AGENDA
BOARD OF MAYOR & ALDERMEN
October 21, 2019 Meeting
Sevierville Civic Center
6:00 P.M.
A. CALL TO ORDER
1. Pledge of Allegiance
2. Invocation

B. ROLL CALL

C. MINUTES – Minutes and Workshop - October 7, 2019

D. PUBLIC FORUM
1. Consider approval of Ordinance O-2019-018 – 3rd reading - An Ordinance to amend the zoning map of the City of Sevierville as set forth in Sevierville Municipal Code, Section 14-201, to rezone property at 815 Middle Creek Road from Arterial Commercial District to Intermediate Commercial District – Dustin Smith

E. REPORTS – Monthly Department Reports
F. COMMUNICATIONS FROM MAYOR & ALDERMEN – Special Presentation

G. OLD BUSINESS
1. Consider approval of Ordinance O-2019-018 – 3rd reading - An Ordinance to amend the zoning map of the City of Sevierville as set forth in Sevierville Municipal Code, Section 14-201, to rezone property at 815 Middle Creek Road from Arterial Commercial District to Intermediate Commercial District – Dustin Smith

H. NEW BUSINESS
1. Consider approval of Ordinance O-2019-019 – 1st reading – An Ordinance to close and abandon a portion of right-of-way at Red Cedar Ridge Road – Dustin Smith
2. Consider approval of Ordinance O-2019-020 – 1st reading – An Ordinance to repeal and replace Title 2, Chapter 2 of the Sevierville Municipal Code to abolish the City’s Trees, Trails, and Beautification Board and the Recreation Advisory Committee, and establish a Parks and Recreation Services Advisory Board – Bob Parker
3. Consider approval of Resolution R-2019-015 – A Resolution authorizing Sevier Solid Waste to construct landfill expansion at 2106 Ridge Road, Pigeon, Forge, Tennessee – Russell Treadway
4. Consider approval to establish a Parks and Recreation Foundation – Bob Parker
5. Consider approval of contract for construction engineering inspection for the CMAQ Traffic Signal Project for the Public Works Department – Bryon Fortner
6. Consider approval of a Lease Agreement between Ra-Tel Broadcasting Company, Incorporated, and the City of Sevierville – Dustin Smith
7. Consider approval to purchase a radio communications tower from LandAir Total Communications in the amount of $20,000 – Matt Henderson
8. Consider approval/ratification of expenses in excess of $5,000 – Lynn McClurg

I. ADJOURNMENT
A regular meeting of the Board of Mayor and Aldermen of the City of Sevierville, Tennessee, was held at the Sevierville Civic Center, 130 Gary Wade Boulevard, Sevierville, Tennessee, on October 7, 2019 at 6:00 PM.

There were present and participating at the meeting:
Robbie Fox, Mayor
Wayne Helton, Alderman
Devin Koester, Vice Mayor
Travis L. McCroskey, Alderman
Jim McGill, Alderman
Mitch Rader, Alderman

Senior Staff present:
Steve Flynn, Water & Sewer Director
Bryon Fortner, Public Works Director
Matt Henderson, Fire Chief
Joseph Manning, Police Chief
Lynn McClurg, Chief Financial Officer & City Recorder
Ed Owens, City Attorney
Bob Parker, Parks & Recreation Director
Dustin Smith, Development Director
Russell Treadway, City Administrator

Mayor Fox chaired the meeting with Lynn K. McClurg as secretary of the meeting. A motion was made by Alderman Rader and seconded by Alderman Helton to approve the minutes of the September 16, 2019 meeting and to dispense with the reading. Motion carried.

PUBLIC FORUM
Mayor Fox opened the public forum section of the meeting. Fox recognized Larry Jackson, who expressed concerns regarding water and sewer service pricing for outside City customers. There being no further comments, the public forum was closed.

COMMUNICATIONS
The Board noted the following community events:
Board Retreat October 8th, 9th SCUD Conference Center
Mayor Fox recognized Brenda McCroskey, who announced that the Chamber of Commerce recently won several International Festival and Events awards.

NEW BUSINESS
Mayor Fox presented and placed for passage an ordinance O2019-018 entitled “AN ORDINANCE TO AMEND THE ZONING MAP OF THE CITY OF SEVIERVILLE, TENNESSEE, AS SET FORTH IN THE SEVIERVILLE MUNICIPAL CODE, SECTION 14-201 TO REZONE PROPERTY AT 815 MIDDLE CREEK ROAD FROM ARTERIAL COMMERCIAL (AC/C-4) DISTRICT TO INTERMEDIATE COMMERCIAL (IC/C-3) DISTRICT.” A motion was made by Alderman McCroskey and seconded by Alderman McGill to approve the ordinance as presented and to dispense with the reading. Those voting Yes: Helton, McCroskey, McGill, Rader. Those voting No: None. Fox declared the ordinance passed on first reading.
Mayor Fox presented and placed for passage on second reading an ordinance O2019-018 entitled “AN ORDINANCE TO AMEND THE ZONING MAP OF THE CITY OF SEVIERVILLE, TENNESSEE, AS SET FORTH IN THE SEVIERVILLE MUNICIPAL CODE, SECTION 14-201 TO REZONE PROPERTY AT 815 MIDDLE CREEK ROAD FROM ARTERIAL COMMERCIAL (AC/C-4) DISTRICT TO INTERMEDIATE COMMERCIAL (IC/C-3) DISTRICT.” A motion was made by Alderman Helton and seconded by Alderman Rader approve the ordinance as presented and to dispense with the reading. Those voting Yes: Helton, McCroskey, McGill, Rader. Those voting No: None. Fox declared the ordinance passed on second reading.

Mayor Fox recognized Brenda McCroskey, Sevierville Chamber of Commerce, who presented bids for the 2020 Vacation Planner & Coupon Book and recommended acceptance of the low qualified bid and award the contract to EP Graphics in the amount of $179,310.00. A motion was made by Alderman Rader and seconded by Alderman McCroskey to approve the bid and award the contract as presented. Motion carried.

Vice Mayor Koester arrived at the meeting.

Mayor Fox recognized Matt Henderson, who requested approval to purchase duty uniforms from various low quote vendors in amounts not to exceed the budget of $34,625.00. A motion was made by Alderman Helton and seconded by Alderman McGill to approve the purchases as requested. Motion carried.

Mayor Fox recognized Bob Parker, who presented bids for two ADA benches for the West Prong Greenway and recommended acceptance of the low qualified bid and purchase from Site Scapes in the amount of $3,312.12. Parker noted that bids were solicited in accordance with RTP/FHWA grant requirements which requires the vendor to provide a “Buy American Certificate”. A motion was made by Vice Mayor Koester and seconded by Alderman McGill to approve the bid and purchase as presented. Motion carried.

Mayor Fox recognized Bob Parker, who presented a change order to the Charles Blalock & Sons contract for the West Prong Greenway project in the amount of $62,625.00 to include work on the observation decks. A motion was made by Alderman Helton and seconded by Alderman Rader to approve the change order as requested. Motion carried.

Mayor Fox recognized Bob Parker, who requested permission to purchase supplies and materials to complete the observation deck for the West Prong Greenway project as follows:

- Lowes Home Center: $689.32
- Carl Ownby Hardware: $3,732.84
- Cash Hardware: $680.00
- Home Depot: $1,704.42

Parker noted that prices were solicited in accordance with RTP/FHWA grant requirements which requires the vendor to provide a “Buy American Certificate”. A motion was made by Alderman McCroskey and seconded by Alderman Helton to approve the purchases as presented. Motion carried.

Mayor Fox recognized Bob Parker, who presented a change order to the Whaley Construction contract for the West Prong Greenway project in the amount of $47,863.00 to redesign and move the pedestrian bridge due to the proximity of the Douglas Lake raw water line. Parker further requested permission to extend the project duration by 45 days and to request contingency funding from FHWA to pay for 80% of the change order. A motion was made by Vice Mayor Koester and seconded by Alderman Rader to approve the changes as requested. Motion carried.
Mayor Fox recognized Bryon Fortner, who presented a change order to the Morristown Roofing contract for the Community Center roof project in the amount of $4,507.12 to cover additional work required, including bracing materials in both sides of the bowling alley. A motion was made by Alderman Rader and seconded by Vice Mayor Koester to approve the change order as requested. Motion carried.

Mayor Fox recognized Bryon Fortner, who presented bids for Convention Center rotunda roof replacement and recommended acceptance of the low qualified bid and award the contract to Morristown Roofing, Co., Inc. in the amount of $82,709.00. Fortner noted that the expense will be covered by a settlement agreement from Envision Building Products, LLC due to failure of the Lamarite slate composite shingles. A motion was made by Vice Mayor Koester and seconded by Alderman McGill to approve the bid and award the contract as presented. Motion carried.

Mayor Fox recognized Bryon Fortner, who requested approval of a general release of all claims related to the repair of the Convention Center rotunda roof. Fortner stated that Envision Building Products, LLC is paying 100% of the repair cost for replacement of the Lamarite slate composite shingles. A motion was made by Alderman McGill and seconded by Alderman McCroskey to approve the release and settlement as presented. Motion carried.

Mayor Fox recognized Bryon Fortner, who requested approval of a repair expenditure with Worldwide Equipment of Knoxville not to exceed $55,000.00 for repair of a front load garbage truck. Fortner estimated that the repair will add 5-7 years of service to the life of the truck. A motion was made by Alderman McGill and seconded by Alderman McCroskey to approve the expenditure as presented. Motion carried.

Mayor Fox recognized Bryon Fortner, who requested approval of the City’s participation in the county-wide US Army Corps of Engineers Flood Preparedness Study. Fortner detailed that Sevierville’s share of the expense totals $67,000.00 payable in two installments beginning with FY2020. A motion was made by Alderman Rader and seconded by Alderman Helton to approve participation and the expenditure as requested. Motion carried.

Mayor Fox recognized Lynn McClurg, who requested approval and/or ratification of the following expenditure(s) in excess of $5,000.00:

1. Stringfellow. Garbage truck repair $7,590.10 Urgent svcs
2. Microbac UCMR State water testing $6,660.00 Low price

A motion was made by Alderman Helton and seconded by Alderman Rader to approve the expenditure(s) as presented. Motion carried.

Mayor Fox recognized Steve Flynn, who presented bids for meter boxes for the downtown restoration project and requested approval of the sole bid and purchase from Graybar Electric. A motion was made by Alderman McCroskey and seconded by Alderman Rader to approve the bid and purchase as requested. Motion carried.

There being no further business to discuss, the meeting adjourned at 6:43 PM.

Approved: __________________________
Robbie Fox, Mayor

Attest: __________________________
Lynn K. McClurg, City Recorder
A workshop meeting of the Board of Mayor and Aldermen of the City of Sevierville, Tennessee, was held at the Sevierville Civic Center, 130 Gary Wade Boulevard, Sevierville, TN on October 7, 2019 at 5:00 PM.

**There were present and participating:**
Robbie Fox, Mayor
Wayne Helton, Alderman
Devin Koester, Vice Mayor
Travis McCroskey, Alderman
Jim McGill, Alderman
Mitch Rader, Alderman

**Senior Staff Present:**
Steve Flynn, Water & Sewer Director
Bryon Fortner, Public Works Director
Matt Henderson, Fire Chief
Joseph Manning, Police Chief
Lynn McClurg, Chief Financial Officer & City Recorder
Ed Owens, City Attorney
Bob Parker, Parks & Recreation Director
Dustin Smith, Interim Development Director
Russell Treadway, City Administrator

Mayor Fox chaired the meeting with Lynn K. McClurg as secretary of the meeting. Fox declared a quorum and announced that the meeting would proceed.

Council discussed the following item(s):
- Sevier County Emergency Services vehicle proposal;
- Radio tower requirements.

There being no further business to discuss, the meeting adjourned at 5:48 PM.

Approved: _______________________________
Robbie Fox, Mayor

Attest: _______________________________
Lynn K. McClurg, City Recorder
DATE: October 21, 2019


RESPONSIBILITY: Dustin Smith, Development Director

PRESENTATION: As presented in the Staff report attached, Jimbo Conner requested his property, located at 815 Middle Creek Road, be rezoned from Arterial Commercial (AC/C-4) to Intermediate Commercial (IC/C-3).

