



AGENDA

BOARD OF MAYOR AND ALDERMEN WORK SESSION

**Monday, May 18, 2015
Council Room, 2nd Floor, City Hall, 4:30 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. Work Session Tickler
4. Review of Items on May 19, 2015 Business Meeting Agenda
5. 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
May 18, 2015

Special Projects

Brickyard Park Ball Fields

David Mason

The final load of sod was installed on Field 1 on Saturday, May 9th. All four fields now have sod installed. Landscaping has now shifted focus to the areas outside of the fields.

The parking lot concrete curbs have been installed. Stone and asphalt paving of the entrance road was partially completed when the sod deliveries to the back two fields was complete. The paving is now proceeding for the remaining portion of the entrance road.

Work has continued on the floor finishes, concession equipment and owner provided data wiring in the concession stand. The tentative schedule is to achieve substantial completion and a certificate of occupancy for the facilities by the end of May. Note that the fields will not yet be playable at that time until the sod has been properly established.

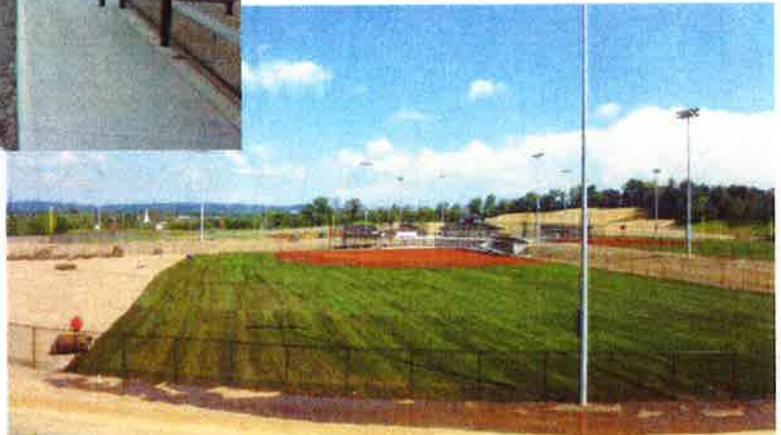
Staff will be proposing a change order utilizing remaining project funds to proceed with the master planned parking lot expansion at this time.

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 Sod Nearly Complete. 5/8/15.



Preparing to topsoil between
Fields 1 & 2. 5/12/15.



Brickyard Park Ball Fields continued

Spectator Seating for Field 1. 5/12/15.



Preparing to pave service driveways to Fields 1 & 2. 5/12/15



Fire Training Ground

The Training Tower colors and design have been picked and Armstrong Construction will order the building materials. Armstrong is doing core samples on site and is ready to begin the foundation. The Fire Department plans are to add storage facilities, a classroom, several fire and rescue props, etc. These will be for vehicle extrication, special rescue, etc.



Chief Dye

WTP Raw Water Transmission and Intake Replacement Design

Niki Ensor

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

Construction Schedule:
March 2015 – January 2017

Project Update:
Six bids were received and opened on May 7, 2015. Bids are being evaluated and must receive funding agency approval before award.



Carousel

Morris Baker



(No updates.) 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. Engage Kingsport volunteers are working to assemble to Carousel Frame inside the Roundhouse.

All gears and bearing needing to be replaced on the Carousel Frame has been ordered.

Project coordinators are working with the City's IT and HR for security/connectivity as well as personnel. In addition, GRC is in the process of finalizing the site work with the addition of a fence around the perimeter of the carousel and green space area. A sidewalk along Clinchfield Street will also be completed with the current curb cut being removed and sidewalk being poured. City funds are being used completing the sidewalk and fence along with internet and security.



Engage Kingsport's timeline for opening of the Carousel:

- 5/15- Floor install- take 2 days
- 5/20-5/27--Carlin Flooring sand & finish & cure- twice - 1 week
- 5/27- install Platform animals. Mount Sweep animals in rafters. - 1 week
- 6/2 is the targets for safety inspections and state inspections
- Soft openings during the time from 6/2 through 7/25
- 7/25 Official Grand Opening



Legal

Sourmash Property

Joe May

A public notice has been filed for sale of property to pay City of Kingsport taxes. Auction will be held at City Hall, main lobby, May 26, 2015, 10:00 a.m. (Public Notice attached.)

Worker's Compensation

Terri Evans

We had two recordable workers' compensation injuries in April, 2015, both resulting in restricted duty only.

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 May 9, 2015, is 102.5%, and of those, 28.5% were government active, 25% were school active, 4.3% were government retirees, 2.8% were school retirees, 17.1% were government dependents, 16.6% were school dependents, .4% were extended patient visits, .1% were workers' compensation visits and 5.2% were no-shows. We believe the no-show number is due in to the weather related increase and smoothing has not occurred as yet. The no show rate for May is 3%. 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.

Budget Office

Judy Smith

Financial Comments

Local Option Sales Tax revenue for the month of March was \$1,424,090 which was \$60,144 above budget and \$31,331 above last year's actual. The Year to Date Total is \$287,317 over budget and \$685,728 over last year which is a 5.73% increase over last year's actual.



AGENDA

BOARD OF MAYOR AND ALDERMEN

BUSINESS MEETING

Tuesday, May 19, 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 – Led by New Vision Youth

II.B. INVOCATION – Jonathan Hermes, Minister, St. Timothy's Episcopal Church

III.A. ROLL CALL

IV. RECOGNITIONS & PRESENTATIONS

1. Keep Kingsport Beautiful Award Recognition – Robin Cleary

V. APPROVAL OF MINUTES

1. Work Session – May 4, 2015
2. Business Meeting – May 5, 2015
3. Called Work Session – May 12, 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 FY 2015 General Purpose School Fund Budget (AF: 115-2015)
(David Frye)
 - Ordinance – First Reading
2. Amend the FY 2015 School Nutrition Services Fund Budget (AF: 116-2015)
(David Frye)
 - Ordinance – First Reading
3. Amend the FY 2015 Schools Federal Projects Fund Budget (AF: 117-2015)
(David Frye)
 - Ordinance – First Reading
4. Amend the FY 2015 School Special Projects Fund Budget (AF: 118-2015)
(David Frye)
 - Ordinance – First Reading
5. Amend the Sewer Project Fund Budgets by Reallocating from Other Sewer
Projects (AF: 113-2015) (Ryan McReynolds)
 - Ordinance – First Reading
6. Budget Ordinance to Appropriate Additional Funds to GP0608 for Greenbelt
Section 3 (AF: 119-2015) (Ryan McReynolds)
 - Ordinance – First Reading

C. BUSINESS MATTERS REQUIRING FINAL ADOPTION

1. Budget Ordinance Establishing and Funding MPO15D for Wilcox Sidewalk
Phase 5 (AF: 101-2015) (Ryan McReynolds)
 - Ordinance – **Second Reading and Final Adoption**

D. OTHER BUSINESS

1. ProPay Merchant Services Application for the Kingsport Public Library (AF: 61-2015) (Morris Baker)
 - Resolution
2. Apply for and Receive a Law Enforcement Agency Traffic Services Safety Grant from the Tennessee Department of Transportation, Governors Highway Safety Office (AF: 106-2015) (David Quillin)
 - Resolution
3. Agreement with Charter Communications to Provide Internet Services to the City of Kingsport (AF: 107-2015) (Terry Wexler / Chris McCartt)
 - Resolution
4. Contract between the City of Kingsport and the Tennessee Department of Transportation for Maintenance Activities Performed on Designated State Highways and for Mowing and Litter on J.B. Dennis (AF: 109-2015) (Ryan McReynolds)
 - Resolution
5. Reject Bid for the Floor Finish Alterations and Asbestos Abatement for Ross N. Robinson Middle School (AF: 110-2015) (Bill Shedden)
 - Resolution
6. Applications with Elavon, Inc. for Processing Services Relating to the City's Acceptance of Credit and Debit Cards for the Payment of Various City Services (AF: 112-2015) (Sid Cox)
 - Resolution
7. Ratifying a Private Act from the Tennessee General Assembly Amending Various Sections of the City Charter (AF: 111-2015) (Mike Billingsley)
 - Resolution
8. Change Order to the Contract with Denark Construction, Inc. for the Brickyard Park Ball Fields (AF: 120-2015) (Chris McCartt)
 - Resolution

E. APPOINTMENTS

1. Amendment to Historic Zoning Commission Members' Term of Office and Appointment (AF: 114-2015) (Mayor Phillips)
 - Amend Terms/Appointments

VII. CONSENT AGENDA

1. Issue Certificate of Compliance for Allandale Package Store to Sell Retail Alcoholic Beverages (AF: 108-2015) (Jim Demming)
 - Issue Certificate

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
Monday, May 4, 2015, 4:30 PM
Council Room – City Hall

PRESENT: Board of Mayor and Aldermen

Mayor Dennis Phillips

Vice-Mayor Mike McIntire

Alderman John Clark

Alderman Colette George

Alderman Tom C. Parham

Alderman Tom Segelhorst

City Administration

Jeff Fleming, City Manager

J. Michael Billingsley, City Attorney

James H. Demming, City Recorder

1. **CALL TO ORDER:** 4:30 p.m. by Mayor Phillips.
2. **ROLL CALL:** By Deputy City Recorder Marshall. Absent: Alderman Andy Hall.
3. **WORK SESSION TICKLER.** Police Chief David Quillin gave details on Officer Jamal Phelps who recently suffered a stroke. City Manager Fleming commented on the fundraising efforts being made by fellow officers, pointing out six thousand dollars had been raised in eleven days, with a goal of \$10,000. Assistant City Manager Ryan McReynolds gave an update on the Sullivan Street paving project, stating it is set to begin on June 1st and he would appreciate everyone's patience until it's over. Assistant City Manager Chris McCartt gave an update on the ball fields, noting games should begin there in June.
4. **REVIEW OF AGENDA ITEMS ON THE MAY 5, 2015 REGULAR BUSINESS MEETING AGENDA.** City Manager Fleming, members of staff and community members gave a summary or presentation for each item on the proposed agenda. Those items the Board discussed at greater length or which received specific questions or concerns included:
 - VI.A.1 **Public Hearing for the 2015 Annual Action Plan for Community Development and Resolution to Apply for and Receive Fiscal Year 2015/2016 Community Development Block Grant (CDBG) Funds** (AF: 102-2015). Development Services Director Lynn Tully stated these figures were based on the latest updates on money that will be received from the federal government. Some discussion followed.
 - VI.B.1 **Budget Ordinance Establishing and Funding MPO15D for Wilcox Sidewalk Phase 5** (AF: 101-2015). Mayor Phillips stated City Manager Fleming gave details on this item, noting although costly, this project is being funded by state and federal dollars and requires certain specifications.
 - VI.D.1 **Apply for and Receive a Department of Justice, Office of Justice Programs/Bureau of Justice Assistance – Bulletproof Vest Partnership Reimbursement Grant** (AF: 97-2015). Chief Quillin stated this grant provides for 50% of the cost of the vests.

Minutes of the Regular Work Session of the Board of Mayor and Aldermen of Kingsport, Tennessee, Monday, May 4, 2015

VI.D.2 Resolution to Enter into an Agreement with the 2nd Judicial District Drug Task Force (AF: 100-2015). Chief Quillin commented Kingsport has participated in the task force for 25 years and this agreement does not change the operational aspect. He noted historically there has been a Memorandum of Understanding in place, however, an actual agreement was recently mandated.

VI.D.5 Adopt the Sullivan County, Tennessee Multi-Hazard Mitigation Plan (AF: 98-2015). Development Services Director Lynn Tully presented this item, stating this has been in place since 1966. She stated a planning process has occurred during the last two years. This plan must be in place in order to receive funds from FEMA in case of a disaster.

BOARD COMMENT. None.

PUBLIC COMMENT. None.

8. ADJOURN. Seeing no other matters presented for discussion at this work session, Mayor Phillips adjourned the meeting at 5:10 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, May 5, 2015, 7:00 PM
Large Court Room – City Hall

PRESENT: Board of Mayor and Aldermen
Mayor Dennis R. Phillips, Presiding
Alderman John Clark
Alderman Colette George

Vice-Mayor Mike McIntire
Alderman Tom C. Parham
Alderman Tom Segelhorst

City Administration
Jeff Fleming, City Manager
J. Michael Billingsley, City Attorney
James Demming, City Recorder/Chief Financial Officer

- I. **CALL TO ORDER:** 7:00 p.m., by Mayor Dennis R. Phillips.
- II.A. **PLEDGE OF ALLEGIANCE TO THE FLAG:** David Quillin, Police Chief. Before the pledge, Chief Quillin gave an update on the status of Officer Jamal Phelps.
- II.B. **INVOCATION:** Jack Edwards, United Methodist Church.
- III. **ROLL CALL:** By City Recorder Demming. Absent: Alderman Andy Hall.
- IV. **RECOGNITIONS AND PRESENTATIONS.** None.
- V. **APPROVAL OF MINUTES.**

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

- A. April 20, 2015 Regular Work Session
- B. April 21, 2015 Regular Business Meeting

Approved: All present voting "aye."

VI. COMMUNITY INTEREST ITEMS.

A. PUBLIC HEARINGS.

1. **Public Hearing for the 2015 Annual Action Plan for Community Development and Resolution to Apply for and Receive Fiscal Year 2015/2016 Community Development Block Grant (CDBG) Funds (AF: 102-2015) (Lynn Tully).**

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

Motion/Second: George/Segelhorst, to pass:

Resolution No. 2015-169, A RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE ALL DOCUMENTS NECESSARY AND PROPER TO RECEIVE COMMUNITY DEVELOPMENT BLOCK GRANT FUNDING, FOR FISCAL YEAR 2016,

**Minutes of the Regular Business Meeting of the Board of Mayor and Aldermen
of the City of Kingsport, Tennessee, Tuesday, May 5, 2015**

FROM THE UNITED STATES OF DEPARTMENT OF HOUSING AND URBAN
DEVELOPMENT

Passed: All present voting "aye" except McIntire "abstaining"

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

B. BUSINESS MATTERS REQUIRING FIRST READING.

**1. Budget Ordinance Establishing and Funding MPO15D for
Wilcox Sidewalk Phase 5 (AF: 101-2015) (Ryan McReynolds).**

Motion/Second: McIntire/Clark, to pass:

AN ORDINANCE TO AMEND THE MPO FUND BUDGET BY APPROPRIATING
GRANT FUNDS RECEIVED FOR THE WILCOX SIDEWALK PHASE 5 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. Ordinance to Appropriate Funding from the Criminal Forfeiture
Fund to Purchase Technology for the Police Department (AF: 94-2015)
(Chief Quillin).**

Motion/Second: Segelhorst/Parham, to pass:

ORDINANCE NO. 6477, AN ORDINANCE TO AMEND THE CRIMINAL FORFEITURE
FUND BUDGET 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, McIntire, Parham,
Segelhorst and Phillips voting "aye."

**2. Ordinance to Amend the FY15 Operating Budgets and Various
Projects (AF: 92-2015) (Jeff Fleming).**

Motion/Second: McIntire/Segelhorst, to pass:

ORDINANCE NO. 6478, AN ORDINANCE TO AMEND THE GENERAL PROJECT,
GENERAL PROJECT SPECIAL REVENUE, MEADOWVIEW CONVENTION CENTER
AND STORM WATER FUND BUDGETS BY TRANSFERRING FUNDS TO VARIOUS
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, McIntire, Parham,
Segelhorst and Phillips voting "aye" with George voting "nay."

**Minutes of the Regular Business Meeting of the Board of Mayor and Aldermen
of the City of Kingsport, Tennessee, Tuesday, May 5, 2015**

D. OTHER BUSINESS.

1. Apply for and Receive a Department of Justice, Office of Justice Programs/Bureau of Justice Assistance – Bulletproof Vest Partnership Reimbursement Grant (AF: 97-2015) (Chief Quillin).

Motion/Second: Parham/Segelhorst, to pass:

Resolution No. 2015-170, A RESOLUTION APPROVING AN APPLICATION FOR AND RECEIPT OF A UNITED STATES DEPARTMENT OF JUSTICE BUREAU OF JUSTICE ASSISTANCE BULLET PROOF VEST (BPV) REIMBURSEMENT GRANT AND AUTHORIZING THE MAYOR TO EXECUTE ALL DOCUMENTS NECESSARY AND PROPER FOR SUCH APPLICATION AND RECEIPT OF GRANT FUNDS

Passed: All present voting “aye.”

2. Resolution to Enter into an Agreement with the 2nd Judicial District Drug Task Force (AF: 100-2015) (Chief Quillin)

Motion/Second: Clark/George, to pass:

Resolution No. 2015-171, A RESOLUTION APPROVING AN INTERLOCAL COOPERATION AGREEMENT WITH THE 2ND JUDICIAL DISTRICT DRUG TASK FORCE, AND AUTHORIZING THE MAYOR AND THE CHIEF OF POLICE TO EXECUTE THE AGREEMENT AND ALL OTHER DOCUMENTS NECESSARY AND PROPER TO EFFECTUATE THE PURPOSE OF THE AGREEMENT

Passed: All present voting “aye.”

3. Enter into an Agreement with Coca-Cola Bottling Company for Pouring Rights at Brickyard Park, Domtar Park and Eastman Park at Horse Creek (AF: 60-2015) (Morris Baker).

Motion/Second: Segelhorst/George, to pass:

Resolution No. 2015-172, A RESOLUTION ACCEPTING A PROPOSAL FROM CCBCC, LLC (COCA-COLA BOTTLING COMPANY); APPROVING AN AGREEMENT FOR POURING RIGHTS AT BRICKYARD PARK, DOMTAR PARK AND EASTMAN PARK AT HORSE CREEK; 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.”

4. Execute the Annual Renewal of the Public Library Service Agreement with the Tennessee State Library and Archives via Holston River Regional Library (AF: 99-2015) (Morris Baker).

Motion/Second: McIntire/Segelhorst, to pass:

Resolution No. 2015-173, A RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE THE ANNUAL RENEWAL OF THE PUBLIC LIBRARY SERVICE

**Minutes of the Regular Business Meeting of the Board of Mayor and Aldermen
of the City of Kingsport, Tennessee, Tuesday, May 5, 2015**

AGREEMENT WITH THE TENNESSEE STATE LIBRARY AND ARCHIVES TO RECEIVE FUNDING FOR BOOKS AND TRAINING AND FOR SERVICES THROUGH THE HOLSTON RIVER REGIONAL LIBRARY SYSTEM FOR FISCAL YEAR 2015/2016

Passed: All present voting "aye."

5. Adopt the Sullivan County, Tennessee Multi-Hazard Mitigation Plan (AF: 98-2015) (Lynn Tully).

Motion/Second: Segelhorst/McIntire, to pass:

Resolution No. 2015-174, A RESOLUTION ADOPTING THE SULLIVAN COUNTY MULTI-HAZARD MITIGATION PLAN FOR KINGSPORT IN SULLIVAN COUNTY, TENNESSEE AND ALL OTHER DOCUMENTS NECESSARY AND PROPER TO ADOPT THE PLAN

Passed: All present voting "aye."

E. APPOINTMENTS/REAPPOINTMENTS.

Appointments/Reappointments are considered under one motion.

Motion/Second: McIntire/Parham, to approve:

1. Reappointment to the Regional Planning Commission (AF: 103-2015) (Mayor Phillips).

Approve:

REAPPOINTMENT OF MR. DAVID STAUFFER TO SERVE A FOUR-YEAR TERM ON THE **REGIONAL PLANNING COMISSION** EFFECTIVE IMMEDIATELY AND EXPIRING ON MAY 31, 2019.

Passed: All present voting "aye."

2. Appointment to the Regional Planning Commission (AF: 104-2015) (Mayor Phillips).

Approve:

APPOINTMENT OF MR. PHIL RICKMAN TO SERVE A FOUR-YEAR TERM ON THE **REGIONAL PLANNING COMISSION** EFFECTIVE IMMEDIATELY AND EXPIRING MAY 30, 2019.

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, May 5, 2015

VII. CONSENT AGENDA.

1. Approval of Offers for Additional Easements and Right-of-Ways for Colonial Heights Springs Sanitary Sewer Extension Project – Phase I (AF: 105-2015) (Ryan McReynolds).

Motion/Second: George/Segelhorst, to adopt:

ADDITIONAL EASEMENTS AND RIGHT-OF-WAYS FOR COLONIAL HEIGHTS SPRINGS SANITARY SEWER EXTENSION PROJECT – PHASE I

Passed in a roll call vote: Clark, George, McIntire, Parham, Segelhorst and Phillips voting “aye.”

VIII. COMMUNICATIONS.

A. CITY MANAGER. Mr. Fleming thanked Liza Harmon and the Little House Garden Club for reaching out and helping with the plant material for the flower bed in front of City Hall.

B. MAYOR AND BOARD MEMBERS. Alderman George wanted everyone to be aware of the Mayor’s Prayer Breakfast on Thursday. She also encouraged everyone watching to call at least ten other people and ask them to vote in the upcoming election. Alderman Segelhorst stated the Dobyns Bennett spring concert was going on at this time and they would be receiving the prestigious Sudler Shield award after previous receiving the Sudler Flag, noting there are only a few other schools that have done so across the country. They will also receive a trophy from Western Carolina for winning the Tournament of Champions. Mr, Segelhorst stated Officer Phelps was in their thoughts and prayers. Alderman Clark wished Officer Phelps a speedy recovery. He also commented on the Lynn Garden ball field’s season opening and vibrant community involvement there, noting he threw the first pitch over the weekend. Alderman Parham commented on attending the black history celebration last week. He also pointed out the Governor’s presence this week and his talk on education initiatives and his compliments to Kingsport’s programs. Mr. Parham also commended those who volunteered a day of service to clean up a local park over the weekend. Vice-Mayor McIntire also commented on the amazing volunteer program at Lynn View Community. Mr. McIntire encourage everyone to keep Officer Phelps in their prayers as he has a long road ahead of him. Mayor thanked the students in attendance and wished a happy birthday to Crystal Phillips.

C. VISITORS. None.

**Minutes of the Regular Business Meeting of the Board of Mayor and Aldermen
of the City of Kingsport, Tennessee, Tuesday, May 5, 2015**

IX. ADJOURN. Seeing no other business for consideration at this meeting, Mayor Phillips adjourned the meeting at 7:30 p.m.

ANGELA MARSHALL
Deputy City Recorder

DENNIS R. PHILLIPS
Mayor

Minutes of the Special Called Work Session of the
Board of Mayor and Aldermen, City of Kingsport, Tennessee
Tuesday, May 12, 2015, 2:00 PM
Council Room – City Hall

PRESENT: Board of Mayor and Aldermen

Mayor Dennis Phillips

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 H. Demming, City Recorder

1. **CALL TO ORDER:** 2:00 p.m. by Mayor Phillips.
2. **ROLL CALL:** By City Recorder Demming.
3. **BUDGET OVERVIEW.**
 - A. General Fund Overview & CIP. City Manager Fleming discussed the budget process and gave further details on this item. Some discussion ensued followed by a fifteen minute break from 3:00-3:15 p.m.
 - B. Schools. School Superintendent Dr. Lyle Ailshie and School Finance Director David Frye presented their budget and answered questions from the board. There was some discussion followed by a five minute break from 3:45-3:50 p.m.
 - C. Utilities. Assistant City Manager for Operation Ryan McReynolds gave a presentation on the water and sewer budget. There was some discussion.
4. **ADJOURN.** Seeing no other matters presented for discussion at this work session, Mayor Phillips adjourned the meeting at 4:40 p.m.

ANGELA MARSHALL
Deputy City Recorder

DENNIS R. PHILLIPS
Mayor



AGENDA ACTION FORM

Amend the FY 2015 General Purpose School Fund Budget

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

Action Form No.: AF-115-2015
 Work Session: May 18, 2015
 First Reading: May 19, 2015

Final Adoption: June 2, 2015
 Staff Work By: David Frye
 Presentation By: David Frye

Recommendation:

Approve the Ordinance.

Executive Summary:

The Board of Education approved fiscal year 2015 budget amendment number five at their meeting on May 7, 2015. This amendment decreases estimated revenues and appropriations within the General Purpose School Fund budget by \$150,000. This decrease is associated with the debt service expenditures being less than budgeted for our outstanding term bonds. There are also transfers that need approval for Dobyns-Bennett and Robinson.

Attachments:

1. Ordinance
2. BOE Budget Amendment Number Five

Funding source appropriate and funds are available: *JF*

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

PRE-FILED CITY RECORDER

ORDINANCE NO. ****

AN ORDINANCE TO AMEND THE FY 2014-15 GENERAL
PURPOSE SCHOOL FUND BUDGET; AND, TO FIX THE
EFFECTIVE DATE OF THIS ORDINANCE

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

SECTION I. That the General Purpose School Fund budget be amended to ratify the Kingsport Board of Education approval of Budget Amendment Number Five to decrease the estimated revenue for City Transfers for Debt Service by \$150,000. The expenditure budget will be changed by increasing the appropriation for Robinson Instructional Equipment by \$5,700; the appropriation for Dobyons-Bennett Non-Instructional Equipment by \$24,417 and to decrease the appropriation for Dobyons-Bennett Instructional Supplies by \$20,000; the appropriation Dobyons-Bennett Student Travel by \$4,000; the appropriation Dobyons-Bennett Principal Travel by \$417; the appropriation for Robinson Non-Instructional Equipment by \$2,200; the appropriation for Robinson Student Travel by \$500; the appropriation for Robinson Principal Travel by \$2,000; the appropriation for Robinson Staff Development by \$1,000; the appropriation for Debt Service-Principal by \$75,000; the appropriation for Debt Service-Interest by \$75,000.

<u>Account Number/Description:</u>	<u>Budget</u>	<u>Incr/<Decr></u>	<u>New Budget</u>
Fund 141: School Fund			
Revenues:	\$	\$	\$
141-0000-399-9811 City Transfers-Debt Service	3,516,700	(150,000)	3,366,700
Totals:	3,516,700	(150,000)	3,366,700

<u>Account Number/Description:</u>	<u>Budget</u>	<u>Incr/<Decr></u>	<u>New Budget</u>
Expenditures:	\$	\$	\$
141-7105-711-0722 Robinson Inst. Equipment	22,612	5,700	28,312
141-7600-871-0790 D-B Non-Inst. Equipment	37,309	24,417	61,726
141-7100-711-0429 D-B Inst. Supplies	143,853	(20,000)	123,853
141-7200-773-0599 D-B Student Travel	20,000	(4,000)	16,000
141-7200-801-0355 D-B Principal Travel	5,300	(417)	4,883
141-7205-773-0599 Robinson Student Travel	2,000	(500)	1,500
141-7205-781-0457 Robinson Staff Development	5,945	(1,000)	4,945
141-7205-801-0355 Robinson Principal Travel	2,000	(2,000)	0
141-7605-871-0790 Robinson Non-Inst. Equip.	32,612	(2,200)	30,412
141-7750-891-0601 Debt Service – Principal	2,854,600	(75,000)	2,779,600
141-7750-891-0602 Debt Service - Interest	1,101,900	(75,000)	1,026,900
Totals:	4,228,131	(150,000)	4,078,131

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 PHILLIPS, Mayor

ATTEST:

APPROVED AS TO FORM:

JAMES H. DEMMING, City Recorder

J. MICHAEL BILLINGSLEY, City Attorney

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

May 7, 2015

KINGSPORT CITY SCHOOLS
FISCAL YEAR 2014-2015
BUDGET AMENDMENT NUMBER FIVE

GENERAL PURPOSE SCHOOL FUND

ITEM ONE: DEBT SERVICE FUNDS

When the budget for debt service is established, the full amount of the scheduled debt service is budgeted. Some of the bonds actually have some interest earnings, which reduce the actual payments. In FY 2015 this savings totals approximately \$150,000. It is recommended that the estimated revenue General Fund Transfers for Debt Service be reduced by \$150,000. It is further recommended that the appropriations for Debt – Principal and Debt - Interest be reduced by \$75,000 each.

ITEM TWO: DOBYNS-BENNETT TRANSFER

Dobyns-Bennett has requested to transfer \$20,000 from their Instructional Supply account, \$4,000 from Student Travel, and \$417 from Principal Travel to their Non-Instructional Equipment account (total of \$24,417). These funds will be used to purchase acoustical panels for the small gym, converting the writing center into a regular classroom, and to replace student desks. It is recommended that the above transfers be approved.

ITEM THREE: ROBINSON TRANSFER

Robinson Middle School has requested to transfer \$2,200 from their Non-Instructional Equipment account, \$500 from Student Travel, \$2,000 from Principal Travel, and \$1,000 from Staff Development to their Instructional Equipment account (total of \$5,700). These funds will be used to purchase student and/or teacher computers. It is recommended that the above transfers be approved.

SCHOOL NUTRITION SERVICES FUND

ITEM ONE: FY 14-15 OPERATING REVENUES AND EXPENSES

Preparing the budget for School Nutrition Services for FY 14-15 presented many challenges with the new and ever changing federal regulations. The anticipation was that the new regulations would decrease our participation, especially our a la carte sales. But this was not the case. At his time I am projecting increases in the following revenue and expense accounts:

Estimated Revenues

Federal Reimbursement – Breakfast	\$ 30,000
Student Lunch Payments	15,000
A La Carte Lunch Sales	145,000
Other Local Revenue	20,000
Total Increases in Estimated Revenue	 \$ 210,000

Budgeted Expenditures

Retirement	\$ 5,000
Medical Insurance	30,000
Food Usage	100,000
Other Supplies and Materials	75,000
Total Increase in Budgeted Expenditures	\$ 210,000

It is recommended that the estimated revenues and appropriations for the accounts listed above be increased by \$210,000. This will increase the SNS budget from \$3,195,900 to \$3,405,900.

ITEM TWO: EQUIPMENT PURCHASES:

There are two equipment purchases that need to be made by School Nutrition Services. It is necessary to amend the FY 14-15 budget, in order to receive and install this equipment prior to the start of school. The two items are:

1. Computer and printer replacement – Most of the computers that are used by SNS are 5-6 years old and are in need of being replaced. There are 26 computers in the cafeterias, 11 manager/assistant manager computers, and 4 computers at the administrative support center. In addition there are 8 printers, 26 touch screen monitors, and 26 pin pads that need to be replaced. The total cost will be \$57,000.
2. Dobyns-Bennett 1 Hour Lunch – With the implementation of the 1 hour lunch period at Dobyns-Bennett it will be necessary to purchase various pieces of equipment to make this program successful. Examples of the equipment are; tables, vending machine, 3 kiosk, 2 warmer/cooler boxes, 3 milk boxes, 3 cashier stands, steamer, and ovens. It is estimated that his equipment will cost a total of \$100,000.

The current budget has an unexpended appropriation for equipment, in the amount of \$30,000. The two items listed above have a total cost of \$157,000. The unreserved fund balance for School nutrition Services at June 30, 2014, was \$2,145,815. It is recommended that the estimated revenue for Fund Balance Appropriations and the appropriation for Food Service Equipment be increased by \$127,000.

FEDERAL PROJECTS FUND

The estimated revenue and appropriations for the Federal Projects Fund are currently in the amount of \$3,827,459. This amount was based on estimates and information known at the time of initial approval and now needs to be adjusted to the actual amount of the grants. We have received the new Carl Perkins Incentive grant for \$2,500.

The details of the changes are shown on the enclosed Schedule of Federal Projects. It is recommended that the estimated revenues and appropriations for the Federal Projects Fund be increased by the net amount of \$26,852. This will make the revised estimated revenue and appropriation amounts \$3,854,311.

SCHOOL SPECIAL PROJECTS FUND

The estimated revenue and appropriations for active projects within the School Special Projects Fund are currently in the amount of \$1,240,008. The initial budgets for these grants were estimates based on previous year's information. There have been new grants received during the year that total \$35,000. There are increases in the Family Resource, Coordinated School Health and the Homeless programs of \$9,000 that are local donations and there are increases that total \$51,708 in the LEAPS, Homeless, and the Safe Schools grants. There was a decrease in the Lottery After-School grant of \$42,500. The 21st Century grant was a grant that was applied for, but not received.

The details of the changes are shown on the enclosed Schedule of School Special Projects. It is recommended that the estimated revenues and appropriations for the School Special Projects Fund be decreased by the net amount of \$49,792. This will make the revised estimated revenue and appropriation amounts \$1,190,216.



AGENDA ACTION FORM

Amend the FY 2015 School Nutrition Services Fund Budget

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

Action Form No.: AF-116-2015
 Work Session: May 18, 2015
 First Reading: May 19, 2015

Final Adoption: June 2, 2015
 Staff Work By: David Frye
 Presentation By: David Frye

Recommendation:

Approve the Ordinance.

Executive Summary:

The Board of Education approved fiscal year 2015 budget amendment number five at their meeting on May 7, 2015. This amendment increases estimated revenues and appropriations within the School Nutrition Services Fund budget by \$337,000. An increase of \$210,000 is necessary for the current year operating budgeted, due to higher than expected participation and sales. A second increase of \$127,000, from a Fund Balance appropriation, will fund equipment purchases that need to be in place at the start of next school year.

Attachments:

1. Ordinance
2. BOE Budget Amendment Number Five

Funding source appropriate and funds are available: *JF*

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

ORDINANCE NO. ****

AN ORDINANCE TO AMEND THE FY 2014-15 SCHOOL
NUTRITION SERVICES FUND BUDGET; AND, TO FIX
THE EFFECTIVE DATE OF THIS ORDINANCE

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

SECTION I. That the School Nutrition Services Fund budget be amended to ratify the Kingsport Board of Education approval of Budget Amendment Number Five to increase the estimated revenue for Federal Reimbursement-Breakfast by \$30,000; the estimated revenue for Student Lunch Payments by \$15,000; the estimated revenue for A La Carter Lunch Sales by \$145,000; the estimated revenue for Other Local Revenue by \$20,000 and the estimated revenue for Fund Balance Appropriations by \$127,000. The expenditure budget will be changed by increasing the appropriation for Retirement by \$5,000; the appropriation for Medical Insurance by \$30,000; the appropriation for Food Usage by \$100,000; the appropriation for Other Supplies and Materials by \$75,000 and the appropriation Food Service Equipment by \$127,000.

<u>Account Number/Description:</u>	<u>Budget</u>	<u>Incr/<Decr></u>	<u>New Budget</u>
Fund 147: School Nutrition Services Fund			
Revenues:	\$	\$	\$
147-0000-337-7113 USDA Reim. - Breakfast	453,500	30,000	483,500
147-0000-349-3521 Student Lunch Payments	370,700	15,000	385,700
147-0000-349-3525 A La Carte Lunch Sales	392,500	145,000	537,500
147-0000-369-4990 Other Local Revenue	0	20,000	20,000
147-0000-392-0100 Fund Balance Appropriations	35,300	127,000	162,300
Totals:	1,252,000	337,000	1,589,000

<u>Account Number/Description:</u>	<u>Budget</u>	<u>Incr/<Decr></u>	<u>New Budget</u>
Expenditures:	\$	\$	\$
147-7350-851-0204 State Retirement	83,400	5,000	88,400
141-7350-851-0207 Medical Insurance	141,900	30,000	171,900
141-7350-851-0424 Food Usage	1,481,800	100,000	1,581,800
141-7350-851-0499 Other Supplies and Materials	34,100	75,000	109,100
141-7350-851-0710 Food Service Equipment	65,000	127,000	192,000
Totals:	1,806,200	337,000	2,143,200

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 PHILLIPS, Mayor

ATTEST:

APPROVED AS TO FORM:

JAMES H. DEMMING, City Recorder

J. MICHAEL BILLINGSLEY, City Attorney

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

May 7, 2015

KINGSPORT CITY SCHOOLS
FISCAL YEAR 2014-2015
BUDGET AMENDMENT NUMBER FIVE

GENERAL PURPOSE SCHOOL FUND

ITEM ONE: DEBT SERVICE FUNDS

When the budget for debt service is established, the full amount of the scheduled debt service is budgeted. Some of the bonds actually have some interest earnings, which reduce the actual payments. In FY 2015 this savings totals approximately \$150,000. It is recommended that the estimated revenue General Fund Transfers for Debt Service be reduced by \$150,000. It is further recommended that the appropriations for Debt – Principal and Debt - Interest be reduced by \$75,000 each.

ITEM TWO: DOBYNS-BENNETT TRANSFER

Dobyns-Bennett has requested to transfer \$20,000 from their Instructional Supply account, \$4,000 from Student Travel, and \$417 from Principal Travel to their Non-Instructional Equipment account (total of \$24,417). These funds will be used to purchase acoustical panels for the small gym, converting the writing center into a regular classroom, and to replace student desks. It is recommended that the above transfers be approved.

ITEM THREE: ROBINSON TRANSFER

Robinson Middle School has requested to transfer \$2,200 from their Non-Instructional Equipment account, \$500 from Student Travel, \$2,000 from Principal Travel, and \$1,000 from Staff Development to their Instructional Equipment account (total of \$5,700). These funds will be used to purchase student and/or teacher computers. It is recommended that the above transfers be approved.

SCHOOL NUTRITION SERVICES FUND

ITEM ONE: FY 14-15 OPERATING REVENUES AND EXPENSES

Preparing the budget for School Nutrition Services for FY 14-15 presented many challenges with the new and ever changing federal regulations. The anticipation was that the new regulations would decrease our participation, especially our a la carte sales. But this was not the case. At this time I am projecting increases in the following revenue and expense accounts:

Estimated Revenues

Federal Reimbursement – Breakfast	\$ 30,000
Student Lunch Payments	15,000
A La Carte Lunch Sales	145,000
Other Local Revenue	20,000
Total Increases in Estimated Revenue	 \$ 210,000

Budgeted Expenditures

Retirement	\$ 5,000
Medical Insurance	30,000
Food Usage	100,000
Other Supplies and Materials	75,000
Total Increase in Budgeted Expenditures	\$ 210,000

It is recommended that the estimated revenues and appropriations for the accounts listed above be increased by \$210,000. This will increase the SNS budget from \$3,195,900 to \$3,405,900.

ITEM TWO: EQUIPMENT PURCHASES:

There are two equipment purchases that need to be made by School Nutrition Services. It is necessary to amend the FY 14-15 budget, in order to receive and install this equipment prior to the start of school. The two items are:

1. Computer and printer replacement – Most of the computers that are used by SNS are 5-6 years old and are in need of being replaced. There are 26 computers in the cafeterias, 11 manager/assistant manager computers, and 4 computers at the administrative support center. In addition there are 8 printers, 26 touch screen monitors, and 26 pin pads that need to be replaced. The total cost will be \$57,000.
2. Dobyns-Bennett 1 Hour Lunch – With the implementation of the 1 hour lunch period at Dobyns-Bennett it will be necessary to purchase various pieces of equipment to make this program successful. Examples of the equipment are; tables, vending machine, 3 kiosks, 2 warmer/cooler boxes, 3 milk boxes, 3 cashier stands, steamer, and ovens. It is estimated that this equipment will cost a total of \$100,000.

The current budget has an unexpended appropriation for equipment, in the amount of \$30,000. The two items listed above have a total cost of \$157,000. The unreserved fund balance for School Nutrition Services at June 30, 2014, was \$2,145,815. It is recommended that the estimated revenue for Fund Balance Appropriations and the appropriation for Food Service Equipment be increased by \$127,000.

FEDERAL PROJECTS FUND

The estimated revenue and appropriations for the Federal Projects Fund are currently in the amount of \$3,827,459. This amount was based on estimates and information known at the time of initial approval and now needs to be adjusted to the actual amount of the grants. We have received the new Carl Perkins Incentive grant for \$2,500.

The details of the changes are shown on the enclosed Schedule of Federal Projects. It is recommended that the estimated revenues and appropriations for the Federal Projects Fund be increased by the net amount of \$26,852. This will make the revised estimated revenue and appropriation amounts \$3,854,311.

SCHOOL SPECIAL PROJECTS FUND

The estimated revenue and appropriations for active projects within the School Special Projects Fund are currently in the amount of \$1,240,008. The initial budgets for these grants were estimates based on previous year's information. There have been new grants received during the year that total \$35,000. There are increases in the Family Resource, Coordinated School Health and the Homeless programs of \$9,000 that are local donations and there are increases that total \$51,708 in the LEAPS, Homeless, and the Safe Schools grants. There was a decrease in the Lottery After-School grant of \$42,500. The 21st Century grant was a grant that was applied for, but not received.

The details of the changes are shown on the enclosed Schedule of School Special Projects. It is recommended that the estimated revenues and appropriations for the School Special Projects Fund be decreased by the net amount of \$49,792. This will make the revised estimated revenue and appropriation amounts \$1,190,216.



AGENDA ACTION FORM

Amend the FY 2015 Schools Federal Projects Fund Budget

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

Action Form No.: AF-117-2015
 Work Session: May 18, 2015
 First Reading: May 19, 2015

Final Adoption: June 2, 2015
 Staff Work By: David Frye
 Presentation By: David Frye

Recommendation:

Approve the Ordinance.

Executive Summary:

On May 7, 2015, the Board of Education approved an amendment to the FY 2014-2015 Schools' Federal Project Fund budget. This fund accounts for entitlement grants received from the federal government. The current budget is \$3,827,459, based on estimated amounts. The estimates are being adjusted to actual amounts. There is a net increase for this budget of \$26,852. This makes the amended total \$3,854,311.

Attachments:

1. Ordinance
2. BOE Budget Amendment Number Five
3. Schedule

Funding source appropriate and funds are available:  _____

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

PRE-FILED CITY RECORDER

ORDINANCE NO. ****

AN ORDINANCE TO AMEND THE FY 2015 SCHOOL
FEDERAL GRANT PROJECTS FUND BUDGET; AND, TO
FIX THE EFFECTIVE DATE OF THIS ORDINANCE

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

SECTION I. That the FY 2015 School Federal Grant Projects Fund budget be amended by increasing/(decreasing) appropriations for Grant funds to the following Grant projects.

<u>Account Number/Description:</u>	<u>Budget</u>	<u>Incr/(Decr)</u>	<u>New Budget</u>
Revenues:	\$	\$	\$
ADMN15 Consolidated Administration	120,886	9,508	130,394
CPG015 Carl Perkins Grant	115,293	2,891	118,184
CPI015 Carl Perkins Incentive Grant	0	2,500	2,500
PS1501 IDEA Pre-School	37,795	8,852	46,647
T11501 Title I	1,804,243	2,958	1,807,201
T21501 Title II – A	314,806	21	314,827
T31501 Title III	9,354	122	9,476
T61501 IDEA Part-B	1,425,082	0	1,425,082
Totals:	3,827,459	26,852	3,854,311
Expenditures:	\$	\$	\$
Instruction	2,409,828	10,800	2,420,628
Support Services	1,265,891	6,728	1,272,619
Other Charges (Fund Transfers)	151,740	9,324	161,064
Totals:	3,827,459	26,852	3,854,311

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

DENNIS PHILLIPS, Mayor

ATTEST:

APPROVED AS TO FORM:

JAMES H. DEMMING, City Recorder

J. MICHAEL BILLINGSLEY, City Attorney

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

May 7, 2015

KINGSPORT CITY SCHOOLS
FISCAL YEAR 2014-2015
BUDGET AMENDMENT NUMBER FIVE

GENERAL PURPOSE SCHOOL FUND

ITEM ONE: DEBT SERVICE FUNDS

When the budget for debt service is established, the full amount of the scheduled debt service is budgeted. Some of the bonds actually have some interest earnings, which reduce the actual payments. In FY 2015 this savings totals approximately \$150,000. It is recommended that the estimated revenue General Fund Transfers for Debt Service be reduced by \$150,000. It is further recommended that the appropriations for Debt – Principal and Debt - Interest be reduced by \$75,000 each.

ITEM TWO: DOBYNS-BENNETT TRANSFER

Dobyns-Bennett has requested to transfer \$20,000 from their Instructional Supply account, \$4,000 from Student Travel, and \$417 from Principal Travel to their Non-Instructional Equipment account (total of \$24,417). These funds will be used to purchase acoustical panels for the small gym, converting the writing center into a regular classroom, and to replace student desks. It is recommended that the above transfers be approved.

ITEM THREE: ROBINSON TRANSFER

Robinson Middle School has requested to transfer \$2,200 from their Non-Instructional Equipment account, \$500 from Student Travel, \$2,000 from Principal Travel, and \$1,000 from Staff Development to their Instructional Equipment account (total of \$5,700). These funds will be used to purchase student and/or teacher computers. It is recommended that the above transfers be approved.

SCHOOL NUTRITION SERVICES FUND

ITEM ONE: FY 14-15 OPERATING REVENUES AND EXPENSES

Preparing the budget for School Nutrition Services for FY 14-15 presented many challenges with the new and ever changing federal regulations. The anticipation was that the new regulations would decrease our participation, especially our a la carte sales. But this was not the case. At his time I am projecting increases in the following revenue and expense accounts:

Estimated Revenues

Federal Reimbursement – Breakfast	\$ 30,000
Student Lunch Payments	15,000
A La Carte Lunch Sales	145,000
Other Local Revenue	20,000
Total Increases in Estimated Revenue	\$ 210,000

Budgeted Expenditures

Retirement	\$ 5,000
Medical Insurance	30,000
Food Usage	100,000
Other Supplies and Materials	75,000
Total Increase in Budgeted Expenditures	\$ 210,000

It is recommended that the estimated revenues and appropriations for the accounts listed above be increased by \$210,000. This will increase the SNS budget from \$3,195,900 to \$3,405,900.

ITEM TWO: EQUIPMENT PURCHASES:

There are two equipment purchases that need to be made by School Nutrition Services. It is necessary to amend the FY 14-15 budget, in order to receive and install this equipment prior to the start of school. The two items are:

1. Computer and printer replacement – Most of the computers that are used by SNS are 5-6 years old and are in need of being replaced. There are 26 computers in the cafeterias, 11 manager/assistant manager computers, and 4 computers at the administrative support center. In addition there are 8 printers, 26 touch screen monitors, and 26 pin pads that need to be replaced. The total cost will be \$57,000.
2. Dobyns-Bennett 1 Hour Lunch – With the implementation of the 1 hour lunch period at Dobyns-Bennett it will be necessary to purchase various pieces of equipment to make this program successful. Examples of the equipment are; tables, vending machine, 3 kiosk, 2 warmer/cooler boxes, 3 milk boxes, 3 cashier stands, steamer, and ovens. It is estimated that his equipment will cost a total of \$100,000.

The current budget has an unexpended appropriation for equipment, in the amount of \$30,000. The two items listed above have a total cost of \$157,000. The unreserved fund balance for School nutrition Services at June 30, 2014, was \$2,145,815. It is recommended that the estimated revenue for Fund Balance Appropriations and the appropriation for Food Service Equipment be increased by \$127,000.

FEDERAL PROJECTS FUND

The estimated revenue and appropriations for the Federal Projects Fund are currently in the amount of \$3,827,459. This amount was based on estimates and information known at the time of initial approval and now needs to be adjusted to the actual amount of the grants. We have received the new Carl Perkins Incentive grant for \$2,500.

The details of the changes are shown on the enclosed Schedule of Federal Projects. It is recommended that the estimated revenues and appropriations for the Federal Projects Fund be increased by the net amount of \$26,852. This will make the revised estimated revenue and appropriation amounts \$3,854,311.

SCHOOL SPECIAL PROJECTS FUND

The estimated revenue and appropriations for active projects within the School Special Projects Fund are currently in the amount of \$1,240,008. The initial budgets for these grants were estimates based on previous year's information. There have been new grants received during the year that total \$35,000. There are increases in the Family Resource, Coordinated School Health and the Homeless programs of \$9,000 that are local donations and there are increases that total \$51,708 in the LEAPS, Homeless, and the Safe Schools grants. There was a decrease in the Lottery After-School grant of \$42,500. The 21st Century grant was a grant that was applied for, but not received.

The details of the changes are shown on the enclosed Schedule of School Special Projects. It is recommended that the estimated revenues and appropriations for the School Special Projects Fund be decreased by the net amount of \$49,792. This will make the revised estimated revenue and appropriation amounts \$1,190,216.

KINGSPORT CITY SCHOOLS
 SCHEDULE OF FEDERAL PROJECTS
 FISCAL YEAR 2014-2015

PROGRAM	AMOUNT
Title I, Part A: Improving Academic Achievement/Disadvantaged	\$ 1,804,243
Consolidated Administration	\$ 120,886
Title II, Part A: Teacher and Principal Training and Recruiting	314,806
Title III, Part A: English Language Acquisition	9,354
IDEA, Part-B: Special Education	1,425,082
IDEA, Pre-School: Special Education	37,795
Carl Perkins: Vocational	<u>115,293</u>
Total Federal Projects	<u><u>\$ 3,827,459</u></u>

KINGSPORT CITY SCHOOLS
 SCHEDULE OF FEDERAL PROJECTS
 FISCAL YEAR 2014-2015

PROGRAM	ORIGINAL BUDGET	INCREASE	DECREASE	AMENDED BUDGET
Title I, Part A: Improving Academic Achievement/Disadvantaged	\$ 1,804,243	\$ 2,958		\$ 1,807,201
Title II, Part A: Teacher and Principal Training and Recruiting	314,806	21		314,827
Title III, Part A: English Language Acquisition	9,354	122		9,476
Consolidated Administration	120,886	9,508		130,394
IDEA, Part-B: Special Education	1,425,082			1,425,082
IDEA, Pre-School: Special Education	37,795	8,852		46,647
Carl Perkins: Vocational	115,293	2,891		118,184
Carl Perkins Incentive Grant: Vocational	0	2,500		2,500
Total Federal Projects	<u>\$ 3,827,459</u>	<u>\$ 26,852</u>	<u>\$ -</u>	<u>\$ 3,854,311</u>



AGENDA ACTION FORM

Amend the FY 2015 School Special Projects Fund Budget

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

Action Form No.: AF-118-2015
 Work Session: May 18, 2015
 First Reading: May 19, 2015

Final Adoption: June 2, 2015
 Staff Work By: David Frye
 Presentation By: David Frye

Recommendation:

Approve the Ordinance.

Executive Summary:

On May 7, 2015, the Board of Education approved an amendment to the FY 2014-2015 Schools' Special Project Fund budget. This fund accounts for State of Tennessee grants, competitive grants, and any other grants that may be received. The current budget for active projects is \$1,240,008 based on estimated amounts. There have been one new project added, one grant deleted, and the estimates are being adjusted to actual amounts. There is a net decrease for this budget of \$49,792. This makes the amended total \$1,190,216.

Attachments:

1. Ordinance
2. BOE Budget Amendment Number Five
3. Schedule

Funding source appropriate and funds are available: *JF*

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

ORDINANCE NO. ****

PRE-FILED
CITY RECORDER

AN ORDINANCE TO AMEND THE FY 2015 SCHOOL SPECIAL PROJECTS FUND BUDGET; AND, TO FIX THE EFFECTIVE DATE OF THIS ORDINANCE

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

SECTION I. That the FY 2015 School Special Projects Fund budget be amended by increasing/(decreasing) appropriations for Grant funds to the following Grant projects.

<u>Account Number/Description:</u>	<u>Budget</u>	<u>Incr/(Decr)</u>	<u>New Budget</u>
<u>Revenues:</u>	\$	\$	\$
CSH015 Coordinated School Health	100,000	4,000	104,000
FRC015 Family Resource Center	29,612	2,500	32,112
HAG015 Homeless Assistance	37,000	16,500	53,500
KTIP15 Kingsport Truancy Intervention	53,720	0	53,720
LP5015 LEAPS After-School Program S-W	292,500	(42,500)	250,000
21 st Century Grant	110,000	(110,000)	0
PK5115 Pre-K Expansion Grant System-Wide	491,322	0	491,322
SSA015 Safe Schools Act	26,400	3,290	29,690
S31501 Safe & Supportive Schools	36,016	41,418	77,434
STEM15 Summer STEM Camp	0	35,000	35,000
Transfer from General School Fund	63,438	0	63,438
Totals:	1,240,008	(49,792)	1,190,216
<u>Expenditures:</u>	\$	\$	\$
Instruction	0		0
Support Services	299,786	149,108	448,894
Non-Instructional Services	893,822	(152,500)	741,322
Capital Outlay	46,400	(46,400)	0
Other	0		0
Totals:	1,240,008	(49,792)	1,190,216

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 PHILLIPS, Mayor

ATTEST:

APPROVED AS TO FORM:

JAMES H. DEMMING, City Recorder

J. MICHAEL BILLINGSLEY, City Attorney

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

May 7, 2015

KINGSPORT CITY SCHOOLS
FISCAL YEAR 2014-2015
BUDGET AMENDMENT NUMBER FIVE

GENERAL PURPOSE SCHOOL FUND

ITEM ONE: DEBT SERVICE FUNDS

When the budget for debt service is established, the full amount of the scheduled debt service is budgeted. Some of the bonds actually have some interest earnings, which reduce the actual payments. In FY 2015 this savings totals approximately \$150,000. It is recommended that the estimated revenue General Fund Transfers for Debt Service be reduced by \$150,000. It is further recommended that the appropriations for Debt – Principal and Debt - Interest be reduced by \$75,000 each.

