



AGENDA

BOARD OF MAYOR AND ALDERMEN WORK SESSION

**Tuesday, March 3, 2015
Council Room, 2nd Floor, City Hall, 4:00 p.m.**

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. Carousel Update – Reggie Martin and Gail Cole, Engage Kingsport
4. Work Session Tickler
5. Review of Items on March 3, 2015 Business Meeting Agenda
6. 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 March 3, 2015

Special Projects

Brickyard Park Ball Fields

David Mason

The recent winter weather events, combined with the cycles of wet weather over the past few months, have now had a cumulative effect of delaying the scheduled completion of the project. Some work has progressed on the interior of the concession stand as the electricians and plumbers have managed to make it to the site to work on a few days when the roads were clear.

The last day the site was suitable for working was February the 15th, at which time field 3 was ready for sod installation, field 2 only lacked raking out to be ready for sod, field 4 had topsoil spread and ready for laser grading, and field 1 had topsoil stockpiled and ready for spreading.

It is difficult to predict a projected completion date until the snow has melted and the fields can begin drying.

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.

Field 1.



Field 4.



Fire Training Ground

Chief Dye

The Burn Building/Training Tower bids were opened and low bid was above the funds that were set aside. So we are looking to see if we can cut costs to be able to move forward with the project.

Future Plans will add storage facilities, a classroom, etc. Several props will be on site 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 the Carousel Frame inside the Roundhouse.



Engage Kingsport and the Office of Cultural Arts have launched 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.

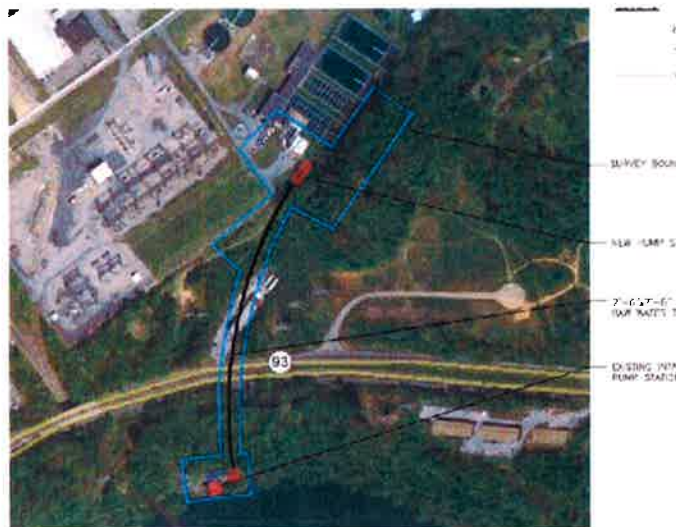
WTP Raw Water Transmission and Intake Replacement Design

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 24, 2015, is 102%, and of those, 22.9% were government active, 30% were school active, 2.4% were government retirees, 3.1% were school retirees, 16.9% were government dependents, 18.9% were school dependents, .5% were extended patient visits, and 5.3% were no-shows. We believe the increased no-show number is due in large part to the weather. Utilization increases with the inclusion of new members as they are asked to make two, back-to-back appointments for their initial visit. Utilization does appear to be leveling out, and we are keeping a close eye on appointment availability to adjust hours as necessary.

Worker's Compensation

Workers' compensation recordable claims will be reported at the second work session of the month to allow accurate reporting.

Sourmash Property

Joe May

As reported last week, the inclement weather experienced during the past two weeks has interfered with the process of serving Notice on the only known person who may have a potential claim to this property. It appears, however, that this may be accomplished in the upcoming week.

After conferring with the City Manager it was decided to expedite the process of sale by advertising and selling this property as a single item rather than waiting to include it in a larger sale.

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 – 2nd Floor, City Hall

7:00 p.m.

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

II.B. INVOCATION – Minister Stan Leonard, Mustard Seed Ministries

III.A. ROLL CALL

IV. RECOGNITIONS & PRESENTATIONS

None

V. APPROVAL OF MINUTES

1. Called Work Session – February 17, 2015
2. Business Meeting – February 17, 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 the FY15 Operating Budgets and Various Projects (AF: 55-2015) (Jeff Fleming)
 - Ordinance

C. BUSINESS MATTERS REQUIRING FINAL ADOPTION

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

D. OTHER BUSINESS

1. Agreement with Eastman Chemical Company to Allow for a Change Order to the Pedestrian Bridge over Wilcox Drive (AF: 51-2015) (Ryan McReynolds)
 - Resolution
2. First Amendment to Funding Agreement with the Industrial Development Board of the City of Kingsport (KEDB), Sullivan County, Tennessee and the Bank of Tennessee (AF: 56-2015) (Jeff Fleming)
 - Resolution

E. APPOINTMENTS

None

VII. CONSENT AGENDA

None

VIII. COMMUNICATIONS

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

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

IX. ADJOURN

Minutes of the Regular Work Session of the
Board of Mayor and Aldermen, City of Kingsport, Tennessee
Tuesday, February 17, 2015, 12:00 PM
Council Room – City Hall

NOTE: The time of the meeting was rescheduled from Monday, February 16, 2015 at 4:30 p.m. due to the weather and road conditions.

PRESENT: Board of Mayor and Aldermen

Mayor Dennis Phillips

Vice-Mayor Mike McIntire

Alderman John Clark

Alderman Colette George

Alderman Andy Hall

Alderman Tom C. Parham

Alderman Tom Segelhorst

City Administration

Jeff Fleming, City Manager

J. Michael Billingsley, City Attorney

James H. Demming, City Recorder

1. **CALL TO ORDER:** 12:00 p.m. by Mayor Phillips.
2. **ROLL CALL:** By Deputy City Recorder Marshall.
3. **MAY ELECTION.** Mr. Jason Booher, Sullivan County Election Commission, gave details on this item, noting there is no current provision in the city charter to appoint an alderman if a current sitting alderman on the board is elected mayor. He stated as it stands now, there will have to be a special election to fill the seat at the cost of about \$35,000. After some discussion, the board asked for City Attorney Billingsley to take action before the regular business meeting so a vote can be made to change the charter.
4. **TRANSIT UPDATE.** Assistant City Manager for Administration Chris McCartt presented this item, highlighting record ridership in 2014. He discussed future options and provided a history of the services and facilities. Mr. McCartt gave a needs assessment to accommodate the future growth of KATS. A study of several sites resulted in the selection of the foundry site to relocate the main office. He gave details on the cost and funding as well as the next steps to pursue this project and showed the board a conceptual layout. Discussion followed.
5. **WORK SESSION TICKLER.** Assistant City Manager for Administration Chris McCartt gave a status update on Brickyard Park. He stated that weather is becoming the enemy, noting they will need 30 fairly warm days for the sod to take root. Mr. McCartt confirmed they are still shooting for the second week in April. Mayor Phillips commented on the tax sale and Alderman Segelhorst commented on the safety meeting.
6. **REVIEW OF AGENDA ITEMS ON THE FEBRUARY 17, 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. There were no items the Board discussed or which received specific questions or concerns.

**Minutes of the Regular Work Session of the Board of Mayor and Aldermen of
Kingsport, Tennessee, Monday, February 17, 2015**

BOARD COMMENT. None.

PUBLIC COMMENT. None.

7. ADJOURN. Seeing no other matters presented for discussion at this work session, Mayor Phillips adjourned the meeting at 1:15 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 17, 2015, 2:00 PM
Council Room – City Hall

NOTE: The time of the meeting was rescheduled from Tuesday, February 17, 2015 at 7:00 p.m. due to the weather and road conditions.

PRESENT:

Board of Mayor and Aldermen

Mayor Dennis R. Phillips, Presiding
Alderman John Clark
Alderman Colette George
Alderman Andy Hall

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:** Dobyys-Bennett Students.
- II.B. **INVOCATION:** Vice Mayor Mike McIntire.
- III. **ROLL CALL:** By City Recorder Demming. All Present.
- IV. **RECOGNITIONS AND PRESENTATIONS.** None.
- V. **APPROVAL OF MINUTES.**

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

- A. February 2, 2015 Regular Work Session
- B. February 3, 2015 Regular Business Meeting

Approved: All present voting "aye."

VI. COMMUNITY INTEREST ITEMS.

AA. PUBLIC HEARINGS. None.

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.

**Minutes of the Regular Business Meeting of the Board of Mayor and Aldermen
of the City of Kingsport, Tennessee, Tuesday, February 17, 2015**

1. Amend Zoning of the Rock Springs Road South Property Located Between Rock Springs Road and Interstate 81 (AF: 33-2015) (Ken Weems). Mayor Phillips stated rezoning this property as presented could result in potentially undesirable future businesses locating next to the houses already there. He stated that in light of the public opinion expressed by the neighbors at the last meeting, changing the zone to B-1 rather than B-4P would be a good compromise and would better control what could locate there. Alderman George made a motion, seconded by Alderman Hall to refer this item back to the Planning Commission. Considerable discussion followed regarding the timeline this process would take by going back to the PC, coming back again to the BMA for two readings and then also the Board of Zoning Appeals. The property owner, Danny Karst, stated the business owner interested in this property was under a time restraint and this process would force him to find another location. The business owner commented as well. Discussion resumed on other options available, such as approving the B-4P today and rezoning to B-1 at a later date. Alderman George stated she was not comfortable with that option as it could be seen as the BMA trying to benefit one developer. She stated although she could live with this situation, she might not be able to live with the next one and asked the board if they were willing to change their standards. City Attorney Billingsley cited legal concerns with downzoning property. Alderman Hall stated he had a problem with the fact this is the fourth zone change request since this property has been annexed. Danny Karst stated he would go on record that he would come back and request this property be rezoned down to B-1 if the board would approve the ordinance today as presented. Alderman George did withdraw her motion to refer this back to the PC and Alderman Hall withdrew his second. Alderman Clark made a motion to amend the description to reflect the B-4P rezoning to the single lot where the cabinet business is locating, designated as Lot 1. Vice-Mayor McIntire seconded the motion to amend with all present voting "aye."

