

RESOLUTION NO. \_\_\_\_\_

A RESOLUTION APPROVING AN OFFER FOR THE PURCHASE OF REAL PROPERTY FOR EXPANSION OF BAYS MOUNTAIN PARK; AND AUTHORIZING THE MAYOR TO EXECUTE AN AGREEMENT AND ALL OTHER DOCUMENTS NECESSARY AND PROPER TO EFFECTUATE THE PURPOSE OF THIS RESOLUTION

WHEREAS, Kerry Deal and Karla Deal, heirs of Elbert and Glenda Gibbs, the current owners of the 38.68 acre tract of property located at 263 Bays Mountain Road (Tax Parcel No.: 057 072.00), contacted the city to express an interest in selling the property to the city for the expansion of Bays Mountain Park; and

WHEREAS, the city caused an appraisal of the property to be performed which estimated the value of the property at \$315,000.00; and

WHEREAS, the owners of the property have accepted the city's offer of \$315,000.00; and

WHEREAS, funding for the acquisition in the amount of \$105,000.00 will be provided by the Bays Mountain Park Commission and the remaining \$210,000.00 will be funded through the BMP Property Purchase project (GP2508).

Now therefore,

BE IT RESOLVED BY THE BOARD OF MAYOR AND ALDERMEN as follows:

SECTION I. Upon consideration of the fair market value of the property and other pertinent factors, an offer of \$315,000.00 is approved for the purchase of 263 Bays Mountain Road, subject to such conditions as set out in the Agreement of Sale set out below for the expansion of Bays Mountain Park.

SECTION II. That the mayor, or in his absence, incapacity, or failure to act, the vice-mayor, is authorized to execute, in a form approved by the city attorney and subject to the requirements of Article X, Section 10 of the Charter of the City of Kingsport, an Agreement of Sale for property identified as 263 Bays Mountain Road, and all other documents necessary and proper, and to take such acts as necessary, to effectuate the purpose of the agreement or this resolution, said agreement being as follows:

**AGREEMENT**

**THIS PURCHASE AGREEMENT** (herein "Agreement") made and entered into on the date of the notary acknowledgment of the Sellers's signatures between **KERRY DEAL and KARLA DEAL**, (hereinafter referred to as the "Sellers"), and **THE CITY OF KINGSPORT, TENNESSEE**, a municipality organized under the laws of the State of Tennessee (hereinafter referred to as the "Buyer").

**WITNESSETH:**

**FOR AND IN CONSIDERATION** of the sum of Ten Dollars (\$10.00) and other good and valuable consideration, including specifically, without limitation, the receipt and sufficiency of which are hereby acknowledged, and in consideration of the mutual covenants contained herein, the parties hereby agree as follows:

**1. SALE.** Sellers agrees to sell, convey, assign, transfer and deliver to Buyer, and Buyer agrees to purchase, acquire and take from Sellers, subject to the terms and conditions of this Agreement that

real property situate, lying and located at 263 Bays Mountain Road Drive, Kingsport, Tennessee and being further identified as tax map 057, parcel 072.00, more particularly described on Exhibit A attached hereto and hereby made a part hereof, together with all improvements and fixtures situated thereon, if any, and also together with all hereditaments and appurtenances thereunto belonging or in any way appertaining (the "Real Property").

**2. PURCHASE PRICE.**

(a) Amount. The purchase price to be paid by Buyer to Sellers for the Real Property shall be Three Hundred Fifteen Thousand and No/100 Dollars (\$315,000.00)

(b) Terms of Payment. Subject to the adjustment provided for herein the Purchase Price, less the prorated property taxes as of the date of closing, shall be paid by Buyer to Sellers in cash or certified funds payable to Sellers on the Closing Date.

**3. CLOSING.** The closing shall occur on or before April 1, 2025, (the "Closing Date"), at a time and location mutually agreed upon by the parties or, upon failure of the parties to agree, at a time and place specified by the Buyer (the "Closing"). Buyer and Sellers agree to deliver and execute such other documents as may be reasonable and necessary in the opinion of counsel for Sellers and Buyer to consummate and close the purchase and sale contemplated herein pursuant to the terms and provisions hereof.