ITEM TWO: DOBYNS-BENNETT TRANSFER

Dobyns-Bennett has requested to transfer \$20,000 from their Instructional Supply account, \$4,000 from Student Travel, and \$417 from Principal Travel to their Non-Instructional Equipment account (total of \$24,417). These funds will be used to purchase acoustical panels for the small gym, converting the writing center into a regular classroom, and to replace student desks. It is recommended that the above transfers be approved.

ITEM THREE: ROBINSON TRANSFER

Robinson Middle School has requested to transfer \$2,200 from their Non-Instructional Equipment account, \$500 from Student Travel, \$2,000 from Principal Travel, and \$1,000 from Staff Development to their Instructional Equipment account (total of \$5,700). These funds will be used to purchase student and/or teacher computers. It is recommended that the above transfers be approved.

SCHOOL NUTRITION SERVICES FUND

ITEM ONE: FY 14-15 OPERATING REVENUES AND EXPENSES

Preparing the budget for School Nutrition Services for FY 14-15 presented many challenges with the new and ever changing federal regulations. The anticipation was that the new regulations would decrease our participation, especially our a la carte sales. But this was not the case. At this time I am projecting increases in the following revenue and expense accounts:

Estimated Revenues

Federal Reimbursement – Breakfast	\$ 30,000
Student Lunch Payments	15,000
A La Carte Lunch Sales	145,000
Other Local Revenue	20,000
Total Increases in Estimated Revenue	\$ 210,000

Budgeted Expenditures

Retirement	\$ 5,000
Medical Insurance	30,000
Food Usage	100,000
Other Supplies and Materials	75,000
Total Increase in Budgeted Expenditures	\$ 210,000

It is recommended that the estimated revenues and appropriations for the accounts listed above be increased by \$210,000. This will increase the SNS budget from \$3,195,900 to \$3,405,900.

ITEM TWO: EQUIPMENT PURCHASES:

There are two equipment purchases that need to be made by School Nutrition Services. It is necessary to amend the FY 14-15 budget, in order to receive and install this equipment prior to the start of school. The two items are:

1. Computer and printer replacement – Most of the computers that are used by SNS are 5-6 years old and are in need of being replaced. There are 26 computers in the cafeterias, 11 manager/assistant manager computers, and 4 computers at the administrative support center. In addition there are 8 printers, 26 touch screen monitors, and 26 pin pads that need to be replaced. The total cost will be \$57,000.
2. Dobyms-Bennett 1 Hour Lunch – With the implementation of the 1 hour lunch period at Dobyms-Bennett it will be necessary to purchase various pieces of equipment to make this program successful. Examples of the equipment are; tables, vending machine, 3 kiosk, 2 warmer/cooler boxes, 3 milk boxes, 3 cashier stands, steamer, and ovens. It is estimated that his equipment will cost a total of \$100,000.

The current budget has an unexpended appropriation for equipment, in the amount of \$30,000. The two items listed above have a total cost of \$157,000. The unreserved fund balance for School nutrition Services at June 30, 2014, was \$2,145,815. It is recommended that the estimated revenue for Fund Balance Appropriations and the appropriation for Food Service Equipment be increased by \$127,000.

FEDERAL PROJECTS FUND

The estimated revenue and appropriations for the Federal Projects Fund are currently in the amount of \$3,827,459. This amount was based on estimates and information known at the time of initial approval and now needs to be adjusted to the actual amount of the grants. We have received the new Carl Perkins Incentive grant for \$2,500.

The details of the changes are shown on the enclosed Schedule of Federal Projects. It is recommended that the estimated revenues and appropriations for the Federal Projects Fund be increased by the net amount of \$26,852. This will make the revised estimated revenue and appropriation amounts \$3,854,311.

SCHOOL SPECIAL PROJECTS FUND

The estimated revenue and appropriations for active projects within the School Special Projects Fund are currently in the amount of \$1,240,008. The initial budgets for these grants were estimates based on previous year's information. There have been new grants received during the year that total \$35,000. There are increases in the Family Resource, Coordinated School Health and the Homeless programs of \$9,000 that are local donations and there are increases that total \$51,708 in the LEAPS, Homeless, and the Safe Schools grants. There was a decrease in the Lottery After-School grant of \$42,500. The 21st Century grant was a grant that was applied for, but not received.

The details of the changes are shown on the enclosed Schedule of School Special Projects. It is recommended that the estimated revenues and appropriations for the School Special Projects Fund be decreased by the net amount of \$49,792. This will make the revised estimated revenue and appropriation amounts \$1,190,216.

KINGSPORT CITY SCHOOLS
SCHEDULE OF SCHOOL SPECIAL PROJECTS
FISCAL YEAR 2014-2015

PROGRAM	AMOUNT
Coordinated School Health	\$ 123,050
Family Resource Center	50,000
Homeless Education Program	37,000
Lottery - After-School Care Grant	292,500
21st Centruy Grant	110,000
State - Pre-School Grant	491,322
Safe Schools Act Grant	46,400
Safe and Supportive Schools Grant	36,016
Truancy Intervention Grant	<u>53,720</u>
Total School Special Projects	<u><u>\$ 1,240,008</u></u>

KINGSPORT CITY SCHOOLS
 SCHEDULE OF SCHOOL SPECIAL PROJECTS
 FISCAL YEAR 2014-2015

PROGRAM	ORIGINAL BUDGET	INCREASE	DECREASE	AMENDED BUDGET
Coordinated School Health FY 15	\$ 123,050	\$ 4,000		\$ 127,050
Family Resource Center FY 15	50,000	2,500		52,500
Homeless Education Program FY 15	37,000	16,500		53,500
Lottery - After-School Care Grant FY 15	292,500		42,500	250,000
21st Century Grant FY 15	110,000		110,000	0
State - Pre-School Grant FY 15	491,322			491,322
Safe Schools Act Grant FY 15	46,400	3,290		49,690
Safe and Supportive Schools Grant FY 15	36,016	41,418		77,434
Summer STEM Camp FY 15	0	35,000		35,000
Truancy Intervention Grant FY 15	53,720			53,720
Total School Special Projects	<u>\$ 1,240,008</u>	<u>\$ 102,708</u>	<u>\$ 152,500</u>	<u>\$ 1,190,216</u>



AGENDA ACTION FORM

Amend the Sewer Project Fund Budgets by Reallocating from Other Sewer Projects

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

Action Form No.: AF-113-2015
 Work Session: May 18, 2015
 First Reading: May 19, 2105

Final Adoption: June 2, 2105
 Staff Work By: C. Austin/J. Smith
 Presentation By: Ryan McReynolds

Recommendation:

Approve the Ordinance.

Executive Summary:

Funding has been identified and allocated to various projects in the Sewer Fund. To more accurately track expenses for individual projects, new project accounts need to be opened for each specific project. This reallocation will fund new projects and combine various project accounts for better project cost tracking.

Funding will be reallocated from SW1100 – Reedy Creek Basin Upgrades to SW1400 – Reedy Creek Trunk Sewer; SW1003 – Gibson Mill S/L Upgrade, SW1203 – Misc Sewerline Ext/Annex, and SW1303 – Stone Dr Rehab to SW1401 – Misc Sewerline Rehab; and SW1301 – North Kpt Annexation, SW1301 – Westfield Annex Ext, and SW1306 – Hidden Acres/Peppertree to SW1511 – Colonial Heights Ph 4 Sewer and SW1512 - Colonial Heights Ph 5 Sewer.

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 SEWER PROJECT FUND BUDGETS BY TRANSFERRING FUNDS TO THE VARIOUS PROJECTS PROJECT 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 Sewer Project Fund budgets be amended by transferring funds from the Reedy Creek Basin & Upgrades project (SW1100) in the amount of \$154,086 to the Reedy Creek Trunk Line Sewer project (GP1400); by transferring funds from the Gibson Mill Road Sewer Line Upgrade project (SW1003) in the amount of \$176,200, from the Miscellaneous Sewer Line Ext/Annex project (SW1203) in the amount of \$360,337, from the North Kingsport Annexation project (SW1301) in the amount of \$176,686, from the Westfield Annexation Extension (SW1302) in the amount of \$61,032, from the Stone Drive Rehab project (SW1303) in the amount of \$35,417 and from the Hidden Acres/Peppertree project (SW1306) in the amount of \$546,531 to the Miscellaneous Sewer Line Rehab project (SW1401) in the amount of \$571,954, to the Colonial Heights Phase 4 Sewer project (SW1511) in the amount of \$484,249 and to the Colonial Heights Phase 5 Sewer project (SW1512) in the amount of \$300,000.

Account Number/Description:

Fund 452: Sewer Fund

Reedy Creek Basin & Upgrades (SW1100)

Revenues:

452-0000-391-4200 From Sewer Fund

Totals:

Expenditures:

452-0000-606-2022 Construction Contracts

452-0000-606-2023 Arch/Eng/Landscaping

452-0000-606-9001 Land

Totals:

Fund 452: Sewer Project Fund

Reedy Creek Trunk Sewer (SW1400)

Revenues:

452-0000-391-0529 Series 2013 B GO Pub Imp

452-0000-391-4200 From Sewer Fund

Totals:

Expenditures:

452-0000-606-2023 Arch/Eng/Landscaping

452-0000-606-9001 Land

452-0000-606-9003 Improvements

Totals:

Fund 452: Sewer Project Fund

Gibson Mill Road S/L UPG (SW1003)

Revenues:

452-0000-391-0519 2005 WA & SW RT

452-0000-391-4200 From Sewer Fund

Totals:

	<u>Budget</u>	<u>Incr/<Decr></u>	<u>New Budget</u>
	\$	\$	\$
	504,000	(154,086)	349,914
	504,000	(154,086)	349,914
	277,693	(171,690)	106,003
	223,307	(2,917)	220,390
	3,000	20,521	23,521
	504,000	(154,086)	349,914
	\$ 4,100,000	\$ 0	\$ 4,100,000
	196,000	154,086	350,086
	4,296,000	154,086	4,450,086
	446,000	154,086	600,086
	100,000	0	100,000
	3,750,000	0	3,750,000
	4,296,000	154,086	4,450,086
	\$ 126,384	\$ 0	\$ 126,384
	595,312	(176,200)	419,112
	721,696	(176,200)	545,496

Expenditures:

452-0000-606-2022 Construction Contracts	682,719	(169,382)	513,337
452-0000-606-2023 Arch/Eng/Landscaping	38,977	(6,818)	32,159
Totals:	721,696	(176,200)	545,496

**Fund 452: Sewer Project Fund
Misc Sewer Line Ext/Annex (SW1203)**

Revenues:

452-0000-391-4200 From Sewer Fund	\$ 372,300	\$ (360,337)	\$ 11,963
Totals:	372,300	(360,337)	11,963

Expenditures:

452-0000-606-2097 State Reviews & Permits	2,000	(925)	1,075
452-0000-606-9001 Land	50,000	(39,112)	10,888
452-0000-606-9003 Improvements	320,300	(320,300)	0
Totals:	372,300	(360,337)	11,963

**Fund 452: Sewer Project Fund
North Kingsport Annexation (SW1301)**

Revenues:

452-0000-391-4200 From Sewer Fund	\$ 445,000	\$ (176,686)	\$ 268,314
Totals:	445,000	(176,686)	268,314

Expenditures:

452-0000-606-2023 Arch/Eng/Landscaping	45,000	(12,423)	32,577
452-0000-606-9003 Improvements	400,000	(164,263)	235,737
Totals:	445,000	(176,686)	268,314

**Fund 452: Sewer Project Fund
Westfield Annex Ext. (SW1302)**

Revenues:

452-0000-391-0525 Series 2009D (BABS) GO	\$ 1,070,000	\$ (61,032)	\$ 1,008,968
Totals:	1,070,000	(61,032)	1,008,968

Expenditures:

452-0000-606-2023 Arch/Eng/Landscaping	130,795	(7,488)	123,307
452-0000-606-9001 Land	5,600	(698)	4,902
452-0000-606-9003 Improvements	933,605	(52,846)	880,759
Totals:	1,070,000	(61,032)	1,008,968

**Fund 452: Sewer Project Fund
Stone Dr. Rehab (SW1303)**

Revenues:

452-0000-391-0525 Series 2009D (BABS) GO	\$ 350,000	\$ 0	\$ 350,000
452-0000-391-4200 From Sewer Fund	119,000	(35,417)	83,583
Totals:	469,000	(35,417)	433,583

Expenditures:

452-0000-606-2023 Arch/Eng/Landscaping	57,600	(3,803)	53,797
452-0000-606-9003 Improvements	411,400	(31,614)	379,786

Totals:

469,000	(35,417)	433,583
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**Fund 452: Sewer Project Fund
Hidden Acres/Peppertree (SW1306)**

Revenues:

452-0000-391-0525	Series 2009D (BABS) GO
452-0000-391-0526	Series 2011 GO Bonds
452-0000-391-0527	Series 2012C GO Pub Imp
452-0000-391-0529	Series 2013 B GO
452-0000-391-4200	From Sewer Fund

\$	\$	\$
150,000	0	150,000
100,000	0	100,000
1,700,000	0	1,700,000
1,900,000	(496,531)	1,403,469
50,000	(50,000)	0
3,900,000	(546,531)	3,353,469

Totals:

Expenditures:

452-0000-606-2023	Arch/Eng/Landscaping
452-0000-606-9001	Land
452-0000-606-9003	Improvements

510,900	(79,921)	430,979
10,000	(7,194)	2,806
3,379,100	(459,416)	2,919,684
3,900,000	(546,531)	3,353,469

Totals:

**Fund 452: Sewer Project Fund
Misc. Sewer Line Rehab (SW1401)**

Revenues:

452-0000-391-0529	Series 2013 B GO
452-0000-391-0531	2014 B GO
452-0000-391-4200	From Sewer Fund

\$	\$	\$
300,000	496,531	796,531
600,000	0	600,000
181,000	75,423	256,423
1,081,000	571,954	1,652,954

Totals:

Expenditures:

452-0000-606-2023	Arch/Eng/Landscaping
452-0000-606-9001	Land
452-0000-606-9003	Improvements

70,000	90,000	160,000
30,000	30,000	60,000
981,000	451,954	1,432,954
1,081,000	571,954	1,652,954

Totals:

**Fund 452: Sewer Project Fund
Colonial Heights Phase 4 Sewer (SW1511)**

Revenues:

452-0000-391-0525	Series 2009D (BABS) GO
452-0000-391-4200	From Sewer Fund

\$	\$	\$
0	61,032	61,032
0	423,217	423,217
0	484,249	484,249

Totals:

Expenditures:

452-0000-606-2023	Arch/Eng/Landscaping
452-0000-606-9001	Land
452-0000-606-9003	Improvements

0	200,000	200,000
0	100,000	100,000
0	184,249	184,249
0	484,249	484,249

Totals:

**Fund 452: Sewer Project Fund
Colonial Heights Phase 5 Sewer (SW1512)**

Revenues:

452-0000-391-4200	From Sewer Fund
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\$	\$	\$
0	300,000	300,000
0	300,000	300,000

Totals:

Expenditures:

452-0000-606-2023	Arch/Eng/Landscaping
452-0000-606-9001	Land

0	200,000	200,000
0	100,000	100,000
0	300,000	300,000

Totals:

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.

ATTEST:

ANGELA L. MARSHALL
Deputy City Recorder

DENNIS R. PHILLIPS, Mayor

APPROVED AS TO FORM:

J. MICHAEL BILLINGSLEY, City Attorney

PASSED ON 1ST READING: _____

PASSED ON 2ND READING: _____



AGENDA ACTION FORM

Budget Ordinance to Appropriate Additional Funds to GP0608 for Greenbelt Section 3

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

Action Form No.: AF-119-2015
Work Session: May 18, 2015
First Reading: May 19, 2015

Final Adoption: June 2, 2015
Staff Work By: B. Albright / M. Thompson
Presentation By: Ryan McReynolds

Recommendation:

Approve the budget ordinance.

Executive Summary:

In March 2015 bids were opened for the Greenbelt Section 3 construction project (behind and west of Riverfront Seafood). City staff received concurrence from TDOT to award the contract to the low bidder on May 11th, 2015. To fully fund this project to cover contingency and testing and closeout costs it is requested the following funding transfer be made:

FROM: GP0102 – Fordtown Road
Account # 311-0000-601.20-22
Amount: \$10,000

TO: GP0608 – Greenbelt Development
Account # 311-0000-601.20-22
Amount: \$10,000

Project Data: TDOT Agreement #: 050183; TDOT PIN: 30629.01; Federal Project #: STP-EN-8200(24); State Project #: 82956-3664-94.

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 TO THE GREENBELT DEVELOPMENT 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 Fordtown Road Improvements project (GP0102) to the Greenbelt Development project (GP0608) in the amount of \$10,000 for the construction of the Greenbelt section 3.

<u>Account Number/Description:</u>	<u>Budget</u>	<u>Incr/<Decr></u>	<u>New Budget</u>
Fund 311: General Project Fund			
Fordtown Rd Improvements (GP0102)			
Revenues:			
	\$	\$	\$
311-0000-368-1031 GO Pub Imp Series 2007	800,000	0	800,000
311-0000-368-1035 Series 2009A GO Pub Imp	100,000	0	100,000
311-0000-368-1037 Series 2009D (BABS)GO	730,000	0	730,000
311-0000-391-0100 From General Fund	14,400	(10,000)	4,400
311-0000-391-0513 GO Refunding 2004 Princ	50,000	0	50,000
311-0000-391-1100 State Street Aid Fund	8,300	0	8,300
Totals:	1,702,700	(10,000)	1,692,700
Expenditures:			
311-0000-601-2022 Construction Contracts	1,659,447	0	1,659,447
311-0000-601-2023 Arch/Eng/Landscaping	1,114	0	1,114
311-0000-601-9001 Land	42,139	(10,000)	32,139
Totals:	1,702,700	(10,000)	1,692,700
 Fund 311: General Project Fund			
Greenbelt Development (GP0608)			
Revenues:			
	\$	\$	\$
311-0000-337-4300 Fed thru State ISTE A Grant	54,908	0	54,908
311-0000-337-5100 Fed thru State TEA 21/TDOT	424,000	0	424,000
311-0000-391-0100 From General Fund	161,173	10,000	171,173
Totals:	640,081	10,000	650,081
Expenditures:			
311-0000-601-2022 Construction Contracts	570,581	10,000	580,581
311-0000-601-2023 Arch/Eng/Landscaping	69,500	0	69,500
Totals:	640,081	10,000	650,081

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

Budget Ordinance Establishing and Funding MPO15D for Wilcox Sidewalk Phase 5

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

Action Form No.: AF-101-2015
Work Session: May 4, 2015
First Reading: May 5, 2015

Final Adoption: **May 19, 2015**
Staff Work By: M. Thompson /T. Elsea
Presentation By: Ryan McReynolds

Recommendation:

Approve the budget ordinance.

Executive Summary:

In January 2014 we entered into an Agreement with TDOT for sidewalk improvements along Wilcox Drive (SR-126) from the Holston River sluice northeast of Wilcox Court to Industry Drive (SR-355). The actual cost for this project will be paid from Federal (80%), and State (20%).

Design for this project is complete, and the scheduled bid opening date for the construction contract is May 28, 2015.

It is requested to establish and fund MPO15D for Wilcox Sidewalk Phase 5 in the total amount of \$750,000.00 –

Account #122 0000 609 2023	\$50,000.00
Account #122 0000 609 9003	\$700,000.00

Project Data: TDOT Agreement #: 130287; TDOT PIN: 119940.00; Federal Project #: STP-126(18); State Project #: 82LPLM-F3-051).

Attachments:

- Budget Ordinance

Funding source appropriate and funds are available: 

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

PRE-FILED CITY RECORDER

Revised

ORDINANCE NO. _____

AN ORDINANCE TO AMEND THE MPO FUND BUDGET BY APPROPRIATING GRANT FUNDS RECEIVED FOR THE WILCOX SIDEWALK PHASE 5 PROJECT; 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 \$750,000 to the Wilcox Sidewalk Phase 5 project (MPO15D). The Tennessee Department of Transportation will fund 20% and 80% will be through KMTPO STP.

<u>Account Number/Description:</u>	<u>Budget</u>	<u>Incr/<Decr></u>	<u>New Budget</u>
Fund 122: MPO Fund			
Wilcox Sidewalk Phase 5 (MPO15D)			
Revenues:			
	\$	\$	\$
122-0000-337-5210 FHWA/TN FHWA 80%	0	600,000	600,000
122-0000-332-9000 State Revenue Dept. of Transportation		150,000	150,000
Totals:	0	750,000	750,000
Expenditures:			
122-0000-609-2010 Advertising & Publication	0	1,500	1,500
122-0000-609-2023 Arch/Eng/Landscaping	0	50,000	50,000
122-0000-609-9003 Improvements	0	698,500	698,500
Totals:	0	750,000	750,000

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

Budget Ordinance Establishing and Funding MPO15D for Wilcox Sidewalk Phase 5

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

Action Form No.: AF-101-2015
Work Session: May 4, 2015
First Reading: May 5, 2015

Final Adoption: May 19, 2015
Staff Work By: M. Thompson /T. Elsea
Presentation By: Ryan McReynolds

Recommendation:

Approve the budget ordinance.

Executive Summary:

In January 2014 we entered into an Agreement with TDOT for sidewalk improvements along Wilcox Drive (SR-126) from the Holston River sluice northeast of Wilcox Court to Industry Drive (SR-355). The actual cost for this project will be paid from Federal (80%), and State (20%).

Design for this project is complete, and the scheduled bid opening date for the construction contract is May 28, 2015.

It is requested to establish and fund MPO15D for Wilcox Sidewalk Phase 5 in the total amount of \$750,000.00 –

Account #122 0000 609 2023	\$50,000.00
Account #122 0000 609 9003	\$700,000.00

Project Data: TDOT Agreement #: 130287; TDOT PIN: 119940.00; Federal Project #: STP-126(18); State Project #: 82LPLM-F3-051).

Attachments:

- 1. Budget Ordinance

Funding source appropriate and funds are available: *ja*

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

ORDINANCE NO. _____

AN ORDINANCE TO AMEND THE MPO FUND BUDGET BY APPROPRIATING GRANT FUNDS RECEIVED FOR THE WILCOX SIDEWALK PHASE 5 PROJECT, 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 \$750,000 to the Wilcox Sidewalk Phase 5 project (MPO15D). The Tennessee Department of Transportation will fund 20% and 80% will be through KMTPO STP

<u>Account Number/Description:</u>	<u>Budget</u>	<u>Incr/<Decr></u>	<u>New Budget</u>
Fund 122: MPO Fund			
Signal at SR126/Island Rd (MPO15A)			
Revenues:			
122-0000-337-5210 FHWA/TN FHWA 80%	\$ 0	\$ 600,000	\$ 600,000
122-0000-332-9000 State Revenue Dept. of Transportation		150,000	150,000
Totals:	0	750,000	750,000
Expenditures:			
122-0000-609-2023 Arch/Eng/Landscaping	0	50,000	50,000
122-0000-609-9003 Improvements	0	700,000	700,000
Totals:	0	750,000	750,000

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

ProPay Merchant Services Application for the Kingsport Public Library

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

Action Form No.: AF-61-2015
 Work Session: April 20, 2015
 First Reading: N/A

Final Adoption: April 21, 2015
 Staff Work By: Helen Whittaker
 Presentation By: Morris Baker

Recommendation:

Approve the resolution.

Executive Summary:

With the library's new automation system, which will go live May 14, patrons will be able, for the first time, to use credit and debit cards to pay overdue fines and fees. The library needs to establish a Merchant Account Agreement with ProPay, the recommended vendor by our automation system consultant. Sidney Cox, City Accounting and Revenue Supervisor, and two library staff members, have gone through the credit card training and implementation provided by our automation system consultant.

Attachments:

1. Resolution
2. Merchant Services Application

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

RESOLUTION NO. _____

A RESOLUTION APPROVING A MERCHANT SERVICES APPLICATION WITH PROPAY, INC. FOR THE KINGSPORT PUBLIC LIBRARY AND AUTHORIZING THE MAYOR TO EXECUTE THE APPLICATION AND ALL OTHER DOCUMENTS NECESSARY AND PROPER TO EFFECTUATE THE PURPOSE OF THE APPLICATION

WHEREAS, the Kingsport Public Library would like to start accepting credit and debit cards for the payment of overdue fines, and fees; and

WHEREAS, the libraries automation system consultant has recommended ProPay, Inc. for the merchant services.

Now therefore,

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

SECTION I. That a Merchant Services Application with ProPay, Inc. is approved.

SECTION II. That the mayor, or in his absence, incapacity, or failure to act, the vice-mayor, is authorized and directed to execute, in a form approved by the city attorney and subject to the requirements of Article X, Section 10 of the Charter of the City of Kingsport, the Merchant Services Application with ProPay, Inc. and all other documents necessary and proper, and to take such acts as necessary, to effectuate the purpose of the application or this resolution.

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

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

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

ADOPTED this the 19th day of May, 2015.

DENNIS R. PHILLIPS, MAYOR

ATTEST:

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

J. MICHAEL BILLINGSLEY, CITY ATTORNEY



ProPay, Inc., a TSYS® Company
 3400 N. Ashton Blvd., Suite 200
 Lehi, Utah 84043
 Customer Service: 866-573-0951
 Fax: 801-341-5301

MERCHANT SERVICES APPLICATION FOR LIBRARIES

BANK DISCLOSURE

Merchant Services Provider Contact Information: ProPay, Inc. ("ProPay"); 3400 N. Ashton Blvd., Suite 200, Lehi, UT 84043. Application Inquiry Phone: 801-341-5300; Customer Service Phone: 866-573-0951. <http://www.propay.com>

Member Bank Information: Wells Fargo Bank, N.A. ("Bank"); 1200 Montego Way, MAC A0347-023, Walnut Creek, CA 94598. Phone: 925-746-4167

Important Bank Responsibilities:

1. Bank is the only entity approved to extend acceptance of Card Association (as defined below) products directly to a Merchant.
2. Bank must be the principal (signer) to the Merchant Services Agreement.
3. Bank is responsible for and must provide settlement funds to Merchant.
4. Bank is responsible for all funds held in reserve that are derived from settlement.
5. Bank is responsible for educating Merchants on pertinent Card Association Rules with which Merchants must comply; but this information may be provided to you by ProPay.

Merchant Information: Refer to the following Merchant Services Application ("Merchant")

Important Merchant Responsibilities:

1. Ensure compliance with cardholder data security and storage requirements.
2. Maintain fraud and chargebacks below Card Association thresholds.
3. Review and understand the terms of the Merchant Services Agreement.
4. Comply with Card Association Rules.

The responsibilities listed above do not supersede terms of the Merchant Services Agreement and are provided to ensure the Merchant understands some important obligations of each party and that the Bank is the ultimate authority should the Merchant experience any problems.



 Merchant Signature Date

 Merchant's Printed Name and Title

You may download "Visa Regulations" from Visa's website at: <http://corporate.visa.com/about-visa/our-business/operating-regulations.shtml>
 You may download "MasterCard Regulations" from MasterCard's website at: <http://www.mastercard.com/us/merchant/support/rules.html>

BUSINESS INFORMATION

LIBRARY'S LEGAL BUSINESS OR CORPORATE NAME:		SALES CONTACT: Paul Anderson		SALES REP PHONE: (801) 341-5650	
"DOING BUSINESS AS" NAME (if different from above):		TYPE OF BUSINESS (select one): <input type="checkbox"/> Public Library <input type="checkbox"/> Academic Library <input type="checkbox"/> School Library (K-12) <input type="checkbox"/> Other			
PHYSICAL ADDRESS:		CITY:	STATE/PROVINCE:	ZIP/POSTAL CODE:	
BILLING ADDRESS (if different from above):		CITY:	STATE/PROVINCE:	ZIP/POSTAL CODE:	
BUSINESS PHONE NUMBER:	FAX NUMBER:	COUNTRY:		FEDERAL TAX I.D./BUSINESS NUMBER:	
CONTACT PERSON AND TITLE:		CONTACT PHONE NUMBER:			
CONTACT E-MAIL ADDRESS:		WEBSITE URL:			
TYPE OF ENTITY (select one): <input type="checkbox"/> Partnership <input type="checkbox"/> LLC <input type="checkbox"/> Sole Proprietor <input type="checkbox"/> Corporation <input type="checkbox"/> Tax Exempt					

TRANSACTION INFORMATION

AVERAGE MONTHLY VOLUME	HIGH MONTHLY VOLUME	CONSUMER'S MONTHLY STATEMENT DESCRIPTION (Max. 18 characters)	
AVERAGE TRANSACTION SIZE	HIGH TRANSACTION SIZE	THIRD-PARTY CONNECTION/GATEWAYS	
ANNUAL VOLUME	PROTECTPAY® <input type="checkbox"/> YES <input type="checkbox"/> NO	PCI COMPLIANT: <input type="checkbox"/> YES <input type="checkbox"/> NO	SAQ/ROC DATE

BANK ACCOUNT INFORMATION
(the bank account is referred to as the "Merchant Bank Account")

BANK ACCOUNT NAME:	TYPE OF ACCOUNT:	ROUTING NUMBER:	ACCOUNT NUMBER:
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PRODUCT AND FEE SCHEDULE

Merchant hereby subscribes to the ProPay Merchant Services and agrees to pay, pursuant to the Merchant Services General Terms and Conditions set forth below, the applicable and incremental fees indicated on the Product and Fee Schedule (collectively, the "Fees"). The card types described below are referred to as "Cards." Merchant selects (check only one): OPTION A OPTION B

Type of Fee	Option A	Option B
	Amount	Amount
Annual Fee	\$99.95	\$299.95
Accept VISA® & MasterCard® Standard Rates* Card Reader Rates	2.30% + \$0.50 1.99% + \$0.25	2.50% + \$0.30 1.99% + \$0.25
Accept Discover® Standard Rates Card Reader Rates	2.30% + \$0.50 2.30% + \$0.30	2.50% + \$0.30 2.50% + \$0.30
Accept American Express® Standard Rates Card Reader Rates	2.99% + \$0.50 2.99% + \$0.30	2.99% + \$0.30 2.99% + \$0.30
Accept ACH Standard Rates	\$0.50	\$0.50
Transfer to Bank Account Fee	\$0.10	\$0.10
Chargeback Fee	\$25	\$25

*A standard rate of 2.2% + \$0.50 under Option A, or 2.2% + \$0.30 under Option B, may be available to Referred Merchants that are 501(c)(3) organizations.

AUTHORIZED SIGNATURES AND DATE OF EXECUTION:

Merchant acknowledges that it has read the Terms and Conditions (and each schedule and other document or agreement referred to therein) and the Product and Fee Schedule. Merchant agrees to be bound by the Terms and Conditions, and agrees that Bank and ProPay shall provide processing and settlement services to Merchant. Merchant further acknowledges that it is not relying on any verbal representation in subscribing to the services described above or in executing this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed, effective the date this page is signed by ProPay (the "Effective Date").

PROPAY, INC.

Signature: _____
Name (Print): _____
Title: _____
Date: _____

MERCHANT

Library/Business Name: _____
Signature: _____
Name (Print): _____
Title: _____
Date: _____

MERCHANT SERVICES GENERAL TERMS AND CONDITIONS

These Merchant Services General Terms and Conditions (these "Terms and Conditions"), the Merchant Services Application to which these Terms and Conditions are attached (the "Application") and Product and Fee Schedule attached (the "Fee Schedule"), and collectively with the Application and these Terms and Conditions, this "Agreement") are entered into by and among ProPay, Inc. ("ProPay"), Wells Fargo Bank, N.A. ("Bank"), and the business entity described on the Application ("Merchant"). This Agreement shall become effective on the Effective Date set forth above. ProPay, Bank, and Merchant are each a "Party" and are, collectively, the "Parties."

WHEREAS, Bank, as a member of VISA, U.S.A., Inc. ("VISA") and MasterCard Worldwide ("MasterCard"), provides transaction processing and other services and products in connection with financial services provided by VISA and MasterCard, and ProPay provides transaction processing and other services and products in connection with financial services provided by American Express Company ("American Express"), and Discover Financial Services ("Discover") (collectively, the "Card Associations"); and

WHEREAS, ProPay, as an agent of Bank, provides payment card processing services; and

WHEREAS, Merchant is engaged in the business of selling goods and services, and desires that Bank and ProPay provide the services described on the Fee Schedule (the "Merchant Services") on the terms and conditions set forth herein,

NOW, THEREFORE, in consideration of the mutual promises made herein and other valuable consideration, receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

1. COMPLIANCE WITH ASSOCIATION REGULATIONS. Each Party: (i) acknowledges that its actions in connection with Transactions are subject, at all times, to the rules, regulations, requirements and guidelines of the Card Associations, as the same may be modified, amended or replaced from time to time (collectively, the "Association Regulations"); (ii) represents and warrants that it is familiar with those portions of the Association Regulations that are relevant to it; and (iii) covenants to take such actions and do such things in connection with or related to each of its Transactions to ensure (A) that such Transactions are processed and handled in a manner that complies, in full, with the Association Regulations and (B) that it otherwise complies, in full, with the Association Regulations that are relevant to it. As used in this Agreement, "Transaction(s)" means one or more payment transactions using a Card Association-branded credit, debit or pre-paid card issued by a member of such Card Association with respect to which Merchant desires ProPay and Bank to provide Merchant Services.

2. INCORPORATION OF ADDITIONAL TERMS AND PROVISIONS.

a. The Parties acknowledge and agree that those provisions, terms and conditions required by any Card Association to be incorporated into or otherwise contained in this Agreement pursuant to the terms of the Association Regulations are hereby incorporated into this Agreement in full, and shall be binding upon the Parties as if set forth in full herein. Without limiting the generality of the foregoing, the Parties specifically acknowledge and agree that this Agreement is deemed to include the provisions required by: (i) the Visa International Operating Regulations relating to the Merchant Chargeback Monitoring Program, the Merchant Agreement Requirements, and Merchant Card Acceptance, as the same may be amended or replaced from time to time (the "Visa Regulations"); and (ii) Section 5.1 and Sections 5.6 through 5.12 of the MasterCard Rules, as the same may be amended or replaced from time to time (the "MasterCard Rules"). Copies of the Visa Regulations (<http://corporate.visa.com/about-visa/our-business/operating-regulations.shtml>) and the MasterCard Rules (http://www.mastercard.com/us/merchant/pdf/BM-Entire_Manual_public.pdf) are available for review online. In the event of any conflict between the terms of this Agreement and the terms of the Association Regulations, the terms of this Agreement shall prevail. Merchant: (i) represents and warrants that it has reviewed in full the contents of the Visa Regulations and MasterCard Rules applicable to it (in particular, those sections referenced above); and (ii) covenants that it will, from time to time, review the contents of the Visa Regulations and MasterCard Rules to ensure it remains aware of, and is capable of performing, its duties and obligations under this Agreement. For purposes of Section 1 and this Section 2, references in the Association Regulations to any type of "Transaction" shall be deemed, as relevant, to be limited to a Transaction under this Agreement.

b. In addition to the foregoing, the Parties acknowledge and agree that the terms and provisions of the following policies, documents and agreements (as set forth, at any relevant point in time, at <http://www.propay.com/legal-agreements/>, as the same may be amended from time to time by ProPay with or without the provision of prior notice to Merchant) are a part of this Agreement and are incorporated into this Agreement by this reference, as if fully set forth herein: (i) the Electronic

Funds Transfer Agreement; (ii) the Error Resolution Policy; (iii) the Privacy Policy; (iv) the Electronic Communications Agreement; (v) the Terms of Use; and (vi) the API License Agreement (if relevant).

3. ACCEPTING CARDS. Merchant shall accept those Cards (as defined on the Fee Schedule) selected by it in the Fee Schedule for acceptance to effect Transactions in accordance with the applicable Association Regulations. All disputes between Merchant and any cardholder relating to any Transaction shall be resolved between the Merchant and the cardholder. ProPay bears no financial responsibility for any disputed Transaction.

4. TRANSACTIONS; PAYMENTS.

a. Obtaining Authorizations and Completing Transactions. Merchant shall obtain (using equipment meeting specifications determined from time to time by ProPay) an authorization for each Transaction: (i) in accordance with the terms of Appendix A-1, if such Transaction is effected through the provision by ProPay of ProtectPay services (which services are provided through a separate agreement between Merchant and ProPay); or (ii) in accordance with the terms of Appendix A-2, if such Transaction is effected without the provision by ProPay of ProtectPay services. Merchant shall comply in full (and shall cause each third party or other agent used by Merchant in connection in any way with any Transaction to comply in full) with all Association Regulations (including, without limitation, Visa's cardholder Information Security Program ("CISP") and MasterCard's Site Data Protection Program ("SDP"), the Payment Card Industry Data Security Standards ("PCI DSS") and all applicable federal, state, provincial and local laws, rules, regulations and guidelines, and relevant judicial, regulatory and administrative interpretations and determinations (collectively with the Association Regulations and PCI DSS, "Applicable Law") in connection with the commencement and completion of, and all other actions associated with, each Transaction, and in connection with the sale or provision of the goods, services or anything else of value upon which the Transaction is based or otherwise in the performance of its obligations hereunder. In the event the Merchant's Transactions are not effected through the provision by ProPay of ProtectPay, upon approval of authorization of a Transaction (as ProPay or Bank reasonably shall request), ProPay shall provide the Merchant Services described above to allow Merchant to be paid for such Transaction, as it was authorized and otherwise in accordance with the terms of this Agreement.

b. Processing Limits. Bank and ProPay may, from time to time in their sole discretion, establish (or modify) and impose on Merchant limits regarding: (i) the number of Transactions or aggregate dollar volume of Transactions Merchant may cause to be processed within a defined period of time; and (ii) the maximum dollar amount of any single Transaction. Without limiting the generality of the foregoing, Bank and ProPay reserve the right to reverse and/or decrease any limit previously established.

c. Payment in Connection with Settled Transactions.

i. Bank shall credit those funds to which Merchant is entitled in connection with settled Transactions to a non-interest-bearing, aggregated account at Bank in the name of Bank, used by ProPay for the

receipt of funds from settled transactions from a group of merchants (including Merchant) (the "ProPay Operating Account"). The ProPay Operating Account is maintained by Bank for the clearing and settlement of Transactions of all ProPay Merchants, including those to Merchant Operating Account (these funds being in the "Merchant Operating Account"). The balance of Merchant funds in the Merchant Operating Account is provided by ProPay to Merchant and can be accessed by Merchant online on ProPay's website. All amounts owing under this Agreement will remain in the Merchant Operating Account until: (i) such funds are released by Merchant at its discretion, as evidenced on ProPay's web site; or (ii) Merchant informs Bank to release such funds to the Merchant Bank Account designated by Merchant in accordance with the Electronic Funds Transfer Agreement. Merchant acknowledges that its obligation to ProPay for all amounts owed under this Agreement arise out of the same Transaction as Bank's obligation to place funds in the ProPay Operating Account with respect to Transactions processed pursuant to the terms of this Agreement for Merchant's Operating Account.

ii. Notwithstanding Section 4(c)(i) above, under no circumstance will ProPay be responsible for processing credits or adjustments related to Transactions not originally processed by ProPay. All Transactions and deposits are subject to audit and final verification by ProPay, and may be adjusted for inaccuracies. Merchant acknowledges that all credits provided to Merchant are provisional and subject to chargebacks and adjustments in accordance with the Association Regulations, whether or not a Transaction is charged back by the Card issuer.

iii. No interest is paid to Merchant on funds in the Merchant's Operating Account. The funds in the Merchant Operating Account are eligible for FDIC pass-through insurance up to the maximum amount as defined by applicable FDIC regulations, from time to time.

iv. Unless caused by the negligence of ProPay, its employees or agents, Merchant assumes any and all risk of loss and/or damages that arises out of or is the result of any theft, embezzlement or unauthorized use of any funds in the Merchant Operating Account or the Merchant Bank Account, and agrees to indemnify and hold ProPay and Bank harmless from any and all claims, demands and causes of action, including attorneys' fees and costs, that arise out of or are the result of any such theft, embezzlement or unauthorized use. If Merchant is a governmental agency, division, or unit, this indemnification obligation shall be subject to the laws of Merchant's state of domicile restricting tort damages.

5. FEES. Merchant agrees: (i) to pay to ProPay the fees set forth in the Fee Schedule as consideration for the provision of the Merchant Services, together with any and all taxes and other charges imposed by any governmental authority in connection with the provision of the Merchant Services; (ii) that ProPay may collect payment of such fees and taxes from Merchant directly out of the total dollar amount of any Transaction ("Gross Transaction Proceeds") received by ProPay in the ProPay Operating Account, or at the option of ProPay, by depositing any Gross Transaction Proceeds received by ProPay in the Merchant Operating Account and then debiting any such fees and taxes from either the Merchant Operating Account or the Merchant Bank Account; and, (iii) that the fees set forth in this Agreement are subject to modification by ProPay providing at least 30 days' advanced notice to Merchant.

6. CHARGEBACKS AND DISPUTES.

a. Merchant is liable to ProPay for all Transactions returned by Merchant's customers to ProPay for whatever reason, otherwise known as "Chargebacks." Merchant is liable to ProPay for the total amount of any sale for which the cardholder disputes the validity of the sale. Merchant will pay ProPay on demand for the amount(s) of all Chargebacks and associated fees. ProPay shall have the right to charge back any disputed charge, prior to contacting Merchant, if ProPay determines that it has sufficient information to resolve the disputed charge in favor of the cardholder. Merchant authorizes ProPay to deduct, recoup, or offset from incoming Transactions and to debit the Merchant Operating Account, and the Reserve Account to recover any Chargeback. Merchant will cooperate with ProPay in complying with the Association Regulations regarding Chargebacks. ProPay may suspend accepting Transactions or releasing funds represented by Transactions to Merchant until Merchant reimburses ProPay for all unpaid Chargebacks. Merchant acknowledges that regardless of its refund or return policy, Chargebacks will be handled in accordance with this Agreement and VISA and MasterCard regulations regarding returns and chargebacks.

b. ProPay may refuse to accept any Transaction or revoke its prior acceptance of a Transaction in the following circumstances: (i) the Transaction was not made in compliance with all terms and conditions of this Agreement and the Association Regulations; (ii) the cardholder disputes liability to ProPay for any reason, including but not limited to those Chargeback rights enumerated in Association Regulations; or, (iii) the Transaction was not directly between Merchant and the cardholder. Merchant will pay ProPay, as appropriate, any amount previously credited to Merchant's Operating Account for a Transaction not accepted by ProPay or, where accepted, it is subsequently revoked.

7. RESERVE ACCOUNT.

a. As a condition of providing the Merchant Services to Merchant, Bank and/or ProPay may require Merchant to: (i) open and maintain with Bank and/or ProPay, at all times during the Term of this Agreement and for a period of not more than 180 days after any termination or expiration of this Agreement (the "Reserve Account Holding Period"), an account (collectively (if more than one account is so created), the "Reserve Account") in order to provide to Bank and ProPay security (A) in connection with the payment of any amount owed by Merchant hereunder (including, without limitation, under Section 5 or Section 11(a)) and (B) against any costs, losses, assessments, fines, fees, penalties and/or expenses suffered or incurred by Bank or ProPay, or expected or anticipated to be suffered or incurred by Bank or ProPay, absent a payment by or on behalf of Merchant, in any case in connection with or arising out of the provision of Merchant Services to Merchant, any chargeback or return effected in connection with any Transaction or any act or omission by Merchant (collectively, "Merchant-Owed Amounts and Merchant-Caused Losses"); (ii) deposit into and maintain in the Reserve Account, at all times during the Reserve Account Holding Period, an amount reasonably determined from time to time by Bank and/or ProPay, in light of their assessment of actual or potential Merchant-Owed Amounts and Merchant-Caused Losses (the "Reserve Account Funding Amount"). Reasons ProPay or Bank may impose a reserve are (i) a material change to Merchant's business or financial strength, (ii) excessive or increasing amounts of chargebacks, declines, or refunds, (iii) a default under this agreement by Merchant, or (iv) if required to do so by the Card Associations or a governmental body.

b. Upon (i) a material change to Merchant's business or financial strength, (ii) excessive or increasing amounts of chargebacks, declines, or refunds, (iii) a default under this agreement by Merchant, or (iv) a request from the Card Associations or a governmental body, Bank or ProPay may require that the amount on deposit in the Reserve Account be increased and shall have sole discretion as to the amount thereof from time to time. Bank and ProPay shall have the right to debit Merchant's funds in the Merchant Operating Account or funds ProPay would be otherwise obligated to pay Merchant in accordance with the terms of this Agreement to establish, increase, or maintain funds in the Reserve Account.

c. Bank and ProPay each may, with notice, from time to time, withdraw from the Reserve Account such amount(s) as may be necessary or appropriate: (i) to pay to any third party an amount owed to such third party in connection with any Merchant-Owed Amount or Merchant-Caused Loss; (ii) to reimburse and/or indemnify Bank or ProPay as a result of or in connection with any Merchant-Owed Amount or Merchant-Caused Loss; or (iii) to pay to Bank or ProPay any other amount owed by Merchant to ProPay or Bank under this Agreement or under any other agreement between Merchant and ProPay and/or Bank.

d. Immediately following any withdrawal by either Bank or ProPay of any amount from the Reserve Account pursuant to the terms of this Agreement, or any increase of the Reserve Account Funding Amount, Merchant shall, upon notice from ProPay, cause the balance in the Reserve Account to be restored to the then-current Reserve Account Funding Amount. In addition to the foregoing, Bank and ProPay may take any action that may be necessary or desirable to cause the amount held in the Reserve Account to equal the Reserve Account Funding Amount, including, without limitation, debiting any funds credited to the Merchant Operating Account or initiating a debit to the Merchant Bank Account.

e. Merchant hereby grants to Bank and ProPay a security interest in any Gross Transaction Proceeds held in the ProPay Operating, in the Merchant Operating Account and in the Reserve Account, and any and all proceeds of any of the foregoing, to secure the due and punctual performance by Merchant of all of its obligations to Bank and/or ProPay

hereunder. Bank or ProPay may enforce such security interest without notice or demand. Upon request of Bank or ProPay, Merchant will execute one or more financing statements or other documents to perfect this security interest.

f. Bank and ProPay shall have the right of recoupment and set off. Merchant hereby acknowledges that Bank and ProPay have the right to offset any outstanding or uncollected amounts owed to Bank or ProPay by Merchant from: (i) any amounts owed to Merchant that they would otherwise be obligated to deposit into the Merchant Operating Account; (ii) any other amounts ProPay may owe Merchant under this Agreement or any other agreement; and (iii) the Merchant Operating Account.

8. DEBITS FROM THE MERCHANT BANK ACCOUNT. Merchant hereby authorizes each of Bank and ProPay to initiate, from time to time and pursuant to the Electronic Funds Transfer Agreement, debits to the Merchant Bank Account in such amounts as may be necessary or appropriate to allow Bank and ProPay to be paid any amount either is owed by Merchant pursuant to the terms of this Agreement in the event Gross Transaction Proceeds or the amounts credited to or on deposit in the Merchant Operating Account or the Reserve Account are not sufficient to pay any such amount so owed to Bank or to ProPay. The foregoing authorization shall remain in full force and effect until the expiration of the Reserve Account Holding Period. In the event Merchant changes its designated Merchant Bank Account as set forth herein, this authorization will apply to Merchant's subsequent Merchant Bank Account.

9. REPRESENTATIONS AND WARRANTIES OF MERCHANT. Merchant represents and warrants to Bank and to ProPay as follows:

a. Merchant is duly organized and in good standing under the laws of the jurisdiction of its organization, and is duly qualified to conduct business in each jurisdiction where failure to do so would have a material adverse effect on its business.

b. The execution and delivery of this Agreement by Merchant, and the performance by Merchant of its obligations hereunder: (i) are within Merchant's corporate powers; and (ii) have been duly authorized by all necessary corporate action on the part of Merchant.

c. This Agreement, when executed by Merchant, will be executed by a duly authorized officer of Merchant, with authority to execute this Agreement on Merchant's behalf and will constitute a valid and binding obligation of Merchant, enforceable in accordance with its terms, and does not violate any law, rule or regulation relevant to Merchant or conflict with any other agreement or obligation entered into or assumed by Merchant.

d. Merchant is in compliance with all Applicable Law in the operation of its business and in the provision and/or sale of all goods and services that are the subject of each Transaction.

e. All of the information provided by Merchant to ProPay and/or Bank in or in connection with the Application or otherwise pursuant to or in connection with this Agreement is true, accurate and complete in all material respects.

f. There is no action, suit or proceeding pending or, to Merchant's knowledge, threatened that, if decided adversely, would impair Merchant's ability to carry on its business substantially as now conducted or that would materially adversely affect Merchant's financial condition or operations, or its ability to perform its obligations under this Agreement or pay its debts.

g. Merchant has never been placed on the MasterCard MATCH system or the Combined Terminated Merchant File.

h. All Transactions are bona fide transactions and no Transaction will involve the use of any payment card for any purpose other than the purchase of goods or services from Merchant or involve the cardholder obtaining cash from Merchant unless allowed by the Association Regulations and agreed to in writing by ProPay.

10. ADDITIONAL COVENANTS OF MERCHANT.

a. Merchant shall immediately notify ProPay if there are any changes to its business, ownership or the nature of its operations that make any information contained in the Application, the representations and warranties, or otherwise provided to Bank or ProPay inaccurate, incomplete, incorrect or misleading. Merchant shall submit Transactions to ProPay and Bank solely for goods and services that are customary for

libraries to provide.

b. Merchant shall notify Bank and ProPay if it intends to allow any third-party service provider or other agent to have access to cardholder data (as defined by the Visa Regulations), and shall ensure that each such third party complies in full with all Applicable Law in connection with its access to or use of any such cardholder data.

c. Merchant shall not present for processing or credit, directly or indirectly, any transaction not originated as a result of a Transaction directly between Merchant and a cardholder or any transaction Merchant knows or should know to be fraudulent or not authorized by the cardholder. Perpetrators of fraudulent transactions will be referred by ProPay, in its sole discretion, to the appropriate law enforcement agency. Merchant agrees that Bank or ProPay may, within its discretion, suspend the disbursement of Transaction funds for any reasonable period of time required to investigate suspicious or unusual activity. ProPay shall have no liability for any losses Merchant may attribute to any suspension of the disbursement of funds.

d. Merchant's refund policies for purchases made, or payment obligations satisfied, with a Card must be at least as favorable as Merchant's refund policy for purchases made, or payment obligations satisfied, with any other form of payment. Merchant will disclose its refund policy prior to or at the time of the purchase and in accordance with Applicable Law.

e. Merchant shall not at any time conduct its business in any manner that directly violates the High Risk Transactions/Acceptable Use Policy (the "Acceptable Use Policy") found at <http://www.propay.com/legal-agreements/high-risk-acceptable-use-policy/>, which is incorporated herein by this reference. Bank and ProPay reserve the right to revise the Acceptable Use Policy from time to time without providing notice. Merchant's presentation to ProPay of High Risk Transactions (as defined in the Acceptable Use Policy) or Transactions that otherwise violate the Acceptable Use Policy may result in any one or more of the following: (i) refusal of an authorization to process Transactions; (ii) suspension of the provision of Merchant Services; and/or (iii) immediate termination of this Agreement.

f. Merchant shall cause the Merchant Bank Account to remain open at all times during the Term of this Agreement and during the Reserve Account Holding Period.

g. Merchant shall timely reconcile all issues related to the Merchant Services, and shall submit any dispute to ProPay, in writing, no later than sixty (60) days after the date on which any item with respect to which such dispute relates is initially posted to the Merchant Operating Account or otherwise appears in any report provided by ProPay or Bank to Merchant. Merchant will be deemed to have waived any dispute with respect to which it fails to provide to ProPay timely notice, as required by this Section 10(g).

h. Merchant (and its principals if Merchant is not a governmental agency, division, or unit) shall provide to ProPay information as requested from time to time by to enable ProPay or Bank to assess the risk exposure in providing a merchant account to Merchant.

i. Merchant hereby authorizes ProPay and Bank to make such inquiries and obtain such information regarding Merchant (and its principals if Merchant is not a governmental agency, division, or unit) and its business operations as ProPay or Bank deem necessary or appropriate in connection with the business relationship created by this Agreement. Merchant also hereby authorizes ProPay and Bank to share any such information with third parties (including, without limitation, the Card Associations, other financial institutions seeking to underwrite Merchant and other entities directly or indirectly involved in providing the Merchant Services).

j. Merchant shall direct any and all concerns and/or questions it may have regarding the Merchant Services or any Card Association to ProPay, who shall be responsible for managing any disputed transaction, charge, credit or other Merchant service issue.

k. Merchant shall ensure that only authorized individuals access the Merchant Operating Account, Merchant Bank Account and the ProPay website to, among other things, effect transfers of funds to and/or from such accounts. Merchant shall be solely responsible for any loss that arises out of any unauthorized individual gaining access to the Merchant Operating Account, Merchant Bank Account or ProPay website using Merchant's ID number and PIN, and shall indemnify and hold Bank and

ProPay harmless from and against any such loss, unless such unauthorized individual gained such access as a result of a breach of security relating to the ProPay website without the participation in any way of Merchant.

