROVING AN AMENDMENT TO THE TERM OF THE LEASE AGREEMENT WITH U.S. HOUSE OF REPRESENTATIVES DISTRICT OFFICE FOR OFFICE SPACE FOR CONGRESSMEN PHIL ROE AT THE KINGSPORT CENTER FOR HIGHER EDUCATION; AUTHORIZING AND DIRECTING THE MAYOR TO EXECUTE THE AMENDMENT; AND ALL OTHER DOCUMENTS NECESSARY AND PROPER TO EFFECTUATE THE PURPOSE OF THE AMENDMENT

WHEREAS, in 2013, the board approved a resolution authorized the mayor to sign an agreement the U.S. House of Representatives for office space to be lease by Congressmen Phil Roe at the Kingsport Center for Higher Education; and

WHEREAS, Congressmen Roe would like to amend the lease agreement to extend the term for an additional two years, so that the expiration date will be January 2, 2017; and

WHEREAS, the rent remains \$1,854.00 per month.

Now therefore,

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

SECTION I. That an amendment to the agreement with U.S. House of Representatives for office space to be leased by Congressmen Phil Roe at the Kingsport Center for Higher Education is approved.

SECTION II. That the mayor, or in his absence, incapacity, or failure to act, the vice-mayor, is authorized and directed to execute, in a form approved by the city attorney, and subject to the requirements of Article X, Section 10 of the Charter of the City of Kingsport, an amendment to the agreement with U.S. House of Representatives for office space to be leased by Congressmen Phil Roe at the Kingsport Center for Higher Education for an additional two year term and all other documents necessary and proper to effectuate the purpose of the amendment or this resolution, said amendment being generally as follows:

U.S. House of Representatives
Washington, D.C. 20515
District Office Lease Amendment
(Page 1 of 2 — 114th Congress)

1. Prior Lease Term. The undersigned Landlord ("Lessor") and Member of the U. S. House of Representatives ("Lessee") agree that they previously entered into a District Office Lease ("Lease") (along with the District Office Lease Attachment), which covered the period from January 3, 2013 to January 2, 2015 for the lease of office space located at 205 Revere Street in the city, state and ZIP of Kingsport, Tennessee 37660

2. Extended Term. If applicable, the above referenced Lease is extended through and including January 2, 2017. (This District Office Lease Amendment ("Amendment") may not provide for an extension beyond January 2, 2017, which is the end of the constitutional term of the 114th Congress.)

3. Rent and Any Other Changes. The monthly rent for the extended term of the Lease shall now be \$1,854.00. All other provisions of the existing Lease shall remain unchanged and in full effect, except for the following additional terms, which are modified as indicated in the space below [If no additional terms are to be modified, write the word "NONE" below].

NONE

4. District Office Lease Attachment for 114th Congress. This Amendment shall have no force and effect unless and until accompanied by an executed District Office Lease Attachment for the 114th Congress and the District Office Lease Attachment for the 114th Congress attached hereto supersedes and replaces any prior District Office Lease Attachment.

5. Counterparts. This Amendment may be executed in any number of counterparts and by facsimile copy, each of which shall be deemed to be an original but all of which together shall be deemed to be one and the same instrument.

6. Section Headings. The section headings of this Amendment are for convenience of reference only and shall not be deemed to limit or affect any of the provisions hereof.

IN WITNESS WHEREOF, the parties have duly executed this District Office Lease Amendment as of the later date written below by the Lessor or the Lessee.

This District Office Lease Amendment must be accompanied with an executed District Office Lease Attachment.

[Acknowledgements Deleted for Inclusion in this Resolution]

District Office Lease Attachment

(Page 1 of 4 — 114th Congress)

1. Incorporated District Office Lease Attachment. Lessor (Landlord) and Lessee (Member/Member-Elect of the U.S. House of Representatives) agree that this District Office Lease Attachment ("Attachment") is incorporated into and made part of the Lease ("Lease") and, if applicable, District Office Lease Amendment ("Amendment") to which it is attached.

2. Performance. Lessor expressly acknowledges that neither the U.S. House of Representatives (the "House") nor its Officers are liable for the performance of the Lease. Lessor further expressly acknowledges that payments made by the Chief Administrative Officer of the House (the "CAO") to Lessor to satisfy Lessee's rent obligations under the Lease — which payments are made solely on behalf of Lessee in support of his/her official and representational duties as a Member of the House — shall create no legal obligation or liability on the part of the CAO or the House whatsoever. Lessee shall be solely responsible for the performance of the Lease and Lessor expressly agrees to look solely to Lessee for such performance.

3. Modifications. Any amendment to the Lease must be in writing and signed by the Lessor and Lessee. Lessor and Lessee also understand and acknowledge that the Administrative Counsel for the CAO ("Administrative Counsel") must review and give approval of any amendment to the Lease prior to its execution.

4. Compliance with House Rules and Regulations. Lessor and Lessee understand and acknowledge that the Lease shall not be valid, and the CAO will not authorize the disbursement of funds to the Lessor, until the Administrative Counsel has reviewed the Lease to determine that it complies with the Rules of the House and the Regulations of the Committee on House Administration, and approved the Lease by signing on page 4 of this Attachment.

5. Payments. The Lease is a fixed term lease with monthly installments for which payment is due in arrears on or before the end of each calendar month. In the event of a payment dispute, Lessor agrees to contact the Office of Finance of the House at 202-225-7474 to attempt to resolve the dispute before contacting Lessee.

6. Void Provisions. Any provision in the Lease purporting to require the payment of a security deposit shall have no force or effect. Furthermore, any provision in the Lease purporting to vary the dollar amount of the rent specified in the Lease by any cost of living clause, operating expense clause, pro rata expense clause, escalation clause, or any other adjustment or measure during the term of the Lease shall have no force or effect.

7. Certain Charges. The parties agree that any charge for default, early termination or cancellation of the Lease which results from actions taken by or on behalf of the Lessee shall be the sole responsibility of the Lessee, and shall not be paid by the CAO on behalf of the Lessee.

8. Death, Resignation or Removal. In the event Lessee dies, resigns or is removed from office during the term of the Lease, the Clerk of the House may, at his or her sole option, either: (a) terminate the Lease by giving thirty (30) days' prior written notice to Lessor; or (b) assume the obligation of the Lease and continue to occupy the premises for a period not to exceed sixty (60) days following the certification of the election of the Lessee's successor. In the event the Clerk elects to terminate the Lease, the commencement date of such thirty (30) day termination notice shall be the date such notice is delivered to the Lessor or, if mailed, the date on which such notice is postmarked.

9. Term. The term of the Lease may not exceed the constitutional term of the Congress to which the Lessee has been elected. The Lease may be signed by the Member-Elect before taking office. Should the Member-Elect not take office to serve as a Member of the 114th Congress, the Lease will be considered null and void.

10. Early Termination. If either Lessor or Lessee terminates the Lease under the terms of the Lease, the terminating party agrees to promptly file a copy of any termination notice with the Office of Finance, U.S. House of Representatives, B-245 Longworth House Office Building, Washington, D.C. 20515, and with the Administrative Counsel by e-mail at leases@mail.house.gov.

11. Assignments. Lessor shall not have the right to assign (by operation of law or otherwise) any of its rights, interests and obligations under the Lease, in whole or in part, without providing thirty (30) days prior written notice to Lessee, and any such purported assignment without such notice shall be void. Lessor shall promptly file a copy of any such assignment notice with the Administrative Counsel by e-mail at leases@mail.house.gov.

12. Sale or Transfer of Leased Premises. Lessor shall provide thirty (30) days prior written notice to Lessee in the event (a) of any sale to a third party of any part of the leased premises, or (b) Lessor transfers or otherwise disposes of any of the leased premises, and provide documentation evidencing such sale or transfer in such notice. Lessor shall promptly file a copy of any such sale or transfer notice with the Administrative Counsel by e-mail at leases@mail.house.gov.

13. Bankruptcy and Foreclosure. In the event (a) Lessor is placed in bankruptcy proceedings (whether voluntarily or involuntarily), (b) the leased premises is foreclosed upon, or (c) of any similar occurrence, Lessor agrees to promptly notify Lessee in writing. Lessor shall promptly file a copy of any such notice with the Office of Finance, U.S. House of Representatives, B-245 Longworth House Office Building, Washington, D.C. 20515, and with the Administrative Counsel by e-mail at leases@mail.house.gov.

14. Estoppel Certificates. Lessee agrees to sign an estoppel certificate relating to the leased premises (usually used in instances when the Lessor is selling or refinancing the building) upon the request of the Lessor. Such an estoppel certificate shall require the review of the Administrative Counsel, prior to Lessee signing the estoppel certificate. Lessor shall promptly provide a copy of any such estoppel certificate to the Administrative Counsel by e-mail at leases@mail.house.gov.

15. Maintenance of Common Areas. Lessor agrees to maintain in good order, at its sole expense, all public and common areas of the building including, but not limited to, all sidewalks, parking areas, lobbies, elevators, escalators, entryways, exits, alleys and other like areas.

16. Maintenance of Structural Components. Lessor also agrees to maintain in good order, repair or replace as needed, at its sole expense, all structural and other components of the premises including, but not limited to, roofs, ceilings, walls (interior and exterior), floors, windows, doors, foundations, fixtures, and all mechanical, plumbing, electrical and air conditioning/heating systems or equipment (including window air conditioning units provided by the Lessor) serving the premises.

17. Lessor Liability for Failure to Maintain. Lessor shall be liable for any damage, either to persons or property, sustained by Lessee or any of his or her employees or guests, caused by Lessor's failure to fulfill its obligations under Sections 15 and 16.

18. Initial Alterations. Lessor shall make any initial alterations to the leased premises, as requested by Lessee and subject to Lessor's consent, which shall not be unreasonably withheld. The cost of such initial alterations shall be included in the annual rental rate.

19. Federal Tort Claims Act. Lessor agrees that the Federal Tort Claims Act, 28 U.S.C. §§ 2671-80, satisfies any and all obligations on the part of the Lessee to purchase private liability insurance. Lessee shall not be required to provide any certificates of insurance to Lessor.

20. Limitation of Liability. Lessor agrees that neither Lessee nor the House nor any of the House's officers or employees will indemnify or hold harmless Lessor against any liability of Lessor to any third party that may arise during or as a result of the Lease or Lessee's tenancy.

21. Compliance with Laws. Lessor shall be solely responsible for complying with all applicable permitting and zoning ordinances or requirements, and with all local and state building codes, safety codes and handicap accessibility codes (including the Americans with Disabilities Act), both in the common areas of the building and the leased space of the Lessee.

22. Electronic Funds Transfer. Lessor agrees to accept monthly rent payments by Electronic Funds Transfer and agrees to provide the Office of Finance, U.S. House of Representatives, with all banking information necessary to facilitate such payments.

23. Refunds. Lessor shall promptly refund to the CAO, without formal demand, any payment made to the Lessor by the CAO for any period for which rent is not owed because the Lease has ended or been terminated.

24. Conflict. Should any provision of this Attachment be inconsistent with any provision of the attached Lease or attached Amendment, the provisions of this Attachment shall control, and those inconsistent provisions of the Lease or the Amendment shall have no force and effect to the extent of such inconsistency.

25. Construction. Unless the clear meaning requires otherwise, words of feminine, masculine or neuter gender include all other genders and, wherever appropriate, words in the singular include the plural and vice versa.

26. Fair Market Value. The Lease or Amendment is entered into at fair market value as the result of a bona fide, arms-length, marketplace transaction. The Lessor and Lessee certify that the parties are not relatives nor have had, or continue to have, a professional or legal relationship (except as a landlord and tenant).

27. District Certification. The Lessee certifies that the office space that is the subject of the Lease is located within the district the Lessee was elected to represent unless otherwise authorized by Regulations of the Committee on House Administration.

28. Counterparts. This Attachment may be executed in any number of counterparts and by facsimile copy, each of which shall be deemed to be an original but all of which together shall be deemed to be one and the same instrument.

29. Section Headings. The section headings of this Attachment are for convenience of reference only and shall not be deemed to limit or affect any of the provisions hereof.

IN WITNESS WHEREOF, the parties have duly executed this District Office Lease Attachment as of the later date written below by the Lessor or the Lessee

[Acknowledgements Deleted for Inclusion in this Resolution]

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

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

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

ADOPTED this the 17th day of February, 2015.

DENNIS R. PHILLIPS, MAYOR

ATTEST:

JAMES H. DEMMING, CITY RECORDER

APPROVED AS TO FORM:

J. MICHAEL BILLINGSLEY, CITY ATTORNEY

U.S. House of Representatives

Washington, D.C. 20515

District Office Lease Amendment

(Page 1 of 2 – 114th Congress)

1. **Prior Lease Term.** The undersigned Landlord (“Lessor”) and Member of the U. S. House of Representatives (“Lessee”) agree that they previously entered into a District Office Lease (“Lease”) (along with the District Office Lease Attachment), which covered the period from January 3, 2013 to January 2, 2015 for the lease of office space located at 205 Revere Street in the city, state and ZIP of Kingsport, Tennessee 37660.
2. **Extended Term.** If applicable, the above referenced Lease is extended through and including January 2, 20 17. (This District Office Lease Amendment (“Amendment”) may not provide for an extension beyond January 2, 2017, which is the end of the constitutional term of the 114th Congress.)
3. **Rent and Any Other Changes.** The monthly rent for the extended term of the Lease shall now be \$1,854.00. All other provisions of the existing Lease shall remain unchanged and in full effect, except for the following additional terms, which are modified as indicated in the space below [If no additional terms are to be modified, write the word “NONE” below].

NONE
4. **District Office Lease Attachment for 114th Congress.** This Amendment shall have no force and effect unless and until accompanied by an executed District Office Lease Attachment for the 114th Congress and the District Office Lease Attachment for the 114th Congress attached hereto supersedes and replaces any prior District Office Lease Attachment.
5. **Counterparts.** This Amendment may be executed in any number of counterparts and by facsimile copy, each of which shall be deemed to be an original but all of which together shall be deemed to be one and the same instrument.
6. **Section Headings.** The section headings of this Amendment are for convenience of reference only and shall not be deemed to limit or affect any of the provisions hereof.

[Signature page follows.]

U.S. House of Representatives
Washington, D.C. 20515
District Office Lease Amendment
(Page 2 of 2 – 114th Congress)

IN WITNESS WHEREOF, the parties have duly executed this District Office Lease Amendment as of the later date written below by the Lessor or the Lessee.

Print Name of Lessor/Landlord/Company

Print Name of Lessee

By:

Lessor Signature

Lessee Signature

Name:

Title:

Date

Date

***This District Office Lease Amendment must be accompanied with an executed
District Office Lease Attachment.***

District Office Lease Attachment

(Page 1 of 4 – 114th Congress)

1. **Incorporated District Office Lease Attachment.** Lessor (Landlord) and Lessee (Member/Member-Elect of the U.S. House of Representatives) agree that this District Office Lease Attachment (“Attachment”) is incorporated into and made part of the Lease (“Lease”) and, if applicable, District Office Lease Amendment (“Amendment”) to which it is attached.
2. **Performance.** Lessor expressly acknowledges that neither the U.S. House of Representatives (the “House”) nor its Officers are liable for the performance of the Lease. Lessor further expressly acknowledges that payments made by the Chief Administrative Officer of the House (the “CAO”) to Lessor to satisfy Lessee’s rent obligations under the Lease – which payments are made solely on behalf of Lessee in support of his/her official and representational duties as a Member of the House – shall create no legal obligation or liability on the part of the CAO or the House whatsoever. Lessee shall be solely responsible for the performance of the Lease and Lessor expressly agrees to look solely to Lessee for such performance.
3. **Modifications.** Any amendment to the Lease must be in writing and signed by the Lessor and Lessee. Lessor and Lessee also understand and acknowledge that the Administrative Counsel for the CAO (“Administrative Counsel”) must review and give approval of any amendment to the Lease prior to its execution.
4. **Compliance with House Rules and Regulations.** Lessor and Lessee understand and acknowledge that the Lease shall not be valid, and the CAO will not authorize the disbursement of funds to the Lessor, until the Administrative Counsel has reviewed the Lease to determine that it complies with the Rules of the House and the Regulations of the Committee on House Administration, and approved the Lease by signing on page 4 of this Attachment.
5. **Payments.** The Lease is a fixed term lease with monthly installments for which payment is due in arrears on or before the end of each calendar month. In the event of a payment dispute, Lessor agrees to contact the Office of Finance of the House at 202-225-7474 to attempt to resolve the dispute before contacting Lessee.
6. **Void Provisions.** Any provision in the Lease purporting to require the payment of a security deposit shall have no force or effect. Furthermore, any provision in the Lease purporting to vary the dollar amount of the rent specified in the Lease by any cost of living clause, operating expense clause, pro rata expense clause, escalation clause, or any other adjustment or measure during the term of the Lease shall have no force or effect.
7. **Certain Charges.** The parties agree that any charge for default, early termination or cancellation of the Lease which results from actions taken by or on behalf of the Lessee shall be the sole responsibility of the Lessee, and shall not be paid by the CAO on behalf of the Lessee.
8. **Death, Resignation or Removal.** In the event Lessee dies, resigns or is removed from office during the term of the Lease, the Clerk of the House may, at his or her sole option, either: (a) terminate the Lease by giving thirty (30) days’ prior written notice to Lessor; or (b) assume the obligation of the Lease and continue to occupy the premises for a period not to exceed sixty (60) days following the certification of the election of the Lessee’s successor. In the event the Clerk elects to terminate the Lease, the commencement date of such thirty (30) day termination notice shall be the date such notice is delivered to the Lessor or, if mailed, the date on which such notice is postmarked.

