

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

A RESOLUTION APPROVING AN INTERLOCAL AGREEMENT WITH THE TOWN OF MOUNT CARMEL, TENNESSEE FOR THE PROVISION OF PUBLIC SERVICES SUCH AS TRAFFIC, WATER, SEWER, STREET, AND SANITATION; 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 would like to enter into an interlocal agreement with the Town of Mount Carmel, Tennessee to provide certain public services, such as traffic, water, sewer, street, and sanitation; and

WHEREAS, this agreement sets the price for labor, equipment, and materials and have a minimum charge of two hours per call.

Now therefore,

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

SECTION I. That the Interlocal Agreement between the city and the Town of Mount Carmel, Tennessee for certain public services 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, an Inter-Local Agreement for certain public services to serve the Town of Mount Carmel, Tennessee, 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:

**INTERLOCAL AGREEMENT**

This Interlocal Agreement is entered into this the \_\_\_\_ day of \_\_\_\_\_, 2023, by and between the TOWN OF MOUNT CARMEL, TENNESSEE, hereinafter referred to as the "Mt. Carmel", and the CITY OF KINGSPORT, TENNESSEE, hereinafter referred to as "Kingsport", both chartered municipalities of the State of Tennessee.

**WITNESSETH:**

WHEREAS, the parties are authorized to enter into this Interlocal Agreement pursuant to Tennessee Code Annotated§ 12-9-101 et seq.; and

WHEREAS, the parties have the right to exercise such power, privilege or authority set forth in this Interlocal Agreement; and

WHEREAS, the board of mayor and aldermen of each of the parties has found and determined that the provision of services set forth herein provide the most efficient use of their powers and is to their mutual advantage and the provision of such services will be provided in a manner that will accord best with geographic, economic, population, and other factors influencing the needs and development of the parties: and

WHEREAS, it is deemed in the public interest for the parties hereto to enter into this Interlocal Agreement for the provision of certain public services, which include traffic, water, sewer, street, and sanitation services.

NOW, THEREFORE, in consideration of the premises and the mutual covenants contained herein, the parties agree as follows:

1. The parties agree that Kingsport personnel, equipment and material must be available to Kingsport as needed to provide service to its citizens, and, therefore, subject to the availability of personnel, equipment and material as determined in the sole discretion

of the Kingsport Director of Public Works, Kingsport will furnish all personnel, labor, equipment, trucks and all other items necessary to provide for certain maintenance service upon request from Mt. Carmel for traffic, water, sewer, street, and sanitation services as defined herein within the corporate limits of Mt. Carmel at a price as follows:

- a) **Labor:** All Kingsport personnel shall be billed out at the applicable hourly rate or hourly pro rata portion of the employee's salary, plus 15%;
- b) **Equipment:** See Exhibit A, attached hereto and incorporated herein by reference plus 15%;
- c) **Materials:** All materials supplied by Kingsport shall be billed at cost plus 15%.

All labor and equipment rates will have a minimum charge of two (2) hours per call.

Services include, but are not limited to:

Traffic Department:

- Technical support for signal operation
- Maintenance support for signals
- Roadway Striping using paint machine
- Installation of signs and posts Streets and Sanitation

Street Cleaning

- Pot Hole Patching
- Leaf Collection
- Brush Collection

Utility Departments (water/sewer/storm)

- Sewer and storm line camera inspection
- Vacuum/Cleaning truck for sewer and storm lines, catch basins, etc.
- Assist in repair of water/sewer/storm lines
- Water leak/line location
- Trouble shooting electrical & mechanical pump issues
- Removing sewer pumps
- Installing sewer pumps
- Pump and haul of sewage
- Assist in removal and disposal of sludge / biosolids
- Loaning of spare parts

- 2. The initial term of this Agreement will commence on July 1, 2023 and end on June 30, 2024, and will automatically be extended for two (2) successive additional one (1) year terms commencing on July 1<sup>st</sup> and ending on June 30<sup>th</sup> of each successive year, unless either party notifies the other party, in writing, not less than thirty (30) days prior to the expiration of the initial term of its intention to terminate this Agreement. Any such written notice will be served by certified or registered mail, return receipt requested. Additionally, either party may at any time terminate this Interlocal Agreement for its convenience upon thirty (30) days written notice to the other party, and such termination shall not be deemed a breach of this Interlocal Agreement. For any termination of this Interlocal Agreement Mt. Carmel will compensate Kingsport for all services delivered prior to the date of such termination.
- 3. Kingsport will bill Mt. Carmel for services rendered within ten (10) days following the end of the month and Mt. Carmel will pay Kingsport on or before the 25th day following the end of such month. Such billing and payment will be based on the rates set out herein.
- 4. The employees or agents of each party who are engaged in the performance of this Agreement shall continue to be employees or agents of that party and shall not be considered for any purpose to be employees or agents of the other party.
- 5. Kingsport does not intend by this Agreement to assume any contractual obligations to anyone other than to Mt. Carmel. Mt. Carmel does not intend by the Agreement to assume any contractual obligations to anyone other than Kingsport. Kingsport and Mt. Carmel do not intend for there to be any third-party beneficiary to this Agreement.
- 6. Notices, statements, and other communications to be given under the terms of the Agreement shall be in writing and given by (i) nationally recognized overnight courier or by (ii) registered or certified mail, return receipt requested and postage prepaid, or (iii) hand delivery addressed as follows:

Kingsport:  
City Manager  
City of Kingsport  
415 Broad Street  
Kingsport, Tennessee 37660  
Mt. Carmel:  
City Recorder  
Town of Mount Carmel  
P.O. Box 1421  
Mount Carmel, TN 37645

With copy to:  
City Attorney  
City of Kingsport  
415 Broad Street  
Kingsport, Tennessee 37660  
With a copy to:  
Town Attorney  
Town of Mount Carmel  
P.O. Box 1421  
Mount Carmel, TN 37645

or at such other address as is from time to time designated by the party receiving the notice. Any such notice which is properly given to the nationally recognized overnight courier, placed in the mails with sufficient postage prepaid, or hand delivered shall be deemed to have been served as of five (5) days after given to the nationally recognized overnight courier or posting or on the actual date of delivery when hand delivered for purposes of establishing that the sending party complied with the applicable time limitations set forth herein, but shall not be binding on the addressee until actually received.

7. No provision of this Agreement shall be construed against or interpreted to the disadvantage of any party hereto by any court or other governmental or judicial authority by reason of such party having or being deemed to have structured, drafted or dictated such provision.
8. No board member, officer, or employee of Kingsport will be personally liable to Mt. Carmel in the event of any default or breach by Kingsport or for any amount which may become due to Mt. Carmel or on any obligations under the terms of this Agreement. No board member, officer, or employee of Mt. Carmel will be personally liable to Kingsport in the event of any default or breach by Mt. Carmel or for any amount which may become due to Kingsport or any obligation under the terms of this Agreement.
9. The relationship of Kingsport and Mt. Carmel shall be that of independent contractors, and neither Kingsport or its employees, or Mt. Carmel or its employees, shall under any circumstances, be considered servants or agents of the other; and each party shall be at no time legally responsible for any negligence or other wrongdoing by the other party, or their servants, employees or agents. Neither party shall provide to the other any insurance coverage or other benefits, including worker's compensation, normally provided by that party for its employees.
10. Kingsport observes certain holidays which may alter the provision of services under this Agreement. The current holidays include New Year's Day, Martin Luther King's birthday, Good Friday, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, the day after Thanksgiving Day, Christmas Day, and at the discretion of Kingsport board of mayor and aldermen other days. Kingsport may decide to observe any or all of the above-mentioned holidays during which services requested by Mt. Carmel may be unavailable on such holiday.
11. Kingsport's employees will be the responsibility of Kingsport. Notwithstanding any clause or part of this Agreement to the contrary, nothing herein will be construed to waive any governmental immunity, including such as set forth in the Governmental Tort Liability Act.
12. For all purposes of this Agreement unless the context shall otherwise require, the terms set forth in this Section whenever capitalized in this Agreement will have the indicated meanings:
13. Neither party will be liable to the other or be deemed to be in breach of this Agreement for any failure or delay in rendering performance arising out of causes beyond its reasonable control and without its fault or negligence. Such causes may include but are not limited to, acts of God or the public enemy, terrorism, severe weather, thunderstorms, severe wind, significant fires, floods, earthquakes, epidemics, quarantine restrictions, strikes, freight embargoes, or Governmental Authorities approval delays which are not caused by any act or omission by either party. The party whose performance is affected agrees to notify the other promptly of the existence and nature of any delay.
14. No amendment to this Interlocal Agreement will be made except upon the written

consent of the parties.

15. In the event that any provision or portion of this Interlocal Agreement is found to be invalid or unenforceable, then such provision or portion thereof will be reformed in accordance with the applicable laws. The invalidity or unenforceability of any provision or portion of any of this Interlocal Agreement will not affect the validity or enforceability of any other provision or portion of the Interlocal Agreement.
16. Upon the occurrence of an alleged default, or a dispute or disagreement between the parties hereto arising out of or in connection with any term or provision of this Agreement or, the subject matter hereof, or the interpretation or enforcement hereof (the "Dispute"), the parties will engage in informal, good faith discussions and attempt to resolve the Dispute. In connection therewith, upon written notice of either party, each of the parties will appoint a designated officer whose task it will be to meet for the purpose of attempting to resolve such Dispute. The designated officers will meet as often as the parties will deem to be reasonably necessary. Such officers will discuss the Dispute. If the parties are unable to resolve the Dispute in accordance with this paragraph, and in the event that either of the parties concludes in good faith that amicable resolution through continued negotiation with respect to the Dispute is not reasonably likely, then the parties may mutually agree to submit to nonbinding mediation. If the matter is not resolved by mediation either party will have the right, at its sole option, without further demand or notice, to take whatever action at law or in equity may appear necessary or desirable to enforce its rights including, but not limited to, the suspension or termination of this agreement.

[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 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 including recreational and educational, 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 May, 2023.

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PATRICK W. SHULL, MAYOR

ATTEST:

ANGELA MARSHALL, DEPUTY CITY RECORDER

APPROVED AS TO FORM:

RODNEY B. ROWLETT, III, CITY ATTORNEY