11. INDEMNIFICATION; LIMITATION OF LIABILITY

a. Merchant shall indemnify and hold Bank, ProPay, each relevant Card Association and their respective owners, affiliates, officers, directors or employees (collectively, the "Indemnified Parties") harmless from and against all claims, demands, losses, damages, liability, actions, costs, judgments, arbitral awards, assessments, fines, fees and expenses (including, without limitation, reasonable attorneys' fees, expenses, arbitration costs and court costs) suffered or incurred by any Indemnified Party arising out of, related to or in connection with: (i) any breach by Merchant of any of its duties or obligations under this Agreement; (ii) any Transaction or any chargeback, return or credit associated with any Transaction; (iii) any act or omission by Merchant or any of Merchant's employees or agents in connection with any payment card (including, but not limited to, any fraudulent activity associated with any payment card); (iv) any violation by Merchant of, or any failure by Merchant to comply with, any Applicable Law, including, without limitation, any Association Regulation, the PCI DSS, CISP or SDP; (v) any liability for any loss, costs or fees incurred by Merchant that are the result of any debit by ProPay from the Merchant Operating Account or the Merchant Bank Account; and (vi) any return of any good or any price adjustment or other dispute with, or claim by, a customer (whether or not such dispute or claim is valid). If Merchant is a governmental agency, division, or unit, this indemnification obligation shall be subject to Merchant's state laws restricting tort or contract damages.

b. EXCEPT AS OTHERWISE SPECIFICALLY SET FORTH IN THIS AGREEMENT, BANK AND PROPAY DISCLAIM ALL REPRESENTATIONS AND WARRANTIES, EXPRESS OR IMPLIED, REGARDING THE MERCHANT SERVICES, INCLUDING WITHOUT LIMITATION, ANY AND ALL WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, QUALITY, SUITABILITY, NON-INFRINGEMENT AND OTHERWISE (REGARDLESS OF ANY COURSE OF DEALING, CUSTOM, OR USAGE OF TRADE), AND REGARDING ANY OTHER SERVICES PROVIDED UNDER THIS AGREEMENT OR ANY GOODS PROVIDED INCIDENTAL TO SUCH SERVICES. EACH PARTY ACKNOWLEDGES THAT IT HAS NOT ENTERED INTO THIS AGREEMENT IN RELIANCE UPON ANY WARRANTY OR REPRESENTATION EXCEPT THOSE SPECIFICALLY SET FORTH HEREIN.

c. UNDER NO CIRCUMSTANCES SHALL BANK'S OR PROPAY'S FINANCIAL RESPONSIBILITY FOR ITS FAILURE TO PERFORM ANY OBLIGATION UNDER THIS AGREEMENT EXCEED THE TOTAL FEES PAID TO PROPAY UNDER THIS AGREEMENT (NET OF CARD ASSOCIATION FEES, THIRD PARTY FEES, INTERCHANGE ASSESSMENTS, AND FINES) FOR THE SIX MONTHS PRIOR TO THE TIME THE LIABILITY ASSOCIATED WITH SUCH FAILURE (OR FAILURES) AROSE. EXCEPT AS OTHERWISE PROVIDED FOR IN THIS AGREEMENT, IN NO EVENT WILL ANY PARTY, ITS RESPECTIVE DIRECTORS, OFFICERS, EMPLOYEES, OR AFFILIATES, BE LIABLE FOR SPECIAL, INCIDENTAL, CONSEQUENTIAL, PUNITIVE DAMAGES, LOST PROFITS OR ANY LOSS, THEFT, DISAPPEARANCE, OR DAMAGE TO DATA TRANSMITTED ELECTRONICALLY IN CONNECTION WITH THIS AGREEMENT.

12. CONFIDENTIAL INFORMATION

a. ProPay's Obligations. ProPay shall not disclose information relating to Transactions other than to Bank, other relevant financial institutions, the relevant Card Association(s) and its employees, agents and other third parties that need to know such information in connection with the provision of the Merchant Services or otherwise to allow ProPay to perform its obligations under this Agreement. ProPay's obligations under this Section 12(a) shall terminate with respect to any Transaction information that becomes public other than as a result of its disclosure by ProPay.

b. Merchant's Obligations.

i. Merchant agrees that the processes used by ProPay in connection with providing the Merchant Services, all communications concerning the Merchant Services provided by ProPay pursuant to the terms of this Agreement (to the extent allowed under Merchant's state public records

laws), and all cardholder data are the confidential information of ProPay. Merchant agrees that neither it nor any of its employees, agents, representatives or independent contractors will sell or disclose any of such information to any person or entity that is not a party to this Agreement without the prior written consent of ProPay. Merchant shall treat each document provided by ProPay, any financial institution or any Card Association relating to this Agreement as confidential and proprietary, and shall protect such document with the same degree of care as Merchant would protect its own confidential and proprietary information.

ii. Except to the extent specifically permitted or required by any applicable Association Regulation or this Agreement, or except as otherwise approved in advance in writing by ProPay, Merchant shall not disclose any information relating to ProPay, any network used to process Transactions, any financial institution or any Transaction to any person or entity other than ProPay or Bank, employees, agents or independent contractors of ProPay or Bank, or those of Merchant's employees who have a specific need to know such information for a purpose relating Merchant's obligations in connection a Transaction (such as responding to a cardholder inquiry, resolving a cardholder dispute, or investigating a possible processing error), or as otherwise specifically required by law, including without limitation, Merchant's state public records laws.

13. TRADEMARK LICENSES

a. License of ProPay's Trademarks. Subject to the terms and conditions contained herein, ProPay hereby grants to Merchant the right to use, reproduce, publish, perform and display the trademarks and logos used by ProPay: (i) on Merchant's web site in connection with its offering of payment options to its customers; and (ii) in promotional and marketing materials and electronic and printed advertising, publicity, press releases, newsletters and mailings about or related to any of the services offered by ProPay.

b. License of Merchant's Trademarks. Subject to the terms and conditions contained herein, Merchant hereby grants to ProPay and its affiliates the right to use, reproduce, publish, perform and display trademarks and logos used by Merchant: (i) in connection with the development, use, reproduction, modification, adaptation, publication, display and performance of the ProPay services offered and/or accessible through Merchant's web site; and (ii) in promotional and marketing materials and electronic and printed advertising, publicity, press releases, newsletters and mailings about or related to any of the services offered by ProPay used by Merchant.

c. Use of Trademarks. Each of Merchant and ProPay shall strictly comply with all standards imposed or established by the other from time to time in connection with the use of its trademarks. In addition, neither Merchant nor ProPay shall create a combination mark consisting of one or more trademarks and/or logos of both Merchant and ProPay. All uses of the other Party's trademarks and logos shall inure to the benefit of the Party owning such trademark or logo. ProPay and Merchant each from time to time may limit, restrict, update or change those trademarks and logos subject to the licenses set forth above by providing written notice to the other Party.

d. Trademark Restrictions. Neither ProPay nor Merchant shall: (i) use any trademark or logo of the other Party except as expressly authorized in this Agreement; (ii) take any action inconsistent with such Party's ownership of its trademarks or logos or any associated registrations, or attack the validity of any such trademarks or logos; (iii) use any trademark or logo of the other Party in any manner that would indicate it is using such trademark or logo other than as a licensee of the other Party; or (iv) assist any third party do any of the foregoing.

e. Use of Card Association Trademarks. During the Term, Merchant may use the trademarks and logos of the Card Associations solely as permitted by, and solely pursuant to the terms of, the Association Regulations.

14. TERM AND TERMINATION

a. This Agreement will become effective on the Effective Date and will remain in effect until terminated by either Party by delivering 90 days' advanced written notice to the other Parties of such termination ("Term").

b. If (i) there is a default by a Party (the "Defaulting Party") of any representation or warranty it has made, or in the performance of any of its obligations, under this Agreement and such default shall continue for a period of thirty (30) days after receipt of written notice thereof (setting

forth in reasonable detail the nature of the default) from any other Party, or (ii) (A) a Party (also referred to as the "Defaulting Party") makes a general assignment for the benefit of creditors, (B) a receiver for all or substantially all of the property of the Defaulting Party is appointed and not removed within thirty (30) days after such appointment, (C) the Defaulting Party files a petition for bankruptcy or reorganization under the provisions of any applicable bankruptcy laws, or (D) the Defaulting Party declares its insolvency or becomes insolvent, then, in any such case, either of the other Parties (the "Non-Defaulting Party") shall have the right to terminate this Agreement immediately upon written notice to the Defaulting Party. In addition to the foregoing, either Non-Defaulting Party may terminate this Agreement immediately upon written notice to the Defaulting Party upon the second default (that is substantially similar to a prior default) by the Defaulting Party of any obligation under this Agreement.

c. In addition to the foregoing, either Bank or ProPay may terminate this Agreement, effective immediately, by providing written notice to Merchant under any of the following circumstances (in the event of any conflict between this Section 14(c) and Section 14(b), the terms of this Section 14(c) shall prevail):

i. If Merchant has or obtains another merchant account with a financial institution to process transactions effected through the use of payment cards issued by one or more Card Associations and: (A) Merchant fails to provide immediate notice to ProPay of such account; or (B) ProPay does not approve (in its sole discretion) such additional account.

ii. Merchant fails to comply with any Association Regulation or otherwise violates any Applicable Law or takes any action that creates harm or loss of goodwill to the Card Associations (as determined by Bank or ProPay, in their sole discretion).

iii. Bank or ProPay determines that any change to Merchant's business, ownership or the nature of its operations reported by Merchant pursuant to Section 10(a) or otherwise discovered by Bank or ProPay creates, in any way, additional risk, or is unacceptable, to Bank or ProPay.

iv. If: (i) any Card Association or Bank disapproves of Merchant, and notifies ProPay of such disapproval; (ii) any Card Association requests or requires Bank or ProPay to terminate this Agreement; (iii) Bank requests or requires ProPay to terminate this Agreement; or, (iv) any circumstances arise or events occur, following which Bank or ProPay is required, pursuant to any Association Regulation, to terminate this Agreement.

d. Upon any termination of this Agreement:

i. All of Bank's and ProPay's obligations to process Transactions (other than Transactions submitted for processing prior to the effective date of termination) immediately shall terminate, and Merchant immediately shall cease submitting any requests to ProPay and Bank to process payment card or other transactions.

ii. All amounts owed by Merchant to Bank and ProPay shall become immediately due and payable.

iii. Bank and ProPay may make reasonable adjustments to the Reserve Account Funding Amount, and may take such actions as may be necessary or desirable to cause the amount held in the Reserve Account to equal the Reserve Account Funding Amount (as so adjusted), including, without limitation, debiting any funds credited to the Merchant Operating Account or initiating a debit to the Merchant Bank Account.

iv. The obligations of Merchant under this Agreement for Transactions processed by ProPay and Bank and for fees, fines, expenses or other obligations incurred, arising from or relating to acts or omissions that occurred prior to the effective date of termination, shall survive any termination of this Agreement.

v. Following the expiration of the Reserve Account Holding Period, ProPay and Bank (if relevant) shall cause the funds remaining in the Reserve Account and/or Merchant Operating Account (if any) to be transferred to Merchant, in accordance with this Agreement and Merchant's reasonable instructions.

vi. If such termination follows or is the result of any failure of Merchant's business (including, without limitation, any bankruptcy, insolvency or other suspension of Merchant's business), Merchant agrees that it shall not sell, transfer, or disclose any materials that contain

cardholder account numbers, personal information or transaction information to third parties, all of which information Merchant either shall return to Bank or provide acceptable proof of destruction to Bank.

vii. ProPay and Merchant each shall terminate all use of the trademarks and/or logos of the other Party under any license granted pursuant to Section 13, and Merchant shall terminate its use of any Card Association trademark or logo, unless it has permission to continue such use pursuant to a separate agreement.

e. All payment obligations of the Parties that arose prior to such termination shall survive any termination of this Agreement. In addition, the terms of Sections 5, 7, 8, 11, 12, 13 and 15, and any other provision of this Agreement that, by its terms, is intended to survive any termination of this Agreement, shall so survive such termination.

15. MISCELLANEOUS PROVISIONS

a. Notices. Any notices or other communications required or permitted by this Agreement shall be in writing and shall be delivered either by personal delivery, by a nationally recognized overnight courier service, by facsimile, electronic mail or other electronic means, by first class mail or by certified or registered mail, return receipt requested, addressed as set forth above or to such other address as any Party shall have designated to the others by written notice given in the manner set forth above. Notices and approvals required under this Agreement shall be deemed given: one day after sent, if sent by overnight courier; when delivered and receipted for, if hand delivered; when received, if sent by facsimile, electronic mail or other electronic means or by first class mail; or when receipted for (or upon the date of attempted delivery where delivery is refused or unclaimed), if sent by certified or registered mail, return receipt requested.

b. Assignment and Transfer. This Agreement may be assigned by Bank or by ProPay (with the consent of Bank), but shall not be assigned by Merchant, directly or by operation of law, without the prior written consent of ProPay. Any attempted assignment in contravention of this Section 15(b) shall be null and void.

c. Waiver. Except as set forth in Section 10(g), no Party hereto shall be deemed to have waived any of its rights, powers or remedies hereunder unless such waiver is made in writing, signed by such Party. Upon any such waiver of a past default, such default shall cease to exist. No such waiver shall extend to any subsequent or other default or impair any right relating thereto except to the extent expressly so waived. No waiver of any provision of this Agreement shall be deemed nor shall constitute a waiver of any other provision of this Agreement, whether or not similar, and no waiver shall constitute a continuing waiver. No course of dealing among the Parties, and no delay or forbearance in exercising any right hereunder, shall imply or otherwise operate as a waiver of any right of a Party.

d. Relationship of Parties. The Parties intend that this Agreement shall be considered a contractual relationship. ProPay and the Merchant and do not intend that this Agreement shall result in the creation of a joint venture, general partnership or any similar form of organization or agency relationship.

e. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. This Agreement shall become effective as of the Effective Date, upon the execution by each of the Parties of at least one counterpart hereof, and it shall not be necessary that any single counterpart bear the signatures of all Parties. Execution and delivery of this Agreement by exchange of facsimile or electronic copies bearing the facsimile or electronic signature of a Party shall constitute a valid and binding execution and delivery of this Agreement by such Party. Such facsimile or electronic copies shall constitute enforceable original documents.

f. Further Assurances. The Parties agree that, upon request, they each shall do such further acts and deeds, and shall provide, execute, acknowledge, deliver and/or record such books and records and such other documents and instruments as may be reasonably requested by any other Party or necessary or appropriate from time to time to effectuate, evidence, confirm or carry out the intent and purposes of this Agreement or to confirm compliance by a Party to the terms and conditions of this Agreement.

g. Severability. If any one or more of the provisions contained in this Agreement shall in any jurisdiction be held or determined by a court

having jurisdiction to be invalid, illegal or unenforceable for any reason, such provision shall be deemed modified so as to be enforceable to the maximum extent permitted by law consistent with the intent of the Parties as herein expressed, and such invalidity shall not affect the remaining provisions of this Agreement, which shall continue in full force and effect.

h. No Remedies Exclusive. No right or remedy granted pursuant to the terms of this Agreement shall be deemed to be exclusive of any other right or remedy granted herein or any other right or remedy now or hereafter available at law or equity. All rights and remedies granted pursuant to the terms of this Agreement, and all rights and remedies now or hereafter available at law or equity, shall be deemed to be cumulative and not alternative, and may be exercised concurrently, independently or successively.

i. Governing Law; Jurisdiction. THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH, AND THE OBLIGATIONS, RIGHTS AND REMEDIES OF THE PARTIES UNDER THIS AGREEMENT SHALL BE DETERMINED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF UTAH, EXCLUSIVE OF ITS RULES REGARDING CONFLICTS OF LAWS. The Parties further agree that all performances due and transactions undertaken pursuant to this Agreement shall be deemed to be due or have occurred in the City of Lehi, Utah County, State of Utah, and that the entry into and performance hereof by Merchant shall be conclusively deemed to be the transaction of business within the State of Utah. In the event any controversy or claim between or among the Parties, their agents, employees, representatives, or affiliates shall arise in any judicial or legal proceeding, each Party hereby waives its right to trial by jury of such controversy or claim. In addition, any Party may elect to have all decisions of fact and law determined by a referee appointed by the court in accordance with applicable state reference procedures. Judgment upon any award rendered shall be entered in the court in which any such reference proceeding was commenced.

j. No Third Party Beneficiaries. This Agreement is for the exclusive benefit of the Parties, and no other person or entity, including any affiliate or creditor of any Party, shall have any right or claim against any Party by reason of this Agreement or shall be entitled to enforce any provision of this Agreement against any Party.

k. Entire Agreement. This Agreement and the attachments hereto or referenced herein constitute the entire agreement among the Parties, and supersede all prior oral and written negotiations among the Parties, with respect to the subject matter hereof. Each Party acknowledges that it has not entered into this Agreement in reliance upon any representation or warranty other than those specifically set forth herein.

l. Headings. The headings listed after each section number in this Agreement are inserted for convenience only, do not constitute a part of this Agreement and are not to be considered in connection with the interpretation or enforcement of this Agreement.

m. Force Majeure. No Party shall be liable for failing to perform, or for any delay in performing, its obligations under this Agreement when such failure or delay is due to force majeure, provided the Party claiming the existence of force majeure gives notice to the other Parties within fourteen (14) days of the commencement or continuance of the circumstances that constitute such force majeure. The term "force majeure" shall include any cause or contingency beyond the control of the Party concerned. No Party shall be relieved from performing any pending obligations under the Agreement when the existence of force majeure has been eliminated or terminated.

n. Review of Books and Records. ProPay and Bank shall have the right, at its cost and expense and by providing not less than thirty (30) days' prior written notice to Merchant, to review those books and records of Merchant that pertain to the performance by Merchant of its obligations under this Agreement, for the purpose of confirming or assessing compliance with the terms and conditions of this Agreement. Any such review shall be conducted during normal business hours at a place reasonably designated by Merchant.

o. Amendment. This Agreement (including, without limitation, the Fee Schedule), and any attachment hereto or document referenced herein, may be amended, modified or revised by ProPay (with the approval of Bank) or Bank at any time, by providing not less than thirty (30) days' prior written notice to Merchant. If Merchant does not agree to the terms of any such amendment, modification or revision, Merchant may terminate this Agreement by providing written notice to ProPay prior to the effective date of such amendment, modification or revision, as set forth in the relevant notice. Failure by Merchant to so terminate this Agreement shall be deemed to be acceptance of and agreement to any such amendment, modification or revision by Merchant. Notwithstanding the foregoing, any fee or rate increase imposed on ProPay by one or more of the Associations, a sponsor bank, a payment processor, or a service provider may be passed on to Merchant and shall be effective upon the date of the receipt of notice of such increase by Merchant without giving rise to the right to terminate.

p. Costs and Expenses. The prevailing party shall reimburse, upon demand, the defaulting party for all costs and expenses, including attorneys' fees, expended or incurred by the prevailing party in any arbitration, mediation, judicial reference, legal action, or otherwise in connection with: (i) the negotiation, preparation, amendment, interpretation or enforcement of this Agreement; (ii) collecting any sum owed to the prevailing party hereunder; (iii) any proceeding for declaratory relief, any counterclaim to any proceeding, or any appeal; or (iv) the protection, preservation or enforcement by the prevailing party of any right hereunder.

APPENDIX A-1

MERCHANT SERVICES WITH PROTECTPAY

1. Cardholder Identification. When a Merchant utilizes the ProtectPay API it is recommended that the Merchant identify the Cardholder accepting payment for goods or services. Also, as part of the Cardholder identification process, when the Merchant uses the ProtectPay PMI or SPI, ProPay will provide a means to collect and utilize the expiration date, and Zip Code or Postal Code from the Cardholder's billing address. It is also highly recommended that Merchant obtain the CVV2, CVC2 or CID information, as applicable, from each Card. However, Merchants must never store this value permanently. "Cardholder" means a person possessing a Card and purporting to be the person in whose name the Card is issued.

2. AUTHORIZATION

2.1 Authorization Required for Transactions. In the event that the expiration date is not stored in ProtectPay, the Merchant must obtain the Card expiration date and forward it to ProPay as part of the authorization request. A Merchant shall not submit an authorization on behalf of any third party.

2.2 Effect. Authorizations are not a guarantee of acceptance or payment of a Transaction and do not waive any provision of the Merchant Services Agreement or otherwise validate a fraudulent transaction or a transaction involving the use of an expired Card. ProPay may, in its sole discretion, refuse to authorize any Transaction. Neither ProPay, nor agents acting on its behalf will be responsible if authorization for a Transaction is not given.

3. PRESENTMENT OF SALES TRANSMITTALS

3.1 Delivery and Retention of Sales Transmittals. Merchant will retain a Merchant copy of the Transaction or credit memorandum for at least 25 months following the date of completion of the Transaction (or such longer period as the Association Regulations may require). When a Merchant retains this information, Merchant must do so in accordance with the applicable Association Regulations, security and confidentiality requirements as referenced in the Merchant Services Agreement.

3.2 Electronic Transmission. Merchant will enter at the ProPay web site, or transmit via API to ProPay, the data necessary to settle a transaction no later than 72 hours from the date the Merchant initiates the Transaction. Upon request by ProPay, information regarding a sales or credit Transaction transmitted with a computer or magnetic stripe reading terminal will be transmitted by the Merchant to ProPay or its agent in the form ProPay from time to time specifies, or as required under Association Regulations. If ProPay requests a copy of a Sales Transmittal, Merchant's record of return or refund to be credited to cardholder's account ("Credit Voucher") or other Transaction evidence, the Merchant will provide it within three (3) business days following the receipt of the request. Merchant acknowledges that ProPay shall have Chargeback rights with respect to any Transaction or Credit Voucher for which the Merchant fails to provide such documents within such time period.

4. Provisional Credit. Under no circumstance will ProPay be responsible for processing credits or adjustments related to Transactions not originally processed by ProPay. All Transactions and deposits are subject to audit and final verification by ProPay, and may be adjusted for inaccuracies. Merchant acknowledges that all credits provided to Merchant are provisional and subject to Chargebacks and adjustments in accordance with the Association Regulations, whether or not a transaction is charged back by the Card issuer.

5. Reprocessing. Notwithstanding any authorization or request from a customer, Merchant will not reenter or reprocess any Transaction that has been charged back by a customer to the Merchant.

6. Double Billing. Any double billing by a Merchant (attempting authorization on a Card twice for the same Transaction) shall be a breach of this Agreement and may be cause for immediate termination of this agreement.

APPENDIX A-2

MERCHANT SERVICES WITHOUT PROTECTPAY

1. Cardholder Identification. Merchant will identify the cardholder when accepting payment for products sold or services rendered. As part of the cardholder identification process, Merchant will obtain the expiration date, and ZIP Code or Postal Code from the cardholder's billing address. It is also highly recommended that Merchant obtain the CVV2, CVC2 or CID information, as applicable, from each Card. However, the Merchant shall not store this element permanently. Merchant will not honor any Card if: (a) the Card has expired; or, (b) the account number embossed on the Card is listed on a current Electronic Warning Bulletin file.

2. AUTHORIZATION

2.1 Authorization Required for all Transactions. Merchant will obtain authorization via ProPay's web site, touch-tone phone system, Application Program Interface ("API") or other method acceptable to ProPay prior to completing any Transaction. Merchant will follow any instructions received during the authorization process. Upon receipt of authorization, Merchant may consummate only the Transaction authorized and must note on the Merchant's record of cardholder purchase the authorization number. Where authorization is obtained, Merchant will be deemed to warrant the true identity of the customer as the cardholder. Transactions will be deemed invalid on Cards that are expired, whether or not an authorization has been obtained. Merchant must obtain the Card expiration date and forward it as part of the authorization request. Merchant shall not submit an authorization on behalf of any third party.

2.2 Effect. Authorizations are not a guarantee of acceptance or payment of a Transaction and do not waive any provision of the Merchant Services Agreement or otherwise validate a fraudulent transaction or a transaction involving the use of an expired Card. ProPay may, in its sole discretion, refuse to authorize any Transaction. Neither ProPay, nor agents acting on its behalf will be responsible if authorization for a Transaction is not given.

3. PRESENTMENT OF SALES TRANSMITTALS

3.1 Forms. Merchant will transmit to ProPay necessary information to document each Transaction. Each Transaction will contain: (a) Merchant name and account identifier; (b) the Card expiration date; and, (c) the total amount of the sale (including any applicable taxes) or credit transaction. ProPay may also require additional information, such as: (a) ZIP Code of customer's billing address; (b) CVV2 code or the equivalent; (c) a brief description of the goods or services involved; (d) the transaction authorization number; and, (e) if applicable, adjacent to the signature line, a notation that all sales are final.

3.2 Delivery and Retention of Transactions. Merchant will retain the merchant copy of the Transaction or credit memorandum for at least 25 months following the date the Merchant initiates the Transaction. When Merchant retains this information, Merchant must do so in accordance with the applicable Association Regulations, security and confidentiality requirements as referenced in the Merchant Services Agreement.

3.3 Electronic Transmission. Merchant will enter at the ProPay web site, or transmit via API to ProPay, the data related to a Transaction no later than 72 hours from the date the Merchant initiates the Transaction. Information regarding a sales or credit Transaction transmitted with a computer or magnetic stripe reading terminal will be transmitted by Merchant to ProPay or its agent in the form ProPay from time to time specifies, or as required under Association Regulations. If ProPay requests a copy of a Transaction, Merchant's record of return or refund to be credited to cardholder's account ("Credit Voucher") or other Transaction evidence, Merchant will provide it within three (3) business days following the request. Merchant acknowledges that ProPay shall have Chargeback rights with respect to any Transaction or Credit Voucher for which Merchant fails to provide such documents within such time period.

4. Provisional Credit. Under no circumstance will ProPay be responsible for processing credits or adjustments related to Transactions not originally processed by ProPay. All Transactions and deposits are subject to audit and final verification by ProPay, and may be adjusted for inaccuracies. Merchant acknowledges that all credits provided to Merchant are provisional and subject to Chargebacks and adjustments in accordance with the Association Regulations, whether or not a transaction is charged back by the Card issuer.

5. Reprocessing. Notwithstanding any authorization or request from a customer, Merchant will not reenter or reprocess any Transaction that has been charged back by a customer to the Merchant.

6. Double Billing. Any double billing by a Merchant (attempting authorization on a Card twice for the same Transaction) shall be a breach of this Agreement and may be cause for immediate termination of this agreement.

APPENDIX B

ACH ADDENDUM

1. **DEFINITIONS.** All capitalized terms not expressly defined in this ACH Addendum have the meaning ascribed to them in the Agreement or the NACHA Regulations, as applicable.

1.1. "ACH" means Automated Clearing House.

1.2. "ACH Fee Schedule" means the ACH Fee Schedule below.

1.3. "ACH Services" means the ACH services provided by ProPay to the Merchant under this ACH Addendum, including without limitation, originating Entries on behalf of the Merchant.

1.4. "ACH Payment" means an ACH payment from or to a Customer for a Transaction, which payment is deposited into or deducted from Merchant's ProPay Account.

1.5. "Applicable Law" shall include all NACHA Regulations and all applicable federal, state and local laws, rules, regulations and guidelines, and relevant judicial, regulatory and administrative interpretations and determinations.

1.6. "Customer" means any customer of the Merchant who pays the Merchant by means of an ACH Payment under this Addendum.

1.7. "Entry" or "Entries" means, as defined in the NACHA Regulations, credit or debit record(s) entered into the ACH network for the purpose of carrying out a funds transfer.

1.8. "NACHA" means the National Automated Clearing House Association.

1.9. "NACHA Regulations" means the NACHA Operating Rules & Guidelines, and any rules, regulations, requirements, interpretations, and guidelines of NACHA, as the same may be modified, amended, or replaced from time to time.

1.10. "Originator" has the meaning ascribed thereto in the NACHA Regulations, and under this Agreement, refers to the Merchant.

1.11. "Receiver" has the meaning ascribed thereto in the NACHA Regulations, and under this Agreement, refers to any Customer of Merchant who pays or receives payment from the Merchant through an ACH Payment.

1.12. "Transaction" means a bona fide sales transaction made by Merchant in the ordinary course of business relating to library services.

2. **ACH SERVICES.** ProPay will use commercially reasonable efforts to submit Entries into the ACH network on behalf of the Merchant in accordance with the Merchant's instructions, the NACHA Regulations, Applicable Law, and this ACH Addendum.

3. **AUTHORIZATION OF MERCHANT: ACCEPTING ACH PAYMENTS.** In accordance with the terms of this ACH Addendum and the NACHA Regulations, the Merchant authorizes ProPay to originate Entries on its behalf to provide to the Merchant the ability to accept and/or make ACH Payments. The Merchant will only accept and make ACH Payments for bona fide Transactions with its Customers made in the ordinary course of business.

4. **INCORPORATION OF NACHA REGULATIONS.** The NACHA Regulations are hereby incorporated into this ACH Addendum in full, and shall be binding upon the Parties as if set forth in full herein. Copies of the NACHA Operating Rules and Guidelines are available for review online at www.achrulesonline.org. In the event of any conflict between the terms of this ACH Addendum and the terms of the NACHA Regulations, the terms of this ACH Addendum shall prevail.

5. OBLIGATIONS OF MERCHANT.

5.1. **Obey NACHA Regulations.** The Merchant shall comply in full (and shall cause each third party or other agent used by Merchant in connection in any way with any Transaction to comply in full) with all NACHA Regulations and Applicable Law in connection with the commencement and completion of, and all other actions associated with, each Transaction, and in connection with the sale or provision of the

goods, services or anything else of value upon which the Transaction is based or otherwise in the performance of its obligations hereunder. The Merchant: (i) represents and warrants that it has reviewed in full the contents of the NACHA Regulations applicable to it; (ii) agrees to be bound by the NACHA Regulations, and (iii) covenants that it will, from time to time, review the contents of the NACHA Regulations to ensure it remains aware of, and is capable of performing, its duties and obligations under this ACH Addendum. The Merchant covenants that it will not, nor will it instruct ProPay on its behalf to, originate Entries that violate the laws of the United States.

5.2. **Authorizations for ACH Payments.** The Merchant shall, in accordance with the NACHA Regulations, obtain and maintain an authorization (in the manner required by the NACHA Regulations) from each Customer for each ACH Payment requested.

5.3. **Disputes and Returns.** All disputes between Merchant and any Customer relating to any Transaction shall be resolved between the Merchant and the Customer. ProPay bears no financial responsibility for any disputed Transaction. Merchant must maintain the unauthorized return rate, as described in the NACHA Regulations, below 0.5% of originating debits.

6. **OBLIGATIONS OF PROPAY.** ProPay acts as a Third Party Sender on behalf of an Originating Depository Financial Institution to provide ACH Services.

6.1. **Originate Entries.** ProPay will use reasonable efforts to originate Entries on behalf of Merchant in accordance with this ACH Addendum.

6.2. **Deposit Funds.** ProPay shall deposit or deduct funds from an ACH Payment into or out of the Merchant's ProPay Account, according to the terms of the Agreement, subject to adjustment and offset for errors, reversals, fees, or other charges payable by the Merchant.

7. **ACH FEE SCHEDULE.** Merchant agrees to pay the fees for the ACH Services as set forth in below ("**ACH Fees**"). ACH Fees are payable according to the terms of the Agreement.

Fee Type	Amount
ACH Payment Fee (per transaction)	\$0.50
Notification of Change Fee (per item)	\$5.00
Return Item Fee (insufficient funds, etc.) (per Item)	\$20.00
ACH Stop Payment/Customer Cancellation Fee (per Item)	\$20.00
Research Fee (per Item)	\$10.00

8. **INTERPRETATION.** The same rights, restrictions, and responsibilities relating to the Merchant Services under the Agreement shall exist and apply (to the fullest extent reasonable) to the ACH Services under this ACH Addendum. The Parties intend that the terms of the Agreement placing restrictions on Transactions and giving rights and responsibilities to each Party, as they relate to payment card transactions (including without limitation, processing limits, payment in connection with settled transactions, Reserve Account (including rights to offset), debits from the Merchant Checking Account, representations and warranties, additional covenants of Merchant, indemnification, limitation of liability, confidential information, trademarks, Term and termination, and the Miscellaneous or other "boiler plate"-type of provisions) shall apply to the Transactions contemplated by this ACH Addendum to the fullest extent possible. By way of clarification, where possible, references to "Transactions" under the Agreement shall be interpreted to include Transactions under this ACH Addendum, references to "Bank and ProPay" or "Bank" under the Agreement shall mean ProPay under this ACH Addendum, references to "Card Associations" under the Agreement shall be interpreted to include NACHA under this ACH Addendum for Transactions involving ACH Payments.

APPENDIX C

API LICENSE AGREEMENT

THIS API LICENSE AGREEMENT (hereinafter referred to as this "License") attached as Appendix C is hereby made as part of and incorporated into the foregoing Agreement by and between Merchant and ProPay. ProPay and Merchant may sometimes hereinafter be referred to collectively as the "Parties" or individually as a "Party." This license is effective as of the date Merchant first accesses, downloads, or uses the Application Programming Interface ("API").

INSTALLING, COPYING, OR OTHERWISE USING THE API CONSTITUTES MERCHANT'S AGREEMENT TO BE BOUND BY ALL OF THE TERMS OF THIS LICENSE. IF MERCHANT DOES NOT AGREE TO ALL OF THE TERMS, MERCHANT IS NOT AUTHORIZED TO USE, DOWNLOAD, OR INSTALL THE API.

1. Purpose. ProPay owns and operates a proprietary payment network and provides payment services and solutions for businesses. ProPay has developed the API, which is for use by Merchant to build software applications that interface with or otherwise communicate with ProPay's payment network. ProPay hereby provides this license to Merchant to enable Merchant's interaction with ProPay's payment network via ProPay's API. All elements of ProPay's API and Merchant's specific Authorization Information shall constitute the ("Licensed Materials").

2. License Grant. Subject to the terms and conditions of this License, ProPay grants to Merchant a nontransferable, nonexclusive, non-sublicense-able, limited license to use the Licensed Materials solely in accordance with this License. Merchant may do the following under this License:

- 2.1 Take action against payment cards consisting of authorizing, capturing, voiding, and refunding transactions;
- 2.2 Sign up users for payment and/or merchant accounts;
- 2.3 Transfer money, including commission payments, between ProPay accounts;
- 2.4 Initiate SpendBack transactions;
- 2.5 Initiate SplitPay transactions; and
- 2.6 Make informational requests regarding ProPay accounts, subject to system or API limitations.

Any combination of subsections 2.1 – 2.6 above shall be deemed a "Permitted Use." A Permitted Use is subject to all restrictions identified herein. Subsections 2.2 – 2.6 require additional terms and conditions or agreements. ProPay shall provide to Merchant confidential data which is specific to Merchant that shall permit Merchant to access and use the API ("Authorization Information"). The Authorization Information is the property of ProPay and may be immediately revoked or terminated by ProPay if Merchant shares the same with any third party (other than Third Party Service Providers from Merchant), if compromised by a third party, or if Merchant uses or accesses the API in any way not expressly permitted or granted under this License.

3. Restrictions. ProPay reserves all rights in the Licensed Materials not expressly granted herein. Except as expressly provided herein: (i) Merchant shall not copy, nor allow others to copy, any of the Licensed Materials; (ii) Merchant shall not sell, assign, pledge, lease, deliver, sublicense or otherwise transfer the Licensed Materials or any part thereof to any third party; (iii) Merchant shall not disclose to any third party or permit any third party to have access to or use the Licensed Materials or any part thereof; (iv) Merchant shall not modify, alter or change the Licensed Materials or any part thereof, or develop any diagram, drawing or other documentation based on the Licensed Materials or the information contained therein; (v) Merchant shall not use the Licensed Materials to develop, manufacture, modify or reproduce any other product or service that it has reason to know, or is notified by ProPay, that competes with any ProPay product or service manufactured and/or distributed by or for ProPay; (vi) Merchant may not reverse engineer the Licensed Materials; and (vii) Merchant shall not permit or enable third parties to copy or obtain ProPay data from Merchant's website in any unauthorized manner including, but not limited to, the use of using robots, spiders, scraping, or any other technology. Notwithstanding the foregoing, Merchant may disclose the Licensed Materials to any third party service provider for the sole purpose of

accomplishing a Permitted Use of this License. Said third party must agree in writing to be bound by all the terms and conditions of this License. A "Third Party Service Provider" is any third party service provider who is reasonably needed to undertake a Permitted Use of this License and who is subject to all restrictions herein.

4. Ownership of Licensed Materials. Merchant acknowledges and agrees that all right, title and interest in and to the Licensed Materials and all patents, copyrights, trademarks, trade names, trade secrets and other proprietary rights related to or residing in the Licensed Materials, and all copies of all or any part thereof in any form whatsoever, shall remain with ProPay. Merchant understands and agrees that the Licensed Materials contain trade secrets of ProPay that must be kept confidential, subject to Merchant's state public records laws. Merchant shall promptly notify ProPay of any actual or threatened misappropriation or infringement of ProPay's proprietary rights which may come to Merchant's attention.

5. Proprietary Notices. Merchant shall not remove from the Licensed Materials, or alter, any of ProPay's trademarks, trade names, logos, patent or copyright notices, or other notices or markings, or add any other notices or markings to the Licensed Materials, without the prior express written consent of ProPay. Merchant shall duplicate all such proprietary rights notices on each copy of the Licensed Materials permitted to be made hereunder.

6. Scope Limited. This License is not intended to create nor constitute an alteration of the purpose and effect of any other agreement entered into by and between the Parties. The scope and effect of this License shall be limited to the purpose set forth above.

7. Term and Termination. The term of this License shall run concurrent with the Term of the Agreement to which this License is attached. This License shall be subject to the same obligations and requirements for termination as the Agreement to which this License is attached.

8. Disclaimer of ProPay Warranties. ACCESS TO THE PAYMENT NETWORK AND MERCHANT'S USE OF THE API IS PROVIDED ON AN "AS IS" BASIS WITHOUT WARRANTY OF ANY KIND. EXCEPT AS EXPRESSLY STATED HEREIN, PROPAY DISCLAIMS ALL WARRANTIES AND CONDITIONS, EXPRESS, IMPLIED, OR STATUTORY, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF TITLE, NON-INFRINGEMENT, MERCHANTABILITY, AND FITNESS FOR A PARTICULAR PURPOSE. PROPAY DOES NOT REPRESENT OR WARRANT THAT PROPAY'S WEBSITE OR THE API SHALL OPERATE SECURELY OR WITHOUT INTERRUPTION. Merchant acknowledges that it has not entered into this License in reliance upon any warranty or representation.

9. Limitation of Liability. PROPAY SHALL NOT BE LIABLE FOR ANY DIRECT, INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES OR LOST PROFITS (HOWEVER ARISING, INCLUDING NEGLIGENCE, BREACH OF CONTRACT, BREACH OF WARRANTY, OR ANY OTHER FORM OF ACTION) ARISING OUT OF OR IN CONNECTION WITH THIS LICENSE, EVEN IF PROPAY IS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

10. Indemnification. Merchant shall indemnify ProPay against any and all claims, losses, liabilities, costs, and expenses, including reasonable attorneys' fees, which ProPay may incur as a result of any third party actions arising from or relating to: (1) Merchant's or Third Party Service Provider's use of the ProPay's payment network, services, or API in excess of the rights granted herein or (2) information or data acquired through the ProPay's payment network, services, or API provided by Merchant or others on Merchant's behalf. If Merchant is a governmental agency, division, or unit, this indemnification obligation shall be subject to Merchant's states laws restricting tort or contract damages.

11. Breach. Notwithstanding any other provision in this License, Merchant understands that if it fails to comply with the provisions of this License, ProPay will suffer irreparable harm, which may not be adequately compensated for by monetary damages alone. Merchant, therefore, agrees that in the event of its breach or threatened breach of this License, ProPay shall be entitled to monetary damages as well as

injunctive and/or other preliminary or equitable relief, in addition to any other remedies as available by law.

12.1. PCI & CISP Security and Confidentiality Requirements. In addition to the security and confidentiality requirements of this Agreement, Merchant shall, at all times, with respect to account and cardholder data and information, comply with the cardholder information security and confidentiality requirements of Payment Card Industry Data Security Standards or Cardholder Information Security Program (hereinafter referred to as "PCIDSS" and "CISP" respectively) as applicable, as mandated by the Associations and sponsor banks with whom ProPay is affiliated through its regular course of business. Merchant shall provide to ProPay proof of such compliance (to the reasonable satisfaction of ProPay) as and when requested by ProPay from time to time. ProPay may assess, and Merchant agrees to pay, non-compliance fees for failure to provide such proof or for failure to comply with the PCIDSS or CISP.

12.2. Compromise Notification. In the event of breach or intrusion of, compromise or otherwise unauthorized access to cardholder account information which is stored and in the possession of Merchant, Merchant shall immediately notify ProPay, and provide ProPay with information relating and pertaining to the type, nature and extent of cardholder account information which has been compromised. Further, Merchant shall cooperate with ProPay and Bank regarding reasonable requests for information and details regarding the compromise of cardholder account information. Merchant shall make all reasonable, good faith efforts to remedy and address the cause of said breach, intrusion, compromise or otherwise unauthorized access to cardholder account information.

12.3. Continuity Procedures. Merchant shall maintain industry "best practices" regarding continuity procedures and systems to ensure security of cardholder account information in the event of a disruption, disaster, or failure of Merchant's data storage system and/or facility.

ADDENDUM TO THE PROPAY MERCHANT SERVICES APPLICATIONS LIBRARIES AND MERCHANT SERVICES GENERAL TERMS AND CONDITIONS

This Addendum ("Addendum") amends the Merchant Services Application for Libraries and Merchant Services General Terms and Conditions, all documents referenced, attached or incorporated by reference or made a part of this agreement ("Agreement") between ProPay, Inc. (herein "Vendor") and City of Kingsport, Tennessee for its Kingsport Public Library (herein "City"). Notwithstanding any statement or provision in the Agreement, the language in this Addendum takes precedence over all other terms, conditions or language to the contrary, and the Agreement and this Addendum shall not be construed to create any ambiguity, it being the intent of the parties that this Addendum shall control. Accordingly, the Agreement is amended as follows:

1. Indemnity, Limitation of Liability and Disclaimer of Warranty. Article II, Section 29 of the Tennessee Constitution prohibits cities from lending their credit to private entities and, therefore, prohibits an agreement by the City to indemnify a third party or agree to a limitation of liability provision. Any indemnity or hold harmless provision contained in the Agreement requiring the City to indemnify or hold harmless Vendor or any other person or entity is enforceable only to the extent permitted by Tennessee law, provided the City's monetary limits of liability under any such provision is limited to the monetary limits of liability as provided for in the Tennessee Governmental Tort Liability Act, T.C.A. section 29-20-101 *et seq.* Any limitation of liability provision contained in the Agreement is enforceable only to the extent permitted by Tennessee law. No provision of the Agreement shall act or be deemed a waiver by the City of any immunity, its rights or privileges as a sovereign entity, or of any provision of the Tennessee Governmental Tort Liability Act, T.C.A. section 29-20-101 *et seq.* Because Tennessee law may not allow City to agree to the disclaimer of warranties such exclusion may not be applicable to the City, and such disclaimer of warranties shall be enforceable only to the extent permitted by Tennessee law. The City reserves all rights afforded to local governments under law for all general and implied warranties. City does not waive any rights it may have to all remedies provided by law and, therefore, any attempt by Vendor to limit its liability shall be void and unenforceable.

2. Non-appropriation. Vendor acknowledges that the City is a governmental entity, and the validity of the Agreement is based upon the availability of public funding under its authority. In the event the City fails to appropriate funds or make monies available for any fiscal year covered by the term of the Agreement for the services or products to be provided, the Agreement shall be terminated on the last day of the fiscal year for which funds were appropriated or monies made available for such purposes without liability to the City, and such termination shall not be a breach of the Agreement, and any unused payment will be returned to the City.

3. Damages. The Agreement does not create an obligation by the City to pay any damages in excess of those amounts legally available to satisfy the City's obligations under the Agreement.

4. Confidentiality. The Agreement and any documents or material obtained by the City may be subject to disclosure, in whole or in part, pursuant to the Tennessee Open Records Act set out in T. C. A. §10-7-503 *et seq.* without regard to any provision contained in the Agreement declaring information confidential. The City must, upon proper request, release public documents and records as defined by T. C. A. §10-7-503 *et seq.*, including this Agreement and records created and maintained related to the Agreement, unless made confidential by Tennessee or Federal law. The City is not required to comply with any provision declaring an item confidential or notice provision contained in the Agreement, when releasing records pursuant to T. C. A. §10-7-503 *et seq.*

5. Governing Law. The Agreement and the rights and obligations of the parties are governed by the laws of the State of Tennessee, without regard to its conflict of laws principles.

6. No Arbitration, Jurisdiction, Waiver of Jury Trial, Venue. Notwithstanding any other provision in the Agreement to the contrary, arbitration is not permitted and if a dispute arises between the parties concerning any aspect of the Agreement, and it cannot be resolved by mutual agreement, any party may resort to resolution of the dispute by litigation in the state or federal courts for Kingsport, Sullivan County, Tennessee. The parties waive their right to a jury trial. Mandatory and exclusive venue and jurisdiction for any disputes shall be in state or federal courts for Kingsport, Sullivan County, Tennessee.

7. No Taxes. As a tax-exempt entity, the City shall not be responsible for sales or use taxes incurred for products or services. The City shall supply Vendor with its Sales and Use Tax Exemption Certificate upon request by Vendor. Vendor shall bear the burden of providing its suppliers with a copy of the City's tax exemption certificate and shall assume all liability for such taxes, if any, that should be incurred.

8. Precedence. In the event of conflict between this Addendum and the provisions of the Agreement, or any other contract, agreement or other document to which the Agreement or this Addendum may accompany or incorporate by reference, the provisions of this Addendum shall, to the extent of such conflict, or to the extent the Agreement is silent, take precedence.

9. Additions/Modifications. If seeking any addition, amendment or modification to the Agreement, including this Addendum, the parties agree in any such purchase order, acknowledgement, or other writings issued to add to, amend or modify the

Agreement, including this Addendum, to reference the specific paragraph number and provision sought to be changed. In no event shall either party be bound by any terms contained in any purchase order, acknowledgement, or other writings unless: (a) such purchase order, acknowledgement, or other writings specifically refers to the Agreement, including the Addendum, and the specific clause they are intended to add to, amend or modify; (b) clearly indicate the intention of both parties to add to, amend modify or override the referenced provision in the Agreement, including this Addendum; and (c) such purchase order, acknowledgement, or other writings are signed, with specific material clauses separately initialed, by authorized representatives of both parties.

10. No Liability of City Officials and Employees. No member, official, or employee of the City shall be personally liable to Vendor or any other person or entity, including a third party beneficiary, in the event any provision of the Agreement is unenforceable; there is any default or breach by the City; for any amount which may become due under the Agreement; or on any obligations under the terms of the Agreement.

11. Survival. This Addendum shall survive the completion of or any termination of the Agreement or other document to which it may accompany or incorporate by reference.

ProPay, Inc.

By: _____
Name: _____
Title: _____
Date: _____

City of Kingsport, Tennessee for its Kingsport Public Library

By: _____
Name: _____
Title: _____
Date: _____

Attest: _____
City Recorder

Approved as to form:

City Attorney



AGENDA ACTION FORM

Apply for and Receive a Law Enforcement Agency Traffic Services Safety Grant from the Tennessee Department of Transportation, Governors Highway Safety Office

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

Action Form No.: AF-106-2015
Work Session: May 18, 2015
First Reading: N/A

Final Adoption: May 19, 2015
Staff Work By: Capt. Jenny Castle
Presentation By: Chief David Quillin

Recommendation:

Approve the resolution.

Executive Summary:

The Governor's Highway Safety Office provides grant funding to programs designed to reduce the number of fatalities, injuries and related economic losses that result from traffic crashes on Tennessee's roadways. Local governments can apply for National Highway Safety Transportation Administration pass-through funding for projects related to various areas of highway safety.

The Kingsport Police Department is seeking funding to assist with a Multiple Traffic Violation / Crash Reduction Campaign consisting of overtime enforcement.

This request is for approximately \$30,608.00 with no match required. Funding is for a one year period.

Attachments:

1. Resolution

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

RESOLUTION NO. _____

A RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE ALL DOCUMENTS NECESSARY AND PROPER TO APPLY FOR AND RECEIVE A LAW ENFORCEMENT AGENCY TRAFFIC SERVICES SAFETY GRANT FROM THE TENNESSEE DEPARTMENT OF TRANSPORTATION THROUGH THE GOVERNOR'S HIGHWAY SAFETY OFFICE

WHEREAS, the Tennessee Department of Transportation, through the Governor's Highway Safety Office, offers a Law Enforcement Agency Traffic Services Safety Grant; and

WHEREAS, the grant provides funding to programs designed to reduce the number of fatalities, injuries, and related economic losses that result from traffic crashes on Tennessee's roadways; and

WHEREAS, the police department would like to apply for the grant for funding to assist with a Multiple Traffic Violation/Crash Reduction Campaign consisting of overtime enforcement; and

WHEREAS, the maximum amount of the grant award is \$30,608.00, the grant requires no match, and the funding is for a one year period.

Now therefore,

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

SECTION I. That the mayor, or in his absence, incapacity, or failure to act, the vice mayor, is authorized and directed to execute, in a form approved by the city attorney, and subject to the requirements of Article X, Section 10 of the Charter of the City of Kingsport, all documents necessary and proper to apply for and receive a Law Enforcement Agency Traffic Services Safety Grant from the Tennessee Department of Transportation through the Governor's Highway Safety Office in the amount of \$30,608.00 for the police department for a period of one year.

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

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

ADOPTED this the 19th day of May, 2015.

DENNIS R. PHILLIPS, MAYOR

ATTEST:

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

J. MICHAEL BILLINGSLEY, CITY ATTORNEY



AGENDA ACTION FORM

Agreement with Charter Communications to Provide Internet Services to the City of Kingsport

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

Action Form No.: AF-107-2015
Work Session: May 18, 2015
First Reading: N/A

Final Adoption: May, 19 2015
Staff Work By: Terry Wexler
Presentation By: Terry Wexler/Chris McCart

Recommendation:

Approve the resolution.

Executive Summary:

Charter Communications has submitted a quote to increase our Internet Bandwidth from 50 Mb to 100 Mb symmetrically, as well as provide fiber service to Fire Station 6, our 911 backup site. The total cost for these upgrades is \$190/month less than our current contract.

The growth of our Internet use, both wired and wireless, has increased dramatically over the past year, as we have seen a large increase in our wireless usage, up to 500 concurrent users. This has decreased useable bandwidth for each one. Adding other City Venues to the network this year will also require this upgrade.

Attachments:

1. Resolution
2. Contractual Agreements for the Build of Aforementioned Upgrades.
3. Addendum

Funding source appropriate and funds are available: 

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

RESOLUTION NO. _____

A RESOLUTION APPROVING AN AGREEMENT WITH CHARTER COMMUNICATIONS, LLC AND AUTHORIZING THE MAYOR TO EXECUTE THE AGREEMENT AND ALL OTHER DOCUMENTS NECESSARY AND PROPER TO EFFECTUATE THE PURPOSE OF THE AGREEMENT

WHEREAS, the city currently has an agreement with Century Link for internet; and

WHEREAS, due to the growth of the internet use, both wireless and wired, it is recommended to increase the bandwidth from 50 Mb to 100 Mb, as well as provide fiber service to Fire Station 6, the 911 back-up site; and

WHEREAS, Charter Communications has offered to meet these requirements with a cost savings of at least \$190.00 per month.

Now therefore,

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

SECTION I. That an agreement with Charter Communications, LLC, 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 Charter Communications, LLC, and all other documents necessary and proper, and to take such acts as necessary, to effectuate the purpose of the agreement or this resolution.

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

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

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

ADOPTED this the 19th day of May, 2015.

DENNIS R. PHILLIPS, MAYOR

ATTEST:

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

J. MICHAEL BILLINGSLEY, CITY ATTORNEY



201409053750240

BUSINESS INTERNET ACCESS, VIDEO AND MUSIC SERVICE AGREEMENT

This Service Agreement ("Agreement") is executed and effective upon the latest date of the signatures set forth in the signature block below ("Effective Date") by and between Charter Communications, LLC, ("Spectrum Business" or "Charter") with a corporate office at 12405 Powerscourt Drive, St. Louis, Missouri 63131 and City of Kingsport, ("Customer") with offices located at 200 Shelby St, Kingsport, TN 37660-4256.