ORDINANCE NO. O-2019-018

AN ORDINANCE TO AMEND THE ZONING MAP OF THE CITY OF SEVIERVILLE, TENNESSEE, AS SET FORTH IN SEVIERVILLE MUNICIPAL CODE, SECTION 14-201 TO REZONE PROPERTY AT 815 MIDDLE CREEK ROAD FROM ARTERIAL COMMERCIAL (AC/C-4) DISTRICT TO INTERMEDIATE COMMERCIAL (IC/C-3) DISTRICT

BE IT ORDAINED BY THE BOARD OF MAYOR AND ALDERMEN OF THE CITY OF SEVIERVILLE, TENNESSEE, THAT:

Section 1. The Zoning Map of the City of Sevierville, Tennessee, be hereby amended by the rezoning of property located at 815 Middle Creek Road (Tax Map 62, Parcel 17.00), from Arterial Commercial (AC/C-4) District to Intermediate Commercial (IC/C-3) District. Said property is more clearly identified on the attached map.

Section 2. This ordinance shall become effective five days from and after its final passage, the public welfare requiring it.

APPROVED: ______________________
Robbie Fox, Mayor

ATTEST:

____________________________
Lynn K. McClurg, City Recorder

Passed on 1st reading: 10/07/2019
Passed on 2nd reading: 10/07/2019
Passed on 3rd reading: _____________
Applicant: Jimbo Conner

Owners: Jimbo Conner

Tax ID Number: Tax Map 062, Lots 4, 5, 6 Parcel 017.00

Current Zone: AC (C-4) (Arterial Commercial District)

Requested Zone: IC (C-3) (Intermediate Commercial District)

Number of Lots: 3

Current Use: Mostly Vacant, Single Family Home, From the Heart Flowers and Gifts

Proposed Use: Commercial, Office, Horse Training Facility

Notification: Letters sent to property owners within 200’

Exhibits: Map

Request
Rezoning of 23.78 acres +/- from AC (C-4) (Arterial Commercial) to IC (C-3) (Intermediate Commercial)

Background
The property proposed for rezoning lays along the westside of Middle Creek Road with 690’ +/- of total frontage and ranges in depth from Middle Creek Road to Middle Creek, which splits these lots from three other lots that Front Veterans Boulevard. The property to the west of the area proposed for rezoning is zoned TCL (C-5) and property to the east of the property is zoned AC (C-4). The properties to the south and north are zoned IC (C-3). City water lays along the westside Middle Creek Road. City sewer lays along the eastside of Middle Creek Road at the rear of this property with a 15’ sewer easement.

Staff Comments
The applicant would hope to see this property develop for commercial or office use on the portions which front Middle Creek Road, while developing the rear of the property as a horse training facility. The rear of the property is located within the 100 year flood hazard area and any permanent structure located within this area would be required to have a finished floor elevation one foot above the base flood elevation.

Public Comments
None to date.

Staff Recommendation
Given that there is contiguous Intermediate Commercial zoned property on both the northern and southern sides of this property, it is a downzoning, it is currently zoned Arterial Commercial and does not front on an arterial street, and IC (C-3) would allow for lot sizes more conducive to the typical development pattern of the Middle Creek Road area, staff would recommend approval.
Proposed Rezoning Arterial Commercial (C-4/AC) to Intermediate Commercial (C-3/IC) O-2019-018
Proposed Rezoning Arterial Commercial (C-4/AC) to Intermediate Commercial (C-3/IC) O-2019-018

Legend
- City Zoning
- Proposed Rezoning
- Parcels
- Road Centerlines

1 inch = 325 feet
DATE: 10/21/2019

AGENDA ITEM: Consider Adoption of Ordinance O-2019-019
1st reading

RESPONSIBILITY: Dustin Smith, Development Director

PRESENTATION: As presented in the Staff report attached, W. C. Whaley, Engineering and Surveying has requested the abandonment of Red Cedar Ridge Road.

REQUESTED ACTION: Passage of the Ordinance on 1st Reading
ORDINANCE NO. O-2019-019

AN ORDINANCE TO CLOSE AND ABANDON A PORTION OF RIGHT-OF-WAY, RED CEDAR RIDGE ROAD

BE IT ORDAINED, by the BOARD OF MAYOR AND ALDERMEN OF THE CITY OF SEVIERVILLE, TENNESSEE, that:

Section 1. After recommendation by the Sevierville Planning Commission, a portion of right-of-way shown as ‘Red Cedar Ridge Road’ on Plat Book LM2, Page 169, and as shown on the attached map, is hereby closed and abandoned.

Section 2. The Mayor is hereby authorized to quit claim a deed of the abandoned right-of-way to the Oak Haven Homeowners Association. All quit claim deeds shall specifically reserve and state that the conveyance of the abandoned right-of-way is subject to the preservation of any existing utility easements.

Section 3. This Ordinance shall become effective, five (5) days following its final passage, the public welfare requiring it.

APPROVED: ______________________________
Robbie Fox, Mayor

ATTEST:

____________________________
Lynn K. McClurg, City Recorder

Passed on 1st reading: ________, 2019
Passed on 2nd reading: ________, 2019
Passed on 3rd reading: ________, 2019
Development Department
Staff Report
Request to Abandon Portion of Right-of-Way
Red Cedar Ridge Road

<table>
<thead>
<tr>
<th>Applicant</th>
<th>W. C. Whaley, Engineering and Surveying</th>
</tr>
</thead>
<tbody>
<tr>
<td>Owner of Adjoining Parcels</td>
<td>Multiple – see background and comments</td>
</tr>
<tr>
<td>Tax ID Numbers of Affected Properties</td>
<td>Multiple – see background and comments</td>
</tr>
<tr>
<td>Zoning Classification</td>
<td>LDR, (Low Density Residential)</td>
</tr>
</tbody>
</table>

Request
Abandonment of a portion of Red Cedar Ridge Road that serves Oak Haven Resort.

Background
The portion of right-of-way (r-o-w) proposed for abandonment lays within Oak Haven Resort. Sometime during the economic downturn Oak Haven placed a gate at the southern most portion being requested for abandonment due to theft and vandalism. At the time, the City allowed the gate to stay up so long as Oak Haven obtained agreements with the HOA and anyone else who used the road for access back out to Old Knoxville Highway. There are several lots which use Red Cedar Ridge Road for access to their properties who are not part of Oak Haven Resort. In 2011 a previous abandonment request of this portion of Red Cedar Ridge Road was approved by the Planning Commission subject to the proper documents and agreements being put in place prior to any quit claim deeds being performed. It did not proceed any further at that point in time and was not presented to the Board of Mayor and Alderman for approval.

Staff Comments
Staff felt it necessary to gain new approval from the Planning Commission before presenting the request to the Board of Mayor and Alderman due to the amount of time that has passed since the last approval in 2011. The access agreements have been established for the additional properties who are not part of Oak Haven and staff has copies on file. The City has also not maintained this portion of Red Cedar Ridge Road since the gate was put in place.

Public Comments
None to date.

Staff Recommendation
Staff can recommend approval of the requested r-o-w abandonment.
DATE: October 21, 2019

AGENDA ITEM: Consider approval of Ordinance O-2019-020 – 1st reading - An Ordinance to Repeal and Replace Recreation Advisory Committee and Trees/Trails and Beautification Board with: Parks and Recreation Services Advisory Board

RESPONSIBILITY: Bob Parker-Director of Parks and Recreation

PRESENTATION: Over the years there has been two citizen boards that work with Parks and Recreation Staff. Due to several resignations and terms expired; the Director feels now is the appropriate time move to one Citizen Advisory Board. Attached is a draft ordinance created by the City Attorney to move in this direction.

REQUESTED ACTION:

Approval of proposed Ordinance to Repeal and Replace Recreation Advisory Committee and Trees/Trails and Beautification Board with; Parks and Recreation Services Advisory Board
ORDINANCE NO. O-2019-020

AN ORDINANCE TO REPEAL AND REPLACE TITLE 2, CHAPTER 2 OF THE SEVIERVILLE MUNICIPAL CODE, TO ABOLISH THE CITY TREES-TRAILS AND BEAUTIFICATION BOARD AND THE RECREATION ADVISORY COMMITTEE, AND TO ESTABLISH A PARKS AND RECREATION SERVICES ADVISORY BOARD

WHEREAS, by Resolution No. R97-031, the Board of Mayor and Aldermen of the City of Sevierville, Tennessee, established a Recreation Advisory Committee; and

WHEREAS, by Ordinance No. O-2003-013, Board of Mayor and Aldermen of the City of Sevierville, Tennessee, enacted Title 2, Chapter 2 of the Sevierville Municipal Code, regarding the City Trees-Trails and Beautification Board; and

WHEREAS, the Board of Mayor and Aldermen of the City of Sevierville, Tennessee, deem it necessary and desirable that the aforesaid Committee and Board be abolished and replaced with a Parks and Recreation Services Advisory Board, to advise the Board of Mayor and Aldermen concerning the administration of services, facilities, and programs managed by the City Parks and Recreation Department.

NOW, THEREFORE, be it ordained by the BOARD OF MAYOR and ALDERMEN of the CITY OF SEVIERVILLE, TENNESSEE, as follows:

SECTION 1. The City Trees-Trails and Beautification Board is hereby abolished.

SECTION 2. Title 2, Chapter 2 of the Sevierville Municipal Code is hereby repealed in its entirety and replaced with the following:

SECTION
2-201. Creation and Establishment of a Parks and Recreation Services Advisory Board and Membership.
2-203. Compensation.
2-204. Duties and Responsibilities
2-205. Chairman and Meetings.

2-201. Creation and Establishment of a Parks and Recreation Services Advisory Board. There is hereby created and established a Parks and Recreation Services Advisory Board for the City of Sevierville, Tennessee (the “Board”), consisting of six (6) voting members appointed by the Mayor and approved by the Board of Aldermen, as follows: Three (3) members shall be citizens and residents of the City; one (1) member may be a resident of the services area of the Parks and Recreation Department; one (1) member shall be a representative of the Sevier County Electric System Supervisor of Vegetative Management; and one (1) member shall be a member of the Board of Aldermen. In addition, the City Director of Parks and Recreation will service ex-officio as a non-voting member and shall service as the administrative recording agent.

2-202. Term of Office. [to be determined]
2-203. **Compensation.** Members of the Board or related committee shall serve without compensation.

2-204. **Duties and Responsibilities.** It shall be the responsibility of the Board to study and investigate the services, facilities, and programs managed by the Parks and Recreation Department, for the purpose of advising the Board of Mayor and Aldermen as to desirable policies and plans. Among other things, the Board shall:

1. Understand and be familiar with all aspects of the responsibilities of the Parks and Recreation Department;
2. Offer constructive suggestions and criticism regarding the operation of the Parks and Recreation Department;
3. Determine the wishes and desires of citizens and users of the Department facilities;
4. Recommend policies and procedures for urban forestry management including, but not limited to, the following areas: species of trees that may be planted on public property; spacing of trees on public property; distance of trees from public curbs and sidewalks; distance of trees from public street corners and fire hydrants; utilities and proper tree planting under or near utilities; public tree care including, but not limited to, tree-topping, pruning, and removal of dead or diseased trees on public property; and management of a memorial tree program; and
5. Recommend a comprehensive fee and charges policy and cost recovery program for use of Parks and Recreation Department facilities. This policy and program, along with all fees and charges, will be updated annually as part of the City’s annual budget process, or as directed by the Board of Mayor and Aldermen.

2-205. **Chairman and Meetings.** At each annual meeting, the voting members of the Board shall elect one of their number to be the Chairman of the Board. The first annual meeting of the Board shall be held on or before January 15, 2020. Thereafter, the Board shall hold an annual meeting each year during the month of January on 30 days’ notice from the Chairman. Special meetings may be scheduled by the Chairman upon 15 days’ notice from the Chairman.