Motion/Second: Parham/Segelhorst, to pass as amended:

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 on first reading: All present voting "aye" except George and Hall voting "nay."

2. Agreement with TDOT Related to the Lynn Garden Drive Signal System Project and Appropriation of Funds (AF: 42-2015) (Ryan McReynolds).

Motion/Second: Segelhorst/George, to pass:

Resolution No. 2015-129, 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

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 17, 2015**

Motion/Second: McIntire/Segelhorst, to pass:

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

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

3. Budget Ordinance to Transfer Funds for the Wilcox Court Intersection Improvements Project (AF: 49-2015) (Ryan McReynolds).

Motion/Second: Parham/McIntire, to pass:

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

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

C. BUSINESS MATTERS REQUIRING FINAL ADOPTION.

1. Amend the FY15 Operating Budgets and Various Projects (AF: 20-2015) (Jeff Fleming).

Motion/Second: McIntire/Segelhorst, to pass:

ORDINANCE NO. 6465, 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 second reading in a roll call vote: Clark, George, Hall, McIntire, Parham, Segelhorst and Phillips voting "aye."

D. OTHER BUSINESS.

1. Bid for the Purchase of Various Water and Sewer Maintenance Items to Consolidated Pipe & Supply, Southern Pipe & Supply and HD Supply Waterworks (AF: 36-2015) (Chris McCart/Ryan McReynolds).

Motion/Second: Segelhorst/McIntire, to pass:

Resolution No. 2015-130, A RESOLUTION AWARDED 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

Passed: All present voting "aye."

2. Bid for the Purchase of One (1) Rubber Tire Wheel Loader to ASC Construction Equipment, Inc. (AF: 37-2015) (Chris McCart/Ryan McReynolds/Steve Hightower).

**Minutes of the Regular Business Meeting of the Board of Mayor and Aldermen
of the City of Kingsport, Tennessee, Tuesday, February 17, 2015**

Motion/Second: Parham/Clark, to pass:

Resolution No. 2015-131, 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

Passed: All present voting "aye."

3. Agreements with the Lynn Garden Optimist Club and the Lynn View Pee Wee Football Organization (AF: 41-2015) (Morris Baker).

Motion/Second: McIntire/Parham, to pass:

Resolution No. 2015-132, 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

Passed: All present voting "aye."

Motion/Second: Hall/Clark, to pass:

Resolution No. 2015-133, 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

Passed: All present voting "aye."

4. Property Acquisition for the Kingsport City School System (AF: 44-2015) (David Frye).

Motion/Second: Hall/Parham, to pass:

Resolution No. 2015-134, 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

Passed: All present voting "aye."

5. Lease Amendment with Congressman Phil Roe for Office Space at the Kingsport Center for Higher Education (AF: 02-2015) (Morris Baker).

Motion/Second: McIntire/George, to pass:

Resolution No. 2015-135, 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 KINGSFORT CENTER FOR HIGHER EDUCATION; AUTHORIZING AND DIRECTING THE MAYOR TO EXECUTE THE AMENDMENT; AND ALL OTHER DOCUMENTS

**Minutes of the Regular Business Meeting of the Board of Mayor and Aldermen
of the City of Kingsport, Tennessee, Tuesday, February 17, 2015**

NECESSARY AND PROPER TO EFFECTUATE THE PURPOSE OF THE
AMENDMENT

Passed: All present voting "aye."

6. Bid for School Nutrition Grocery and Beverage Items (AF:
46-2015) (Jennifer Walker).

Motion/Second: George/Clark, to pass:

Resolution No. 2015-136, A RESOLUTION AWARDDING THE BID FOR VARIOUS GROCERY ITEMS FOR USE BY KINGSFORT SCHOOL NUTRITION PROGRAM TO GORDON FOOD SERVICE AND AUTHORIZING THE CITY MANAGER TO EXECUTE A PURCHASE ORDER FOR THE SAME

Passed: All present voting "aye."

7. Amendment to Add Kingsport City School Sites to the Current City of Kingsport Agreement with EnerNOC (AF: 47-2015) (Bill Shedden).

Motion/Second: McIntire/Segelhorst, to pass:

Resolution No. 2015-137, 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

Passed: All present voting "aye."

8. Private Act from the Tennessee General Assembly Amending Parts of the City Charter (AF: 35-2015) (Mike Billingsley). The city attorney provided details on the requested changes to the city charter, including those added after the previous work session regarding city elections.

Motion/Second: Parham/McIntire, to pass:

Resolution No. 2015-138, A RESOLUTION REQUESTING THE GENERAL ASSEMBLY TO PASS A PRIVATE ACT PERTAINING TO THE CHARTER OF THE CITY OF KINGSFORT 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 FO THE GENERAL ASSEMBLY; AND TO FIX THE EFFECTIVE DATE OF THIS RESOLUTION

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 17, 2015**

E. APPOINTMENTS/REAPPOINTMENTS.

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

Motion/Second: McIntire/Parham, to approve:

APPOINTMENT OF MR. BRYAN HALL TO SERVE A THREE-YEAR TERM ON THE ***VISITOR ENHANCEMENT ADVISORY BOARD*** REPLACING MR. ANDY KING. THE APPOINTMENT IS EFFECTIVE IMMEDIATELY AND WILL EXPIRE ON FEBRUARY 28, 2018.

Passed: All present voting "aye."

VII. CONSENT AGENDA. None.

VIII. COMMUNICATIONS.

A. CITY MANAGER. Mr. Fleming had Mr. Mike Thomas, owner of TNT Sportsplex talk about the opening of his new business.

B. MAYOR AND BOARD MEMBERS. All of the aldermen commented on the weather and thanked city workers for working in it. Alderman George reminded people to bring their pets inside. Alderman Parham commented he was proud of the BMA and staff for being able to accommodate the contractor earlier in the meeting.

C. VISITORS. None.

D. CITY RECORDER – The Board of Mayor and Aldermen acknowledged receipt of the report on debt obligation for the issuance of \$17,695,000 General Obligation Refunding Bonds, Series 2015.

IX. ADJOURN. Seeing no other business for consideration at this meeting, Mayor Phillips adjourned the meeting at 3:30 p.m.

ANGELA MARSHALL
Deputy City Recorder

DENNIS R. PHILLIPS
Mayor



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-55-2015
 Work Session: March 3, 2015
 First Reading: March 3, 2015

Final Adoption: March 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 Sullivan St. Improvements project in the amount of \$658,030, by transferring \$165,197 from the Bridge Repair/Improvement project to the Street Resurfacing project and by transferring \$349,197 to State Street Aid for snow removal from the street resurfacing project and close all of the old projects.

The Water Fund will be amended by transferring funds from the Galvanized Water Pipe Replacement project in the amount of \$2,930, by transferring \$74,652 from the Double Springs Tank project, by transferring \$949 from the Rock Springs PH2 Waterline Upgrade project, by transferring \$17,043 from the North Kingsport Annexation Project to the Sullivan Street Phase 2 project in the amount of \$90,700 and by transferring the remaining \$4,874 to the Double Springs Waterline project.

The Double Springs Waterline project will also be adjusted by transferring \$59,529 from the Westfield Annexation Upgrade project and by transferring \$172,041 from the Hidden Acres/Peppertree project making the total transfer to Double Springs Waterline project \$236,444.

Attachments:

1. 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 WATER PROJECT FUND, GENERAL FUND PROJECTS, STATE STREET AID FUND AND GENERAL FUND BUDGETS BY TRANSFERRING FUNDS TO VARIOUS 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 budgets be amended by transferring \$658,030 from the Sullivan Street Improvements project (GP1226) to the Sullivan Street Improvements Project Phase 2, by transferring \$165,197 from the Bridge Repair/Improvements (GP1017) to the Street Resurfacing Project (GP1518) and by transferring \$349,197 from the Street Resurfacing Project (NC1500) to the State Street Aid Fund for Snow Removal and that the General Fund budget be amended by appropriating funds to Police Department operating budget in the amount of \$3,750 for carpet and repairs.

Section II. That the Water Project Fund budgets be amended by transferring funds from the Galvanized Water Pipe Replacement project (WA1202) in the amount of \$2,930, from the Double Springs Tank project (WA1305) in the amount of \$74,652, from the Rock Springs PH2 Waterline Upgrade (WA1304) in the amount of \$949, from the North Kingsport Annexation project (WA1307) in the amount of \$17,043 to the Sullivan Street Phase 2 Waterline project (WA1509) in the amount of \$90,700 and to the Double Springs Waterline (WA1510) in the amount of \$4,874; and that the Water Project Fund be amended by transferring \$59,529 from the Westfield Annexation Upgrade (WA1302) and by transferring \$172,041 from the Hidden Acres/Peppertree project (WA1308) to the Double Springs Waterline project (WA1510).

