

RESOLUTION NO. _____

A RESOLUTION TO RATIFY THE MAYORS SIGNATURE ON AN AMENDMENT TO THE AGREEMENT WITH TRAXON CONSTRUCTION INC., AND AUTHORIZING THE MAYOR TO EXECUTE THE AGREEMENT AND ALL OTHER DOCUMENTS NECESSARY AND PROPER TO EFFECTUATE THE PURPOSE OF THE AGREEMENT

WHEREAS, on August 6, 2024 the board awarded construction contract to Traxon Construction Inc., for waterline upgrades for the Sullivan County Water Project (Res. No. 2025-023); and

WHEREAS, since that time, the Tennessee Department of Environment and Conservation (TDEC) is requesting an amendment to add termination for cause and convenience language to the existing agreement in order to be in compliance with Federal requirements.

Now therefore,

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

SECTION I. That Amendment Number 1 to Contract with Traxon Construction, Inc., executed on September 20, 2024, is approved and the board hereby ratifies the mayor's execution of Amendment Number 1 to Contract.

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 Amendment Number 1 to Contract with Traxon Construction, Inc., 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:

AMENDMENT NUMBER 1 TO CONTRACT

Amendment Number 1 to the contract effective August 08, 2024, by and between the City of Kingsport ("CITY") AND Traxon Construction, Inc. 435 Painter Road, Fall Branch, Tennessee 37656, United States.

TERMINATION FOR CONVENIENCE

Section 9 "Termination for Convenience" shall be added to read as follows:

SECTION 9. TERMINATION FOR CONVENIENCE. The Contract may be terminated by City upon thirty (30) days written notice to Contractor. Such termination will not be deemed a breach of contract by either party. Should City exercise this provision, City will compensate Contractor for all satisfactory and authorized services completed as of the termination date, and Contractor will refund to City any funds paid by City in excess of such amount. Upon such termination, Contractor will not have any right to any actual general, special, incidental, consequential, or any other damages whatsoever of any description or amount.

TERMINATION FOR CAUSE

Section 10 "Termination for Cause" shall be added to read as follows:

SECTION 10. TERMINATION FOR CAUSE.

- A.** The City may terminate the Contract if the Contractor
- (a)** repeatedly refuses or fails to supply enough properly skilled workers or proper materials;
 - (b)** fails to make payment to Subcontractors or suppliers in accordance with the respective agreements between the Contractor and the Subcontractors or suppliers;
 - (c)** repeatedly disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority; or
 - (d)** otherwise is guilty of substantial breach of a provision of the Contract Documents.

B. When any of the above reasons described exist, the Owner, without prejudice to any other rights or remedies of the City and after giving the Contractor and the Contractor's surety, if any, seven days' notice, terminate employment of the Contractor and may, subject to any prior rights of the surety:

(a) Exclude the Contractor from the site and take possession of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Contractor;

(b) Accept assignment of subcontracts; and

(c) Finish the Work by whatever reasonable method the City may deem expedient. Upon written request of the Contractor, the City shall furnish to the Contractor a detailed accounting of the costs incurred by the City in finishing the Work.

C. When the City terminates the Contract for one of the reasons stated in Section 1.1, the Contractor shall not be entitled to receive further payment until the Work is finished.

D. If the unpaid balance of the Contract Sum exceeds costs of finishing the Work, including compensation for the Architect's services and expenses made necessary thereby, and other damages incurred by the City and not expressly waived, such excess shall be paid to the Contractor. If such costs and damages exceed the unpaid balance, the Contractor shall pay the difference to the City. The amount to be paid to the Contractor or Owner, as the case may be, shall be certified by the Architect, upon application, and this obligation for payment shall survive termination of the Contract. All other terms and conditions of the Agreement shall remain in full force and effect and shall control over any terms and conditions contained within this Amendment No. 1.

[Acknowledgements Deleted for Inclusion in this Resolution]

SECTION III. That the mayor is further authorized to make such changes approved by the mayor and the city attorney to the amendment set out herein that do not substantially alter the material provisions of the 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 1st day of October, 2024.

PAUL W. MONTGOMERY, MAYOR

ATTEST:

ANGELA MARSHALL, DEPUTY CITY RECORDER

APPROVED AS TO FORM:

RODNEY B. ROWLETT, III, CITY ATTORNEY