

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

A RESOLUTION APPROVING AN AGREEMENT WITH PHILLIPS AND JORDAN, INC. FOR MATERIAL DISPOSAL AT THE CONSTRUCTION AND DEMOLITION LANDFILL, AUTHORIZING THE MAYOR TO EXECUTE THE AGREEMENT AND ALL OTHER DOCUMENTS NECESSARY AND PROPER TO EFFECTUATE THE PURPOSE OF THE AGREEMENT

WHEREAS, Phillips and Jordan is currently assisting with the recovery efforts from Hurricane Helene by providing debris removal services in the affected areas; and

WHEREAS, while currently utilizing landfills closer to the affected areas due to the large volume of material still to be disposed of Phillips and Jordan has contacted the city about utilizing the construction and demolition landfill for the disposal of material; and

WHEREAS, upon assessment of the needs it has been determined the construction and demolition landfill can accommodate the request; and

WHEREAS, Phillips and Jordan have proposed entering into a disposal agreement which provides for a term of six months and incorporates the city's landfill rates for material disposal; and

WHEREAS, Phillips and Jordan will also provide surety or other financial instrument for the anticipated receivables to protect the city against loss.

Now therefore,

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

SECTION I. That an agreement with Phillips and Jordan, Inc. for the disposal of storm debris generated by Hurricane Helene 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, a Final Disposal Agreement for the disposal of storm debris generated by Hurricane Helene, 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 as set out below:

FINAL DISPOSAL AGREEMENT

Phillips and Jordan, Inc., hereafter called "Contractor", and the City of Kingsport, hereafter called "Owner/Operator", hereby covenant and agree effective the 6th day of January 2025, as follows:

1. PREMISES AND TERM. Owner/Operator, in consideration of the covenants, terms and conditions, and other good and valuable consideration stipulated by the Parties as sufficient, hereby permits Contractor, for the period commencing on the effective date of this agreement and ending on June 30th, 2025. The premises are more particularly described as follows ("Premises"): Address: 1921 Brookside Lane, Kingsport, TN 37660
2. SCOPE OF AGREEMENT AND RIGHTS OF CONTRACTOR. Owner/Operator grants to Contractor and its successors and assigns the right to utilize the premises, including for disposal of storm debris generated by Hurricane Helene ("Material"). It is understood and agreed that the Contractor, its successor and assigns, during the term of this lease, shall have all rights of ingress, egress, and regress to, over and from the premises. Owner/Operator warrants that it has all

necessary rights and authority to execute this Agreement and transfer the rights contained in this Agreement to Contractor.

3. PRICING. Contractor shall pay the Owner/Operator the following:
  - C&D: \$60.00 per ton
  - Tires: \$225.00 per ton
4. INVOICING. All invoices for the full amount owed shall be submitted to Contractor by Owner Operator.
5. PAYMENT. Contractor shall submit payment to Owner/Operator within thirty (30) days of approved invoice.
6. WASTE WAIVER. An email providing information regarding disposal of special waste is attached as Exhibit A.
7. TAXES. Owner/Operator shall pay the taxes on the lands which it owns.
8. PUBLIC LIABILITY INSURANCE. Contractor, upon the request of the Owner/Operator, shall, at their expense, carry public liability insurance for personal injuries and property damage which might be sustained by third parties arising out of the use, occupancy, management or control of the Premises. Any such policy or policies will provide that coverage on a primary and noncontributory basis and shall include the City of Kingsport as an additional insured and may not be canceled except upon thirty (30) days prior written notice of cancellation to both Contractor and Owner/Operator. Contractor shall provide Owner/Operator with a certificate of such insurance upon reasonable request during the term. Contractor agrees to indemnify and hold Owner/Operator harmless from any and all claims for personal injury and property damage which may be sustained by third parties arising out of the use, occupancy, management, or control of the premises by Contractor.
9. USE OF PREMISES. Contractor will use the Premises for Material drop off in accordance with this Agreement. Contractor shall fully and promptly comply with and obey all laws, ordinances, rules, orders, regulations, and requirements of any regularly constituted public authority which in any way affect the Premises, or the use thereof.
10. OWNER/OPERATOR OBLIGATIONS. The Owner/Operator will adhere to all federal, state, local, and agency regulations applicable to the Premises. Owner/Operator shall have all applicable permits in place prior to Contractor's use of the Premises. Owner/Operator shall be responsible for all permitting and costs associated therewith.
11. INDEMNIFICATION. Contractor shall indemnify and hold Owner/Operator harmless from and against any direct and actual liabilities, claims, demands, damages, costs, expenses, fees, or fines, specifically related to Contractor's breach, violation or non-performance of any covenants, condition or agreement herein contained on the part of Contractor to be kept or performed. To the extent permitted by Tennessee law as it pertains to the ability of governmental entities to indemnify or hold harmless third parties, Owner/Operator shall similarly indemnify and hold harmless Contractor from and against any and all liabilities, claims, demands, damages, costs, expenses, fees, fines, penalties, suits, proceedings, actions, and causes of action of any nature whatsoever arising out of or in any way connected with Owner/Operator's breach, violation or non-performance of any covenant, condition or agreement herein contained on the part of the Owner/Operator to be kept or performed.
12. TERMINATION. Either Party shall have the right to terminate this Agreement upon giving thirty (30) days written notice by registered mail, properly addressed, or by electronic mail, effective upon the sender's receipt of confirmation generated by the recipient's email system that the notice has been received by the recipient's email system, of such intention to the other Party. At the end of said thirty (30) day period, both Parties shall be forever released and discharged from all future obligations, liabilities and duties under this Agreement. Without a written agreement and unless terminated previously, this Agreement will expire one (1) year from its effective date.
13. NOTICE. Any notice or notices required hereunder to be given by Contractor to Owner/Operator shall be given in writing at 1921 Brookside Lane, Kingsport, Tennessee 37660 with a copy to Office of the City Attorney, City of Kingsport, 415 Broad Street, Kingsport, Tennessee 37660 or such other address as may be designated by Owner/Operator in writing. Any notice or notices required to be given to Contractor shall be given in writing to him at 10142 Parkside Dr., Suite 500, ATTN: Heath Stone/Vice President, Knoxville, TN 37922, or such other address as Contractor or Contractor's successors and assigns may from time to time designate in writing.
14. LAW AND BENEFIT. This Agreement shall be subject to the laws of the Tennessee and shall inure to the benefit of and be binding upon Owner/Operator and Contractor, and their respective successors and assigns.

[Acknowledgements Excluded for Inclusion in 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 21st day of January, 2025.

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PAUL W. MONTGOMERY, MAYOR

ATTEST:

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ANGELA MARSHALL, DEPUTY CITY RECORDER

APPROVED AS TO FORM:

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RODNEY B. ROWLETT, III, CITY ATTORNEY