Both parties desire to enter into this Agreement in order to set forth the general terms under which Charter is to provide Customer with Charter's services ("Service" or "Services") to Customer site(s), the scope and description to be specified per site below and/or in a Service order(s) executed by both parties (each instance of site identification and order a "Service Order" or collectively the "Service Orders"), which shall be incorporated in this Agreement upon execution. **This Agreement and each Service Order will be effective only after both parties have signed each document.**

SERVICE ORDER

Under the Business Internet, Video and Music Service Agreement

CUSTOMER INFORMATION:

Account Name: City of Kingsport

Invoicing Address: _____

Invoicing Special Instructions: _____

1. SITE-SPECIFIC INFORMATION:

Order Type: New Service

Service Location (Address): 200 Shelby St, Kingsport, TN 37660-4256

Service Location Name (for purposes of identification): _____

Service Location Special Instructions: _____

Non-Hospitality or Non-Video

Customer Contact Information. To facilitate communication the following information is provided as a convenience and may be updated at any time without affecting the enforceability of the terms and conditions herein:

	Billing Contact	Site Contact	Technical Contact
Name			
Phone			
Fax			
Cell			
Email Address			

MONTHLY SERVICE FEES:		
Data Services:		
<i>Spectrum Business Bundle: No Bundle *</i>		
<u>Base Service</u>	Network Miles:	\$1,600.00
	MEF Service Types (if applicable): _____	
	Speed: 100 Mbps (Down/Up)	
	CPE: _____	
<u>IP Options</u>		
	Additional Dynamic IPs: None (max of 12 for total of 15)	\$0.00

* If Customer has selected the Spectrum Business Special Offers, the Section 3(i) of the Commercial Terms of Service (for Spectrum Business Bundle) shall apply.

ONE-TIME CHARGES:
ONE-TIME CHARGES \$0.00

2. TOTAL FEES.

Total Monthly Service Fees of \$1,600.00 are due upon receipt of the monthly invoice.

- SERVICE PERIOD.** The initial Service Period of this Service Order shall begin on the date installation is completed and shall continue for a period of 60 months. Upon expiration of the initial term, this Service Order shall automatically renew for successive one-month terms and Charter may then apply Charter's then-current Monthly Service Fees unless either party terminates this Service Order by giving thirty (30) days prior written notice to the other party before the expiration of the current term.
- TROUBLE REPORTS SERVICE PERFORMANCE.** Spectrum Business Network Operations Center: 866.603.3199. Charter operates and maintains the Spectrum Business Network Operations Center ("CB NOC"), which is staffed 24 hours a day, 7 days a serviceweek, 365 days a year. To report suspected problems with your fiber-based Service(s) call the CB NOC for support @ 866.603.3199. Charter shall provide a telephone response to such calls within one (1) hour, and, if necessary, initiate a physical response within four (4) hours of receiving Customer's call reporting the problem. Once the CB NOC representative has received the necessary information, a Customer Trouble Ticket will be assigned and investigation of Trouble Ticket will begin. After the status of the Trouble Ticket has been determined, the CB NOC will contact Customer's designated contact individual at the appropriate number to discuss the findings.
- EPLAN SERVICES.** Customer acknowledges that EPLAN Services consist of multiple end points connecting your designated locations to create a shared-data network. As new service locations are added to your EPLAN Services, the Network Miles will increase. The performance parameter metric Delay is impacted by the total Network Miles. Therefore, the applicable Delay metric is based upon the then-total Network Miles of the total of EPLAN Services provided by Charter to Customer. Customer acknowledges that the applicable Delay metric will be based upon the then-current total Network Miles.

* Your current Mileage Band is shown as Total EPLAN Network Miles in the above Monthly Service Fees table.

6. **SERVICE CREDITS.** Customer shall be entitled to one (1) hour of service credit per Site per affected fiber optic-based Service (i.e. circuit) for each hour of Service Interruption if the interruption: (a) exceeds four (4) consecutive hours, (b) is not caused by Customer, or its agents, employees, licensees, or contractors, or a Force Majeure Event, (c) is not caused by Customer-provided equipment or facilities beyond the demarcation point, (d) is not caused by scheduled maintenance, and (e) a Trouble Ticket has been opened within 24 hours of the commencement of the interruption. Service Credits shall not apply to any period of time for which Charter is not granted access, if necessary, to the applicable Customer Site. A "Service Interruption" is the continuous period of time during which a respective Service is not provided substantially as ordered to one or more Customer Sites. A Service Interruption commences when Charter becomes aware of such Service Interruption of a Service and ends when the Service is operational and the Trouble Ticket is closed.

A Service Credit is calculated as follows:

- * Service Credit = Per Hour Rate X (# of consecutive hours during Service interruption)
- * Per Hour Rate = Per Day Rate/twenty-four (24)
- * Per Day Rate = Monthly Service Charge/thirty (30) days
(30 = average days in one [1] month)

Any Service interruption that exceeds a consecutive period of twelve (12) hours shall be considered an outage for one (1) day.

Example:

If Customer is paying a \$10,000 Monthly Service Fee and a Service interruption of one (1) day (or 24 hours) occurs, the Service Credit shall be equal to \$333.33 and shall be applied on the billing cycle following the date Charter makes its credit determination:

Per Day Rate = \$10,000/30 days = \$333.33
Per Hour Rate = \$333.33/24 hours = \$13.89

Service Credit = 1 day X \$333.33 = \$333.33
OR
24 hours X \$13.89 = \$333.33

Service credits will be based on the Customer's Monthly Service Fee for those Sites and specific Services affected by the Service Interruption. Non-recurring, equipment and usage-based charges are excluded. The sum of all Service Credits shall not exceed the Customer's total Monthly Service Fees for the month in which the Service interruption occurred. The Customer must contact Spectrum Business at 866.603.3199 (or successor applicable toll-free number) to request a Service Credit for a specific Service Interruption. Spectrum Business will exercise commercially reasonable efforts to respond to such Service Credit requests within fifteen (15) business days of receipt thereof. The approved Service Credit will be applied on the billing cycle following the date Charter makes its credit determination. Service Credits shall be Customer's sole and exclusive remedy for Charter's failure to provide Services as ordered.

7. **NO UNTRUE STATEMENTS.** Customer further represents and warrants to Charter that neither this Service Order, nor any other information, including without limitation, any schedules or drawings furnished to Charter contains any untrue or incorrect statement of material fact or omits or fails to state a material fact.
8. **CONFIDENTIALITY.** Customer hereby agrees to keep confidential and not to disclose directly or indirectly to any third party, the terms of this Service Order or any other related Service Orders, except as may be required by law. If any unauthorized disclosure is made by Customer and/or its agent or representative, Charter shall be entitled to, among other damages arising from such unauthorized disclosure, injunctive relief and a penalty payment in the amount of the total One-Time Charges associated with this Service Order, and Charter shall have the option of terminating this Service Order, other related Service Orders and/or the Service Agreement.

9. **FACSIMILE.** A copy sent via fax machine or scanned and e-mailed of a duly executed Agreement and Service Order signed by both authorized parties shall be considered evidence of a valid order, and Charter may rely on such copy of the Agreement and Service Order as if it were the original.
10. **ADDENDUM.** This agreement and all documents referenced, attached, incorporated by reference or made a part of this Agreement, including the Customer Certification of Intrastate Circuits, are amended by an addendum entitled "Addendum to Business, Internet Access, Video and Music Service Agreement" and this Agreement, and all documents referenced, attached, incorporated by reference or made a part of this Agreement are not effective until the addendum is fully executed by the parties.

NOW THEREFORE, Charter and Customer agree to the terms and conditions included within this Service Agreement, including the Commercial Terms of Service which follow, and hereby execute this Service Agreement by their duly authorized representatives.

Charter Communications, LLC

City of Kingsport

By: Charter Communications, Inc., its Manager

Signature: _____

Signature: _____

Printed Name: _____

Printed Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

Spectrum Business Account Executive:

Name: Steve McClellan

COMMERCIAL TERMS OF SERVICE

1. **AGREEMENT TERM.** This Agreement shall terminate upon the lawful termination of the final existing Service Order entered into under this Agreement.
2. **SERVICE.** Charter shall provide the Services during the Service Period to Customer at the site(s) identified in the Service Order(s). "Service Period" is the time period starting on the date the Services are functional in all material respects and available for use (the "Turn-up Date"), and continuing for the number of months specified in the Service Order(s).
3. **STANDARD PAYMENT TERMS.** Customer shall pay fees and charges for the Services in the amount specified on the Service Order in accordance with this Agreement. A one-time charge ("OTC") is a nonrecurring fee for construction, Service installation charge(s), repair, replacement, or any other nonrecurring costs or charges. "Equipment" means the components (e.g., any gateway or edge electronic device, node, router, switch, communications lines/cables, etc.) that make up the Network. "Network" means all of the physical elements necessary to provide the Services.
 - (a) **Charges.** Customer shall pay all associated charges associated with the Service(s), as set forth or referenced in the applicable Service Order(s) or invoiced by Charter. These charges may include, but are not limited to a monthly service fee ("MSF"), nonrecurring fees for construction, installation, repair, replacement or other one-time charges ("OTC"), usage charges such as, pay-per-view charges, and applicable federal, state, and local taxes, fees, surcharges and recoupments (however designated). MSFs shall be subject to increases attributable to programming, license, copyright, retransmission and/or other similar costs imposed upon Charter. Charter shall provide not less than thirty (30) days prior notice to Customer of any MSF change.
 - (b) **Taxes, Surcharges, and Fees.** Customer shall pay any sales, use, property, excise or other taxes, franchise fees, and governmental charges (excluding income taxes) arising under this Agreement, in addition to any surcharges that may be imposed as may be permitted under and consistent with applicable law. A copy of Customer's tax exemption document, if applicable, must be provided to Charter to certify tax-exempt status. Tax-exempt status shall not relieve Customer of its obligation to pay any applicable franchise fees. Charter reserves the right from time to time to change the surcharges for Services under this Agreement to reflect the charges or payment obligations imposed on Charter which Charter is permitted or required under applicable law to pass through to Customer (e.g., universal service fund ("USF") charges, franchise fees etc.).
 - (c) **Change Requests.** Any charges associated with Service and Equipment installations, changes, or additions requested by Customer subsequent to executing a Service Order for the applicable site are the sole financial responsibility of Customer. Charter shall notify Customer, in writing, of any additional OTCs and/or adjustments to MSFs associated with or applicable to such Customer change requests prior to making any such additions or modifications. Customer's failure to accept such additional charges within three days of receiving such notice shall be deemed a rejection by Customer, and Charter shall not be liable to perform any work giving rise to such charges. For accepted charges, Customer shall be assessed such additional OTCs and/or adjustments of the MSFs either (i) in advance of implementation of the change request or (ii) beginning on Customer's next and/or subsequent invoice(s).
 - (d) **Site Visits and Repairs.** If Customer's misuse, abuse or modification of the Services, Equipment or Network results in a visit to the Customer site for inspection, correction or repair, Charter may charge Customer a site visit fee as well as charges for any resulting Equipment or Network repair or replacement, which may be necessary.
 - (e) **Invoicing Errors.** Customer must provide written notice to Charter of any invoice errors or disputed charges within 30 days of the invoice date on which the errors and/or disputed charges appear for Customer to receive any credit that may be due. Customer must have and present a reasonable basis for disputing any amount charged.
 - (f) **Late Fees.** Undisputed amounts not paid within 30 days of the invoice date shall be past due and subject to a late fee of not more than 1.5% per month or the maximum amount permitted by law.
 - (g) **Non-payment.** If Services are suspended due to late payment, Charter may require that Customer pay all past due charges, a reconnect fee, and one or more MSFs in advance before reconnecting Services.
 - (h) **Collection Fees.** Charter may charge a reasonable service fee for all returned checks and bank card, credit card or other charge card charge-backs. Customer shall be responsible for all expenses, including reasonable attorney fees and collection costs, incurred by Charter in collecting any unpaid amounts due under this Agreement.
 - (i) **Bundled Pricing.** If Customer has selected a Spectrum Business Bundle ("CBB") specifically, the following conditions shall apply:
 - i. In consideration for Customer's purchase of all Services in the CBB and only with respect to that period of time during which Customer continues to purchase such CBB, Charter shall apply a discount to the Services ordered under the applicable Service Order(s). Such discount has been applied to the Services included in Charter's bundled pricing offer and is reflected in the MSF for such Services.

- ii. Upon discontinuation or termination by Customer of any component of a Service of the applicable CBB, the pricing for the remaining Services shall revert to Charter's a la carte pricing for such Services in effect at the time. Termination liability applicable to the Services under this Agreement shall otherwise remain unchanged.

4. SERVICE LOCATION ACCESS AND INSTALLATION.

- (a) Access. Charter will require reasonable access to each service location listed on a Service Order ("Service Location") as necessary for Charter to review, install, inspect, maintain or repair any Equipment or Materials necessary to provide the Services. If Customer owns or controls the Service Location(s), Customer grants Charter permission to enter the Service Location(s) for the exercise of such right. If a Service Location is not owned and/or controlled by Customer, Customer will obtain, with Charter's assistance, appropriate right of access. If such right of access for Charter is not obtained by either party, then Charter's obligations with respect to such Service Location shall be considered null and void.

- (b) Installation Review; Subsequent Interference. Charter may perform an installation review of each Service Location prior to installation of the Services. Upon request, Customer shall provide Charter with accurate site and/or physical network diagrams or maps of a Service Location, including electrical and other utility service maps, prior to the installation review. If Charter determines that safe installation and/or activation of one or more of the Services will have negative consequences to Charter's personnel or Network or cause technical difficulties to Charter or its customers, Charter may terminate the Service Order effective upon written notice to Customer or may require Customer to correct the situation before proceeding with installation or activation of the Services.

If during a Service Period, or any renewal thereof, (i) proper operation of Equipment or provision of a Service is no longer unhindered or possible as a result of interference or obstruction due to any cause other than Charter or (ii) such interference/obstruction or its cause may endanger, hinder, harm or injure Charter's personnel or Network and/or cause technical difficulties to Charter or its customers, Charter may terminate the affected Service Order(s) without liability upon written notice to Customer.

- (c) Site Preparation. Customer shall be responsible for necessary preparations at its location(s) for delivery and installation of Equipment and the installation and ongoing provision of Services, including the relocation of Customer's equipment, furniture and furnishings as necessary to access the Equipment or Services. Upon request, Customer shall provide any available electrical, utility service, and/or general physical network diagrams or maps prior to installation or maintenance work to be undertaken by Charter.
- (d) Installation. Charter will schedule one or more installation visits with Customer. Customer's authorized representative must be present during installation. If

during the course of installation Charter determines additional work is necessary to enable Charter to deliver the Services to the Service Location, Charter will notify Customer of any additional OTCs. If Customer does not agree to pay such OTCs by executing a revised Service Order within five business days of receiving the same, Customer and Charter shall each have the right to terminate the applicable Service Order. Customer shall connect Customer's computer or network to applicable Charter-provided Equipment to enable access to the Services. Charter shall be responsible for reasonable restoration efforts necessary to address any displacement resulting from excavation.

- (e) Ongoing Visits. Charter will need periodic access for inspection, operation and maintenance of the Network. Except in emergency situations, Charter will obtain approval from Customer (not to be unreasonably withheld or delayed) before entering Customer Premises. At Charter's request, Customer, or a representative designated by Customer, will accompany Charter's employees or agents into any unoccupied unit for any purpose relating to the Equipment.

5. EQUIPMENT AND MATERIALS.

- (a) Responsibilities and Safeguards. Except as otherwise provided in this Agreement or any Service Order(s), neither party shall be responsible for the maintenance or repair of cable, electronics, structures, Equipment or materials owned by the other party; provided, however, that subject to the indemnification limitations set forth in this Agreement, each party shall be responsible to the other for any physical damage or harm such party causes to the other party's personal or real property through the damage—causing party's negligence or willful misconduct. Customer shall:

- a) Safeguard Equipment against others;
- b) Not add other equipment nor move, modify, disturb, alter, remove, nor otherwise tamper with any portion of the Equipment;
- c) Not hire nor permit anyone other than personnel authorized by Charter acting in their official capacity to perform any work on Equipment; and
- d) Not move nor relocate Equipment to another location or use it at an address other than the Service location without the prior written consent of Charter.

Any unauthorized connection or other tampering with the Services or Equipment shall be cause for immediate suspension of Services, termination of this Agreement and/or legal action, and Charter shall be entitled to recover damages, including the value of any Services and/or Equipment obtained in violation of this Agreement in addition to reasonable collection costs including reasonable attorney fees. Should any antenna, or signal amplification system for use in connection with communication equipment hereafter be installed on the Premises which interferes with the Services, Charter shall not be obligated to distribute a signal to the Premises

better than the highest quality which can be furnished without additional cost to Charter as a result of such interference, until such time as the interference is eliminated.

- (b) Customer Security Responsibilities. Customer shall be responsible for the implementation of reasonable security measures and procedures with respect to use of and access to the Service and/or Equipment. Charter may suspend the Services upon learning of a breach of security and will attempt to contact Customer in advance, if practicable.
 - (c) Ownership. Notwithstanding any other provision contained in this Agreement to the contrary, all Equipment and materials installed or provided by Charter are and shall always remain the property of Charter, shall not become a fixture to the Premises, and must be returned to Charter at any time Services are disconnected in the condition in which they were received subject to ordinary wear and tear. Customer will not sell, lease, assign nor encumber any Equipment. Customer shall not obtain or acquire title to, interest or right (including intellectual property rights) in the Service or Equipment other than to the limited extent of use rights expressly granted under this Agreement.
 - (d) Equipment Return, Retrieval, Repair and Replacement. Immediately upon termination of this Agreement and/or Service Order(s) ("Termination"), at the discretion of Charter, Customer shall return, or allow Charter to retrieve, the Equipment supplied by Charter to Customer. Failure of Customer to return, or allow Charter to retrieve, Equipment within 10 days after Services are terminated will result in a charge to Customer's account equal to the retail cost of replacement of the unreturned Equipment. Customer shall pay for the repair or replacement of any damaged Equipment, except such repairs or replacements as may be necessary due to normal and ordinary wear and tear or material/workmanship defects, together with any costs incurred by Charter in obtaining or attempting to regain possession of such Equipment, including reasonable attorney fees.
6. **ADMINISTRATIVE WEB SITE.** Charter may, at its sole option, make one or more administrative web sites available to Customer in connection with Customer's use of the Services (each an "Administrative Web Site"). Charter may furnish Customer with one or more user identifications and/or passwords for use on the Administrative Web Site. Customer shall be responsible for the confidentiality and use of such user identifications and/or passwords and shall immediately notify Charter if there has been an unauthorized release, use or other compromise of any user identification or password. In addition, Customer agrees that its authorized users shall keep confidential and not distribute any information or other materials made available by the Administrative Web Site. Customer shall be solely responsible for all use of the Administrative Web Site, and Charter shall only be entitled to rely on all Customer uses of and submission to the Administrative Web Site as authorized by Customer.

Charter shall not be liable for any loss, cost, expense of other liability arising out of any Customer use of the Administrative Web Site, Charter may change or discontinue the Administrative Web Site, or Customer's right to use the Administrative Web Site, at any time. Additional terms and policies may apply to Customer's use of the Administrative Web Site. These terms and policies will be posted on the site.

7. **VIDEO, MUSIC AND CONTENT SERVICE.** This Video, Music and Content Service Section shall only apply if Video, Music and Content Services are included in a Service Order under this Agreement; however, continued use or reception of the Video Services is subject to the provisions of this Agreement.
- (a) Music Rights Fees. Customer is responsible for and must secure any music rights and/or pay applicable fees required by the American Society of Composers, Authors & Publishers (ASCAP), Broadcast Music, Inc. (BMI) and SESAC, Inc. (SESAC) or their respective successors, and any other entity, person or governmental authority from which a license is necessary or appropriate relating to Customer's transmission, retransmission, communication, distribution, performance or other use of the Services.
 - (b) Premium and Pay-Per-View. Customer may not: (i) exhibit any premium Services such as HBO or Showtime in any public or common area; (ii) order or request Pay-Per-View (PPV) programming for receipt, exhibition or taping in a commercial establishment; or (iii) exhibit nor assist in the exhibition of PPV programming in a commercial establishment unless explicitly authorized to do so by agreement with an authorized program provider and subject to Charter's prior written consent.
 - (c) HD Formatted Programming. If Customer has selected High Definition ("HD") formatted programming, Customer is responsible for provision, installation and maintenance of the receiving equipment and/or facilities necessary for its reception and display. Any failure of Customer to fulfill the foregoing obligation shall not relieve Customer of its obligation to pay the applicable MSFs or OTCs for the HD formatted programming.
 - (d) Provision of Service. Without notice, Charter may preempt, rearrange, delete, add, discontinue, modify or otherwise change any or all of the advertised programming comprising, packaging of, line-up applicable to, and/or distribution of its Video Services.
 - (e) Restrictions. Customer shall not and shall not authorize or permit any other person to (i) copy, record, dub, duplicate, alter, make or manufacture any recordings or other reproductions of the Services (or any part thereof); or (ii) transmit the Services by any television or radio broadcast or by any other means or use the Services outside the Service Location. Customer acknowledges that such duplication, reproduction or transmission may subject Customer to criminal penalties and/or civil liability and damages under applicable copyright and/or trademark laws. With respect to the music programming comprising a portion of the Services, Customer shall not, and shall not

authorize or permit any other person to, do any of the following unless Customer has obtained a then-current music license permitting such activity: (i) charge a cover charge or admission fee to any Service Location(s) at the time the Services are being performed or are to be performed; (ii) permit dancing, skating or other similar forms of entertainment or physical activity in conjunction with the performance of the Services; or (iii) insert any commercial announcements into the Services or interrupt any performance of the Services for the making of any commercial announcements.

8. INTERNET ACCESS SERVICE. This Internet Access Service Section shall only apply if Internet Access Services are included in a Service Order under this Agreement; however, continued use of the Internet Service shall be subject to the provisions of this Agreement.

- (a) Customer shall (i) maintain certain minimum equipment and software to receive the Service (see www.charter-business.com (or the applicable successor URL) for the current specifications); (ii) ensure that any person who has access to the Internet Services through Customer's computer(s), Service Location, facilities or account shall comply with the terms of this Agreement, (iii) be responsible for all charges incurred and all conduct, whether authorized or unauthorized, caused by use of Customer's computers, service locations, facilities or account using the Internet Services.
- (b) Internet Service Speeds. Charter shall use commercially reasonable efforts to achieve the Internet speed selected by Customer on the Service Order, however, actual Internet speeds may vary. Many factors affect speed including, without limitation, the number of workstations using a single connection.
- (c) Electronic Addresses. All e-mail addresses, e-mail account names, and IP addresses ("Electronic Addresses") provided by Charter are the property of Charter. [Customer may not alter, modify, sell, lease, assign, encumber or otherwise tamper with the Electronic Addresses]
- (d) Changes of Address. Charter may change addressing schemes, including e-mail and IP addresses.
- (e) No Liability for Risks of Internet Use. The Service, Charter's network and the Internet are not secure, and others may access or monitor traffic.
- (f) No Liability for Purchases. Customer shall be solely liable and responsible for all fees or charges for online services, products or information. Charter shall have no responsibility to resolve disputes with other vendors.
- (g) Blocking and Filtering. Customer assumes all responsibility for providing and configuring any "firewall" or security measures for use with the Service. Except to the extent set forth in the Supplemental Spectrum Business Security Service Section, Charter shall not be responsible in any manner for the effectiveness of these blocking and filtering technologies. Charter does not warrant that others

will be unable to gain access to Customer's computer(s) and/or data even if Customer utilizes blocking and filtering technologies, nor does Charter warrant that the data or files will be free from computer viruses or other harmful components. Charter has no responsibility and assumes no liability for such acts or occurrences.

(h) Acceptable Use Policy. Customer shall comply with the terms of Charter's Acceptable Use Policy ("AUP") found at www.charter-business.com (or the applicable successor URL) and that policy is incorporated by reference into this Agreement. Customer represents and warrants that Customer has read the AUP and shall be bound by its terms as they may be amended, revised, replaced, supplemented or otherwise changed from time-to-time by Charter with or without notice to Customer. Charter may suspend Service immediately for any violation of the Charter AUP.

9. SUPPLEMENTAL SERVICES. The following Subsections shall only apply in the event the referenced supplemental service has been selected by and are being delivered to Customer. The supplemental services (also "Services") may be made up of software and hardware components. Charter shall ensure the supplemental services are operational and updated from time-to-time based on manufacturer-sent updates. Except to the limited extent described in the foregoing sentence, Charter makes no warranties of any kind (express or implied) regarding the supplemental services and hereby disclaims any and all warranties pertaining thereto (including implied warranties of title, noninfringement, merchantability, and fitness for a particular purpose). Charter does not have title to and is not the manufacturer of any software or hardware components of the supplemental services nor is Charter the supplier of any components of such software or hardware. Customer shall return or destroy all software components provided to Customer upon the termination of the applicable Service Order, and in the case of the destruction thereof, shall, upon request, provide Charter with certification that such components have been destroyed. IN NO EVENT SHALL CHARTER BE LIABLE FOR ANY DAMAGES ARISING FROM THE PERFORMANCE OR NONPERFORMANCE OF ANY SUPPLEMENTAL SERVICES.

- (a) Hosting. This Hosting Service subsection shall only apply if one of Charter's Hosting Services ("Hosting") is included as part of the Service in a Service Order under this Agreement. Charter will provide to Customer Hosting Service in accordance with the specifications associated with the plan Customer has selected on the Service Order.
 - a) Hosting Software. The Hosting Service will permit access to a variety of resources available from selected third parties, including developer tools, communication forums and product information (collectively, "Hosting Software"). The Hosting Software, including any updates, enhancements, new features, and/or the addition of any new Web properties, may be subject to and Customer shall comply with applicable product use rights/end user

license agreements between such third parties and Customer. Without abrogating or limiting anything set forth in the Sections: Internet Access Service, this Section, No Third-Party Support, Customer Use or Performance, Charter (not the manufacturer) shall provide technical support for Hosting Service, but version changes of any such software compatibility and/or suitability with any other Customer provided software shall be Customer's responsibility. Customer hereby consents to the disclosure to the provider of Third Party Software, of Customer's name and any other necessary information for the limited purpose of licensing rights. Customer shall not use Hosting Service for or in connection with any high risk use or activity such as aircraft or other modes of human mass transportation, nuclear, or chemical facilities, or Class III medical devices under the Federal Food, Drug, and Cosmetic Act. **COPYING OR REPRODUCTION OF THE HOSTING SOFTWARE TO ANY OTHER SERVER OR LOCATION FOR FURTHER REPRODUCTION OR REDISTRIBUTION IS EXPRESSLY PROHIBITED, UNLESS APPROVED IN WRITING BY CHARTER.**

- b) Domain Names. Customer shall be solely responsible for registering or renewing a desired domain name. Charter does not guarantee that Customer will be able to register or renew a desired domain name.
- c) Specification Limitations. Individual websites may not at any time exceed the Hosting specifications identified on the applicable Service Order. If Customer's Hosting account exceeds the applicable specifications or is adversely impacting Charter's network or server(s), Charter may (i) contact Customer to resolve the issues; or (ii) if Customer has exceeded the then-applicable specifications in any given month, upgrade account on the next available billing cycle to the next service level tier or suspend or terminate the Hosting Service.

Notwithstanding anything to the contrary, if Customer's use of the Hosting Service is causing an adverse impact on Charter's network or servers, Charter may suspend or terminate the Hosting Service without notice.
- d) Limitation of Charter-provided Services. Certain services are not provided by Charter as part of the Hosting Service (e.g., Charter does not provide nor offer webpage creation, development, design or content services).
- e) Hosting Fees. The applicable Service Order sets forth the MSFs for the Hosting Service. Customer is responsible for payment whether or not the hosting platform is used and whether or not it functions properly, unless such failure is caused by Charter.
- f) Content Liability and Use Restrictions. Charter exercises no control over the content of the information passing through Customer's site(s) and it is

Customer's sole responsibility to ensure that Customer and Customer's users use of the Hosting Service complies at all times with all applicable laws and regulations and the AUP. Charter shall have the right to disclose any and all available information collected from Customer to law enforcement authorities upon written request by such authorities. Information that may be disclosed includes IP addresses, account history, and files stored on servers used to provide the Hosting Service. If Customer engages in any of the following prohibited activities, Charter shall have the right to suspend or terminate the Hosting Services and/or this Agreement:

1. The hosting of unlicensed software.
 2. Use of software or files that contain computer viruses or files that may harm user's computers;
 3. Any attempt or actual unauthorized access by Customer or through Customer's equipment to any Charter website or the website of any Charter customer;
 4. The collection or any attempt to collect personally identifiable information of any person or entity without his, her or its express written consent. Customer shall maintain records of any such written consent throughout the term of this Agreement and for three years thereafter;
 5. Any action or inaction which is harmful or potentially harmful to the Charter server structure;
 6. Running a banner exchange, free adult thumbnail gallery post and/or free adult image galleries on your website;] or
 7. Inclusion of sites with material, links, or resources for hacking, phreaking, viruses, or any type of site that promotes or participates in willful harm to Internet sites, users or providers.
- g) Impositions on Customer's End Users. Customer is responsible for charging and collecting from its end users any and all applicable taxes. If Customer fails to impose and/or collect any tax from its end users then, as between Charter and Customer, Customer shall be liable for such uncollected tax and any interest and penalty assessed thereon with respect to the uncollected tax. Customer shall indemnify and hold the Charter Indemnified Parties (defined below) harmless for any costs incurred or taxes or fees paid due to actions taken by the applicable taxing authority to collect any such tax from Charter due to Customer's failure to comply with this Section.
- (b) CB Security Service – Desktop and Managed. Charter's managed security service, CB Managed Security, and desktop security service, CB Desktop Security (collectively, "CB Security Service") are each made up of software and hardware components. Charter shall ensure that the selected CB Security Service(s) is/are operational and updated from time-to-time based on manufacturer-

sent updates. Charter is not the manufacturer of any software or hardware components of either Spectrum Business Security Service nor is Charter the supplier of any components of such software or hardware.

- (c) **CB Back-Up Service.** For Charter's data storage service ("CB Back-up"), Customer shall be assessed applicable OTCs and MSFs which shall be based upon Customer's selection of version retention quantity and storage tier (e.g., five gigabits). The version retention quantity selected specifies the maximum number of separate versions of a document that will be retained (running in sequential order based on the last version created). For example, if Customer has selected "seven" as the version retention quantity, Customer will be able to access the last seven versions of a particular document. In addition to OTCs and MSFs, monthly storage overage fees shall apply each month Customer exceeds the respective subscribed storage level. Additional OTCs and MSFs also apply to Customer-requested media and/or professional services.

Charter is not the manufacturer or supplier of any CB Back-Up software components. Customer shall be responsible for updating CB Back-Up from time-to-time based on updates provided by the software manufacturer, and any failure of Customer to perform such updates shall relieve Charter from any responsibility to ensure that CB Back-Up remains operational.

If the functionality of CB Back-Up cannot be maintained by Charter, Charter shall have the right to discontinue providing the Service immediately and Charter shall credit Customer's account for any pre-paid MSFs attributable to the Service, except where such lack of functionality is caused by Customer or any end user gaining access to the Service through Customer's facilities, equipment, or point of access. Customer shall not be relieved of its responsibility to continue to pay for CB Back-Up in the event CB Back-Up does not function properly as a result of Customer's failure to install and configure the software, activate the service or install manufacturer-provided updates. CUSTOMER UNDERSTANDS AND ACKNOWLEDGES THAT (1) IT IS CUSTOMER'S SOLE RESPONSIBILITY TO CREATE AND RETAIN THE CB BACK-UP PASSWORD THAT IS NECESSARY FOR ACCESS TO ANY DATA STORED VIA THE CB BACK-UP SERVICE AND (2) CHARTER HAS NO ACCESS TO AND DOES NOT KNOW NOR KEEP ANY RECORD OF THE PASSWORD CREATED BY CUSTOMER. FAILURE BY CUSTOMER TO RETAIN CUSTOMER'S CB BACK-UP PASSWORD SHALL RESULT IN COMPLETE LOSS OF ACCESSABILITY TO DATA STORED VIA CB BACK-UP.

- 10. DATA NETWORKING (aka "DATA TRANSPORT").** Charter will provide Data Networking Services for Customer locations connected over coaxial and/or fiber-optic cable. Connectivity is established between two or more customer end-points under a unique customer topology. Charter will install the coaxial or fiber-optic cable into each Customer site as listed in the Service Order(s). Charter will also supply an edge device at each site that

will be capable of receiving the Service as specified in the Service Order(s)

- a) Charter will terminate fiber-optic cable on a patch panel or provide a coaxial outlet at an agreed upon minimum point of penetration (MPOP) up to 50 feet within each facility (unless otherwise specified in the Service Order). If the hand-off point of the Data Networking Service at Customer's premise exceeds this distance, Customer may be responsible for any additional costs for internal wiring.

- b) Customer will make available to Charter a building ground connection at each location that meets current electrical codes for the placement of a fiber-optic patch panel and/or coaxial outlet. Unless otherwise specified in the applicable Service Order, it is recommended that Customer provide a separate 20 Amp 110V AC circuit for the edge electronics, which is powered by a UPS system. Customer-supplied routing will be necessary for communication between each Service Location.

- c) If Customer has selected "Monitoring" for a Service, Charter shall monitor the Services 24 hours a day, seven days a week. Customer shall contact the Spectrum Business Network Operations Center at 1-866-603-3199 or subsequent number to report Data Networking Service problems. Additional fees may apply for Monitoring over coaxial cable.

- d) In the event Customer is receiving Data Networking Services: Optical Ethernet EP-LAN or EVP-LAN, Charter recommends that the Customer place a router at each ingress/egress point (on Customer's side of the demarcation), which will reduce the number of customer media access control ("MAC") addresses which must be learned by Charter's network (aka 'masking') in order to be conveyed. In the event Customer chooses not to place a router on its side of the demarcation, Charter will place limitations on the number of MAC addresses that will be learned by Charter's network and, in circumstances where the customer exceeds these limitations, some Customer network traffic will be denied from entering Charter's network. Additional monthly fees will be applied if the number of MAC addresses on a given EVC (Ethernet Virtual Connection) exceeds 500, and Charter will not allow more than 1000 MAC addresses onto the network.

- 11. NO THIRD-PARTY HARDWARE OR SOFTWARE SUPPORT.** Customer is responsible for the installation, repair and use of Customer-supplied third-party hardware and/or software. For purposes of this Agreement the Hosting Software shall be considered third party software. Charter does not support third-party hardware or software supplied by Customer. Any questions concerning third-party hardware or software should be directed to the provider of that product. Charter assumes no liability or responsibility for the installation, maintenance, compatibility or performance of third party software, any Customer-supplied hardware or software with the Services. If such third-party equipment or software impairs the Services, Customer shall remain liable for payments

as agreed (if any) without recourse for credit or prorated refund for the period of impairment. Charter has no responsibility to resolve the difficulties caused by such third-party equipment or software. If, at Customer's request, Charter should attempt to resolve difficulties caused by such third-party equipment or software, such efforts shall be performed at Charter's discretion and at then-current commercial rates and terms.

12. CUSTOMER USE. Customer shall not re-sell or re-distribute access to the Service(s) or system capacity, or any part thereof, in any manner without the express prior written consent of Charter. Customer shall not use or permit third parties to use the Service(s), including the Equipment and software provided by Charter, for any illegal purpose, or to achieve unauthorized access to any computer systems, software, data, or other copyright or patent protected material. Customer shall not interfere with other customers' use of the Equipment or Services or disrupt the Charter Network, backbone, nodes or other Services. Violation of any part of this Section is grounds for immediate Termination of this Agreement and/or all Service Orders in addition to any other rights or remedies Charter may have.

13. PERFORMANCE. Charter will use commercially reasonable efforts in keeping with normal industry standards to ensure that the Service is available to Customer 24 hours per day, seven days per week. It is possible, however, that there will be interruptions of Service. The Service may be unavailable from time-to-time either for scheduled or unscheduled maintenance, technical difficulties, or for other reasons beyond Charter's reasonable control. Temporary service interruptions/outages for such reasons, as well as service interruptions/outages caused by Customer, its agents and employees, or by a Force Majeure Event, shall not constitute a failure by Charter to perform its obligations under this Agreement, and Customer will not hold Charter at fault for loss of Customer revenue or lost employee productivity due to Service outages.

14. DEFAULT; SUSPENSION OF SERVICE; TERMINATION. No express or implied waiver by Charter of any event of default shall in any way be a waiver of any further subsequent event of default. Nothing herein, including Termination, shall relieve Customer of its obligation to pay Charter all amounts due.

(a) Default by Customer. Customer shall be in default under this Agreement if Customer does one or more of the following things (each individually to be considered a separate event of default) and Customer fails to correct each such noncompliance within 30 days of receipt of written notice:

- a) Customer is more than 30 days past due with respect to any payment required hereunder;
- b) Customer otherwise has failed to comply with the terms of this Agreement or any other Service Order(s) incorporated herein.

(b) Termination for Convenience. Notwithstanding any other term or provision in this Agreement, Customer shall have the right to terminate a Service Order, or this Agreement in whole or part, at any time during the Service Period upon thirty (30) days prior written notice to Charter, and subject to payment of all outstanding amounts due, any applicable Termination Charges, and the return of any Charter Equipment.

(c) Charter's Right to Terminate and Termination Charge. If Customer is in default, Charter shall have the right, at its option, without prior notice, and in addition to any other rights of Charter expressly set forth in this Agreement and any other remedies it may have under applicable law to:

a) Immediately suspend Services to Customer until such time as the underlying noncompliance has been corrected without affecting Customer's on-going obligation to pay Charter any amounts due under this Agreement (e.g., the MSFs) as if such suspension of Services had not taken place;

b) Terminate the Services, this Agreement or the applicable Service Order(s).

If Termination is due to noncompliance by Customer or is elected/done by Customer for convenience, Customer must pay Charter a Termination charge (a "Termination Charge"), which the parties recognize as liquidated damages. This Termination Charge shall be equal to 50% of the unpaid balance of the MSFs that would have been due throughout the remainder of the applicable Service Period plus 100% of (1) the outstanding balance of any and all OTCs plus (2) any and all previously waived OTCs.

(d) Default by Charter. Charter shall be in default under this Agreement if Charter fails to comply with the terms of this Agreement and/or any or all of the applicable Service Order(s), and Charter fails to remedy each such noncompliance or occurrence within 30 days of receipt of written notice from Customer describing in reasonable detail the nature, scope and extent of the default or noncompliance.

(e) Customer's Right to Terminate and Termination Charge.

a) In the event Customer wishes to terminate a Service without cause, Customer shall be liable for the same Termination Charges as described above.

b) Customer shall have the right, at its option and in addition to any other remedies it may have, to terminate any applicable Service Order(s), if the underlying event of default and/or noncompliance by Charter is limited to Services provided under the applicable Service Order(s) or this Agreement, if such noncompliance is not so limited, provided that Charter's diligent efforts to correct such breach are not commenced and pursued within 30 days after Charter's receipt of a written notice from Customer describing in reasonable detail the nature, scope and extent of the event of default/noncompliance.

c) If Termination is due to noncompliance by Charter, Charter shall reimburse Customer for any pre-paid,

unused MSFs attributable to such terminated Service Order(s). In addition, if Termination is due to noncompliance by Charter within one year of the applicable Turn-Up Date, Charter shall pay a Termination Charge, which the parties recognize as liquidated damages, equal to a portion of any OTC that has already been paid by Customer to Charter relative to Service at the sites covered by the terminated Service Order. This Termination Charge shall be equal to the product of a) the number of months (including partial months) remaining in the initial 12 months of the initial Service Period at the time of Termination and b) a ratio in which the numerator is the total of OTCs paid to date and the denominator is 12.

15. LIMITATION OF LIABILITY. PLEASE READ THIS SECTION CAREFULLY, IT CONTAINS DISCLAIMERS OF WARRANTIES AND LIMITATIONS OF LIABILITY.

- (a) Limited Warranty. At all times during the Service Period, Charter warrants that it will use commercially reasonable efforts in keeping with industry standards to cause the Services to be available to Customer. Charter does not warrant that Services will be error free.

THE FOREGOING LIMITED WARRANTY IS EXCLUSIVE AND IN LIEU OF ALL EXPRESS AND IMPLIED WARRANTIES WHATSOEVER.

EXCEPT AS OTHERWISE STATED IN THIS AGREEMENT, CHARTER MAKES NO WARRANTIES, EXPRESS OR IMPLIED, AS TO ANY SERVICE AND SPECIFICALLY DISCLAIMS ANY AND ALL IMPLIED WARRANTIES, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE OR NON-INFRINGEMENT OF THIRD PARTY RIGHTS.

WITHOUT LIMITING ANY EXPRESS PROVISIONS OF THIS AGREEMENT, NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR ANY INDIRECT, CONSEQUENTIAL, EXEMPLARY, SPECIAL, INCIDENTAL RELIANCE OR PUNITIVE DAMAGES (INCLUDING LOST BUSINESS, REVENUE, PROFITS, OR GOODWILL) ARISING IN CONNECTION WITH THIS AGREEMENT OR THE PROVISION OF SERVICES, INCLUDING ANY SERVICE IMPLEMENTATION DELAYS AND/OR FAILURES, UNDER ANY THEORY OF TORT, CONTRACT, WARRANTY, STRICT LIABILITY OR NEGLIGENCE, EVEN IF THE PARTY HAS BEEN ADVISED, KNEW OR SHOULD HAVE KNOWN OF THE POSSIBILITY OF SUCH DAMAGES. CHARTER'S MAXIMUM LIABILITY TO CUSTOMER WITH REGARD TO ANY SERVICE SHALL NOT EXCEED THE AMOUNT, EXCLUDING OTCS, PAID OR PAYABLE BY CUSTOMER TO CHARTER FOR THE APPLICABLE SERVICE IN THE THREE MONTHS IMMEDIATELY PRECEDING THE EVENTS GIVING RISE TO THE CLAIM.

THE FOREGOING LIMITATIONS APPLIES TO ALL CAUSES OF ACTIONS AND CLAIMS, INCLUDING

BREACH OF CONTRACT, BREACH OF WARRANTY, NEGLIGENCE, STRICT LIABILITY, MISREPRESENTATION AND OTHER TORTS.

Any warranty claim by Customer must be made within 30 days after the applicable Services have been performed. Charter's sole obligation and Customer's sole remedy, with respect to any breach of the limited warranty set forth herein, shall be a prorated refund of the fees paid by Customer based on the period of time when the Services are out of compliance with this limited warranty provision.

- (b) Content. Any content that Customer may access or transmit through any Service is provided by independent content providers, over which Charter does not exercise and disclaims any control. Charter neither previews content nor exercises editorial control; does not endorse any opinions or information accessed through any Service; and assumes no responsibility for content. Charter specifically disclaims any responsibility for the accuracy or quality of the information obtained using the Service. Such content or programs may include programs or content of an infringing, abusive, profane or sexually offensive nature. Customer and its authorized users accessing other parties' content through Customer's facilities do so at Customer's own risk, and Charter assumes no liability whatsoever for any claims, losses, actions, damages, suits or proceedings arising out of or otherwise relating to such content.
- (c) Damage, Loss or Destruction of Software Files and/or Data. Customer uses the Services and Equipment supplied by Charter at its sole risk. Charter does not manufacture the Equipment, and the Services and Equipment are provided on an "as is basis" without warranties of any kind. Charter assumes no responsibility whatsoever for any damage to or loss or destruction of any of Customer's hardware, software, files, data or peripherals which may result from Customer's use of any Service. Charter does not warrant that data or files sent by or to Customer will be transmitted in uncorrupted form or within a reasonable period of time.
- (d) Unauthorized Access. If Customer chooses to run or offer access to applications from its equipment that permits others to gain access through the Network, Customer must take appropriate security measures. Failing to do so may cause immediate termination of Customer's Service by Charter without liability for Charter. Charter is not responsible for and assumes no liability for any damages resulting from the use of such applications, and Customer shall hold harmless and indemnify the Charter Indemnified Parties from and against any claims, losses, or damages arising from such use. Charter is not responsible and assumes no liability for losses, claims, damages, expenses, liability, or costs resulting from others accessing Customer's computers, its internal network and/or the Network through Customer's equipment.
- (e) Force Majeure Event. Neither Party shall be liable to the other for any delay, inconvenience, loss, liability or damage resulting from any failure or interruption of Services, directly or indirectly caused by circumstances

beyond such party's control, including but not limited to denial of use of poles or other facilities of a utility company, labor disputes, acts of war or terrorism, criminal, illegal or unlawful acts, natural causes, mechanical or power failures, or any order, law or ordinance in any way restricting the operation of the Services. Changes in economic, business or competitive condition shall not be considered a Force Majeure Event.

- 16. INDEMNIFICATION.** In addition to its specific indemnification responsibilities set forth elsewhere in this Agreement and as permissible under applicable law, Customer at its own expense, shall indemnify, defend and hold harmless Charter and its directors, employees, representatives, officers and agents, (the "Indemnified Parties") against any and all claims, liabilities, lawsuits, damages, losses, judgments, costs, fees and expenses incurred by Charter Indemnified Parties, including reasonable attorney fees and court costs incurred by Charter Indemnified Parties under this Agreement, to the full extent that such arise from Customer's misrepresentation with regard to or noncompliance with the terms of this Agreement and any or all Service Orders, Customer's failure to comply with applicable law, and/or Customer's negligence or willful misconduct. Charter Indemnified Parties shall have the right but not the obligation to participate in the defense of the claim at Customer's cost and Customer shall cooperate with Charter Indemnified Parties in such case.
- 17. TITLE.** Title to the Equipment shall remain with Charter during the applicable Service Period. Customer shall keep that portion of the Equipment located on Customer premises free and clear of all liens, encumbrances and security interests. Upon termination of Service or expiration of a Service Order's Service Period for a specific site, Charter shall have the right to remove all Equipment components and/or leave any of such components in place, assigning title and interest in such components to Customer, it being understood that no further notice or action is required to accomplish the assignment contemplated hereunder. Charter shall have the right to remove the Equipment and all components within 60 days after such termination.
- 18. COMPLIANCE WITH LAWS.** Customer shall not use or permit third parties to use the Services in any manner that violates applicable law or causes Charter to violate applicable law. Both parties shall comply with all applicable laws and regulations when carrying out their respective duties hereunder.
- 19. PRIVACY.** Charter treats private communications on or through its Network or using any Service as confidential and does not access, use or disclose the contents of private communications, except in limited circumstances and as permitted by law. Charter also maintains a Privacy Policy with respect to the Services in order to protect the privacy of its customers. The Privacy Policy may be found on Charter's website at www.Charter-Business.com. The Privacy Policy may be updated or modified from time-to-time by Charter, with or without notice to Customer.

- 20. GENERAL CUSTOMER REPRESENTATIONS AND OBLIGATIONS.** Customer represents to Charter (a) that Customer has the authority to execute, deliver and carry out the terms of this Agreement and associated Service Orders and (b) that any person who accesses any Services through Customer's equipment or through the Network facilities in Customer's Premises will be an authorized user, will use the Service, Network and/or Network facilities in an appropriate and legal manner, and will be subject to the terms of this Agreement. Customer is responsible for ensuring its users of the Service comply with the terms of this Agreement. Customer shall be responsible for all access to and use of the Service by means of Customer's equipment, whether or not Customer has knowledge of or authorizes such access or use. Customer shall be solely liable and responsible for all charges incurred and all conduct through either authorized or unauthorized use of the Service, until informs Charter of any breach of security.

- 21. NOTICES.** Any notices to be given under this Agreement shall be validly given or served only if in writing and sent by nationally recognized overnight delivery service or certified mail, return receipt requested, to the following addresses:

If to Charter:
Charter Communications
ATTN: CB Corporate – Contracts Management
Dept: Corporate Operations
12405 Powerscourt Drive
St. Louis, MO 63131

Notices to Customer shall be sent to the Customer billing address.

Each party may change its respective address (es) for legal notice by providing notice to the other party.

22. MISCELLANEOUS.

- (a) Entire Agreement; Signatures. This Agreement and any related, executed Service Order(s) constitute the entire Agreement with respect to the Services, Network and Equipment. This Agreement supersedes all prior understandings, promises and undertakings, if any, made orally or in writing by or on behalf of the parties with respect to the subject matter of this Agreement. This Agreement may be executed in one or more counterparts, each of which is an original, but together constituting one and the same instrument. Execution of a facsimile copy will have the same force and effect as execution of an original, and a facsimile signature will be deemed an original and valid signature.
- (b) No Amendments, Supplements or Changes. Except for pricing terms as set forth in this Agreement, this Agreement and the associated executed Service Order(s) may not be amended, supplemented or changed without both parties' prior written consent.
- (c) No Assignment or Transfer. The parties may not assign or transfer (directly or indirectly by any means, by operation of law or otherwise) this Agreement and the associated

Service Order(s), or their rights or obligations hereunder to any other entity without first obtaining written consent from the other party, which consent shall not be unreasonably withheld; provided, however, that without Customer's consent, Charter may assign this Agreement and the associated executed Service Order(s) to affiliates controlling, controlled by or under common control with Charter, or to its successor-in-interest if Charter sells some or all of the underlying communications system.

- (d) Severability. If any term, covenant, condition or portion of this Agreement or any related, executed Service Order(s) shall, to any extent, be invalid or unenforceable, the remainder of this Agreement or any related, executed Service Order(s) shall not be affected and each remaining term, covenant or condition shall be valid and enforceable to the fullest extent permitted by law.
- (e) Governing Law. The law of the state in which the Services are provided (excluding its conflicts of law provisions) shall govern the construction, interpretation, and performance of this Agreement, except to the extent superseded by federal law. IN ANY AND ALL CONTROVERSIES OR CLAIMS ARISING OUT OF OR RELATING TO THIS AGREEMENT, ITS NEGOTIATION, ENFORCEABILITY OR VALIDITY, OR THE PERFORMANCE OR BREACH THEREOF OR THE RELATIONSHIPS ESTABLISHED HEREUNDER, CUSTOMER AND CHARTER EACH HEREBY WAIVES ITS RIGHT, IF ANY, TO TRIAL BY JURY.
- (f) Both parties had the opportunity to review and participate in the negotiation of the terms of this Agreement and the Service Order(s) and, accordingly, no court construing this Agreement and any Service Order(s) shall construe it more stringently against one party than against the other.
- (g) No Third Party Beneficiaries. The terms of this Agreement and the parties' respective performance of obligations as described are not intended to benefit any person or entity not a party to this Agreement, and the consideration provided by each party hereunder only runs to the respective parties hereto, and that no person or entity not a party to this Agreement shall have any rights hereunder nor the right to require performance of obligations by either of the parties hereto.
- (h) Waiver. Except as otherwise provided herein, the failure of Charter to enforce any provision of this Agreement shall not constitute or be construed as a waiver of such provision or of the right to enforce such provision.



April 29, 2015

City of Kingsport - 200 Shelby St Ste 200
200 Shelby St
Kingsport, TN 37660-4256

RE: CHARTER SERVICES FOR City of Kingsport - 100M LBI

Dear Valued Customer:

On behalf of the entire team at Spectrum Business, I would like to thank you for choosing us as your communications partner. Charter is committed to delivering reliable, high-quality communications services to you and all our customers.

The SERVICES AGREEMENT with an effective date of _____ for LBI: Fiber Internet, 100 Mbps service states that the initial Service Period of the Service Order continues for a period of 60 months from the **Turn-Up Date**.

Your Turn-Up Date for this service is 2/14/2016. Our records indicate that your services are fully operational, therefore billing will begin from this date and continue for the period specified above. Please contact us immediately if you oppose this date for any reason or have other questions regarding your service, please call: 866-603-3199.

Site Information:

Service Location (Address): 200 Shelby St, Kingsport, TN 37660-4256

Service Location Name (for purposes of identification): _____

Thank you and we look forward to a long and mutually rewarding partnership.

SPECTRUM BUSINESS

Signature: _____

Printed Name: _____

Title: _____

Date: _____

One (1) Copy for Customer (Charter Technician to leave one copy with Customer at Turn-Up)
One (1) Copy for Charter's Customer File (faxed to)



April 29, 2015

City of Kingsport - 200 Shelby St Ste 200
200 Shelby St
Kingsport, TN 37660-4256

RE: CHARTER SERVICES FOR City of Kingsport - 100M LBI

Dear Valued Customer:

On behalf of the entire team at Spectrum Business, I would like to thank you for choosing us as your communications partner. Charter is committed to delivering reliable, high-quality communications services to you and all our customers.