This Ordinance shall take effect five (5) days from and after its final passage, the public welfare requiring it.

APPROVED: ______________________________
Robert W. Fox, Mayor

ATTEST:

______________________________
Lynn K. McClurg, City Recorder

Passed on 1st reading: _________
Passed on 2nd reading: _________
Passed on 3rd reading: _________
DATE: October 21, 2019

AGENDA ITEM: Consider approval of Resolution R-2019-015 – A Resolution authorizing Sevier Solid Waste to construct landfill expansion at 2106 Ridge Road, Pigeon, Forge, Tennessee.

RESPONSIBILITY: Russell Treadway, City Administrator

PRESENTATION: Sevier Solid Waste is looking to expand landfill operations by constructing a Class III Demolition fill on a portion of the current site on Ridge Road in Pigeon Forge. This fill will be built over the temporary fill that was used for debris from the 2016 fires.

REQUESTED ACTION: Approval of resolution.
RESOLUTION R-2019-015

A RESOLUTION OF THE CITY OF SEVIERVILLE, TENNESSEE, AUTHORIZING SEVIER SOLID WASTE TO CONSTRUCT LANDFILL EXPANSION AT 2106 RIDGE ROAD, PIGEON FORGE, TENNESSEE

WHEREAS, the governing body of the City of Sevierville, Tennessee, desires to authorize Sevier Solid Waste, Inc., to construct a landfill expansion at 2106 Ridge Road, pigeon Forge, Tennessee; and

WHEREAS, THE LANDFILL IS ESSENTIAL FOR Sevier Solid Waste to properly dispose of demolition material from the City of Sevierville; and

WHEREAS, IN ACCORDANCE WITH Tennessee Code Annotated 68-211-7, the City desires to authorize Sevier Solid Waste, Inc., to construct a landfill and the proposed landfill is on Sevier Solid Waste’s property; and

NOW THEREFORE BE IT RESOLVED by the BOARD OF MAYOR AND ALDERMEN of the CITY OF SEVIERVILLE, TENNESSEE, AS FOLLOWS: The City of Sevierville authorizes Sevier Solid Waste, Inc., to construct a demolition landfill at the 2106 Ridge Road address.

Adopted this ____ day of ____________________, 2019

APPROVED: _______________________
Robbie Fox, Mayor

ATTEST:

_____________________
Lynn K. McClurg, City Recorder
DATE: October 21, 2019

AGENDA ITEM: Establishment of a Parks and Recreation Foundation

RESPONSIBILITY: Bob Parker-Director of Parks and Recreation

PRESENTATION:
The Parks and Recreation Master Plan which was adopted in October 2018 recommended establishing a Parks and Recreation Foundation. City Leadership Team Members and the City Attorney’s Office have been working for several months to develop documents that are required under State Law and IRS regulations to set up a Foundation.

Attached please find two proposed documents:
* Charter of Incorporation of Parks and Recreation Foundation
* By Laws of Parks and Recreation Foundation

This action will require a (5) Member Board be appointed.

REQUESTED ACTION:
Approval of both Charter of Incorporation and By Laws in order to Establish a Parks and Recreation Foundation of Sevierville
BYLAWS OF
PARKS & RECREATION FOUNDATION OF SEVIERVILLE, INC.

(A Tennessee Nonprofit Corporation)

ARTICLE I.
OFFICES

Section 1. Place. The principal offices of the Parks Foundation of Sevierville, Inc. (hereinafter “Corporation”) shall be located in Sevierville, Sevier County, Tennessee.

Section 2. Additional Offices. The Corporation may also have offices at such other places, both within and outside the State of Tennessee, as the Board of Directors may from time to time determine or the business of the Corporation may require.

ARTICLE II.
NOT FOR PROFIT CORPORATION

Section 1. Not-for-Profit Organization. The Corporation is not for profit. The Corporation is irrevocably dedicated to and operated exclusively for non-profit purposes, and no part of the income or assets of the Corporation shall be distributed to or inure to the benefit of any individual.

The purposes for which the Corporation is organized are exclusively charitable and educational within the meaning of Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, and the corresponding provisions of any future United States Internal Revenue Code. The specific purposes include:

A. To seek federal, state, municipal, public, and private support and leverage such support to supplement the efforts of the Parks & Recreation Department of the City of Sevierville, Tennessee to beautify and maintain greenways, blueways, arboretums, parkland, and related public spaces, encourage physical fitness, and provide after-school and summer programming for area youth;

B. To encourage and strengthen a consortium of public and private sector entities and individuals throughout the Sevierville community and leverage their collective assets towards the common community benefits of maximizing the use of public spaces and amenities in order to encourage healthy, active lifestyles and beautification of the abundant natural recreational resources of the Sevierville community; and

C. Any and all other further purposes and activities permitted under the Tennessee Revised Nonprofit Corporation Act, codified at Tennessee Code Annotated, Section 48-51-101, et seq.,
and the corresponding provision of any future Tennessee Nonprofit Corporation Act, and as may be permitted to be carried on by an organization exempt from federal income tax under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, and the corresponding provision of any future United States Internal Revenue Code.

No substantial part of the activities of the Corporation shall be the carrying on of propaganda, or otherwise attempting to influence legislation, and the Corporation shall not participate in or intervene in (including the publishing or distribution of statements for) any political campaign on behalf of any candidate for public office.

Notwithstanding any other provision of these Bylaws, the Corporation shall not carry on any other activities not permitted to be carried on by an organization exempt from federal income tax under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, or the corresponding provision of any future United States Internal Revenue Law.

Section 2. Assets Held in Trust. All of the assets of the Corporation shall be held in trust for the purposes herein mentioned, including the payment of all of the Corporation’s liabilities and the payment of the claims of creditors of the Corporation.

Section 3. Distribution of Assets upon Dissolution. In the event of dissolution, the residual assets of the Corporation will be turned over to one (1) or more organizations which themselves are exempt as organizations described in Sections 501(c)(3) and 170(c)(2) of the Internal Revenue Code of 1986, as amended, or corresponding sections of any future Internal Revenue Code, or to the City of Sevierville, and, further, the Corporation’s property shall not be conveyed to any organization created or operated for profit or to any individual for less than fair market value of such property, and all assets remaining after the payment of the Corporation’s debts shall be conveyed or distributed only to an organization or organizations created and operated for non-profit purposes similar to those of the Corporation or to the City of Sevierville.

ARTICLE III:
BOARD OF DIRECTORS

Section 1. Directorship. The Corporation is organized upon a directorship basis and shall have no members. The property, business, and affairs of the Corporation will be managed by its Board of Directors.

Section 2. Number and Term of Office. The Board of Directors of the Corporation shall consist of not less than five (5) persons, who shall all be duly qualified electors of the City of Sevierville. The Directors, whether Municipal Directors or Individual Directors, as hereinafter defined, shall serve a one (1) year term, or until his or her successor is duly designated and/or elected. There shall be no
 distinction between Municipal Directors and Individual Directors, either
in their rights to vote on matters coming before the Board of Directors
or in their other powers and duties, excepting the following provisions
governing their selection, removal, and suspension.

Section 3. Municipal Directors. The Municipal Directors shall be
those persons designated by those governmental and quasi-governmental
offices, bodies, and institutions ("Designating Institutions") that, by
virtue of their control and oversight of or interest in the parkland and
related assets and properties of Sevierville, are deemed by the
Incorporator to be necessary for the effective operation of the
Corporation. At the organizational meeting of the Corporation, the
Incorporator shall identify and designate such Designating Institutions.
The Designating Institutions shall thereby be empowered to each designate
one (1) person to serve on the Board of Directors. The Board of Directors
may, by a majority vote of the Directors present at a regular meeting
of the Board of Directors or a special meeting called for such purpose,
add additional Designating Institutions. The Secretary of the
Corporation shall maintain, as Exhibit A to these Bylaws, a current list
of all Designating Institutions.

Section 4. Surrender of Designation Power of Governmental or Quasi-
Governmental Office, Body, or Institution. Any Designating Institution
may surrender its director designation power upon thirty (30) days
written notice to the Corporation’s President and Chairperson. Any
director serving pursuant to such designation by the surrendering
Designating Institution shall be automatically removed from the Board
of Directors upon the expiration of such thirty-day period or such
shorter time as may be determined by the Board of Directors in its sole
discretion.

Section 5. Removal or Replacement of Municipal Directors. The Board
of Directors of the Corporation shall have the power to remove an
Municipal Director only upon the unanimous vote of the Board of Directors,
excluding the director whose position is at issue, at a regular meeting
or a special meeting called for that purpose, in which the Board of
Directors find and hold that such Municipal Director has violated Article
VIII of these Bylaws or has otherwise violated his or her duty of loyalty
to the Corporation. Upon notice of the removal of such Municipal
Director, such director’s designating office, body, or institution shall
be entitled to appoint a new designee to replace the removed Municipal
Director.

Subject to the requirements of Section 3, supra, a Designating
Institution may replace its designated director at its pleasure upon two
(2) weeks notice to the President and/or Chairperson of the Corporation.

Section 6. Individual Directors. The Board of Directors may also
include Individual Directors. The Individual Directors shall be those
persons who are appointed by the Incorporator or are elected by a
majority vote of the Board of Directors at the annual meeting of the
Section 7. Resignation, Removal, and Vacancies of Individual Directors. An Individual Director may resign by written notice to the Corporation. The resignation will be effective upon its receipt by the Corporation or a subsequent time as set forth in the notice of resignation. An Individual Director may be removed, either with or without cause, upon a majority vote of the Board of Directors at the annual meeting of the Board of Directors, a regular meeting, or a special meeting called for that purpose.

If a vacancy has occurred among the Individual Directors as a result of death, resignation, removal, or otherwise, the vacancy may be filled by the affirmative vote of a majority of the remaining Directors though less than a quorum of the Board of Directors.

Section 8. President. The President of the Corporation shall be a nonvoting, ex-officio Director.

Section 9. Municipal Director Majority. Notwithstanding any other provision in these Bylaws, the Municipal Directors shall at all times constitute a majority voting interest in the Board of Directors. If the number of Municipal Directors in office should be reduced to a number equal to or less than the sum of the number of Individual Directors, then, in order to retain a majority voting interest with the Municipal Directors, the voting rights of a minimally sufficient number of Individual Directors shall be suspended unless and until a replacement Municipal Director is appointed. Such suspension of voting rights shall be of the least-tenured Individual Directors or as may otherwise be determined by the Board of Directors.

Section 10. General Powers as to Negotiable Paper and Transfer of Tangible Assets. The Board of Directors may, from time to time, authorize the making, signature, or endorsement of checks, drafts, notes, and other negotiable paper or other instruments for the payment of money and designate the persons who will be authorized to make, sign, or endorse the same on behalf of the Corporation. Unless otherwise determined by the Board of Directors from time to time, the duly authorized signature of the Chairperson and President of the Corporation shall be required for any negotiable paper or instruments signed on behalf of the Corporation or for any document whereby any tangible asset of the Corporation will be transferred.

Section 11. Powers as to Other Documents. All other material contracts, conveyances, and other instruments may be executed on behalf of the Corporation as may be provided in the Contract Approval Policy, as amended from time to time, by the Board of Directors.

Section 12. Compensation. Directors will serve without compensation as directors but may be reimbursed for actual, reasonable,
and necessary expenses incurred by a Director in his or her capacity as a Director.

ARTICLE IV:
MEETINGS

Section 1. Annual Meeting. The annual meeting of the Board of Directors of the Corporation will be held at such time and place as designated by the Board of Directors or Chairperson for the purpose of electing Directors and Officers for the ensuing year, presenting to the Board of Directors a copy of the Corporation’s financial report for the preceding fiscal year, and for the transaction of other business properly brought before the meeting.

Section 2. Regular Meetings. Regular meetings of the Board of Directors shall be held at regular intervals as may be designated by the Board from time to time. At least one (1) regular meeting of the Board, the annual meeting, must be held each year. If the date, time, and place of a regular and/or annual meeting of the Board of Directors is determined by resolution of the Board, such meeting may be held without further additional notice.