<u>Account Number/Description:</u>	<u>Budget</u>	<u>Incr/<Decr></u>	<u>New Budget</u>
Fund 311: General Project Fund			
Sullivan St. Improvements (GP1226)			
Revenues:	\$	\$	\$
311-0000-368-1037 Series 2009D (BABS) GO	135,000	0	135,000
311-0000-368-1040 Series 2011 GO Pub Imp	85,827	0	85,827
311-0000-368-1041 Series 2012C GO Pub Imp	408,804	0	408,804
311-0000-368-1046 Series 2013B GO Pub Imp	28,591	0	28,591
311-0000-368-1047 Series 2014A GO Bonds	615,340	(602,755)	12,585
311-0000-368-2101 Premium From Bond Sale	88,850	(55,275)	33,575
Totals:	1,362,412	(658,030)	704,382
Expenditures:	\$	\$	\$
311-0000-601-2023 Arch/Eng/Landscaping	70,086	0	70,086
311-0000-601-4041 Bond Sale Expense	29,371	0	29,371

311-0000-601-9001 Land	20,945	5,881	26,826
311-0000-601-9003 Improvements	1,242,010	(663,911)	578,099
Totals:	1,362,412	(658,030)	704,382

Fund 311: General Project Fund
Sullivan St Improvements PH2 (GP1500)

Revenues:	\$	\$	\$
311-0000-368-1046 Series 2013B GO Pub Imp	21,409	0	21,409
311-0000-368-1047 2014A GO Bonds	1,099,802	602,755	1,702,557
311-0000-368-2101 Premium From Bond Sale	115,166	55,275	170,441
Totals:	1,236,377	658,030	1,894,407

Expenditures:	\$	\$	\$
311-0000-601-2023 Arch/Eng/Landscaping	61,409	158,030	219,439
311-0000-601-4041 Bond Sale Expense	14,968	0	14,968
311-0000-601-9003 Improvements	1,160,000	500,000	1,660,000
Totals:	1,236,377	658,030	1,894,407

Fund 311: General Project Fund
Bridge Repair/Improvements (GP1017)

Revenues:	\$	\$	\$
311-0000-368-1037 Series 2009D (BABS) GO	107,095	(97,026)	10,069
311-0000-368-1047 Series 2014A GO Bonds	68,171	(68,171)	0
311-0000-368-2101 Premium From Bond Sale	7,423	0	7,423
Totals:	182,689	(165,197)	17,492

Expenditures:	\$	\$	\$
311-0000-601-2022 Construction Contracts	1,872	0	1,872
311-0000-601-2023 Arch/Eng/Landscaping	7,628	(128)	7,500
311-0000-601-4041 Bond Sale Expense	3,482	0	3,482
311-0000-601-9003 Improvements	169,707	(165,069)	4,638
Totals:	182,689	(165,197)	17,492

Fund 311: General Project Fund
Street Resurfacing (GP1518)

Revenues:	\$	\$	\$
311-0000-368-1037 Series 2009D (BABS) GO	0	97,026	97,026
311-0000-368-1047 2014 A GO Bonds	916,502	68,171	984,673
311-0000-368-2101 Premium From Bond Sale	95,971	0	95,971
Totals:	1,012,473	165,197	1,177,670

Expenditures:	\$	\$	\$
311-0000-601-2022 Construction Contracts	1,000,000	165,197	1,165,197

311-0000-601-4041 Bond Sale Expense	12,473	0	12,473
Totals:	1,012,473	165,197	1,177,670

Fund 111: General Project –Special Rev Fund
Street Resurfacing (NC1500)

Revenues:	\$	\$	\$
111-0000-391-0100 From General Fund	593,533	(349,197)	244,336
Totals:	593,533	(349,197)	244,336

Expenditures:	\$	\$	\$
111-0000-601-2022 Construction Contracts	593,533	(355,861)	237,672
111-0000-601-2023 Arch/Eng/Landscaping	0	6,664	6,664
Totals:	593,533	(349,197)	244,336

Fund 110: General Fund

Expenditures:	\$	\$	\$
110-4804-481-7035 Gen Proj.-Spec Rev	617,565	(349,197)	268,368
110-4804-481-7023 To State Street Aid	1,239,000	349,197	1,588,197
Totals:	1,856,565	0	1,856,565

Fund 121: State Street Aid Fund

Revenues:	\$	\$	\$
121-0000-391-0100 From General Fund	1,239,000	349,197	1,588,197
Totals:	1,239,000	349,197	1,588,197

Expenditures:			
121-4024-461-3038 Snow Removal Services	350,000	349,197	699,197
Totals:	350,000	349,197	699,197

Fund 411: Water Project Fund
Galvanized WA Pipe Replacement (WA1202)

Revenues:	\$	\$	\$
451-0000-391-0526 Series 2011 GO Bonds	902,507	(2,930)	899,577
Totals:	902,507	(2,930)	899,577

Expenditures:	\$	\$	\$
451-0000-605-2023 Arch/Eng/Landscaping	105,392	(2,930)	102,462
451-0000-605-2054 Land & Building Rental	13,201	0	13,201
451-0000-605-2097 State Reviews & Permits	1,502	0	1,502
451-0000-605-9001 Land	1,162	0	1,162
451-0000-605-9003 Improvements	781,250	0	781,250
Totals:	902,507	(2,930)	899,577

Fund 411: Water Project Fund
Westfield Annex UPG(WA1302)

Revenues:

451-0000-391-0525 Series 2009D (BABS)GO
 451-0000-391-0526 Series 2011 GO Bonds
 451-0000-391-4500 From Water Fund
 451-0000-391-4600 Reserve Outside City Imp

Totals:

\$	\$	\$
232,543	0	232,543
216,367	0	216,367
181	0	181
225,909	(59,529)	166,380
675,000	(59,529)	615,471

Expenditures:

451-0000-605-2023 Arch/Eng/Landscaping
 451-0000-601-9003 Improvements

Totals:

\$	\$	\$
85,700	(9,109)	76,591
589,300	(50,420)	538,880
675,000	(59,529)	615,471

Fund 411: Water Project Fund
Rock Springs PH2 WL UPG (WA1304)

Revenues:

451-0000-391-4500 From Water Fund

Totals:

\$	\$	\$
172,579	(949)	171,630
172,579	(949)	171,630

Expenditures:

451-0000-605-2023 Arch/Eng/Landscaping
 451-0000-605-9003 Improvements

Totals:

\$	\$	\$
10,664	(949)	9,715
161,915	0	161,915
172,579	(949)	171,630

Fund 411: Water Project Fund
Double Springs Tank (WA1305)

Revenues:

451-0000-391-0525 Series 2009D (BABS)GO
 451-0000-391-4500 From Water Fund

Totals:

\$	\$	\$
114,943	0	114,943
647,057	(74,652)	572,405
762,000	(74,652)	687,348

Expenditures:

451-0000-605-2023 Arch/Eng/Landscaping
 451-0000-605-9003 Improvements

Totals:

\$	\$	\$
35,000	0	35,000
727,000	(74,652)	652,348
762,000	(74,652)	687,348

Fund 411: Water Project Fund
North Kpt Annexation (WA1307)

Revenues:

451-0000-391-0526 Series 2011 GO Bonds

Totals:

\$	\$	\$
64,000	(17,043)	46,957
64,000	(17,043)	46,957

Expenditures:

451-0000-605-2023 Arch/Eng/Landscaping
 451-0000-605-9003 Improvements

Totals:

\$	\$	\$
8,000	(2,233)	5,767
56,000	(14,810)	41,190
64,000	(17,043)	46,957

Fund 411: Water Project Fund**Hidden Acres/Peppertree (WA1308)****Revenues:**

451-0000-391-0529 Series 2013 B GO Imp
 451-0000-391-4500 From Water Fund

Totals:

\$	\$	\$
950,000	(122,041)	827,959
50,000	(50,000)	0
1,000,000	(172,041)	827,959

Expenditures:

451-0000-605-2022 Construction Contracts
 451-0000-605-2023 Arch/Eng/Landscaping
 451-0000-605-9003 Improvements

Totals:

\$	\$	\$
100	(22)	78
117,900	(21,807)	96,093
882,000	(150,212)	731,788
1,000,000	(172,041)	827,959

Fund 411: Water Project Fund**Sullivan St. Phase 2 Waterline (WA1509)****Revenues:**

451-0000-391-0526 Series 2011 GO Bonds
 451-0000-391-4500 From Water Fund

Totals:

\$	\$	\$
0	19,973	19,973
0	70,727	70,727
0	90,700	90,700

Expenditures:

451-0000-605-2023 Arch/Eng/Landscaping
 451-0000-605-9003 Improvements

Totals:

\$	\$	\$
0	11,600	5,804
0	79,100	79,100
0	90,700	84,904

Fund 411: Water Project Fund**Double Springs Waterline (WA1510)****Revenues:**

451-0000-391-4600 Reserve Outside City Imp
 451-0000-391-0529 Series 2013 B GO Imp
 451-0000-391-4500 From Water Fund

Totals:

\$	\$	\$
0	59,529	59,529
0	122,041	122,041
0	54,874	54,874
0	236,444	236,444

Expenditures:

451-0000-605-2023 Arch/Eng/Landscaping
 451-0000-605-9003 Improvements

Totals:

\$	\$	\$
0	35,222	35,222
0	201,222	201,222
0	236,444	236,444

Fund 110: General Fund

Revenues:

110-0000-368-9900 Miscellaneous

Totals:

\$	\$	\$
30,000	3,750	33,750
30,000	3,750	33,750

Expenditures:

110-3001-441-2055 Repairs & Maintenance

Totals:

\$	\$	\$
15,000	3,750	18,750
15,000	3,750	18,750

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 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

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

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 lying on the boundary of parcel 1, Tax Map 119I, in common with the northern right-of-way of Interstate 81; thence in a northwesterly direction, approximately 378.80 feet to a point, said point lying on the northern 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 184.27 feet to a point, said point lying on the northwest boundary of parcel 1 in common with the southern right-of-way of Rock Springs Road; thence in a southeasterly direction, approximately 343.28 feet to a point, said point lying on the southern boundary of parcel 1 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 200 feet to the point of BEGINNING, and being a portion of parcel 1, Tax Map 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 _____



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

	Y	N	O
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

	Y	N	O
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			
The Kingsport Planning Division recommends approval for the following reasons: <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> Staff Field Notes and General Comments: <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