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Service Location Name (for purposes of identification): _____

Thank you and we look forward to a long and mutually rewarding partnership.

SPECTRUM BUSINESS

Signature: _____

Printed Name: _____

Title: _____

Date: _____

One (1) Copy for Customer (Charter Technician to leave one copy with Customer at Turn-Up)
One (1) Copy for Charter's Customer File (faxed to)



201409053750196

DATA TRANSPORT SERVICE AGREEMENT

This Service Agreement ("Agreement") is executed and effective upon the latest date of the signatures set forth in the signature block below ("Effective Date") by and between Charter Fiberlink-Tennessee, LLC, ("Spectrum Business" or "Charter") with a corporate office at 12405 Powerscourt Drive, St. Louis, Missouri 63131 and City Of Kingsport-Fire Department #6, ("Customer") with offices located at 4598 Fort Henry Dr, Kingsport, TN 37663.

Both parties desire to enter into this Agreement in order to set forth the general terms under which Charter is to provide Customer with Charter's services ("Service" or "Services") to Customer site(s), the scope and description to be specified per site below and/or in a Service order(s) executed by both parties (each instance of site identification and order a "Service Order" or collectively the "Service Orders"), which shall be incorporated in this Agreement upon execution. **This Agreement and each Service Order will be effective only after both parties have signed each document.**

SERVICE ORDER

Under the Data Transport Service Agreement

CUSTOMER INFORMATION:

Account Name: City Of Kingsport-Fire Department #6

Invoicing Address: City of Kingsport, Kingsport, TN 37660

Invoicing Special Instructions: _____

1. SITE-SPECIFIC INFORMATION:

Order Type: New Service

Service Location (Address): 4598 Fort Henry Dr, Kingsport, TN 37663

Service Location Name (for purposes of identification): _____

Service Location Special Instructions: _____

2. SITE-SPECIFIC INFORMATION:

Order Type: New Service

Service Location (Address): 200 Shelby St, Ste. 200, Kingsport, TN 37660

Service Location Name (for purposes of identification): _____

Service Location Special Instructions: _____

Non-Hospitality or Non-Video

Customer Contact Information. To facilitate communication the following information is provided as a convenience and may be updated at any time without affecting the enforceability of the terms and conditions herein:

	Billing Contact	Site Contact	Technical Contact
Name			
Phone			
Fax			
Cell			
Email Address			

MONTHLY SERVICE FEES: 4598 Fort Henry Dr	
Data Services:	
<i>Spectrum Business Bundle: No Bundle *</i>	
<u>Base Service</u> Network Miles:	\$540.00
MEF Service Types (if applicable): EPL	
Speed: 20 Mbps (Down/Up)	
CPE:	

MONTHLY SERVICE FEES: 200 Shelby St	
Data Services:	
<i>Spectrum Business Bundle: No Bundle *</i>	
<u>Base Service</u> Network Miles:	\$780.00
MEF Service Types (if applicable): EPL	
Speed: 100 Mbps (Down/Up)	
CPE:	

ONE-TIME CHARGES:
ONE-TIME CHARGES \$0.00

** If Customer has selected the Spectrum Business Special Offers, the Section 3(i) of the Commercial Terms of Service (for Spectrum Business Bundle) shall apply.*

2. TOTAL FEES.

Total Monthly Service Fees of \$1320.00 are due upon receipt of the monthly invoice.

3. **SERVICE PERIOD.** The initial Service Period of this Service Order shall begin on the date installation is completed and shall continue for a period of 60 months. Upon expiration of the initial term, this Service Order shall automatically renew for successive one-month terms and Charter may then apply Charter's then-current Monthly Service Fees unless either party terminates this Service Order by giving thirty (30) days prior written notice to the other party before the expiration of the current term.

4. **TROUBLE REPORTS SERVICE PERFORMANCE.** Spectrum Business Network Operations Center: 866.603.3199. Charter operates and maintains the Spectrum Business Network Operations Center ("CB NOC"), which is staffed 24 hours a day, 7 days a serviceweek, 365 days a year. To report suspected problems with your fiber-based Service(s) call the CB NOC for support @ 866.603.3199. Charter shall provide a telephone response to such calls within one (1) hour, and, if necessary, initiate a physical response within four (4) hours of receiving Customer's call reporting the problem. Once the CB NOC representative has received the necessary information, a Customer Trouble Ticket will be assigned and investigation of Trouble Ticket will begin. After the status of the Trouble Ticket has been determined, the CB NOC will contact Customer's designated contact individual at the appropriate number to discuss the findings.

5. **EPLAN SERVICES.** Customer acknowledges that EPLAN Services consist of multiple end points connecting your designated locations to create a shared-data network. As new service locations are added to your EPLAN Services, the Network Miles will increase. The performance parameter metric Delay is impacted by the total Network Miles. Therefore, the applicable Delay metric is based upon the then-total Network Miles of the total of EPLAN Services provided by Charter to Customer. Customer acknowledges that the applicable Delay metric will be based upon the then-current total Network Miles.

* Your current Mileage Band is shown as Total EPLAN Network Miles in the above Monthly Service Fees table.

6. **SERVICE CREDITS.** Customer shall be entitled to one (1) hour of service credit per Site per affected fiber optic-based Service (i.e. circuit) for each hour of Service Interruption if the interruption: (a) exceeds four (4) consecutive hours, (b) is not caused by Customer, or its agents, employees, licensees, or contractors, or a Force Majeure Event, (c) is not caused by Customer-provided equipment or facilities beyond the demarcation point, (d) is not caused by scheduled maintenance, and (e) a Trouble Ticket has been opened within 24 hours of the commencement of the interruption. Service Credits shall not apply to any period of time for which Charter is not granted access, if necessary, to the applicable Customer Site. A "Service Interruption" is the continuous period of time during which a respective Service is not provided substantially as ordered to one or more Customer Sites. A Service Interruption commences when Charter becomes aware of such Service Interruption of a Service and ends when the Service is operational and the Trouble Ticket is closed.

A Service Credit is calculated as follows:

* Service Credit = Per Hour Rate X (# of consecutive hours during Service interruption)

* Per Hour Rate = Per Day Rate/twenty-four (24)

* Per Day Rate = Monthly Service Charge/thirty (30) days

(30 = average days in one [1] month)

Any Service interruption that exceeds a consecutive period of twelve (12) hours shall be considered an outage for one (1) day

Example:

If Customer is paying a \$10,000 Monthly Service Fee and a Service interruption of one (1) day (or 24 hours) occurs, the Service Credit shall be equal to \$333.33 and shall be applied on the billing cycle following the date Charter makes its credit determination:

Per Day Rate = \$10,000/30 days = \$333.33

Per Hour Rate = \$333.33/24 hours = \$13.89

Service Credit = 1 day X \$333.33 = \$333.33

OR

24 hours X \$13.89 = \$333.33

Service credits will be based on the Customer's Monthly Service Fee for those Sites and specific Services affected by the Service Interruption. Non-recurring, equipment and usage-based charges are excluded. The sum of all Service Credits shall not exceed the Customer's total Monthly Service Fees for the month in which the Service interruption occurred. The Customer must contact Spectrum Business at 866.603.3199 (or successor applicable toll-free number) to request a Service Credit for a specific Service Interruption. Spectrum Business will exercise commercially reasonable efforts to respond to such Service Credit requests within fifteen (15) business days of receipt thereof. The approved Service Credit will be applied on the billing cycle following the date Charter makes its credit determination. Service Credits shall be Customer's sole and exclusive remedy for Charter's failure to provide Services as ordered.

7. **NO UNTRUE STATEMENTS.** Customer further represents and warrants to Charter that neither this Service Order, nor any other information, including without limitation, any schedules or drawings furnished to Charter contains any untrue or incorrect statement of material fact or omits or fails to state a material fact.
8. **CONFIDENTIALITY.** Customer hereby agrees to keep confidential and not to disclose directly or indirectly to any third party, the terms of this Service Order or any other related Service Orders, except as may be required by law. If any unauthorized disclosure is made by Customer and/or its agent or representative, Charter shall be entitled to, among other damages arising from such unauthorized disclosure, injunctive relief and a penalty payment in the amount of the total One-Time Charges associated with this Service Order, and Charter shall have the option of terminating this Service Order, other related Service Orders and/or the Service Agreement.

9. **FACSIMILE.** A copy sent via fax machine or scanned and e-mailed of a duly executed Agreement and Service Order signed by both authorized parties shall be considered evidence of a valid order, and Charter may rely on such copy of the Agreement and Service Order as if it were the original.
10. **ADDENDUM.** This agreement and all documents referenced, attached, incorporated by reference or made a part of this Agreement, including the Customer Certification of Intrastate Circuits, are amended by an addendum entitled "Addendum to Business, Internet Access, Video and Music Service Agreement" and this Agreement, and all documents referenced, attached, incorporated by reference or made a part of this Agreement are not effective until the addendum is fully executed by the parties.

NOW THEREFORE, Charter and Customer agree to the terms and conditions included within this Service Agreement, including the Commercial Terms of Service which follow, and hereby execute this Service Agreement by their duly authorized representatives.

Charter Fiberlink-Tennessee, LLC

City Of Kingsport-Fire Department #6

By: Charter Communications, Inc., its Manager

Signature: _____

Signature: _____

Printed Name: _____

Printed Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

Spectrum Business Account Executive:

Name: Steve McClellan

COMMERCIAL TERMS OF SERVICE

1. **AGREEMENT TERM.** This Agreement shall terminate upon the lawful termination of the final existing Service Order entered into under this Agreement.
2. **SERVICE.** Charter shall provide the Services during the Service Period to Customer at the site(s) identified in the Service Order(s). "Service Period" is the time period starting on the date the Services are functional in all material respects and available for use (the "Turn-up Date"), and continuing for the number of months specified in the Service Order(s).
3. **STANDARD PAYMENT TERMS.** Customer shall pay fees and charges for the Services in the amount specified on the Service Order in accordance with this Agreement. A one-time charge ("OTC") is a nonrecurring fee for construction, Service installation charge(s), repair, replacement, or any other nonrecurring costs or charges. "Equipment" means the components (e.g., any gateway or edge electronic device, node, router, switch, communications lines/cables, etc.) that make up the Network. "Network" means all of the physical elements necessary to provide the Services.
 - (a) **Charges.** Customer shall pay all associated charges associated with the Service(s), as set forth or referenced in the applicable Service Order(s) or invoiced by Charter. These charges may include, but are not limited to a monthly service fee ("MSF"), nonrecurring fees for construction, installation, repair, replacement or other one-time charges ("OTC"), usage charges such as, pay-per-view charges, and applicable federal, state, and local taxes, fees, surcharges and recoupments (however designated), MSFs shall be subject to increases attributable to programming, license, copyright, retransmission and/or other similar costs imposed upon Charter, Charter shall provide not less than thirty (30) days prior notice to Customer of any MSF change.
 - (b) **Taxes, Surcharges, and Fees.** Customer shall pay any sales, use, property, excise or other taxes, franchise fees, and governmental charges (excluding income taxes) arising under this Agreement, in addition to any surcharges that may be imposed as may be permitted under and consistent with applicable law.. A copy of Customer's tax exemption document, if applicable, must be provided to Charter to certify tax-exempt status. Tax-exempt status shall not relieve Customer of its obligation to pay any applicable franchise fees. Charter reserves the right from time to time to change the surcharges for Services under this Agreement to reflect the charges or payment obligations imposed on Charter which Charter is permitted or required under applicable law to pass through to Customer (e.g., universal service fund ("USF") charges, franchise fees etc.).
 - (c) **Change Requests.** Any charges associated with Service and Equipment installations, changes, or additions requested by Customer subsequent to executing a Service Order for the applicable site are the sole financial responsibility of Customer. Charter shall notify Customer, in writing, of any additional OTCs and/or adjustments to MSFs associated with or applicable to such Customer change requests prior to making any such additions or modifications. Customer's failure to accept such additional charges within three days of receiving such notice shall be deemed a rejection by Customer, and Charter shall not be liable to perform any work giving rise to such charges. For accepted charges, Customer shall be assessed such additional OTCs and/or adjustments of the MSFs either (i) in advance of implementation of the change request or (ii) beginning on Customer's next and/or subsequent invoice(s).
 - (d) **Site Visits and Repairs.** If Customer's misuse, abuse or modification of the Services, Equipment or Network results in a visit to the Customer site for inspection, correction or repair, Charter may charge Customer a site visit fee as well as charges for any resulting Equipment or Network repair or replacement, which may be necessary.
 - (e) **Invoicing Errors.** Customer must provide written notice to Charter of any invoice errors or disputed charges within 30 days of the invoice date on which the errors and/or disputed charges appear for Customer to receive any credit that may be due. Customer must have and present a reasonable basis for disputing any amount charged.
 - (f) **Late Fees.** Undisputed amounts not paid within 30 days of the invoice date shall be past due and subject to a late fee of not more than 1.5% per month or the maximum amount permitted by law.
 - (g) **Non-payment.** If Services are suspended due to late payment, Charter may require that Customer pay all past due charges, a reconnect fee, and one or more MSFs in advance before reconnecting Services.
 - (h) **Collection Fees.** Charter may charge a reasonable service fee for all returned checks and bank card, credit card or other charge card charge-backs. Customer shall be responsible for all expenses, including reasonable attorney fees and collection costs, incurred by Charter in collecting any unpaid amounts due under this Agreement.
 - (i) **Bundled Pricing.** If Customer has selected a Spectrum Business Bundle ("CBB") specifically, the following conditions shall apply:
 - i. In consideration for Customer's purchase of all Services in the CBB and only with respect to that period of time during which Customer continues to purchase such CBB, Charter shall apply a discount to the Services ordered under the applicable Service Order(s). Such discount has been applied to the Services included in Charter's bundled pricing offer and is reflected in the MSF for such Services.

- ii. Upon discontinuation or termination by Customer of any component of a Service of the applicable CBB, the pricing for the remaining Services shall revert to Charter's a la carte pricing for such Services in effect at the time. Termination liability applicable to the Services under this Agreement shall otherwise remain unchanged.

4. SERVICE LOCATION ACCESS AND INSTALLATION.

- (a) Access. Charter will require reasonable access to each service location listed on a Service Order ("Service Location") as necessary for Charter to review, install, inspect, maintain or repair any Equipment or Materials necessary to provide the Services. If Customer owns or controls the Service Location(s), Customer grants Charter permission to enter the Service Location(s) for the exercise of such right. If a Service Location is not owned and/or controlled by Customer, Customer will obtain, with Charter's assistance, appropriate right of access. If such right of access for Charter is not obtained by either party, then Charter's obligations with respect to such Service Location shall be considered null and void.

- (b) Installation Review; Subsequent Interference. Charter may perform an installation review of each Service Location prior to installation of the Services. Upon request, Customer shall provide Charter with accurate site and/or physical network diagrams or maps of a Service Location, including electrical and other utility service maps, prior to the installation review. If Charter determines that safe installation and/or activation of one or more of the Services will have negative consequences to Charter's personnel or Network or cause technical difficulties to Charter or its customers, Charter may terminate the Service Order effective upon written notice to Customer or may require Customer to correct the situation before proceeding with installation or activation of the Services.

If during a Service Period, or any renewal thereof, (i) proper operation of Equipment or provision of a Service is no longer unhindered or possible as a result of interference or obstruction due to any cause other than Charter or (ii) such interference/obstruction or its cause may endanger, hinder, harm or injure Charter's personnel or Network and/or cause technical difficulties to Charter or its customers, Charter may terminate the affected Service Order(s) without liability upon written notice to Customer.

- (c) Site Preparation. Customer shall be responsible for necessary preparations at its location(s) for delivery and installation of Equipment and the installation and ongoing provision of Services, including the relocation of Customer's equipment, furniture and furnishings as necessary to access the Equipment or Services. Upon request, Customer shall provide any available electrical, utility service, and/or general physical network diagrams or maps prior to installation or maintenance work to be undertaken by Charter.
- (d) Installation. Charter will schedule one or more installation visits with Customer. Customer's authorized representative must be present during installation. If

during the course of installation Charter determines additional work is necessary to enable Charter to deliver the Services to the Service Location, Charter will notify Customer of any additional OTCs. If Customer does not agree to pay such OTCs by executing a revised Service Order within five business days of receiving the same, Customer and Charter shall each have the right to terminate the applicable Service Order. Customer shall connect Customer's computer or network to applicable Charter-provided Equipment to enable access to the Services. Charter shall be responsible for reasonable restoration efforts necessary to address any displacement resulting from excavation.

- (e) Ongoing Visits. Charter will need periodic access for inspection, operation and maintenance of the Network. Except in emergency situations, Charter will obtain approval from Customer (not to be unreasonably withheld or delayed) before entering Customer Premises. At Charter's request, Customer, or a representative designated by Customer, will accompany Charter's employees or agents into any unoccupied unit for any purpose relating to the Equipment.

5. EQUIPMENT AND MATERIALS.

- (a) Responsibilities and Safeguards. Except as otherwise provided in this Agreement or any Service Order(s), neither party shall be responsible for the maintenance or repair of cable, electronics, structures, Equipment or materials owned by the other party; provided, however, that subject to the indemnification limitations set forth in this Agreement, each party shall be responsible to the other for any physical damage or harm such party causes to the other party's personal or real property through the damage-causing party's negligence or willful misconduct. Customer shall:

- a) Safeguard Equipment against others;
- b) Not add other equipment nor move, modify, disturb, alter, remove, nor otherwise tamper with any portion of the Equipment;
- c) Not hire nor permit anyone other than personnel authorized by Charter acting in their official capacity to perform any work on Equipment; and
- d) Not move nor relocate Equipment to another location or use it at an address other than the Service location without the prior written consent of Charter.

Any unauthorized connection or other tampering with the Services or Equipment shall be cause for immediate suspension of Services, termination of this Agreement and/or legal action, and Charter shall be entitled to recover damages, including the value of any Services and/or Equipment obtained in violation of this Agreement in addition to reasonable collection costs including reasonable attorney fees. Should any antenna, or signal amplification system for use in connection with communication equipment hereafter be installed on the Premises which interferes with the Services, Charter shall not be obligated to distribute a signal to the Premises

better than the highest quality which can be furnished without additional cost to Charter as a result of such interference, until such time as the interference is eliminated.

- (b) Customer Security Responsibilities. Customer shall be responsible for the implementation of reasonable security measures and procedures with respect to use of and access to the Service and/or Equipment. Charter may suspend the Services upon learning of a breach of security and will attempt to contact Customer in advance, if practicable.
 - (c) Ownership. Notwithstanding any other provision contained in this Agreement to the contrary, all Equipment and materials installed or provided by Charter are and shall always remain the property of Charter, shall not become a fixture to the Premises, and must be returned to Charter at any time Services are disconnected in the condition in which they were received subject to ordinary wear and tear. Customer will not sell, lease, assign nor encumber any Equipment. Customer shall not obtain or acquire title to, interest or right (including intellectual property rights) in the Service or Equipment other than to the limited extent of use rights expressly granted under this Agreement.
 - (d) Equipment Return, Retrieval, Repair and Replacement. Immediately upon termination of this Agreement and/or Service Order(s) ("Termination"), at the discretion of Charter, Customer shall return, or allow Charter to retrieve, the Equipment supplied by Charter to Customer. Failure of Customer to return, or allow Charter to retrieve, Equipment within 10 days after Services are terminated will result in a charge to Customer's account equal to the retail cost of replacement of the unreturned Equipment. Customer shall pay for the repair or replacement of any damaged Equipment, except such repairs or replacements as may be necessary due to normal and ordinary wear and tear or material/workmanship defects, together with any costs incurred by Charter in obtaining or attempting to regain possession of such Equipment, including reasonable attorney fees.
6. **ADMINISTRATIVE WEB SITE.** Charter may, at its sole option, make one or more administrative web sites available to Customer in connection with Customer's use of the Services (each an "Administrative Web Site"). Charter may furnish Customer with one or more user identifications and/or passwords for use on the Administrative Web Site. Customer shall be responsible for the confidentiality and use of such user identifications and/or passwords and shall immediately notify Charter if there has been an unauthorized release, use or other compromise of any user identification or password. In addition, Customer agrees that its authorized users shall keep confidential and not distribute any information or other materials made available by the Administrative Web Site. Customer shall be solely responsible for all use of the Administrative Web Site, and Charter shall only be entitled to rely on all Customer uses of and submission to the Administrative Web Site as authorized by Customer.

Charter shall not be liable for any loss, cost, expense of other liability arising out of any Customer use of the Administrative Web Site, Charter may change or discontinue the Administrative Web Site, or Customer's right to use the Administrative Web Site, at any time. Additional terms and policies may apply to Customer's use of the Administrative Web Site. These terms and policies will be posted on the site.

7. **VIDEO, MUSIC AND CONTENT SERVICE.** This Video, Music and Content Service Section shall only apply if Video, Music and Content Services are included in a Service Order under this Agreement; however, continued use or reception of the Video Services is subject to the provisions of this Agreement.
- (a) Music Rights Fees. Customer is responsible for and must secure any music rights and/or pay applicable fees required by the American Society of Composers, Authors & Publishers (ASCAP), Broadcast Music, Inc. (BMI) and SESAC, Inc. (SESAC) or their respective successors, and any other entity, person or governmental authority from which a license is necessary or appropriate relating to Customer's transmission, retransmission, communication, distribution, performance or other use of the Services.
 - (b) Premium and Pay-Per-View. Customer may not: (i) exhibit any premium Services such as HBO or Showtime in any public or common area; (ii) order or request Pay-Per-View (PPV) programming for receipt, exhibition or taping in a commercial establishment; or (iii) exhibit nor assist in the exhibition of PPV programming in a commercial establishment unless explicitly authorized to do so by agreement with an authorized program provider and subject to Charter's prior written consent.
 - (c) HD Formatted Programming. If Customer has selected High Definition ("HD") formatted programming, Customer is responsible for provision, installation and maintenance of the receiving equipment and/or facilities necessary for its reception and display. Any failure of Customer to fulfill the foregoing obligation shall not relieve Customer of its obligation to pay the applicable MSFs or OTCs for the HD formatted programming.
 - (d) Provision of Service. Without notice, Charter may preempt, rearrange, delete, add, discontinue, modify or otherwise change any or all of the advertised programming comprising, packaging of, line-up applicable to, and/or distribution of its Video Services.
 - (e) Restrictions. Customer shall not and shall not authorize or permit any other person to (i) copy, record, dub, duplicate, alter, make or manufacture any recordings or other reproductions of the Services (or any part thereof); or (ii) transmit the Services by any television or radio broadcast or by any other means or use the Services outside the Service Location. Customer acknowledges that such duplication, reproduction or transmission may subject Customer to criminal penalties and/or civil liability and damages under applicable copyright and/or trademark laws. With respect to the music programming comprising a portion of the Services, Customer shall not, and shall not

authorize or permit any other person to, do any of the following unless Customer has obtained a then-current music license permitting such activity: (i) charge a cover charge or admission fee to any Service Location(s) at the time the Services are being performed or are to be performed; (ii) permit dancing, skating or other similar forms of entertainment or physical activity in conjunction with the performance of the Services; or (iii) insert any commercial announcements into the Services or interrupt any performance of the Services for the making of any commercial announcements.

8. **INTERNET ACCESS SERVICE.** This Internet Access Service Section shall only apply if Internet Access Services are included in a Service Order under this Agreement; however, continued use of the Internet Service shall be subject to the provisions of this Agreement.

- (a) Customer shall (i) maintain certain minimum equipment and software to receive the Service (see www.charter-business.com (or the applicable successor URL) for the current specifications); (ii) ensure that any person who has access to the Internet Services through Customer's computer(s), Service Location, facilities or account shall comply with the terms of this Agreement, (iii) be responsible for all charges incurred and all conduct, whether authorized or unauthorized, caused by use of Customer's computers, service locations, facilities or account using the Internet Services.
- (b) **Internet Service Speeds.** Charter shall use commercially reasonable efforts to achieve the Internet speed selected by Customer on the Service Order, however, actual Internet speeds may vary. Many factors affect speed including, without limitation, the number of workstations using a single connection.
- (c) **Electronic Addresses.** All e-mail addresses, e-mail account names, and IP addresses ("**Electronic Addresses**") provided by Charter are the property of Charter. [Customer may not alter, modify, sell, lease, assign, encumber or otherwise tamper with the Electronic Addresses]
- (d) **Changes of Address.** Charter may change addressing schemes, including e-mail and IP addresses.
- (e) **No Liability for Risks of Internet Use.** The Service, Charter's network and the Internet are not secure, and others may access or monitor traffic.
- (f) **No Liability for Purchases.** Customer shall be solely liable and responsible for all fees or charges for online services, products or information. Charter shall have no responsibility to resolve disputes with other vendors.
- (g) **Blocking and Filtering.** Customer assumes all responsibility for providing and configuring any "firewall" or security measures for use with the Service. Except to the extent set forth in the Supplemental Spectrum Business Security Service Section, Charter shall not be responsible in any manner for the effectiveness of these blocking and filtering technologies. Charter does not warrant that others

will be unable to gain access to Customer's computer(s) and/or data even if Customer utilizes blocking and filtering technologies, nor does Charter warrant that the data or files will be free from computer viruses or other harmful components. Charter has no responsibility and assumes no liability for such acts or occurrences.

(h) **Acceptable Use Policy.** Customer shall comply with the terms of Charter's Acceptable Use Policy ("AUP") found at www.charter-business.com (or the applicable successor URL) and that policy is incorporated by reference into this Agreement. Customer represents and warrants that Customer has read the AUP and shall be bound by its terms as they may be amended, revised, replaced, supplemented or otherwise changed from time-to-time by Charter with or without notice to Customer. Charter may suspend Service immediately for any violation of the Charter AUP.

9. **SUPPLEMENTAL SERVICES.** The following Subsections shall only apply in the event the referenced supplemental service has been selected by and are being delivered to Customer. The supplemental services (also "**Services**") may be made up of software and hardware components. Charter shall ensure the supplemental services are operational and updated from time-to-time based on manufacturer-sent updates. Except to the limited extent described in the foregoing sentence, Charter makes no warranties of any kind (express or implied) regarding the supplemental services and hereby disclaims any and all warranties pertaining thereto (including implied warranties of title, noninfringement, merchantability, and fitness for a particular purpose). Charter does not have title to and is not the manufacturer of any software or hardware components of the supplemental services nor is Charter the supplier of any components of such software or hardware. Customer shall return or destroy all software components provided to Customer upon the termination of the applicable Service Order, and in the case of the destruction thereof, shall, upon request, provide Charter with certification that such components have been destroyed. **IN NO EVENT SHALL CHARTER BE LIABLE FOR ANY DAMAGES ARISING FROM THE PERFORMANCE OR NONPERFORMANCE OF ANY SUPPLEMENTAL SERVICES.**

(a) **Hosting.** This Hosting Service subsection shall only apply if one of Charter's Hosting Services ("Hosting") is included as part of the Service in a Service Order under this Agreement. Charter will provide to Customer Hosting Service in accordance with the specifications associated with the plan Customer has selected on the Service Order.

a) **Hosting Software.** The Hosting Service will permit access to a variety of resources available from selected third parties, including developer tools, communication forums and product information (collectively, "**Hosting Software**"). The Hosting Software, including any updates, enhancements, new features, and/or the addition of any new Web properties, may be subject to and Customer shall comply with applicable product use rights/end user

license agreements between such third parties and Customer. Without abrogating or limiting anything set forth in the Sections: Internet Access Service, this Section, No Third-Party Support, Customer Use or Performance, Charter (not the manufacturer) shall provide technical support for Hosting Service, but version changes of any such software compatibility and/or suitability with any other Customer provided software shall be Customer's responsibility. Customer hereby consents to the disclosure to the provider of Third Party Software, of Customer's name and any other necessary information for the limited purpose of licensing rights. Customer shall not use Hosting Service for or in connection with any high risk use or activity such as aircraft or other modes of human mass transportation, nuclear, or chemical facilities, or Class III medical devices under the Federal Food, Drug, and Cosmetic Act. **COPYING OR REPRODUCTION OF THE HOSTING SOFTWARE TO ANY OTHER SERVER OR LOCATION FOR FURTHER REPRODUCTION OR REDISTRIBUTION IS EXPRESSLY PROHIBITED, UNLESS APPROVED IN WRITING BY CHARTER.**

- b) **Domain Names.** Customer shall be solely responsible for registering for or renewing a desired domain name. Charter does not guarantee that Customer will be able to register or renew a desired domain name.
- c) **Specification Limitations.** Individual websites may not at any time exceed the Hosting specifications identified on the applicable Service Order. If Customer's Hosting account exceeds the applicable specifications or is adversely impacting Charter's network or server(s), Charter may (i) contact Customer to resolve the issues; or (ii) if Customer has exceeded the then-applicable specifications in any given month, upgrade account on the next available billing cycle to the next service level tier or suspend or terminate the Hosting Service.

Notwithstanding anything to the contrary, if Customer's use of the Hosting Service is causing an adverse impact on Charter's network or servers, Charter may suspend or terminate the Hosting Service without notice.

- d) **Limitation of Charter-provided Services.** Certain services are not provided by Charter as part of the Hosting Service (e.g., Charter does not provide nor offer webpage creation, development, design or content services).
- e) **Hosting Fees.** The applicable Service Order sets forth the MSFs for the Hosting Service. Customer is responsible for payment whether or not the hosting platform is used and whether or not it functions properly, unless such failure is caused by Charter.
- f) **Content Liability and Use Restrictions.** Charter exercises no control over the content of the information passing through Customer's site(s) and it is

Customer's sole responsibility to ensure that Customer and Customer's users use of the Hosting Service complies at all times with all applicable laws and regulations and the AUP. Charter shall have the right to disclose any and all available information collected from Customer to law enforcement authorities upon written request by such authorities. Information that may be disclosed includes IP addresses, account history, and files stored on servers used to provide the Hosting Service. If Customer engages in any of the following prohibited activities, Charter shall have the right to suspend or terminate the Hosting Services and/or this Agreement:

1. The hosting of unlicensed software.
 2. Use of software or files that contain computer viruses or files that may harm user's computers;
 3. Any attempt or actual unauthorized access by Customer or through Customer's equipment to any Charter website or the website of any Charter customer;
 4. The collection or any attempt to collect personally identifiable information of any person or entity without his, her or its express written consent. Customer shall maintain records of any such written consent throughout the term of this Agreement and for three years thereafter;
 5. Any action or inaction which is harmful or potentially harmful to the Charter server structure;
 6. Running a banner exchange, free adult thumbnail gallery post and/or free adult image galleries on your website;] or
 7. Inclusion of sites with material, links, or resources for hacking, phreaking, viruses, or any type of site that promotes or participates in willful harm to Internet sites, users or providers.
- g) **Impositions on Customer's End Users.** Customer is responsible for charging and collecting from its end users any and all applicable taxes. If Customer fails to impose and/or collect any tax from its end users then, as between Charter and Customer, Customer shall be liable for such uncollected tax and any interest and penalty assessed thereon with respect to the uncollected tax. Customer shall indemnify and hold the Charter Indemnified Parties (defined below) harmless for any costs incurred or taxes or fees paid due to actions taken by the applicable taxing authority to collect any such tax from Charter due to Customer's failure to comply with this Section.
 - (b) **CB Security Service – Desktop and Managed.** Charter's managed security service, CB Managed Security, and desktop security service, CB Desktop Security (collectively, "CB Security Service") are each made up of software and hardware components. Charter shall ensure that the selected CB Security Service(s) is/are operational and updated from time-to-time based on manufacturer-

sent updates. Charter is not the manufacturer of any software or hardware components of either Spectrum Business Security Service nor is Charter the supplier of any components of such software or hardware.

- (c) **CB Back-Up Service.** For Charter's data storage service ("**CB Back-up**"), Customer shall be assessed applicable OTCs and MSFs which shall be based upon Customer's selection of version retention quantity and storage tier (e.g., five gigabits). The version retention quantity selected specifies the maximum number of separate versions of a document that will be retained (running in sequential order based on the last version created). For example, if Customer has selected "seven" as the version retention quantity, Customer will be able to access the last seven versions of a particular document. In addition to OTCs and MSFs, monthly storage overage fees shall apply each month Customer exceeds the respective subscribed storage level. Additional OTCs and MSFs also apply to Customer-requested media and/or professional services.

Charter is not the manufacturer or supplier of any CB Back-Up software components. Customer shall be responsible for updating CB Back-Up from time-to-time based on updates provided by the software manufacturer, and any failure of Customer to perform such updates shall relieve Charter from any responsibility to ensure that CB Back-Up remains operational.

If the functionality of CB Back-Up cannot be maintained by Charter, Charter shall have the right to discontinue providing the Service immediately and Charter shall credit Customer's account for any pre-paid MSFs attributable to the Service, except where such lack of functionality is caused by Customer or any end user gaining access to the Service through Customer's facilities, equipment, or point of access. Customer shall not be relieved of its responsibility to continue to pay for CB Back-Up in the event CB Back-Up does not function properly as a result of Customer's failure to install and configure the software, activate the service or install manufacturer-provided updates. **CUSTOMER UNDERSTANDS AND ACKNOWLEDGES THAT (1) IT IS CUSTOMER'S SOLE RESPONSIBILITY TO CREATE AND RETAIN THE CB BACK-UP PASSWORD THAT IS NECESSARY FOR ACCESS TO ANY DATA STORED VIA THE CB BACK-UP SERVICE AND (2) CHARTER HAS NO ACCESS TO AND DOES NOT KNOW NOR KEEP ANY RECORD OF THE PASSWORD CREATED BY CUSTOMER. FAILURE BY CUSTOMER TO RETAIN CUSTOMER'S CB BACK-UP PASSWORD SHALL RESULT IN COMPLETE LOSS OF ACCESSABILITY TO DATA STORED VIA CB BACK-UP.**

- 10. DATA NETWORKING (aka "DATA TRANSPORT").** Charter will provide Data Networking Services for Customer locations connected over coaxial and/or fiber-optic cable. Connectivity is established between two or more customer end-points under a unique customer topology. Charter will install the coaxial or fiber-optic cable into each Customer site as listed in the Service Order(s). Charter will also supply an edge device at each site that

will be capable of receiving the Service as specified in the Service Order(s).

- a) Charter will terminate fiber-optic cable on a patch panel or provide a coaxial outlet at an agreed upon minimum point of penetration (MPOP) up to 50 feet within each facility (unless otherwise specified in the Service Order). If the hand-off point of the Data Networking Service at Customer's premise exceeds this distance, Customer may be responsible for any additional costs for internal wiring.
- b) Customer will make available to Charter a building ground connection at each location that meets current electrical codes for the placement of a fiber-optic patch panel and/or coaxial outlet. Unless otherwise specified in the applicable Service Order, it is recommended that Customer provide a separate 20 Amp 110V AC circuit for the edge electronics, which is powered by a UPS system. Customer-supplied routing will be necessary for communication between each Service Location.
- c) If Customer has selected "Monitoring" for a Service, Charter shall monitor the Services 24 hours a day, seven days a week. Customer shall contact the Spectrum Business Network Operations Center at 1-866-603-3199 or subsequent number to report Data Networking Service problems. Additional fees may apply for Monitoring over coaxial cable.
- d) In the event Customer is receiving Data Networking Services: Optical Ethernet EP-LAN or EVP-LAN, Charter recommends that the Customer place a router at each ingress/egress point (on Customer's side of the demarcation), which will reduce the number of customer media access control ("MAC") addresses which must be learned by Charter's network (aka 'masking') in order to be conveyed. In the event Customer chooses not to place a router on its side of the demarcation, Charter will place limitations on the number of MAC addresses that will be learned by Charter's network and, in circumstances where the customer exceeds these limitations, some Customer network traffic will be denied from entering Charter's network. Additional monthly fees will be applied if the number of MAC addresses on a given EVC (Ethernet Virtual Connection) exceeds 500, and Charter will not allow more than 1000 MAC addresses onto the network.

- 11. NO THIRD-PARTY HARDWARE OR SOFTWARE SUPPORT.** Customer is responsible for the installation, repair and use of Customer-supplied third-party hardware and/or software. For purposes of this Agreement the Hosting Software shall be considered third party software. Charter does not support third-party hardware or software supplied by Customer. Any questions concerning third-party hardware or software should be directed to the provider of that product. Charter assumes no liability or responsibility for the installation, maintenance, compatibility or performance of third party software, any Customer-supplied hardware or software with the Services. If such third-party equipment or software impairs the Services, Customer shall remain liable for payments

as agreed (if any) without recourse for credit or prorated refund for the period of impairment. Charter has no responsibility to resolve the difficulties caused by such third-party equipment or software. If, at Customer's request, Charter should attempt to resolve difficulties caused by such third-party equipment or software, such efforts shall be performed at Charter's discretion and at then-current commercial rates and terms.

12. **CUSTOMER USE.** Customer shall not re-sell or re-distribute access to the Service(s) or system capacity, or any part thereof, in any manner without the express prior written consent of Charter. Customer shall not use or permit third parties to use the Service(s), including the Equipment and software provided by Charter, for any illegal purpose, or to achieve unauthorized access to any computer systems, software, data, or other copyright or patent protected material. Customer shall not interfere with other customers' use of the Equipment or Services or disrupt the Charter Network, backbone, nodes or other Services. Violation of any part of this Section is grounds for immediate Termination of this Agreement and/or all Service Orders in addition to any other rights or remedies Charter may have.

13. **PERFORMANCE.** Charter will use commercially reasonable efforts in keeping with normal industry standards to ensure that the Service is available to Customer 24 hours per day, seven days per week. It is possible, however, that there will be interruptions of Service. The Service may be unavailable from time-to-time either for scheduled or unscheduled maintenance, technical difficulties, or for other reasons beyond Charter's reasonable control. Temporary service interruptions/outages for such reasons, as well as service interruptions/outages caused by Customer, its agents and employees, or by a Force Majeure Event, shall not constitute a failure by Charter to perform its obligations under this Agreement, and Customer will not hold Charter at fault for loss of Customer revenue or lost employee productivity due to Service outages.

14. **DEFAULT; SUSPENSION OF SERVICE; TERMINATION.** No express or implied waiver by Charter of any event of default shall in any way be a waiver of any further subsequent event of default. Nothing herein, including Termination, shall relieve Customer of its obligation to pay Charter all amounts due.

(a) Default by Customer. Customer shall be in default under this Agreement if Customer does one or more of the following things (each individually to be considered a separate event of default) and Customer fails to correct each such noncompliance within 30 days of receipt of written notice:

- a) Customer is more than 30 days past due with respect to any payment required hereunder;
- b) Customer otherwise has failed to comply with the terms of this Agreement or any other Service Order(s) incorporated herein.

(b) Termination for Convenience. Notwithstanding any other term or provision in this Agreement, Customer shall have the right to terminate a Service Order, or this Agreement in whole or part, at any time during the Service Period upon thirty (30) days prior written notice to Charter, and subject to payment of all outstanding amounts due, any applicable Termination Charges, and the return of any Charter Equipment.

(c) Charter's Right to Terminate and Termination Charge. If Customer is in default, Charter shall have the right, at its option, without prior notice, and in addition to any other rights of Charter expressly set forth in this Agreement and any other remedies it may have under applicable law to:

- a) Immediately suspend Services to Customer until such time as the underlying noncompliance has been corrected without affecting Customer's on-going obligation to pay Charter any amounts due under this Agreement (e.g., the MSFs) as if such suspension of Services had not taken place;
- b) Terminate the Services, this Agreement or the applicable Service Order(s).

If Termination is due to noncompliance by Customer or is elected/done by Customer for convenience, Customer must pay Charter a Termination charge (a "Termination Charge"), which the parties recognize as liquidated damages. This Termination Charge shall be equal to 50% of the unpaid balance of the MSFs that would have been due throughout the remainder of the applicable Service Period plus 100% of (1) the outstanding balance of any and all OTCs plus (2) any and all previously waived OTCs.

(d) Default by Charter. Charter shall be in default under this Agreement if Charter fails to comply with the terms of this Agreement and/or any or all of the applicable Service Order(s), and Charter fails to remedy each such noncompliance or occurrence within 30 days of receipt of written notice from Customer describing in reasonable detail the nature, scope and extent of the default or noncompliance.

(e) Customer's Right to Terminate and Termination Charge.

- a) In the event Customer wishes to terminate a Service without cause, Customer shall be liable for the same Termination Charges as described above.
- b) Customer shall have the right, at its option and in addition to any other remedies it may have, to terminate any applicable Service Order(s), if the underlying event of default and/or noncompliance by Charter is limited to Services provided under the applicable Service Order(s) or this Agreement, if such noncompliance is not so limited, provided that Charter's diligent efforts to correct such breach are not commenced and pursued within 30 days after Charter's receipt of a written notice from Customer describing in reasonable detail the nature, scope and extent of the event of default/noncompliance.
- c) If Termination is due to noncompliance by Charter, Charter shall reimburse Customer for any pre-paid,

unused MSFs attributable to such terminated Service Order(s). In addition, if Termination is due to noncompliance by Charter within one year of the applicable Turn-Up Date, Charter shall pay a Termination Charge, which the parties recognize as liquidated damages, equal to a portion of any OTC that has already been paid by Customer to Charter relative to Service at the sites covered by the terminated Service Order. This Termination Charge shall be equal to the product of a) the number of months (including partial months) remaining in the initial 12 months of the initial Service Period at the time of Termination and b) a ratio in which the numerator is the total of OTCs paid to date and the denominator is 12.

15. LIMITATION OF LIABILITY. PLEASE READ THIS SECTION CAREFULLY, IT CONTAINS DISCLAIMERS OF WARRANTIES AND LIMITATIONS OF LIABILITY.

- (a) Limited Warranty. At all times during the Service Period, Charter warrants that it will use commercially reasonable efforts in keeping with industry standards to cause the Services to be available to Customer. Charter does not warrant that Services will be error free.

THE FOREGOING LIMITED WARRANTY IS EXCLUSIVE AND IN LIEU OF ALL EXPRESS AND IMPLIED WARRANTIES WHATSOEVER.

EXCEPT AS OTHERWISE STATED IN THIS AGREEMENT, CHARTER MAKES NO WARRANTIES, EXPRESS OR IMPLIED, AS TO ANY SERVICE AND SPECIFICALLY DISCLAIMS ANY AND ALL IMPLIED WARRANTIES, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE OR NON-INFRINGEMENT OF THIRD PARTY RIGHTS.

WITHOUT LIMITING ANY EXPRESS PROVISIONS OF THIS AGREEMENT, NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR ANY INDIRECT, CONSEQUENTIAL, EXEMPLARY, SPECIAL, INCIDENTAL RELIANCE OR PUNITIVE DAMAGES (INCLUDING LOST BUSINESS, REVENUE, PROFITS, OR GOODWILL) ARISING IN CONNECTION WITH THIS AGREEMENT OR THE PROVISION OF SERVICES, INCLUDING ANY SERVICE IMPLEMENTATION DELAYS AND/OR FAILURES, UNDER ANY THEORY OF TORT, CONTRACT, WARRANTY, STRICT LIABILITY OR NEGLIGENCE, EVEN IF THE PARTY HAS BEEN ADVISED, KNEW OR SHOULD HAVE KNOWN OF THE POSSIBILITY OF SUCH DAMAGES. CHARTER'S MAXIMUM LIABILITY TO CUSTOMER WITH REGARD TO ANY SERVICE SHALL NOT EXCEED THE AMOUNT, EXCLUDING OTCs, PAID OR PAYABLE BY CUSTOMER TO CHARTER FOR THE APPLICABLE SERVICE IN THE THREE MONTHS IMMEDIATELY PRECEDING THE EVENTS GIVING RISE TO THE CLAIM.

THE FOREGOING LIMITATIONS APPLIES TO ALL CAUSES OF ACTIONS AND CLAIMS, INCLUDING

BREACH OF CONTRACT, BREACH OF WARRANTY, NEGLIGENCE, STRICT LIABILITY, MISREPRESENTATION AND OTHER TORTS.

Any warranty claim by Customer must be made within 30 days after the applicable Services have been performed. Charter's sole obligation and Customer's sole remedy, with respect to any breach of the limited warranty set forth herein, shall be a prorated refund of the fees paid by Customer based on the period of time when the Services are out of compliance with this limited warranty provision.

- (b) Content. Any content that Customer may access or transmit through any Service is provided by independent content providers, over which Charter does not exercise and disclaims any control. Charter neither previews content nor exercises editorial control; does not endorse any opinions or information accessed through any Service; and assumes no responsibility for content. Charter specifically disclaims any responsibility for the accuracy or quality of the information obtained using the Service. Such content or programs may include programs or content of an infringing, abusive, profane or sexually offensive nature. Customer and its authorized users accessing other parties' content through Customer's facilities do so at Customer's own risk, and Charter assumes no liability whatsoever for any claims, losses, actions, damages, suits or proceedings arising out of or otherwise relating to such content.
- (c) Damage, Loss or Destruction of Software Files and/or Data. Customer uses the Services and Equipment supplied by Charter at its sole risk. Charter does not manufacture the Equipment, and the Services and Equipment are provided on an "as is basis" without warranties of any kind. Charter assumes no responsibility whatsoever for any damage to or loss or destruction of any of Customer's hardware, software, files, data or peripherals which may result from Customer's use of any Service. Charter does not warrant that data or files sent by or to Customer will be transmitted in uncorrupted form or within a reasonable period of time.
- (d) Unauthorized Access. If Customer chooses to run or offer access to applications from its equipment that permits others to gain access through the Network, Customer must take appropriate security measures. Failing to do so may cause immediate termination of Customer's Service by Charter without liability for Charter. Charter is not responsible for and assumes no liability for any damages resulting from the use of such applications, and Customer shall hold harmless and indemnify the Charter Indemnified Parties from and against any claims, losses, or damages arising from such use. Charter is not responsible and assumes no liability for losses, claims, damages, expenses, liability, or costs resulting from others accessing Customer's computers, its internal network and/or the Network through Customer's equipment.
- (e) Force Majeure Event. Neither Party shall be liable to the other for any delay, inconvenience, loss, liability or damage resulting from any failure or interruption of Services, directly or indirectly caused by circumstances

beyond such party's control, including but not limited to denial of use of poles or other facilities of a utility company, labor disputes, acts of war or terrorism, criminal, illegal or unlawful acts, natural causes, mechanical or power failures, or any order, law or ordinance in any way restricting the operation of the Services. Changes in economic, business or competitive condition shall not be considered a Force Majeure Event.

16. **INDEMNIFICATION.** In addition to its specific indemnification responsibilities set forth elsewhere in this Agreement and as permissible under applicable law, Customer at its own expense, shall indemnify, defend and hold harmless Charter and its directors, employees, representatives, officers and agents, (the "Indemnified Parties") against any and all claims, liabilities, lawsuits, damages, losses, judgments, costs, fees and expenses incurred by Charter Indemnified Parties, including reasonable attorney fees and court costs incurred by Charter Indemnified Parties under this Agreement, to the full extent that such arise from Customer's misrepresentation with regard to or noncompliance with the terms of this Agreement and any or all Service Orders, Customer's failure to comply with applicable law, and/or Customer's negligence or willful misconduct. Charter Indemnified Parties shall have the right but not the obligation to participate in the defense of the claim at Customer's cost and Customer shall cooperate with Charter Indemnified Parties in such case.
17. **TITLE.** Title to the Equipment shall remain with Charter during the applicable Service Period. Customer shall keep that portion of the Equipment located on Customer premises free and clear of all liens, encumbrances and security interests. Upon termination of Service or expiration of a Service Order's Service Period for a specific site, Charter shall have the right to remove all Equipment components and/or leave any of such components in place, assigning title and interest in such components to Customer, it being understood that no further notice or action is required to accomplish the assignment contemplated hereunder. Charter shall have the right to remove the Equipment and all components within 60 days after such termination.
18. **COMPLIANCE WITH LAWS.** Customer shall not use or permit third parties to use the Services in any manner that violates applicable law or causes Charter to violate applicable law. Both parties shall comply with all applicable laws and regulations when carrying out their respective duties hereunder.
19. **PRIVACY.** Charter treats private communications on or through its Network or using any Service as confidential and does not access, use or disclose the contents of private communications, except in limited circumstances and as permitted by law. Charter also maintains a Privacy Policy with respect to the Services in order to protect the privacy of its customers. The Privacy Policy may be found on Charter's website at www.Charter-Business.com. The Privacy Policy may be updated or modified from time-to-time by Charter, with or without notice to Customer.

20. **GENERAL CUSTOMER REPRESENTATIONS AND OBLIGATIONS.** Customer represents to Charter (a) that Customer has the authority to execute, deliver and carry out the terms of this Agreement and associated Service Orders and (b) that any person who accesses any Services through Customer's equipment or through the Network facilities in Customer's Premises will be an authorized user, will use the Service, Network and/or Network facilities in an appropriate and legal manner, and will be subject to the terms of this Agreement. Customer is responsible for ensuring its users of the Service comply with the terms of this Agreement. Customer shall be responsible for all access to and use of the Service by means of Customer's equipment, whether or not Customer has knowledge of or authorizes such access or use. Customer shall be solely liable and responsible for all charges incurred and all conduct through either authorized or unauthorized use of the Service, until informs Charter of any breach of security.

21. **NOTICES.** Any notices to be given under this Agreement shall be validly given or served only if in writing and sent by nationally recognized overnight delivery service or certified mail, return receipt requested, to the following addresses:

If to Charter:
Charter Communications
ATTN: CB Corporate – Contracts Management
Dept: Corporate Operations
12405 Powerscourt Drive
St. Louis, MO 63131

Notices to Customer shall be sent to the Customer billing address.

Each party may change its respective address (es) for legal notice by providing notice to the other party.

22. **MISCELLANEOUS.**

- (a) Entire Agreement; Signatures. This Agreement and any related, executed Service Order(s) constitute the entire Agreement with respect to the Services, Network and Equipment. This Agreement supersedes all prior understandings, promises and undertakings, if any, made orally or in writing by or on behalf of the parties with respect to the subject matter of this Agreement. This Agreement may be executed in one or more counterparts, each of which is an original, but together constituting one and the same instrument. Execution of a facsimile copy will have the same force and effect as execution of an original, and a facsimile signature will be deemed an original and valid signature.
- (b) No Amendments, Supplements or Changes. Except for pricing terms as set forth in this Agreement, this Agreement and the associated executed Service Order(s) may not be amended, supplemented or changed without both parties' prior written consent.
- (c) No Assignment or Transfer. The parties may not assign or transfer (directly or indirectly by any means, by operation of law or otherwise) this Agreement and the associated

Service Order(s), or their rights or obligations hereunder to any other entity without first obtaining written consent from the other party, which consent shall not be unreasonably withheld; provided, however, that without Customer's consent, Charter may assign this Agreement and the associated executed Service Order(s) to affiliates controlling, controlled by or under common control with Charter, or to its successor-in-interest if Charter sells some or all of the underlying communications system.

- (d) Severability. If any term, covenant, condition or portion of this Agreement or any related, executed Service Order(s) shall, to any extent, be invalid or unenforceable, the remainder of this Agreement or any related, executed Service Order(s) shall not be affected and each remaining term, covenant or condition shall be valid and enforceable to the fullest extent permitted by law.
- (e) Governing Law. The law of the state in which the Services are provided (excluding its conflicts of law provisions) shall govern the construction, interpretation, and performance of this Agreement, except to the extent superseded by federal law. IN ANY AND ALL CONTROVERSIES OR CLAIMS ARISING OUT OF OR RELATING TO THIS AGREEMENT, ITS NEGOTIATION, ENFORCEABILITY OR VALIDITY, OR THE PERFORMANCE OR BREACH THEREOF OR THE RELATIONSHIPS ESTABLISHED HEREUNDER, CUSTOMER AND CHARTER EACH HEREBY WAIVES ITS RIGHT, IF ANY, TO TRIAL BY JURY.
- (f) Both parties had the opportunity to review and participate in the negotiation of the terms of this Agreement and the Service Order(s) and, accordingly, no court construing this Agreement and any Service Order(s) shall construe it more stringently against one party than against the other.
- (g) No Third Party Beneficiaries. The terms of this Agreement and the parties' respective performance of obligations as described are not intended to benefit any person or entity not a party to this Agreement, and the consideration provided by each party hereunder only runs to the respective parties hereto, and that no person or entity not a party to this Agreement shall have any rights hereunder nor the right to require performance of obligations by either of the parties hereto.
- (h) Waiver. Except as otherwise provided herein, the failure of Charter to enforce any provision of this Agreement shall not constitute or be construed as a waiver of such provision or of the right to enforce such provision.