**4. SURVEY.** Immediately upon the execution of this Agreement, Buyer shall, at Buyer's cost, cause a survey and surveyor's certificate, in form sufficient to remove the survey exception from the title insurance binder as more specifically provided in Section 5 hereof, to be prepared on the Real Property by a licensed surveyor acceptable to Buyer. The survey shall be made in accordance with the Minimum Standard Detail Requirements for ALTA/ACSM Land Title surveys for a Class A survey. Such survey shall show the total area of the Real Property in square feet, easements, if any, location of adjoining streets and rights of way, building setback lines, and such other details as may be required by Buyer. Once prepared, the survey description will replace Exhibit A and will become a part of this Agreement identified as Exhibit A-1, and such survey description shall be insurable (and shall be insured) by the title insurance company. If the survey (i) is for good cause not acceptable to Buyer's title insurance company; or (ii) shows the dimensions of the Real Property to be other than as set forth on Exhibit A; or (iii) shows any materially adverse conditions or matters affecting the Real Property which are not approved by Buyer, then Buyer, within twenty (20) days from receipt of such survey, shall notify Sellers in writing of Buyer's objections to the survey and Sellers shall thereupon have twenty (20) days to remove or cure such objections to the satisfaction of the Buyer and the title company. If Sellers fail to satisfy such objections with the time specified, Buyer shall have the right to (i) terminate this Agreement; (ii) extend the time period for removing or curing any objectionable item by written notice to Sellers or (iii) close this purchase and sale without reduction in the Purchase Price.

**5. TITLE INSURANCE.** Buyer, at its expense, shall secure an owner's title insurance commitment to issue a title insurance policy insuring Buyer's fee simple interest in the Real Property to the extent of the Purchase Price. The title insurance commitment will be issued by a reputable title insurance company chosen by Buyer and will contain exceptions only for real estate taxes and assessments for the current year which are not yet due and payable, and any other exceptions Buyer may approve in writing. If the commitment contains other exceptions, not acceptable to Buyer, then Buyer shall so notify Sellers of such exceptions within twenty (20) days of Buyer's receipt of the commitment, and Sellers shall have twenty (20) days from receipt of the Buyer's objections, to resolve such exceptions to the satisfaction of the Buyer. If Sellers are unable to cure or resolve such exceptions to Buyer's satisfaction within the time specified, Buyer shall have the right to terminate this Agreement, extend the cure period, or proceed to close this Agreement. In the event Buyer elects to terminate this Agreement pursuant to this Section 5, then this Agreement shall be cancelled and thereafter neither Sellers nor Buyer shall have any continuing obligation to each other under this Agreement.

**6. DEED AND TITLE.**

(a) Sellers hereby agree to convey to Buyer a good and marketable fee simple title to the Real Property, without exceptions, except as expressly provided herein, by a good and valid general warranty deed, in statutory form, suitable for recordation. Title to the Real Property shall not be subject to any easements, encumbrances or other exceptions which Buyer, in its sole discretion, deems unacceptable.

(b) In the event, as of the Closing Date, Sellers are unable to convey marketable title to the Real Property due to defects in Seller's title, or Sellers are unable to convey title due to exceptions Buyer finds unacceptable, then Closing shall be postponed for a reasonable period of time not to exceed 30 days until Sellers shall remove said title defects or exceptions. If Sellers is unable to cure such title defects or exceptions within said 30 days, this Agreement shall be null and void and there shall

be no further obligations between the parties. If Buyer shall waive such title defects or exceptions by so notifying the Sellers in writing, or if Sellers shall have cured such defects or exceptions, as provided herein, the obligations of the parties hereunder shall not be affected by reason thereof, there shall be no abatement or reduction of the Purchase Price, and this transaction shall be consummated in accordance with the terms and provisions of this Agreement, except that such title defects or exceptions that are waived by Buyer, if any, shall be set forth as exceptions in the deed.

**7. FEASIBILITY STUDY AND INSPECTIONS.** Each party, in its own discretion, shall determine that the property it is acquiring pursuant to this Agreement is suitable for the use for which it is being obtained. Each party shall each have the right, at its own expense, to conduct an inspection, environmental study or audit, a professional wetland delineation, professional floodplain analysis, grading and soil tests, feasibility and engineering studies, compaction and support studies, and any other inspections and/or tests that such party may deem necessary or advisable (hereinafter collectively the "Study") of the property it is acquiring for a period of sixty (60) days (hereinafter "Feasibility Period") after the Effective Date. The party conducting the Study and its agents, employees, contractors and representatives shall have at all reasonable times right of access to such property and shall be entitled to enter upon the property during the Feasibility Period in order to conduct the Study. Such activities of the Study shall not materially damage the property or unreasonably disrupt the other party's ongoing activity at the property. In the event of damage to or disruption of the property cause by the inspection or the Study, the inspecting party agrees to restore the property to substantially the same condition as existed prior to its access thereto. If as a result of such inspection or Study, the acquiring party determines in its sole and absolute discretion, that the property it is acquiring is unacceptable to that party for any reason whatsoever, such party shall have the unconditional right to terminate this Agreement, provided written notice of such is provided to the other party no later than ten (10) business days after the expiration of the Feasibility Period. If the terminating party provides written notice of cancellation to the other party no later than fifteen (15) business days after the expiration of the Feasibility Period, then this Agreement shall be cancelled, and thereafter neither party shall have any further liabilities, rights or obligations hereunder except those which expressly survive the termination of this Agreement.