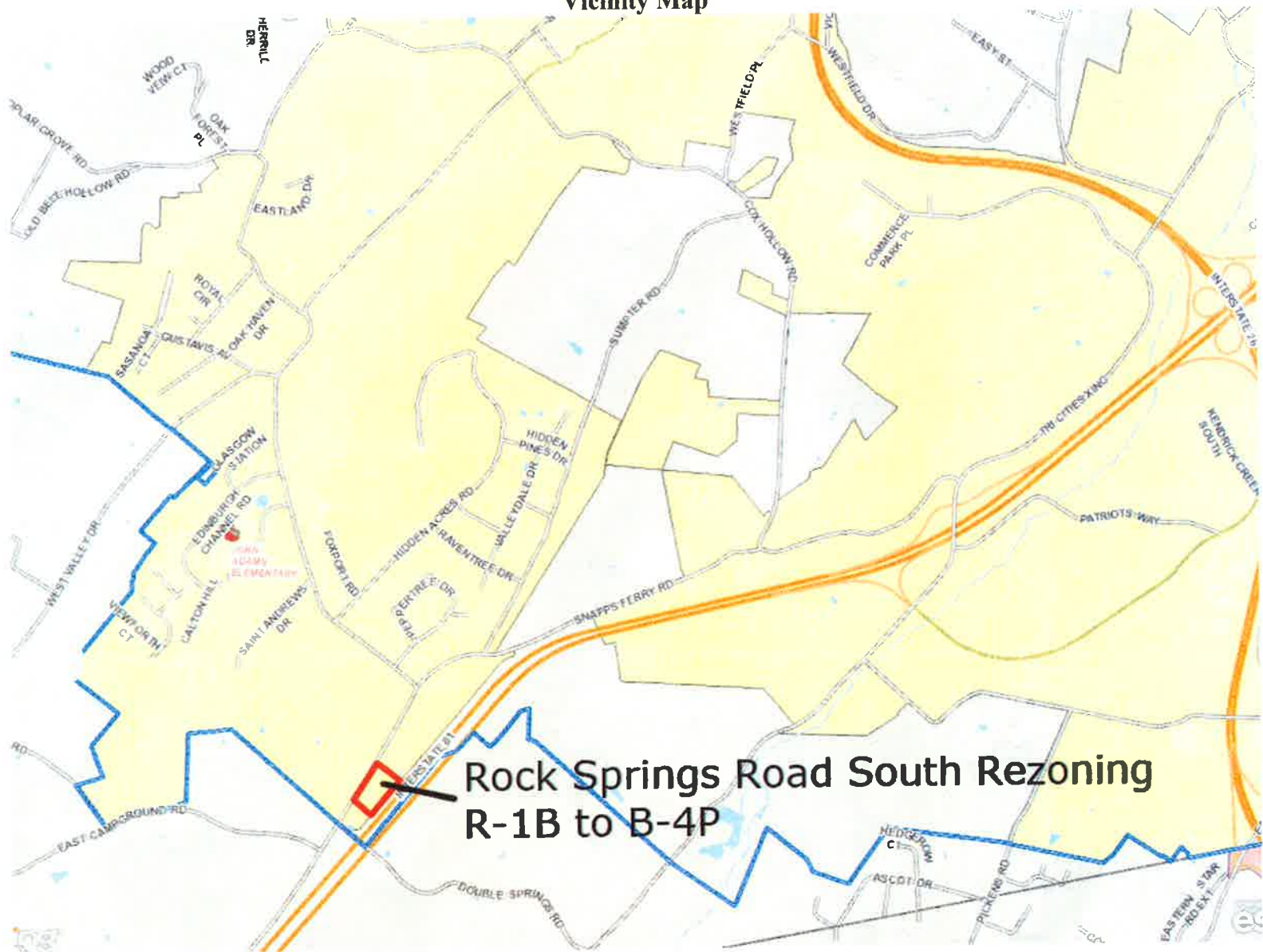
REPRESENTATIVE

PHONE (423) 765-2663

INTENT

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

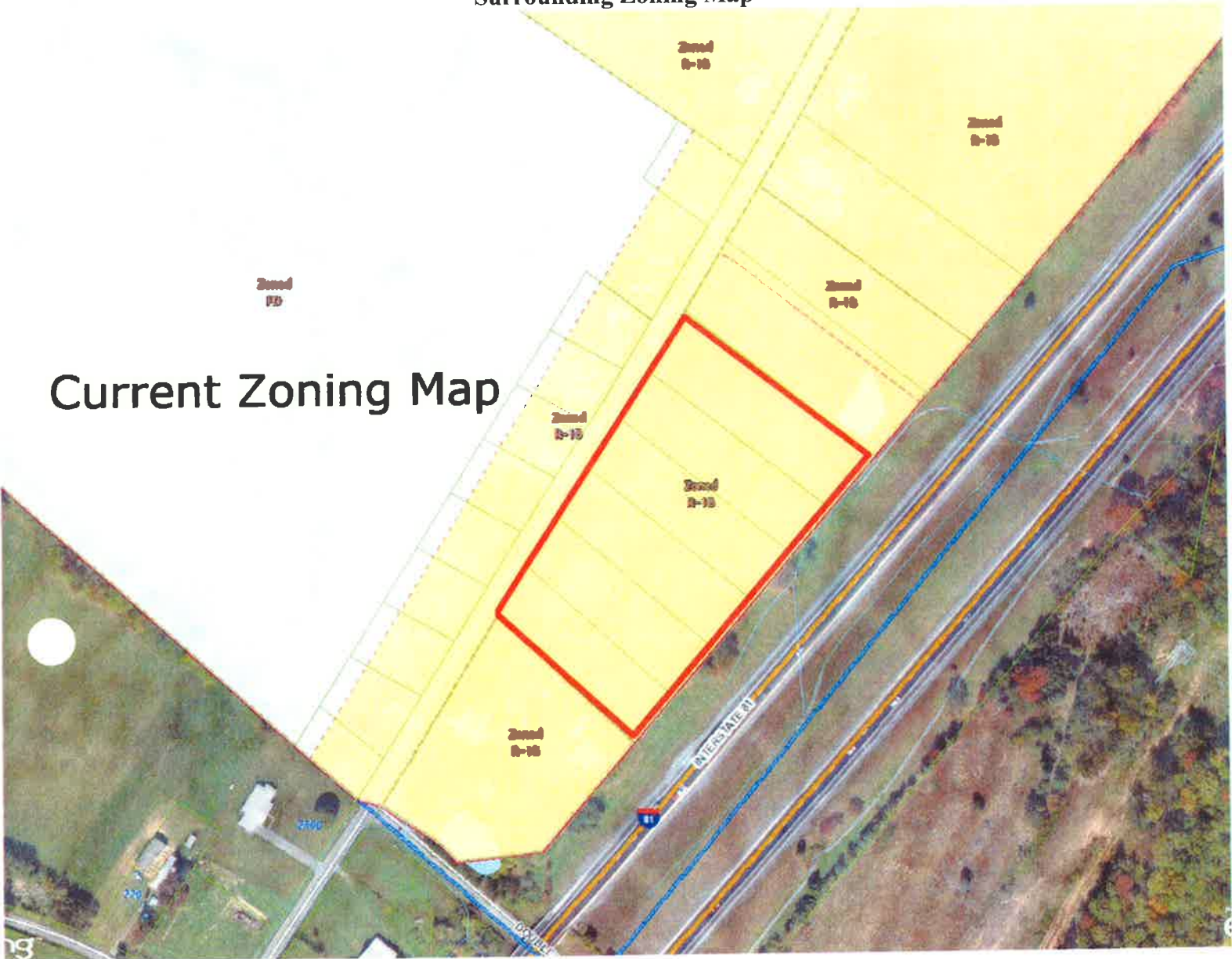
Vicinity Map



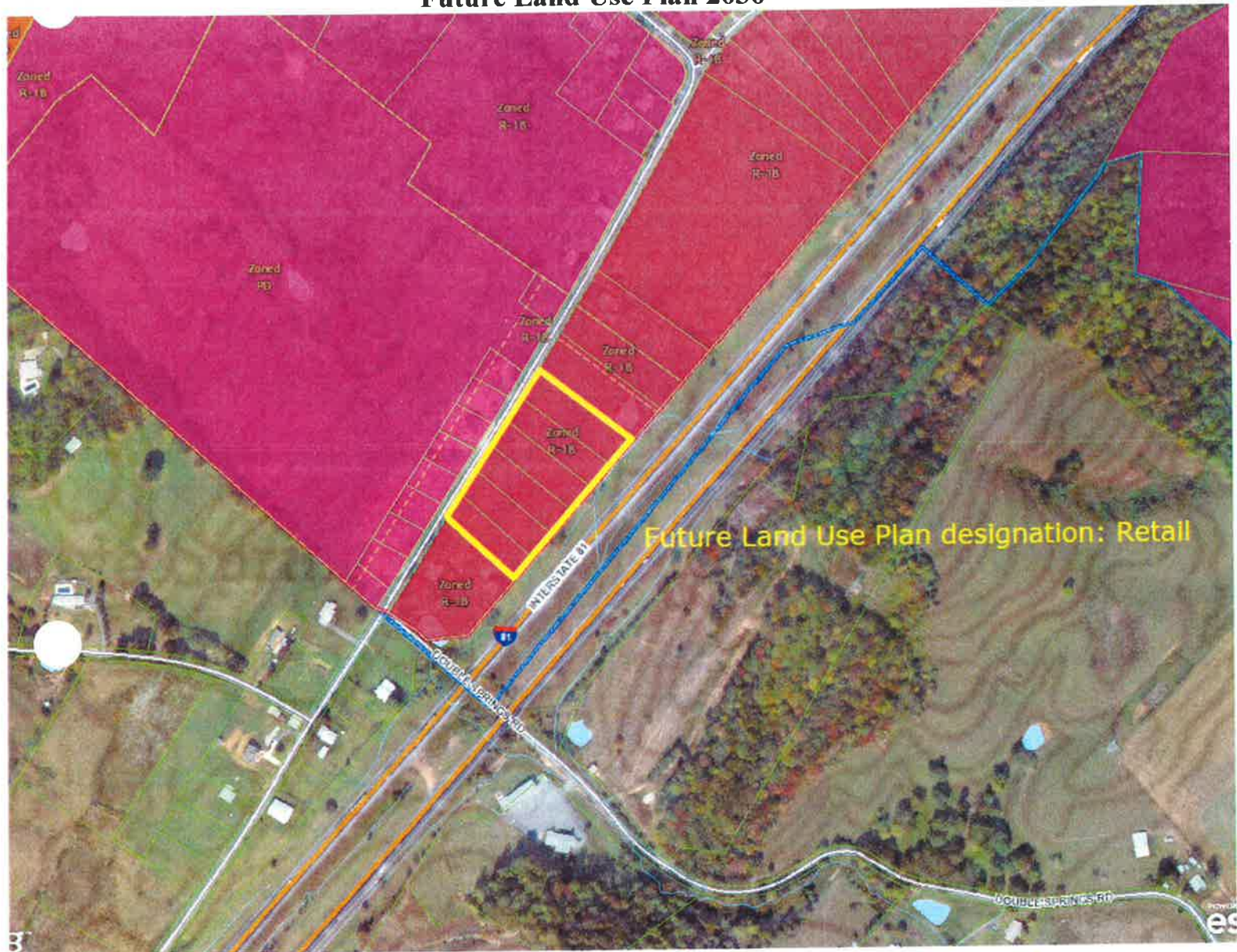
Rezoning Report

Surrounding Zoning Map

Current Zoning Map



Future Land Use Plan 2030



Aerial



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

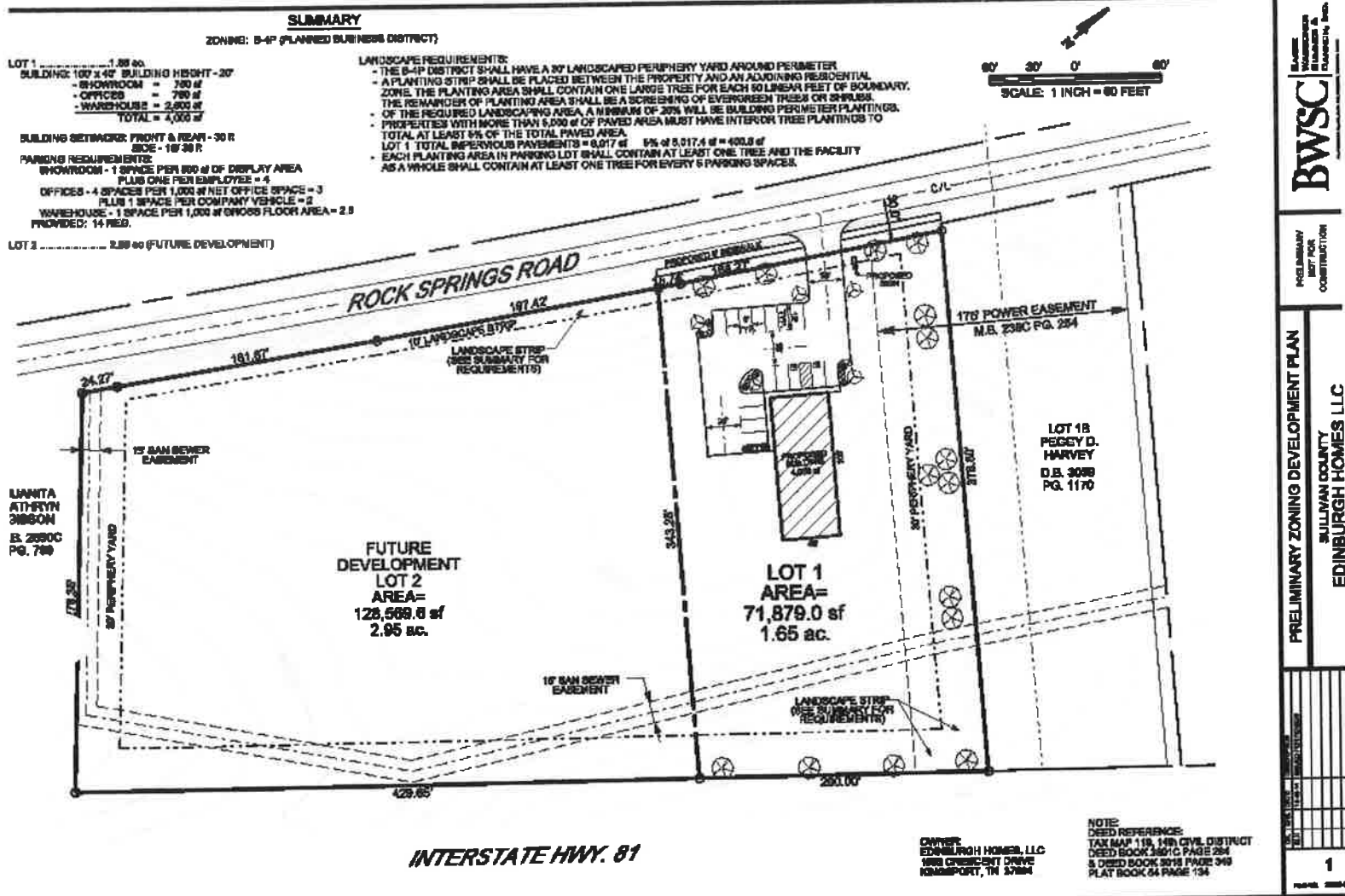
Location	Parcel / Zoning Petition	Zoning / Name	History Zoning Action Variance Action
North, East, Northwest	1	<u>Zone: City R-1B</u> Use: single family residential	Property annexed in 2009
Further North and Northwest	2	<u>Zone: City PD</u> Use: vacant property	Property annexed in 2009
East	3	<u>Zone: 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



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: 

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



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Attachments:

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

Funding source appropriate and funds are available: js

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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:

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	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.

0.11 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:

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



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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	—	—	—

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

Agreement with Eastman Chemical Company to Allow for a Change Order to the Pedestrian Bridge over Wilcox Drive

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

Action Form No.: AF-51-2015
 Work Session: March 2, 2015
 First Reading: N/A

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

Recommendation:

Approve the resolution.

Executive Summary:

At the time that the plans were developed for the pedestrian bridge over Wilcox Drive that TDOT is currently constructing, the final paint for Eastman Chemical Company's Corporate Business Center had not been selected. Eastman now desires that the pedestrian bridge paint be changed to match what will be used in the Corporate Business Center. Eastman in the attached agreement is asking for said paint change and that they will cover the added cost for this change order. The City has the agreement with TDOT and therefore would make the change order request and agree to pay for said request. Once approved by TDOT the City would pay for the change order and then invoice Eastman.

Attachments:

1. Resolution
2. Agreement

Funding source appropriate and funds are available: 

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

RESOLUTION NO. _____

A RESOLUTION APPROVING A GUARANTY OF CHANGE ORDER EXPENSE WITH EASTMAN CHEMICAL COMPANY REGARDING THE WILCOX ROAD PEDESTRIAN BRIDGE AND AUTHORIZING THE MAYOR TO EXECUTE THE AGREEMENT AND ALL OTHER DOCUMENTS NECESSARY AND PROPER TO EFFECTUATE THE PURPOSE OF THE AGREEMENT