District Office Lease Attachment

(Page 2 of 4 – 114th Congress)

9. **Term.** The term of the Lease may not exceed the constitutional term of the Congress to which the Lessee has been elected. The Lease may be signed by the Member-Elect before taking office. Should the Member-Elect not take office to serve as a Member of the 114th Congress, the Lease will be considered null and void.
10. **Early Termination.** If either Lessor or Lessee terminates the Lease under the terms of the Lease, the terminating party agrees to promptly file a copy of any termination notice with the Office of Finance, U.S. House of Representatives, B-245 Longworth House Office Building, Washington, D.C. 20515, and with the Administrative Counsel by e-mail at leases@mail.house.gov.
11. **Assignments.** Lessor shall not have the right to assign (by operation of law or otherwise) any of its rights, interests and obligations under the Lease, in whole or in part, without providing thirty (30) days prior written notice to Lessee, and any such purported assignment without such notice shall be void. Lessor shall promptly file a copy of any such assignment notice with the Administrative Counsel by e-mail at leases@mail.house.gov.
12. **Sale or Transfer of Leased Premises.** Lessor shall provide thirty (30) days prior written notice to Lessee in the event (a) of any sale to a third party of any part of the leased premises, or (b) Lessor transfers or otherwise disposes of any of the leased premises, and provide documentation evidencing such sale or transfer in such notice. Lessor shall promptly file a copy of any such sale or transfer notice with the Administrative Counsel by e-mail at leases@mail.house.gov.
13. **Bankruptcy and Foreclosure.** In the event (a) Lessor is placed in bankruptcy proceedings (whether voluntarily or involuntarily), (b) the leased premises is foreclosed upon, or (c) of any similar occurrence, Lessor agrees to promptly notify Lessee in writing. Lessor shall promptly file a copy of any such notice with the Office of Finance, U.S. House of Representatives, B-245 Longworth House Office Building, Washington, D.C. 20515, and with the Administrative Counsel by e-mail at leases@mail.house.gov.
14. **Estoppel Certificates.** Lessee agrees to sign an estoppel certificate relating to the leased premises (usually used in instances when the Lessor is selling or refinancing the building) upon the request of the Lessor. Such an estoppel certificate shall require the review of the Administrative Counsel, prior to Lessee signing the estoppel certificate. Lessor shall promptly provide a copy of any such estoppel certificate to the Administrative Counsel by e-mail at leases@mail.house.gov.
15. **Maintenance of Common Areas.** Lessor agrees to maintain in good order, at its sole expense, all public and common areas of the building including, but not limited to, all sidewalks, parking areas, lobbies, elevators, escalators, entryways, exits, alleys and other like areas.
16. **Maintenance of Structural Components.** Lessor also agrees to maintain in good order, repair or replace as needed, at its sole expense, all structural and other components of the premises including, but not limited to, roofs, ceilings, walls (interior and exterior), floors, windows, doors, foundations, fixtures, and all mechanical, plumbing, electrical and air conditioning/heating systems or equipment (including window air conditioning units provided by the Lessor) serving the premises.

District Office Lease Attachment

(Page 3 of 4 – 114th Congress)

17. **Lessor Liability for Failure to Maintain.** Lessor shall be liable for any damage, either to persons or property, sustained by Lessee or any of his or her employees or guests, caused by Lessor's failure to fulfill its obligations under Sections 15 and 16.
18. **Initial Alterations.** Lessor shall make any initial alterations to the leased premises, as requested by Lessee and subject to Lessor's consent, which shall not be unreasonably withheld. The cost of such initial alterations shall be included in the annual rental rate.
19. **Federal Tort Claims Act.** Lessor agrees that the Federal Tort Claims Act, 28 U.S.C. §§ 2671-80, satisfies any and all obligations on the part of the Lessee to purchase private liability insurance. Lessee shall not be required to provide any certificates of insurance to Lessor.
20. **Limitation of Liability.** Lessor agrees that neither Lessee nor the House nor any of the House's officers or employees will indemnify or hold harmless Lessor against any liability of Lessor to any third party that may arise during or as a result of the Lease or Lessee's tenancy.
21. **Compliance with Laws.** Lessor shall be solely responsible for complying with all applicable permitting and zoning ordinances or requirements, and with all local and state building codes, safety codes and handicap accessibility codes (including the Americans with Disabilities Act), both in the common areas of the building and the leased space of the Lessee.
22. **Electronic Funds Transfer.** Lessor agrees to accept monthly rent payments by Electronic Funds Transfer and agrees to provide the Office of Finance, U.S. House of Representatives, with all banking information necessary to facilitate such payments.
23. **Refunds.** Lessor shall promptly refund to the CAO, without formal demand, any payment made to the Lessor by the CAO for any period for which rent is not owed because the Lease has ended or been terminated.
24. **Conflict.** Should any provision of this Attachment be inconsistent with any provision of the attached Lease or attached Amendment, the provisions of this Attachment shall control, and those inconsistent provisions of the Lease or the Amendment shall have no force and effect to the extent of such inconsistency.
25. **Construction.** Unless the clear meaning requires otherwise, words of feminine, masculine or neuter gender include all other genders and, wherever appropriate, words in the singular include the plural and vice versa.
26. **Fair Market Value.** The Lease or Amendment is entered into at fair market value as the result of a bona fide, arms-length, marketplace transaction. The Lessor and Lessee certify that the parties are not relatives nor have had, or continue to have, a professional or legal relationship (except as a landlord and tenant).
27. **District Certification.** The Lessee certifies that the office space that is the subject of the Lease is located within the district the Lessee was elected to represent unless otherwise authorized by Regulations of the Committee on House Administration.

U.S. House of Representatives
Washington, D.C. 20515

District Office Lease Attachment

(Page 4 of 4 – 114th Congress)

28. **Counterparts.** This Attachment may be executed in any number of counterparts and by facsimile copy, each of which shall be deemed to be an original but all of which together shall be deemed to be one and the same instrument.
29. **Section Headings.** The section headings of this Attachment are for convenience of reference only and shall not be deemed to limit or affect any of the provisions hereof.

IN WITNESS WHEREOF, the parties have duly executed this District Office Lease Attachment as of the later date written below by the Lessor or the Lessee.

_____ <i>Print Name of Lessor/Landlord</i>	_____ <i>Print Name of Lessee</i>
By: _____ <i>Lessor Signature</i> Name: Title:	_____ <i>Lessee Signature</i>
_____ <i>Date</i>	_____ <i>Date</i>

From the Member's Office, who is the point of contact for questions?			
Name	Sheila Houser	Phone (423) 247-8161	E-mail sheila.houser @mail.house.gov

This District Office Lease Attachment and the attached Lease or Amendment have been reviewed and are approved, pursuant to Regulations of the Committee on House Administration.

Signed _____ Date _____, 20____.
(Administrative Counsel)

<p><i>Send completed forms to: Administrative Counsel, 217 Ford House Office Building, Washington, D.C. 20515.</i> <i>Copies may also be faxed to 202-225-6999.</i></p>



AGENDA ACTION FORM

Bid for School Nutrition Grocery and Beverage Items

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

Action Form No.: AF-46-2015
 Work Session: February 16, 2015
 First Reading: N/A

Final Adoption: February 17, 2015
 Staff Work By: Committee
 Presentation By: Jennifer Walker

Recommendation:

Approve the resolution.

Executive Summary:

Kingsport City Schools Nutrition Services administers a contract for Grocery Items and Beverages to maintain a continual supply of items for the Kingsport City Schools. The bids were opened on January 27, 2015 with three bidders responding. The bids were reviewed by School Nutrition and a recommendation was presented to the Board of Education on February 5, 2015 to award this contract to the lowest compliant bidder, Gordon Food Service. The Board of Education approved and recommends awarding Gordon Food Service the bid with a contract amount not to exceed \$1,300,000.00 and authorize the Mayor to sign all applicable documents.

This contract will cover the period of March 1, 2015 thru February 29, 2016. The bid documents include a renewal option on an annual basis in one year increments for up to three additional years providing all terms, conditions and cost are acceptable to both parties.

Funding will be provided by School Nutrition Services budget.

Attachments:

1. Resolution
2. Bid Minutes
3. Letter of Recommendation
4. Contract

Funding source appropriate and funds are available.

	<u>Y</u>	<u>N</u>	<u>O</u>
Clark	—	—	—
George	—	—	—
Hall	—	—	—
McIntire	—	—	—
Parham	—	—	—
Segelhorst	—	—	—
Phillips	—	—	—

RESOLUTION NO. _____

A RESOLUTION AWARDING THE BID FOR VARIOUS GROCERY ITEMS FOR USE BY KINGSPORT SCHOOL NUTRITION PROGRAM TO GORDON FOOD SERVICE AND AUTHORIZING THE CITY MANAGER TO EXECUTE A PURCHASE ORDER FOR THE SAME

WHEREAS, bids were opened January 27, 2015 for a continual supply of grocery items for various Kingsport City Schools; and

WHEREAS, upon review of the bids, the board finds Gordon Food Service is the lowest responsive compliant bidder in the best interest and advantage to the city, and the City of Kingsport desires to enter into a contract to supply various grocery items for various schools from Gordon Food Service an estimated cost not to exceed \$1,300,000.00 for the period of March 1, 2015 through February 29, 2016; and

WHEREAS, the costs, and all other expenses of the School Nutrition Program, are completely funded by the School Food and Nutrition Program revenue received from meals and USDA reimbursement.

Now therefore,

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

SECTION I. That the bid for a continual supply of various types of grocery items for use by Kingsport City Schools Nutrition Services is awarded to Gordon Food Service.

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, a contract with the Gordon Food Service for certain grocery items used by School Nutrition Services 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 generally as follows:

Sample
C O N T R A C T

This Contract, made and entered into on this the 1st day of March 2015, by and between the CITY OF KINGSPORT, TENNESSEE, a municipal corporation, duly organized and existing under and by virtue of the laws of the State of Tennessee, with situs in Sullivan County, Tennessee, hereinafter referred to as the City, party of the first part, and SUPPLIER NAME, hereinafter referred to as the Contractor, party of the second part.

W I T N E S S E T H:

WHEREAS, the City has taken all steps required by law for the purchase of certain commodities, to-wit:

**GROCERY ITEMS AND BEVERAGES FOR THE CITY OF KINGSPORT SCHOOL
NUTRITION PROGRAM AS STATED IN BID DOCUMENTS –**

all in a proper manner as set forth herein; and has advertised, requested and received bids, as required by law, which bids, being sealed, were opened on the 27th day of January 2015; and the City accepted the proposal or bid of the Contractor herein, all of which is set forth in the minutes of said meeting, to which reference is here made.

NOW, THEREFORE, in consideration of the promises, and for the further considerations hereinafter mentioned, this contract is hereby mutually understood and agreed to by and between the parties hereto for themselves, their personal representatives, successors and/or assigns.

SECTION 1. SCOPE OF THE CONTRACT. The party of the second part shall furnish all the materials and will perform all the work as provided by the following enumerated specifications and documents, which are attached hereto and made a part hereof, as it is fully copied and contained herein:

1. Bids Wanted as published in the "Kingsport Times-News" on January 11, 2015.
 2. Specifications on file in the office of the City Manager and previously sent to the Contractor.
- The party of the second part shall defend, indemnify and save harmless the City of Kingsport from any and all claims and suits for injury to person or property arising out of the performance of this Contract, caused by the acts or omissions of the Contractor, its agents, employees or sub-contractors, excepting bodily injury or property damage caused by the sole negligence of the City of Kingsport, its agents or employees.

SECTION 2. CONTRACT TERM. The work to be performed under this Contract shall be from March 1, 2015 to February 29, 2016. The Contract will be awarded for a period of one (1) year with a renewal option on an annual basis in one (1) year increments up to three (3) additional providing all terms, conditions and cost are acceptable to both parties. The City reserves the right to re-bid at the end of any contract period. This Agreement shall terminate at the end of the contract year, February 29, 2016. Additional annual term(s), each of which said term shall expire at the end of the then current contract year, shall be at the sole option of the City of Kingsport. If not renewed, for reason of Funding Out (which means school has insufficient funds to pay at June 30), School shall have no obligation to pay any additional costs and School shall surrender all rights and interest in any asset(s) which are not fully owned by School to Company. Except for the Maintenance Component and charges based upon the usage of the Equipment, the balance of the monthly payment owed by the School shall be consistent during the term(s) of the Agreement.

SECTION 3. THE CONTRACT PRICE. The City shall pay, in current fund, the Contractor for the performance of this Contract on the basis of the unit price cost per unit, as set forth in SECTION 1 above, and as set out and stipulated in the bid or proposal of said Contract, and the total cost of ONE MILLION THREE HUNDRED THOUSAND DOLLARS AND NO CENTS (\$1,300,000.00) is a not-to-exceed cost, based upon the estimated number of units required for the performance of this Contract and in the event there is any variation in the units actually required in the performance of this Contract, and the estimate made above, then the unit price shall in all things control, so that the total estimated cost ONE MILLION THREE HUNDRED THOUSAND DOLLARS AND NO CENTS (\$1,300,000.00) is subject to being increased in the event the units required for this Contract are greater than that estimated, and is subject to being decreased in the event said units are less than that estimated; which said payment, based upon the unit costs mentioned above, shall be full compensation for all materials and supplies furnished, and all labor done by the Contractor under and pursuant to this Agreement, and said sum shall also pay for all losses or damages of the Contractor arising out of the nature of the work, and for any and all expenses incurred in consequence of the work under this Contract, and for the well and faithful performance of said Contract.

SECTION 4. METHOD OF PAYMENT. Accounts will close on the last school day of each month. Statements should be forwarded to the office no later than the third working day after closing the month. The vendor will furnish a monthly recap of all purchased items as they are listed on the purchase order by the third working day after closing the month. The vendor will furnish a yearly recap of all purchased items by the third working day after orders have ended for the school. The contractor will provide credit memos monthly no later than the third working day after closing the month.

Invoicing: All invoices and statements will be sent to Kingsport City School Nutrition Services, 400 Clinchfield Street, Suite 200, Kingsport, Tennessee 37660.

SECTION 5. INSURANCE. The Contractor aforesaid shall at all times keep in full force and effect, during the life of this Contract, Worker's Compensation Insurance in accordance with Title 50, Tennessee Code Annotated and all Amendatory Acts thereto, covering all of the employees during the progress of said performance of Contract, and to furnish the City satisfactory evidence

that he has in full force and effect such insurance on all of his employees used in the execution and carrying out the work under this Contract. Also, the Contractor shall have comprehensive general public liability insurance in amounts acceptable to the City. The Contractor will furnish comprehensive automobile liability insurance and furnish the City with certificates of insurance or policies and maintain the insurance in such form as shall be satisfactory to the City. The Contractor shall obtain and maintain owners liability insurance specifically naming City as the insured to defend, indemnify and save harmless the City of Kingsport from any and all claims and suits for injury to persons, including death, or property damage arising out of the performance of the Contract caused in any way by the acts or omissions of the Contractor or the Contractor's agents, employees, or sub-contractors during or in connection with the Contract performance, excepting bodily injury or death or property damage caused by the sole negligence of the City of Kingsport, its agents or employee.

SECTION 6. SERVICE LEVEL. The contractor shall fill all original orders at a monthly average of 97% or above on the scheduled delivery day. The remaining 3% shall be delivered within 24 hours of the scheduled delivery day.

Reports: Monthly and Year-to-Date utilization reports shall be issued to the City of Kingsport school district monthly. These reports shall be submitted for total quantity delivered per item in terms of bid units per school delivery point and a combined district total.

Records: All contractors are required to keep records for three years after the City of Kingsport makes final payment and all other pending matters are closed. Contractors must agree that the School Food Authority, the State Agency, the United State Department of Agriculture, or Comptroller General may review any books, documents, papers, and records of the contractor which are directly pertinent to all negotiated contracts.

Delivery Time and Place: Deliveries shall be required to the following sites.

The Contractor is required to provide the names of the drivers and finalize plans for the year within two weeks of contract award for first orders for delivery on or before March 1, 2015.

- A required delivery schedule follows:
(All Addresses are Kingsport, TN)

- Mondays
 - Ross N Robinson Middle School 6 am
1517 Jessee Street
 - John Sevier Middle School 6:30 am
1200 Watree Street
 - George Washington Elementary School 7:30 am
1100 Bellingham Drive
 - Theodore Roosevelt Elementary School 7:50 am
1051 lake Street
 - John F Kennedy Elementary School 8:15 am
1500 Woodland Avenue
 - Andrew Jackson Elementary School 9:00 am
600 Jackson Street
 - John Adams Elementary School 9:40 am
2727 Edinburgh Channes Road

- Thursdays
 - Dobyys Bennett High School 6:00 am
1800 Legion Drive
 - Andrew Johnson Elementary School 6:45 am
1001 Ormond Drive
 - Thomas Jefferson Elementary School 7:15 am
2216 Westmorland Avenue
 - Abraham Lincoln Elementary School 8:00 am
1000 Summer Street

- **Emergency or Holiday Exceptions to these time frames must be pre-approved on a case by case basis by Jennifer Walker, Director of School Nutrition Services.**

We reserve the right to refuse deliveries that are delivered late or do not meet specifications. The delivery must be documented with a legible invoice with the correct bid price, quantity and extension. The manager or their designee must sign all invoices at the time of delivery. Unsigned invoices will NOT be paid. It is requested that the successful bidder provide duplicate order forms for the convenience of both parties. The successful bidder is required to provide clean, mobile racks and bread trays for proper storage at each school.

No substitutions of delivery days or times can be made without prior approval of the City of Kingsport School Nutrition Services Director. Delivery schedules will be altered to meet holiday and snow day schedules. They will be made FOB destination to each school. Stock is to be placed adjacent to the appropriate storage area as designated by the Cafeteria Manager or their designee.

If applicable, deliveries must be made in mechanically refrigerated truck maintaining an appropriate temperature for the items being shipped (below freezing for frozen goods, 40 degrees F and below for other refrigerated perishables, etc.) and according to HACCAP (Hazard Analysis and Critical Control Points). The City of Kingsport reserves the right to reject the use of any equipment by a carrier if it is not in a clean, sanitary condition suitable for the transport of food items, supplies, etc.

To assist drivers and authorize school to expedite receiver accuracy of quantities of each item, brand, and code numbers of each item and condition of merchandise, the invoice will list foods and beverages in order as pulled from truck and placed in the warehouse for delivery verification. Each delivery ticket will be rendered in duplicate and shall be signed by a designated school receiver. No invoice will be paid without designated school receiver or designee's signature. Variations from the norm, i.e., shortages, damages, etc., shall be noted on each ticket by the designated school receiver and initialed by both the truck driver and school receiver. The contractor shall be required to issue credits for errors not detected at the time of delivery.

Special or intermediate deliveries will be required if a contractor fails to deliver a product on a regularly scheduled delivery and/or in emergency situations when meal counts are higher than projected.

Drivers shall wear company uniforms and/or I.D. badges.