**8. CONDITION OF PROPERTY.** There has been no storage, disposal, treatment or release of hazardous substances during the period of Sellers's ownership, and to the best of Sellers' knowledge, the Real Property has not been used, and is not presently being used, and will not through the Closing Date, be used for the storage or disposal of hazardous substances. (The term "hazardous substances" shall have the broadest meaning given under applicable state and federal law, including without limitation that given in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. section 9601 et seq.) Sellers are not aware of any facts, conditions or circumstances indicating any form of environmental contamination affecting any properties which are adjacent to the Real Property. There are no encumbrances, liens, or charges of any kind upon the Real Property that will not be satisfied and discharged in full by Sellers and released at or before Closing in a form satisfactory to Buyer. There are no contracts, agreements, or arrangements relating to the use and operation of the Real Property not disclosed herein. Sellers represent that there is no pending or threatened litigation that does or will materially and adversely affect the Real Property or its value.

**9. CONDITIONS PRECEDENT.**

Buyer's obligations pursuant to this Agreement are contingent upon and subject to the satisfaction, as of Closing, of each of the following conditions (any of which may be waived in whole or in part in writing by the Buyer at, or prior to Closing):

(1) The results of the title examination report and title insurance commitment described in Section 5 shall be acceptable to Buyer in its sole discretion as of Closing. There shall be no change in the matters reflected in the title insurance commitment described in Section 5 hereof, and there shall not exist any encumbrances or title defects affecting the Real Property not described in such title insurance commitment.

(2) All of the representations, warranties and conditions of Sellers set forth in this Agreement shall be true and correct as of the date hereof, and as of the Closing Date, and Sellers shall not, on or prior to Closing, have failed to meet, comply with or perform any conditions or obligations on Sellers's part required by the terms of this Agreement.

(3) There shall be no change in the matters reflected in the survey described in Section 4 hereof, and there shall not exist any easement, right of way, encroachment, conflict, or a protrusion with respect to the Real Property not shown on the survey.

If any condition specified in this Section 8 is not fully satisfied by Closing, or any extension thereof pursuant to this Agreement, Buyer may, at its option, waive such unsatisfactory condition precedent and consummate this Agreement, or may terminate this Agreement by written notice to Sellers, this

Agreement shall be cancelled and thereafter neither Sellers nor Buyer shall have any continuing obligation to each other under this Agreement. It shall be the right of the Buyer at its sole discretion and upon written notice to the Sellers to terminate this Agreement at any time prior to the closing of the property if it shall deem the property not suitable for its needs, and upon such termination, this Agreement shall be cancelled and thereafter neither Sellers nor Buyer shall have any continuing obligation to each other under this Agreement.

**10. NOTICE.** Any notice or demand on either party hereunder shall be deemed to have been given when mailed to the other party by Certified Mail, Return Receipt Requested, postage prepaid at the addresses set forth below:

<b>SELLERS:</b>	Kerry Deal & Karla Deal	<b>BUYER:</b>	City of Kingsport, Tennessee
	P. O. Box 124		415 Broad Street
	Hinton, WV 25951		Kingsport, TN 37660

**11. PRORATIONS.** All real estate taxes and assessments shall be prorated as of the Closing Date, using for such purpose the rate and valuation shown on the latest available tax notice.

**12. EXPENSES OF SELLERS.** In closing this transaction, Sellers shall be charged with the following:

- (a) The cost of preparation of the warranty deed;
- (b) The fees and expenses of any attorney or other advisor engaged by Sellers in connection with this transaction;
- (c) The commission or fees charged by any real estate broker or agent retained or used by the Sellers in connection with this transaction; and
- (d) All expenses incurred in connection with the release of any prior existing indebtedness, including without limitation any prepayment penalties; and
- (e) Prorated taxes.

**13. EXPENSES OF BUYER.** In closing this transaction, Buyer shall be charged with the following:

- (a) The cost of any title search and title insurance policy;
- (b) The cost of recording the deed and any transfer tax associated with such deed;
- (c) Any fees charged in connection with any attorney or other advisor engaged by Buyer in connection with this transaction; and
- (d) The cost of the survey provided pursuant to Section 4.

**14. RISK OF LOSS.** The risk of loss or damage to any of the Real Property described above by fire, vandalism, or other casualty shall remain with the Sellers until Closing. In the event of such loss before Closing, this Agreement shall be voidable at the option of Buyer. Should Buyer elect to continue with the purchase following such loss or damage before Closing, Buyer shall have the option to (a) negotiate an equitable reduction in the Purchase Price or (b) close this Agreement at the stated Purchase Price and accept all insurance funds and other monies payable to Sellers regarding such loss or damage. If action is necessary to recover under any casualty policy, Sellers shall cooperate with Buyer in bringing such action in Sellers's name and Sellers shall reimburse Buyer for the attorney's fees and other expenses incurred by Buyer to pursue such claim.