WHEREAS, the State of Tennessee is building a pedestrian bridge crossing Wilcox Drive which the city will own; and

WHEREAS, Eastman Chemical Company owns the property on both sides of Wilcox where the bridge will cross; and

WHEREAS, Eastman Chemical Company wants the bridge painted with a different paint from the current plans and specifications; and

WHEREAS, Eastman would like the city to request a change order to the contract with the state to change the paint type to Tnemec series 1078 Epoxy Finish; and

WHEREAS, if the change order is granted, and the change order results in an increase in the contract price the city will issue an invoice to Eastman for the difference; and

Now therefore,

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

SECTION I. That a Guaranty of Change Order Expense for the Wilcox Drive Pedestrian Bridge structure with Eastman Chemical Company 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 Guaranty of Change Order Expense for the Wilcox Drive Pedestrian Bridge structure with Eastman Chemical Company and all other documents necessary and proper, and to take such acts as necessary, to effectuate the purpose of the agreement or this resolution, said agreement being as follows:

Guaranty of Change Order Expense
Pedestrian Bridge Structure

AGREEMENT, made this ____ day of February, 2015, between THE CITY OF KINGSPORT, a municipal Corporation of the State of Tennessee, (hereinafter referred to as "City") and EASTMAN CHEMICAL COMPANY (hereinafter referred to as "Eastman").

WHEREAS, the State of Tennessee ("State") is constructing a pedestrian bridge crossing Wilcox Drive which the City will own ("Bridge"); and

WHEREAS, Eastman owns the property on both sides of Wilcox Drive where the Bridge will cross; and

WHEREAS, Eastman desires that a type of paint be used on the Bridge which is different from the paint called for in the current plans and specifications, and the City has no objection to the change in paint type proposed by Eastman provided Eastman pays any additional costs resulting from the change; and

WHEREAS, Eastman has agreed to reimburse the City for any additional cost resulting from the change of paint type.

NOW, THEREFORE, based on the promises herein, the parties agree:

1. The City will request that the State change the paint type to be used on the Bridge to that requested by Eastman which is Tnemec series 1078 Epoxy Finish.

2. If the change order is granted by the State and if the change order results in an increase in the contract price for the construction of the Bridge, the City shall issue an invoice to Eastman in the amount the contract price increased as a result of the change and Eastman shall pay said amount to the City (or other party as directed by the City in writing) within thirty (30) days of receipt the invoice

[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 3rd day of March, 2015.