A. If a contractor is unable to deliver a prior approved substitute product, the City of Kingsport school district shall, in good faith and in its sole discretion, purchase a product of equal or greater quality from another source. The supplier shall be responsible and liable for the difference in the cost between the amount paid for the substituted product and the amount which would have been paid had the product been delivered. The supplier shall not be entitled to complain that the substitute product could have been purchased at a lower price.

B. Delivering brands that are not pre-approved may be reason for rejection of the product, termination of the contract, and shall be considered non-delivery of product.

Fiscal Funding: If the effective dates of this proposal extend beyond June 30 of the current fiscal year, it shall be understood that purchases in the next fiscal year are conditional on the receipt of federal and/or state funds. In the event of the discontinuance or a decrease in federal and/or state funds, the City of Kingsport school district reserves the right to change the item identifications, decrease the quantities, and/or delete items.

SECTION 7. TERMINATION OF CONTRACT. Failure on the part of the City of Kingsport school district, or the contractor, to comply with the provisions of this contract may result in contract termination.

Each party shall follow the procedure outlined below, if a contract is to be terminated:

Step 1 - Issue warning letter and outline violations and length of time to correct the problem.

Step 2 - Issue letter of Intent to Cancel Contract, if problem is not resolved by given date.

Step 3 - Issue letter to cancel contract.

SECTION 8. BUYER CONTRACT RELATIONSHIP. Under arrangements of this contract, a contractor is in essence "hired" as a buyer for the City of Kingsport school district. In this respect,

it is the contractor's responsibility to maintain the best interest of the City of Kingsport school district with respect to the following:

- A. Interface with packers on problems relating to product pack and quality.
- B. Make purchases of specified items at the lowest price, including freight.
- C. Maintain a constant search for substitute items which offer better values.
- D. Promote the introduction of new items, either by packer or distributor representatives.
- E. Organize and conduct clinics for City of Kingsport Director of School Nutrition supervisor and/or cafeteria managers, conducted by packer representatives on item usage and preparation.

SECTION 9. STANDARD CONTRACT CONDITIONS.

- A. This contract shall be governed in all respects - as to validity, construction, capacity, performance, or otherwise - by the laws of the State of Tennessee. Any action brought in law or in equity to enforce any provision of the entire Agreement shall be filed in the appropriate state court in Sullivan County, Tennessee. In any action to enforce this Agreement, the prevailing party shall be entitled to recover its costs and expenses, including reasonable attorney's fees.
- B. Contractors providing service herewith, assures the City of Kingsport school district that they are conforming to the provisions of the Civil Rights Act of 1964, as amended.
- C. Contractors shall comply with Executive Order 11246, entitled "Equal Employment Opportunity", as amended by Labor Regulations (41 CFR Part 60).
- D. State Sales and Use Tax Certificate of Exemption form will be issued upon request. Sales tax shall not be included in prices.
- E. Contractor shall comply with applicable federal, state, and local laws and regulations pertaining to wages, hours, and conditions of employment. In connection with contractor's performance of work under this contract, contractor agrees not to discriminate against any employee(s) or applicant(s) for employment because of age, race, religious creed, sex, national origin, or handicap.
- F. The contractor agrees to retain all books, records, and other documents relative to this agreement for three (3) years after final payment. The City of Kingsport, its authorized agents, and/or state/federal representatives shall have full access to, and the right to examine any of said materials during said period. If an investigation or audit is in progress, records shall be maintained until stated matter is closed.
- G. Contractor shall comply with all applicable standards, order, or requirements issued under Section 306 of the Clear Air Act (42 U.S.C. 1857 [h]), Section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency Regulations (40 CFR Part 15), which prohibit the use under non-exempt federal contracts, grants, or loans of facilities included on the EPA List of Violating Facilities.
- H. Contractor must comply with mandatory standards and policies related to energy efficiency which are contained in the State Energy Plan issued in compliance with the Energy Policy and Conservation Act (PL 94-165).

SECTION 10. PRODUCT REQUIREMENTS.

- 1. Item Identification (ID): The item identifications (descriptions) listed herein are not specifications. Product identifications are limited to requirements which can be verified on delivery or information essential for communication between contractor and City of Kingsport school district. For example, "U.S." Grades are generally not specified unless there is a grade shield on the container or the product is accompanied by an inspection certificate. The use of pre-approved brands makes it unnecessary to utilize detailed specifications.
- 2. Product Protection Guarantees: School districts have "automatic" product protection recourse against suppliers for products which are misrepresented. According to federal regulations, the supplier whose name and address appear on the package is the responsible party. Contractors are expected to take immediate action to correct any situation in which product integrity is violated.
- 3. Import Products: Products which are canned or packed outside of the United States will not be accepted. Please note this rule applies to "Private Labels" as well as other labels. The intent of the City of Kingsport school district is to follow the Buy America Provisions of PL100-237. The contractor agrees to abide by the Buy American Provision of the William F. Goodling Nutrition Reauthorization Act of 1998. Policy memoranda 210.21-14 and 220.17-01.
- 4. Quality and Yield Assurance: A quality and yield assurance letter from the manufacturer must be received by the City of Kingsport Director of School Nutrition stating the guarantee that

their product meets the required quality and yield specifications. The CN Label Information is to be included.

For all canned and frozen fruits and vegetables the successful bidder agrees to provide the manufacturer's label codes for USDA quality grades.

The City of Kingsport Director of School Nutrition retains the right to check compliance on any item. A sample of the product will be shipped to an USDA Acceptance Laboratory for verification of the USDA quality grade. Compliance for yield will be made by the City of Kingsport Director of School Nutrition and/or managers on a random basis.

If the analysis indicates that the product meets the USDA quality grade and/or yield specifications, the City of Kingsport Director of School Nutrition will bear the cost of the analysis. If the analysis indicates that the product does not meet the USDA quality grade and/or yield specified, the following penalties will be administered as a minimum:

- a. The Contractor will bear the cost of the analysis.
- b. The Contractor will replace the entire product for all schools within the system for the delivery period without cost even though part of the product had to be or was used. The replacement product must meet the USDA quality grade and yield specifications. The remainder of the rejected product must be picked up without cost to the City of Kingsport school system.

5. Samples: In order to evaluate a new product, the new product will be provided at the expense of the Contractor. The first sample should be presented to the City of Kingsport Director of School Nutrition. If the product is feasible for use in the program, samples may be requested for City of Kingsport school nutrition managers and supervisors to evaluate. Samples will be available (upon request) for a student panel evaluation of a product.

If requested, samples must be furnished within 24 hours. For all additional items submitted must also have a Nutrition Facts Label, and ingredient statement, and/or a CN label or Products Formulation Statement on Manufacturer's letterhead. This documentation MUST demonstrate how the product contributes to the meal pattern requirements and provide calories, saturated fat, trans fat, and sodium contribution per serving.

6. Approved Brands: The "Approved Brand" space on the product lists indicates one of the following:

- A. Product identification is in itself sufficient, in the case of certain generic items such as pork chops. The words "packer label" may appear in the approved brands column and the contractor may bid any label.
- B. The Contractor shall supply the appropriate label for grade specified for canned and frozen fruits and vegetables. The potential contractor shall supply 1st Quality Label only.
- C. Items not covered by instructions 4-A or 4-B above will have manufacturer's name and product number under "brands". Potential contractors may propose only those products which are pre-approved. This instruction most frequently applies to meat items. In some instances where "private label" is normally bid, the potential contractor will choose to offer a quote on a national brand, in these instances, the national brand must be pre-approved.
- D. The successful contractor shall notify the City of Kingsport school district when a brand change is appropriate. The successful contractor shall obtain the best price when a brand change is submitted for approval.

7. Item Substitutions/Changes:

The School District reserves the right to make brand changes at any point during the contract for the following reasons to include, but not limited to, decrease in sales, quality control issues, customer complaints, or additions of approved brands. When requesting a brand change, the Child Nutrition Department shall ask the distributor to submit pricing on other approved brands.

8. Nutrition Compliance

- A. Products with Low-fat and Low-sodium nutrition claims are preferred when available.
- B. Food products and ingredients used to prepare schools meals must contain zero grams of trans fat (less than 0.5 grams) per serving. Documentation for food products and food ingredients must indicate zero grams of trans fat per serving. The Nutrition Facts Panel must indicate zero trans fat.

C. Effective July 1, 2014, all grain products must meet the whole grain-rich criteria for the school meal programs and contain 100 percent whole grain or a blend of whole-grain meal and/or flour and enriched meal and/or flour of which at least 50 percent is whole grain. The remaining 50 percent or less of grains, if any, must be enriched.

D. Ready-to-Eat (RTE) breakfast cereals must list a whole grain as the primary ingredient and the cereal must be fortified. RTE cereals that are made from 100 percent whole grains are not required to be fortified. If the product includes enriched ingredients, or if the product itself is enriched, the ingredients or the product must meet the Food and Drug Administration's standards of identify for enrichment (21 CFR Section 137).

E. USDA recently published practical, science-based nutrition standards for snack foods and beverages sold to children at school during the school day. The standards, required by the Healthy, Hunger-Free Kids Act of 2010, will allow schools to offer healthier snack foods to children, while limiting junk food.

F. Nutrition Standards for Foods

Any food sold in schools must:

1. Be a "whole grain-rich" grain product; or
2. Have as the first ingredient a fruit, a vegetable, a dairy product, or a protein food; or
3. Be a combination food that contains at least ¼ cup of fruit and/or vegetable; or
4. Contain 10% of the Daily Value (DV) of one of the nutrients of public health concern in the 2010 Dietary Guidelines for Americans (calcium, potassium, vitamin D, or dietary fiber).*

G. Foods must also meet several nutrient requirements:

- Calorie limits: ° Snack items: ≤ 200 calories
° Entrée items: ≤ 350 calories
- Sodium limits: ° Snack items: ≤ 230 mg**
° Entrée items: ≤ 480 mg
- Fat limits: ° Total fat: ≤ 35% of calories
° Saturated fat: < 10% of calories
° Trans fat: zero grams
- Sugar limit: ° ≤ 35% of weight from total sugars in foods

*On July 1, 2016, foods may not qualify using the 10% DV criteria.

**On July 1, 2016, snack items must contain ≤ 200 mg sodium per item

Current/applicable regulations for grains used in the School Breakfast Program (SBP) and National School Lunch Program (NSLP) can be found at <http://www.fns.usda.gov/cnd/Governance/Policy-Memos/2012/SP30-2012os.pdf>. As regulations change, additional information is available at www.fns.usda.gov/cnd. All SNP operators are required to follow regulations in place at time of purchase. As those regulations change, there may be a need to revise product requirements. This School System reserves the right to delete or add products to comply with regulations.

IN WITNESS whereof the parties by their authorized agents have executed this contract.

[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 17th day of February, 2015.

DENNIS R. PHILLIPS, MAYOR

ATTEST:

JAMES H. DEMMING, CITY RECORDER

APPROVED AS TO FORM:

J. MICHAEL BILLINGSLEY, CITY ATTORNEY

MINUTES BID
OPENING
January 27, 2015
4:00P.M.

Present: Sandy Crawford, Procurement Manager; Lisa Tallman Assistant Procurement Manager, Schools;
and Jennifer Walker, Supervisor of School Nutrition Services

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

The Procurement Manager opened with the following bids:

GROCERY ITEMS AND BEVERAGE BID – SCHOOL NUTIRTION SERVICES		
Vendor:	Extended Price per UOM	Comments:
Gordon Food Service	\$1,331,125.30	See attached.
Sysco Knoxville	\$1,302,181.79	See attached.
Reinhart Food Service	\$ 862,896.40	Total handwritten on bid-column truncated. See attached.

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

RE: RECOMMENDATION TO ACCEPT GROCERY AND BEVERAGE BID FROM
GORDON FOOD SERVICE

Kingsport City School Nutrition received three grocery and beverage bid proposals from three vendors for consideration on January 27, 2015 as follows:

Gordon Food Service: \$1,331,125.30
Sysco Knoxville, LLC: \$1,302,181.79
Reinhart Food Service, LLC: \$862,896.40

The lowest bid was determined by calculating an estimated usage quantity multiplied by a price per unit of measure. Each line item price on the bid spreadsheet was recalculated for accuracy and adjusted for alternate pack size pricing as needed. After careful review, we had to correct approximately 25 lines on the GFS bid including one gross error of \$159,198.00 on line item 319 instead of the correct amount of \$13,263.12. We amended approximately 17 line items on the Sysco bid. Line items 39 and 50 were omitted from both offers due to discrepancy in the bid spread sheet. Reinhart could not be evaluated since their bid spreadsheet was incomplete. The adjusted bottom line sum of prices per extended unit of measure for each vendor is as follows:

Gordon Food Service: \$1,203,061.11
Sysco Knoxville, LLC: \$1,303,457.00
Reinhart Food Service, LLC: Bid rejected due to bid specifications not met; Bid spreadsheet was incomplete.

With the addition of beverages this year to our grocery contract and regulation changes allowing different types of beverages to be offered, we are estimating beverage spend of \$100,000.00 which will potentially increase our revenue in beverage sells this year.

School Nutrition is recommending that the Board of Mayor and Alderman award the bid to the low compliant bidder, Gordon Food Service, and approve a contract with a not to exceed amount of \$1,300,000.00.

All expenditures from this contract are fully funded by the School Nutrition Services budget. School Nutrition Services is a self-supporting department within the Kingsport City Schools. We receive funding from federal reimbursements, state funding, and revenue generated by meal fees, a la carte items sold and catering.

Jennifer Walker, RD, LDN, CDE
Supervisor of School Nutrition Services

Sample

CONTRACT

This Contract, made and entered into on this the 1st day of March 2015, by and between the CITY OF KINGSPORT, TENNESSEE, a municipal corporation, duly organized and existing under and by virtue of the laws of the State of Tennessee, with situs in Sullivan County, Tennessee, hereinafter referred to as the City, party of the first part, and SUPPLIER NAME, hereinafter referred to as the Contractor, party of the second part.

WITNESSETH:

WHEREAS, the City has taken all steps required by law for the purchase of certain commodities, to-wit:

GROCERY ITEMS AND BEVERAGES FOR THE CITY OF KINGSPORT SCHOOL NUTRITION PROGRAM AS STATED IN BID DOCUMENTS –

all in a proper manner as set forth herein; and has advertised, requested and received bids, as required by law, which bids, being sealed, were opened on the 27th day of January 2015; and the City accepted the proposal or bid of the Contractor herein, all of which is set forth in the minutes of said meeting, to which reference is here made.

NOW, THEREFORE, in consideration of the promises, and for the further considerations hereinafter mentioned, this contract is hereby mutually understood and agreed to by and between the parties hereto for themselves, their personal representatives, successors and/or assigns.

SECTION 1. SCOPE OF THE CONTRACT. The party of the second part shall furnish all the materials and will perform all the work as provided by the following enumerated specifications and documents, which are attached hereto and made a part hereof, as it is fully copied and contained herein:

1. Bids Wanted as published in the "Kingsport Times-News" on January 11, 2015.
2. Specifications on file in the office of the City Manager and previously sent to the Contractor.

The party of the second part shall defend, indemnify and save harmless the City of Kingsport from any and all claims and suits for injury to person or property arising out of the performance of this Contract, caused by the acts or omissions of the Contractor, its agents, employees or sub-contractors, excepting bodily injury or property damage caused by the sole negligence of the City of Kingsport, its agents or employees.

SECTION 2. CONTRACT TERM. The work to be performed under this Contract shall be from March 1, 2015 to February 29, 2016. The Contract will be awarded for a period of one (1) year with a renewal option on an annual basis in one (1) year increments up to three (3) additional providing all terms, conditions and cost are acceptable to both parties. The City reserves the right to re-bid at the end of any contract period. This Agreement shall terminate at the end of the contract year, February 29, 2016. Additional annual term(s), each of which said term shall expire at the end of the then current contract year, shall be at the sole option of the City of Kingsport. If not renewed, for reason of Funding Out (which means school has insufficient funds to pay at June 30), School shall have no obligation to pay any additional costs and School shall surrender all rights and interest in any asset(s) which are not fully owned by

School to Company. Except for the Maintenance Component and charges based upon the usage of the Equipment, the balance of the monthly payment owed by the School shall be consistent during the term(s) of the Agreement.

SECTION 3. THE CONTRACT PRICE. The City shall pay, in current fund, the Contractor for the performance of this Contract on the basis of the unit price cost per unit, as set forth in SECTION 1 above, and as set out and stipulated in the bid or proposal of said Contract, and the total cost of ONE MILLION THREE HUNDRED THOUSAND DOLLARS AND NO CENTS (\$1,300,000.00) is a not-to-exceed cost, based upon the estimated number of units required for the performance of this Contract and in the event there is any variation in the units actually required in the performance of this Contract, and the estimate made above, then the unit price shall in all things control, so that the total estimated cost ONE MILLION THREE HUNDRED THOUSAND DOLLARS AND NO CENTS (\$1,300,000.00) is subject to being increased in the event the units required for this Contract are greater than that estimated, and is subject to being decreased in the event said units are less than that estimated; which said payment, based upon the unit costs mentioned above, shall be full compensation for all materials and supplies furnished, and all labor done by the Contractor under and pursuant to this Agreement, and said sum shall also pay for all losses or damages of the Contractor arising out of the nature of the work, and for any and all expenses incurred in consequence of the work under this Contract, and for the well and faithful performance of said Contract.

SECTION 4. METHOD OF PAYMENT. Accounts will close on the last school day of each month. Statements should be forwarded to the office no later than the third working day after closing the month. The vendor will furnish a monthly recap of all purchased items as they are listed on the purchase order by the third working day after closing the month. The vendor will furnish a yearly recap of all purchased items by the third working day after orders have ended for the school. The contractor will provide credit memos monthly no later than the third working day after closing the month.

Invoicing: All invoices and statements will be sent to Kingsport City School Nutrition Services, 400 Clinchfield Street, Suite 200, Kingsport, Tennessee 37660.