**ADDENDUM TO SPECTRUM BUSINESS INTERNET ACCESS, VIDEO AND MUSIC SERVICE AGREEMENT
AND DATA TRANSPORT SERVICE AGREEMENT**

This Addendum ("Addendum") modifies the Spectrum Business Internet Access, Video and Music Service Agreement, the Data Transport Service Agreement and any agreement or document incorporated therein ("the Documents") between City of Kingsport, Tennessee ("City"), and Charter Communications, LLC ("Spectrum Business" or "Charter"). Notwithstanding any provision or language in the Documents, the provisions in this Addendum takes precedence over all other terms, conditions or language to the contrary in the Documents, and the Documents and this Addendum shall not construed to create any ambiguity between any of the Documents and this Addendum, it being the intent of the parties that this Addendum shall control. Accordingly, the Documents are amended as follows:

1. Indemnity, Limitation of Liability and Disclaimer of Warranty. Article II, Section 29 of the Tennessee Constitution prohibits cities from lending their credit to private entities and, therefore, prohibits an agreement to indemnify a third party or agree to a limitation of liability provision. Any indemnity or hold harmless provisions contained in the Documents are enforceable only to the extent not prohibited by Tennessee law, provided the City's monetary limits of liability under any indemnity provision is limited to the monetary limits of liability as provided for in the Tennessee Tort Liability Act, T.C.A. section 29-20-101 *et seq.* Any limitation of liability provision contained in the Documents is enforceable only to the extent not prohibited by Tennessee law. No provision of the Documents shall act or be deemed a waiver by the City of any immunity, its rights or privileges as a sovereign entity, or of any provision of the Tennessee Governmental Liability Act, T.C.A. section 29-20-101 *et seq.* Because Tennessee law may not allow the City to agree to the disclaimer of warranties such exclusion may not be applicable to the City, such disclaimer of warranties shall be enforceable only to the extent not prohibited by Tennessee law. Notwithstanding the foregoing, the City understands and agrees that Charter disclaims and shall not be responsible for any liability to the full extent that such arises from City's misrepresentation with regard to or noncompliance with the terms of this Agreement and/or any Service Order, City's failure to comply with applicable law, and/or City's negligence or willful misconduct.

2. Nonappropriation. Charter acknowledges that the City is a governmental entity, and the Documents validity is based upon the availability of public funding under its authority. In the event the City fails to appropriate funds or make monies available for any fiscal year covered by the term of the Documents for the services to be provided, the Documents shall be terminated on the last day of the fiscal year for which funds were appropriated or monies made available for such purposes without liability to the City, and such termination shall not be a breach of the Documents by the City.

3. Damages. The Documents do not create an obligation by the City to pay any damages in excess of those amounts legally available to satisfy the City's obligations under the Documents. To the extent not prohibited by law, the City understands and agrees that Charter disclaims and shall not be responsible for any liability to the full extent that such arises from City's misrepresentation with regard to noncompliance with the terms of this Agreement and/or any Service Order, City's failure to comply with applicable law, and/or City's negligence or willful misconduct.

4. Confidentiality. The Documents and any documents or material obtained by the City may be subject to disclosure in whole or in part pursuant to the Tennessee Open Records Act set out in T.C.A. 10-7-503 *et seq.* without regard to any provision contained in the Documents declaring information confidential.

5. No Arbitration, Waiver of Jury Trial, Jurisdiction, Governing Law, Venue. Notwithstanding any other provision in the Documents to the contrary, arbitration is not permitted and if a dispute arises between the parties concerning any aspect of the Documents and it cannot be resolve by mutual agreement any party may resort to resolution of the dispute by litigation in the state of federal courts for Kingsport, Sullivan County, Tennessee. The parties waive their right to a jury trial. The Documents shall be governed by the laws of the State of Tennessee, without regard to its conflict of laws principles. .

6. Non-liability of City Officials and Employees. No member, official, or employee of the City shall be personally liable to the Charter in the event any provision of the Documents is unenforceable; there is any default or breach by the City; for any amount which may become due under the Contract; or on any obligations under the terms of the Contract, only to the extent not prohibited by law. The City understands and agrees that Charter disclaims and shall not be responsible for any liability to the full extent that such arises from City's misrepresentation with regard to or noncompliance with the terms of this Agreement and/or any Service Order, City's failure to comply with applicable law, and/or City's negligence or willful misconduct.

Charter Communications, LLC

City of Kingsport, Tennessee

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

Attest: _____
City Recorder

Approved as to form:

City Attorney



AGENDA ACTION FORM

Contract between the City of Kingsport and the Tennessee Department of Transportation for Maintenance Activities Performed on Designated State Highways and for Mowing and Litter on J.B. Dennis

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

Action Form No.: AF-109-2015
 Work Session: May 18, 2015
 First Reading: N/A

Final Adoption: May 19, 2015
 Staff Work By: Ronnie Hammonds
 Presentation By: Ryan McReynolds

Recommendation:

Approve a resolution authorizing the Mayor or his designee to sign an agreement for FY 2016 between the City and the Tennessee Department of Transportation for reimbursement of maintenance activities performed on state highway routes located inside Kingsport's city limits.

Executive Summary:

Each year the City of Kingsport enters into an agreement with the State for reimbursement of maintenance performed on state routes. These routes are Stone Drive, Center Street, Fort Henry Drive, Lynn Garden Drive, Industry Drive, Wilcox Drive, Memorial Boulevard and limited portions of John B. Dennis Highway. Maintenance activities include: shoulder work, snow removal, spot patching, ditch work, crack sealing, paint and striping, sweeping, mowing and litter control. Tracked on a monthly basis, these activities are performed by Traffic Engineering, Street Maintenance and Right-of-Way Maintenance. Reimbursement is requested monthly based on the terms of the contract. Most costs are reimbursed at \$0.15 per square yard. Reimbursement is limited to 12 litter control cycles and 6 mowing cycles annually. The limiting amount of the contract is \$253,008.15 for FY16. Total roadway surface equals 1,576,829 square yards. Mowing acreage totals 34.14 at \$45 per acre, and litter control covers 12.11 miles at the actual amount expended. Mowing and litter control for John B. Dennis is being continued this year. This includes 43.9 acres of mowing and 4.74 miles of litter control for a total contract amount of \$20,385.

Attachments:

1. Resolution
2. Agreement
3. Rates

Funding source appropriate and funds are available:  _____

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

RESOLUTION NO. _____

A RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE A CONTRACT FOR FISCAL YEAR 2016 WITH THE STATE OF TENNESSEE DEPARTMENT OF TRANSPORTATION FOR REIMBURSEMENT OF MAINTENANCE ACTIVITIES PERFORMED ON DESIGNATED STATE HIGHWAY ROUTES LOCATED IN THE KINGSPORT CITY LIMITS; EXECUTE A CONTRACT WITH THE STATE OF TENNESSEE DEPARTMENT OF TRANSPORTATION FOR MOWING AND LITTER ON JOHN B. DENNIS; AND EXECUTE ALL DOCUMENTS NECESSARY AND PROPER TO EFFECTUATE THE PURPOSE OF THE AGREEMENTS

WHEREAS, the city desires to enter into a contract for fiscal year 2016 with the State of Tennessee Department of Transportation for reimbursement of maintenance activities performed on designated state highway routes located in the Kingsport city limits;

WHEREAS, the routes included in the contract are Stone Drive, Center Street, Fort Henry Drive, Lynn Garden Drive, Industry Drive, Wilcox Drive, Memorial Boulevard and portions of John B. Dennis Highway; and

WHEREAS, the maintenance activities include shoulder work, snow removal, spot patching, ditch work, crack sealing, paint and striping, sweeping, mowing and litter control; and

WHEREAS, the maximum amount of the contract is \$253,008.15 for fiscal year 2016; and

WHEREAS, the contract for mowing and litter control for John B. Dennis includes 43.9 acres of mowing and 4.74 miles of litter control for a total contract amount of \$20,385.

Now therefore,

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

SECTION I. That an agreement with the State of Tennessee Department of Transportation for reimbursement of maintenance activities performed on designated state highway routes located in the Kingsport city limits 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 State of Tennessee Department of Transportation for reimbursement of maintenance activities performed on designated state highway routes located in the Kingsport city limits 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:

**CONTRACT
BETWEEN THE STATE OF TENNESSEE,
DEPARTMENT OF TRANSPORTATION
AND
CITY OF KINGSPORT**

This Contract, by and between the State of Tennessee, Department of Transportation, hereinafter referred to as the "Department" and CITY OF KINGSPORT, hereinafter referred to as the "Agency" is for the provision of the routine maintenance of state routes as further defined in the "SCOPE OF SERVICES."

Contract # CMA 1613

A. SCOPE OF SERVICES:

A.1 The Agency shall provide all service and deliverables as required, described, and detailed herein and shall meet all service and delivery timelines as specified by this Contract.

A.2 Tenn. Code Ann. § 54-5-201 provides that the Department is authorized to enter into contracts with municipalities regarding the improvement and maintenance of streets over which traffic on state highways is routed.

A.3 Tenn. Code Ann. § 54-5-202 provides that streets constructed, reconstructed, improved and maintained by the Department shall be of a width and type that the Department deems proper, but the width so constructed, reconstructed, improved and maintained shall not be less than eighteen feet (18'); and, in the case of resurfacing and maintenance, from curb to curb where curbs exist, or the full width of the roadway where no curbs exist.

A.4 Tenn. Code Ann. § 54-5-203 provides that the Department is authorized to enter into contracts with municipalities that are organized to care for streets to reimburse, subject to the approval of the Department, for improvements and maintenance.

A.5 Tenn. Code Ann. § 54-16-106 provides that the highway authorities of the state, counties, cities, and town are authorized to enter into agreements with each other respecting the improvement and maintenance of controlled-access facilities, defined by Tenn. Code Ann. § 54-16-101 as a highway or street specially designed for through traffic, and over, from or to which owners or occupants of abutting land or other persons have no right or easement of access from abutting properties.

A.6 Tenn. Code Ann. § 54-5-139 provides that the Department may enter into a contract with a qualified county to perform maintenance activities upon the rights-of-way of state highways located outside of municipalities and metropolitan governments; and, that the reimbursement shall be on an actual cost basis.

A.7 The Department is hereby contracting with the Agency for the improvements and maintenance specified in Attachment Exhibit "A" titled "Guidelines Covering Maintenance of State Highways through Municipalities", attached and incorporated hereto as part of this Contract.

B. CONTRACT PERIOD:

This Contract shall be effective for the period beginning July 1, 2015, and ending on June 30, 2016. The Agency hereby acknowledges and affirms that the Department shall have no obligation for services rendered by the Agency which were not performed within this specified contract period.

C. PAYMENT TERMS AND CONDITIONS:

C.1. Maximum Liability. In no event shall the maximum liability of the Department under this Contract exceed Two Hundred Fifty-Three Thousand Eight Dollars and Fifteen Cents (\$253,008.15). The payment rates in Section C.3 shall constitute the entire compensation due the Agency for all service and Agency obligations hereunder regardless of the difficulty, materials or equipment required. The payment rates include, but are not limited to, all applicable taxes, fees, overheads, and all other direct and indirect costs incurred or to be incurred by the Agency.

The Agency is not entitled to be paid the maximum liability for any period under the Contract or any extensions of the Contract for work not requested by the Department. The maximum liability represents available funds for payment to the Agency and does not guarantee payment of any such funds to the Agency under this Contract unless the Department requests work and the Agency performs said work. In which case, the Agency shall be paid in accordance with the payment rates detailed in Section C.3. The Department is under no obligation to request work from the Agency in any specific dollar amounts or to request any work at all from the Agency during any period of this Contract.

C.2 Compensation Firm. The payment rates and the maximum liability of the Department under this Contract are firm for the duration of the Contract and are not subject to escalation for any reason unless amended.

C.3 Payment Methodology. The Agency shall be compensated based on the payment rates herein for units of service authorized by the Department in a total amount not to exceed the Contract Maximum Liability established in Section C.1.

a. The Agency's compensation shall be contingent upon the satisfactory completion of units, milestones, or increments of service defined in Section A.

The Agency shall be compensated for said units, milestones, or increments of service based upon the payment rates provided in Attachments Either "Exhibit A" titled "Guidelines Covering Maintenance of State Highways through Municipalities" and if included herein "Exhibit B" containing the maximum allowable labor and equipment rates, attached and incorporated hereto as part of this Contract.

C.4 Travel Compensation. The Agency shall not be compensated or reimbursed for travel, meals, or lodging.

C.5 Invoice Requirements. The Agency shall invoice the Department only for completed increments of service and for the amount stipulated in Section C.3, above, and present said sworn invoices within the time specified in Section C.6 below and no more often than monthly, with all necessary supporting documentation, to:

Brian Ramsey
PO BOX 3518CRS
Johnson City TN 37602

- a. Each invoice shall clearly and accurately detail at a minimum all of the following required information (calculations must be extended and totaled correctly).
- (1) Invoice Number (assigned by the Agency);
 - (2) Invoice Date;
 - (3) Contract Number (assigned by the Department);
 - (4) Customer Account Name: Tennessee Department of Transportation, Maintenance Division;
 - (5) Customer Account Number (assigned by the Agency to the above-referenced Customer);
 - (6) Agency Name;
 - (7) Agency Tennessee Edison Registration ID Number;
 - (8) Agency Contact for Invoice Questions (name, phone, and/or fax);
 - (9) Agency Remittance Address;
 - (10) Description of Delivered Service that shall detail the work performed by activity, including the quantified units of measure as identified in the Attachments, and work location that corresponds to the request for reimbursement of each activity submitted;
 - (11) Complete Itemization of Charges, which shall detail the following:
 - i. Service or Milestone Description (including name & title as applicable) of each service invoiced,
 - ii. Number of Completed Units of Measure as applicable for each service invoiced, as provided in Exhibit A,
 - iii. Applicable Payment Rate (as stipulated in Section C.3.) of each service invoiced,
 - iv. Amount Due by Service, and
 - v. Total Amount Due for the invoice period; and
 - (12) Any further information requested by the Department.

The Agency understands and agrees that an invoice under this Contract shall:

- (1) include only charges for service described in Contract Section A and Exhibit A, and in accordance with payment terms and conditions set forth in Contract Section C;
- (2) only be submitted for completed service and shall not include any charge for future work;
- (3) not include sales tax or shipping charges; and
- (4) initiate the timeframe for payment only when the Department is in receipt of the invoice, and the invoice meets the minimum requirements of this Section C.5.

C.6 Timely Invoice. The amount(s) per compensable increment (detailed in Section C.3) shall be contingent upon the Department's receipt of an invoice (as required in Section C.5.) for said service(s) within sixty (60) days after the end of the calendar month in which the service(s) were rendered. At the sole discretion of the Department, the amount per compensable increment of any service for which the Department receives an invoice later than prescribed herein shall be subject to a reduction in amount of up to 100%. In the case of an untimely invoice, before any payment will be considered by the Department, the Agency must submit a written request regarding the untimely invoice, which shall detail the reason the invoice is untimely as well as the Agency's plan for submitting all future invoices no later than prescribed herein, and it must be signed by an individual empowered to bind the Agency to this Contract.

C.7 Payment of Invoice. A payment by the Department shall not prejudice the Department's right to object to or question any payment, invoice, or matter in relation thereto. A payment by the Department shall not be construed as acceptance of any part of the work or service provided or as approval of any amount invoiced.

C.8 Invoice Reductions. 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, on the basis of audits conducted in accordance with the terms of this Contract, not to constitute proper remuneration for compensable services.

C.9 Deductions. The Department reserves the right to deduct from amounts, which are or shall become due and payable to the Agency under this or any contract between the Agency and the State of Tennessee any amounts, which are or shall become due and payable to the State of Tennessee by the Agency.

C.10. Prerequisite Documentation. The Agency shall not invoice the Department under this Contract until the Department has received the following documentation properly completed.

a. The Agency shall complete, sign, and present to the Department an "Authorization Agreement for Automatic Deposit (ACH Credits) Form" provided by the Department. By doing so, the Agency acknowledges and agrees that, once said form is received by the Department, all payments to the Agency, under this or any other contract the Agency has with the State of Tennessee shall be made by Automated Clearing House (ACH).

b. The Agency shall complete, sign, and present to the Department a "Substitute W-9 Form" provided by the Department. The taxpayer identification number detailed by said form must agree with the Agency's Federal Employer Identification Number or Tennessee Edison Registration ID referenced in this Contract.

D. STANDARD TERMS AND CONDITIONS:

D.1 Required Approvals. The Department is not bound by this Contract until it is signed by the contract parties.

D.2 Modification and Amendment. This Contract may be modified only by a written amendment signed by all parties hereto and approved by both the officials who approved the base contract and, depending upon the specifics of the contract as amended, any additional officials required by Tennessee laws and regulations.

D.3 Termination for Convenience. The Department may terminate this Contract without cause for any reason. Said termination shall not be deemed a breach of contract 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 satisfactory, authorized service 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. Upon such termination, the Agency shall have no right to any actual general, special, incidental, consequential, or any other damages whatsoever of any description or amount.

D.4 Termination for Cause. If the Agency fails to properly perform its obligations under this Contract in a timely or proper manner, or if the Agency violates any terms of this Contract, the Department shall have the right to immediately terminate the Contract 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 Contract by the Agency.

D.5. Subcontracting. The Agency shall not assign this Contract or enter into a subcontract for any of the services performed under this Contract without obtaining the prior written approval of the Department. If such subcontracts are approved by the Department, each shall contain, at a minimum, sections of this Contract pertaining to "Conflicts of Interest," "Nondiscrimination," "Records," "Monitoring," and "State and Federal Requirements," (as identified by the section headings). Notwithstanding any use of approved subcontractors, the Agency shall be the prime contractor and shall be responsible for all work performed.

D.6 Conflicts of Interest. The Agency warrants that no part of the total Contract 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 Contract.

D.7 Nondiscrimination. The Agency hereby agrees, warrants, and assures that no person shall be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination in the performance of this Contract or in the employment practices of the Agency on the grounds of handicap or disability, age, race, color, religion, sex, national origin, or any other classification protected by Federal, Tennessee State constitutional, or statutory law. The Agency shall, upon request, show proof of such nondiscrimination and shall post in conspicuous places, available to all employees and applicants, notices of nondiscrimination.

D.8. Records. The Agency shall maintain documentation for all charges under this Contract. The books, records, and documents of the Agency, insofar as they relate to work performed or money received under this Contract, shall be maintained for a period of three (3) full years from the date of the final payment and shall be subject to audit at any reasonable time and upon reasonable notice by the Department, the Comptroller of the Treasury, or their duly appointed representatives. The financial statements shall be prepared in accordance with generally accepted accounting principles.

D.9 Monitoring. The Agency's activities conducted and records maintained pursuant to this Contract shall be subject to monitoring and evaluation by the Department, the Comptroller of the Treasury, or their duly appointed representatives.

D.10 Progress Reports. The Agency shall submit brief, periodic, progress reports to the Department as requested.

D.11 Strict Performance. Failure by any party to this Contract to insist in any one or more cases upon the strict performance of any of the terms, covenants, conditions, or provisions of this Contract shall not be construed as a waiver or relinquishment of any such term, covenant, condition, or provision. No term or condition of this Contract shall be held to be waived, modified, or deleted except by a written amendment signed by the parties hereto.

D.12 Independent Contractor. The parties hereto, in the performance of this Contract, shall not act as employees, partners, joint venturers, 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 Contract shall be construed to create an employer/employee relationship or to allow either to exercise control or direction over the manner or method by which the other transacts its business affairs or provides its usual services. The employees or agents of one party shall not be deemed or construed to be the employees or agents of the other party for any purpose whatsoever.

The Agency, being a Tennessee governmental entity, is governed by the provisions of the Tennessee Government Tort Liability Act, *Tennessee Code Annotated*, Sections 29-20-101 *et seq.*, for causes of action sounding in tort. Further, no contract provision requiring a Tennessee political entity to indemnify or hold harmless the Department beyond the liability imposed by law is enforceable because it appropriates public money and nullifies governmental immunity without the authorization of the General Assembly.

D.13 Department Liability. The Department shall have no liability except as specifically provided in this Contract. The Department does not assume any liability for damages caused to persons or property by reason of the Agency performance of this Contract. The Department assumes no liability for injury to any person or employees of the Agency performing work under this Contract.

D.14 Force Majeure. The obligations of the parties to this Contract 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, natural disasters, riots, wars, epidemics, or any other similar cause.

D.15 State and Federal Compliance. The Agency shall comply with all applicable State and Federal laws and regulations in the performance of this Contract.

D.16 Governing Law. This Contract 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 Contract. 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.18 Completeness. This Contract is complete and contains the entire understanding between the parties relating to the subject matter contained herein, including all the terms and conditions of the parties' agreement. This Contract supersedes any and all prior understandings, representations, negotiations, and agreements between the parties relating hereto, whether written or oral.

D.19 Severability. If any terms and conditions of this Contract are held to be invalid or unenforceable as a matter of law, the other terms and conditions hereof shall not be affected thereby and shall remain in full force and effect. To this end, the terms and conditions of this Contract are declared severable.

D.20 Headings. Section headings of this Contract are for reference purposes only and shall not be construed as part of this Contract.

E. SPECIAL TERMS AND CONDITIONS:

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

E.2 Communications and Contacts. All instructions, notices, consents, demands, or other communications required or contemplated by this Contract shall be in writing and shall be made by certified, first class mail, return receipt requested and postage prepaid, by overnight courier service with an asset tracking system, or by EMAIL or facsimile transmission with recipient confirmation. Any such communications, regardless of method of transmission, shall be addressed to the respective party at the appropriate mailing address, facsimile number, or EMAIL address as set forth below or to that of such other party or address, as may be hereafter specified by written notice.

The Department:

Brian Ramsey
District 17 Operations Supervisor
State of Tennessee Department of Transportation

PO BOX 3518CRS
Johnson City TN 37602
Brian.Ramsey@tn.gov
Telephone # 423-282-0651
FAX # 423-854-5310

The Agency:

Ryan McReynolds
Public Works Director
225 West Center Street Kingsport, TN 37660-4237
Telephone # (423)229-9398
Fax (423)229-9473
RyanMcReynolds@KingsportTN.gov

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

E.3 Subject to Funds Availability. The Contract is subject to the appropriation and availability of State of Tennessee 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 Contract upon written notice to the Agency. Said termination shall not be deemed a breach of Contract by the Department. Upon receipt of the written notice, the Agency shall cease all work associated with the Contract. 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.

E.4 MUTCD. In accordance with Tenn. Code Ann. 54-5-108, the Agency shall conform to and act in accordance with the current edition of the Manual on Uniform Traffic Control Devices (MUTCD) as adopted by rules of the Department. Particularly, the Agency shall sign work-zones associated with this Contract in accordance with the aforesaid MUTCD.

E.5. Maintenance. Nothing contained in this Contract shall change the maintenance obligations governed by the laws of the State of Tennessee, it being the intent of this Contract not to enlarge the present maintenance obligations of the Department.

[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 an agreement with State of Tennessee Department of Transportation for mowing and litter on John B. Dennis is approved.

SECTION V. That the mayor, or in his absence, incapacity, or failure to act, the vice-mayor, is authorized and directed to execute, in a form approved by the city attorney and subject to the requirements of Article X, Section 10 of the Charter of the City of Kingsport, the agreement with State of Tennessee Department of Transportation for mowing and litter on John B. Dennis 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:

**CONTRACT
BETWEEN THE STATE OF TENNESSEE,
DEPARTMENT OF TRANSPORTATION
AND
CITY OF KINGSFORT**

This Contract, by and between the State of Tennessee, Department of Transportation, hereinafter referred to as the "Department" and CITY OF KINGSFORT, hereinafter referred to as the "Agency" is for the provision of a special agreement for mowing and litter removal, as further defined in the "SCOPE OF SERVICES."

Contract #. CMA 1614

A. SCOPE OF SERVICES:

A.1 The Agency shall provide all service and deliverables as required, described, and detailed herein and shall meet all service and delivery timelines as specified by this Contract.

A.2 Tenn. Code Ann. § 54-5-201 provides that the Department is authorized to enter into contracts with municipalities regarding the improvement and maintenance of streets over which traffic on state highways is routed.

A.3 Tenn. Code Ann. § 54-5-202 provides that streets constructed, reconstructed, improved and maintained by the Department shall be of a width and type that the Department deems proper, but the width so constructed, reconstructed, improved and maintained shall not be less than eighteen feet (18'); and, in the case of resurfacing and maintenance, from curb to curb where curbs exist, or the full width of the roadway where no curbs exist.

A.4 Tenn. Code Ann. § 54-5-203 provides that the Department is authorized to enter into contracts with municipalities that are organized to care for streets to reimburse, subject to the approval of the Department, for improvements and maintenance.

A.5 Tenn. Code Ann. § 54-16-106 provides that the highway authorities of the state, counties, cities, and town are authorized to enter into agreements with each other respecting the improvement and maintenance of controlled-access facilities, defined by Tenn. Code Ann. § 54-16-101 as a highway or street specially designed for through traffic, and over, from or to which owners or occupants of abutting land or other persons have no right or easement of access from abutting properties.

A.6 Tenn. Code Ann. § 54-5-139 provides that the Department may enter into a contract with a qualified county to perform maintenance activities upon the rights-of-way of state highways located outside of municipalities and metropolitan governments; and, that the reimbursement shall be on an actual cost basis.

A.7 The Department is hereby contracting with the Agency for the improvements and maintenance specified in Attachment Exhibit A" titled "Guidelines Covering Maintenance of State Highways through Municipalities", attached and incorporated hereto as part of this Contract.

B. CONTRACT PERIOD:

This Contract shall be effective for the period beginning July 1, 2015, and ending on June 30, 2016. The Agency hereby acknowledges and affirms that the Department shall have no obligation for services rendered by the Agency which were not performed within this specified contract period.

C. PAYMENT TERMS AND CONDITIONS:

C.1. Maximum Liability. In no event shall the maximum liability of the Department under this Contract exceed Twenty Thousand Three Hundred Eighty Five Dollars (\$20,385.00). The payment rates in Section C.3 shall constitute the entire compensation due the Agency for all service and Agency obligations hereunder regardless of the difficulty, materials or equipment required. The payment rates include, but are not limited to, all applicable taxes, fees, overheads, and all other direct and indirect costs incurred or to be incurred by the Agency.

The Agency is not entitled to be paid the maximum liability for any period under the Contract or any extensions of the Contract for work not requested by the Department. The maximum liability represents available funds for payment to the Agency and does not guarantee payment of any such funds to the Agency under this Contract unless the Department requests work and the Agency performs said work. In which case, the Agency shall be paid in accordance with the payment rates detailed in Section C.3. The Department is under no obligation to request work from the Agency in any specific dollar amounts or to request any work at all from the Agency during any period of this Contract.

C.2. Compensation Firm. The payment rates and the maximum liability of the Department under this Contract are firm for the duration of the Contract and are not subject to escalation for any reason unless amended.

C.3. Payment Methodology. The Agency shall be compensated based on the payment rates herein for units of service authorized by the Department in a total amount not to exceed the Contract Maximum Liability established in Section C.1.

a. The Agency's compensation shall be contingent upon the satisfactory completion of units, milestones, or increments of service defined in Section A.

b. The Agency shall be compensated for said units, milestones, or increments of service based upon the payment rates provided in Attachments Either "Exhibit A" titled "Guidelines Covering Maintenance of State Highways through Municipalities" and if included herein "Exhibit B" containing the maximum allowable labor and equipment rates, attached and incorporated hereto as part of this Contract.

C.4. Travel Compensation. The Agency shall not be compensated or reimbursed for travel, meals, or lodging.

C.5. Invoice Requirements. The Agency shall invoice the Department only for completed increments of service and for the amount stipulated in Section C.3, above, and present said sworn invoices within the time specified in Section C.6 below and no more often than monthly, with all necessary supporting documentation, to:

Brian Ramsey
PO BOX 3518CRS
Johnson City TN 37602

a. Each invoice shall clearly and accurately detail at a minimum all of the following required information (calculations must be extended and totaled correctly).

- (1) Invoice Number (assigned by the Agency);
- (2) Invoice Date;
- (3) Contract Number (assigned by the Department);
- (4) Customer Account Name: Tennessee Department of Transportation, Maintenance Division;
- (5) Customer Account Number (assigned by the Agency to the above-referenced Customer);
- (6) Agency Name;
- (7) Agency Tennessee Edison Registration ID Number;
- (8) Agency Contact for Invoice Questions (name, phone, and/or fax);
- (9) Agency Remittance Address;
- (10) Description of Delivered Service that shall detail the work performed by activity, including the quantified units of measure as identified in the Attachments, and work location that corresponds to the request for reimbursement of each activity submitted;
- (11) Complete Itemization of Charges, which shall detail the following:
 - i. Service or Milestone Description (including name & title as applicable) of each service invoiced,
 - ii. Number of Completed Units of Measure as applicable for each service invoiced, as provided in Exhibit A,
 - iii. Applicable Payment Rate (as stipulated in Section C.3.) of each service invoiced,
 - iv. Amount Due by Service, and
 - v. Total Amount Due for the invoice period; and

b. The Agency understands and agrees that an invoice under this Contract shall:

- (1) include only charges for service described in Contract Section A and Exhibit A, and in accordance with payment terms and conditions set forth in Contract Section C;
- (2) only be submitted for completed service and shall not include any charge for future work;
- (3) not include sales tax or shipping charges; and
- (4) initiate the timeframe for payment only when the Department is in receipt of the invoice, and the invoice meets the minimum requirements of this Section C.5.

C.6 Timely Invoice. The amount(s) per compensable increment (detailed in Section C.3) shall be contingent upon the Department's receipt of an invoice (as required in Section C.5.) for said service(s) within sixty (60) days after the end of the calendar month in which the service(s) were rendered. At the sole discretion of the Department, the amount per compensable increment of any service for which the Department receives an invoice later than prescribed herein shall be subject to a reduction in amount of up to 100%. In the case of an untimely invoice, before any payment will be considered by the Department, the Agency must submit a written request regarding the untimely invoice, which shall detail the reason the invoice is untimely as well as the Agency's plan for submitting all future invoices no later than prescribed herein, and it must be signed by an individual empowered to bind the Agency to this Contract.

C.7 Payment of Invoice. A payment by the Department shall not prejudice the Department's right to object to or question any payment, invoice, or matter in relation thereto. A payment by the Department shall not be construed as acceptance of any part of the work or service provided or as approval of any amount invoiced.

C.8 Invoice Reductions. 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, on the basis of audits conducted in accordance with the terms of this Contract, not to constitute proper remuneration for compensable services.

C.9 Deductions. The Department reserves the right to deduct from amounts, which are or shall become due and payable to the Agency under this or any contract between the Agency and the State of Tennessee any amounts, which are or shall become due and payable to the State of Tennessee by the Agency.

C.10 Prerequisite Documentation. The Agency shall not invoice the Department under this Contract until the Department has received the following documentation properly completed.

a. The Agency shall complete, sign, and present to the Department an "Authorization Agreement for Automatic Deposit (ACH Credits) Form" provided by the Department. By doing so, the Agency acknowledges and agrees that, once said form is received by the Department, all payments to the Agency, under this or any other contract the Agency has with the State of Tennessee shall be made by Automated Clearing House (ACH).

b. The Agency shall complete, sign, and present to the Department a "Substitute W-9 Form" provided by the Department. The taxpayer identification number detailed by said form must agree with the Agency's Federal Employer Identification Number or Tennessee Edison Registration ID referenced in this Contract.

D. STANDARD TERMS AND CONDITIONS:

D.1 Required Approvals. The Department is not bound by this Contract until it is signed by the contract parties.

D.2 Modification and Amendment. This Contract may be modified only by a written amendment signed by all parties hereto and approved by both the officials who approved the base contract and, depending upon the specifics of the contract as amended, any additional officials required by Tennessee laws and regulations.

D.3 Termination for Convenience. The Department may terminate this Contract without cause for any reason. Said termination shall not be deemed a breach of contract 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 satisfactory, authorized service 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. Upon such termination, the Agency shall have no right to any actual general, special, incidental, consequential, or any other damages whatsoever of any description or amount.

D.4 Termination for Cause. If the Agency fails to properly perform its obligations under this Contract in a timely or proper manner, or if the Agency violates any terms of this Contract, the Department shall have the right to immediately terminate the Contract 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 Contract by the Agency.

D.5 Subcontracting. The Agency shall not assign this Contract or enter into a subcontract for any of the services performed under this Contract without obtaining the prior written approval of the Department. If such subcontracts are approved by the Department, each shall contain, at a minimum, sections of this Contract pertaining to "Conflicts of Interest," "Nondiscrimination," "Records," "Monitoring," and "State and Federal Requirements," (as identified by the section headings). Notwithstanding any use of approved subcontractors, the Agency shall be the prime contractor and shall be responsible for all work performed.

D.6 Conflicts of Interest. The Agency warrants that no part of the total Contract 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 Contract.

D.7 Nondiscrimination. The Agency hereby agrees, warrants, and assures that no person shall be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination in the performance of this Contract or in the employment practices of the Agency on the grounds of handicap or disability, age, race, color, religion, sex, national origin, or any other classification protected by Federal, Tennessee State constitutional, or statutory law. The Agency shall, upon request, show proof of such nondiscrimination and shall post in conspicuous places, available to all employees and applicants, notices of nondiscrimination.

D.8 Records. The Agency shall maintain documentation for all charges under this Contract. The books, records, and documents of the Agency, insofar as they relate to work performed or money received under this Contract, shall be maintained for a period of three (3) full years from the date of the final payment and shall be subject to audit at any reasonable time and upon reasonable notice by the Department, the Comptroller of the Treasury, or their duly appointed representatives. The financial statements shall be prepared in accordance with generally accepted accounting principles.

D.9 Monitoring. The Agency's activities conducted and records maintained pursuant to this Contract shall be subject to monitoring and evaluation by the Department, the Comptroller of the Treasury, or their duly appointed representatives.

D.10 Progress Reports. The Agency shall submit brief, periodic, progress reports to the Department as requested.

D.11 Strict Performance. Failure by any party to this Contract to insist in any one or more cases upon the strict performance of any of the terms, covenants, conditions, or provisions of this Contract

shall not be construed as a waiver or relinquishment of any such term, covenant, condition, or provision. No term or condition of this Contract shall be held to be waived, modified, or deleted except by a written amendment signed by the parties hereto.

D.12 Independent Contractor. The parties hereto, in the performance of this Contract, shall not act as employees, partners, joint venturers, 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 Contract shall be construed to create an employer/employee relationship or to allow either to exercise control or direction over the manner or method by which the other transacts its business affairs or provides its usual services. The employees or agents of one party shall not be deemed or construed to be the employees or agents of the other party for any purpose whatsoever.

The Agency, being a Tennessee governmental entity, is governed by the provisions of the Tennessee Government Tort Liability Act, *Tennessee Code Annotated*, Sections 29-20-101 *et seq.*, for causes of action sounding in tort. Further, no contract provision requiring a Tennessee political entity to indemnify or hold harmless the Department beyond the liability imposed by law is enforceable because it appropriates public money and nullifies governmental immunity without the authorization of the General Assembly.

D.13 Department Liability. The Department shall have no liability except as specifically provided in this Contract. The Department does not assume any liability for damages caused to persons or property by reason of the Agency performance of this Contract. The Department assumes no liability for injury to any person or employees of the Agency performing work under this Contract.

D.14 Force Majeure. The obligations of the parties to this Contract 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, natural disasters, riots, wars, epidemics, or any other similar cause.

D.15 State and Federal Compliance. The Agency shall comply with all applicable State and Federal laws and regulations in the performance of this Contract.

D.16 Governing Law. This Contract 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 Contract. 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.17 Completeness. This Contract is complete and contains the entire understanding between the parties relating to the subject matter contained herein, including all the terms and conditions of the parties' agreement. This Contract supersedes any and all prior understandings, representations, negotiations, and agreements between the parties relating hereto, whether written or oral.

D.18 Severability. If any terms and conditions of this Contract are held to be invalid or unenforceable as a matter of law, the other terms and conditions hereof shall not be affected thereby and shall remain in full force and effect. To this end, the terms and conditions of this Contract are declared severable.

D.19 Headings. Section headings of this Contract are for reference purposes only and shall not be construed as part of this Contract.

E. SPECIAL TERMS AND CONDITIONS:

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

E.2 Communications and Contacts. All instructions, notices, consents, demands, or other communications required or contemplated by this Contract shall be in writing and shall be made by certified, first class mail, return receipt requested and postage prepaid, by overnight courier service with an asset tracking system, or by EMAIL or facsimile transmission with recipient confirmation. Any such communications, regardless of method of transmission, shall be addressed to the respective party at the appropriate mailing address, facsimile number, or EMAIL address as set forth below or to that of such other party or address, as may be hereafter specified by written notice.

The Department:

Brian Ramsey
District 17 Operations Supervisor
State of Tennessee Department of Transportation
PO BOX 3518CRS
Johnson City TN 37602
Brian.Rannsey@tn.gov
Telephone # 423-282-0651
FAX # 423-854-5310

The Agency:

Ryan McReynolds

Public Works Director
225 West Center Street Kingsport, TN 37660-4237
Telephone # (423)229-9398
Fax # (423)229-9473
RyanMcReynolds@KingsportTN.gov

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

E.3 Subject to Funds Availability. The Contract is subject to the appropriation and availability of State of Tennessee 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 Contract upon written notice to the Agency. Said termination shall not be deemed a breach of Contract by the Department. Upon receipt of the written notice, the Agency shall cease all work associated with the Contract. 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.

E.4 MUTCD. In accordance with Tenn. Code Ann. 54-5-108, the Agency shall conform to and act in accordance with the current edition of the Manual on Uniform Traffic Control Devices (MUTCD) as adopted by rules of the Department. Particularly, the Agency shall sign work-zones associated with this Contract in accordance with the aforesaid MUTCD.

E.5. Maintenance. Nothing contained in this Contract shall change the maintenance obligations governed by the laws of the State of Tennessee, it being the intent of this Contract not to enlarge the present maintenance obligations of the Department.

[Acknowledgements Deleted for Inclusion in this Resolution]

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

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

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

ADOPTED this the 19th day of May, 2015.

ATTEST:

DENNIS R. PHILLIPS, Mayor

JAMES H. DEMMING, City Recorder

APPROVED AS TO FORM:

J. MICHAEL BILLINGSLEY, City Attorney

**CONTRACT
BETWEEN THE STATE OF TENNESSEE,
DEPARTMENT OF TRANSPORTATION
AND
CITY OF KINGSPORT**

This Contract, by and between the State of Tennessee, Department of Transportation, hereinafter referred to as the "Department" and CITY OF KINGSPORT, hereinafter referred to as the "Agency" is for the provision of a special agreement for mowing and litter removal, as further defined in the "SCOPE OF SERVICES."

Contract #: CMA 1614

A. SCOPE OF SERVICES:

- A.1 The Agency shall provide all service and deliverables as required, described, and detailed herein and shall meet all service and delivery timelines as specified by this Contract.
- A.2 Tenn. Code Ann. § 54-5-201 provides that the Department is authorized to enter into contracts with municipalities regarding the improvement and maintenance of streets over which traffic on state highways is routed.
- A.3 Tenn. Code Ann. § 54-5-202 provides that streets constructed, reconstructed, improved and maintained by the Department shall be of a width and type that the Department deems proper, but the width so constructed, reconstructed, improved and maintained shall not be less than eighteen feet (18'); and, in the case of resurfacing and maintenance, from curb to curb where curbs exist, or the full width of the roadway where no curbs exist.
- A.4 Tenn. Code Ann. § 54-5-203 provides that the Department is authorized to enter into contracts with municipalities that are organized to care for streets to reimburse, subject to the approval of the Department, for improvements and maintenance.
- A.5. Tenn. Code Ann. § 54-16-106 provides that the highway authorities of the state, counties, cities, and town are authorized to enter into agreements with each other respecting the improvement and maintenance of controlled-access facilities, defined by Tenn. Code Ann. § 54-16-101 as a highway or street specially designed for through traffic, and over, from or to which owners or occupants of abutting land or other persons have no right or easement of access from abutting properties.
- A.6. Tenn. Code Ann. § 54-5-139 provides that the Department may enter into a contract with a qualified county to perform maintenance activities upon the rights-of-way of state highways located outside of municipalities and metropolitan governments; and, that the reimbursement shall be on an actual cost basis.
- A.7. The Department is hereby contracting with the Agency for the improvements and maintenance specified in Attachment Exhibit A" titled "Guidelines Covering Maintenance of State Highways through Municipalities", attached and incorporated hereto as part of this Contract.

B. CONTRACT PERIOD:

This Contract shall be effective for the period beginning July 1, 2015, and ending on June 30, 2016. The Agency hereby acknowledges and affirms that the Department shall have no obligation for services rendered by the Agency which were not performed within this specified contract period

C. PAYMENT TERMS AND CONDITIONS:

- C.1. Maximum Liability. In no event shall the maximum liability of the Department under this Contract exceed Twenty Thousand Three Hundred Eighty Five Dollars (\$20,385.00). The payment rates

in Section C 3 shall constitute the entire compensation due the Agency for all service and Agency obligations hereunder regardless of the difficulty, materials or equipment required. The payment rates include, but are not limited to, all applicable taxes, fees, overheads, and all other direct and indirect costs incurred or to be incurred by the Agency

The Agency is not entitled to be paid the maximum liability for any period under the Contract or any extensions of the Contract for work not requested by the Department. The maximum liability represents available funds for payment to the Agency and does not guarantee payment of any such funds to the Agency under this Contract unless the Department requests work and the Agency performs said work. In which case, the Agency shall be paid in accordance with the payment rates detailed in Section C.3. The Department is under no obligation to request work from the Agency in any specific dollar amounts or to request any work at all from the Agency during any period of this Contract.

C 2. Compensation Firm. The payment rates and the maximum liability of the Department under this Contract are firm for the duration of the Contract and are not subject to escalation for any reason unless amended.

C 3. Payment Methodology. The Agency shall be compensated based on the payment rates herein for units of service authorized by the Department in a total amount not to exceed the Contract Maximum Liability established in Section C.1.

a. The Agency's compensation shall be contingent upon the satisfactory completion of units, milestones, or increments of service defined in Section A.

b. The Agency shall be compensated for said units, milestones, or increments of service based upon the payment rates provided in Attachments Either "Exhibit A" titled "Guidelines Covering Maintenance of State Highways through Municipalities" and if included herein "Exhibit B" containing the maximum allowable labor and equipment rates, attached and incorporated hereto as part of this Contract.

C 4. Travel Compensation. The Agency shall not be compensated or reimbursed for travel, meals, or lodging.

C 5. Invoice Requirements. The Agency shall invoice the Department only for completed increments of service and for the amount stipulated in Section C.3, above, and present said sworn invoices within the time specified in Section C.6 below and no more often than monthly, with all necessary supporting documentation, to:

Brian Ramsey
PO BOX 3518CRS
Johnson City TN 37602

a. Each invoice shall clearly and accurately detail at a minimum all of the following required information (calculations must be extended and totaled correctly)

- (1) Invoice Number (assigned by the Agency);
- (2) Invoice Date;
- (3) Contract Number (assigned by the Department);
- (4) Customer Account Name: Tennessee Department of Transportation, Maintenance Division;
- (5) Customer Account Number (assigned by the Agency to the above-referenced Customer);
- (6) Agency Name;
- (7) Agency Tennessee Edison Registration ID Number;
- (8) Agency Contact for Invoice Questions (name, phone, and/or fax);
- (9) Agency Remittance Address;
- (10) Description of Delivered Service that shall detail the work performed by activity, including the quantified units of measure as identified in the Attachments, and

work location that corresponds to the request for reimbursement of each activity submitted.

(11) Complete Itemization of Charges, which shall detail the following

- i. Service or Milestone Description (including name & title as applicable) of each service invoiced.
- ii. Number of Completed Units of Measure as applicable for each service invoiced, as provided in Exhibit A.
- iii. Applicable Payment Rate (as stipulated in Section C.3.) of each service invoiced.
- iv. Amount Due by Service, and
- v. Total Amount Due for the invoice period, and

(12) Any further information requested by the Department.

b. The Agency understands and agrees that an invoice under this Contract shall

- (1) include only charges for service described in Contract Section A and Exhibit A, and in accordance with payment terms and conditions set forth in Contract Section C.
- (2) only be submitted for completed service and shall not include any charge for future work.
- (3) not include sales tax or shipping charges; and
- (4) initiate the timeframe for payment only when the Department is in receipt of the invoice, and the invoice meets the minimum requirements of this Section C.5.

C.6. Timely Invoice. The amount(s) per compensable increment (detailed in Section C.3) shall be contingent upon the Department's receipt of an invoice (as required in Section C.5.) for said service(s) within sixty (60) days after the end of the calendar month in which the service(s) were rendered. At the sole discretion of the Department, the amount per compensable increment of any service for which the Department receives an invoice later than prescribed herein shall be subject to a reduction in amount of up to 100%. In the case of an untimely invoice, before any payment will be considered by the Department, the Agency must submit a written request regarding the untimely invoice, which shall detail the reason the invoice is untimely as well as the Agency's plan for submitting all future invoices no later than prescribed herein, and it must be signed by an individual empowered to bind the Agency to this Contract.

C.7. Payment of Invoice. A payment by the Department shall not prejudice the Department's right to object to or question any payment, invoice, or matter in relation thereto. A payment by the Department shall not be construed as acceptance of any part of the work or service provided or as approval of any amount invoiced.

C.8. Invoice Reductions. 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, on the basis of audits conducted in accordance with the terms of this Contract, not to constitute proper remuneration for compensable services.

C.9. Deductions. The Department reserves the right to deduct from amounts, which are or shall become due and payable to the Agency under this or any contract between the Agency and the State of Tennessee any amounts, which are or shall become due and payable to the State of Tennessee by the Agency.

C.10. Prerequisite Documentation. The Agency shall not invoice the Department under this Contract until the Department has received the following documentation properly completed.

- a. The Agency shall complete, sign, and present to the Department an "Authorization Agreement for Automatic Deposit (ACH Credits) Form" provided by the Department. By doing so, the Agency acknowledges and agrees that, once said form is received by the Department, all payments to the Agency, under this or any other contract the Agency has with the State of Tennessee shall be made by Automated Clearing House (ACH).

- b The Agency shall complete, sign, and present to the Department a "Substitute W-9 Form" provided by the Department. The taxpayer identification number detailed by said form must agree with the Agency's Federal Employer Identification Number or Tennessee Edison Registration ID referenced in this Contract.

D. STANDARD TERMS AND CONDITIONS:

- D 1 Required Approvals The Department is not bound by this Contract until it is signed by the contract parties.
- D 2 Modification and Amendment This Contract may be modified only by a written amendment signed by all parties hereto and approved by both the officials who approved the base contract and, depending upon the specifics of the contract as amended, any additional officials required by Tennessee laws and regulations.
- D 3 Termination for Convenience The Department may terminate this Contract without cause for any reason. Said termination shall not be deemed a breach of contract 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 satisfactory, authorized service 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. Upon such termination, the Agency shall have no right to any actual general, special, incidental, consequential, or any other damages whatsoever of any description or amount.
- D 4 Termination for Cause If the Agency fails to properly perform its obligations under this Contract in a timely or proper manner, or if the Agency violates any terms of this Contract, the Department shall have the right to immediately terminate the Contract 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 Contract by the Agency.
- D 5 Subcontracting The Agency shall not assign this Contract or enter into a subcontract for any of the services performed under this Contract without obtaining the prior written approval of the Department. If such subcontracts are approved by the Department, each shall contain, at a minimum, sections of this Contract pertaining to "Conflicts of Interest," "Nondiscrimination," "Records," "Monitoring," and "State and Federal Requirements," (as identified by the section headings). Notwithstanding any use of approved subcontractors, the Agency shall be the prime contractor and shall be responsible for all work performed.
- D 6 Conflicts of Interest The Agency warrants that no part of the total Contract 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 Contract.
- D 7 Nondiscrimination The Agency hereby agrees, warrants, and assures that no person shall be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination in the performance of this Contract or in the employment practices of the Agency on the grounds of handicap or disability, age, race, color, religion, sex, national origin, or any other classification protected by Federal, Tennessee State constitutional, or statutory law. The Agency shall, upon request, show proof of such nondiscrimination and shall post in conspicuous places, available to all employees and applicants, notices of nondiscrimination.
- D 8 Records The Agency shall maintain documentation for all charges under this Contract. The books, records, and documents of the Agency, insofar as they relate to work performed or money received under this Contract, shall be maintained for a period of three (3) full years from the date of the final payment and shall be subject to audit at any reasonable time and upon reasonable notice by the Department, the Comptroller of the Treasury, or their duly appointed

representatives. The financial statements shall be prepared in accordance with generally accepted accounting principles.

- D 9 Monitoring. The Agency's activities conducted and records maintained pursuant to this Contract shall be subject to monitoring and evaluation by the Department, the Comptroller of the Treasury, or their duly appointed representatives.
- D 10 Progress Reports. The Agency shall submit brief, periodic, progress reports to the Department as requested.
- D 11 Strict Performance. Failure by any party to this Contract to insist in any one or more cases upon the strict performance of any of the terms, covenants, conditions, or provisions of this Contract shall not be construed as a waiver or relinquishment of any such term, covenant, condition, or provision. No term or condition of this Contract shall be held to be waived, modified, or deleted except by a written amendment signed by the parties hereto.
- D 12 Independent Contractor. The parties hereto, in the performance of this Contract, shall not act as employees, partners, joint venturers, 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 Contract shall be construed to create an employer/employee relationship or to allow either to exercise control or direction over the manner or method by which the other transacts its business affairs or provides its usual services. The employees or agents of one party shall not be deemed or construed to be the employees or agents of the other party for any purpose whatsoever.

The Agency, being a Tennessee governmental entity, is governed by the provisions of the Tennessee Government Tort Liability Act, *Tennessee Code Annotated*, Sections 29-20-101 *et seq.*, for causes of action sounding in tort. Further, no contract provision requiring a Tennessee political entity to indemnify or hold harmless the Department beyond the liability imposed by law is enforceable because it appropriates public money and nullifies governmental immunity without the authorization of the General Assembly.

- D 13 Department Liability. The Department shall have no liability except as specifically provided in this Contract. The Department does not assume any liability for damages caused to persons or property by reason of the Agency performance of this Contract. The Department assumes no liability for injury to any person or employees of the Agency performing work under this Contract.
- D 14 Force Majeure. The obligations of the parties to this Contract 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, natural disasters, riots, wars, epidemics, or any other similar cause.
- D 15 State and Federal Compliance. The Agency shall comply with all applicable State and Federal laws and regulations in the performance of this Contract.
- D 16 Governing Law. This Contract 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 Contract. 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 17 Completeness. This Contract is complete and contains the entire understanding between the parties relating to the subject matter contained herein, including all the terms and conditions of the parties' agreement. This Contract supersedes any and all prior understandings, representations, negotiations, and agreements between the parties relating hereto, whether written or oral.
- D 18 Severability. If any terms and conditions of this Contract are held to be invalid or unenforceable as a matter of law, the other terms and conditions hereof shall not be affected thereby and shall

remain in full force and effect. To this end, the terms and conditions of this Contract are declared severable.

- D 19. Headings. Section headings of this Contract are for reference purposes only and shall not be construed as part of this Contract.

E. SPECIAL TERMS AND CONDITIONS:

- E 1. Conflicting Terms and Conditions. Should any of these special terms and conditions conflict with any other terms and conditions of this Contract, these special terms and conditions shall control.
- E 2. Communications and Contacts. All instructions, notices, consents, demands, or other communications required or contemplated by this Contract shall be in writing and shall be made by certified, first class mail, return receipt requested and postage prepaid, by overnight courier service with an asset tracking system, or by EMAIL or facsimile transmission with recipient confirmation. Any such communications, regardless of method of transmission, shall be addressed to the respective party at the appropriate mailing address, facsimile number, or EMAIL address as set forth below or to that of such other party or address, as may be hereafter specified by written notice.