DENNIS R. PHILLIPS, MAYOR

ATTEST:

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

J. MICHAEL BILLINGSLEY, CITY ATTORNEY

**Guaranty of Change Order Expense
Pedestrian Bridge Structure**

AGREEMENT, made this ____ day of February, 2015, between THE CITY OF KINGSPORT, a municipal Corporation of the State of Tennessee, (hereinafter referred to as "City") and EASTMAN CHEMICAL COMPANY (hereinafter referred to as "Eastman").

WHEREAS, the State of Tennessee ("State") is constructing a pedestrian bridge crossing Wilcox Drive which the City will own ("Bridge"); and

WHEREAS, Eastman owns the property on both sides of Wilcox Drive where the Bridge will cross; and

WHEREAS, Eastman desires that a type of paint be used on the Bridge which is different from the paint called for in the current plans and specifications, and the City has no objection to the change in paint type proposed by Eastman provided Eastman pays any additional costs resulting from the change; and

WHEREAS, Eastman has agreed to reimburse the City for any additional cost resulting from the change of paint type.

NOW, THEREFORE, based on the promises herein, the parties agree:

1. The City will request that the State change the paint type to be used on the Bridge to that requested by Eastman which is Tnemec series 1078 Epoxy Finish.

2. If the change order is granted by the State and if the change order results in an increase in the contract price for the construction of the Bridge, the City shall issue an invoice to Eastman in the amount the contract price increased as a result of the change and Eastman shall pay said amount to the City (or other party as directed by the City in writing) within thirty (30) days of receipt the invoice.

Eastman Chemical Company

By: *John Clark*

Its: *VP, Global Public Affairs and*
Bohning

City of Kingsport

By: _____

Mayor, City of Kingsport

Attest

James H. Demming, City Recorder



AGENDA ACTION FORM

First Amendment to Funding Agreement with the Industrial Development Board of the City of Kingsport (KEDB), Sullivan County, Tennessee and the Bank of Tennessee

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

Action Form No.: AF-56-2015
 Work Session: March 3, 2015
 First Reading: N/A

Final Adoption: March 3, 2015
 Staff Work By: KEDB Atty Waddell
 Presentation By: Jeff Fleming

Recommendation:

Approve the resolution.

Executive Summary:

Effective July 5, 2011, The Industrial Development Board of the City of Kingsport, Tennessee (KEDB) entered into a purchase option with Magneti Marelli North America, Inc., whereby KEDB was granted the option to purchase the Magneti Marelli Manufacturing facility located on Airport Parkway in Kingsport, Tennessee.

Effective August 23, 2011, KEDB exercised its option to purchase this property for a gross purchase price of \$3,400,000. KEDB then leased the Property to C & F Manufacturing USA, Inc. (C & F) by lease dated August 23, 2011, for an initial term of 10 years with two successive five year renewal terms. The monthly rental payments during the initial term was \$22,615.93.

In order to finance the purchase of the property, KEDB borrowed the sum of \$3,500,000, from Bank of Tennessee as evidenced by Promissory Note dated August 22, 2011. The Note was for a term of 20 years, accruing interest at the rate of 4.680% per annum for a period of 10 years until August 22, 2021, after which time interest may change based on a variable rate as described in the Note. Monthly note payments of principal and interest are \$22,615.93, the amount C & F is required to pay under the Lease.

[Executive Summary continued on next page]

Attachments:

1. Resolution
2. First Amendment to Loan and Security Agreement
3. Modification to Promissory Note
4. Funding Agreement dated August 22, 2011

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

[Executive Summary Action Form 56-2015 continued]

Pursuant to the Funding Agreement dated July 21, 2011, between KEDB, the City of Kingsport, Tennessee and Sullivan County, Tennessee, the Board of Mayor and Aldermen of the City and the Sullivan County Commission adopted resolutions to provide contingency funding to KEDB in the aggregate amount of up to \$300,000 per year. More specifically, the Funding Agreement provides that to support KEDB's acquisition of the Property and Bank of Tennessee's making of the Acquisition Loan, the City and County each agreed to pay to KEDB 50% of the amount by which the rent payments as collected by KEDB under the Lease are insufficient to make the payments required under the Acquisition Loan, with the maximum amount of each governmental entity's contingency payment to be \$150,000 per year. KEDB assigned, pledged and granted to Bank of Tennessee a security interest in its rights under the Funding Agreement as collateral for the Promissory Note.

C & F has defaulted in the payment of rent due under the Lease and KEDB has acquired C & F's leasehold interest in the Property by judicial process through a Writ of Detainer. The Property is now vacant and is being aggressively marketed for sale or for long term lease with purchase option.

Since the Property is not earning income at the present time and to reduce the monthly cash flow necessary to satisfy the obligations under the Lease which, in turn, will reduce the City and County's obligation under the Funding Agreement, KEDB has negotiated with Bank of Tennessee a modification to the Note which has a present principal balance of \$3,111,653.66. The Note modification provides effective with the monthly payment due February 22, 2015, and continuing through the monthly payment due January 22, 2016, principal amortizations required under the Note shall be suspended and payment of only accrued interest shall be due and payable on the 22nd day of each calendar month. Interest shall continue to accrue at the rate of 4.680% per annum. Effective February 22, 2016 through August 22, 2021, principal and interest shall be due and payable in equal consecutive monthly installments of \$23,578.91 each, or an increase of \$962.98 per month.

As one of its requirements for the Note modification, Bank of Tennessee has requested that both the City and County agree to a First Amendment to Funding Agreement pursuant to which both the City and County reaffirm its contingency funding commitment pursuant to the July 21, 2011 Funding Agreement and reaffirm KEDB's assignment and pledge to Bank of Tennessee of the security interest in its rights under the Funding Agreement as collateral for the Note. The modification documents do not increase or change in any manner either the City or the County's obligations, both financial and otherwise, under the Funding Agreement, nor create any obligation which does not presently exist.

RESOLUTION NO. _____

A RESOLUTION APPROVING AN AMENDMENT TO THE FUNDING AGREEMENT WITH THE INDUSTRIAL DEVELOPMENT BOARD OF THE CITY OF KINGSPORT AND SULLIVAN COUNTY FOR FUNDING FOR THE MANUFACTURING FACILITY LOCATED AT 10388 AIRPORT PARKWAY, AND AUTHORIZING THE MAYOR TO EXECUTE THE AMENDMENT AND ALL OTHER DOCUMENTS NECESSARY AND PROPER TO EFFECTUATE THE PURPOSE OF THE AMENDMENTS

WHEREAS, in August 22, 2011, the board approved a Funding Agreement, which the city and Sullivan County agreed to make certain funding commitments to support a loan made by the Bank of Tennessee to the Industrial Development Board of the City of Kingsport, Tennessee to acquire a manufacturing facility located at 10388 Airport Parkway, Kingsport Tennessee; and

WHEREAS, the Industrial Development Board of the City of Kingsport then leased the facility to C&F Manufacturing USA, Inc.; and

WHEREAS, C&F Manufacturing USA, Inc. has defaulted in the payment of rent under their lease agreement with the Industrial Development Board of the City of Kingsport; and

WHEREAS, the Bank of Tennessee has requested the board approve a First Amendment to the Funding Agreement with the Industrial Development Board of the City of Kingsport, Tennessee and Sullivan County, Tennessee reaffirming its contingency funding commitment pursuant to the July 21, 2011 Funding Agreement.

Now therefore,

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

SECTION I. That a First Amendment to Funding Agreement with the Industrial Development Board of the City of Kingsport, Tennessee and Sullivan County, Tennessee, 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, a First Amendment to Funding Agreement the with Industrial Development Board of the City of Kingsport, Tennessee and Sullivan County, Tennessee, 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:

FIRST AMENDMENT TO FUNDING AGREEMENT

THIS FIRST AMENDMENT TO FUNDING AGREEMENT, dated as of February __, 2015 is made by and among **THE CITY OF KINGSPORT, TENNESSEE**, a municipal corporation of the State of Tennessee (herein the "City"), **SULLIVAN COUNTY, TENNESSEE**, a political subdivision of the State of Tennessee (herein the "County"), and **THE INDUSTRIAL DEVELOPMENT BOARD OF THE CITY OF KINGSPORT, TENNESSEE**, a corporation organized under T.C.A. § 7-53-101 et seq., commonly known as the "Kingsport Economic

Development Board" (herein "KEDB") (the City, County and KEDB sometimes referred to herein individually as a "Party" or collectively as the "Parties").

RECITALS:

A. The Parties previously have entered into a Funding Agreement dated as of August 22, 2011 (the "Funding Agreement") pursuant to which the City and County have undertaken certain contingency funding commitments to support a loan made by Bank of Tennessee (the "Lender") to KEDB in the principal amount of \$3,500,000 (the "Term Loan"), the proceeds of which were used by KEDB to acquire a manufacturing facility located at 10388 Airport Parkway, Kingsport, Tennessee (the "Facility").

B. Pursuant to Lease Agreement dated August 23, 2011 (the "Lease Agreement") KEDB has leased the Facility to C & F Manufacturing USA, Inc. ("C&F") for the purpose of facilitating C & F's manufacturing operations at such Facility.

C. C & F has defaulted in the payment of rent due under the Lease Agreement thereby necessitating the performance of the obligations of the City and the County under the Funding Agreement to provide funds to KEDB for the purpose of making payments due under the Term Loan.

D. Pursuant to the request of the City, County, and KEDB, Lender has agreed to modify the payment terms under the Term Loan and Lender has requested that the City, County, and KEDB enter into this First Amendment to Funding Agreement in connection with such loan modification.

NOW, THEREFORE, in consideration of the foregoing premises, and in consideration of and to induce Lender's modification of the Term Loan as described herein, the City, County and KEDB do hereby contract and agree as follows:

1. Status of Term Loan. The Term Loan is evidenced by KEDB's Promissory Note dated August 22, 2011, payable to Lender in the original principal amount of \$3,500,000 (the "Promissory Note"). The Parties acknowledge that the current outstanding principal balance under the Promissory Note is \$3,111,653.66.