SECTION 5. INSURANCE. The Contractor aforesaid shall at all times keep in full force and effect, during the life of this Contract, Worker's Compensation Insurance in accordance with Title 50, Tennessee Code Annotated and all Amendatory Acts thereto, covering all of the employees during the progress of said performance of Contract, and to furnish the City satisfactory evidence that he has in full force and effect such insurance on all of his employees used in the execution and carrying out the work under this Contract. Also, the Contractor shall have comprehensive general public liability insurance in amounts acceptable to the City. The Contractor will furnish comprehensive automobile liability insurance and furnish the City with certificates of insurance or policies and maintain the insurance in such form as shall be satisfactory to the City. The Contractor shall obtain and maintain owners liability insurance specifically naming City as the insured to defend, indemnify and save harmless the City of Kingsport from any and all claims and suits for injury to persons, including death, or property damage arising out of the performance of the Contract caused in any way by the acts or omissions of the Contractor or the Contractor's agents, employees, or sub-contractors during or in connection with the Contract performance, excepting bodily injury or death or property damage caused by the sole negligence of the City of Kingsport, its agents or employee.

SECTION 6. SERVICE LEVEL. The contractor shall fill all original orders at a monthly average of 97% or above on the scheduled delivery day. The remaining 3% shall be delivered within 24 hours of the scheduled delivery day.

Reports: Monthly and Year-to-Date utilization reports shall be issued to the City of Kingsport school district monthly. These reports shall be submitted for total quantity delivered per item in terms of bid units per school delivery point and a combined district total.

Records: All contractors are required to keep records for three years after the City of Kingsport makes final payment and all other pending matters are closed. Contractors must agree that the School Food Authority, the State Agency, the United State Department of Agriculture, or Comptroller General may review any books, documents, papers, and records of the contractor which are directly pertinent to all negotiated contracts.

Delivery Time and Place: Deliveries shall be required to the following sites.

The Contractor is required to provide the names of the drivers and finalize plans for the year within two weeks of contract award for first orders for delivery on or before March 1, 2015.

- A required delivery schedule follows:
(All Addresses are Kingsport, TN)

- Mondays

- Ross N Robinson Middle School 6 am
1517 Jessee Street
- John Sevier Middle School 6:30 am
1200 Watree Street
- George Washington Elementary School 7:30 am
1100 Bellingham Drive
- Theodore Roosevelt Elementary School 7:50 am
1051 lake Street
- John F Kennedy Elementary School 8:15 am
1500 Woodland Avenue
- Andrew Jackson Elementary School 9:00 am
600 Jackson Street
- John Adams Elementary School 9:40 am
2727 Edinburgh Channes Road

- Thursdays

- Dobyys Bennett High School 6:00 am
1800 Legion Drive
- Andrew Johnson Elementary School 6:45 am
1001 Ormond Drive
- Thomas Jefferson Elementary School 7:15 am
2216 Westmorland Avenue
- Abraham Lincoln Elementary School 8:00 am
1000 Summer Street

- **Emergency or Holiday Exceptions to these time frames must be pre-approved on a case by case basis by Jennifer Walker, Director of School Nutrition Services.**

We reserve the right to refuse deliveries that are delivered late or do not meet specifications. The delivery must be documented with a legible invoice with the correct bid price, quantity and extension. The manager or their designee must sign all invoices at the time of delivery. Unsigned invoices will NOT be paid. It is requested that the successful bidder provide duplicate

order forms for the convenience of both parties. The successful bidder is required to provide clean, mobile racks and bread trays for proper storage at each school.

No substitutions of delivery days or times can be made without prior approval of the City of Kingsport School Nutrition Services Director. Delivery schedules will be altered to meet holiday and snow day schedules. They will be made FOB destination to each school. Stock is to be placed adjacent to the appropriate storage area as designated by the Cafeteria Manager or their designee.

If applicable, deliveries must be made in mechanically refrigerated truck maintaining an appropriate temperature for the items being shipped (below freezing for frozen goods, 40 degrees F and below for other refrigerated perishables, etc.) and according to HACCAP (Hazard Analysis and Critical Control Points). The City of Kingsport reserves the right to reject the use of any equipment by a carrier if it is not in a clean, sanitary condition suitable for the transport of food items, supplies, etc.

To assist drivers and authorize school to expedite receiver accuracy of quantities of each item, brand, and code numbers of each item and condition of merchandise, the invoice will list foods and beverages in order as pulled from truck and placed in the warehouse for delivery verification. Each delivery ticket will be rendered in duplicate and shall be signed by a designated school receiver. No invoice will be paid without designated school receiver or designee's signature. Variations from the norm, i.e., shortages, damages, etc., shall be noted on each ticket by the designated school receiver and initialed by both the truck driver and school receiver. The contractor shall be required to issue credits for errors not detected at the time of delivery.

Special or intermediate deliveries will be required if a contractor fails to deliver a product on a regularly scheduled delivery and/or in emergency situations when meal counts are higher than projected.

Drivers shall wear company uniforms and/or I.D. badges.

- A. If a contractor is unable to deliver a prior approved substitute product, the City of Kingsport school district shall, in good faith and in its sole discretion, purchase a product of equal or greater quality from another source. The supplier shall be responsible and liable for the difference in the cost between the amount paid for the substituted product and the amount which would have been paid had the product been delivered. The supplier shall not be entitled to complain that the substitute product could have been purchased at a lower price.
- B. Delivering brands that are not pre-approved may be reason for rejection of the product, termination of the contract, and shall be considered non-delivery of product.

Fiscal Funding: If the effective dates of this proposal extend beyond June 30 of the current fiscal year, it shall be understood that purchases in the next fiscal year are conditional on the receipt of federal and/or state funds. In the event of the discontinuance or a decrease in federal and/or state funds, the City of Kingsport school district reserves the right to change the item identifications, decrease the quantities, and/or delete items.

SECTION 7. TERMINATION OF CONTRACT. Failure on the part of the City of Kingsport school district, or the contractor, to comply with the provisions of this contract may result in contract termination.

Each party shall follow the procedure outlined below, if a contract is to be terminated:

Step 1 - Issue warning letter and outline violations and length of time to correct the problem.

Step 2 - Issue letter of Intent to Cancel Contract, if problem is not resolved by given date.

Step 3 - Issue letter to cancel contract.

SECTION 8. BUYER CONTRACT RELATIONSHIP. Under arrangements of this contract, a contractor is in essence "hired" as a buyer for the City of Kingsport school district. In this respect, it is the contractor's responsibility to maintain the best interest of the City of Kingsport school district with respect to the following:

- A. Interface with packers on problems relating to product pack and quality.
- B. Make purchases of specified items at the lowest price, including freight.
- C. Maintain a constant search for substitute items which offer better values.
- D. Promote the introduction of new items, either by packer or distributor representatives.
- E. Organize and conduct clinics for City of Kingsport Director of School Nutrition supervisor and/or cafeteria managers, conducted by packer representatives on item usage and preparation.

SECTION 9. STANDARD CONTRACT CONDITIONS.

- A. This contract shall be governed in all respects - as to validity, construction, capacity, performance, or otherwise - by the laws of the State of Tennessee. Any action brought in law or in equity to enforce any provision of the entire Agreement shall be filed in the appropriate state court in Sullivan County, Tennessee. In any action to enforce this Agreement, the prevailing party shall be entitled to recover its costs and expenses, including reasonable attorney's fees.
- B. Contractors providing service herewith, assures the City of Kingsport school district that they are conforming to the provisions of the Civil Rights Act of 1964, as amended.
- C. Contractors shall comply with Executive Order 11246, entitled "Equal Employment Opportunity", as amended by Labor Regulations (41 CFR Part 60).
- D. State Sales and Use Tax Certificate of Exemption form will be issued upon request. Sales tax shall not be included in prices.
- E. Contractor shall comply with applicable federal, state, and local laws and regulations pertaining to wages, hours, and conditions of employment. In connection with contractor's performance of work under this contract, contractor agrees not to discriminate against any employee(s) or applicant(s) for employment because of age, race, religious creed, sex, national origin, or handicap.
- F. The contractor agrees to retain all books, records, and other documents relative to this agreement for three (3) years after final payment. The City of Kingsport, its authorized agents, and/or state/federal representatives shall have full access to, and the right to examine any of said materials during said period. If an investigation or audit is in progress, records shall be maintained until stated matter is closed.
- G. Contractor shall comply with all applicable standards, order, or requirements issued under Section 306 of the Clear Air Act (42 U.S.C. 1857 [h]), Section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency Regulations (40 CFR Part 15), which prohibit the use under non-exempt federal contracts, grants, or loans of facilities included on the EPA List of Violating Facilities.

- H. Contractor must comply with mandatory standards and policies related to energy efficiency which are contained in the State Energy Plan issued in compliance with the Energy Policy and Conservation Act (PL 94-165).

SECTION 10. PRODUCT REQUIREMENTS.

1. Item Identification (ID): The item identifications (descriptions) listed herein are not specifications. Product identifications are limited to requirements which can be verified on delivery or information essential for communication between contractor and City of Kingsport school district. For example, "U.S." Grades are generally not specified unless there is a grade shield on the container or the product is accompanied by an inspection certificate. The use of pre-approved brands makes it unnecessary to utilize detailed specifications.
2. Product Protection Guarantees: School districts have "automatic" product protection recourse against suppliers for products which are misrepresented. According to federal regulations, the supplier whose name and address appear on the package is the responsible party. Contractors are expected to take immediate action to correct any situation in which product integrity is violated.
3. Import Products: Products which are canned or packed outside of the United States will not be accepted. Please note this rule applies to "Private Labels" as well as other labels. The intent of the City of Kingsport school district is to follow the Buy America Provisions of PL100-237. The contractor agrees to abide by the Buy American Provision of the William F. Goodling Nutrition Reauthorization Act of 1998. Policy memoranda 210.21-14 and 220.17-01.
4. Quality and Yield Assurance: A quality and yield assurance letter from the manufacturer must be received by the City of Kingsport Director of School Nutrition stating the guarantee that their product meets the required quality and yield specifications. The CN Label Information is to be included.

For all canned and frozen fruits and vegetables the successful bidder agrees to provide the manufacturer's label codes for USDA quality grades.

The City of Kingsport Director of School Nutrition retains the right to check compliance on any item. A sample of the product will be shipped to an USDA Acceptance Laboratory for verification of the USDA quality grade. Compliance for yield will be made by the City of Kingsport Director of School Nutrition and/or managers on a random basis.

If the analysis indicates that the product meets the USDA quality grade and/or yield specifications, the City of Kingsport Director of School Nutrition will bear the cost of the analysis. If the analysis indicates that the product does not meet the USDA quality grade and/or yield specified, the following penalties will be administered as a minimum:

- a. The Contractor will bear the cost of the analysis.
- b. The Contractor will replace the entire product for all schools within the system for the delivery period without cost even though part of the product had to be or was used. The replacement product must meet the USDA quality grade and yield specifications. The remainder of the rejected product must be picked up without cost to the City of Kingsport school system.

5. Samples: In order to evaluate a new product, the new product will be provided at the expense of the Contractor. The first sample should be presented to the City of Kingsport Director of School Nutrition. If the product is feasible for use in the program, samples may be requested for City of Kingsport school nutrition managers and supervisors to evaluate. Samples will be available (upon request) for a student panel evaluation of a product.

If requested, samples must be furnished within 24 hours. For all additional items submitted must also have a Nutrition Facts Label, and ingredient statement, and/or a CN label or Products Formulation Statement on Manufacturer's letterhead. This documentation MUST demonstrate how the product contributes to the meal pattern requirements and provide calories, saturated fat, trans fat, and sodium contribution per serving.

6. Approved Brands: The "Approved Brand" space on the product lists indicates one of the following:
 - A. Product identification is in itself sufficient, in the case of certain generic items such as pork chops. The words "packer label" may appear in the approved brands column and the contractor may bid any label.
 - B. The Contractor shall supply the appropriate label for grade specified for canned and frozen fruits and vegetables. The potential contractor shall supply 1st Quality Label only.
 - C. Items not covered by instructions 4-A or 4-B above will have manufacturer's name and product number under "brands". Potential contractors may propose only those products which are pre-approved. This instruction most frequently applies to meat items. In some instances where "private label" is normally bid, the potential contractor will choose to offer a quote on a national brand, in these instances, the national brand must be pre-approved.
 - D. The successful contractor shall notify the City of Kingsport school district when a brand change is appropriate. The successful contractor shall obtain the best price when a brand change is submitted for approval.
7. Item Substitutions/Changes:

The School District reserves the right to make brand changes at any point during the contract for the following reasons to include, but not limited to, decrease in sales, quality control issues, customer complaints, or additions of approved brands. When requesting a brand change, the Child Nutrition Department shall ask the distributor to submit pricing on other approved brands.

8. Nutrition Compliance

- A. Products with Low-fat and Low-sodium nutrition claims are preferred when available.
- B. Food products and ingredients used to prepare schools meals must contain zero grams of trans fat (less than 0.5 grams) per serving. Documentation for food products

and food ingredients must indicate zero grams of trans fat per serving. The Nutrition Facts Panel must indicate zero trans fat.

C. Effective July 1, 2014, all grain products must meet the whole grain-rich criteria for the school meal programs and contain 100 percent whole grain or a blend of whole-grain meal and/or flour and enriched meal and/or flour of which at least 50 percent is whole grain. The remaining 50 percent or less of grains, if any, must be enriched.

D. Ready-to-Eat (RTE) breakfast cereals must list a whole grain as the primary ingredient and the cereal must be fortified. RTE cereals that are made from 100 percent whole grains are not required to be fortified. If the product includes enriched ingredients, or if the product itself is enriched, the ingredients or the product must meet the Food and Drug Administration's standards of identify for enrichment (21 CFR Section 137).

E. USDA recently published practical, science-based nutrition standards for snack foods and beverages sold to children at school during the school day. The standards, required by the Healthy, Hunger-Free Kids Act of 2010, will allow schools to offer healthier snack foods to children, while limiting junk food.

F. Nutrition Standards for Foods

Any food sold in schools must:

1. Be a "whole grain-rich" grain product; or
2. Have as the first ingredient a fruit, a vegetable, a dairy product, or a protein food; or
3. Be a combination food that contains at least ¼ cup of fruit and/or vegetable; or
4. Contain 10% of the Daily Value (DV) of one of the nutrients of public health concern in the 2010 Dietary Guidelines for Americans (calcium, potassium, vitamin D, or dietary fiber).*

G. Foods must also meet several nutrient requirements:

- Calorie limits:
 - Snack items: ≤ 200 calories
 - Entrée items: ≤ 350 calories
- Sodium limits:
 - Snack items: ≤ 230 mg**
 - Entrée items: ≤ 480 mg
- Fat limits:
 - Total fat: ≤ 35% of calories
 - Saturated fat: < 10% of calories
 - Trans fat: zero grams
- Sugar limit:
 - ≤ 35% of weight from total sugars in foods

*On July 1, 2016, foods may not qualify using the 10% DV criteria.

****On July 1, 2016, snack items must contain \leq 200 mg sodium per item**

Current/applicable regulations for grains used in the School Breakfast Program (SBP) and National School Lunch Program (NSLP) can be found at <http://www.fns.usda.gov/cnd/Governance/Policy-Memos/2012/SP30-2012os.pdf>. As regulations change, additional information is available at www.fns.usda.gov/cnd. All SNP operators are required to follow regulations in place at time of purchase. As those regulations change, there may be a need to revise product requirements. This School System reserves the right to delete or add products to comply with regulations.

IN WITNESS whereof the parties by their authorized agents have executed this contract.

CITY OF KINGSPORT, TENNESSEE
SUPPLIER NAME

BY: _____
MAYOR

BY: _____
AUTHORIZED SUPPLIER REPRESENTATIVE

ATTEST:

RECORDER

APPROVED AS TO FORM:

CITY ATTORNEY



AGENDA ACTION FORM

An Amendment to Add Kingsport City School Sites to the Current City of Kingsport Agreement with EnerNOC

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

Action Form No.: AF-47-2015
 Work Session: February 16, 2015
 First Reading: N/A

Final Adoption: February 17, 2015
 Staff Work By: Committee
 Presentation By: Bill Shedden

Recommendation: Approve the resolution.

Executive Summary:

The City of Kingsport is in a current agreement with EnerNOC, Inc. and the Kingsport City Schools has an opportunity to add sites to this agreement. The EnerNOC Demand Response Program allows the City to receive payments for reducing main line power consumption during times of abnormally high electricity demand. Program benefits include: minimum payment to the City of Kingsport for participation, additional payment for energy demand reduction, real time monitoring meters, load testing of facility generators, and reduced risk of brown outs to Kingsport residents and businesses.

Kingsport City Schools recommends that the City of Kingsport amend the current EnerNoc Demand Response Sales and Services Agreement to add the following sites for the Kingsport City Schools:

Site Name	Site Address	Estim.Capacity (kW)
Dobyns Bennett High School Account #0163632600	1800 Legion Drive, Kingsport TN 37664	400
Dobyns Bennett High School Account #0126649940	1800 Legion Drive, Kingsport TN 37664	100
Sevier Middle School Account #0144480800	1200 Wateree Street, Kingsport TN 37660	175
Robinson Middle School Account # 0153312600	1517 Jessee Street, Kingsport TN 37660	125

The EnerNOC Solution Financial Opportunity for the Kingsport City Schools, the current City of Kingsport Agreement with EnerNOC, Inc. and the Amendment Number 1 are attached. This amendment will provide potential payments to the Kingsport City Schools annually of \$22,709.00 on average.

Attachments:

1. Resolution
2. EnerNOC Solution Financial Opportunity
3. Amendment Number 1
4. City of Kingsport EnerNOC Agreement

	Y	N	O
Clark	—	—	—
George	—	—	—
Hall	—	—	—
McIntire	—	—	—
Parham	—	—	—
Segelhorst	—	—	—
Phillips	—	—	—

RESOLUTION NO. _____

A RESOLUTION APPROVING AN AMENDMENT TO THE AGREEMENT WITH ENERNOC, INC. TO ADD SELECTED KINGSFORT CITY SCHOOLS TO THE CURRENT AGREEMENT; AUTHORIZING THE MAYOR TO EXECUTE THE AMENDMENT; AND ALL OTHER DOCUMENTS NECESSARY AND PROPER TO EFFECTUATE THE PURPOSE OF THE AMENDMENT

WHEREAS, in February, 2013, the city entered into an agreement with EnerNoc, Inc. Load Response Program which allowed the city to receive payments for reducing main line power consumption by turning off pump stations during times of abnormally high electricity demand; and

WHEREAS, the contract term was for five (5) years, with a minimum payment to the city of \$151,583.00, but the actual number depends on the number of events called; and

WHEREAS, at this time the Kingsport City Schools would like to add to the agreement Dobyne Bennett High School, Sevier Middle School and Robinson Middle School; and

WHEREAS, the contract will provide potential payments to the Kingsport City Schools annually of \$22,709.00, on average.

