



October 5, 2022

RE: TDEC ARP Funding Support

Mayor Venable: *Richard*

The City of Kingsport supports the effort of Sullivan County to apply for funding through the TDEC Water Infrastructure Grant application. The City of Kingsport accepts the County's award of \$2,298,271 and will provide the matching funds of \$255,363 to apply towards the project.

The City of Kingsport is ready and willing to assist this project to completion. Being responsible for the operation and maintenance of the system after completion, we have a direct interest in seeing a quality project from beginning to end. We understand that any expenditures in excess of the awarded \$2,298,271 will be covered by the City of Kingsport.

Thank you for your consideration of the TDEC ARP application. Please contact me if you have any questions.

Sincerely,

A handwritten signature in blue ink that reads "Patrick W. Shull".

Patrick W. Shull  
COL USA (Ret)  
Mayor, City of Kingsport

NE/drm

## RESOLUTION NO. 2023-099

A RESOLUTION APPROVING AN INTERLOCAL AGREEMENT WITH SULLIVAN COUNTY, TENNESSEE TO UPGRADE WATERLINES IN VARIOUS LOCATIONS, AND AUTHORIZING THE MAYOR TO EXECUTE THE AGREEMENT AND ALL OTHER DOCUMENTS NECESSARY AND PROPER TO EFFECTUATE THE PURPOSE OF THE AGREEMENT

WHEREAS, Sullivan County, Tennessee is receiving American Rescue Plan funding to distribute to utilities that serve residences throughout the county; and

WHEREAS, the city presented options to the First Tennessee Development District (FTDD) for funding consideration, and working for Sullivan County, the FTDD determined a plan to distribute their funds throughout the county; and

WHEREAS, the city was presented \$2,298,271.00 in funding for three areas outside city limits, but within Sullivan County, the areas being:

- a. Lakecrest Dr area (approx. 11,400 ft serving 128 properties)
  - b. Gravely Rd / Thomas Addition areas (approx. 6,100 ft serving 96 properties)
  - c. Fordtown Rd / Jackson Hollow Rd area (approx. 5,000 ft serving 72 properties);
- and

WHEREAS, the interlocal agreement will allow Sullivan County to provide funding to upgrade waterlines and place them into service, for the provision of water to the areas set forth herein; and

WHEREAS, payment will be made from Sullivan County once bids are opened for the project and the lowest compliant bidder is chosen; and

WHEREAS, the construction cost, including engineering, is estimated to be \$3,000,000; and

Now therefore,

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

SECTION I. That an Interlocal Agreement with Sullivan County, Tennessee, to upgrade waterlines in various locations, 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 Interlocal Agreement with Sullivan County, Tennessee, to upgrade waterlines in various locations 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:

### AGREEMENT

This Agreement is entered into this the \_\_\_\_ day of \_\_\_\_\_, 2022, by and between the CITY OF KINGSPORT, hereinafter referred to as "Kingsport", a municipal corporation of the state of

Tennessee, and the SULLIVAN COUNTY, TN, hereinafter referred to as "Sullivan County", a subdivision of the state of Tennessee.

WITNESSETH:

WHEREAS, the parties are authorized to enter into this Agreement pursuant to Tennessee Code Annotated § 7-35-416; and

WHEREAS, it is deemed in the public interest for the parties hereto to enter into this Agreement for the upgrade of public water service to various locations in Sullivan County.

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

**Section 1.** As a condition precedent to Sullivan County providing its obligations set out in this Agreement, Kingsport will upgrade Kingsport's water distribution system, providing adequate service for the following areas:

- a. Lakecrest Dr area (approx. 11,400 ft serving 128 properties)
- b. Gravely Rd / Thomas Addition areas (approx. 6,100 ft serving 96 properties)
- c. Fordtown Rd / Jackson Hollow Rd area (approx. 5,000 ft serving 72 properties)

Kingsport will provide a minimum of \$255,363 in matching funds to meet ARP grant funding requirements.

**Section 2.** Upon successful bid opening for this project, Sullivan County will provide \$2,298,271 of TDEC ARP grant funding to Kingsport for the following:

- a. Construction costs for work described in Section 1, along with contingency funds equaling 6% of construction costs;
- b. Engineering fees covering survey, design, and construction management totaling 14% of construction cost.

**Section 3.** The construction of water service is to be completed in early 2024. The work will be split into two projects; Lakecrest Dr area to be completed in late summer 2023 and the remainder of areas to be completed by spring 2024.

**Section 4.** This Agreement is subject to such rules, regulations, or laws as may be applicable to similar agreements in the state of Tennessee, and the parties will collaborate in obtaining such permits, certificates, or the like, as may be required to comply therewith.

**Section 5.** Neither party will be liable to the other party 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 winds, 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 party promptly of the existence and nature of the delay.

**Section 6.** In the event that any provision or portion of this 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 Agreement will not affect the validity or enforceability of any other provision or portion of the Agreement.

**Section 7.** The failure of either party to perform, keep or fulfill any of the covenants, undertakings, obligations or conditions set forth in this Agreement, and the continuance of such default for a period of thirty (30) days after the defaulting party's receipt of written notice from the non-defaulting party of said failure will be a default. 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 deem reasonably necessary. Such officers will discuss the Dispute. If the parties are unable to resolve the Dispute in accordance with this Section 7, and in the event either party 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. Venue for any litigation for any dispute arising out of or related to this Agreement, which cannot promptly be resolved by negotiation, will be the state courts for Kingsport, Sullivan County, Tennessee. This Agreement will be construed under and will be governed by the laws of the state of Tennessee.

**Section 8.** Notices, statements and other communications to be given under the terms of this Agreement will be in writing and delivered by hand, sent by certified mail, postage prepaid, return receipt requested, or sent by nationally recognized overnight delivery service, or email addressed to the parties as follows:

To Kingsport:

Assistant Utilities Director – Engineering / Operations

City of Kingsport

1113 Konnarock Rd

Kingsport, Tennessee 37664

with copy to:

City Attorney

City of Kingsport

415 Broad Street

Kingsport, Tennessee 37660

To Sullivan County:

Mayor Richard S. Venable

3411 Hwy 126, Suite 206

Blountville, TN 37617

Such notice may also be sent to such other address as is from time to time designated by the party receiving the notice. Any such notice that is sent in accordance with this Section 8 will be deemed received when hand delivery is received or refused, as shown on the return receipt if mailed or shown as delivered if sent by nationally recognized overnight delivery service.

**Section 9.** Both parties are governmental entities having substantial experience with the subject matter of this Agreement, and each has fully participated in the negotiation and drafting of this Agreement. Accordingly, this Agreement will be construed without regard to the rule that ambiguities in a document are to be construed against the draftsman. No inferences will be drawn from the fact that the final, duly executed Agreement differs in any respect from any previous draft hereof.

**Section 10.** This Agreement, together with any other writings signed by the parties expressly stated to be supplemental hereto and together with any instruments to be executed and delivered pursuant to this Agreement, constitutes the entire agreement between the parties and supersedes all prior understandings and writings, and this Agreement may only be modified or amended during the term only by a written non-electronic instrument that has been duly executed by the non-electronic signatures of authorized representatives of the parties hereto.

IN WITNESS WHEREOF, the parties have executed this Agreement in duplicate original counterparts, each of which constitutes an original

[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 1st day of November, 2022.

Patrick W. Shull  
PATRICK W. SHULL, Mayor

ATTEST:

Angela Marshall  
ANGELA MARSHALL  
Deputy City Recorder



APPROVED AS TO FORM:

Rodney B. Rowlett III  
RODNEY B. ROWLETT, III, City Attorney