**15. TIME IS OF THE ESSENCE.** Time is of the essence to the performance of this Agreement.

**16. MERGER CLAUSE.** All understandings and agreements heretofore had between the parties are merged in this Agreement, which alone fully and completely expresses their agreement, and the same is entered into after full investigation, neither party relying upon any statement, representation, express or implied warranties, guarantees, promises, statements, "setups", representation, or information, not embodied in this Agreement, made by the other, or by any agent, employee, servant, or other person representing or purporting to represent the Sellers. This Agreement contains the full agreement between the parties and there are no other contracts, express or implied, which are not stated herein.

**17. POSSESSION.** Delivery of possession of the Real Property shall occur at Closing.

**18. CAPTIONS.** The section headings or captions appearing in this Agreement are for convenience only, are not a part of this Agreement and are not to be considered in interpreting this Agreement.

**19. ENTIRE AGREEMENT; MODIFICATIONS.** This written Agreement constitutes the entire and complete agreement between the parties hereto and supersedes any prior oral or written agreements between the parties with respect to the Real Property. It is expressly agreed that there are no verbal understandings or agreements which in any way change the terms, covenants and conditions herein set forth, and that no modification of this Agreement and no waiver of any of its terms and conditions shall be effective unless in writing and duly executed by the parties hereto.

**20. CONTROLLING LAW; VENUE.** This Agreement has been made and entered into under the laws of the State of Tennessee, and said laws shall control the interpretation thereof. Venue for any litigation concerning this Agreement shall be filed in the state or federal courts for Sullivan County,

Tennessee.

**21. BINDING EFFECT.** All covenants, agreements, warranties and provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

**22. FURTHER ACTS.** Each party hereto agrees to do, execute, acknowledge and deliver all such further acts, assignments, transfers, assurances and instruments that may reasonably be required to fully effectuate the transactions contemplated in this Agreement.

**IN WITNESS WHEREOF**, the parties have hereunto set their hands in duplicate originals the day and year first written above.

[Acknowledgements Deleted for Inclusion in this Resolution]

**EXHIBIT A**

Description of Real Property

BEGINNING at an iron pin at the gravel county road, corner to A. L. Isley; thence with Isley's line N. 1 deg. 35 min. 59 sec. W. 208.16 feet to a poplar tree; thence S. 50 deg. 58 min. 21 sec. W. 59.75 feet to an iron pin in the center of Laurel Run Creek; thence with said creek N. 10 deg. 49 min. 07 sec. W. 567.98 feet to an iron pin set in the middle of the creek; thence N. 67 deg. 15 min. 11 sec. W. 296.74 feet to an iron pin; thence N. 0 deg. 01 min. 23 sec. E. 230.16 feet to a hemlock; thence 3 deg. 40 min. 11 sec. W. 262.56 feet to an iron pin; thence N. 89 deg. 24 min. 16 sec. W. 212.94 feet to an iron pin; thence S. 71 deg. 02 min. 00 sec. W. 90.00 feet to an iron pin, corner to Robert Arney; thence with Arney's line N. 54 deg. 45 min. 00 sec. E. 345.87 feet to an iron pin; thence N. 20 deg. 00 min. 00 sec. E. 293 feet to an iron pin; thence N. 5 deg. 00 min. 00 sec. E. 200 feet to a rock at mouth of creek; thence along Coiner Branch N. 56 deg. 25 min. 20' E. 529.70 feet to a planted rock; corner to A. S. Simpson; thence along the Simpson line S. 34 deg. 47 min. 33 sec. E. 1319.42 feet to a white oak; thence S. 33 deg. 23 min. 25 sec. W. 970.75 feet to a planted rock; thence S. 31 deg. 25 min. 34 sec. W. 416.85 feet to an iron pin at the county gravel road; thence along said road S. 74 deg. 59 min. 00 sec. W. 38.80 feet to the point of BEGINNING, containing 38.678 acres, more or less, according to survey of Joe A. Hale, dated May 2, 1979.

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

SECTION 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 immediately upon its adoption, the public welfare requiring it.

ADOPTED this the 17<sup>th</sup> day of December, 2024.

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PAUL W. MONTGOMERY, MAYOR

ATTEST:

\_\_\_\_\_  
ANGELA MARSHALL, DEPUTY CITY RECORDER

APPROVED AS TO FORM:

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RODNEY B. ROWLETT, III, CITY ATTORNEY