Section 3. Special Meetings. Special meetings of the Board of Directors may be called unilaterally by the Chairperson or the President and will be called by the Chairperson or Secretary at the direction of at least a majority of the Directors then in office or as may otherwise be provided by law. Special meetings will be held at the principal office of the Corporation unless otherwise directed by the Chairperson or Secretary and stated in the notice of meeting. Any request for a meeting by the Directors must state the purpose or purposes of the proposed meeting.

Section 4. Notice of Meeting. Except as otherwise provided by these Bylaws or by law, written notice containing the date, time, and location of all meetings of the Board of Directors will be given personally, by mail, or by electronic transmission to each Director not less than seven (7) days before a regular meeting and not less than two (2) days before a special meeting. Notice by electronic transmission will be deemed to have been given when electronically transmitted to the person entitled to the notice or communication in a manner authorized by the person. Notice of a regular meeting shall state the date, time, and location of the meeting but need not state the purpose or purposes of the meeting nor the business to be transacted at the meeting. Notice of a special meeting must state the date, time, location, and purpose or purposes of the meeting.

Section 5. Waiver of Notice. Attendance of a Director at a meeting constitutes a waiver of notice of the meeting, except where the Director attends the meeting for the express purpose of objecting to the transaction of any business because the meeting was not lawfully called or convened.
Section 6. Quorum and Voting. A majority of the voting Directors will constitute a quorum at any regular or special meeting of the Board of Directors. The vote of a majority of the Directors present at a meeting at which a quorum is present will constitute the action of the Board of Directors, unless the vote of a larger number is required by law or by other sections of these Bylaws or the Charter of Incorporation. In the event of a vote on a matter in which any Director has a conflict of interest, said Director shall be counted for the purposes of determining quorum but shall not be counted for a determination of majority, super-majority, or unanimity as such specific action may require.

Section 7. Conduct at Meetings. Meetings of the Board of Directors will be presided over by the Chairperson or, in his or her absence, the Vice Chairperson. The Secretary of the Corporation or, in his or her absence, a person chosen at the meeting will act as Secretary of the meeting.

Section 8. Action by Unanimous Written Consent. Any action required or permitted to be taken at a regular or special meeting of the Board of Directors may be taken without a meeting, without prior notice, and without a vote, if all of the Directors consent in writing, including by electronic transmission such as electronic mail, to the action so taken. Written consents will be filed with the minutes of the proceedings of the Board of Directors.

Section 9. Participation by Remote Communication. A Director may participate in a meeting of the Board of Directors by conference telephone or other means of remote communication by which all persons participating in the meeting may communicate with each other. Participation in a meeting pursuant to this section constitutes presence in person at the meeting for the purposes of quorum.

ARTICLE V:
OFFICERS

Section 1. Officers of the Corporation. The Officers of the Corporation shall include a Chairperson, a Vice Chairperson, a Secretary, and a Treasurer. The same person may hold any two or more offices, except that the office of Chairperson or President and the office of Secretary shall be separate. No Officer will execute, acknowledge or verify any instrument in more than one (1) capacity. The Board of Directors may also appoint any other Officers and agents as they deem necessary for accomplishing the purposes of the Corporation. The President shall also be an Officer of the Corporation.

Section 2. Election. The Officers shall be elected by the Board of Directors at its annual meeting or a special meeting called for that purpose, unless otherwise determined by the Board.

Section 3. Term of Office. The term of office of all Officers will commence upon their election and will continue until the next annual
meeting of the Corporation and until their respective successors are
chosen or until their resignation or removal, unless otherwise determined
by the Board. Excepting the office of President, any Officer may be
removed from office at any meeting of the Board of Directors, with or
without cause, by the affirmative vote of a 2/3 supermajority of the
Directors then in office, whenever in their judgment the best interest
of the Corporation will be served. An Officer may resign by written
notice to the Corporation. The resignation will be effective upon its
receipt by the Corporation or at a subsequent time specified in the
notice of the resignation. Any vacancy in an Officer position shall be
filled at the next regular or special meeting of the Board of Directors.

Section 3. Compensation. Any Officer who also is an employee of
the Corporation may receive reasonable compensation for his or her
services as an employee, as may be fixed by the Board of Directors.

Section 4. Chairperson. The Chairperson shall preside at all
meetings of the Board of Directors and shall be a member of all
committees, with a right to vote. Except as otherwise authorized by
resolution of the Board of Directors, the Chairperson shall have power
to sign all contracts, bonds, deeds, and other instruments made by the
Board of Directors. At each meeting, the Chairperson shall submit such
recommendations and information as he may consider proper concerning the
business affairs and policies of the Board of Directors. Only Municipal
Directors shall be eligible for election as Chairperson.

Section 5. Vice Chairperson. The Vice Chairperson will, in the
absence or disability of the Chairperson, perform the duties and exercise
the powers of the Chairperson and will perform any other duties
prescribed by the Board of Directors or the Chairperson. Only Municipal
Directors shall be eligible for election as Vice Chairperson.

Section 7. Secretary. The Secretary will attend meetings of
the Board of Directors and record or cause to be recorded the minutes
of all proceedings in a book to be kept for that purpose. The Secretary
will give or cause to be given notice of all meetings of the Board of
Directors for which notice may be required and will perform any other
duties prescribed by the Board of Directors.

Section 8. Treasurer. The Treasurer will oversee the
financial activities of the Corporation. The Treasurer will perform all
duties incident to the office of Treasurer and other administrative
duties as may be prescribed by the Board of Directors. All books, papers,
vouchers, money and other property of whatever kind belonging to the
Corporation which are in the Treasurer’s possession or under his or her
control will be returned to the Corporation at the time of his or her
death, resignation, or removal from office.

If required by a resolution the Board of Directors, the Treasurer
shall give the Corporation a bond in such sum and with such surety or
sureties as shall be satisfactory to the Board of Directors for the
faithful performance of the duties of his or her office and for the
restoration to the Corporation, in case of the Treasurer’s death, resignation, retirement, or removal from office, of all books, papers, vouchers, money, and other property of whatever kind in his possession or under his control belonging to the Corporation. The cost of such bond shall be paid by the Corporation.

Section 9. President. The Director of the Parks & Recreation Department of the City of Sevierville shall serve ex-officio as the President of the Corporation. The President will be the Chief Administrative Officer of the Corporation and will have general and active management of the activities of the Corporation. The President, subject to the control of the Board of Directors, will supervise and control all of the property and affairs of the Corporation and will have the general duties incident to the office of the President and other duties as may be prescribed by the Board of Directors. The President shall have the right and duty to attend and participate in all regular or special meetings of the Board of Directors of the Corporation and any committee thereof, without a right to vote. Within this authority and in the course of his or her duties, he or she may sign, execute, acknowledge, or verify instruments of any nature which the Board of Directors has authorized to be signed, executed, acknowledged, or verified. In the event of a vacancy in the office of Director of the Parks & Recreation Department of the City of Sevierville, the Mayor of the City of Sevierville or his designee shall serve as the temporary President of the Corporation.

ARTICLE VI: COMMITTEES

Section 1. Acting Committees. The Board of Directors may, by a majority vote at a regular meeting or special meeting called for that purpose, designate and create committees as it may deem appropriate. Such committees shall have the authority as delegated to them by the Board of Directors to act on behalf of the Corporation. Only Directors and/or Officers of the Corporation may serve on any committee so empowered to take any action on behalf of the Corporation. Notwithstanding the foregoing, no committee may take the following actions, such power residing solely in the Board of Directors:

A. Amend the Charter of Incorporation;

B. Adopt an agreement of merger or consolidation;

C. Approve the sale, lease, or exchange of all or substantially all of the Corporation’s property and assets;

D. Approve the dissolution of the Corporation or a revocation of a dissolution;

E. Amend the Bylaws of the Corporation; or

F. Fill vacancies on the Board of Directors.
All committees so empowered to act on behalf of the Board, and each member thereof, will serve at the pleasure of the Board of Directors. Unless in conflict with a provision of the Act, the Charter, or these Bylaws, the Board of Directors will have the power at any time to increase or decrease the number of members of any such committee, to fill vacancies thereon, to change any member thereof, and to change the functions or abolish any committee by a majority vote of the Board of Directors. Regular or special meetings of any such committee may be held in the same manner provided in these Bylaws for regular or special meetings of the Board of Directors, and the presence of a majority of the voting members any such committee will constitute a quorum at an acting committee’s meeting.

Section 2. Advisory Committees. The Chairperson and/or President of the Corporation may designate and create such advisory committees as the Chairperson and/or President may determine to be in the best interests of the Corporation for consideration of any issue or issues which may affect the Corporation and its goals and purposes. Any such advisory committee may not take any action on behalf of the Corporation but shall make such recommendations as may be within the scope of such committee’s jurisdiction at any regular or special meeting of the Board of Directors. Any advisory committee designated and created by the Chairperson and/or President shall include at least one (1) Municipal Director and one (1) Individual Director, and an advisory committee may include other Directors or other persons as may be determined by the person designating and creating such advisory committee. The President shall have the right to participate in any advisory committee in an ex-officio, non-voting capacity.

An advisory committee and the members thereof shall serve at the will and pleasure of the person designating and creating such advisory committee. An advisory committee member may be removed with or without cause by the person designating and creating the advisory committee and shall be removed by a majority vote of the Board of Directors at a regular meeting or special meeting called for that purpose. An advisory committee may be abolished by the person designating and creating the advisory committee and shall be abolished by a majority vote of the Board of Directors at a regular meeting or special meeting called for that purpose. There shall be no quorum requirement for advisory committees.

Section 3. Reporting. Any committee shall record minutes of its meetings and shall report its activities to the Board of Directors at its next regular meeting.

ARTICLE VII:  
INDEMNIFICATION

Section 1. Indemnification. The Corporation will, to the fullest extent permissible under Tennessee Code Annotated, Sections 48-58-501, et seq., and any other applicable law, indemnify any Director or Officer of the Corporation (and, to the extent provided in a
resolution of the Board of Directors or by contract, may indemnify any volunteer, employee, or agent of the Corporation who was or is a party to or threatened to be made a party to any threatened, pending, or completed action, suit or proceeding by reason of the fact that the person is or was a Director, Officer, volunteer, employee, or agent of the Corporation, or is or was serving at the request of the Corporation as a Director, trustee, Officer, partner, volunteer, employee, or agent of another corporation, partnership, joint venture, trust or other enterprise, whether for profit or not for profit, against expenses including attorneys’ fees (which expenses may be paid by the Corporation in advance of a final disposition of the action, suit or proceeding as provided by law), judgments, penalties, fines and amounts paid in settlement actually and reasonably incurred by the person in connection with the action, suit or proceeding if the person acted (or refrained from acting) in good faith and in a manner the person reasonably believed to be in or not opposed to the best interests of the Corporation, and with respect to any criminal action or proceeding, if the person had no reasonable cause to believe his or her conduct was unlawful.

Section 2. Rights to Continue. This indemnification will continue as to a person who has ceased to be a Director or officer of the Corporation. Indemnification may continue as to a person who has ceased to be a volunteer, employee, or agent of the Corporation to the extent provided in a resolution of the Board of Directors or in any contract between the Corporation and the person. Any indemnification of a person who was entitled to indemnification after such person ceased to be a Director, Officer, volunteer, employee, or agent of the Corporation will inure to the benefit of the heirs and personal representatives of that person.

ARTICLE VIII:
CONFLICTS OF INTEREST

Section 1. Disclosure. When a Director, an Officer, or a committee member is affiliated with an organization seeking to provide services or facilities to the Corporation, or when a Director, an Officer, or committee member has any conflict of interest, real or apparent, such affiliation or conflict of interest should be disclosed to the Board of Directors and made a matter of record, either when the interest becomes a matter of Board action or committee action or as part of a periodic procedure to be established by the Board. An affiliation with an organization will be considered to exist when a Director, Officer, or committee member, or a member of his or her immediate family or close relative is an officer, director, trustee, partner, employee or agent of the organization, or has any other substantial interest or dealings with the organization.