Now therefore,

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

SECTION I. That an amendment to the agreement with EnerNoc, 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, an amendment to the agreement of February 16, 2013 with EnerNoc, Inc. adding Dobyne Bennett High School, Sevier Middle School and Robinson Middle School for inclusion in the agreement, and all other documents necessary and proper to effectuate the purpose of the agreement or this resolution, said amendment being generally as follows:

AMENDMENT NUMBER 1
TO ENERNOC DEMAND RESPONSE SALES AND SERVICES AGREEMENT

Amendment 1 to the Demand Response Sales and Service Agreement with an effective date of February 16, 2103 between the City of Kingsport and EnerNOC, Inc.

Attachment A-2

Changed to add the following Sites:

Site Name	Site Address	Estim.Capacity (kW)
Dobyne Bennett High School Account #0163632600	1800 Legion Drive, Kingsport TN 37664	400
Dobyne Bennett High School Account #0126649940	1800 Legion Drive, Kingsport TN 37664	100
Sevier Middle School Account #0144480800	1200 Wateree Street, Kingsport TN 37660	175
Robinson Middle School	1517 Jessee Street, Kingsport TN 37660	125

Account # 0153312600

All other terms and conditions remain the same as in the Demand Response Sales and Service Agreement of February 16, 2013.

[Acknowledgements Deleted for Inclusion in this Resolution]

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

SECTION 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 17th day of February, 2015.

DENNIS R. PHILLIPS, MAYOR

ATTEST:

JAMES H. DEMMING, CITY RECORDER

APPROVED AS TO FORM:

J. MICHAEL BILLINGSLEY, CITY ATTORNEY

ENERNOC | EnerNOC Solution Financial Opportunity

PREPARED FOR
Bill Shedden
Facilities Manager, Kingsport City Schools
Energy Management Proposal
Quote Valid for 30 Days

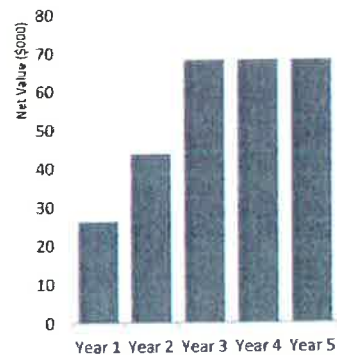
Howard Henward:
BDM
404-449-6871
hhenward@enernoc.com

Total Estimated Value of EnerNOC Solution:

\$68,127

Estimated Payback Over Contract Term

	Year 1	Year 2	Year 3	Future	Total
Energy Cost Savings	\$0	\$0	\$0	\$0	\$0
Non-Energy Cost Savings	\$0	\$0	\$0	\$0	\$0
Capacity Payment Earnings	\$17,354	\$8,668	\$15,479	\$0	\$41,501
Energy Payment Earnings	\$8,875	\$8,875	\$8,875	\$0	\$26,626
Total Value	\$26,229	\$17,543	\$24,354	\$0	\$68,127
Software Fee	\$0	\$0	\$0	\$0	\$0
Out-of-Pocket Cost	\$0	\$0	\$0	\$0	\$0
Net Value	\$26,229	\$17,543	\$24,354	\$0	\$68,127



Powerful Management Tool - Better visibility leads to better planning, communication, and decision-making.

Address all three energy cost drivers (how you buy it, how much you use, and when you use it) in a single, unified platform so they can be managed holistically.

Reduce overall energy costs, both direct and indirect:

- **Optimize Facilities:** Continuously identify and prioritize savings opportunities
- **Save Time:** Eliminate time spent collecting data and conducting manual analysis and reporting
- **Understand Use:** Access on-demand, real-time visibility into usage, cost trends, and budget performance
- **Communicate Effectively:** Easily report on KPIs and drive alignment around goals across your organization

AMENDMENT NUMBER 1 TO ENERNOC DEMAND RESPONSE SALES AND SERVICES AGREEMENT

Amendment 1 to the Demand Response Sales and Service Agreement with an effective date of February 16, 2103 between the City of Kingsport and EnerNOC, Inc.

Attachment A-2

Changed to add the following Sites:

<u>Site Name</u>	<u>Site Address</u>	<u>Estim,Capacity (kW)</u>
Dobyns Bennett High School Account #0163632600	1800 Legion Drive, Kingsport TN 37664	400
Dobyns Bennett High School Account #0126649940	1800 Legion Drive, Kingsport TN 37664	100
Sevier Middle School Account #0144480800	1200 Wateree Street, Kingsport TN 37660	175
Robinson Middle School Account # 0153312600	1517 Jessee Street, Kingsport TN 37660	125

All other terms and conditions remain the same as in the Demand Response Sales and Service Agreement of February 16, 2013.

ENERNOC, INC

CITY OF KINGSPORT

BY: _____

Mayor

DATE: _____

DATE: _____

WITNESS:

ATTEST:

City Recorder

APPROVED AS TO FORM:

City Attorney



Get More From Energy

Demand Response Sales and Services Agreement

This Demand Response Sales and Services Agreement (this "Agreement"), effective as of February 16, 2013 ("Effective Date"), the scope of which is described more fully below, is made by and between EnerNOC, Inc. ("EnerNOC"), located at 101 Federal St., Suite 1100, Boston, MA 02110 USA, and City of Kingsport ("Customer"), located at 225 West Center Street, Kingsport, TN 37680. EnerNOC and Customer are defined herein as the Parties ("Parties") to this Agreement.

1. **Term.** This Agreement shall commence on the Effective Date and end on 5/31/2018 (the "Term").
2. **EnerNOC Managed Services**
 - a. **Scope of Services.** EnerNOC agrees to manage Customer's participation in the demand response program(s), as further described in Attachment(s) A-1 attached hereto (each individually the "Program" and collectively, the "Programs"), in accordance with the rules set forth by the applicable independent system/grid operator and/or utility, which are subject to amendment by the applicable independent system/grid operator and/or utility from time to time. EnerNOC will (i) work with Customer to develop an appropriate curtailment plan for Customer's business; (ii) complete all necessary permits and associated reporting on Customer's behalf; (iii) register Customer's Accepted Capacity (as defined in Attachment(s) A-1); (iv) manage Customer's curtailable electrical capacity in the Programs and, upon notification by EnerNOC and acceptance by Customer, provide real-time support to Customer during demand response events ("Demand Response Events") via, at Customer's sole discretion, direct load control or manual implementation by Customer, as applicable; and (v) reconcile all Program payments in accordance with the rules set forth by the applicable independent system/grid operator and/or utility and as further described in Attachment(s) A-1. In addition, as necessary, EnerNOC will coordinate with Customer's host utility to capture kilowatt-hour (kWh) pulses from the Customer's primary utility meter to provide Customer near real-time, Internet-enabled power monitoring.
 - b. **EnerNOC System.** EnerNOC, as it deems necessary and at its sole option, may equip one or more of Customer facility address (each a "Site Address") as identified on Attachment(s) A-2 hereto with the EnerNOC system, which includes an EnerNOC Site Server ("ESS") that can, at Customer's sole discretion, enable remote generator start/stop, and/or direct load management, power metering, data collection, near real-time data communication, and Internet-based reporting and analytics. Subsequent to the date hereof, Attachment(s) A-2 may be updated in writing from time to time by the Parties to reflect additional Site Addresses.
3. **Customer Support Requirements**
 - a. **ESS Installation.** Within fourteen (14) days of execution by Customer of this Agreement, Customer shall provide EnerNOC with reasonable access to install a cellular connectivity device that allows for Internet-based communication of Site Address' electricity consumption and Demand Response Event performance. If cellular connectivity is not feasible, Customer shall provide either a static or non-static, as applicable, Internet Protocol (IP) address and Local Area Network (LAN) access that allows for Internet-based communication of Site Address' energy consumption and Demand Response Event performance where necessary.
 - b. **Acceptance Testing.** Customer agrees to collaborate with EnerNOC in testing the ESS at each Site Address where the ESS is installed in a timely manner prior to registering with the Program(s).
 - c. **Event Performance.** Customer agrees to use commercially reasonable efforts to generate and/or reduce electrical demand to achieve Accepted Capacity as defined in Attachment(s) A-1 at each Site Address when notified by EnerNOC during Demand Response Events. Customer and EnerNOC understand that the curtailable electrical capacity identified in Attachment(s) A-2 does not represent Accepted Capacity and is solely the Parties' best estimate of performance and that Accepted Capacity may vary.
 - d. **Nondisclosure to Third Parties.** Customer and EnerNOC acknowledge that in its relationship with the other Party, it may receive information including (but without limitation): confidential information, business strategies, financial information, information relating to the ESS and the EnerNOC System, and information contained in this Agreement, including the terms of the revenue sharing arrangement described in Attachment(s) A-1 (all collectively "Confidential Information"). Except as required by applicable law or regulation or as expressly set forth in Subsection 3(f) hereof, neither Party shall disclose any Confidential Information to any third party or allow any third party access to such Confidential Information.
 - e. **Trade Secret Protection Obligations.** Customer shall not alter, reverse engineer, disassemble, decompile or copy the ESS or any other EnerNOC System components and shall not allow any third party to use, access, or examine the ESS or any other EnerNOC System components.
 - f. **Use of Confidential Information.** Notwithstanding anything contained herein to the contrary, Customer acknowledges that EnerNOC may receive Confidential Information of Customer through data collected by the ESS and the EnerNOC System, which may be disclosed by EnerNOC (i) to the applicable independent system/grid operator and/or utility as solely necessary for the performance of this Agreement and (ii) to any subcontractors or other agents of EnerNOC.
 - g. **Service Provider Limitation.** Customer agrees not to contract with any other demand response service provider for the Term of this Agreement, for the Site Addresses listed on Attachment A-2..
4. **General Terms**
 - a. **Limitation on Liability.** To the extent permitted by Tennessee law, EnerNOC's liability hereunder is limited to direct actual damages as the sole and exclusive remedy, and total damages shall not exceed the lesser of (i) the total amount paid to



Attachment A-1
Emergency Load Response Program

1. **Program Description.** PJM Interconnection's (PJM) Emergency Load Response Program (ELRP) enables program participants to receive revenue for being available to reduce electricity consumption when the reliability of the electric grid is in jeopardy and voltage reductions and rolling brownouts are imminent.
2. **Program Rules.** The terms of this Agreement will reflect ELRP program terms and conditions which may be amended from time to time by PJM, the current terms of which are summarized below:

<i>Program Availability</i>	During the program period June 1-September 30 ("Program Period"), Customers must be able to respond during non-holiday weekdays from 12:00 p.m. to 8:00 p.m. (Eastern Prevailing Time). PJM may call events outside of the Program Period; Customer's performance during such events shall not impact Capacity Payments, but will be included in Customer's Energy Payments as defined in Section 4(b) below.
<i>Event Trigger</i>	PJM will initiate Demand Response Events in ELRP in the case of a defined system emergency.
<i>Advanced Notification</i>	Customers are expected to be able to respond to an ELRP Demand Response Event notice within 120 minutes of notification from EnerNOC.
<i>Event Frequency & Duration</i>	Maximum of ten (10) Demand Response Events in a year, with event duration ranging from a minimum of one (1) hour to a maximum of six (6) hours.
<i>Testing Requirement</i>	If no Demand Response Event occurs, PJM requires EnerNOC to hold a Test Event by September 30 of the Program Period.

3. **Paid Capacity.** "Paid Capacity" will be either (i) Accepted Capacity, if a Demand Response Event or a Test Event (collectively, a "DR Event") has not been initiated during the Program Period, or (ii) Customer's average Delivered Capacity for all DR Events initiated during the Program Period.
 - a. **Accepted Capacity.** "Accepted Capacity" shall represent the best estimate of Customer's expected curtailment based on analysis of consumption data and pre-enrollment testing. Customer agrees that the Accepted Capacity may be adjusted by EnerNOC in the future to reflect actual performance, changes in facility operations, Program rules, regulations and/or other relevant information.
 - b. **Delivered Capacity.** "Delivered Capacity" will be the calculated performance with respect to the Program baselines and as measured by the ESS following each DR Event, up to 100% of Accepted Capacity. Customer's Delivered Capacity may be adjusted by EnerNOC in the future following PJM approval of performance data from DR Events.
4. **Payments**
 - a. **Capacity Payments.** EnerNOC will pay Customer 50.00% of the established PJM market clearing price obtained by EnerNOC multiplied by Paid Capacity ("Capacity Payment").
 - b. **Energy Payments.** In months when one or more Demand Response Events are called, EnerNOC will pay Customer 75.00% of the Energy Payments available from PJM to EnerNOC in connection with Customer responding to a Demand Response Event when notified by EnerNOC.
 - c. **Underperformance.** In no event shall Customer be penalized for underperformance by being required to return money to EnerNOC. If customer underperforms, adjustments will be made to future payments so that total payments made to Customer for the Program Period will reflect Paid Capacity for such Program Period.
 - d. **Payment Timing.** EnerNOC shall make all payments associated with Customer's participation in the ELRP to Customer on a quarterly basis, and such payments shall be made within forty-five (45) days of EnerNOC's receipt of total payment from PJM.
5. **Additional Terms**
 - a. **Curtailment Service Provider.** Customer hereby designates EnerNOC as its sole curtailment services provider for the limited purpose of participating in PJM's Emergency Load Response Program for the Site Addresses listed in Attachment A-2.



Attachment A-2

Site Name	Site Address	Estim. Capacity (kW)
Hillcrest Pump Station	3806 Summit Dr. Kingsport, TN 37664	275
Colonial View Pump Station	601 Moreland Dr. Kingsport, TN 37664	215
Wastewater Treatment Plant (mtrs # 445747522 & 24)	700 Industry Dr. Kingsport, TN 37660	100
Water Treatment Plant	2436 Sherwood Rd. Kingsport, TN 37664	670
Raw Water Intake	1897 S. John B. Dennis Hwy Kingsport, TN 37660	465



Get More From Energy

- Customer under this Agreement during the six-month period immediately preceding the event giving rise to the claim(s) or (s) \$100,000. All other remedies or damages (at law, in equity, tort, contract, or otherwise) are expressly waived, including any indirect, punitive, special, consequential, or incidental damages, lost profit, or other business interruption damages.
- b. **Choice of Law.** This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of Tennessee, without giving effect to choice of law rules.
- c. **Miscellaneous.** Customer may not assign any of its rights or delegate any of its performance obligations hereunder without the prior written consent of EnerNOC. This Agreement contains the entire agreement between Customer and EnerNOC and may only be amended in writing signed by each of the Parties. If any of its provisions shall be held invalid or unenforceable, this Agreement shall be construed as if not containing those provisions and the rights and obligations of the Parties hereto shall be construed and enforced accordingly. This Agreement shall be binding upon the Parties together with their successors and assigns.
- d. **Force Majeure.** The Parties shall be excused for any failure or delay in the performance of their obligations hereunder due to acts of God or any other legitimate cause beyond their reasonable control.
- e. **Termination.** Either Party may terminate this Agreement immediately if the Program(s) is materially altered, suspended or ended. Notwithstanding the foregoing, in the event that capacity is not available in the Program for a given Program Period (as defined in Attachment(s) A-1), EnerNOC may reduce Customer's Accepted Capacity to zero and/or terminate this Agreement. In addition, Customer shall have the right to terminate this Agreement upon thirty (30) days prior written notice, provided, however, that such notice be received by EnerNOC between October 1 and January 31 of each year.
- f. **Notices.** Any notices required or permitted to be given hereunder by either Party to the other shall be given in writing: (1) by personal delivery; (2) by electronic facsimile with confirmation sent by United States first class registered or certified mail, postage prepaid, return receipt requested; (3) by bonded courier or by a nationally recognized overnight delivery company; or (4) by United States first class registered or certified mail, postage prepaid, return receipt requested, in each case, addressed to the Parties as follows (or to such other addresses as the Parties may request in writing by notice given pursuant to this Section): EnerNOC, Inc., Attn: Deputy General Counsel, 101 Federal Street, Suite 1100, Boston, MA 02110; and to the Customer at City of Kingsport, at 225 West Center Street, Kingsport, TN 37680.
- g. **Insurance.** EnerNOC shall maintain
- Commercial General Liability Insurance with limits of \$1,000,000 per occurrence and \$2,000,000 aggregate
Automobile Liability Insurance with limits of \$1,000,000 per occurrence combined single limit
Workers' Compensation and Employers' Liability Insurance with limits of not less than \$500,000
- All insurance carriers must have an AM Best rating of A-VIII or better. Upon request of Customer, Customer shall be listed as a certificate holder and additional insured on the Commercial General Liability policy. Customer shall be notified in writing at least thirty (30) days prior to cancellation of any insurance policy.
- h. **Non-liability of City Officials and Employees.** No member, official, or employee of the Customer shall be personally liable to EnerNOC or any other party, including a third party beneficiary, in the event any provision of the Agreement is unenforceable; there is any default or breach by the Customer; for any amount which may become due under the Agreement; or on any obligations under the terms of this Agreement.

EnerNOC, Inc.

Name

Title

Signature

Laurie Harrison
Deputy General Counsel

City of Kingsport

Name

Title

Signature

Dennis R. Phillips
Mayor
Dennis R. Phillips



APPROVED AS TO FORM:

J. Michael Phillips
CITY ATTORNEY



AGENDA ACTION FORM

Private Act from the Tennessee General Assembly Amending the Parts of the City Charter

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

Action Form No.: AF-35-2015
 Work Session: February 16, 2015
 First Reading: N/A

Final Adoption: February 17, 2015
 Staff Work By: Fleming/Demming/Billingsley
 Presentation By: Mike Billingsley

Recommendation:

Approve the resolution.

Executive Summary:

The attached resolution requests the Tennessee General Assembly to pass a private act allowing for certain amendments to the city charter. If the act is passed, to make the act effective it will have to be approved by the board by a two-thirds majority vote.

Generally, the purpose of the proposed amendment is to make certain provisions clearer. The changes provide further clarification that the powers of the board can be exercised by ordinance, resolution or motion, and pertaining to the methods of disposition of real property.

