

RESOLUTION NO. _____

A RESOLUTION APPROVING A CROSSING CLOSURE AGREEMENT WITH CSX TRANSPORTATION, INC. FOR THE BRICKYARD PARK PEDESTRIAN BRIDGE PROJECT AND AUTHORIZING THE MAYOR TO EXECUTE THE AGREEMENT AND ALL OTHER DOCUMENTS NECESSARY AND PROPER TO EFFECTUATE THE PURPOSE OF THE AGREEMENT

WHEREAS, the city has plans to construct a pedestrian bridge connecting Centennial Park to Brickyard Park; and

WHEREAS, the bridge will be constructed over a highway-rail at grade crossing on Cherokee Street at MP 00Z 93.94 (DOT# 243972P), and CSX Transportation, Inc., (CSXT) proposes to permanently close the crossing; and

WHEREAS, surface removal, track work, and installation of permanent crossing barricades will be provided by CSXT for this crossing closure; and

WHEREAS, CSXT also agrees to provide a monetary contribution of \$75,000.00 to the city, and the funds will be used for the capital improvements related to the construction of the Brickyard Park Pedestrian Bridge; and

WHEREAS, staff recommends entering into a Crossing Closure Agreement with CSXT for the closure of the crossing on Cherokee Street; and to accept the financial contribution of \$75,000.00 to be used for the construction of the Brickyard Park Pedestrian Bridge; and

WHEREAS, the amount of \$75,000.00 will be appropriated to GP2108 by separate ordinance.

Now therefore,

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

SECTION I. That a Crossing Closure Agreement with CSX Transportation, Inc., for the closure of the highway-rail at grade crossing on Cherokee Street at MP 00Z 93.94 (DOT# 243972P), for the construction of a bicycle/pedestrian bridge connecting Centennial Park to Brickyard Park, 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, Crossing Closure Agreement with CSX Transportation, Inc., for the closure of the highway-rail at grade crossing on Cherokee Street at MP 00Z 93.94 (DOT# 243972P), for the construction of a bicycle/pedestrian bridge connecting Centennial Park to Brickyard Park, to deliver the agreement and take any and all action as may be required on the part of the city to carry out, give effect to, and consummate the transactions contemplated by the agreement and this resolution, said agreement being as follows:

CROSSING CLOSURE AGREEMENT

This Crossing Closure Agreement (this "Agreement") is entered into this ___ day of 2024, by and between, CSX Transportation, Inc., a Virginia corporation ("CSXT") and City of Kingsport, Tennessee a body politic of the State of Tennessee (the "City").

RECITALS

WHEREAS, the City has agreed to close the highway-rail at grade crossing on Cherokee Street at MP 00Z 93.94 (DOT# 243972P) (the "Cherokee St. Crossing"); and

WHEREAS, CSXT has agreed to provide certain incentives to the City, as specifically set forth in this agreement.

NOW THEREFORE, in consideration of the mutual agreements contained herein and other good and valuable consideration, the receipt, adequacy and sufficiency of which are hereby acknowledged, the parties hereto agree and covenant as follows:

1. Cherokee Street Crossing Closure. Upon completion of the construction of the bicycle/pedestrian bridge at DOT: 243972R, MP Z94.93 City hereby consents to the permanent closure of the Cherokee Street Crossing (the "closure"). It being the express agreement of the parties that approval for and construction of the pedestrian/bicycle bridge shall serve in part as consideration for closure of the crossing. Whereby, from the time the invoice is received by CSX, payment should be made to the City in the amount agreed upon below, within 90 days after construction completion of the project. Should CSXT withhold approval for construction of the bicycle/pedestrian bridge the Cherokee Street Crossing shall remain open.

2. CSXT Incentives. CSXT will provide the following incentives to City:

(a) Surface Removal. CSXT agrees to remove and dispose of the crossing surface, restore the track side ditch lines, and install permanent barricades.

(b) Equipment Handling Signal equipment will be removed by CSXT and delivered to the CSXT.

(c) Financial Contribution. CSXT agrees to provide a monetary contribution of Seventy-Five Thousand Dollars (\$75,000.00) to the City. The funds will be used for the capital improvements related to the construction of the Brickyard Park Pedestrian Bridge and improvements related to the safety fencing along the CSX right of way in the construction limits.

3. Entire Agreement. This Agreement embodies the entire understanding of the parties, and may not be waived or modified except in a writing signed by authorized representatives of both parties and supersedes all prior or contemporaneous written or oral understandings, agreements, or negotiations regarding its subject matter.

4. Waiver. If either party fails to enforce its respective rights under this Agreement, or fails to insist upon the performance of the other party's obligations hereunder, such failure shall not be construed as a permanent waiver of any rights or obligations in this Agreement.

5. Notices. All notices, consents, and approvals required or permitted by this Agreement shall be in writing and shall be deemed delivered upon personal delivery, upon the expiration of three (3) days following mailing by first class U.S. mail, or upon the next business day following mailing by a nationally recognized overnight carrier, to the parties at the addresses set forth below, or at such other addresses as either party may designate by delivery of prior notice to the other party:

If to CSXT: CSX Transportation, Inc.
500 Water Street, J301
Jacksonville, Florida 32202
Attention: Director Project Management – Public Projects

If to the City: City of Kingsport, TN
415 Broad Street
Kingsport, TN 37600
Attention: Michael Thompson

6. Severability. The parties agree that if any part, term or provision of this Agreement is held to be illegal, unenforceable, or in conflict with any applicable federal, state, or local law or regulation, such part, term, or provision shall be severable, with the remainder of the Agreement remaining valid and enforceable.

7. Applicable Law. This Agreement shall be governed by the laws of the State of Tennessee, exclusive of its choice of law rules.

IN WITNESS WHEREOF, the undersigned have executed this Agreement as of the date first set forth above.

[Acknowledgements Deleted for Inclusion in this Resolution]

SECTION III. That the mayor is further authorized to make such changes approved by the mayor and the city attorney to the agreement set out herein that do not substantially alter the

material provisions of the agreement, and the execution thereof by the mayor and the city attorney is conclusive evidence of the approval of such changes.

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

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

ADOPTED this the 16th day of January, 2024.

PATRICK W. SHULL, MAYOR

ATTEST:

ANGELA MARSHALL, DEPUTY CITY RECORDER

APPROVED AS TO FORM:

RODNEY B. ROWLETT, III, CITY ATTORNEY