2. Modified Payment Schedule for Promissory Note.

(a) February 22, 2015 through January 22, 2016. Payments under the Promissory Note shall be due on the 22nd day of each calendar month. Beginning with the monthly payment due February 22, 2015, and continuing through the monthly payment due January 22, 2016, principal amortization required under the Promissory Note shall be suspended and payments of only accrued interest shall be due and payable on the 22nd day of each calendar month. Interest shall continue to accrue at the rate of 4.68% per annum and shall be calculated in the same manner as specified in the Promissory Note as originally executed.

(b) February 22, 2016 through August 22, 2021. Beginning with the monthly payment due February 22, 2016 and continuing on the 22nd day of each succeeding calendar month through August 22, 2021, principal and interest shall be due and payable in equal consecutive monthly installments of \$23,578.91 each.

(c) September 22, 2021 to Maturity. Effective as of August 22, 2021, interest on the outstanding principal balance shall accrue at the Variable Rate set forth in the Promissory Note and the monthly payments due under the Promissory Note for September 22, 2021 and each month thereafter shall be adjusted accordingly from time to time with changes in the Variable Rate.

(d) Maturity Date. The final payment of all remaining principal and accrued interest under the Promissory Note shall be due on August 22, 2031.

3. Reaffirmation of Contingency Funding Commitment by the City of Kingsport. In consideration of the modification of the Promissory Note as described herein, the City hereby reaffirms its commitment under the Funding Agreement to pay to KEDB 50% of the amount by which the rent payments collected by KEDB under the Lease Agreement are insufficient to make the payments required under the Promissory Note, as amended by this loan modification. All other terms and conditions of the City's funding commitment remain as originally stated in the Funding Agreement.

4. Contingency Funding Commitment by Sullivan County. In consideration of the modification of the Promissory Note as described herein, the County hereby reaffirms its commitment under the Funding Agreement to pay to KEDB 50% of the amount by which the rent payments collected by KEDB under the Lease Agreement are insufficient to make the payments required under the Promissory Note, as amended by this loan modification. All other terms and conditions of the County's funding commitment remain as originally stated in the Funding Agreement.

5. Reaffirmation of Security Interest and Pledge. The City and County hereby acknowledge and agree that (i) KEDB has assigned, pledged and granted to Lender a security interest in its

rights under the Funding Agreement as collateral for the Promissory Note, (ii) KEDB shall modify the Loan and Security Agreement as required by Lender to reflect the loan modification as described herein, and, (iii) Lender, as the assignee, pledgee and holder of such security interest, shall be entitled to enforce KEDB's rights under the Funding Agreement, as modified by this First Amendment to Funding Agreement, and to apply the monies payable by the City and County under the Funding Agreement, as modified by this First Amendment to Funding Agreement, to the monies due from time to time under the Promissory Note, as modified.

6. No Other Amendments or Modifications. Except as set for the herein, all other terms and provisions of the Funding Agreement remain in full force and effect as originally executed.

7. No Personal Liability. No member, director, officer, commissioner, elected representative or employee, whether past present or future, of the City, County or KEDB, or any successor body, shall have any personal liability for the performance of any obligations of the City, the County or KEDB respectively, under the Funding Agreement as modified by this First Amendment.

IN WITNESS WHEREOF, the Parties have caused this instrument to be executed by their respective duly authorized representatives as of the date first written hereinabove on the following pages.

[Acknowledgements Deleted for Inclusion in this Resolution]

SECTION III. That the mayor is further authorized to make such changes approved by the mayor and the city attorney to the amendment 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 3rd day of March, 2015.

DENNIS R. PHILLIPS, MAYOR

ATTEST:

JAMES H. DEMMING, CITY RECORDER

APPROVED AS TO FORM:

J. MICHAEL BILLINGSLEY, CITY ATTORNEY

FIRST AMENDMENT TO LOAN AND SECURITY AGREEMENT

THIS FIRST AMENDMENT TO LOAN AND SECURITY AGREEMENT ("Agreement"), effective as of February 22, 2015, is made and entered into by and between **BANK OF TENNESSEE**, a Tennessee banking corporation ("Lender"), and **THE INDUSTRIAL DEVELOPMENT BOARD OF THE CITY OF KINGSPORT, TENNESSEE**, a Tennessee public not-for-profit corporation with its offices in Kingsport, Tennessee ("Borrower").

RECITALS:

A. Pursuant to Loan and Security Agreement dated August 22, 2011 and Borrower's Promissory Note dated August 22, 2011 payable to Lender in the principal amount of \$3,500,000 (the "Promissory Note"), Lender has provided to Borrower a term loan in the principal amount of \$3,500,000 (the "Term Loan").

B. The purpose of the Term Loan was for Borrower to acquire a manufacturing facility located at 10388 Airport Parkway, Kingsport, Tennessee (the "Facility") and to lease the Facility to C & F Manufacturing USA, Inc. ("C&F") pursuant to Lease Agreement dated August 22, 2011 (the "Loan Agreement")

C. C & F has defaulted in the payment of rent due under the Lease Agreement and Borrower has requested that Lender modify the payment terms under the Promissory Note, which modification Lender is willing to provide as set forth hereinbelow.

NOW, THEREFORE, in consideration of the foregoing premises, and in consideration of and to induce Lender's modification of the Promissory Note as described herein, Lender and Borrower do hereby contract and agree as follows:

1. Status of Term Loan. The parties acknowledge that the current outstanding principal balance under the Promissory Note is \$3,111,653.66.

2. Modification of Payment Schedule. The parties agree that the payment schedule under the Promissory Note is hereby modified as follows:

(a) February 22, 2015 through January 22, 2016. Payments under the Promissory Note are due on the 22nd day of each calendar month. Effective with the monthly payment due February 22, 2015, and continuing through the monthly payment due January 22, 2016, principal amortization required under the Promissory Note shall be suspended and payments of only accrued interest shall be due and payable on the 22nd day of each calendar month. Interest shall continue to accrue at the rate of 4.68% per annum and shall be calculated in the same manner as specified in the Promissory Note as originally executed.

(b) February 22, 2016 through August 22, 2021. Effective with the monthly payment due February 22, 2016 and continuing on the 22nd day of each succeeding calendar month

IN WITNESS WHEREOF, the parties have caused this instrument to be executed by their respective duly authorized representatives as of the date first written hereinabove.

BANK OF TENNESSEE

By: _____
Jenny Dugger
Senior Vice President

**THE INDUSTRIAL DEVELOPMENT BOARD
OF THE CITY OF KINGSFORT, TENNESSEE**

By: _____
William D. Dudley
Chairman

By: _____
Keith Wilson
Secretary-Treasurer

MODIFICATION TO PROMISSORY NOTE

THIS MODIFICATION TO PROMISSORY NOTE, effective as of February 22, 2015, is made by and between **BANK OF TENNESSEE**, a Tennessee banking corporation ("Bank") and **THE INDUSTRIAL DEVELOPMENT BOARD OF THE CITY OF KINGSFORT, TENNESSEE**, a Tennessee corporation organized under T.C.A. 7-53-101 et seq. ("Borrower").

RECITALS:

A. Bank previously has provided a loan to Borrower in the principal amount of \$3,500,000 as evidenced by Borrower's Promissory Note dated August 22, 2011 payable to Bank in the principal amount of \$3,500,000 (the "Promissory Note").

B. The indebtedness evidenced by the Promissory Note is governed and secured by the terms of a Loan and Security Agreement dated August 22, 2011 (the "Loan Agreement").

C. Borrower has requested that Bank modify the payment terms under the Promissory Note and Bank is willing to provide such modification in accordance with the terms and conditions set forth hereinbelow.

NOW, THEREFORE, in consideration of the foregoing premises, and in consideration of the parties' mutual covenants and undertakings set forth hereinbelow, Bank and Borrower do hereby amend the Promissory Note as follows:

1. Current Principal Balance. Bank and Borrower agree that the current outstanding principal balance under the Promissory Note is \$3,111,653.66.

2. Modified Payment Schedule.

(a) February 22, 2015 through January 22, 2016. Payments under the Promissory Note are due on the 22nd day of each calendar month. Effective with the monthly payment due February 22, 2015, and continuing through the monthly payment due January 22, 2016, principal amortization required under the Promissory Note shall be suspended and payments of only accrued interest shall be due and payable on the 22nd day of each calendar month. Interest shall continue to accrue at the rate of 4.68% per annum and shall be calculated in the same manner as specified in the Promissory Note as originally executed.

(b) February 22, 2016 through August 22, 2021. Effective with the monthly payment due February 22, 2016 and continuing on the 22nd day of each succeeding calendar month through August 22, 2021, principal and interest shall be due and payable in equal consecutive monthly installments of \$23,578.91 each.

(c) September 22, 2021 to Maturity. Effective as of August 22, 2021, interest on the outstanding principal balance shall accrue at the Variable Rate set forth in the Promissory Note and

the monthly payments due under the Promissory Note for September 22, 2021 and each month thereafter shall be adjusted accordingly from time to time with changes in the Variable Rate.

(d) Maturity Date. The final payment of all remaining principal and accrued interest under the Promissory Note shall be due on August 22, 2031.

3. No Other Modifications. Except as set forth in this Modification to Promissory Note, the terms and conditions of the Promissory Note, as originally executed, remain unaltered and in full force and effect.

IN WITNESS WHEREOF, Bank and Borrower have executed this Modification to Promissory Note by and through their respective duly authorized corporate officers.