The Department:

Brian Ramsey
District 17 Operations Supervisor
State of Tennessee Department of Transportation
PO BOX 3518CRS
Johnson City TN 37602
Brian.Ramsey@tn.gov
Telephone # 423-282-0651
FAX # 423-854-5310

The Agency

Ryan McReynolds
Public Works Director
225 West Center Street Kingsport, TN 37660-4237
Telephone # (423)229-9398
Fax # (423)229-9473
RyanMcReynolds@KingsportTN.gov

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

- E 3. Subject to Funds Availability. The Contract is subject to the appropriation and availability of State of Tennessee 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 Contract upon written notice to the Agency. Said termination shall not be deemed a breach of Contract by the Department. Upon receipt of the written notice, the Agency shall cease all work associated with the Contract. 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.
- E 4. MUTCD. In accordance with Tenn. Code Ann. 54-5-108, the Agency shall conform to and act in accordance with the current edition of the Manual on Uniform Traffic Control Devices (MUTCD).

as adopted by rules of the Department. Particularly, the Agency shall sign work-zones associated with this Contract in accordance with the aforesaid MUTCD

- E 5 Maintenance Nothing contained in this Contract shall change the maintenance obligations governed by the laws of the State of Tennessee, it being the intent of this Contract not to enlarge the present maintenance obligations of the Department

IN WITNESS WHEREOF,

CITY OF KINGSPORT:

AGENCY SIGNATURE

DATE

PRINTED NAME AND TITLE OF AGENCY SIGNATORY (above)

APPROVED AS TO FORM AND LEGALITY

AGENCY ATTORNEY SIGNATURE

DATE

STATE OF TENNESSEE DEPARTMENT OF TRANSPORTATION:

JOHN SCHROER, COMMISSIONER

DATE

APPROVED AS TO FORM AND LEGALITY

DEPARTMENT GENERAL COUNSEL

**INVENTORY OF ELIGIBLE MACHINE MOWING FOR THE MAINTENANCE
OF STATE HIGHWAYS THROUGH MUNICIPALITIES**

The following Table itemizes the eligible mowing area in acres which will be maintained by the Agency under the terms of this contract. The Department agrees to reimburse said Agency in the amount actually expended for machine mowing, not to exceed the number of cycles and the price per acre as detailed below.

Approved Mowing Reimbursement Per Acre \$ 45 00
Calculated Maximum Reimbursement (Mowing) \$ 11,853 00

Mowing Inventory Worksheet								
Route Number	Roadway Type	Begin Termini (LM)	End Termini(LM)	Median Area (acres)	Controlled Access Area (acres)	Segment Total Area (acres)	Number of Mowing Cycles	Contract Segment Total Area (acres)
SR93	2A	7 16	11 9			43 9	6	263 4
Total Contract Area (acres):								263

**INVENTORY OF ELIGIBLE LITTER REMOVAL FOR THE MAINTENANCE
OF STATE HIGHWAYS THROUGH MUNICIPALITIES**

The following Table itemizes the eligible length of litter removal in linear miles which will be maintained by the Agency under the terms of this contract. The Department agrees to reimburse said Agency in the amount actually expended for litter removal, not to exceed the number of cycles and the price per linear mile as detailed below.

Calculated Maximum Reimbursement (Litter) \$ 8,532 00

Litter Inventory Worksheet										
Route Number	Roadway Type	Beginning Termini (LM)	Ending Termini (LM)	Segment Length (mi.)	Litter Pass Miles Per Segment	Segment Total Litter (mi.)	Price per Litter Mile	Number of Litter Cycles	Contract Segment Total Litter (mi.)	Contract Segment Total Litter (\$)
SR93	2A	7 16	11 9	4 74	3	14 22	\$ 50.00	12	170 64	8532
Total Contract Litter (mi)									170 64	\$ 8,532 00

CITY MAINTENANCE ROADWAY TYPICAL SECTIONS

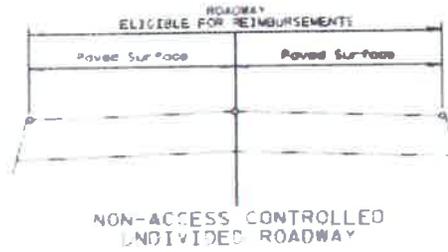


FIGURE 1A

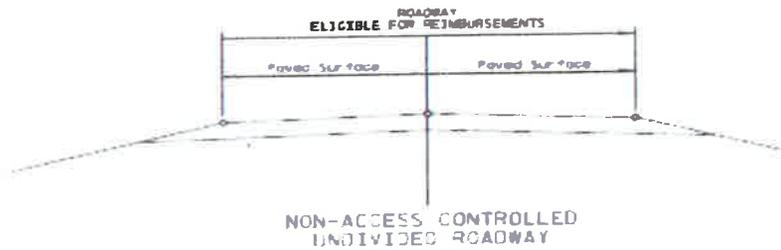


FIGURE 1B

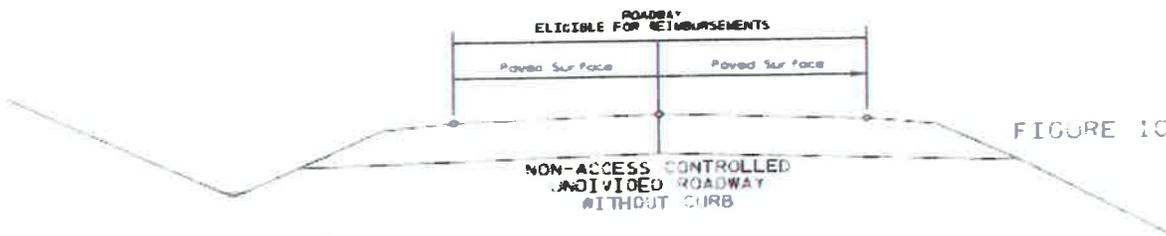


FIGURE 1C

NOTE:
IN FIGURES 1A, 1B, AND 1C FOR NON-ACCESS CONTROLLED ROUTES
THE PAVED SURFACE WILL INCLUDE PAVED SHOULDERS

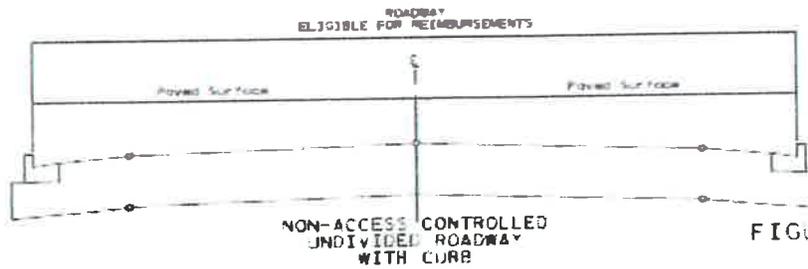


FIGURE 1D

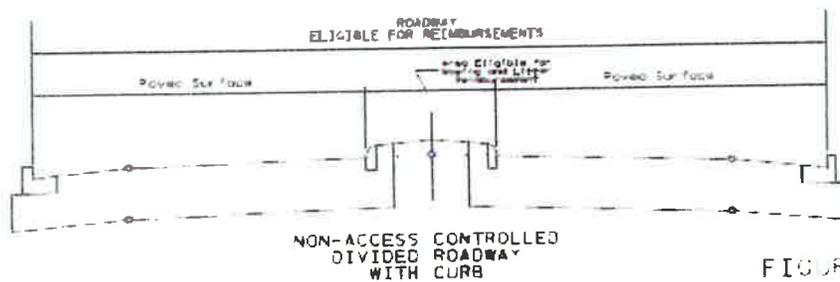


FIGURE 1E

CITY MAINTENANCE
ROADWAY TYPICAL SECTIONS

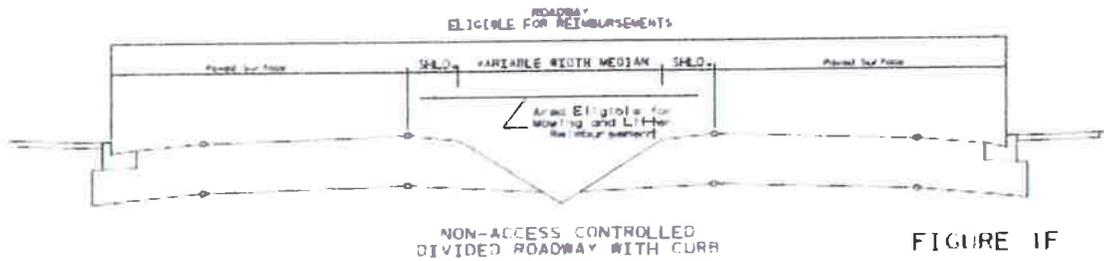


FIGURE 1F

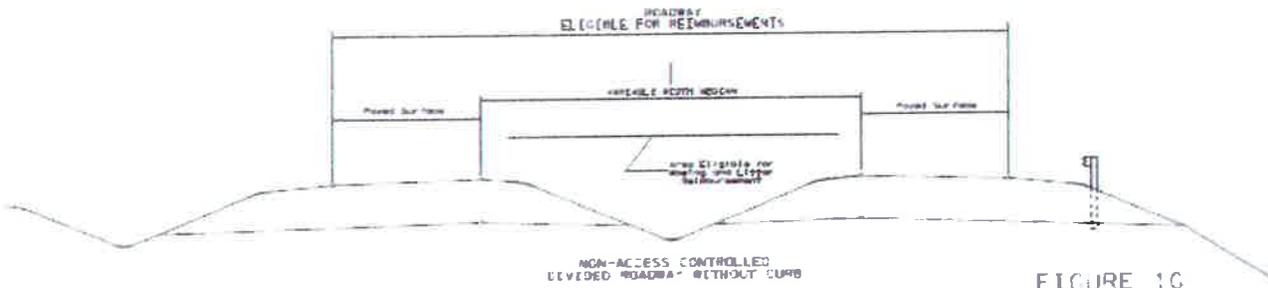


FIGURE 1G

NOTE:
IN FIGURES 1F AND 1G FOR NON-ACCESS CONTROLLED ROUTES
THE PAVED SURFACE WILL INCLUDE PAVED SHOULDERS.

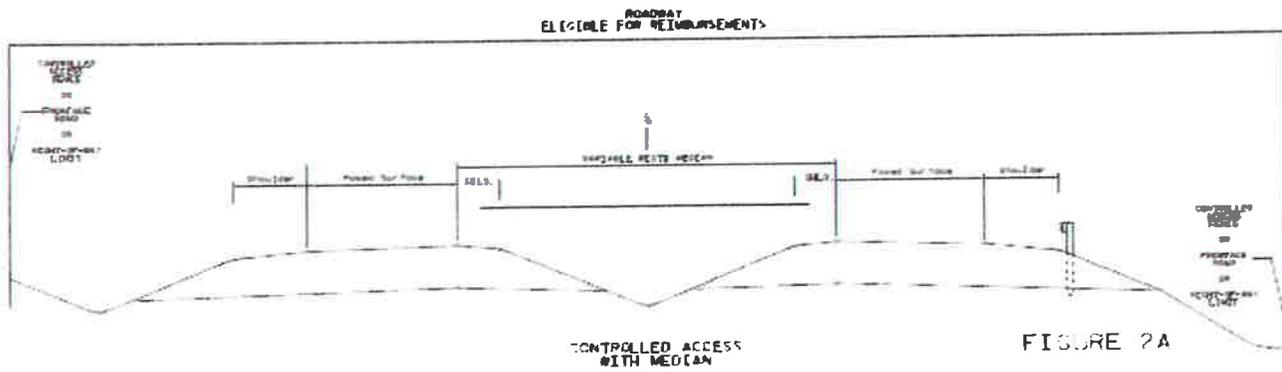


FIGURE 2A

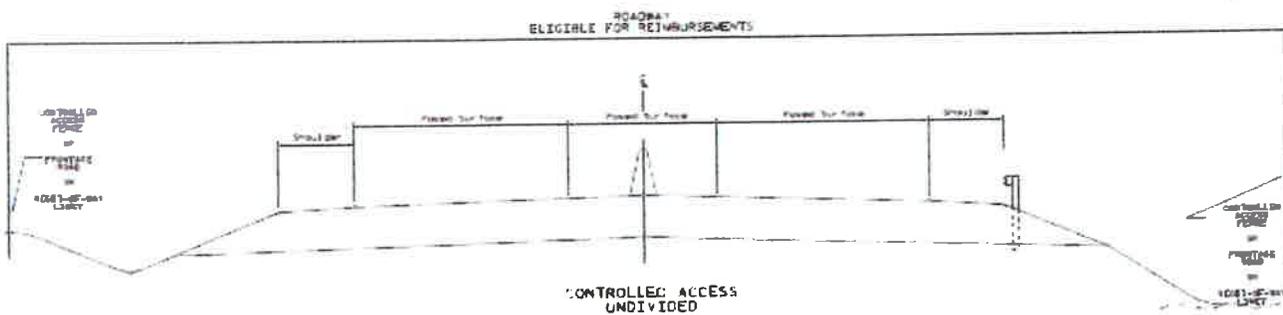


FIGURE 2B

"EXHIBIT B"
 CITY OF
 MAXIMUM ALLOWABLE EQUIPMENT RATES
 2015-2016 FISCAL YEAR

ITEM NO	DESCRIPTION OF EQUIPMENT	RATE	UNIT
01	SEDAN, POLICE OR FULL SIZE	12.00	HR
02	TRUCK, PICKUP	11.00	HR
03	TRUCK, ¾ TO 1 TON LIGHT DUTY	12.00	HR
04	TRUCK, ¾ TO 1 TON 4X4	13.00	HR
05	TRUCK, UTILITY/SERVICE BODY	14.00	HR
06	TRUCK, DUMP UP TO 15,000 GVWR	24.65	HR
07	TRUCK, DUMP OVER 15,000 UP TO 20,000 GVWR	28.12	HR
08	TRUCK, DUMP OVER 20,000 UP TO 40,000 GVWR	42.35	HR
09	TRUCK, DUMP TANDEM AXLE OVER 40,000 GVWR	68.00	HR
10	TRUCK, STAKE OR FLATBED UP TO 10,000 GVWR	17.45	HR
11	TRUCK, STAKE OR FLATBED OVER 10,000 UP TO 20,000 GVWR	26.10	HR
12	TRUCK, STAKE OR FLATBED OVER 20,000	42.00	HR
13	TRUCK, FLATBED OVER 32,500 GVWR	54.00	HR
14	TRUCK, TRACTOR SINGLE AXLE	37.00	HR
15	TRUCK, TRACTOR TANDEM AXLE	40.15	HR
16	TRUCK, SEWER/CULVERT/CATCH BASIN/ CLEANER (VAC-ALL)	82.20	HR
17	SWEEPER, TRUCK MOUNTED	55.89	HR
18	SWEEPER, SELF-PROPELLED	43.71	HR
19	TRUCK, W/STREET FLUSHER	70.16	HR
20	TRUCK, CRANE	28.28	HR
21	TRUCK, EXCAVATOR	64.73	HR
22	TRUCK, REFUSE COLLECTION	30.50	HR
23	TRACTOR, W/SWEEPER	32.68	HR
24	TRACTOR, W/DITCHER	62.12	HR
25	TRACTOR, WHEEL	48.22	HR
26	CHIPPER, BRUSH	36.81	HR
27	TRAILER, TILT	8.04	HR
28	TRAILER, PLATFORM OR GENERAL	10.12	HR
29	TRAILER, LOW BOY TANDEM	20.78	HR
30	JOINT & CRACK SEALING MACHINE	28.55	HR
31	ASPHALT RECLAIMER/RECYCLER MACHINE	135.78	HR

"EXHIBIT B"
CITY OF
MAXIMUM ALLOWABLE EQUIPMENT RATES
2015-2016 FISCAL YEAR

ITEM NO	DESCRIPTION OF EQUIPMENT	RATE	UNIT
32	PAVER, ASPHALT SELF-PROPELLED	154.53	HR
33	PAVER, ASPHALT PULL TYPE	7.45	HR
34	DISTRIBUTOR, ASPHALT, PULL TYPE	27.37	HR
35	CHIP SPREADER MACHINE	57.42	HR
36	EXCAVATOR, TRACK TYPE (TRACKHOE)	87.31	HR
37	DRAGLINES AND CRANES	75.99	HR
38	TRACTOR, CRAWLER (DOZER)	98.18	HR
39	MOTOR GRADER	65.30	HR
40	BACKHOE	37.90	HR
41	LOADER, FT END RUBBER TIRED (ARTICULATED) UP TO 1 CU. YD.	32.13	HR
42	LOADER, FT END RUBBER TIRED (ARTICULATED) OVER 1 UP TO 1.5 CY	47.50	HR
43	LOADER, FT END RUBBER TIRED (ARTICULATED) OVER 1.5 CU. YD.	59.71	HR
44	LOADER, FRONT END TRACK TYPE	71.50	HR
45	LOADER, SKID-STEER	58.46	HR
46	PROFILER, MILLING MACHINE	305.76	HR
47	ROLLER, WALK BEHIND	4.27	HR
48	ROLLER, STEEL WHEEL, 1 TO 5 TONS	88.84	HR
49	ROLLER, STEEL WHEEL, OVER 5 TONS	41.93	HR
50	GENERATOR, PORTABLE	8.30	HR
51	AIR COMPRESSOR, PORTABLE OR PULL TYPE	36.40	HR
52	WELDER, PORTABLE OR PULL TYPE	5.76	HR
53	CONCRETE MIXER, PORTABLE OR PULL TYPE	32.07	HR
54	CURBING MACHINE	65.74	HR
55	PAINT MACHINE, WALK BEHIND	31.57	HR
56	PAINT MACHINE, TRUCK MOUNTED (LARGE)	84.61	HR
57	THERMOPLASTIC MARKING MACHINE, WALK BEHIND	23.24	HR
58	TRAFFIC LINE REMOVER (WATER BLASTER)	43.68	HR
59	ARROW BOARD, TRAILER OR TRUCK MOUNTED	4.15	HR
60	MESSAGE SIGN, TRAILER MOUNTED	1.14	HR
61	LIGHT TOWER, TRAILER MOUNTED	24.18	HR
62	TRUCK MOUNTED ATTENUATOR	10.00	HR

**CONTRACT
BETWEEN THE STATE OF TENNESSEE,
DEPARTMENT OF TRANSPORTATION
AND
CITY OF KINGSPORT**

This Contract, by and between the State of Tennessee, Department of Transportation, hereinafter referred to as the "Department" and CITY OF KINGSPORT, hereinafter referred to as the "Agency" is for the provision of the routine maintenance of state routes as further defined in the "SCOPE OF SERVICES "

Contract #: CMA 1613

A. SCOPE OF SERVICES:

- A.1 The Agency shall provide all service and deliverables as required, described, and detailed herein and shall meet all service and delivery timelines as specified by this Contract.
- A.2 Tenn. Code Ann. § 54-5-201 provides that the Department is authorized to enter into contracts with municipalities regarding the improvement and maintenance of streets over which traffic on state highways is routed.
- A.3 Tenn. Code Ann. § 54-5-202 provides that streets constructed, reconstructed, improved and maintained by the Department shall be of a width and type that the Department deems proper, but the width so constructed, reconstructed, improved and maintained shall not be less than eighteen feet (18'); and, in the case of resurfacing and maintenance, from curb to curb where curbs exist, or the full width of the roadway where no curbs exist.
- A.4 Tenn. Code Ann. § 54-5-203 provides that the Department is authorized to enter into contracts with municipalities that are organized to care for streets to reimburse, subject to the approval of the Department, for improvements and maintenance.
- A.5 Tenn. Code Ann. § 54-16-106 provides that the highway authorities of the state, counties, cities, and town are authorized to enter into agreements with each other respecting the improvement and maintenance of controlled-access facilities, defined by Tenn. Code Ann. § 54-16-101 as a highway or street specially designed for through traffic, and over, from or to which owners or occupants of abutting land or other persons have no right or easement of access from abutting properties.
- A.6 Tenn. Code Ann. § 54-5-139 provides that the Department may enter into a contract with a qualified county to perform maintenance activities upon the rights-of-way of state highways located outside of municipalities and metropolitan governments; and, that the reimbursement shall be on an actual cost basis.
- A.7 The Department is hereby contracting with the Agency for the improvements and maintenance specified in Attachment Exhibit A" titled "Guidelines Covering Maintenance of State Highways through Municipalities", attached and incorporated hereto as part of this Contract.

B. CONTRACT PERIOD:

This Contract shall be effective for the period beginning July 1, 2015, and ending on June 30, 2016. The Agency hereby acknowledges and affirms that the Department shall have no obligation for services rendered by the Agency which were not performed within this specified contract period.

C. PAYMENT TERMS AND CONDITIONS:

- C.1. Maximum Liability. In no event shall the maximum liability of the Department under this Contract exceed Two Hundred Fifty-Three Thousand Eight Dollars and Fifteen Cents (\$253,008.15). The

payment rates in Section C.3 shall constitute the entire compensation due the Agency for all service and Agency obligations hereunder regardless of the difficulty, materials or equipment required. The payment rates include, but are not limited to, all applicable taxes, fees, overheads, and all other direct and indirect costs incurred or to be incurred by the Agency.

The Agency is not entitled to be paid the maximum liability for any period under the Contract or any extensions of the Contract for work not requested by the Department. The maximum liability represents available funds for payment to the Agency and does not guarantee payment of any such funds to the Agency under this Contract unless the Department requests work and the Agency performs said work. In which case, the Agency shall be paid in accordance with the payment rates detailed in Section C.3. The Department is under no obligation to request work from the Agency in any specific dollar amounts or to request any work at all from the Agency during any period of this Contract.

- C.2. Compensation Firm. The payment rates and the maximum liability of the Department under this Contract are firm for the duration of the Contract and are not subject to escalation for any reason unless amended.
- C.3. Payment Methodology. The Agency shall be compensated based on the payment rates herein for units of service authorized by the Department in a total amount not to exceed the Contract Maximum Liability established in Section C.1.
 - a. The Agency's compensation shall be contingent upon the satisfactory completion of units, milestones, or increments of service defined in Section A.
 - b. The Agency shall be compensated for said units, milestones, or increments of service based upon the payment rates provided in Attachments Either "Exhibit A" titled "Guidelines Covering Maintenance of State Highways through Municipalities" and if included herein "Exhibit B" containing the maximum allowable labor and equipment rates, attached and incorporated hereto as part of this Contract.
- C.4. Travel Compensation. The Agency shall not be compensated or reimbursed for travel, meals, or lodging.
- C.5. Invoice Requirements. The Agency shall invoice the Department only for completed increments of service and for the amount stipulated in Section C.3, above, and present said sworn invoices within the time specified in Section C.6 below and no more often than monthly, with all necessary supporting documentation, to:

Brian Ramsey
PO BOX 3518CRS
Johnson City TN 37602

- a. Each invoice shall clearly and accurately detail at a minimum all of the following required information (calculations must be extended and totaled correctly).
 - (1) Invoice Number (assigned by the Agency);
 - (2) Invoice Date;
 - (3) Contract Number (assigned by the Department);
 - (4) Customer Account Name: Tennessee Department of Transportation, Maintenance Division;
 - (5) Customer Account Number (assigned by the Agency to the above-referenced Customer);
 - (6) Agency Name;
 - (7) Agency Tennessee Edison Registration ID Number;
 - (8) Agency Contact for Invoice Questions (name, phone, and/or fax);
 - (9) Agency Remittance Address;

- (10) Description of Delivered Service that shall detail the work performed by activity, including the quantified units of measure as identified in the Attachments, and work location that corresponds to the request for reimbursement of each activity submitted.
- (11) Complete Itemization of Charges, which shall detail the following:
 - i. Service or Milestone Description (including name & title as applicable) of each service invoiced.
 - ii. Number of Completed Units of Measure as applicable for each service invoiced, as provided in Exhibit A.
 - iii. Applicable Payment Rate (as stipulated in Section C 3) of each service invoiced.
 - iv. Amount Due by Service, and
 - v. Total Amount Due for the invoice period; and
- (12) Any further information requested by the Department.

b. The Agency understands and agrees that an invoice under this Contract shall:

- (1) include only charges for service described in Contract Section A and Exhibit A, and in accordance with payment terms and conditions set forth in Contract Section C.
- (2) only be submitted for completed service and shall not include any charge for future work.
- (3) not include sales tax or shipping charges; and
- (4) initiate the timeframe for payment only when the Department is in receipt of the invoice, and the invoice meets the minimum requirements of this Section C.5

C.6 Timely Invoice. The amount(s) per compensable increment (detailed in Section C 3) shall be contingent upon the Department's receipt of an invoice (as required in Section C.5.) for said service(s) within sixty (60) days after the end of the calendar month in which the service(s) were rendered. At the sole discretion of the Department, the amount per compensable increment of any service for which the Department receives an invoice later than prescribed herein shall be subject to a reduction in amount of up to 100%. In the case of an untimely invoice, before any payment will be considered by the Department, the Agency must submit a written request regarding the untimely invoice, which shall detail the reason the invoice is untimely as well as the Agency's plan for submitting all future invoices no later than prescribed herein, and it must be signed by an individual empowered to bind the Agency to this Contract.

C.7. Payment of Invoice. A payment by the Department shall not prejudice the Department's right to object to or question any payment, invoice, or matter in relation thereto. A payment by the Department shall not be construed as acceptance of any part of the work or service provided or as approval of any amount invoiced.

C.8. Invoice Reductions. 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, on the basis of audits conducted in accordance with the terms of this Contract, not to constitute proper remuneration for compensable services.

C.9. Deductions. The Department reserves the right to deduct from amounts, which are or shall become due and payable to the Agency under this or any contract between the Agency and the State of Tennessee any amounts, which are or shall become due and payable to the State of Tennessee by the Agency.

C.10. Prerequisite Documentation. The Agency shall not invoice the Department under this Contract until the Department has received the following documentation properly completed.

- a. The Agency shall complete, sign, and present to the Department an "Authorization Agreement for Automatic Deposit (ACH Credits) Form" provided by the Department. By doing so, the Agency acknowledges and agrees that, once said form is received by the

Department, all payments to the Agency, under this or any other contract the Agency has with the State of Tennessee shall be made by Automated Clearing House (ACH).

- b The Agency shall complete, sign, and present to the Department a "Substitute W-9 Form" provided by the Department. The taxpayer identification number detailed by said form must agree with the Agency's Federal Employer Identification Number or Tennessee Edison Registration ID referenced in this Contract

D. STANDARD TERMS AND CONDITIONS:

- D 1 Required Approvals The Department is not bound by this Contract until it is signed by the contract parties.
- D 2 Modification and Amendment This Contract may be modified only by a written amendment signed by all parties hereto and approved by both the officials who approved the base contract and, depending upon the specifics of the contract as amended, any additional officials required by Tennessee laws and regulations.
- D 3 Termination for Convenience The Department may terminate this Contract without cause for any reason. Said termination shall not be deemed a breach of contract 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 satisfactory, authorized service 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. Upon such termination, the Agency shall have no right to any actual general, special, incidental, consequential, or any other damages whatsoever of any description or amount.
- D 4 Termination for Cause If the Agency fails to properly perform its obligations under this Contract in a timely or proper manner, or if the Agency violates any terms of this Contract, the Department shall have the right to immediately terminate the Contract 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 Contract by the Agency.
- D 5 Subcontracting The Agency shall not assign this Contract or enter into a subcontract for any of the services performed under this Contract without obtaining the prior written approval of the Department. If such subcontracts are approved by the Department, each shall contain, at a minimum, sections of this Contract pertaining to "Conflicts of Interest," "Nondiscrimination," "Records," "Monitoring," and "State and Federal Requirements," (as identified by the section headings). Notwithstanding any use of approved subcontractors, the Agency shall be the prime contractor and shall be responsible for all work performed.
- D 6 Conflicts of Interest The Agency warrants that no part of the total Contract 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 Contract.
- D 7 Nondiscrimination The Agency hereby agrees, warrants, and assures that no person shall be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination in the performance of this Contract or in the employment practices of the Agency on the grounds of handicap or disability, age, race, color, religion, sex, national origin, or any other classification protected by Federal, Tennessee State constitutional, or statutory law. The Agency shall, upon request, show proof of such nondiscrimination and shall post in conspicuous places, available to all employees and applicants, notices of nondiscrimination.
- D 8 Records The Agency shall maintain documentation for all charges under this Contract. The books, records, and documents of the Agency, insofar as they relate to work performed or money received under this Contract, shall be maintained for a period of three (3) full years from the date

of the final payment and shall be subject to audit at any reasonable time and upon reasonable notice by the Department, the Comptroller of the Treasury, or their duly appointed representatives. The financial statements shall be prepared in accordance with generally accepted accounting principles.

- D 9 Monitoring. The Agency's activities conducted and records maintained pursuant to this Contract shall be subject to monitoring and evaluation by the Department, the Comptroller of the Treasury, or their duly appointed representatives.
- D 10 Progress Reports. The Agency shall submit brief, periodic, progress reports to the Department as requested.
- D 11 Strict Performance. Failure by any party to this Contract to insist in any one or more cases upon the strict performance of any of the terms, covenants, conditions, or provisions of this Contract shall not be construed as a waiver or relinquishment of any such term, covenant, condition, or provision. No term or condition of this Contract shall be held to be waived, modified, or deleted except by a written amendment signed by the parties hereto.
- D 12 Independent Contractor. The parties hereto, in the performance of this Contract, shall not act as employees, partners, joint venturers, 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 Contract shall be construed to create an employer/employee relationship or to allow either to exercise control or direction over the manner or method by which the other transacts its business affairs or provides its usual services. The employees or agents of one party shall not be deemed or construed to be the employees or agents of the other party for any purpose whatsoever.

The Agency, being a Tennessee governmental entity, is governed by the provisions of the Tennessee Government Tort Liability Act, *Tennessee Code Annotated*, Sections 29-20-101 *et seq.*, for causes of action sounding in tort. Further, no contract provision requiring a Tennessee political entity to indemnify or hold harmless the Department beyond the liability imposed by law is enforceable because it appropriates public money and nullifies governmental immunity without the authorization of the General Assembly.

- D 13 Department Liability. The Department shall have no liability except as specifically provided in this Contract. The Department does not assume any liability for damages caused to persons or property by reason of the Agency performance of this Contract. The Department assumes no liability for injury to any person or employees of the Agency performing work under this Contract.
- D 14 Force Majeure. The obligations of the parties to this Contract 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, natural disasters, riots, wars, epidemics, or any other similar cause.
- D 15 State and Federal Compliance. The Agency shall comply with all applicable State and Federal laws and regulations in the performance of this Contract.
- D 16 Governing Law. This Contract 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 Contract. 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 17 Completeness. This Contract is complete and contains the entire understanding between the parties relating to the subject matter contained herein, including all the terms and conditions of the parties' agreement. This Contract supersedes any and all prior understandings, representations, negotiations, and agreements between the parties relating hereto, whether written or oral.

- D 18 Severability If any terms and conditions of this Contract are held to be invalid or unenforceable as a matter of law, the other terms and conditions hereof shall not be affected thereby and shall remain in full force and effect. To this end, the terms and conditions of this Contract are declared severable.
- D 19 Headings Section headings of this Contract are for reference purposes only and shall not be construed as part of this Contract.

E. SPECIAL TERMS AND CONDITIONS:

- E.1. Conflicting Terms and Conditions Should any of these special terms and conditions conflict with any other terms and conditions of this Contract, these special terms and conditions shall control.
- E.2 Communications and Contacts All instructions, notices, consents, demands, or other communications required or contemplated by this Contract shall be in writing and shall be made by certified, first class mail, return receipt requested and postage prepaid, by overnight courier service with an asset tracking system, or by EMAIL or facsimile transmission with recipient confirmation. Any such communications, regardless of method of transmission, shall be addressed to the respective party at the appropriate mailing address, facsimile number, or EMAIL address as set forth below or to that of such other party or address, as may be hereafter specified by written notice.

The Department:

Brian Ramsey
District 17 Operations Supervisor
State of Tennessee Department of Transportation
PO BOX 3518CRS
Johnson City TN 37602
Brian.Ramsey@tn.gov
Telephone # 423-282-0651
FAX # 423-854-5310

The Agency:

Ryan McReynolds
Public Works Director
225 West Center Street Kingsport, TN 37660-4237
Telephone # (423)229-9398
Fax (423)229-9473
RyanMcReynolds@KingsportTN.gov

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

- E.3. Subject to Funds Availability The Contract is subject to the appropriation and availability of State of Tennessee 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 Contract upon written notice to the Agency. Said termination shall not be deemed a breach of Contract by the Department. Upon receipt of the written notice, the Agency shall cease all work associated with the Contract. 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.

- E 4 MUTCD. In accordance with Tenn Code Ann. 54-5-108, the Agency shall conform to and act in accordance with the current edition of the Manual on Uniform Traffic Control Devices (MUTCD) as adopted by rules of the Department. Particularly, the Agency shall sign work-zones associated with this Contract in accordance with the aforesaid MUTCD.
- E 5 Maintenance. Nothing contained in this Contract shall change the maintenance obligations governed by the laws of the State of Tennessee, it being the intent of this Contract not to enlarge the present maintenance obligations of the Department

IN WITNESS WHEREOF,

City of Kingsport:

AGENCY SIGNATURE **DATE**

PRINTED NAME AND TITLE OF AGENCY SIGNATORY (above)

APPROVED AS TO FORM AND LEGALITY

AGENCY ATTORNEY SIGNATURE **DATE**

STATE OF TENNESSEE DEPARTMENT OF TRANSPORTATION:

JOHN SCHROER, COMMISSIONER **DATE**

APPROVED AS TO FORM AND LEGALITY

DEPARTMENT GENERAL COUNSEL

GUIDELINES COVERING MAINTENANCE
OF STATE HIGHWAYS THROUGH MUNICIPALITIES

The following items where applicable are eligible for reimbursement by the Department to the Agency under the Standard Maintenance Agreement:

Activity	Maintenance Work Type	Unit Of Measure
401	Manual Spot Patching	Tons
402	Crack Repair	Pounds
404	Mechanical Continuous Patching	Tons
405	Milling	Square Yards
406	Surface Replacement	Tons
411	Concrete Pavement Repair	Cubic Yards
412	Concrete Joint Repair	Linear Feet
425	Grading Unpaved Surface (Shoulder)**	Linear Miles
427	Patching Unpaved Surface (Shoulder)**	Tons
435	Machine Mowing**	Acres
438	Debris Removal**	Man Hours
441	Litter Removal**	Roadway Miles
446	Mechanical Sweeping and Street Flushing	Miles
447	Manual Roadway Sweeping	Man Hours
460	Plowing Snow	Lane Miles
461	De-icing Salt and/or Sand for Snow & Ice Removal	Tons
463	Anti-icing (Salt Brine)	Gallons
470	Pavement Markings	Line Miles
471	Specialty Markings	Each

** Work must be inside the area eligible for reimbursements as detailed in "CITY MAINTENANCE ROADWAY TYPICAL SECTIONS".

The following items are the responsibility of the Agency and are not eligible for reimbursement by the Department:

1. Crosswalk Striping
2. Mowing right-of-way back of curbs or beyond edge of paved surface on roadway segments which are not access controlled.
3. Litter from right-of-way back of curbs or beyond edge of paved surface on roadway segments which are not access controlled.
4. Storm drainage
5. Traffic control signs and signals and any other traffic control or monitoring devices.
6. Street lighting
7. Street name signs
8. Tree removal and vegetation control on right-of-way back of curbs or beyond edge of paved surface on roadway segments which are not access controlled.
9. Sidewalks

NOTE:

1. Major resurfacing when generally required will be performed by the Department as a construction project, in accordance with a program developed after consultation with the Agency.
2. The Department will furnish and maintain route markers through the Municipalities.

ROADWAY SURFACE INVENTORY FOR THE MAINTENANCE OF STATE HIGHWAYS THROUGH MUNICIPALITIES

The following Table itemizes the current roadway surface area to the nearest whole square yard which will be routinely maintained, swept, or flushed by the Agency under the terms of this contract. The Department agrees to reimburse said Agency in the amount actually expended for street maintenance, excluding machine mowing and litter removal, not to exceed the calculated maximum reimbursement below.

Approved Maximum Reimbursement Per Square Yard	\$ 0.15
Total Roadway Surface Area (YD^2)	1576829
Calculated Maximum Reimbursement (Roadway Surface)	\$236,524.35

Roadway Surface Inventory Worksheet													
Route	Street Name	Action	Crossing Boundary Description	Rdwy Profile Type	Access Control	Begin Log Mile	End Log Mile	Roadway Length(mi.)	Roadway Length(ft.)	Roadway Width(ft.)	Median Width(ft.)	Median Area (yd.^2)	Reimbursable Area (yd.^2)
SR001	West Stone Drive	BEGIN	Kaywood Avenue	1G	No	39.84	40.9	1.06	5596.8	102	16	5210	58220
SR001	West Stone Drive	CHANGE	Netherland Inn Rd	1G	No	40.9	41.3	0.4	2112	97	22	2976	19797
SR001	West Stone Drive	CHANGE	Hawkins/Sullivan County Line	1G	No	0	1.33	1.33	7022.4	98	20	9823	66843
SR001	West Stone Drive	CHANGE	Afton Street	1F	No	1.33	1.65	0.32	1689.8	96	16	2667	13478
SR001	East Stone Drive	CHANGE	End of I-26 W Ramp towards Kingsport	1D	No	1.97	7.42	5.45	2877.8	102	11	2020	32408
SR001	East Stone Drive	CHANGE	Beechnut Drive	1G	No	6.46	8.44	1.98	10454.4	99	27	11992	103008
SR001	East Stone Drive	END	0.8 miles before Ollis Bowers Hill	1G	No	8.44	11.48	3.04	16051.2	98	30	51678	123102
SR036	Kingsport Highway	BEGIN	Regency Drive	1C	No	2.271	2.703	0.432	2280.96	24	0	0	6083
SR036	Kingsport Highway	CHANGE	I81 Ramps	1C	No	2.703	2.905	0.102	538.56	75	20	344	4144
SR036	Kingsport Highway	CHANGE	Colonial Heights	1C	No	3	4.37	1.37	7233.6	70	18	2080	54181
SR036	Fort Henry Drive	CHANGE	Overhead CSX Railroad	1G	No	4.37	5.36	0.99	5227.2	74	32	6902	36077
SR036	Fort Henry Drive	CHANGE	Kennidge Street	1D	No	5.36	6.47	1.11	5860.8	76	9	500	48991
SR036	Fort Henry Drive	CHANGE	SR 93	1D	No	6.47	7.819	1.349	7122.72	65	13	1294	50148
SR036	Fort Henry Drive	CHANGE	Indian Ct	1F	No	7.819	8.38	0.561	2962.08	66	19	4227	17495
SR036	West Center Street	CHANGE	Prospect Drive	1D	No	8.38	10.54	2.16	11404.8	60	0	0	76032
SR036	West Center Street	END	90 Degree Right Turn	1D	No	10.54	13.56	3.02	15945.6	44	9	1157	76799
SR093	Sullivan Gardens	BEGIN	Sullivan Gardens Drive	1D	No	4.464	5.016	0.532	2808.96	82	0	0	25593
SR093	Sullivan Gardens	CHANGE	Galemont Drive	1D	No	5.016	5.99	0.974	5142.72	85	21	1330	35812
SR093	John B. Dennis	CHANGE	End Access Control	1G	No	6.22	7.15	0.93	4910.4	120	22	5082	60390
SR093	John B. Dennis	END	Pawson Drive	1G	No	11.929	13.71	1.781	9403.68	98	16	13958	88438
SR126	South Wilcox Drive	BEGIN	SR 93	1F	No	0	0.445	0.445	2349.6	67	11	2284	15207
SR126	South Wilcox Drive	SHIFT	90 Degree Right Turn	1D	No	0.445	1.006	0.561	2962.08	78	0	0	25671
SR126	South Wilcox Drive	CHANGE	Haga Road	1D	No	1.006	1.23	0.224	1182.72	62	0	0	8148
SR126	South Wilcox Drive	CHANGE	Ward Place	1D	No	1.23	1.9	0.67	3537.6	78	0	0	30659
SR126	South Wilcox Drive	CHANGE	Overhead CSX Railroad	1D	No	1.9	2.18	0.28	1478.4	75	0	0	12320
SR126	South Wilcox Drive	CHANGE	Industry Drive	1F	No	2.18	2.52	0.34	1795.2	66	0	0	13166
SR126	South Wilcox Drive	CHANGE	Lincoln Street	1F	No	2.52	3.11	0.59	3115.2	44	21	4848	10382
SR126	Memorial Blvd	CHANGE	East Center Street	1F	No	3.11	3.32	0.21	1108.8	88	13	938	9904
SR126	Memorial Blvd	CHANGE	Kanmore Drive	1F	No	3.32	4.41	1.09	5755.2	60	15	3376	34993
SR126	Memorial Blvd	CHANGE	Light at End of Control Access	1A	No	4.5	4.55	0.05	264	85	26	678	1815
SR126	Memorial Blvd	CHANGE	Stratford Road	1A	No	4.55	4.895	0.345	1821.6	38	12	228	7465
SR126	Memorial Blvd	END	Severy Hill St	1A	No	4.895	5.81	0.915	4831.2	36	0	0	19325
SR346	West Center Valley Rd	BEGIN	Mcconnell Rd	1A	No	0.7	1.92	1.22	6441.6	22	0	0	16746
SR347	Poplar Grove Rd	BEGIN	Oak Forest Pl	1A	No	8.5	10.62	2.12	11193.6	20	0	0	24875
SR355	Industrial Drive	BEGIN	SR 126	1B	No	0	2.1	2.1	11088	36	0	0	44352
SR355	Industrial Drive	CHANGE	Ft. Robinson Drive	1C	No	2.1	2.35	0.25	1320	60	11	1002	7798
SR355	Industrial Drive	END	Lynn Garden Drive	1C	No	2.35	2.58	0.23	1214.4	48	0	0	5477
								Total Length (mi.)	40.531			Total Roadway Surface	1576829

**INVENTORY OF ELIGIBLE MACHINE MOWING FOR THE MAINTENANCE
OF STATE HIGHWAYS THROUGH MUNICIPALITIES**

The following Table itemizes the eligible mowing area in acres which will be maintained by the Agency under the terms of this contract. The Department agrees to reimburse said Agency in the amount actually expended for machine mowing, not to exceed the number of cycles and the price per acre as detailed below.

Approved Mowing Reimbursement Per Acre: \$ 45.00
 Calculated Maximum Reimbursement (Mowing): \$9,217.80

Mowing Inventory Worksheet								
Route Number	Roadway Type	Begin Termini (LM)	End Termini(LM)	Median Area (acres)	Controlled Access Area (acres)	Segment Total Area (acres)	Number of Mowing Cycles	Contract Segment Total Area (acres)
SR001	1G	39.84 / 6.83	41.3 / 11.44	21.74		21.74	6	130.4
SR036	1G	4.37 / 7.75	5.36 / 8.38	3.01		3.01	6	18.1
SR093	1G	6.08	13.8	6.76		6.76	6	40.6
SR126	1F	0.0 / 2.09	0.26 / 4.47	2.55		2.55	6	15.3
SR346						0	0	0.0
SR355	1F	2.047	2.211	0.08		0.08	6	0.48
Total Contract Area (acres):								205

**INVENTORY OF ELIGIBLE LITTER REMOVAL FOR THE MAINTENANCE
OF STATE HIGHWAYS THROUGH MUNICIPALITIES**

The following Table itemizes the eligible length of litter removal in linear miles which will be maintained by the Agency under the terms of this contract. The Department agrees to reimburse said Agency in the amount actually expended for litter removal, not to exceed the number of cycles and the price per linear mile as detailed below

Calculated Maximum Reimbursement (Litter) \$ 7,266.00

Litter Inventory Worksheet												
Route Number	Roadway Type	Beginning Termini (LM)	Ending Termini (LM)	Segment Length (mi.)	Litter Pass Miles Per Segment	Segment Total Litter (mi.)	Price per Litter Mile	Number of Litter Cycles	Contract Segment Total Litter (mi.)	Contract Segment Total Litter (\$)		
SR001	1G	39.84 / 6.83	2.31 / 11.44	6.81	1	6.81	\$ 50.00	12	81.72	4086		
SR036	1G	4.37 / 7.75	5.36 / 8.38	1.33	1	1.33	\$ 50.00	12	15.96	798		
SR093	1G	6.08	13.8	2.56	1	2.56	\$ 50.00	12	30.72	1536		
SR126	1F	0.0 / 2.09	0.26 / 4.47	1.31	1	1.31	\$ 50.00	12	15.72	786		
SR346						0	\$ -	0	0	0		
SR355	1F	2.047	2.211	0.1	1	0.1	\$ 50.00	12	1.2	60		
Total Contract Litter (mi)									145.32	\$7,266.00		

CITY MAINTENANCE ROADWAY TYPICAL SECTIONS

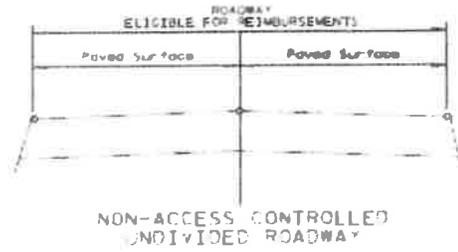


FIGURE 1A

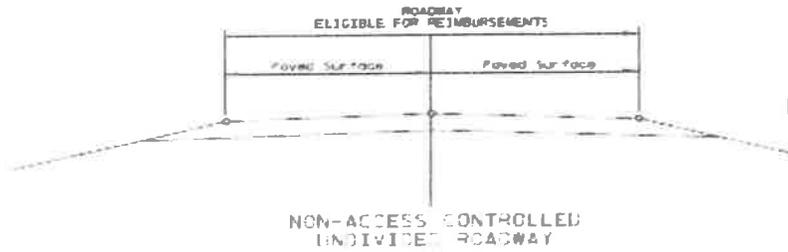


FIGURE 1B

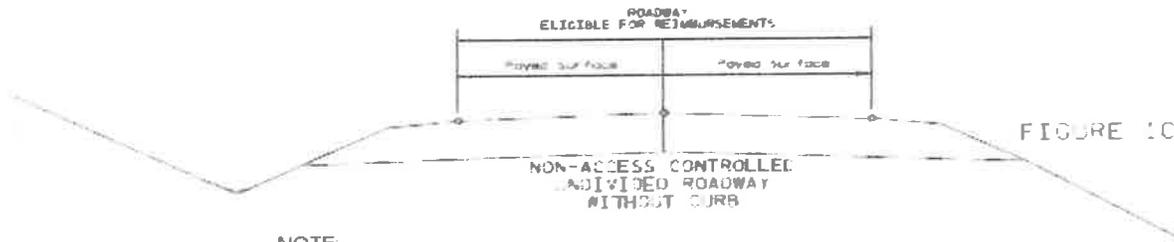


FIGURE 1C

NOTE:
IN FIGURES 1A, 1B, AND 1C FOR NON-ACCESS CONTROLLED ROUTES
THE PAVED SURFACE WILL INCLUDE PAVED SHOULDERS

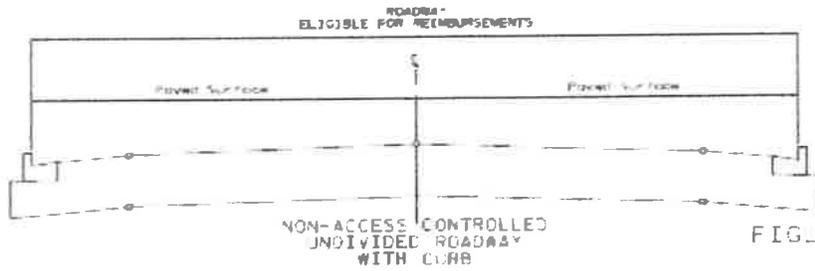


FIGURE 1D

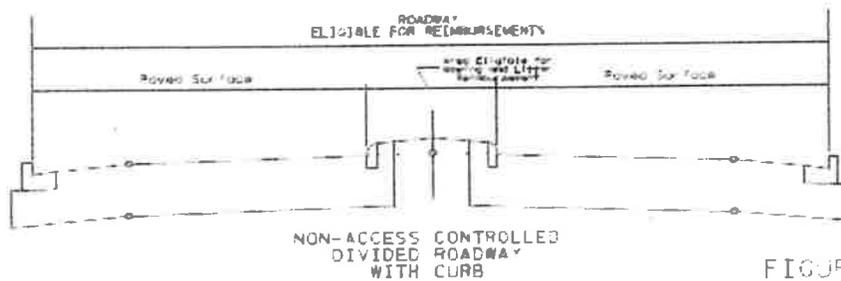
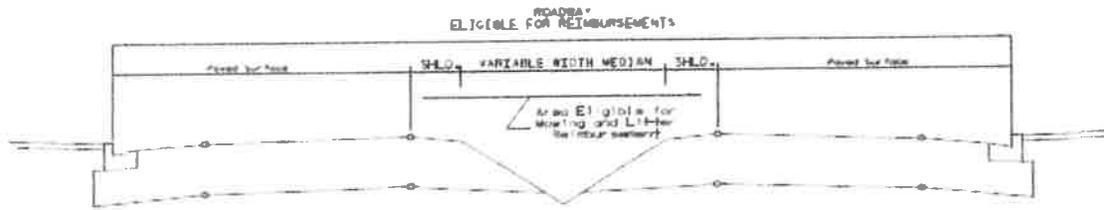


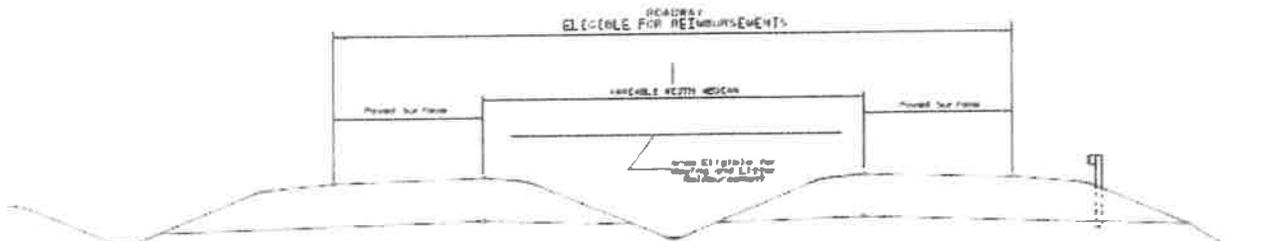
FIGURE 1E

CITY MAINTENANCE ROADWAY TYPICAL SECTIONS



NON-ACCESS CONTROLLED
DIVIDED ROADWAY WITH CURB

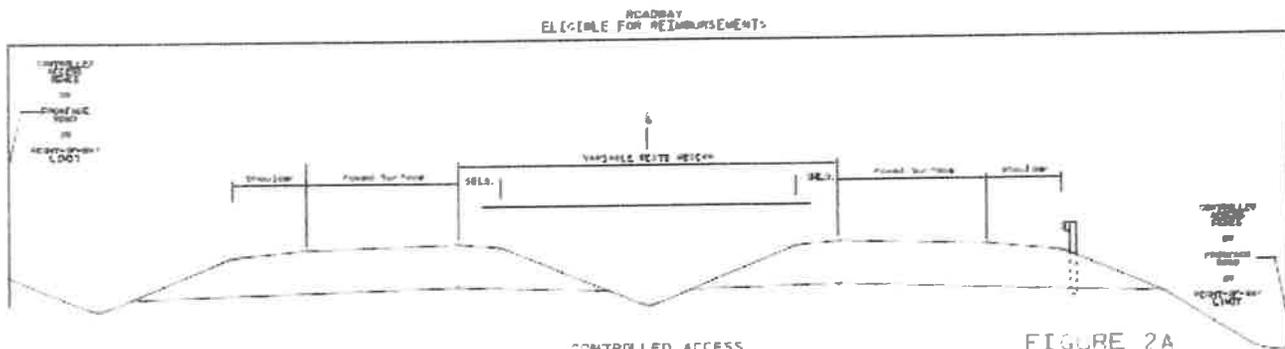
FIGURE 1F



NON-ACCESS CONTROLLED
DIVIDED ROADWAY WITHOUT CURB

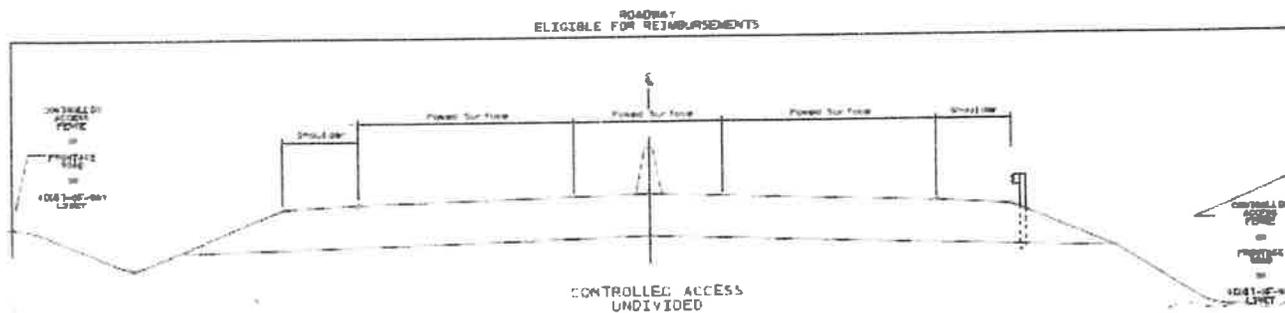
FIGURE 1G

NOTE:
IN FIGURES 1F AND 1G FOR NON-ACCESS CONTROLLED ROUTES
THE PAVED SURFACE WILL INCLUDE PAVED SHOULDERS.