Section 2. Voting. Any Director, Officer, or committee member having a possible conflict of interest on any matter should not vote or use his or her personal influence on the matter; however, he or she may be counted in determining a quorum for the meeting at which the matter is voted upon, as permitted by law but shall not be counted in determining
majority, supermajority, or unanimity, as any such specific action may require. The Board should obtain and rely on appropriate comparability data. The minutes of the meeting should reflect that the disclosure was made, that the interested Director, Officer, or committee member abstained from voting, whether his or her presence was counted in determining a quorum, and whether comparability data was considered and used as a basis for making the decision. The comparability data should be attached to the minutes and made a part of the record.

Section 3. Statement of Position. The foregoing requirements should not be construed to prevent a Director or Officer from stating his or her position on the matter under consideration, nor from answering questions of other Directors relating to the matter.

ARTICLE IX:
MISCELLANEOUS

Section 1. Fiscal Year. The fiscal year of the Corporation will end on June 30 or such other time as may be determined and designated by the Board of Directors from time to time.

Section 2. Amendments. These Bylaws may be amended or repealed by the affirmative vote of a 2/3 supermajority of the Directors of the Corporation then in office at any regular or special meeting of the Board of Directors. Notwithstanding the foregoing, the Secretary and President of the Corporation are empowered and authorized to edit Exhibit A as needed, from time to time, to reflect any changes to the Designating Institutions made by the Board of Directors, and such editing shall not be construed as an amendment of these Bylaws.

Section 3. Loans and Guarantees. The Corporation will not provide loans to or guarantee obligations of an officer or Director of the Corporation, unless expressly permitted under Tennessee law.

These Bylaws were duly approved at the organizational meeting of the Board of Directors of the Corporation, held on the ___ day of ________________, 2019.

______________________________
CHAIRPERSON
EXHIBIT A - DESIGNATING INSTITUTIONS

1. Mayor of the City of Sevierville
2. Board of Mayor and Aldermen of the City of Sevierville
3. City of Sevierville Recreation Advisory Committee
4. City of Sevierville Trees, Trails and Beautification Board
5. [any others (e.g. Chamber of Commerce, Public Building Authority, major community businesses/foundations/etc.)]
CHARTER OF INCORPORATION OF

PARKS & RECREATION FOUNDATION OF SEVIERVILLE, INC.

The undersigned natural person, having capacity to contract and acting as Incorporator of a corporation under the Tennessee Nonprofit Corporation Act, Tennessee Code Annotated section 48-51-101, et seq., adopts the following Charter for such corporation:

1. The Name of the Corporation is: Parks & Recreation Foundation of Sevierville, Inc.

2. A. The duration of the Corporation is perpetual.
   B. The fiscal year end of the Corporation is June 30.
   C. The Corporation is a public benefit corporation.

3. A. The address and principal office of the Corporation in the State of Tennessee shall be:

   Parks & Recreation Foundation of Sevierville, Inc.
   120 Gary Wade Blvd.
   Sevierville, TN 37862

   B. The registered agent of the Corporation shall be:

   Robert Parker
   Parks & Recreation Foundation of Sevierville, Inc.
   120 Gary Wade Blvd.
   Sevierville, TN 37862

   C. The name and address of the Incorporator shall be:

   Lynn K. McClurg
   P.O. Box 5500
   Sevierville, TN 37876

4. The Corporation is nonsectarian and is not for profit.

   The Corporation is irrevocably dedicated to and operated exclusively for nonprofit purposes; and no part of the income or assets of the Corporation shall be distributed to, or inure to the benefit of any individual, except that the Corporation shall be authorized and empowered to pay reasonable compensation for services rendered and to make payments and distributions in furtherance of the purposes set forth herein.

5. In the event of dissolution, the residual assets of the organization will be turned over to one or more organizations which themselves are exempt as organizations described in Sections 501(c)(3) and 170(c)(2) of the Internal Revenue Code of 1986, as amended, or corresponding sections of any prior or future Internal Revenue Code, exclusively for public purposes, and/or to the City of Sevierville. Further, the Corporation’s property shall not be conveyed to any organization created or operated for profit or to any individual for less than fair market value of such property, and all assets remaining after the payment of the Corporation’s debts shall be conveyed or distributed only to an organization or organizations created and operated for non-profit purposes similar to those of the Corporation and/or to the City of Sevierville to
be used only for purposes similar to those of the Corporation.

6. The carrying on of propaganda, or otherwise attempting to influence legislation shall not constitute a substantial part of the overall activities of the Corporation, and the Corporation shall not participate in, or intervene in (including the publication or distribution of statements), any political campaign on behalf of or in opposition to any candidate for public office. Notwithstanding any other provision of this Charter, the Corporation shall not carry on any other activities not permitted to be carried on (a) by a corporation exempt from federal income tax under Section 501(c)(3) of the Code or (b) by a corporation, contributions to which are deductible under Section 170(c)(2) of the Code. The corporation is prohibited from engaging in any political activity.

7. The purposes for which the Corporation is organized are exclusively charitable and educational within the meaning of Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, and the corresponding provisions of any future United States Internal Revenue Code. The specific purposes are:

A. To seek federal, state, municipal, public, and private support and leverage such support to supplement the efforts of the Parks & Recreation Department of the City of Sevierville, Tennessee to beautify and maintain greenways, blueways, arboretums, parkland, and related public spaces, encourage physical fitness, and provide after-school and summer programming for area youth;

B. To encourage and strengthen a consortium of public and private sector entities and individuals throughout the Sevierville community and leverage their collective assets towards the common community benefits of maximizing the use of public spaces and amenities in order to encourage healthy, active lifestyles and beautification of the abundant natural recreational resources of the Sevierville community; and

C. Any and all other further purposes and activities permitted under the Tennessee Code Annotated, Section 48-51-101, et seq., and the corresponding provision of any future Tennessee Nonprofit Corporation Act, and as may be permitted to be carried on by an organization exempt from federal income tax under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, and the corresponding provision of any future United States Internal Revenue Code.

8. Notwithstanding any other provision of these articles, this Corporation shall not carry on any other activities not permitted to be carried on by an organization exempt from federal income tax under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, and the corresponding provision of any future United States Internal Revenue Law.

9. The powers of the Corporation are:

A. To accept, hold, invest, reinvest, and administer any gifts, bequests, devises, benefits of trust, and property of any sort, without limitation as to amount or value, and to use, disburse or donate the income or principal thereof for exclusively charitable purposes in connection with promoting and advancing the charitable activities of the Corporation.

B. To do and perform all acts reasonably necessary for or incidental to the accomplishment of the purposes of the Corporation, and to do any and all things and exercise any and all powers, rights and privileges which a corporation may now or hereafter be authorized to do or exercise under the Tennessee Nonprofit Corporation Act, Tennessee Code Annotated, Section 48-51-101, et seq., and the corresponding provision of any future Tennessee Nonprofit Corporation
Act, and as may be permitted to be carried on by an organization exempt from federal income tax under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, and the corresponding provision of any future United States Internal Revenue Code.

C. To do and perform all charitable actions as are appropriate to accomplish the corporate purposes of this Corporation.

10. This Corporation shall have no Membership but shall be governed by a Board of Directors, which shall be vested with all of the powers granted under the Tennessee Nonprofit Corporation Act. The number of Directors and terms shall be set forth in the Bylaws of this Corporation.

11. No Director shall have the right to exercise veto power over the actions of the Board of Directors or the Corporation.

12. The Corporation shall indemnify and hold harmless its Directors and Officers to the fullest extent permissible under the Tennessee Nonprofit Corporation Act and any amendment thereto.

13. This Charter may be amended at any regular or special meeting subject to compliance with the provisions of the Bylaws.

14. This Charter shall be effective immediately upon filing with the Tennessee Secretary of State.

Dated this __th day of ____________, 2019.

Parks & Recreation Foundation of Sevierville, Inc.

By: _______________________________________
    Lynn K. McClurg, Incorporator
DATE: October 21, 2019

AGENDA ITEM: Consider Approval of Contract for Construction Engineering Inspection for the CMAQ Traffic Signal Project for the Public Works Department

RESPONSIBILITY: Bryon Fortner, P.E. – Public Works Director

PRESENTATION: When our team evaluated proposals and made the selection of the engineering firm to do the design work for the CMAQ Sevier County Tourist Corridor Traffic Systems project, we also evaluated firms for the Construction Engineering Inspection (CEI) portion of the project. Through the TDOT qualifications based selection process, CDM Smith was chosen to be the most qualified firm to do this work. The attached contract, scope of services and budget is a result of staff discussions, input from our design consultant, and the city attorney. Please note that because of the unknowns of contractor scheduling and staging, this is a time and materials contract with a not-to-exceed budget of $385,480.00. This engineering work is part of the 100% federal portion of the contract.

REQUESTED ACTION: Approval of Contract with CDM Smith with a not-to-exceed budget of $385,480.00.
STANDARD FORM OF AGREEMENT
BETWEEN
OWNER AND ENGINEER
Sevier County Tourist Corridor ITS Project - CEI

THIS IS AN AGREEMENT made as of October 11, 2019 between City of Sevierville, TN ("OWNER") and CDM Smith Inc. ("ENGINEER").

OWNER's Project is generally identified as follows: Sevier County Tourist Corridor ITS Project - CEI
PIN #s: 121434.00 & 121434.01 - (the "Project").

OWNER and ENGINEER, in consideration of their mutual covenants herein, agree in respect of the performance or furnishing of services by ENGINEER to the Project and the payment for those services by OWNER as set forth below. Execution of this Agreement by ENGINEER and OWNER constitutes OWNER's written authorization to ENGINEER to proceed on the date first above written with the Services described in Article 1 below. This Agreement will become effective on the date first above written.

ARTICLE 1 – SCOPE OF SERVICES

1.1 ENGINEER agrees to perform, or cause to be performed, for OWNER services as described in Exhibit A (hereinafter referred to as “Services”) in accordance with the requirements outlined in this Agreement.

ARTICLE 2 – TIMES FOR RENDERING SERVICES

2.1 Specific time periods and/or specific dates for the performance of ENGINEER's Services are set forth in Exhibit A.

2.2 If, through no fault of Engineer, such periods of time or dates are changed, or the orderly and continuous progress of Engineer's services is impaired, or Engineer's services are delayed or suspended, then the time for completion of Engineer's services, and the rates and amounts of Engineer's compensation, shall be adjusted equitably.

2.3 If Owner authorizes changes in the scope, extent, or character of the Project or Engineer's services, then the time for completion of Engineer's services, and the rates and amounts of Engineer's compensation, shall be adjusted equitably.

2.4 Owner shall make decisions and carry out its other responsibilities in a timely manner so as not to delay the Engineer's performance of its services. If ENGINEER's services are delayed or suspended in whole or in part by OWNER for more than three months through no fault of ENGINEER, ENGINEER shall be entitled to equitable adjustment of the schedule and of rates and amounts of compensation provided for elsewhere in this Agreement to reflect, among other things, reasonable costs incurred by ENGINEER in connection with such delay or suspension and reactivation.

ARTICLE 3 – OWNER'S RESPONSIBILITIES

OWNER shall:

3.1 Pay the ENGINEER in accordance with the terms of this Agreement.

3.2 Designate in writing a person to act as OWNER's representative with respect to the services to be performed or furnished by ENGINEER under this Agreement. Such person will have complete
authority to transmit instructions, receive information, interpret, and define OWNER's policies and decisions with respect to ENGINEER's services for the Project.

3.3 Provide all criteria and full information as to OWNER's requirements for the Project, including, as applicable to the Services, design objectives and constraints, space, capacity and performance requirements, flexibility and expandability, and furnish copies of all design and construction standards which OWNER will require to be included in the Drawings and Specifications.

3.4 Be responsible for all requirements and instructions that it furnishes to Engineer pursuant to this Agreement, and for the accuracy and completeness of all programs, reports, data, and other information furnished by Owner to Engineer pursuant to this Agreement. Engineer may use and rely upon such requirements, programs, instructions, reports, data, and information in performing or furnishing services under this Agreement, subject to any express limitations or reservations applicable to the furnished items.