BANK OF TENNESSEE

By: _____

Jenny Dugger
Senior Vice President

**THE INDUSTRIAL DEVELOPMENT
BOARD OF THE CITY OF
KINGSPORT, TENNESSEE**

By: _____

William D. Dudney
Chairman

ATTEST:

Keith Wilson
Secretary-Treasurer

FUNDING AGREEMENT

THIS AGREEMENT, dated as of August 22, 2011, is made by and among **THE CITY OF KINGSPORT, TENNESSEE**, a municipal corporation of the State of Tennessee ("City"), **SULLIVAN COUNTY, TENNESSEE**, a political subdivision of the State of Tennessee (herein the "County"), and **THE INDUSTRIAL DEVELOPMENT BOARD OF THE CITY OF KINGSPORT, TENNESSEE**, a corporation organized under T.C.A. § 7-53-101 et seq., commonly known as the "Kingsport Economic Development Board" ("KEDB").

RECITALS:

- A. KEDB desires to acquire a manufacturing facility located at 10388 Airport Parkway, Kingsport, Sullivan County, Tennessee (the "Facility") and to lease the Facility to C&F Automotive, Ltd. or its affiliate ("C&F"), such acquisition of the Facility and leasing to C&F collectively referred to herein as the "Project."
- B. Pursuant to a Letter of Intent previously executed between KEDB and C&F, KEDB anticipates that the Project will facilitate the creation of as many as 450 jobs which will increase employment in the City and the County.
- C. To induce KEDB to complete the Project, the Board of Mayor and Aldermen of the City and the Sullivan County Commission have heretofore adopted resolutions to provide contingency funding to KEDB in an aggregate amount of up to \$300,000 per year, with such arrangements to be documented pursuant to a formal written agreement between the City and the County.
- D. The parties desire to execute this Funding Agreement to satisfy the conditions of each resolution and to document the terms and conditions upon which the City and the County will perform their funding commitments for the benefit of KEDB.

NOW, THEREFORE, in consideration of the foregoing premises, and in consideration of the parties' mutual covenants and undertakings set forth hereinbelow, the City, County and KEDB do hereby mutually agree and contract with each other as follows:

1. **Acquisition of Facility.** KEDB will acquire fee simple title to the Facility from Magneti Marelli North America, Inc.

2. **Financing of Acquisition and Leasing of Facility.** KEDB will obtain a loan from Bank of Tennessee in the principal amount of \$3,500,000, the proceeds of which will be used to complete the acquisition of the Facility (the "Acquisition Loan"). Simultaneously with the acquisition of the Facility, KEDB will enter into a Lease Agreement with C&F (the "Lease Agreement") for an initial term of not less than ten (10) years and providing for two (2) renewal terms of five (5) years each. Such Lease Agreement shall require C&F to pay base rent to KEDB in regular monthly installments (in addition to such payments as may be required for real estate taxes and personal property taxes (or payments in lieu of such taxes), insurance, utilities, maintenance and other operating expenses) in an amount sufficient to pay principal and interest due under the Acquisition Loan based upon a fixed interest rate of 4.68% per annum and a level amortization schedule of 240 consecutive monthly installments. The Lease Agreement shall provide that such payment schedule shall be in effect for a period of 120 months at which time the interest rate will be adjusted to a new fixed rate equal to (i) the then current rate for United States Treasury obligations having a 10 year maturity, plus (ii) 150 basis points. Such adjusted fixed interest rate shall be calculated and become effective 30 days prior to the end of the initial 120 month period. The then outstanding principal balance shall be amortized at such adjusted interest rate in equal monthly installments payable over the remainder of the 240 month payment schedule, and the Lease Agreement shall provide that the base rent due under the Lease Agreement shall be adjusted accordingly.

3. **Contingency Funding Commitment by the City of Kingsport.** To support KEDB's acquisition of the Facility and Bank of Tennessee's making of the Acquisition Loan, the City hereby

agrees to pay to KEDB 50% of the amount by which the rent payments as collected by KEDB under the Lease Agreement are insufficient to make the payments required under the Acquisition Loan; provided, however, the maximum amount of the City's contingency payments shall be \$150,000 per year and, provided further, that such payments shall be due from the City only to the extent that lease payments collected by KEDB under the Lease Agreement are not sufficient to pay the debt service under the Acquisition Loan. The City shall make such payments to KEDB from time to time upon 30 days prior written notice from KEDB. Such notice shall include information describing C&F's delinquency under the Lease Agreement and such other pertinent information as the City may request. The City shall make such contingency payments to KEDB for the stated term of the Lease Agreement and for the stated term of any renewals of the Lease Agreement. In the event C&F subsequently cures rent delinquencies for which the City has previously made a payment to KEDB pursuant to this Agreement, KEDB shall refund such monies to the City; provided, however, in the event C&F makes a payment which partially cures such delinquencies, the amount of such partial cure payment shall be divided equally between the City and the County or in such other proportions as are commensurate with the contingency payments previously made by the City and the County.

4. **Contingency Funding Commitment by the County of Sullivan.** To support KEDB's acquisition of the Facility and Bank of Tennessee's making of the Acquisition Loan, the County hereby agrees to pay to KEDB 50% of the amount by which the rent payments as collected by KEDB under the Lease Agreement are insufficient to make the payments required under the Acquisition Loan; provided, however, the maximum amount of the County's contingency payments shall be \$150,000 per year and, provided further, that such payments shall be due from the County only to the extent that lease payments collected by KEDB under the Lease Agreement are not sufficient to pay the debt

service under the Acquisition Loan. The County shall make such payments to KEDB from time to time upon 30 days prior written notice from KEDB. Such notice shall include information describing C&F's delinquency under the Lease Agreement and such other pertinent information as the County may request. The County shall make such contingency payments to KEDB for the stated term of the Lease Agreement and for the stated term of any renewals of the Lease Agreement. In the event C&F subsequently cures rent delinquencies for which the County has previously made a payment to KEDB pursuant to this Agreement, KEDB shall refund such monies to the County; provided, however, in the event C&F makes a payment which partially cures such delinquencies, the amount of such partial cure payment shall be divided equally between the City and the County or in such other proportions as are commensurate with the contingency payments previously made by the City and the County.

5. **Modification of Lease Agreement.** So long as the Acquisition Loan is outstanding, KEDB shall not, without the prior written consent of the City and the County, (i) decrease the rent payable by C&F under the Lease Agreement, (ii) decrease the initial term of the Lease Agreement or decrease the renewal terms provided for under the Lease Agreement, or (iii) reduce or otherwise modify or waive C&F's obligations to pay Operating Expenses under the Lease Agreement or reduce the amount of such payments.

6. **Security Interest and Pledge.** The City and County agree that KEDB is entitled to assign, pledge and grant a security interest in its rights under this Agreement to Bank of Tennessee as collateral for the Acquisition Loan, and the City and County further agree that Bank of Tennessee, as the assignee, pledgee or holder of such security interest shall be entitled to enforce KEDB's rights under this Agreement and to apply the monies payable by the City and the County under this Agreement toward the monies due from time to time under the Acquisition Loan. In the event there is

a default under the Acquisition Loan, and upon written notice by Bank of Tennessee that such default has occurred, the City and the County are authorized and directed to make the payments due under this Agreement directly to Bank of Tennessee. KEDB, the City and the County each agree that Bank of Tennessee is an intended third party beneficiary of this Agreement and, upon its exercise of its rights, shall be entitled to enforce this Agreement and to apply the proceeds payable under this Agreement to satisfy the indebtedness under the Acquisition Loan.

7. **Lease Termination.** In the event of the termination of the Lease Agreement whether by C&F or KEDB and for whatever reason, and without C&F exercising its option to purchase the Facility, while any principal balance or accrued interest is owed by KEDB to Bank of Tennessee under the Acquisition Loan, then as soon as possible after the termination KEDB will use its best efforts to sell or lease the Facility using all of the marketing strategies it has at its disposal. KEDB shall apply the proceeds of the same to the principal balance and/or accrued interest owed on the Acquisition Loan that is the subject of this Agreement, and if the Acquisition Loan is completely satisfied and additional proceeds remain, KEDB will use such proceeds to repay the City and County for any amount each paid pursuant to this Agreement, the proceeds to be divided between the City and County based on the amount each paid.

8. **No Personal Liability.** No member, director, officer, commissioner, elected representative, or employee, past, present or future, of the City, the County, or KEDB, or any successor body, shall have any personal liability for the performance of any obligations of the City, the County, or KEDB, respectively under this Agreement.

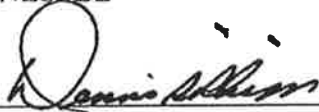
9. **Applicable Law.** This Agreement is made as a Tennessee contract and shall be construed and applied according to the laws of the State of Tennessee.

IN WITNESS WHEREOF, the parties have caused this instrument to be executed by their respective duly authorized representatives as of the date first written hereinabove.

[Signatures on Following Pages]

[Signature Page to Funding Agreement]

THE CITY OF KINGSPORT,
TENNESSEE

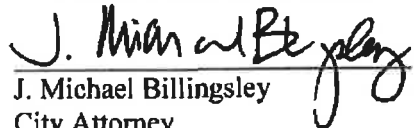
By: 
Dennis R. Phillips
Mayor

ATTEST:


City Recorder




APPROVED AS TO FORM:


J. Michael Billingsley
City Attorney

[Signature Page to Funding Agreement]

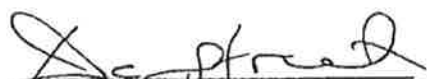
SULLIVAN COUNTY, TENNESSEE

By: 
Steve M. Godsey
Mayor

ATTEST:



County Clerk

APPROVED AS TO FORM:



Daniel P. Street
County Attorney

[Signature Page to Funding Agreement]

**THE INDUSTRIAL DEVELOPMENT
BOARD OF THE CITY OF
KINGSPORT, TENNESSEE**

By: 
Robert L. Feathers
Chairman

ATTEST:


Lynn Johnson
Secretary-Treasurer