CONTROLLED ACCESS
WITH MEDIAN

FIGURE 2A



CONTROLLED ACCESS
UNDIVIDED

FIGURE 2B

"EXHIBIT B"
 CITY OF
 MAXIMUM ALLOWABLE EQUIPMENT RATES
 2015-2016 FISCAL YEAR

ITEM NO	DESCRIPTION OF EQUIPMENT	RATE	UNIT
01	SEDAN, POLICE OR FULL SIZE	12.00	HR
02	TRUCK, PICKUP	11.00	HR
03	TRUCK, ¾ TO 1 TON LIGHT DUTY	12.00	HR
04	TRUCK, ¾ TO 1 TON 4X4	13.00	HR
05	TRUCK, UTILITY/SERVICE BODY	14.00	HR
06	TRUCK, DUMP UP TO 15,000 GVWR	24.65	HR
07	TRUCK, DUMP OVER 15,000 UP TO 20,000 GVWR	28.12	HR
08	TRUCK, DUMP OVER 20,000 UP TO 40,000 GVWR	42.35	HR
09	TRUCK, DUMP TANDEM AXLE OVER 40,000 GVWR	68.00	HR
10	TRUCK, STAKE OR FLATBED UP TO 10,000 GVWR	17.45	HR
11	TRUCK, STAKE OR FLATBED OVER 10,000 UP TO 20,000 GVWR	26.10	HR
12	TRUCK, STAKE OR FLATBED OVER 20,000	42.00	HR
13	TRUCK, FLATBED OVER 32,500 GVWR	54.00	HR
14	TRUCK, TRACTOR SINGLE AXLE	37.00	HR
15	TRUCK, TRACTOR TANDEM AXLE	40.15	HR
16	TRUCK, SEWER/CULVERT/CATCH BASIN/ CLEANER (VAC-ALL)	82.20	HR
17	SWEeper, TRUCK MOUNTED	55.89	HR
18	SWEeper, SELF-PROPELLED	43.71	HR
19	TRUCK, W/STREET FLUSHER	70.16	HR
20	TRUCK, CRANE	28.28	HR
21	TRUCK, EXCAVATOR	64.73	HR
22	TRUCK, REFUSE COLLECTION	30.50	HR
23	TRACTOR, W/SWEeper	32.68	HR
24	TRACTOR, W/DITCHER	62.12	HR
25	TRACTOR, WHEEL	48.22	HR
26	CHIPPER, BRUSH	36.81	HR
27	TRAILER, TILT	8.04	HR
28	TRAILER, PLATFORM OR GENERAL	10.12	HR
29	TRAILER, LOW BOY TANDEM	20.78	HR
30	JOINT & CRACK SEALING MACHINE	28.55	HR
31	ASPHALT RECLAIMER/RECYCLER MACHINE	135.78	HR

"EXHIBIT B"
CITY OF
MAXIMUM ALLOWABLE EQUIPMENT RATES
2015-2016 FISCAL YEAR

ITEM NO	DESCRIPTION OF EQUIPMENT	RATE	UNIT
32	PAVER, ASPHALT SELF-PROPELLED	154.53	HR
33	PAVER, ASPHALT PULL TYPE	7.45	HR
34	DISTRIBUTOR, ASPHALT, PULL TYPE	27.37	HR
35	CHIP SPREADER MACHINE	57.42	HR
36	EXCAVATOR, TRACK TYPE (TRACKHOE)	87.31	HR
37	DRAGLINES AND CRANES	75.99	HR
38	TRACTOR, CRAWLER (DOZER)	98.18	HR
39	MOTOR GRADER	65.30	HR
40	BACKHOE	37.90	HR
41	LOADER, FT END RUBBER TIRED (ARTICULATED) UP TO 1 CU. YD.	32.13	HR
42	LOADER, FT END RUBBER TIRED (ARTICULATED) OVER 1 UP TO 1.5 CY	47.50	HR
43	LOADER, FT END RUBBER TIRED (ARTICULATED) OVER 1.5 CU. YD.	59.71	HR
44	LOADER, FRONT END TRACK TYPE	71.50	HR
45	LOADER, SKID-STEER	58.46	HR
16	PROFILER, MILLING MACHINE	305.76	HR
47	ROLLER, WALK BEHIND	4.27	HR
48	ROLLER, STEEL WHEEL, 1 TO 5 TONS	88.84	HR
49	ROLLER, STEEL WHEEL, OVER 5 TONS	41.93	HR
50	GENERATOR, PORTABLE	8.30	HR
51	AIR COMPRESSOR, PORTABLE OR PULL TYPE	36.40	HR
52	WELDER, PORTABLE OR PULL TYPE	5.76	HR
53	CONCRETE MIXER, PORTABLE OR PULL TYPE	32.07	HR
54	CURBING MACHINE	65.74	HR
55	PAINT MACHINE, WALK BEHIND	31.57	HR
56	PAINT MACHINE, TRUCK MOUNTED (LARGE)	84.61	HR
57	THERMOPLASTIC MARKING MACHINE, WALK BEHIND	23.24	HR
58	TRAFFIC LINE REMOVER (WATER BLASTER)	43.68	HR
59	ARROW BOARD, TRAILER OR TRUCK MOUNTED	4.15	HR
60	MESSAGE SIGN, TRAILER MOUNTED	1.14	HR
61	LIGHT TOWER, TRAILER MOUNTED	24.18	HR
62	TRUCK MOUNTED ATTENUATOR	10.00	HR

**CITY OF KINGSPORT
MAXIMUM ALLOWABLE EQUIPMENT RATES
2015-2016 FISCAL YEAR**

LABOR RATES **Beginning July 1, 2015 and ending June 30, 2016**

Job Title Classification	Low Rate	High Rate
Maintenance Helper	\$10.41	\$14.79
Traffic Maintenance Technician	13.00	18.46
Refuse/Dump Truck Driver	12.07	17.15
Equipment Operator	13.00	18.46
Traffic Control Technician	14.00	19.89
Heavy Equipment Operator	14.00	19.89
Maintenance Worker	11.21	15.92
Crew Leader	15.45	21.95
Foreman	17.06	24.23
Streets Supervisor	18.37	26.09

- 1. NOTE: WHERE EMPLOYEES MIGHT BE REQUIRED TO WORK IN AN OVERTIME STATUS, REIMBURSEMENT WILL BE MADE AT TIME AND ONE-HALF (1.5 TIMES EMPLOYEE’S BASE RATE OF PAY).**
- 2. NOTE: A FEE OF 30% FRINGE BENEFITS WILL BE CHARGED TO THE ABOVE LABOR PERFORMANCE RATES.**



AGENDA ACTION FORM

Reject Bid for the Floor Finish Alterations and Asbestos Abatement for Ross N. Robinson Middle School

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

Action Form No.: AF-110-2015
 Work Session: May 18, 2015
 First Reading: N/A

Final Adoption: May 19, 2015
 Staff Work By: Committee
 Presentation By: B. Shedden

Recommendation:

Approve the resolution.

Executive Summary:

Bids were opened on April 23, 2015 for the Floor Finish Alterations and Asbestos Abatement for Ross N. Robinson Middle School. One (1) bid was received and opened. After review, Bill Shedden, Supervisor of Maintenance & Custodians, recommends, per the attached, to reject this bid.

Attachments:

1. Resolution
2. Recommendation

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

RESOLUTION NO. _____

A RESOLUTION REJECTING ALL BIDS RELATED TO THE
FLOOR FINISH ALTERATIONS AND ASBESTOS ABATEMENT
FOR ROSS N. ROBINSON MIDDLE SCHOOL

WHEREAS, bids were opened April 23, 2015, for the floor finish alterations and asbestos abatement for Ross N. Robinson Middle School project; and

WHEREAS, the bid received was substantially over the estimated budget allocated for this project; and

WHEREAS, since the time of the opening of the bids, the scope of the project has changed, and therefore the city wants to reject all bids.

Now therefore,

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

SECTION I. That all bids opened on April 23, 2015, relating to the floor finish alterations and asbestos abatement for Ross N. Robinson Middle School project are rejected.

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

ADOPTED this the 19th day of May, 2015.

DENNIS R. PHILLIPS, MAYOR

ATTEST:

JAMES H. DEMMING, CITY RECORDER

APPROVED AS TO FORM:

J. MICHAEL BILLINGSLEY, CITY ATTORNEY

Lisa,

It is my recommendation that we reject the bid from Armstrong Construction on the abatement/removal of floor tile and the installation of new LVT flooring in the 22 classrooms at Robinson Middle School for the following reasons:

1. We only received one bid.
2. The bid is much higher than the estimate budgeted for the complete project.
3. The scope of work needs to be changed to add the air quality study to be done by a third party company not associated with the abatement removal company.

It is my recommendation that we reject this bid and re-bid at a later date.

Thanks,

Bill Shedden
Supervisor of Maintenance & Custodians
1000 Poplar St.
Kingsport, Tn. 37660
W- 423-378-2196
C-423-921-2686
President--TSPMA



AGENDA ACTION FORM

Applications with Elavon, Inc. for Processing Services Relating to the City's Acceptance of Credit and Debit Cards for the Payment of Various City Services

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

Action Form No.: AF-112-2015
Work Session: May 18, 2015
First Reading: N/A

Final Adoption: May 19, 2015
Staff Work By: Sid Cox
Presentation By: Sid Cox

Recommendation:

Approve the resolution

Executive Summary:

The BMA previously adopted Resolution #2013-138 on March 5, 2013 which authorized the Mayor to execute various merchant services applications with Elavon, Inc., for a period of 2 years, for processing services related to the city's acceptance of credit and debit cards for the payment of various City services. The 2 year period has now expired on Resolution #2013-138.

The attached Resolution extends the authorization for the Mayor to sign various merchant services applications with Elavon, Inc. for another 2 years.

The City's Carousel site will soon be opening with an automated token dispenser that will accept credit and debit cards. This Resolution will provide for the credit and debit card merchant services application to be signed in order to accept credit and debit cards at the site.

Attachments:

- 1. Resolution

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

RESOLUTION NO. _____

A RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE MERCHANT SERVICES APPLICATIONS WITH ELAVON, INC. FOR CREDIT CARD PROCESSING AND ALL OTHER DOCUMENTS NECESSARY AND PROPER TO EFFECTUATE THE PURPOSE OF THE AGREEMENT FOR PROCESSING SERVICES RELATING TO THE ACCEPTANCE OF CREDIT AND DEBIT CARDS FOR THE PAYMENT OF VARIOUS CITY SERVICES

WHEREAS, the city desires to enter into various Merchant Services Applications with Elavon, Inc. for processing services in connection with credit and debit card transactions to allow the city to accept payment by credit and debit cards for various city services for a period of two (2) years; and

WHEREAS, the applications provide for payment of processing fees to Elavon, Inc. based on the total credit and debit card sales and transaction volumes generated by the city for the payment of various city services plus the interchange and card association fees charged by the various debit and credit card providers; and

WHEREAS, over the next two years it is the plan to allow payment for more city services by credit and debit cards, requiring the execution of applications over a period of time; and

WHEREAS, a separate application is required for each location and account; and

WHEREAS, the applications will generally be in the same form;

Now therefore,

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

SECTION I. That for a period of up to two (2) years from the date this resolution is adopted, the mayor is authorized and directed to execute, in a form approved by the city attorney, Merchant Services Applications with Elavon, Inc., for processing services in connection with reasonable credit and debit card payment transactions.

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

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

ADOPTED this 19th day of May, 2015.

DENNIS R. PHILLIPS, Mayor

ATTEST:

ANGELA MARSHALL, Deputy City Recorder

APPROVED AS TO FORM:

J. MICHAEL BILLINGSLEY, City Attorney



AGENDA ACTION FORM

Ratifying a Private Act from the Tennessee General Assembly Amending Various Sections of the City Charter

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

Action Form No.: AF-111-2015
Work Session: May 18, 2015
First Reading: N/A

Final Adoption: May 19, 2015
Staff Work By: Fleming/Demming/Billingsley
Presentation By: Mike Billingsley

Recommendation:

Approve Private Chapter 9 of the Private Acts of 2015.

Executive Summary:

In February 2015 in the board adopted a resolution requesting passage of a private act by the Tennessee General Assembly providing for certain amendments to the city charter. The act was passed by the General Assembly. To make the act effective it must be approved by the board by a two-thirds majority vote and the city recorder must certify the approval to the Secretary of State.

Generally, proposed provisions of the private act will clarify certain provisions of the Charter. Attached is a copy of the affected Charter provision with the changes shown in red.

The private act is not effective unless it is adopted by a 2/3 majority vote of the board.

Attachments:

1. Resolution
2. Private Act
3. Changes to Charter shown using the Word tracking feature

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

RESOLUTION NO. _____

RESOLUTION TO APPROVE PRIVATE CHAPTER NO. 9
OF THE PRIVATE ACTS OF 2015, AMENDING THE
CHARTER OF THE CITY OF KINGSPORT, TENNESSEE

WHEREAS the City of Kingsport has received from the Honorable Tre Hargett, Secretary of State for the State of Tennessee, a copy of House Bill No. 1390 of the 109th General Assembly of the State of Tennessee, being Private Chapter No. 9 of the Private Acts of 2015; and

WHEREAS, the Constitution of the State of Tennessee provides that any Act of the General Assembly, private or local in aim or effect, applicable to a particular county or municipality or county, either in its governmental or its proprietary capacity, shall be void and of no effect unless the Act by its terms either requires the approval by a two-thirds vote of the local legislative body of the municipality or county, or, requires approval in an election by a majority of those voting in said election in the municipality or county affected; and

WHEREAS, said Act provides that the same shall not take effect unless it shall have been approved by a two-thirds (2/3) vote of the members of the Board of Mayor and Aldermen of the City of Kingsport, its approval proclaimed by the presiding officer of the municipal legislative body, and its approval certified by the city recorder to the Secretary of State.

NOW, THEREFORE, in order to comply with the provisions of the Constitution of the State of Tennessee, and said Act, and so as to approve the same as enacted, and to render same complete, valid and binding, and, to advise the Secretary of State of this action.

BE IT RESOLVED, by the Board of Mayor and Aldermen, that House Bill No. 1390 of the 109th General Assembly of the State of Tennessee, being Private Chapter No. 9 of the Private Acts of 2015, is approved as enacted.

BE IT FURTHER RESOLVED, that this resolution be spread upon the official minutes of the Board of Mayor and Aldermen and that a certified copy thereof, signed by the Mayor and attested by the City Recorder be forwarded to the Secretary of State, the Honorable Tre Hargett, Nashville, Tennessee, so as to advise him of this action.

DENNIS R. PHILLIPS, MAYOR

ATTEST:

JAMES H. DEMMING, CITY RECORDER

APPROVED AS TO FORM:

J. MICHAEL BILLINGSLEY, CITY ATTORNEY



State of Tennessee
PRIVATE CHAPTER NO. 9

HOUSE BILL NO. 1390

By Representative Hulsey

Substituted for: Senate Bill No. 1415

By Senator Ramsey

AN ACT to amend Chapter 76 of the Private Acts of 1917, as amended by Chapter 106 of the Private Acts of 1937; Chapter 68 of the Private Acts of 1955; Chapter 106 of the Private Acts of 1955; Chapter 25 of the Private Acts of 1963; Chapter 486 of the Private Acts of 1968; Chapter 54 of the Private Acts of 1969; Chapter 8 of the Private Acts of 1973; Chapter 281 of the Private Acts of 1974; Chapter 235 of the Private Acts of 1975; Chapter 292 of the Private Acts of 1978; Chapter 283 of the Private Acts of 1978; Chapter 40 of the Private Acts of 1979; Chapter 244 of the Private Acts of 1980; Chapter 198 of the Private Acts of 1982; Chapter 159 of the Private Acts of 1984; Chapter 44 of the Private Acts of 1989; Chapter 47 of the Private Acts of 1995; Chapter 44 of the Private Acts of 1995; Chapter 177 of the Private Acts of 1996 and Chapter 30 of the Private Acts of 2001; and any other acts amendatory thereto, relative to the charter of the city of Kingsport.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Chapter 76 of the Private Acts of 1917, as amended by Chapter 68 of the Private Acts of 1955; Chapter 106 of the Private Acts of 1955; Chapter 25 of the Private Acts of 1963; Chapter 486 of the Private Acts of 1968; Chapter 281 of the Private Acts of 1974; Chapter 292 of the Private Acts of 1978; Chapter 198 of the Private Acts of 1982; Chapter 159 of the Private Acts of 1984; Chapter 44 of the Private Acts of 1995; Chapter 177 of the Private Acts of 1996; Chapter 30 of the Private Acts of 2001, and any other acts amendatory thereto, is amended in Article I, Section 2 by deleting the language "Execution of powers. City of Kingsport shall have the power and authority;" and substituting instead the language "Execution of powers. The City of Kingsport shall, by ordinance, resolution or motion, have the power and authority;" and is further amended by deleting subdivision (8) in Section 2 and substituting instead the following:

(8) *General powers as to property.* To acquire or receive and hold, maintain, improve, sell, lease, mortgage, pledge or otherwise dispose of property, real or personal, and any estate or interest therein, within or without the city or state. As it pertains to real property the board of mayor and aldermen shall determine the method or methods used to exercise these powers, which may include, but are not limited to a request for bids, auction, private negotiation, private sale, or any other method available for acquiring, disposing or leasing real property.

SECTION 2. Chapter 76 of the Private Acts of 1917, as amended by Chapter 25 of the Private Acts of 1963; Chapter 283 of the Private Acts of 1978; Chapter 40 of the Private Acts of 1979, and any other acts amendatory thereto, is amended by deleting Section 2 in Article III in its entirety and substituting instead the following:

Sec. 2. Election, term of mayor; designation of members as board of mayor and aldermen.

At the general city election in May of 1979, and every two (2) years thereafter, there shall be elected by the qualified voters of the City of Kingsport, a mayor who shall serve a term of two (2) years beginning at the first regular meeting of the board in July following his election. The mayor and aldermen shall together constitute the board of mayor and aldermen of the City of Kingsport.

No person shall be a candidate for the office of mayor and the office of alderman in the same election, nor shall any person hold both offices at the same time.

in the event an incumbent alderman having an unexpired term remaining to serve shall run and be elected to the office of mayor, upon taking office as mayor the vacancy thus created in the office of alderman shall be filled as hereinafter set out in section 10 of this article.

SECTION 3. Chapter 76 of the Private Acts of 1917, as amended by Chapter 6 of the Private Acts of 1973, Chapter 44 of the Private Acts of 1989, and any other acts amendatory thereto, is amended by deleting subsection (c) in Section 10 of Article III in its entirety and substituting instead the following:

(c) *Appointment of successors.* After any office becomes vacant, such vacancy in said board shall be filled by appointment within thirty (30) days by an affirmative vote of a majority of the remaining members thereof, provided, however, that no member shall be appointed under this section at any time when the said board already has as many as three (3) members so appointed, but in case of any additional vacancy, the said board shall forthwith by ordinance or resolution call upon the election commissioners for Sullivan County and Hawkins County to call a special election for the purpose of filling such additional vacancy, whereupon said election commissioners shall immediately call such special election and appoint the necessary officers therefor, and said special election shall be held in the same manner as and subject to the regulations in this Charter respecting general city elections.

SECTION 4. Chapter 76 of the Private Acts of 1917, and any other acts amendatory thereto, is amended by deleting Section 3 in Article VI in its entirety and substituting instead the following:

Sec. 3. Bonds.

The city manager and every officer, agent and employee having duties embracing the receipt, disbursement, custody or handling of money shall, before entering upon his duties, execute a fidelity bond with some surety company authorized to do business in the State of Tennessee, as surety (except that bonds for five hundred dollars (\$500.00) or less may be given with personal surety), in such amount as shall be prescribed by ordinance of the board of mayor and aldermen, except where the amount is prescribed in this Charter. All such bonds and the sureties thereto shall be subject to the approval of the board of mayor and aldermen. Except where the amount of the bond is prescribed in this Charter, the board of mayor and aldermen may authorize the acquisition of an Employee Honesty Policy in lieu of such bond.

SECTION 5. Chapter 76 of the Private Acts of 1917, as amended by Chapter 106 of the Private Acts of 1937, Chapter 54 of the Private Acts of 1969, Chapter 235 of the Private Acts of 1976, Chapter 292 of the Private Acts of 1978, Chapter 244 of the Private Acts of 1980, Chapter 44 of the Private Acts of 1995, Chapter 30 of the Private Acts of 2001 and any other acts amendatory thereto, is amended by deleting subsection (b) and subsection (h) in Section 2 in Article VII, and substituting instead the following:

(b) *Appointment or removal of officers or employees.* Except as provided in this Charter, to appoint and remove all heads of departments and all subordinate officers and employees, and all appointments to be made on merit and fitness alone. Except for a reduction in force no employee shall be removed except upon specific charges in writing after completion of their six (6) month-probationary period. Any employee except department heads, deputy department heads and confidential employees may request a hearing prior to their final termination. The request for a hearing must be made in writing delivered to the office of the city manager by 5:00 p.m. on the third business day following the notice to the employee that the city manager will act on the termination if the request for a hearing is not timely made. The hearing may be public if requested by the employee and the accused shall have the right to appear and defend in person or by counsel and shall have process of the board of mayor and aldermen to compel attendance of witnesses in their behalf. An employee who is suspended without pay for less than six (6) work days shall not have a right to a formal hearing, but rather shall have a right to have the opportunity to meet with the city manager. The meeting will not be public and at the meeting the employee will have an opportunity to respond and explain before the city manager acts on the suspension. The opportunity for the meeting is waived if the employee fails to request the meeting in writing delivered to the office of

the city manager by 5:00 p.m. on the business day following the notice to the employee of the reason for the proposed suspension and that the city manager will act on the suspension, if the request for a meeting is not timely made.

(h) *Purchasing agent; bids required.* To act as purchasing agent of the city and to purchase all material, supplies, equipment and services for the proper conduct of the city's business. The board of mayor and aldermen shall prescribe by ordinance the maximum expenditure which the city manager may make without specific authorization of the board of mayor and aldermen, and it shall prescribe rules for competitive bidding, but no purchase expending city funds shall be made at any one time in an amount which in the aggregate will exceed fifty thousand dollars (\$50,000.00) unless bids shall have been requested through public advertisement and award made to the lowest responsible compliant bidder in the best interest and advantage of the city. This requirement shall not apply to purchases, leases or lease purchases of real property or any exemptions substantially similar to those contained in § 6-56-304, as amended from time to time.

SECTION 6. Chapter 76 of the Private Acts of 1917, as amended by Chapter 54 of the Private Acts of 1969, Chapter 235 of the Private Acts of 1976, Chapter 292 of the Private Acts of 1978, Chapter 244 of the Private Acts of 1980, Chapter 44 of the Private Acts of 1995, Chapter 47 of the Private Acts of 1995, Chapter 30 of the Private Acts of 2001, and any other acts amendatory thereto, is amended by deleting subsection (a) in Section 1 in Article XX and substituting instead the following:

(a) All contracts expending city funds of more than fifty thousand dollars (\$50,000) shall be awarded to the lowest responsible compliant bidder in the best interest and advantage to the City of Kingsport after publication, advertisement and competition, as may be prescribed by ordinance. This requirement shall not apply to purchases, leases or lease purchases of real property or any exemptions substantially similar to those contained in § 6-56-304, as amended from time to time. No contract for any public work or improvement shall be awarded except on condition that the contractor give bond with some bonding company authorized to transact business in [the State of] Tennessee, as surety, in a sum equal to at least fifty percent (50%) of the contract price of the particular work or improvement for the faithful performance of such contract. In lieu of the bond required in this subsection, the city may, in its sole discretion, allow the following securities or cash to be substituted:

(1) United States Treasury bonds, United States Treasury notes or United States Treasury bills.

(2) General obligation bonds of the State of Tennessee.

(3) Certificates of deposits irrevocably pledged from a state or national bank having its principal office in [the State of] Tennessee.

(4) An irrevocable letter of credit from a state or national bank having its principal office in [the State of] Tennessee. The terms and conditions of any letter of credit shall be subject to the approval of the city treasurer. All letters of credit shall be accompanied by an authorization of the contractor to deliver retained funds to the bank issuing the letter.

(5) Cash, provided that if cash is posted, the city shall pay to the contractor interest at the same rate that interest is paid on funds invested in a local government investment pool established pursuant to Tennessee Code Annotated, Section 9-4-704, for the contract period.

SECTION 7. This act shall have no effect unless it is approved by a two-thirds (2/3) vote of the legislative body of the city of Kingsport. Its approval or nonapproval shall be proclaimed by the presiding officer of the city of Kingsport and certified to the secretary of state.

SECTION 8. For the purpose of approving or rejecting the provisions of this act, it shall be effective upon becoming a law, the public welfare requiring it. For all other purposes, it shall become effective as provided in Section 7.

HOUSE BILL NO. 1390

PASSED: April 14, 2015



BETH HARWELL, SPEAKER
HOUSE OF REPRESENTATIVES



RON RAMSEY
SPEAKER OF THE SENATE

APPROVED this 24th day of April 2015



BILL HASLAM, GOVERNOR

ARTICLE I. CORPORATE NAME, BOUNDARIES AND POWERS

Sec. 2. Corporate powers.

Execution of powers. The City of Kingsport shall, by ordinance, resolution or motion, have the power and authority:

(8) *General powers as to property.* To acquire or receive and hold, maintain, improve, sell, lease, mortgage, pledge or otherwise dispose of property, real or personal, and any estate or interest therein, within or without the city or state. As it pertains to real property the board of mayor and aldermen shall determine the method or methods used to exercise these powers, which may include, but are not limited to a request for bids, auction, private negotiation, private sale, or any other method available for acquiring, disposing or leasing real property.

ARTICLE III. BOARD OF MAYOR AND ALDERMEN

Sec. 2. Election, term of mayor; designation of members as board of mayor and aldermen.

At the general city election in May of 1979, and every two (2) years thereafter, there shall be elected by the qualified voters of the City of Kingsport, a mayor who shall serve a term of two (2) years beginning at the first regular meeting of the board in July following his election. The mayor and aldermen shall together constitute the board of mayor and aldermen of the City of Kingsport.

No person shall be a candidate for the office of mayor and the office of alderman in the same election, nor shall any person hold both offices at the same time.

In the event an incumbent alderman having an unexpired term remaining to serve, shall run and be elected to the office of mayor, upon taking office as mayor the vacancy thus created in the office of alderman shall be filled as hereinafter set out in section 10 of this article.~~by special election held within ninety (90) days after the occurrence of such vacancy (or following the certification of the prior May aldermanic election to the city recorder).~~

Sec. 10. Vacancies.

(a) *Causes of vacancies.* The office of mayor, vice-mayor or alderman is vacated:

- (1) By the death of the incumbent;
- (2) By the resignation of the incumbent;
- (3) By the incumbent ceasing to be a resident of the city; or
- (4) By the incumbent's violation of the Charter.

(b) *Declaration of vacancies to board.* The mayor or vice-mayor shall declare to the board, at each session thereof, all offices to be filled by that body, which have become vacant.

(c) *Appointment of successors.* After any office becomes vacant, such vacancy in said board shall be filled by appointment within thirty (30) days by an affirmative vote of a majority of the remaining members thereof; provided, however, that no member shall be appointed under this section at any time when the said board already has as many as three (3) ~~two (2)~~ members so appointed, but in case of any additional vacancy, the said board shall forthwith by ordinance or resolution call upon the election commissioners for Sullivan County and Hawkins County to call a special election for the purpose of filling such additional vacancy, whereupon said election commissioners shall immediately call such special election and appoint the

necessary officers therefor, and said special election shall be held in the same manner as and subject to the regulations in this Charter respecting general city elections.

(d) *Vote.* All such appointments by the board shall be made viva voce, on the calling of the roll.

(e) *Term of office of successors.* The successors so appointed to hold office until the first regular meeting in July following the next general city election held after his appointment.

ARTICLE VI. OFFICERS AND EMPLOYEES GENERALLY

Sec. 1. Appointment; compensation; removal.

The board of mayor and aldermen shall appoint and fix the salary of the city manager who shall hold office at the pleasure of the board. The board shall fix the salary of and elect a city judge as provided for in this Charter. The board of mayor and aldermen shall establish and make provision in the appropriation ordinance for such other offices, officers, agents and employees as may be necessary or as required by this Charter. The recorder, chief of police, treasurer, city attorney, and all other officers, agents and employees, except the city judge, the board of education and appointees of the board of education provided for elsewhere in this Charter, shall be appointed by the city manager and shall be removable by the city manager at any time.

Sec. 2. Oath or affirmation of salaried personnel.

Every officer, agent and employee holding a position upon an annual salary shall, before entering upon his duties, take and subscribe and file with the recorder an oath or affirmation that he has all the qualifications and is not subject to any of the disqualifications named in this Charter for the office or employment he is about to assume; that he will support the Constitution of the United States and of this state and the Charter and ordinances of the city, and that he will faithfully discharge the duties of his office or employment.

Sec. 3. Bonds.

The city manager and every officer, agent and employee having duties embracing the receipt, disbursement, custody or handling of money shall, before entering upon his duties, execute a fidelity bond with some surety company authorized to do business in the State of Tennessee, as surety (except that bonds for five hundred dollars (\$500.00) or less may be given with personal surety), in such amount as shall be prescribed by ordinance of the board of mayor and aldermen, except where the amount is prescribed in this Charter. All such bonds and the sureties thereto shall be subject to the approval of the board of mayor and aldermen. Except where amount of the bond is prescribed in this Charter, the board of mayor and aldermen may authorize the acquisition of an Employee Honesty Policy in lieu of such bond.

Sec. 4. Authority to require additional bond.

If at any time it appears to the mayor, city manager or recorder that the surety or sureties on any official bond are insufficient, the officer or employee shall be required to give additional bond, and, if such officer or employee fails to give such additional bond within twenty (20) days after he shall have been notified, his office shall be vacant.

Sec. 5. Health and welfare benefits or insurance.

(a) The city is hereby authorized to establish, by ordinance, hospital, medical, surgical, disability or related benefits including, but not limited to, medical, dental, life, and income protection, whether provided by insurance, or, direct payment or reimbursement, for all officers and employees of the city and members

of their families; to determine who shall be eligible to participate under said plan; to incur the expense of experts to determine the feasibility of such plan, its probable cost and administrative matters pertaining thereto; to contract with any insurance company properly licensed and qualified to do business in Tennessee in connection therewith, or any service provider; to determine to what extent, if any, the cost of such benefits shall be borne by employees, by the city, or both, and fix rates based on the beneficiaries of such plan, to determine how the share of the employee, if any, shall be collected; to appropriate and pay for the share, if any, of the city; to provide for the administration of said plan and the cost in connection therewith and to do all things necessary to establish and comply with the purposes of this act [section].

(b) When in the possession of the city, applications, claims and all individual records of persons entitled to benefits from any policies or plans established pursuant to this article shall be confidential and shall not be disclosed to anyone except to the extent expressly authorized in such applications, claims, policies or plans or insofar as it may be necessary for the administration of this article, the policy or plan, or other policies or plans affecting a person covered under the policy or plan, or upon order of a court of competent jurisdiction.

ARTICLE VI. OFFICERS AND EMPLOYEES GENERALLY

Sec. 1. Appointment; compensation; removal.

The board of mayor and aldermen shall appoint and fix the salary of the city manager who shall hold office at the pleasure of the board. The board shall fix the salary of and elect a city judge as provided for in this Charter. The board of mayor and aldermen shall establish and make provision in the appropriation ordinance for such other offices, officers, agents and employees as may be necessary or as required by this Charter. The recorder, chief of police, treasurer, city attorney, and all other officers, agents and employees, except the city judge, the board of education and appointees of the board of education provided for elsewhere in this Charter, shall be appointed by the city manager and shall be removable by the city manager at any time.

Sec. 2. Oath or affirmation of salaried personnel.

Every officer, agent and employee holding a position upon an annual salary shall, before entering upon his duties, take and subscribe and file with the recorder an oath or affirmation that he has all the qualifications and is not subject to any of the disqualifications named in this Charter for the office or employment he is about to assume; that he will support the Constitution of the United States and of this state and the Charter and ordinances of the city, and that he will faithfully discharge the duties of his office or employment.

Sec. 3. Bonds.

The city manager and every officer, agent and employee having duties embracing the receipt, disbursement, custody or handling of money shall, before entering upon his duties, execute a fidelity bond with some surety company authorized to do business in the State of Tennessee, as surety (except that bonds for five hundred dollars (\$500.00) or less may be given with personal surety), in such amount as shall be prescribed by ordinance of the board of mayor and aldermen, except where the amount is prescribed in this Charter. All such bonds and the sureties thereto shall be subject to the approval of the board of mayor and aldermen. Except where amount of the bond is prescribed in this Charter, the board of mayor and aldermen may authorize the acquisition of an Employee Honesty Policy in lieu of such bond.

Sec. 4. Authority to require additional bond.

If at any time it appears to the mayor, city manager or recorder that the surety or sureties on any official bond are insufficient, the officer or employee shall be required to give additional bond, and, if such officer

or employee fails to give such additional bond within twenty (20) days after he shall have been notified, his office shall be vacant.

Sec. 5. Health and welfare benefits or insurance.

(a) The city is hereby authorized to establish, by ordinance, hospital, medical, surgical, disability or related benefits including, but not limited to, medical, dental, life, and income protection, whether provided by insurance, or, direct payment or reimbursement, for all officers and employees of the city and members of their families; to determine who shall be eligible to participate under said plan; to incur the expense of experts to determine the feasibility of such plan, its probable cost and administrative matters pertaining thereto; to contract with any insurance company properly licensed and qualified to do business in Tennessee in connection therewith, or any service provider; to determine to what extent, if any, the cost of such benefits shall be borne by employees, by the city, or both, and fix rates based on the beneficiaries of such plan, to determine how the share of the employee, if any, shall be collected; to appropriate and pay for the share, if any, of the city; to provide for the administration of said plan and the cost in connection therewith and to do all things necessary to establish and comply with the purposes of this act [section].

(b) When in the possession of the city, applications, claims and all individual records of persons entitled to benefits from any policies or plans established pursuant to this article shall be confidential and shall not be disclosed to anyone except to the extent expressly authorized in such applications, claims, policies or plans or insofar as it may be necessary for the administration of this article, the policy or plan, or other policies or plans affecting a person covered under the policy or plan, or upon order of a court of competent jurisdiction.

ARTICLE VII. CITY MANAGER

Sec. 2. Powers and duties.

The powers and duties of the city manager shall be:

(a) Enforcement of laws and ordinances; institution of prosecution. To see that the laws and ordinances are enforced, and upon knowledge or information of any violation thereof, to see that prosecutions are instituted in the city court.

(b) *Appointment or removal of officers or employees.* Except as provided in this Charter, to appoint and remove all heads of departments and all subordinate officers and employees, and all appointments to be made on merit and fitness alone. Except for a reduction in force no employee shall be removed except upon specific charges in writing after completion of their six (6) month-probationary period. Any employee except department heads, deputy department heads and confidential employees may request a hearing prior to their final termination. The request for a hearing must be made in writing delivered to the office of the city manager by 5:00 p.m. on the third business day following the notice to the employee that the city manager will act on the termination if the request for a hearing is not timely made. The hearing may be public if requested by the employee and the accused shall have the right to appear and defend in person or by counsel and shall have process of the board of mayor and aldermen to compel attendance of witnesses in their behalf. An employee who is suspended without pay for less than six (6) work days shall not have a right to a formal hearing, but rather shall have a right to have the opportunity to meet with the city manager. The meeting will not be public and at the meeting the employee will have an opportunity to respond and explain before the city manager acts on the suspension. The opportunity for the meeting is waived if the employee fails to request the meeting in writing delivered to the office of the city manager by 5:00 p.m. on the business day following the notice to the employee of the reason for the proposed suspension and that the city manager will act on the suspension, if the request for a

meeting is not timely made.

(c) Supervision, control of officers, departments. To supervise and control the work of the recorder, the chief of police, the city attorney, treasurer, and all other officers except the city judge, and of all departments and divisions created by this Charter or which hereafter may be created by the board of mayor and aldermen, other than the department of education created by this Charter.

(d) Enforcement of public utility franchises. To see that all terms and conditions imposed in favor of the city or its inhabitants in any public utility or franchise are faithfully done, kept and performed and upon knowledge or information of any violation thereof, to call the same to the attention of the city attorney who is hereby required to take such steps as are necessary to enforce the same.

(e) Attendance at meetings of board of mayor and aldermen. To attend all meetings of the board of mayor and aldermen with the right to take part in the discussions, but having no vote.

(f) Recommendation of measures to board of mayor and aldermen. To recommend to the board of mayor and aldermen for adoption such measures as the city manager may deem necessary or expedient.

(g) Budget commissioner. To act as budget commissioner and to keep the board of mayor and aldermen fully advised as to the financial condition and needs of the city.

(h) *Purchasing agent; bids required.* To act as purchasing agent of the city and to purchase all material, supplies, equipment and services for the proper conduct of the city's business. The board of mayor and aldermen shall prescribe by ordinance the maximum expenditure which the city manager may make without specific authorization of the board of mayor and aldermen, and it shall prescribe rules for competitive bidding, but no purchase expending city funds shall be made at any one time in an amount which in the aggregate will exceed fifty thousand dollars (\$50,000.00) unless bids shall have been requested through public advertisement and award made to the lowest responsible compliant bidder in the best interest and advantage of the city. This requirement shall not apply to purchases, leases or lease purchases of real property or any exemptions substantially similar to those contained in T.C.A. section 6-56-304, as amended from time to time.

ARTICLE XX. CITY CONTRACTS

Sec. 1. Designated work to be by contract; advertisement for bids; bond of contractor; rejection of bids, re-advertisement; work by city forces.

(a) All contracts expending city funds of for more than fifty thousand dollars (\$50,000) shall be awarded to the lowest responsible compliant bidder in the best interest and advantage to the City of Kingsport after publication, advertisement and competition, as may be prescribed by ordinance. This requirement shall not apply to purchases, leases or lease purchases of real property or any exemptions substantially similar to those contained in T.C.A. section 6-56-304, as amended from time to time. No contract for any public work or improvement shall be awarded except on condition that the contractor give bond with some bonding company authorized to transact business in [the State of] Tennessee, as surety, in a sum equal to at least fifty percent (50%) of the contract price of the particular work or improvement for the faithful performance of such contract. In lieu of the bond required in this subsection, the city may, in its sole discretion, allow the following securities or cash to be substituted:

- (1) United States Treasury bonds, United States Treasury notes or United States Treasury bills.
- (2) General obligation bonds of the State of Tennessee.

- (3) Certificates of deposits irrevocably pledged from a state or national bank having its principal office in [the State of] Tennessee.
- (4) An irrevocable letter of credit from a state or national bank having its principal office in [the State of] Tennessee. The terms and conditions of any letter of credit shall be subject to the approval of the city treasurer. All letters of credit shall be accompanied by an authorization of the contractor to deliver retained funds to the bank issuing the letter.
- (5) Cash, provided that if cash is posted, the city shall pay to the contractor interest at the same rate that interest is paid on funds invested in a local government investment pool established pursuant to Tennessee Code Annotated, Section 9-4- 704 [T.C.A. § 9-4-704], for the contract period.

(b) The board of mayor and aldermen board shall have the power to reject all bids and advertise again, and all advertisements shall contain a reservation of this right.

(c) This section shall not be construed to prohibit any work or improvements by city forces upon authorization by the board of mayor and aldermen. Such authorization shall be based on detailed estimates submitted by the responsible department and approved by the city manager.

(d) No contract for any public work or improvement for more than fifty thousand dollars (\$50,000) shall be awarded except on condition that the contractor give bond with some bonding company authorized to transact business in [the State of] Tennessee, as surety for mechanics' liens and materialmen's liens, in a sum equal to at least fifty percent (50%) of the contract price of the particular work or improvement. In lieu of the bond required in this subsection, the city may, in its sole discretion, allow the following securities or cash to be substituted:

- (1) United States Treasury bonds, United States Treasury notes or United States Treasury bills.
- (2) General obligation bonds of the State of Tennessee.
- (3) Certificates of deposit irrevocably pledged from a state or national bank having its principal office in [the State of] Tennessee.
- (4) An irrevocable letter of credit from a state or national bank having its principal office in [the State of] Tennessee. The terms and conditions of any letter of credit shall be subject to the approval of the city treasurer. All letters of credit shall be accompanied by an authorization of the contractor to deliver retained funds to the bank issuing the letter.
- (5) Cash, provided that if cash is posted, the city shall pay to the contractor interest at the same rate that interest is paid on funds invested in a local government investment pool established pursuant to Tennessee Code Annotated, Section 9-4- 704 [T.C.A. § 9-4-704], for the contract period.



AGENDA ACTION FORM

Change Order to the Contract with Denark Construction, Inc. for the Brickyard Park Ball Fields

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

Action Form No.: AF-120-2015
Work Session: May 18, 2015
First Reading: N/A

Final Adoption: May 19, 2015
Staff Work By: D. Mason
Presentation By: C. McCartt

Recommendation:

Approve the Resolution

Executive Summary:

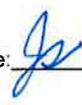
As discussed at the May 4th BMA Work Session staff recommends approving Change Order No. 2 in order to complete the parking lot, as described by Add Alternate #1 during the original bid process, for Brickyard Park. This change will add 73 spaces for a total of 323 and will also include the appropriate curbing, lighting and landscaping.

The change order amount will be \$110,412.00.

Funds for this change order are available in project GP1409.

Attachments:

- 1. Resolution

Funding source appropriate and funds are available: 

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

RESOLUTION NO. _____

A RESOLUTION APPROVING CHANGE ORDER #2 TO THE CONTRACT WITH DENARK CONSTRUCTION, INC. FOR THE BRICKYARD PARK BALL FIELDS PROJECT AND AUTHORIZING THE MAYOR TO EXECUTE ALL DOCUMENTS NECESSARY AND PROPER TO EFFECTUATE THE CHANGE ORDER

WHEREAS, the City of Kingsport entered a contract with Denark Construction on July 17, 2014 for the Centennial Ball Park, now known as Brickyard Park; and

WHEREAS, the City of Kingsport has previously approved Change Order No. 1 to the contract; and

WHEREAS, the master plan for Brickyard Park includes a future 5th ball field with an associated expansion of the parking lot; and

WHEREAS, the general site grading for the future 5th ball field and expanded parking lot have been completed under a separate contract; and

WHEREAS, the City of Kingsport desires to increase the scope of the contract to provide for the expansion of the parking lot in the amount of \$110,412.00, necessary to complete the project; and

WHEREAS, funding is available in Project GP1409.

Now therefore,

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

SECTION I. That Change Order #2 to the contract with Denark Construction for the Centennial Ball Park, now known as Brickyard Park, to provide for the expansion of the parking lot in the amount of \$110,412.00, is approved.

SECTION II. That the Mayor, or in his absence, incapacity, or failure to act, the Vice Mayor, is authorized and directed to execute, in a form approved by the City Attorney, all documents necessary and proper to effectuate Change Order #2 to the contract with Denark Construction for the Centennial Ball Park, now known as Brickyard Park.

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

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

ADOPTED this the 19th day of May, 2015.

DENNIS R. PHILLIPS, MAYOR

ATTEST:

JAMES H. DEMMING, CITY RECORDER

APPROVED AS TO FORM:

J. MICHAEL BILLINGSLEY, CITY ATTORNEY



AGENDA ACTION FORM

Amendment to Historic Zoning Commission Members' Term of Office and Appointment

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

Action Form No.: AF-114-2015
Work Session: May 18, 2015
First Reading: N/A

Final Adoption: May 19, 2015
Staff Work By: Corey Shepherd
Presentation By: Mayor Phillips

Recommendation:

Approve amendment to terms.

Executive Summary:

To closer comply with the terms and appointments of the Historic Zoning Commission amendments are needed so that each of the seven members appointed to the Historic Zoning Commission will serve for a period of five years and arranged so that the term of one member shall expire each year.

<u>Commissioner</u>	<u>Term Expiration</u>	<u>Term Expiration Amendment</u>
McKinney, Jewell	April 30, 2017	June 30, 2016
Henderson, James	February 28, 2018	June 30, 2016
Oaks, David	April 30, 2017	June 30, 2017
Perdue, Beverley	May 31, 2018	June 30, 2018
Como, Ted	February 28, 2017	June 30, 2019
Harmon, Liza	May 31, 2018	June 30, 2020
Crocker, Perry	April 30, 2017	June 30, 2018

Attachments:

1. Letter of Recommendation
2. Bylaws

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



CITY OF KINGSPORT, TENNESSEE

May 11, 2015

Mayor Dennis Phillips
225 West Center Street
Kingsport, TN 37660

Dear Mayor Phillips:

It has come to the attention of the Kingsport Historic Zoning Commission that the Commission has been following the incorrect procedure as it relates to the length of terms and the appointment process. The KHZC, in conjunction with Planning Staff, have proposed an amended appointment list for you to consider that will bring the HZC closer to compliance. Moving forward, Commissioners will be appointed to five year terms with one Commissioner's appointment expiring each year. On behalf of the KHZC, we appreciate this consideration.

Sincerely,

Jim Henderson,
Chairman of the Kingsport Historic Zoning Commission



HISTORIC ZONING COMMISSION

(Ref. Art. VI, Sec. 3-6, Kingsport Municipal Code)

MEMBERSHIP:

The Kingsport Historic Zoning Commission (HZC) shall consist of seven (7) members, consisting of a representative of a local patriotic or historical organization, an architect, if available; a member of the Planning Commission at the time of the appointment; and remaining members appointed from the City in general.

METHOD OF APPOINTMENT:

HZC members shall be appointed by the Mayor.

ELIGIBILITY:

Those persons who are residents of the City of Kingsport and who have been appointed by the Mayor are eligible to serve on the HZC.

TERM OF OFFICE:

Each member shall be appointed to the HZC for a period of five (5) years, and appointments will be arranged so that the term of one member shall expire each year.

COMPENSATION:

All members of the HZC shall serve without compensation.

OFFICERS:

The HZC shall elect a Chairman, Vice-Chairman and a Secretary.

MEETINGS, TIME AND PLACE:

Meetings shall be held the second Monday of each month at 1:30 p.m. in the Bob Clear Conference Room.

RULES OF PROCEDURE:

All meetings of the HZC shall be open to the public. The Commission shall keep minutes of its procedures showing the vote of each member upon request, or if absent or failing to vote, indicating such fact.

PURPOSE:

Make recommendations to the Planning Commission, Board of Mayor and Aldermen, and others in regard to matters relating to the preservation and enhancement of structures, premises and areas of substantial, historical or architectural significance and to matters relating to the establishment of historic zoning districts and regulations to be enforced there under. The functions of the Historic Zoning Commission shall include:

1. The initial phase for establishing a Historic District.
2. Review applications for improvements and alterations in any existing H-2 Historic District in the City of Kingsport; and
3. Continue the on-going study of the significant historic sites and structures for the City of Kingsport.



AGENDA ACTION FORM

Issue Certificate of Compliance for Allandale Package Store to Sell Retail Alcoholic Beverages

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

Action Form No.: AF-108-2015
 Work Session: May 18, 2015
 First Reading: N/A

Final Adoption: May 19, 2015
 Staff Work By: Kathy Reynolds
 Presentation By: Jim Demming

Recommendation:

Issue Certificate of Compliance to the Allandale Package Store to sell retail alcoholic beverages.

Executive Summary:

Attached is an application for the Allandale Package Store that has been filed with the City Recorder for a Certificate of Compliance to sell retail beverages. The Allandale Package Store was formerly Kelly's Package Store which currently has a Certificate of Compliance, but due to a change in the ownership of the package store, the new owner is applying for a Certificate of Compliance.

Section 6-74 of the City Code states that to assure that all requirements are satisfied, no original or renewal Certificate of Compliance shall be issued for any location until:

1. An application has been filed with the City Recorder; and
2. The application complies with all restrictions as to location and number of retail licenses to be issued within the City; and
3. The application has been considered at a regular or called meeting of the Board and approved by a majority vote.

This application has met the requirements of Section 6-74 of the City Code. The Police background check has been conducted on the applicant and the results are attached for your review

Attachments:

1. Application
2. Police Background Report

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

CITY OF KINGSPORT

APPLICATION FOR CERTIFICATE OF COMPLIANCE

INSTRUCTIONS

1. Answer all questions completely. Use blank space at end of form for extra details on any question for which you have insufficient space.
2. Type, print, or write carefully. Illegible or incomplete forms will not receive consideration.
3. Consider your answers carefully. Your signature at the end of this form will certify as to their correctness. **YOU WILL BE SIGNING THIS APPLICATION UNDER OATH AND WILL BE SUBJECT TO PENALTY OF PERJURY FOR FALSE ANSWERS.**
4. An application must be completed by all individuals having any interest, direct or indirect, in the Licensee as owner, partner, stockholder, member, director, and officer or otherwise.

1. Name of Licensee

PP Properties LLC

2. Full name of person completing this application

Bobbie Marie Hayes Phillips

3. Home Address - Mailing Address and Street Address

2121 Pendragon Rd. Kingsport, TN 37660

4. Telephone Number Licensee can be reached

423-335-5552

5. Date of Birth and Social Security Number

6-26-56

6. Name of Liquor Store

Allandale Package Store

7. Business Address

4528 W. Stone Dr. Kingsport, TN 37660

8. Zoning Designation of Business Address Listed at Item 7.

B-3

9. Names, addresses and phone numbers of three (3) residents of the City of Kingsport that have known each applicant for at least two (2) years.

Name	Address	Phone Number
Stephen Lahair	254 W. New St	423-292-6449
Christopher Thomas	403 Cherokee St.	423-384-3811
'Fred' Poel Barger	1001 Konnarock Rd.	423-335-1251

10. Have you been convicted of a felony in Tennessee or anywhere else within a ten-year period immediately preceding the date of this application?

NO

11. Please list all convictions for misdemeanors in Tennessee or anywhere else, including date and place of conviction, within a ten-year period immediately preceding the date of this application.

NONE

12. Have you been charged with or indicted for a criminal matter that has not been fully resolved in Tennessee or anywhere else? Yes _____ No X. If yes, please provide details of the charge, the name of the charging jurisdiction, the status of the charge and when you expect the charge to be resolved.

13. That the applicant will comply with the state statutes, federal statutes, ordinances of the City of Kingsport, and all rules and regulations with reference to the sale of alcoholic beverages.

Yes X No _____

14. Is the applicant now and has been for at least two years prior to the date of this application a bona fide resident of the state of Tennessee.

Yes X No _____

15. The applicant further understands that the business will be actively engaged in the retail sale of alcoholic beverages at the liquor store within ninety (90) days after the license is granted or this certificate of compliance is void.

Yes X No _____

I understand that any applicant making a false statement in the application or withholding information on this application shall result in a denial of the certificate or the revocation of the license.

In addition to the denial of the certificate I further understand that by signing this application I am stating that the information contained therein is true and correct to the best of my knowledge, information and belief and that I sign this application under penalty of perjury.

STATE OF TENNESSEE
COUNTY OF SULLIVAN

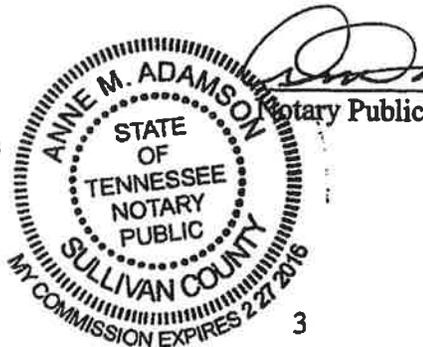
The undersigned, Bobbie Marie Hayes Phillips hereby makes oath and swears that all the facts and answers set forth in the above application are true and correct to the best of my knowledge, information, and belief. The undersigned further makes oath that if the applicant is a corporation, firm, joint-stock company, syndicate, partnership or association, that he or she is authorized to execute this application on behalf of the owner.

In testimony whereof witness my signature on this the 7 day of May 2015.

Bobbie Marie Hayes Phillips
Applicant Bobbie Marie Hayes Phillips

Sworn to and subscribed by Bobbie M. Phillips before me, a notary public in and for said State and County, on this the 7th day of May, 2015.

My commission expires 02-27-2016



City Planner

Is requested location for distribution, wholesalers, manufacturers, warehouses, businesses in an area designated and zoned for those uses under the laws and ordinances of the City of Kingsport?

Yes No

Is requested structure in a Nonconforming Conforming location under the zoning laws and ordinances of the City of Kingsport?

Is requested location within 200 feet of property on which any public or private school (K-12) is located?

Yes No

*Signature of City Planner:

A handwritten signature in black ink, appearing to be "Cheryl [unclear]", written over a horizontal line.

Reynolds, Kathy

From: Tidwell, Noah
Sent: Monday, May 11, 2015 1:05 PM
To: Reynolds, Kathy
Subject: Certificate of Compliance

Kathy,

I did not find anything that would prevent Mrs. Phillips from receiving her certificate of compliance.

Thanks,

Noah Tidwell