3.5 Give prompt written notice to ENGINEER whenever OWNER observes or otherwise becomes aware of any development that affects the scope or time of performance or furnishing of ENGINEER’s Services or any relevant, material defect or nonconformance in ENGINEER’s Services or in the work of any Contractor employed by Owner on the Project.

3.6 Bear all costs incident to compliance with the requirements of this Article 3.

**ARTICLE 4 – PAYMENTS TO ENGINEER FOR SERVICES**

4.1 Methods of Payment for Services of ENGINEER.

4.1.1 OWNER shall pay ENGINEER for Services performed or furnished under this Agreement or as described in Exhibit A. The amount of any excise, VAT, or gross receipts tax that may be imposed shall be added to the compensation shown in Exhibit A. If after the Effective Date any governmental entity takes a legislative action that imposes additional sales or use taxes on Engineer’s services or compensation under this Agreement, then Engineer may invoice such additional taxes for reimbursement by Owner. Owner shall reimburse Engineer for the cost of such invoiced additional taxes in addition to the compensation to which Engineer is entitled.

4.1.2 Invoices for Services will be prepared in accordance with ENGINEER’s standard invoicing practices and will be submitted to OWNER by ENGINEER at least monthly. Payments are due within 30 days of receipt of invoice.

4.1.3 If OWNER fails to make any payment due ENGINEER for services and expenses within thirty days after receipt of ENGINEER's invoice therefor, the amounts due ENGINEER will be increased at the rate of 1.0% per month (or the maximum rate of interest permitted by law, if less) from said thirtieth day; and, in addition, ENGINEER may, after giving seven days' written notice to OWNER, suspend services under this Agreement until ENGINEER has been paid in full all amounts due for services, expenses and charges. Payments will be credited first to interest and then to principal. In the event of a disputed or contested billing, only that portion so contested may be withheld from payment, and the undisputed portion will be paid.

OWNER agrees to pay ENGINEER all costs of collection including but not limited to reasonable attorneys' fees, collection fees and court costs incurred by ENGINEER to collect properly due payments.
ARTICLE 5 – GENERAL CONDITIONS

5.1 Standard of Care
The standard of care for all professional engineering and related services performed or furnished by ENGINEER under this Agreement will be the care and skill ordinarily used by members of ENGINEER’s profession practicing under similar conditions at the same time and in the same locality. Engineer makes no warranties, express or implied, under this Agreement or otherwise, in connection with any services performed or furnished by Engineer.

5.2 Technical Accuracy
Owner shall not be responsible for discovering deficiencies in the technical accuracy of Engineer’s services. Engineer shall correct deficiencies in technical accuracy without additional compensation, unless such corrective action is directly attributable to deficiencies in Owner-furnished information.

5.3 Opinions of Probable Construction Cost
Engineer’s opinions (if any) of probable Construction Cost are to be made on the basis of Engineer’s experience, qualifications, and general familiarity with the construction industry. However, because Engineer has no control over the cost of labor, materials, equipment, or services furnished by others, or over contractors’ methods of determining prices, or over competitive bidding or market conditions, Engineer cannot and does not guarantee that proposals, bids, or actual Construction Cost will not vary from opinions of probable Construction Cost prepared by Engineer. If Owner requires greater assurance as to probable Construction Cost, then Owner agrees to obtain an independent cost estimate.

5.4 Compliance with Laws and Regulations, and Policies and Procedures

5.4.1 Engineer and Owner shall comply with applicable Laws and Regulations.

5.4.2 This Agreement is based on Laws and Regulations procedures as of the Effective Date. Changes after the Effective Date to Laws and Regulations may be the basis for modifications to Owner’s responsibilities or to Engineer’s scope of services, times of performance, or compensation.

5.4.3 Engineer shall not be required to sign any document, no matter by whom requested, that would result in the Engineer having to certify, guarantee, or warrant the existence of conditions whose existence the Engineer cannot ascertain. Owner agrees not to make resolution of any dispute with the Engineer or payment of any amount due to the Engineer in any way contingent upon the Engineer signing any such document.

5.4.4 Engineer shall not at any time supervise, direct, control, or have authority over any Constructor’s work, nor shall Engineer have authority over or be responsible for the means, methods, techniques, sequences, or procedures of construction selected or used by any Constructor, or the safety precautions and programs incident thereto, for security or safety at the Site, nor for any failure of a Constructor to comply with Laws and Regulations applicable to that Constructor’s furnishing and performing of its work. Engineer shall not be responsible for the acts or omissions of any Constructor.

5.4.5 Engineer neither guarantees the performance of any Constructor nor assumes responsibility for any Constructor’s, failure to furnish and perform the Work in accordance with the Construction Contract Documents.

5.4.6 Engineer shall not be responsible for any decision made regarding the Construction Contract Documents, or any application, interpretation, clarification, or modification of the Construction Contract Documents, other than those made by Engineer or its Consultants.
5.4.7 Engineer is not required to provide and does not have any responsibility for surety bonding or insurance-related advice, recommendations, counseling, or research, or enforcement of construction insurance or surety bonding requirements.

5.4.8 Engineer’s services do not include providing legal advice or representation.

5.4.9 Engineer’s services do not include (1) serving as a “municipal advisor” for purposes of the registration requirements of Section 975 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (2010) or the municipal advisor registration rules issued by the Securities and Exchange Commission, or (2) advising Owner, or any municipal entity or other person or entity, regarding municipal financial products or the issuance of municipal securities, including advice with respect to the structure, timing, terms, or other similar matters concerning such products or issuances.

5.4.10 While at the Site, Engineer, its Consultants, and their employees and representatives shall comply with the applicable requirements of Contractor's and Owner's safety programs of which Engineer has been informed in writing.

5.5 Termination

The obligation to provide further services under this Agreement may be terminated:

5.5.1 For cause,

a. by either party upon 30 days written notice in the event of substantial failure by the other party to perform in accordance with the terms hereof through no fault of the terminating party.

b. by Engineer:

1) upon seven days written notice if Owner demands that Engineer furnish or perform services contrary to Engineer’s responsibilities as a licensed professional; or

2) upon seven days written notice if the Engineer’s services for the Project are delayed or suspended for more than 90 days for reasons beyond Engineer’s control, or as the result of the presence at the Site of undisclosed Constituents of Concern.

3) Engineer shall have no liability to Owner on account of such termination.

c. Notwithstanding the foregoing, this Agreement will not terminate for cause if the party receiving such notice begins, within seven days of receipt of such notice, to correct its substantial failure to perform and proceeds diligently to cure such failure within no more than 30 days of receipt thereof; provided, however, that if and to the extent such substantial failure cannot be reasonably cured within such 30 day period, and if such party has diligently attempted to cure the same and thereafter continues diligently to cure the same, then the cure period provided for herein shall extend up to, but in no case more than, 60 days after the date of receipt of the notice.

5.5.2 For convenience, by Owner effective upon Engineer’s receipt of notice from Owner.

5.5.3 Effective Date of Termination: The terminating party under Paragraph 5.5.1 may set the effective date of termination at a time up to 30 days later than otherwise provided to allow Engineer to demobilize personnel and equipment from the Site, to complete tasks whose value would otherwise be lost, to prepare notes as to the status of completed and uncompleted tasks,
and to assemble Project materials in orderly files.

5.5.4 Payments Upon Termination:

a. In the event of any termination under Paragraph 5.5, Engineer will be entitled to invoice Owner and to receive full payment for all services performed or furnished in accordance with this Agreement and all Reimbursable Expenses incurred through the effective date of termination. Upon making such payment, Owner shall have the limited right to the use of Documents, at Owner’s sole risk, subject to the provisions of Paragraph 5.6.

b. In the event of termination by Owner for convenience or by Engineer for cause, Engineer shall be entitled, in addition to invoicing for those items identified in Paragraph 5.5.4.a, to invoice Owner and receive payment of a reasonable amount for services and expenses directly attributable to termination, both before and after the effective date of termination, such as reassignment of personnel, costs of terminating contracts with Engineer’s Consultants, and other related close-out costs. Not used.

5.6 Use of Documents

5.6.1 All Documents are instruments of service, and ENGINEER shall retain an ownership and property interest therein (including the copyright and the right of reuse at the discretion of the ENGINEER) whether or not the Project is completed.

5.6.2 If Engineer is required to prepare or furnish Drawings or Specifications under this Agreement, Engineer shall deliver to Owner at least one original printed record version of such Drawings and Specifications, signed and sealed according to applicable Laws and Regulations.

5.6.3 Owner and Engineer may transmit, and shall accept, Project-related correspondence, Documents, text, data, drawings, information, and graphics, in electronic media or digital format, either directly, or through access to a secure Project website, in accordance with a mutually agreeable protocol. If this Agreement does not establish protocols for electronic or digital transmittals, then Owner and Engineer shall jointly develop such protocols. When transmitting items in electronic media or digital format, the transmitting party makes no representations as to long term compatibility, usability, or readability of the items resulting from the recipient’s use of software application packages, operating systems, or computer hardware differing from those used in the drafting or transmittal of the items, or from those established in applicable transmittal protocols.

5.6.4 OWNER may make and retain copies of Documents for information and reference in connection with use on the Project by OWNER. Upon receipt of full payment due and owing for all Services, ENGINEER grants OWNER a license to use the Documents on the Project, extensions of the Project, and related uses of OWNER, subject to the following limitations: (1) OWNER acknowledges that such Documents are not intended or represented to be suitable for use on the Project unless completed by ENGINEER, or for use or reuse by OWNER or others on extensions of the Project or on any other project without written verification or adaptation by ENGINEER; (2) any such use or reuse, or any modification of the Documents, without written verification, completion, or adaptation by ENGINEER, as appropriate for the specific purpose intended, will be at OWNER’s sole risk and without liability or legal exposure to ENGINEER or to ENGINEER’s Consultants; (3) to the extent permitted by Tennessee law, OWNER shall indemnify and hold harmless ENGINEER and ENGINEER’s Consultants from all claims, damages, losses, and expenses, including attorneys’ fees, arising out of or resulting from any use, reuse, or modification without written verification, completion, or adaptation by ENGINEER; (4) such limited license to OWNER shall not create any rights in third parties.
5.6.5 If ENGINEER at OWNER’s request verifies or adapts the Documents for extensions of the Project or for any other project, then OWNER shall compensate ENGINEER at rates or in an amount to be agreed upon by OWNER and ENGINEER.

5.7 Controlling Law
This Agreement is to be governed by the Laws and Regulations of the state in which the Project is located.

5.8 Mutual Waiver of Consequential Damages
Notwithstanding any other provision of this Agreement to the contrary, neither party including their officers, agents, servants and employees shall be liable to the other for lost profits or any special, indirect, incidental, or consequential damages in any way arising out of this Agreement however caused under a claim of any type or nature based on any theory of liability (including, but not limited to: contract, tort, or warranty) even if the possibility of such damages has been communicated.

5.9 Limitation of Liability
In no event shall ENGINEER’s total liability to OWNER and/or any of the OWNER's officers, employees, agents, contractors or subcontractors for any and all injuries, claims, losses, expenses or damages whatsoever arising out of or in any way related to this agreement from cause or causes, including, but not limited to, ENGINEER’s wrongful act, omission, negligence, errors, strict liability, breach of contract, breach of warranty, express or implied, exceed the total amount of fee paid to ENGINEER under this agreement or $50,000, whichever is greater.

5.10 Successors and Assigns

5.10.1 OWNER and ENGINEER each is hereby bound and the partners, successors, executors, administrators and legal representatives of OWNER and ENGINEER (and to the extent permitted by paragraph 5.10.2 the assigns of OWNER and ENGINEER) are hereby bound to the other party to this Agreement and to the partners, successors, executors, administrators and legal representatives (and said assigns) of such other party, in respect of all covenants, agreements and obligations of this Agreement.

5.10.2 Neither OWNER nor ENGINEER may assign, sublet or transfer any rights under or interest (including, but without limitation, moneys that may become due or moneys that are due) in this Agreement without the written consent of the other, except to the extent that any assignment, subletting or transfer is mandated by law or the effect of this limitation may be restricted by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement.