There is a proposed amendment to the bond requirements for city employees who handle money. The change provides for the acquisition of an Employee Honesty Insurance Policy, which the city already has, rather than a bond for each employee.

[The Executive Summary is continued on the next page.]

Attachments:

1. Resolution

	Y	N	O
Clark	—	—	—
George	—	—	—
Hall	—	—	—
McIntire	—	—	—
Parham	—	—	—
Segelhorst	—	—	—
Phillips	—	—	—

[Executive Summary Action Form 35-2015 continued]

There are some provisions added to the current requirement to allow an employee to have a hearing before the city manager when an employee will be terminated. A time limit for the employee to request the hearing will now be in the charter. It is currently in the city's Personnel Policies and Procedures as a part of the Separation from Employment policy. The employee will have three business days to request the hearing. The Separation from Employment Policy was approved by the board in Resolution 2009-176.

There is also an addition that makes it clear that a formal hearing is not needed if an employee is suspended without pay for less than six work days. Instead the employee will have the opportunity to meet with the city manager to respond and explain.

Finally, there are some provisions clarifying further that competitive bidding is required only when the contract involves the expenditure of city funds. There are provisions added that includes all exceptions from bidding stated in T.C.A. section 6-56-403.

RESOLUTION NO. _____

A RESOLUTION REQUESTING THE GENERAL ASSEMBLY TO PASS A PRIVATE ACT PERTAINING TO THE CHARTER OF THE CITY OF KINGSPORT THAT WILL AMEND ARTICLE I, CORPORATE NAME, BOUNDARIES AND POWERS TO PROVIDE FOR CHANGES TO CORPORATE POWERS; ARTICLE VI, OFFICERS AND EMPLOYEES GENERALLY PERTAINING TO BONDS FOR CERTAIN EMPLOYEES; ARTICLE VII, CITY MANAGER TO CLARIFY THE POWERS AND DUTIES OF THE CITY MANAGER; ARTICLE XX, CONTRACTS TO CLARIFY PURCHASING AND EXCEPTIONS; AUTHORIZING THE CITY MANAGER TO SEND THIS RESOLUTION TO MEMBERS OF THE GENERAL ASSEMBLY; AND TO FIX THE EFFECTIVE DATE OF THIS RESOLUTION

BE IT RESOLVED by the Board of Mayor and Aldermen that this Board does hereby request the members of the Tennessee General Assembly representing the citizens of Kingsport to take appropriate action to amend the Charter of the City of Kingsport as follows:

SECTION I. To amend Article I, Section 2, of said Charter relating to the manner of exercising corporate powers by the City of Kingsport, to read as follows:

ARTICLE I. CORPORATE NAME, BOUNDARIES AND POWERS

Sec. 2. Corporate powers.

Execution of powers. The City of Kingsport shall, by ordinance, resolution or motion, have the power and authority:

(8) *General powers as to property.* To acquire or receive and hold, maintain, improve, sell, lease, mortgage, pledge or otherwise dispose of property, real or personal, and any estate or interest therein, within or without the city or state. As it pertains to real property the board of mayor and aldermen shall determine the method or methods used to exercise these powers, which may include, but are not limited to a request for bids, auction, private negotiation, private sale, or any other method available for acquiring, disposing or leasing real property.

SECTION II. To amend Article VI, Section 3, of said Charter relating bonds, to read as follows:

ARTICLE VI. OFFICERS AND EMPLOYEES GENERALLY

Sec. 3. Bonds.

The city manager and every officer, agent and employee having duties embracing the receipt, disbursement, custody or handling of money shall, before entering upon his duties, execute a fidelity bond with some surety company authorized to do business in the State of Tennessee, as surety (except that bonds for five hundred dollars (\$500.00) or less may be given with personal surety), in such amount as shall be prescribed by ordinance of the board of mayor and aldermen, except where the amount is prescribed in this Charter. All such bonds and the sureties thereto shall be subject to the approval of the board of mayor and aldermen. Except where amount of the bond is prescribed in this Charter, the board of mayor

and aldermen may authorize the acquisition of an Employee Honesty Policy in lieu of such bond.

SECTION III. To amend Article VII, Section 2(b) and (h), of said Charter relating to appointment or removal of city officers and employees, to read as follows:

ARTICLE VII. CITY MANAGER

Sec. 2. Powers and duties.

The powers and duties of the city manager shall be:

(b) *Appointment or removal of officers or employees.* Except as provided in this Charter, to appoint and remove all heads of departments and all subordinate officers and employees, and all appointments to be made on merit and fitness alone. Except for a reduction in force no employee shall be removed except upon specific charges in writing after completion of their six (6) month-probationary period. Any employee except department heads, deputy department heads and confidential employees may request a hearing prior to their final termination. The request for a hearing must be made in writing delivered to the office of the city manager by 5:00 p.m. the close of business on the third business day following the notice to the employee that the city manager will act on the termination if the request for a hearing is not timely made. The hearing may be public if requested by the employee and the accused shall have the right to appear and defend in person or by counsel and shall have process of the board of mayor and aldermen to compel attendance of witnesses in their behalf. An employee who is suspended without pay for less than six (6) work days shall not have a right to a formal hearing, but rather shall have a right to have the opportunity to meet with the city manager. The meeting will not be public and at the meeting the employee will have an opportunity to respond and explain before the city manager acts on the suspension. The opportunity for the meeting is waived if the employee fails to request the meeting in writing delivered to the office of the city manager by 5:00 p.m. on the business day following the notice to the employee of the reason for the proposed suspension and that the city manager will act on the suspension, if the request for a meeting is not timely made.

(h) *Purchasing agent; bids required.* To act as purchasing agent of the city and to purchase all material, supplies, equipment and services for the proper conduct of the city's business. The board of mayor and aldermen shall prescribe by ordinance the maximum expenditure which the city manager may make without specific authorization of the board of mayor and aldermen, and it shall prescribe rules for competitive bidding, but no purchase expending city funds shall be made at any one time in an amount which in the aggregate will exceed fifty thousand dollars (\$50,000.00) unless bids shall have been requested through public advertisement and award made to the lowest responsible compliant bidder in the best interest and advantage of the city. This requirement shall not apply to purchases, leases or lease purchases of real property or any exemptions substantially similar to those contained in T.C.A. section 6-56-304, as amended from time to time.

SECTION IV. To amend Article XX, Section 1(a), of said Charter relating to city contracts, to read as follows:

ARTICLE XX. CITY CONTRACTS

Sec. 1. Designated work to be by contract; advertisement for bids; bond of contractor; rejection of bids, re-advertisement; work by city forces.

(a) All contracts expending city funds of more than fifty thousand dollars (\$50,000) shall be awarded to the lowest responsible compliant bidder in the best interest and advantage to the City of Kingsport after publication, advertisement and competition, as may be prescribed by ordinance. This requirement shall not apply to purchases, leases or lease

purchases of real property or any exemptions substantially similar to those contained in T.C.A. section 6-56-304, as amended from time to time. No contract for any public work or improvement shall be awarded except on condition that the contractor give bond with some bonding company authorized to transact business in [the State of] Tennessee, as surety, in a sum equal to at least fifty percent (50%) of the contract price of the particular work or improvement for the faithful performance of such contract. In lieu of the bond required in this subsection, the city may, in its sole discretion, allow the following securities or cash to be substituted:

- (1) United States Treasury bonds, United States Treasury notes or United States Treasury bills.
- (2) General obligation bonds of the State of Tennessee.
- (3) Certificates of deposits irrevocably pledged from a state or national bank having its principal office in [the State of] Tennessee.
- (4) An irrevocable letter of credit from a state or national bank having its principal office in [the State of] Tennessee. The terms and conditions of any letter of credit shall be subject to the approval of the city treasurer. All letters of credit shall be accompanied by an authorization of the contractor to deliver retained funds to the bank issuing the letter.
- (5) Cash, provided that if cash is posted, the city shall pay to the contractor interest at the same rate that interest is paid on funds invested in a local government investment pool established pursuant to Tennessee Code Annotated, Section 9-4- 704 [T.C.A. § 9-4-704], for the contract period.

SECTION V. That this act shall have no effect unless it is approved by a two-thirds (2/3) vote of the legislative body of the City of Kingsport. Its approval or non-approval shall be proclaimed by the presiding officer of such legislative body and certified to the secretary of state.

SECTION VI. That the city manager is authorized and directed to forward copies of this Resolution to all members of the Sullivan County and Hawkins County delegations to the Tennessee General Assembly, and he is further authorized and directed to do all things lawful and to execute and deliver such documents, approved by the city attorney, as may in his discretion be necessary and desirable to implement the intent of this resolution.

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

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

ADOPTED this the 17th day of February, 2015.

DENNIS R. PHILLIPS, MAYOR

ATTEST:

JAMES H. DEMMING, CITY RECORDER

APPROVED AS TO FORM:

J. MICHAEL BILLINGSLEY, CITY ATTORNEY



AGENDA ACTION FORM

Appointment to the Visitor Enhancement Program Advisory Board

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

Action Form No.: AF-48-2015
 Work Session: February 16, 2015
 First Reading: N/A

Final Adoption: February 17, 2015
 Staff Work By: R. McBryar
 Presentation By: Mayor Phillips

Recommendation:

Approve appointment.

Executive Summary:

Mr. Bryan Hall has agreed to serve on the Visitor Enhancement Program Advisory Board if approved by the Board of Mayor and Aldermen. Bryan's appointment will replace member Andy King. The appointment will be for a three-year term effective immediately and will expire February 28, 2018.

Attachments:

1. Bio

	<u>Y</u>	<u>N</u>	<u>O</u>
Clark	—	—	—
George	—	—	—
Hall	—	—	—
McIntire	—	—	—
Parham	—	—	—
Segelhorst	—	—	—
Phillips	—	—	—

January 30, 2015

Bryan Hall

Home Depot
2000 Harrell Road
Kingsport, TN 37660

Mr. Bryan Hall is a native of Kingsport and spent most of his career in the grocery industry – 16 years with Food Lion starting in Kingsport and his last position was a Regional Merchandising Manager in Nashville. Bryan moved back to Kingsport a year ago to be closer to the people and places he loves the most and is currently the Store Manager of Home Depot in Kingsport.

Mr. Hall has a daughter and looks to become a better community-involved-citizen and servant leader. He would like to see himself and Home Depot involved more in the community.

MEMORANDUM

TO: Jeff Fleming, City Manager
Board of Mayor and Aldermen

FROM: James H. Demming, City Recorder/CFO

DATE: February 10, 2015

SUBJECT: Presentation of Submission to the State of Tennessee the Report on Debt Obligations (State Form CT-0253) - \$17,695,000 General Obligation Refunding Bonds – Series 2015

At the January 20, 2015 regular meeting, the BMA authorized the issuance of up to \$20,200,000 in bonds to refund various outstanding bonds and notes. At that time, the City had filed a plan of refunding with the State Comptroller's Office which had estimated that we would realize approximately \$1,193,000 (or net present value benefit of 5.40%) in future debt service savings from this transaction.

The City conducted a competitive sale for this issuance on January 26, 2015 and completed the closing on February 6, 2015. The City received electronic bids from 10 national firms, with the winning public bid for the fixed rate bonds submitted by UBS Financial Services, Inc. with a true interest cost (TIC) of 2.12%. The gross debt service savings realized from this refunding transaction are \$1,977,000 or a net present value benefit of 8.79%.

As a follow-up to the bond closing, the City is required, prior to filing with the State of Tennessee, to complete and submit to the BMA the attached "Report on Debt Obligations" (State Form No. CT-0253).

A Final Financing Report for the transaction was prepared by the City's Financial Advisor – Raymond James & Associates and includes detailed information about this refunding bond issue. Excerpts from this report are included with the State Reporting Form for your information. The complete report is available for your review at your convenience.

If additional information is needed, please advise.

REPORT ON DEBT OBLIGATION
(Pursuant to Tennessee Code Annotated Section 9-21-151)**1. Public Entity:**Name: City of Kingsport, TennesseeAddress: 225 West Center StreetKingsport, TennesseeDebt Issue Name: General Obligation Refunding Bonds, Series 2015

If disclosing initially for a program, attach the form specified for updates, indicating the frequency required.

2. Face Amount: \$ 17,695,000.00Premium/Discount: \$ 2,516,265.20**3. Interest Cost:** 2.1347 %☒ Tax-exempt☐ Taxable☒ TIC ☐ NIC☐ Variable: Index _____ plus _____ basis points; or☐ Variable: Remarketing Agent _____☐ Other: _____**4. Debt Obligation:**☐ TRAN ☐ RAN ☐ CON☐ BAN ☐ CRAN ☐ GAN☒ Bond ☐ Loan Agreement☐ Capital Lease

If any of the notes listed above are issued pursuant to Title 9, Chapter 21, enclose a copy of the executed note with the filing with the Office of State and Local Finance ("OSLF").

5. Ratings:☐ UnratedMoody's Aa2Standard & Poor's AA

Fitch _____

6. Purpose:☐ General Government _____ %☐ Education _____ %☐ Utilities _____ %☐ Other _____ %☒ Refunding/Renewal 100.00 %

BRIEF DESCRIPTION

various public works projects**7. Security:**☒ General Obligation☐ Revenue☐ Annual Appropriation (Capital Lease Only)☐ General Obligation + Revenue/Tax☐ Tax Increment Financing (TIF)☐ Other (Describe): _____**8. Type of Sale:**☒ Competitive Public Sale☐ Negotiated Sale☐ Informal Bid☐ Interfund Loan _____☐ Loan Program _____**9. Date:**Dated Date: 02/06/2015Issue/Closing Date: 02/06/2015

REPORT ON DEBT OBLIGATION

(Pursuant to Tennessee Code Annotated Section 9-21-151)

10. Maturity Dates, Amounts and Interest Rates *:

Year	Amount	Interest Rate	Year	Amount	Interest Rate
2016	\$145,000.00	2.0000 %	2028	\$1,325,000.00	3.0000 %
2017	\$150,000.00	3.0000 %		\$	%
2019	\$160,000.00	3.0000 %		\$	%
2020	\$1,220,000.00	4.0000 %		\$	%
2021	\$1,100,000.00	4.0000 %		\$	%
2022	\$1,145,000.00	4.0000 %		\$	%
2023	\$2,300,000.00	4.0000 %		\$	%
2024	\$2,390,000.00	4.0000 %		\$	%
2025	\$2,485,000.00	4.0000 %		\$	%
2026	\$2,580,000.00	4.0000 %		\$	%
2027	\$2,695,000.00	3.0000 %		\$	%

If more space is needed, attach an additional sheet.

If (1) the debt has a final maturity of 31 or more years from the date of issuance, (2) principal repayment is delayed for two or more years, or (3) debt service payments are not level throughout the retirement period, then a cumulative repayment schedule (grouped in 5 year increments out to 30 years) including this and all other entity debt secured by the same source MUST BE PREPARED AND ATTACHED. For purposes of this form, debt secured by an ad valorem tax pledge and debt secured by a dual ad valorem tax and revenue pledge are secured by the same source. Also, debt secured by the same revenue stream, no matter what lien level, is considered secured by the same source.

* This section is not applicable to the Initial Report for a Borrowing Program.

11. Cost of Issuance and Professionals:☐ No costs or professionals

	AMOUNT (Round to nearest \$)	FIRM NAME
Financial Advisor Fees	\$ 37,500	Raymond James & Associates, Inc.
Legal Fees	\$ 0	
Bond Counsel	\$ 30,000	Adams and Reese LLP
Issuer's Counsel	\$ 0	
Trustee's Counsel	\$ 0	
Bank Counsel	\$ 0	
Disclosure Counsel	\$ 0	
Paying Agent Fees	\$ 2,275	Regions Bank
Registrar Fees	\$ 0	
Trustee Fees	\$ 0	
Remarketing Agent Fees	\$ 0	
Liquidity Fees	\$ 0	
Rating Agency Fees	\$ 32,375	Moody's and Standard & Poors
Credit Enhancement Fees	\$ 0	
Bank Closing Costs	\$ 0	
Underwriter's Discount _____ %		
Take Down	\$ 194,645	UBS Financial Services Inc.
Management Fee	\$ 0	
Risk Premium	\$ 0	
Underwriter's Counsel	\$ 0	
Other expenses	\$ 0	
Printing and Advertising Fees	\$ 1,750	I-Deal Prospectus
Issuer/Administrator Program Fees	\$ 3,500	Grant Thornton LLP; verification
Real Estate Fees	\$ 0	
Sponsorship/Referral Fee	\$ 0	
Other Costs _____	\$ 7,500	Raymond James & Associates, Inc.; escrow bidding agent
TOTAL COSTS	\$ 309,645	

REPORT ON DEBT OBLIGATION

(Pursuant to Tennessee Code Annotated Section 9-21-151)

12. Recurring Costs:☐ No Recurring Costs

	AMOUNT (Basis points/\$)	FIRM NAME (If different from #11)
Remarketing Agent		
Paying Agent / Registrar	500.00	Regions Bank
Trustee		
Liquidity / Credit Enhancement		
Escrow Agent		
Sponsorship / Program / Admin		
Other		

13. Disclosure Document / Official Statement:☐ None Prepared☒ EMMA link<http://emma.msrb.org/SecurityView/SecurityDetails.aspx?cusip=A9F6> or☐ Copy attached**14. Continuing Disclosure Obligations:**

Is there an existing continuing disclosure obligation related to the security for this debt?

☒ Yes ☐ No

Is there a continuing disclosure obligation agreement related to this debt?