5.10.3 Unless expressly provided otherwise in this Agreement:
   a. Nothing in this Agreement shall be construed to create, impose or give rise to any duty owed by ENGINEER to any Constructor, other person or entity, or to any surety for or employee of any of them, or give any rights in or benefits under this Agreement to anyone other than OWNER and ENGINEER.
   b. All duties and responsibilities undertaken pursuant to this Agreement will be for the sole and exclusive benefit of OWNER and ENGINEER and not for the benefit of any other party.

5.11 Notices
Any notice required under this Agreement will be in writing, addressed to the appropriate party at the address which appears on the signature page to this Agreement (as modified in writing from time to time by such party) and given personally, by registered or certified mail, return receipt requested, by facsimile, email, or by a nationally recognized overnight courier service. All notices shall be effective upon the date of receipt.

5.12 **Severability**

Any provision or part of the Agreement held to be void or unenforceable under any law or regulation shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon OWNER and ENGINEER, who agree that the Agreement shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

5.13 **Changed Conditions**

If concealed or unknown conditions that affect the performance of the Services are encountered, which conditions are not ordinarily found to exist or which differ materially from those generally recognized as inherent in the Services of the character provided for under this Agreement or which could not have reasonably been anticipated, notice by the observing party shall be given promptly to the other party and, if possible, before conditions are disturbed. Upon claim by the ENGINEER, the payment and schedule shall be equitably adjusted for such concealed or unknown condition by change order or amendment to reflect additions that result from such concealed, changed, or unknown conditions.

5.14 **Environmental Site Conditions**

It is acknowledged by both parties that ENGINEER’s scope of services does not include any services related to Constituents of Concern, as defined in Article 6. If ENGINEER or any other party encounters an undisclosed Constituent of Concern, or if investigative or remedial action, or other professional services, are necessary with respect to disclosed or undisclosed Constituents of Concern as defined in Article 6, then ENGINEER may, at its option and without liability for consequential or any other damages, suspend performance of services on the portion of the Project affected thereby until OWNER: (1) retains appropriate specialist consultant(s) or contractor(s) to identify and, as appropriate, abate, remediate, or remove the Constituents of Concern, and (2) warrants that the Site is in full compliance with applicable Laws and Regulations.

If the presence at the Site of undisclosed Constituents of Concern adversely affects the performance of ENGINEER’s services under this Agreement, then the ENGINEER shall have the option of (1) accepting an equitable adjustment in its compensation or in the time of completion, or both; or (2) terminating this Agreement for cause on 30 days’ notice.

OWNER acknowledges that ENGINEER is performing professional services for OWNER and that ENGINEER is not and shall not be required to become an “arranger,” “operator,” “generator,” or “transporter” of hazardous substances, so defined in the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended, which are or may be encountered at or near the Site in connection with ENGINEER’s activities under this Agreement.

5.15 **Insurance**

ENGINEER shall procure and maintain insurance, as required in Exhibit B, for protection from claims under workers' compensation acts, claims for damages because of bodily injury including personal injury, sickness or disease or death of any and all employees or of any person other than such employees, and from claims or damages because of injury to or destruction of property.

5.16 **Discovery**

ENGINEER shall be entitled to compensation on a time and materials basis when responding to all
requests for discovery relating to this Project and to extent that ENGINEER is not a party to the lawsuit.

5.17 **Nondiscrimination and Affirmative Action**
In connection with its performance under this Agreement, ENGINEER shall not discriminate against any employee or applicant for employment because of race, color, creed, religion, age, sex, marital status, sexual orientation or affectional preference, national origin, ancestry, citizenship, physical or mental handicap or because he or she is a disabled veteran or veteran of the Vietnam era. ENGINEER shall take affirmative action to ensure that qualified applicants are employed and that employees are treated during employment without regard to their race, color, creed, religion, age, sex, marital status, sexual orientation or affectional preference, national origin, ancestry, citizenship, physical or mental handicap or because he or she is a disabled veteran or veteran of the Vietnam era. Such actions shall include recruiting and hiring, selection for training, promotion, fixing rates or other compensation, benefits, transfers and layoff or termination.

5.18 **Force Majeure**
Any delays in or failure of performance by ENGINEER shall not constitute a default under this Agreement if such delays or failures of performance are caused by occurrences beyond the reasonable control of ENGINEER including but not limited to: acts of God or the public enemy; expropriation or confiscation; compliance with any order of any governmental authority; changes in law; act of war, rebellion, terrorism or sabotage or damage resulting therefrom; fires, floods, explosions, accidents, riots; strikes or other concerted acts of workmen, whether direct or indirect; delays in permitting; OWNER’s failure to provide data in OWNER’s possession or provide necessary comments in connection with any required reports prepared by ENGINEER, or any other causes which are beyond the reasonable control of ENGINEER. ENGINEER’s scheduled completion date shall be adjusted to account for any force majeure delay and ENGINEER shall be reimbursed by OWNER for all costs incurred in connection with or arising from a force majeure event, including but not limited to those costs incurred in the exercise of reasonable diligence to avoid or mitigate a force majeure event.

5.19 **Waiver**
Non-enforcement of any provision by either party shall not constitute a waiver of that provision, nor shall it affect the enforceability of that provision or of the remainder of this Agreement.

5.20 **Headings**
The headings used in this Agreement are for general reference only and do not have special significance.

5.21 **Subcontractors**
ENGINEER may utilize such ENGINEER’s Subcontractors as ENGINEER deems necessary to assist in the performance of its Services.

5.22 **Coordination with Other Documents**
It is the intention of the parties that if the ENGINEER’s Services include design then the Standard General Conditions will be used as the General Conditions for the Project and that all amendments thereof and supplements thereto will be generally consistent therewith. Except as otherwise defined herein, the terms which have an initial capital letter in this Agreement and are defined in the Standard General Conditions will be used in this Agreement as defined in the Standard General Conditions. The term “defective” will be used in this Agreement as defined in the Standard General Conditions.

5.23 **Purchase Order**
Notwithstanding anything to the contrary contained in any purchase order or in this Agreement, any purchase order issued by OWNER to ENGINEER shall be only for accounting purposes for OWNER
and the pre-printed terms and conditions contained on any such purchase order are not incorporated herein, shall not apply to this Agreement, and shall be void for the purposes of the Services performed by ENGINEER under this Agreement.

5.24 Dispute Resolution
In the event of any dispute between the parties arising out of or in connection with the contract or the services or work contemplated herein; the parties agree to first make a good faith effort to resolve the dispute informally. Negotiations shall take place between the designated principals of each party. If the parties are unable to resolve the dispute through negotiation within 45 days, then either party may give written notice within 10 days thereafter that it elects to proceed with non-binding mediation pursuant to the commercial mediation rules of the American Arbitration Association. In the event that mediation is not invoked by the parties or that the mediation is unsuccessful in resolving the dispute, then either party may submit the controversy to a court of competent jurisdiction. The foregoing is a condition precedent to the filing of any action other than an action for injunctive relief or if a Statute of Limitations may expire.

Each party shall be responsible for its own costs and expenses including attorneys’ fees and court costs incurred in the course of any dispute, mediation, or legal proceeding. The fees of the mediator and any filing fees shall be shared equally by the parties.

ARTICLE 6 – DEFINITIONS

Whenever used in this Agreement the following terms have the meanings indicated which are applicable to both the singular and the plural.

6.1 Agreement
This Agreement between OWNER and ENGINEER for Professional Services including those exhibits listed in Article 7.

6.2 Constituent of Concern

6.3 Construction Cost – ♦
The total cost to OWNER of those portions of the entire Project designed or specified by ENGINEER. Construction Cost does not include ENGINEER’s compensation and expenses, the cost of land, rights-of-way, or compensation for or damages to properties, or OWNER’s legal, accounting, insurance counseling or auditing services, or interest and financing charges incurred in connection with the Project or the cost of other services to be provided by others to OWNER pursuant to Article 3. Construction Cost is one of the items

♦ This provision is applicable for projects where ENGINEER provides Design, Bidding and/or Construction Phase Services.
comprising Total Project Costs.

6.4 Constructor
Any person or entity (not including the Engineer, its employees, agents, representatives, and Consultants), performing or supporting construction activities relating to the Project, including but not limited to Contractors, Subcontractors, Suppliers, Owner’s work forces, utility companies, other contractors, construction managers, testing firms, shippers, and truckers, and the employees, agents, and representatives of any or all of them.

6.5 Contractor - ♦
The person or entity with whom OWNER enters into a written agreement covering construction work to be performed or furnished with respect to the Project.

6.6 Documents
As applicable to the Services, the data, reports, drawings, specifications, record drawings and other deliverables, whether in printed or electronic media format, provided or furnished by ENGINEER to OWNER pursuant to the terms of this Agreement.

6.7 ENGINEER’s Subcontractor
A person or entity having a contract with ENGINEER to perform or furnish Services as ENGINEER's independent professional subcontractor engaged directly on the Project.

6.8 Reimbursable Expenses
The expenses incurred directly in connection with the performance or furnishing of Services for the Project for which OWNER shall pay ENGINEER as indicated in Exhibit A.

6.9 Resident Project Representative - ♦
The authorized representative of ENGINEER who will be assigned to assist ENGINEER at the site during the Construction Phase. The Resident Project Representative will be ENGINEER's agent or employee and under ENGINEER's supervision. As used herein, the term Resident Project Representative includes any assistants of Resident Project Representative agreed to by OWNER. The duties and responsibilities of the Resident Project Representative are set forth in Exhibit B, “Duties, Responsibilities and Limitations of Authority of Resident Project Representative” (“Exhibit B”).

6.10 Standard General Conditions - ♦
The Standard General Conditions of the Construction Contract (No. N/A) of the Engineers Joint Contract Documents Committee.

6.11 Total Project Costs - ♦
The sum of the Construction Cost, allowances for contingencies, the total costs of design professional and related services provided by ENGINEER and (on the basis of information furnished by OWNER) allowances for such other items as charges of all other professionals and consultants, for the cost of land and rights-of-way, for compensation for or damages to properties, for interest and financing charges and for other services to be provided by others to OWNER under Article 3.

6.12 Work - ♦

♦ This provision is applicable for projects where ENGINEER provides Design, Bidding and/or Construction Phase Services.
professional and related services provided by ENGINEER and (on the basis of information furnished by OWNER) allowances for such other items as charges of all other professionals and consultants, for the cost of land and rights-of-way, for compensation for or damages to properties, for interest and financing charges and for other services to be provided by others to OWNER under Article 3.

6.12 Work - ♦
The entire construction or the various separately identifiable parts thereof required to be provided under the Construction Contract Documents. Work includes and is the result of performing or providing all labor, services, and documentation necessary to produce such construction, and; furnishing, installing, and incorporating all materials and equipment into such construction; and may include related services such as testing, start-up, and commissioning, all as required by the Construction Contract Documents.

ARTICLE 7 – EXHIBITS AND SPECIAL PROVISIONS

7.1 This Agreement is subject to the provisions of the following Exhibits which are attached to and made a part of the Agreement:

Exhibit A – Proposal Letter outlining Engineer’s Services, Time for Performance, and Method of Payment

Exhibit B - Insurance Requirements

This Agreement (consisting of Pages 1 to 11 inclusive), and the Exhibits identified above constitute the entire agreement between OWNER and ENGINEER and supersede all prior written or oral understandings. This Agreement may only be amended, supplemented, modified, or canceled by a duly executed written instrument.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement to be effective as of the date first above written.