☒ Yes ☐ NoIf yes to either question, date that disclosure is due June 30Name and title of person responsible for compliance James H. Demming, City Recorder/CFO**15. Written Debt Management Policy:**Governing Body's approval date of the current version of the written debt management policy 11/15/2011Is the debt obligation in compliance with and clearly authorized under the policy? ☒ Yes ☐ No**16. Written Derivative Management Policy:**☒ No derivative

Governing Body's approval date of the current version of the written derivative management policy _____

Date of Letter of Compliance for derivative _____

Is the derivative in compliance with and clearly authorized under the policy? ☐ Yes ☐ No**17. Submission of Report:**To the Governing Body: on 02/06/2015 and presented at public meeting held on 02/17/2015Copy to Director to OSLE: on 02/18/2015 either by:
☐ Mail to: 505 Deaderick Street, Suite 1600
James K. Polk State Office Building
Nashville, TN 37243-1402
 ☒ OR ☒ Email to: StateAndLocalFinance.PublicDebtForm@cot.tn.gov
18. Signatures:

	AUTHORIZED REPRESENTATIVE	PREPARER
Name	<u>Dennis R. Phillips</u>	<u>Cynthia M. Barnett, Esq.</u>
Title	<u>Mayor</u>	<u>Bond Counsel</u>
Firm	<u>City of Kingsport, Tennessee</u>	<u>Adams and Reese LLP</u>
Email	<u>DennisPhillips@kingsporttn.gov</u>	<u>cindy.barnett@arlaw.com</u>
Date	<u>02/06/2015</u>	<u>02/06/2015</u>

RAYMOND JAMES



Final Financing Report

\$17,695,000 General Obligation Refunding Bonds, Series 2015

February 6, 2015

**Nashville Public Finance // Debt Investment Banking
One Burton Hills Blvd. – Suite 225
Nashville, Tennessee 37215
800.764.1002**



EXECUTIVE SUMMARY

EXECUTIVE SUMMARY

Background: The City of Kingsport, Tennessee (the “City”) issued its \$17,695,000 General Obligation Refunding Bonds, Series 2015 (the “Bonds”) on February 6, 2015. The Bonds were issued to refinance existing debt which included one note issue and, in part, three outstanding bond issues. The objective of the transaction was to generate significant annual aggregate and net present value savings.

For this transaction, Raymond James & Associates, Inc., Nashville, Tennessee (“Raymond James”) and Adams and Reese PLC, Nashville, Tennessee served the City as Financial Advisor and Bond Counsel, respectively.

Refunding Candidates: The bonds and notes refunded in whole or in part and collectively referred to as the “Refunded Bonds” were as follows:

- a. \$2,000,000 General Obligation Capital Outlay Notes, Series 2007, dated June 12, 2007 (the “Notes”) maturing on June 12, 2015 through June 12, 2019, inclusive, that were callable at any time at a price of par and accrued interest. The Notes were refunded on a current basis at closing;
- b. \$19,360,000 General Obligation School and Public Improvement Bonds, Series 2007, dated June 8, 2007 (the “Series 2007 Bonds”) maturing on February 1, 2020 through February 1, 2027, inclusive which are callable on and after February 1, 2017 at price of par and accrued interest. Series 2007 Bonds maturing on February 1, 2016 through February 1, 2019 will remain in place and will not be advance refunded;
- c. \$7,480,000 General Obligation School and Public Improvement Refunding Bonds, Series 2008 Bonds, dated June 12, 2008 maturing on March 1, 2023 through March 1, 2028, inclusive (the “Series 2008A Bonds) which are callable at par and accrued interest on and after March 1, 2018. Series 2008A Bonds maturing on March 1, 2015 through March 1, 2022 will remain in place and will not be advance refunded; and
- d. \$11,165,000 General Obligation Bonds, Series 2008 Bonds, dated June 12, 2008 maturing on March 1, 2023 through March 1, 2028, inclusive (the “Series 2008B Bonds) which are callable on and after March 1, 2018 at a price of par and accrued interest. Series 2008B Bonds maturing on March 1, 2015 through March 1, 2022 will remain in place and will not be advance refunded).

Since funds were budgeted for Fiscal Year 2015 by the City to pay debt service when due on the Notes (principal and interest) and interest on the refunded portions of the Series 2007 Bonds, the Series 2008A Bonds and the Series 2008B Bonds, those funds (\$341,710.65 less the rounding amount on the Bonds of \$671.41) were contributed at closing by the City to reduce the size of the composite transaction and to improve the overall efficiency of the transaction.

Transaction Preparation: As required by prevailing State statutes, the City submitted a detailed City of Kingsport *Refunding Plan – 2015* (the “Plan”) and a request for approval pursuant to State Funding Board Guidelines relating to Public Chapter 766, Acts of 2014 of the State of Tennessee (the “Act”) (the “Request”) to the Director of State and Local Finance in the Tennessee Comptroller of the Treasury’s office (the “Director”). The transaction was designed primarily to take advantage of historically low interest rates available in the capital markets in order to achieve annual aggregate and overall net present value saving for the City. In the Plan, the City targeted estimated aggregate

annual and net present value savings of \$1,193,118 and \$1,004,133 (about 5.40 percent of refunded principal), respectively.

The Director reviewed and reported on the Plan and approved the Request. The Director's documents were provided directly to the Board of Mayor and Aldermen (the "Governing Body") as required by prevailing Tennessee statutes. Following receipt of those documents, the Governing Bonds approved a formal resolution authorizing the sale and issuance of the Bonds (the "Resolution") on January 20, 2015.

Numerous documents, including but not limited to, a draft version of the *Preliminary Official Statement*, the Resolution and other data were provided to Moody's Investors Service, Inc., a division of Moody's Corporation ("Moody's") and Standard & Poor's Ratings Services – Standard & Poor's Financial Services LLC, a part of McGraw Hill Financial ("S&P") seeking credit ratings for the Bonds. As is usual and customary, "due diligence" calls were conducted among City officials, analysts for Moody's and S&P and Raymond James representatives in order to provide additional information and respond to questions regarding the City's transaction, its financial situation and plans and its current economic circumstances. Following their standard analytical processes, Moody's and S&P's credit committees reviewed the materials. In accordance with their published methodology, Moody's and S&P affirmed the City's outstanding credit ratings for all rated debt and assigned the Bonds their ratings of "Aa2" and "AA", respectively.

Bond Sale: The Bonds were offered for sale at competitive public bidding at 11:00 a.m., EST on January 26, 2015. Details concerning the public sale were provided to potential bidders and others in the *Preliminary Official Statement* that was dated January 16, 2015.

Through IPREO's BiDCOMP®/Parity® system, ten of the original thirteen firms which indicated an interest in bidding for the Bonds submitted proposals ranging from a high bid of 2.121765 percent on a true interest cost basis ("TIC") to 2.301356 percent prior to permitted adjustments.

The successful bidder for the Bonds was an account led by UBS Financial Services, Weehawken, New Jersey (the "Underwriter") who contracted with the Municipality, subject to the conditions set forth in the Detailed Notice of Sale to purchase the Bonds at an adjusted purchase price of \$20,016,620.20 (consisting of the par amount of the Bonds of \$17,695,000, plus a premium of \$2,516,265.20, less an underwriter's discount of \$194,645.00) or a bid price of 113.120% percent of par.

Following official bidding, resizing and other permitted adjustments conducted by Raymond James, an escrow was structured and arbitrage yields were calculated. Since open market investment instruments were more advantageous and added value net of transactions expenses, these instruments were used in lieu of U.S. Government Treasury Obligations – State and Local Government Series ("SLGS"). With the assistance of Bond Counsel, the competitive selection of open market securities (the "Escrow Investments") was conducted through a formal bidding process handled by a separate division of Raymond James as bidding agent (the "Bidding Agent"). Final bidding documents were adjusted following the sizing of the Bonds to conform to the targeted needs of the escrow. At the appointed hour, five bids were received and evaluated and an award was made to BB&T Capital Markets to provide the Escrow Investments at closing. Pursuant to Bidding Agent Agreement, the City compensated Raymond James directly for its services as Bidding Agent.

The sufficiency of the escrow and the yields were independently verified by Grant Thornton LLP, Minneapolis, Minnesota (the "Verification Agent"). Grant Thornton's independent report and opinion were incorporated into the final transcript of proceedings for the Bonds.

Based on the final escrow structuring, Regions Bank Corporate Trust; Nashville, Tennessee, the registrar, paying and escrow agent (the "Registration Agent") was directed to purchase at closing and hold the Escrow Investments in the irrevocable escrow for the benefit of the holders of the advance refunded bonds and to retire the Notes at closing (February 6, 2015). The remaining portions of the proceeds of the Bonds were used by Raymond James to pay documented costs of issuance.

Summary: The City's "Aa2"/ "AA" credit ratings were clearly appealing to investors as witnessed by the exceptionally low yields bid and the number of proposals received for the Bonds. The City was able to achieve significant annual aggregate savings of totaling \$1,859,581.37 and net present value savings of \$1,636,304.84 (8.799 percent of refunded principal), respectively. Overall net present value savings were approximately 62.8 percent higher than projected in the Plan. Exceptional savings and a remarkable all-inclusive cost ("AIC") (i.e., the cost of funds including all transaction expenses) of 2.2069 percent both were reflective of the extraordinary low yields available in the capital markets during early 2015.



FINAL SCHEDULES

\$17,695,000

City of Kingsport, Tennessee

General Obligation Refunding Bonds, Series 2015

(Refunding of Series 2007A Bonds, 2007 Capital Outlay Note, & Both Series 2008 101 Call)

Savings Report

Date	Principal	Coupon	Interest	Total P+I	Refunded D/S	Savings
06/30/2015	-	-	-	-	-	671.41
06/30/2016	145,000.00	2.000%	707,544.44	852,544.44	932,124.40	79,579.96
06/30/2017	150,000.00	3.000%	658,700.00	808,700.00	931,697.20	122,997.20
06/30/2018	-	-	654,200.00	654,200.00	932,022.80	277,822.80
06/30/2019	160,000.00	3.000%	654,200.00	814,200.00	931,060.00	116,860.00
06/30/2020	1,220,000.00	4.000%	649,400.00	1,869,400.00	1,863,850.00	(5,550.00)
06/30/2021	1,100,000.00	4.000%	600,600.00	1,700,600.00	1,864,250.00	163,650.00
06/30/2022	1,145,000.00	4.000%	556,600.00	1,701,600.00	1,866,400.00	164,800.00
06/30/2023	2,300,000.00	4.000%	510,800.00	2,810,800.00	2,986,487.50	175,687.50
06/30/2024	2,390,000.00	4.000%	418,800.00	2,808,800.00	2,983,312.50	174,512.50
06/30/2025	2,485,000.00	4.000%	323,200.00	2,808,200.00	2,983,125.00	174,925.00
06/30/2026	2,580,000.00	4.000%	223,800.00	2,803,800.00	2,978,475.00	174,675.00
06/30/2027	2,695,000.00	3.000%	120,600.00	2,815,600.00	2,989,362.50	173,762.50
06/30/2028	1,325,000.00	3.000%	39,750.00	1,364,750.00	1,429,937.50	65,187.50
Total	\$17,695,000.00	-	\$6,118,194.44	\$23,813,194.44	\$25,672,104.40	\$1,859,581.37

PV Analysis Summary (Net to Net)

Gross PV Debt Service Savings	1,977,344.08
Net PV Cashflow Savings @ 1.974%(Bond Yield)	1,977,344.08
Transfers from Prior Issue Debt Service Fund	(341,710.65)
Contingency or Rounding Amount	671.41
Net Present Value Benefit	\$1,636,304.84
Net PV Benefit / \$18,597,000 Refunded Principal	8.799%
Net PV Benefit / \$17,695,000 Refunding Principal	9.247%
Bond Year Dollars	\$165,733.82
Average Coupon	3.6915787%
Average Life	9.366 Years

Preliminary

\$17,695,000

City of Kingsport, Tennessee

General Obligation Public Improvement Bonds, Series 2015A

(Refunding of Series 2007A Bonds, 2007 Capital Outlay Note, & Both Series 2008 101 Call)

Total Issue Sources And Uses

Dated 02/06/2015 | Delivered 02/06/2015

	2007 Cap Notes	2007A Bonds	2008 Bonds	2008 Bonds	Issue Summary
Sources Of Funds					
Par Amount of Bonds	\$620,000.00	\$9,780,000.00	\$2,925,000.00	\$4,370,000.00	\$17,695,000.00
Reoffering Premium	45,762.30	1,487,881.50	394,032.05	588,589.35	2,516,265.20
Transfers from Prior Issue Debt Service Funds	183,154.40	-	63,422.34	94,462.50	341,039.24
Total Sources	\$849,216.70	\$11,267,881.50	\$3,382,525.80	\$5,053,351.85	\$20,552,304.44
Uses Of Funds					
Deposit to 2015 Escrow Fund					19,409,014.08
Deposit to Current Refunding Fund					833,745.36
Costs of Issuance					114,900.00
Total Underwriter's Discount (1.100%)					194,645.00
Total Uses					\$20,552,304.44

\$17,695,000

City of Kingsport, Tennessee

General Obligation Refunding Bonds, Series 2015

(Refunding of Series 2007A Bonds, 2007 Capital Outlay Note, & Both Series 2008 101 Call)

Detail Costs Of Issuance

Dated 02/06/2015 | Delivered 02/06/2015

COSTS OF ISSUANCE DETAIL

Financial Advisor	\$37,500.00
Bond Counsel	\$30,000.00
Moody's fee	\$16,625.00
S&P fee	\$15,750.00
POS/Official Statement	\$1,750.00
OMS Bidding Agent Fee	\$7,500.00
Verification Agent	\$3,500.00
Registration, Paying, and Escrow Agent	\$2,275.00
TOTAL	\$114,900.00



RATING AGENCY RESEARCH REPORTS

New Issue: Moody's assigns Aa2 to Kingsport, TN's \$19M GO Bonds, Series 2015; Outlook is negative

Global Credit Research - 22 Jan 2015

KINGSPORT (CITY OF) TN
Cities (including Towns, Villages and Townships)
TN

Moody's Rating

ISSUE	RATING
General Obligation Refunding Bonds, Series 2015	Aa2
Sale Amount	\$19,200,000
Expected Sale Date	02/05/15
Rating Description	General Obligation

Moody's Outlook NEG

NEW YORK, January 22, 2015 --Moody's Investors Service has assigned a Aa2 rating to the City of Kingsport's (TN) \$19 million General Obligation Refunding Bonds, Series 2015. Moody's also maintains a Aa2 rating on approximately \$230.5 million in previously rated General Obligation bonds.

SUMMARY RATING RATIONALE

The Aa2 rating incorporates the city's stable economy with significant taxpayer concentration and adequate financial position despite a steady decline in reserves over the last six fiscal years. The rating also reflects an above average, but manageable debt burden.

OUTLOOK

The negative outlook reflects six years of audited General Fund operating deficits, which have limited the city's financial flexibility and resulted in below average reserve levels when compared to like-rated entities. Despite this negative trend, management increased the tax rate (from its certified rate) in fiscal 2014 and 2015, as well as eliminated the appropriation of fund balance within both budgets. As a result, the city realized a small surplus in fiscal 2014. Going forward, the city does not anticipate appropriating fund balance in future budgets and we would expect that reserves would continue to increase in the near-term closer to the Aa2 median. While we believe that the city's General Fund and Fleet Maintenance Fund reserves through fiscal 2013 are adequate at the current rating level, additional declines in General Fund reserves in fiscal 2014 or fiscal 2015, as well as continued declines in available reserves within the Fleet Maintenance Fund beyond anticipated 2014 levels, would result in further negative pressure on the Aa2 rating.

WHAT COULD MAKE THE RATING GO UP (REMOVAL OF THE NEGATIVE OUTLOOK):

- Return to structural balance
- Increased General Fund reserves to levels more in line with Aa2 rating category
- Continued diversification of top taxpayers (decreased concentration in Eastman Chemical Company)
- Decline in debt burden

WHAT COULD MAKE THE RATING GO DOWN:

- Continued declines in General Fund reserves in fiscal 2015 and beyond

- Further declines in reserves in Fleet Maintenance Fund beyond anticipated fiscal 2015 levels
- Sizeable reduction in tax base
- Significant increase in debt burden
- Reduced operations or financial distress of the city's largest taxpayer, Eastman Chemical Company

STRENGTHS

- Sizeable tax base with continued growth expected in the near-term
- Adoption of tax rate increases in fiscal 2014 and 2015 to help support return to structural balance

CHALLENGES

- Six years of audited General Fund balance declines
- Above average debt burden
- Significant taxpayer concentration

RECENT DEVELOPMENTS

Since September 2014, the city released its fiscal 2014 financial statement, which reflected its first operating surplus (\$133,381) within the last seven years. As a result, General Fund balance increased to \$11.7 million or an adequate 16.8% of General Fund revenues. Additional available reserves in the Fleet Maintenance Fund decreased by approximately \$700,000 to \$3.1 million, which was \$300,000 less than originally anticipated in September. Overall, the city ended with \$14.8 million or a more satisfactory 21.6% of General Fund revenues in available reserves in fiscal 2014.

Year-to-date, revenues are tracking ahead of budget in fiscal 2015, while expenditures are expected to end under budget due to conservative estimates. As a result, management anticipates ending fiscal 2015 with another small surplus in the General Fund. Available reserves in the Fleet Maintenance Fund are expected to decline by \$500,000, at most, due to an equipment replacement plan.

DETAILED RATING RATIONALE

ECONOMY AND TAX BASE: REGIONALLY IMPORTANT ECONOMIC BASE WITH LOCAL ECONOMY DOMINATED BY EASTMAN CHEMICAL COMPANY

Kingsport continues to benefit from a sizable \$5.8 billion tax base and significant commercial and industrial employment base. The tax base is dominated by Eastman Chemical Company (senior unsecured rating of Baa2 stable) which represents approximately 24.4% of total taxable value. The current headquarters facility consists of more than 500 buildings on approximately 6,000 acres of land. Over the last five years, Eastman has spent an estimated \$1.3 billion to expand production capacity, and has recently announced another \$1.7 billion expansion that will go through 2020. The new expansion is expected to generate 300 direct jobs and 1,000 contractor and construction jobs. In addition, Leclerc Foods recently completed a \$15.7 million expansion that created 30 new jobs, while Portola Packaging finished a \$12 million expansion that generated 40 new jobs.

Commercial and retail sectors continue to be strong, with high occupancy rates as well as the addition of several new restaurants and a new theater complex. Another positive for the retail sector is the recent passing of the Border Region Retail Tourism legislation by the Tennessee General Assembly. The new legislation would allow the city to recapture approximately 59% of all state sales taxes within a specific 950 acre special district designed to incent and attract super regional retailers to the Kingsport market. While the majority of the site still remains a green field, grading is well under way on 100 acres that will be ready for future retail and big box building pads. Once the site is fully developed, management believes it will add tremendous value through additional sales tax revenues.

The city has experienced assessed value growth averaging 6.4% over the past five years, driven by a combination of annexation, commercial and residential development, and reappraisal. Full value has grown at a slightly higher rate of 6.6% over the same five year period. Unemployment within the city was 6.5% in October 2014, above both the state (6.3%) and national (5.5%) rates. Wealth levels remain in line with Tennessee averages with per capita income of 106.2% of the state and median family income of 101.1% of the state. Full

value per capita is also strong at \$112,810.

FINANCIAL OPERATIONS AND RESERVES: GENERAL FUND RESERVES REMAIN ADEQUATE DESPITE CONSECUTIVE OPERATING DEFICITS; ADDITIONAL FLEXIBILITY IN INTERNAL SERVICE FUNDS

The city's financial position will continue to be challenged over the near term, driven by consecutive years of declining reserves, limiting the city's financial flexibility. These declines are somewhat offset by still adequate General Fund reserves and additional monies available to support General Fund operations in the Internal Service Funds. While the city has had a history of conservative budgeting and General Fund balance in excess of 30% of annual revenues, reserves have declined in six of the last seven fiscal years due in part to internally financed capital projects, as well as underperformance of various economically sensitive revenues. From fiscal 2007 through fiscal 2014, the city's General Fund reserves declined by approximately 44% to \$11.7 million from \$20.9 million.

Most recently, the fiscal 2014 year ended with a \$133,381 increase in General Fund balance to \$11.7 million or an adequate 16.8% of General Fund revenues, still well below the Aa2 national median of 33% of General Fund revenues. Overall, revenues tracked slightly over budget due to the positive performance of sales taxes, while expenditures ended under budget due to conservative estimates. In addition, the city's unassigned fund balance at \$11.6 million (16.6% of General Fund revenues) remained just above the city's formal policy of \$11.4 million.

In addition to General Fund reserves, the city maintains monies in a Fleet Maintenance Fund (an Internal Service Fund). Reserves within this fund are generated from user charges billed to each department that deploys any type of rolling stock. The Fleet Maintenance Fund had \$3.1 million in accumulated funds as of June 30, 2014, which at the discretion of the Board of Mayor and Alderman, can be designated for any purpose, including General Fund operating expenses. Since these funds could be transferred over to the General Fund as a short-term loan, we believe this gives the city added financial flexibility (Available fund balance of \$14.8 million or 21.6% of General Fund revenues) in the event of a fiscal crisis. The city's largest revenue source, property taxes (51.1% of annual General Fund revenues) continues to remain strong and with continued development is expected to increase in fiscal 2015.

The fiscal 2015 budget represents a 3.7% increase from fiscal 2014. In addition, the budget does not include any appropriation of fund balance, a practice that city management expects to continue. The budget also incorporates a \$0.13 (per \$100 of assessed valuation) property tax rate increase that is expected to generate \$2.2 million in new revenue. These additional funds helped to offset a 1% salary increase for all employees, a number of new positions, and increased debt service costs. Year-to-date, revenues are tracking ahead of budget due to positive performance of sales taxes, while expenditures are under budget due to conservative estimates. Overall, management expects to end the year with a small surplus in the General Fund. In addition, the city currently expects up to a \$500,000 decline in available reserves in the Fleet Maintenance Fund due increased equipment replacement plans. Moody's will continue to monitor the city's General Fund reserve levels over the next 18 months, however continued use of General Fund balance in fiscal 2015, as well as continued declines in Fleet Maintenance Fund reserves beyond anticipated fiscal 2015 levels, would result in additional negative pressure on the city's rating.

Liquidity

The city's net cash position has continued to decrease to \$5.3 million (7.5% of General Fund revenues) in fiscal 2014 from \$11.5 million (18.1% of General Fund revenues) in fiscal 2010 due to cash funding for various capital projects and use of reserves to offset under-performing economically sensitive revenues during the economic downturn. In addition, the majority of the \$3.5 million decrease in cash realized between fiscal 2013 and 2014 is due to a timing issue related to reimbursements expected to be received from other funds and governments.

DEBT AND PENSIONS: DEBT BURDEN IS ABOVE-AVERAGE BUT MANAGEABLE DUE TO SELF SUPPORTING NATURE OF WATER AND SEWER DEBT

Kingsport's debt position is expected to remain manageable in the near-term given the self-supporting nature of the city's water and sewer system and average retirement of principal. Kingsport's direct debt burden is high but manageable at 2.5% of full valuation and increases to a higher 3.3% when taking into account the overlapping debt of local counties. This debt burden is net of \$102.2 million of outstanding debt that is self-supporting by water and sewer system revenues. In addition, approximately \$32.7 million in additional debt issued for the Aquatic Center, Conference Center, and Golf course is supported by the Regional Sales Tax Fund. The city has a policy to amortize non-school and non-self-supporting debt over 15 years, with the exception of moneys issued for buildings, which it amortizes over 20 years. This has led to an average repayment of debt - approximately 64.8%

of principal is repaid within ten years.

The city currently maintains a \$173.2 million five-year (2015-2019) Capital Improvement Plan, including \$148.3 million in additional bonds. While more than half of the new money debt will be for water and sewer purposes (\$62.2 million), the city typically secures the debt with a secondary General Obligation Unlimited Tax pledge. Taking into consideration the new money debt, the city's debt burden is expected to increase beyond the already above-average levels. Moody's will monitor the city's debt burden over the upcoming years with the expectation that levels will still remain affordable, however if debt levels rise significantly, additional rating pressure could result.

Debt Structure

The city's variable rate debt exposure is minimal, representing 3.0% of total debt and consists of two loans from the Tennessee Municipal Bond Fund (TMBF).

Debt-Related Derivatives

Positively, the city is not party to any derivatives products.

Pensions and OPEB

The city currently participates in the Political Subdivision Pension Plan (PSPP) and the State Employees, Teachers, and Higher Education Employees Pension Plan (SETHEEPP), both of which are multi-employer defined benefit plans administered by the Tennessee Consolidated Retirement System. The Annual Required Contribution (ARC) for PSPP was \$6.1 million (5.2% of operations expenditures) and \$2.9 million (2.5% of operating expenditures) for SETHEEPP in fiscal 2014. The city consistently contributes 100% of the annual pension cost for both plans. The city's adjusted pension liability, under Moody's methodology for adjusting reported pension data, is \$141 million or a slightly above-average 1.17 times of operating revenues. Moody's uses the adjusted net pension liability to improve comparability of reported pension liabilities. The adjustments are not intended to replace the city's reported liability information, but to improve comparability with other rated entities. In addition, the city voted to adopt a defined contribution plan for all new employees, which is expected to save the city on retirement costs going forward.

The city also provides Other Post-Employment Benefits (OPEB) to employees. The total ARC for the city and school's OPEB plan totaled \$6.1 million (5.2% of operating expenditures) and the city contributed 24.6% of the ARC (\$1.5 million or 1.3% of operating expenditures) in fiscal 2014. Fixed costs including annual pension, OPEB and debt service expenditures summed to a moderate 22% of fiscal 2014 expenditures.

MANAGEMENT AND GOVERNANCE: POSITIVE PERFORMANCE OF MAJOR REVENUE SOURCES; FLEXIBILITY TO REDUCE EXPENDITURES

Tennessee cities have an institutional framework score of "Aaa," or very strong. Both property tax and local option sales tax revenues for cities have remained relatively stable over the last five years, and many recovered in fiscal 2013 and 2014 from modest drops during the recession. Expenditures are largely predictable and cities have the legal ability to reduce expenditures if necessary.

KEY STATISTICS

2014 Tax Base Size - Full Value (in 000s): \$5,784,232

2014 Full Value Per Capita: \$112,810

2010 Median Family Income as % of US median: 85.70%

2013 Fund Balance as % of Revenues: 14.03%

Five-Year Dollar Change in Fund Balance as % of Revenues: 0.44%

2013 Cash Balance as % of Revenues: 11.70%

Five-Year Dollar Change in Cash Balance as % of Revenues: -2.65%

Institutional Framework: Aaa

Operating History - Five-Year Average of Operating Revenues/ Operating Expenditures: 1.00x

Net Direct Debt/Full Value: 2.52%

Net Direct Debt/Operating Revenues: 1.21x

Three-Year Average of Moody's Adjusted Net Pension Liability/Full Value: 2.07%

Three-Year Average of Moody's Adjusted Net Pension Liability/Operating Revenues: 1.00x

OBLIGOR PROFILE

The city of Kingsport has a population of 48,205 is located in the northeastern portion of Tennessee (Aaa stable) approximately 25 miles northwest of Johnson City (Aa2) and 23 miles from Bristol, TN (Aa2) and Bristol, VA (A3 negative).

LEGAL SECURITY

The bonds are a direct general obligation of the city, for which the full faith and credit have been irrevocably pledged.

USE OF PROCEEDS

Proceeds from the Series 2015 bonds will be used to refund the Series 2007 Capital Outlay Notes, as well as the Series 2007, Series 2008A, and Series 2008B bonds for an estimated net present value savings of \$1.6 million, or 7.3% of refunded principal, with no extension of maturity.

RATING METHODOLOGY

The principal methodology used in this rating was US Local Government General Obligation Debt published in January 2014. Please see the Credit Policy page on www.moodys.com for a copy of this methodology.

REGULATORY DISCLOSURES

For ratings issued on a program, series or category/class of debt, this announcement provides certain regulatory disclosures in relation to each rating of a subsequently issued bond or note of the same series or category/class of debt or pursuant to a program for which the ratings are derived exclusively from existing ratings in accordance with Moody's rating practices. For ratings issued on a support provider, this announcement provides certain regulatory disclosures in relation to the rating action on the support provider and in relation to each particular rating action for securities that derive their credit ratings from the support provider's credit rating. For provisional ratings, this announcement provides certain regulatory disclosures in relation to the provisional rating assigned, and in relation to a definitive rating that may be assigned subsequent to the final issuance of the debt, in each case where the transaction structure and terms have not changed prior to the assignment of the definitive rating in a manner that would have affected the rating. For further information please see the ratings tab on the issuer/entity page for the respective issuer on www.moodys.com.

Regulatory disclosures contained in this press release apply to the credit rating and, if applicable, the related rating outlook or rating review.

Please see www.moodys.com for any updates on changes to the lead rating analyst and to the Moody's legal entity that has issued the rating.

Please see the ratings tab on the issuer/entity page on www.moodys.com for additional regulatory disclosures for each credit rating.

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Related Criteria And Research

Summary:

Kingsport, Tennessee; General Obligation

Credit Profile

US\$20.2 mil GO Rfdg Bnds ser 2015 due 03/01/2028

Long Term Rating

AA/Stable

New

Kingsport GO

Long Term Rating

AA/Stable

Affirmed

Rationale

Standard & Poor's Ratings Services assigned its 'AA' long-term rating to Kingsport, Tenn.'s series 2015 general obligation (GO) refunding bonds. At the same time, Standard & Poor's affirmed its 'AA' long-term rating and underlying rating (SPUR) on the city's previously issued GO debt. The outlook is stable.

The bonds are secured by the city's full faith and credit. Officials plan to use bond proceeds to refund certain series of bonds for an estimated net present value savings of roughly 5% to 7%.

The ratings reflect our assessment of the following factors for the city, specifically its:

- Strong economy as one of the cities in the Tri-Cities metropolitan statistical area (MSA);
- Very strong budgetary flexibility, with 2014 audited reserves at 26.1% of general fund expenditures;
- Adequate budgetary performance, with a projected surplus in fiscal year 2015;
- Very strong liquidity providing very strong cash to cover both debt service and expenditures;
- Very strong management with strong financial policies; and
- Very weak debt and contingent liability position, mostly as a result of its high net direct debt.

Strong economy

We consider Kingsport's economy strong due to its role in the broad and diverse economy of the Tri-Cities MSA (Kingsport, Johnson City, and Bristol). Traditionally, county unemployment has tracked the national unemployment rate (measuring 7.5% in 2013 in comparison with the nation's 7.4%). Per capita market value for the city was \$113,027 for fiscal 2015. The city has projected per capita effective buying income (EBI) 84.3% of the national level.

The MSA has historically had a strong manufacturing and industrial presence, and has continued to diversify into education, health care, and retail. Eastman Chemical Co., a Fortune 500 company with approximately 6,737 employees and about 3,000 contractors in Kingsport, is the second-largest private employer in Tennessee, and the largest regional employer and largest taxpayer in the MSA. In early September 2014, Eastman Chemical entered into a definitive agreement to acquire Taminco Corp., a global specialty chemical company. The total value of this transaction is \$2.8 billion. The acquisition of Taminco strengthens Eastman's presence in markets such as food, feed, and agriculture, and has added roughly 3,400 jobs to the area.

The city's taxable assessed value (AV) has remained stable, and officials anticipate 2% annual increases in AV for the

next several years. Taxable AV reached approximately \$1.8 billion in fiscal 2014; estimated full market value for fiscal 2014 was \$5.8 billion. We believe the tax base is moderately concentrated, with the top 10 taxpayers accounting for roughly 34.5% of total AV.

Very strong budget flexibility

In our opinion, Kingsport's budgetary flexibility is very strong, with available general fund reserves at 26.1% of expenditures in fiscal 2014. Audited results for fiscal 2014 reflect a small surplus due to higher-than-budgeted revenues. As a result of the surplus, audited results for fiscal 2014 reflect an \$11.7 million available general fund balance, which we consider very strong at 26.1% of expenditures. The fiscal 2015 budget is balanced, but estimates project the fund balance will be greater than 25% in fiscal 2015 due to higher-than-budgeted sales tax revenues. We believe the city will maintain its very strong budgetary flexibility.

Adequate budgetary performance

The city's budgetary performance has been adequate overall, in our view, after counting recurring transfers for school district operations (in the amount of about \$13 million annually) as an operating expense rather than a below-the-line transfer. Although we treat this transfer as an operating expense for our analysis, the city actually has a surplus of about \$22.4 million before transfers.

The total governmental funds operating result was about negative 4.6% after adjustment for expenditures for the spending down of previously deposited bond proceeds. About 57.3% of the city's operating revenue is from property taxes, with about 33.5% from sales tax revenue.

The adopted fiscal 2015 budget reflects an \$11.8 million fund balance, or a projected 26.2% of expenditures, which we believe is very strong. Management attributes the small surplus to higher-than-budgeted sales tax revenues.

Given the city's historical budget-to-actual performance, we do not anticipate a change in our assessment of the city's general fund performance. Property tax collections have remained healthy, with collections totaling above 96% each year. Sales tax revenue increased steadily during the past three years, by about 3.6% in fiscal 2014, 1.42% in fiscal 2013, and 5.68% in fiscal 2012. We anticipate that sales taxes will remain at least level, if not continue to grow, and with property tax revenue remaining stable, the city will be in a good position to maintain its strong performance.

Very strong liquidity

Supporting the city's finances is liquidity we consider very strong, with total government available cash at more than 25% of total governmental fund expenditures and more than 3x of debt service. We believe the city has exceptional access to external liquidity. It has two letters of credit in place for a total of \$8 million. Because liquidity is so strong, coverage would exceed 3.5x. The city has frequently issued bonds, including GO, revenue, and sales tax bonds, during the past 15 years.

Very strong management conditions

We view the city's management conditions as very strong, with strong financial practices. The city uses historical data as well as national and state conditions to create its revenue and expenditure assumptions. Management provides the board with monthly reports on its budget-to-actuals, and can amend the budget if needed. The city performs long-term planning for both capital and financial needs, both of which go out five years. In addition, Kingsport maintains a formal

debt policy and a formal investment policy with investment updates provided quarterly. The city also maintains a reserve policy of four months of operations.

Very weak debt and contingent liability profile

In our opinion, the city's debt and contingent liability profile is very weak, with total governmental fund debt service at 7.4% of total governmental fund expenditures, and with net direct debt at 106% of total governmental fund revenue. After accounting for self-support from the water and sewer system, we believe that overall net debt is moderate at 3.3% of market value. Amortization is average, with roughly 59.2% of debt retired in 10 years.

The city has entered into two direct purchase agreements with a total principal amount of about \$8 million. These agreements allow for acceleration payable in less than 180 days, and we do not consider the termination events consistent with our published criteria for standby bond purchase agreement termination events. Debt is transferrable to another party, but there is no most-favored-nation clause. In addition, the agreements allow the holder to accelerate principal if any holder or credit enhancer of indebtedness of the borrower or any counterparty under any related swap agreement causes such obligation to become immediately due and payable. We understand the city has no other obligations outstanding with acceleration provisions that, if triggered, could lead to acceleration under the agreements. The city plans to issue roughly \$23 million in fiscal 2016, primarily for water and sewer system improvements.

The city participates in the Tennessee Consolidated Retirement System (TCRS) to provide pension benefits for employees. The required contribution is determined by actuarial valuation and may be amended by the TCRS Board of Trustees. The city also provides other postemployment benefits (OPEBs) on a pay-as-you-go basis. The combined annual required contribution pension costs and OPEB pay-as-you-go costs for fiscal 2014 were 4.8% of expenditures, and the city does not anticipate that these costs will increase substantially in the near term. The city's pension liability is 72.5% funded.

Very strong institutional framework

We consider the Institutional Framework score for Tennessee cities very strong.

Outlook

The stable outlook reflects our anticipation that Kingsport's financial and capital management policies will continue to provide stability for the next two years. We believe the strength and stability of the city's core economic structure will allow it to maintain significant financial flexibility and overall rating stability.

While unlikely within the two-year outlook period, we could raise the rating if the city were to improve its budgetary performance, or if economic indicators significantly improve. Conversely, we could lower the rating if the city's budgetary performance or its debt profile were to significantly deteriorate, although this is currently unlikely as well.

Related Criteria And Research

Related Criteria

- USPF Criteria: Local Government GO Ratings Methodology And Assumptions, Sept. 12, 2013
- USPF Criteria: Contingent Liquidity Risks, March 5, 2012

Related Research

- S&P Public Finance Local GO Criteria: How We Adjust Data For Analytic Consistency, Sept. 12, 2013
- Institutional Framework Overview: Tennessee Local Governments

Ratings Detail (As Of January 23, 2015)

Kingsport GO

Long Term Rating

AA/Stable

Affirmed

Kingsport GO

Unenhanced Rating

AA(SPUR)/Stable

Affirmed

Long Term Rating

AA/Stable

Affirmed

Many issues are enhanced by bond insurance.

Complete ratings information is available to subscribers of RatingsDirect at www.globalcreditportal.com. All ratings affected by this rating action can be found on Standard & Poor's public Web site at www.standardandpoors.com. Use the Ratings search box located in the left column.