OWNER:  

By:  
Title:  
Date:  

ENGINEER:

By: Jeff Mize, PE  
Title: Associate  
Date: October 11, 2019

Address for giving notices:  
120 Gary Wade Blvd  
Sevierville, TN 37862

Address for giving notices:  
1100 Marion Street, Suite 300  
Knoxville, TN 37921
EXHIBIT A

Scope of Services and Fee Proposal
October 3, 2019

Mr. Bryon Fortner  
Director of Public Works  
City of Sevierville  
310 Robert Henderson Road  
Sevierville, TN 37862

RE: Professional CEI Services per TDOT Local Programs  
Sevier County Tourist Corridor Intelligent Transportation System Project  
Project ID# 121434.00, Federal ID# CM-7800(61), State ID# 78LPLM-F3-015 &  
Project ID# 121434.01, Federal ID# CM-9123(8), State ID# 78LPLM-F3-028  
City of Sevierville, TN

Dear Mr. Fortner:

CDM Smith is pleased to provide this proposal for professional Construction Engineering & Inspection (CEI) services for the above listed project. We understand this project involves improvements to fifty-eight intersections within Sevier County and will be completed through the Tennessee Department of Transportation’s Locally Managed Federal and State funded projects. The purpose of the project is to alleviate long term maintenance problems, improve operational efficiency/traffic flow, and improve pedestrian accessibility for these intersections. We understand work will include the following:

- Improvements to traffic signal/pedestrian systems at 58 intersections  
- Installation of retrofit items to the traffic signals at some of the intersections  
- Installation of concrete islands, concrete ramps  
- Installation of ped poles and push buttons, wiring, pullboxes, and appurtenances to connect to the traffic signal control cabinets  
- Installation of audible crossing devices at some intersections  
- Installation of striping at some intersections  
- Assisting if needed for adjustments of phasing zones/timing to traffic signals

From our recent discussions, we anticipate that the project will be completed with the following tasks:

**Bidding Services**

CDM Smith will provide the following bidding assistance services to the City:

- **Pre-Bid Meeting**  
  CDM Smith will attend a pre-bid meeting, to be facilitated by the design engineer and city.  
- **Pre-Construction Meeting**  
  After contract award, CDM Smith will attend and facilitate a pre-construction meeting as required by TDOT’s locally managed process.
Coordination
CDM Smith will provide the following project coordination:

- **Utility Coordination**
  CDM Smith’s CEI team will coordinate with affected Utility Companies during the construction phase if a conflict is discovered to help with a resolution to ease installation of planned items.

- **TDOT Coordination/Meetings**
  CDM Smith will provide part time management and administrative duties to advance the project to completion. We will coordinate with both the City of Sevierville staff and with the TDOT Local Programs staff during the construction phase of the project to help the project move forward in a timely manner.

Construction Engineering Inspection (CEI):
Based on the plans and information provided by the design engineer, the CEI services for this proposal have been estimated assuming a total construction schedule of 64 weeks plus a 6 week closeout period for a total of 70 weeks. We have estimated the following CEI staff positions to cover this timeframe:

- Part time project/records management and utility coordination for the entire 70-week period.
- One fulltime project representative at 40 hours per week (54 weeks) and 2 hours per week overtime (27 weeks).
- One additional fulltime project representative at 40 hours per week (17 weeks). Actual time worked will be contingent on the contractor’s schedule once the project is awarded.

After contract award, CDM Smith would request consideration for any adjustments needed to the approved budget (either up or down) to ensure the project is being staffed to appropriately cover the actual construction schedule. As stated above, we anticipate a part time records closeout effort with TDOT’s Local Government Office to take an additional 6 weeks at 12 hours per week. CEI services will be provided using the plans and contract specifications to assist the City and contractor in constructing the project while meeting the completion deadline. We anticipate being onsite as described above for the anticipated duration of the contract. Services will include daily construction reports, project documentation, and project photographs. CDM Smith will also provide review and approval of pay estimates, general oversight of contract provisions, assistance with plans interpretation and construction related questions, and coordination of project efforts with the assigned City of Sevierville and TDOT project representatives. We offer the following detailed scope of work which follows TDOT’s CEI process:

- Attend and facilitate a pre-construction conference.
- Assign registered and qualified CEI field inspection staff for the time frame proposed above. Inspectors will be pre-qualified with TDOT to provide construction inspection services and be familiar with TDOT’s March 2016 Standard Specifications. Inspectors will observe and review construction to ensure that traffic signal and roadway items are built in compliance with the plans and specifications.
• Prepare for and attend FHWA inspections as required.
• Prepare for and assist TDOT / FHWA auditors assigned to review project records and payments.
• Provide records manager to compile all project records as required by TDOT.
• Negotiate additional pay item prices with contractor if needed.
• Notify City of Sevierville and TDOT Project Supervisors of need for Supplemental Agreements or Construction Change Orders if required.
• If required, prepare change order and submit to City of Sevierville and TDOT Project Supervisor.
• If required, provide recommendations regarding time extension requests.
• Utilize certified employees to provide QA testing normally performed by TDOT personnel on the construction site.
• Document testing on standard TDOT forms.
• Monitor testing provided by contractor if applicable.
• Monitor documentation provided by contractor.
• Review material certifications submitted by the contractor.
• Prepare and submit a Final Materials and Tests certification with final records.
• Provide concrete cylinder breaks.
• Document and assemble quantities for monthly progress payments.
• Submit quantities to City of Sevierville and TDOT Project Supervisor on TDOT supplied forms.
• Maintain office files on all project correspondence.
• Inspect work for conformance with Project Plans and Specifications.
• Maintain project inspection records on standard forms supplied by TDOT.
• Provide daily inspection of traffic control and erosion control measures.
• Prepare daily diary of construction activities.
• Receive and check contractor payroll for conformance with state wage rates.
• Notify contractor of late payrolls.
• Verify payroll submittal before progress payment submittal
• Conduct employee interviews using forms supplied by TDOT.
• Prepare and submit required reports to TDOT’s Contract Compliance office.
• Compile and submit project records after project completion in TDOT standard format.
• Prepare and submit a final pay estimate.
• Prepare documentation for claims or potential claims by the contractor.
• Assist City of Sevierville and TDOT in the evaluation of claims.

Not included in this Scope of Services
This scope of work does not include the following services; however, if requested by the City, CDM Smith can furnish these services as part of a supplemental agreement.
• Construction Staking (assume staking will be provided by the contractor)
• As-Built Plans (assume as-built plans will be provided by contractor if required by the city)
Contractual
CDM Smith proposes to complete the assignment as described in this proposal under a time and materials contract with a not-to-exceed budget of $385,480.00. This budget will not be exceeded without your written approval. Following is a detailed breakdown of costs for each position.

- Part time Project/Records Management.......................................................... $ 66,838.00
- 40 hours Fulltime Representative (54 weeks).............................................. $ 202,531.00
- Overtime for Representative (27 weeks)...................................................... $ 7,595.00
- 2nd 40 hours Fulltime Representative (17 weeks) ....................................... $ 63,757.00
- Utility Coordination Assistance During Construction................................. $ 9,304.00
- Subcontractor (materials testing)................................................................. $ 5,000.00
- Project Direct Costs ..................................................................................... $ 30,455.00

TOTAL............................................................................................................. $385,480.00

Invoices will be submitted to the City on a monthly basis and will include a progress report of activities completed during each billing period. All services and coordination will be performed in accordance with the latest edition of the TDOT Local Government Guidelines.

We anticipate this letter proposal will be included as an exhibit to a mutually agreeable contract agreement for engineering services, inclusive of terms and conditions. These documents together shall serve as our contract for the project.

We appreciate the opportunity to present this proposal and look forward to working with the City of Sevierville to provide CEI services for this exciting project! Please advise if additional information or explanation is needed at this time.

Sincerely,
CDM Smith, Inc.

Jeff Mize, PE
Associate
EXHIBIT B

Insurance Requirements
INSURANCE COVERAGE REQUIREMENTS

These coverage requirements apply to the Design Firm and any subcontractors who may perform services under the contract.

Commercial General Liability Insurance - $1,000,000 limit per occurrence for property damage and bodily injury. Coverage should be occurrence form.

Business Automobile Liability Insurance - $1,000,000 limit per accident for property damage and personal injury.

Workers’ Compensation and Employers’ Liability Insurance - Workers’ Compensation statutory limits as required by Tennessee law. This policy should include Employers’ Liability coverage for $1,000,000 per accident.

Professional Liability Insurance - $1,000,000.

CONDITIONS FOR ALL COVERAGES

Additional Insured: The City of Sevierville, its Board of Mayor and Aldermen, and all officers, employees, agents, representatives, boards, commissions, committees and volunteers will be covered as Additional Insured respecting liability arising out of activities performed by or on behalf of the Design Firm; products and completed operations of the Design Firm; premises owned, leased or used by the Design Firm, or premises on which Design Firm is performing services on behalf of City. The coverage will contain no special limitations on the scope of protection afforded to the Owner. This clause does not apply to Workers’ Compensation Insurance.

Notice of Cancellation or Non-renewal: Each insurance policy required by this clause will be endorsed to state that coverage will not be suspended, voided, cancelled, reduced in coverage, or in limits except after thirty (30) days prior written notice has been given to the City’s Risk Manager.

Acceptability of Insurers: Insurance will be placed with financially sound Tennessee admitted insurers (Best’s rating of A or better) or other insurers approved by the City’s Risk Manager: Jamie Tyler, phone 453-5504

Certificates of Insurance: Design Firms will furnish the City with certificates of insurance with original endorsements affecting coverage required by this clause. The certificates and endorsements for each policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. The certificates and endorsements are to be received and approved by the City’s Risk Manager before work commences. The certificates of insurance should be directed to Jamie Tyler, the City’s Risk Manager and must also be accompanied by a copy of the Notice of Bid Award Letter.

Defense, Indemnification and Hold Harmless Agreement: Design Firms hereby agree to indemnify, defend and hold harmless the City from any and all loss, damage, cost, expense, liability, claims, demands, suits, fines, penalties, attorney’s fees, and judgments, whether civil or criminal, arising directly or indirectly from or in any manner related to the work, project, event or other purposes, including but not limited to, the service of beer, wine and liquor, in connection with the Design Firms’ performance or failure to perform under the terms of the contract, regardless of the active or passive nature of any negligence by the City. Design Firms will not be responsible if liability arises from the sole negligence of the City. Design Firms will pay the City for any costs incurred in enforcing Design Firms’ obligations to indemnify.
DATE: October 15, 2019

AGENDA ITEM: Lease Agreement

RESPONSIBILITY: Dustin Smith, Development Director

PRESENTATION: Attached is the third amendment to the lease agreement between Ra-Tel Broadcasting Company, Inc and the City of Sevierville. This third amendment adds equipment to the communication tower, a generator and pad, as well as a propane tank and pad to the site. The original lease was recorded June 15, 2009, the first amendment was recorded December 18, 2012, and the second amendment October 15, 2018. This agreement would continue the lease for the remaining three years of the second renewal term at an annual amount of $19,200. The payment for the current year will be prorated for the period remaining in the year, with $7,862.27 due upon execution of the agreement. If a third renewal term is exercised, there will be an annual increase of 3.5%.

REQUESTED ACTION: Approve and authorize signature of the agreement.
THIRD AMENDMENT TO LEASE AGREEMENT

This Third Amendment to Lease Agreement is entered into effective October 8, 2019, by and between RA-TEL BROADCASTING COMPANY, INC., a Tennessee Corporation (“Landlord”) and THE CITY OF SEVIERVILLE, a Tennessee Municipal Corporation (“Tenant”).

WHEREAS, South Central Communications Corporation (“South Central”) as Lessor, and Tenant, as Lessee, entered into that certain Lease Agreement effective May 26, 2009, whereby South Central leased to Tenant a certain tower site located in Sevierville, Tennessee (Coordinates: 35-52-48N, 83-33-10W) (the “Lease”); and

WHEREAS, a Memorandum of Lease, reciting the essential terms of the Lease, was recorded June 15, 2009, at Book 3361, page 676 in the Register’s Office for Sevier County, Tennessee; and

WHEREAS, South Central and Tenant entered into a First Amendment to Lease Agreement signed by Landlord on March 5, 2012 and signed by Tenant on March 19, 2012; and

WHEREAS, by Warranty Deed dated December 18, 2012, of record at Book 4027, page 59 in said Register’s Office, Landlord purchased from South Central the real property upon which the tower site is located (the “Property”); and

WHEREAS, as owner of the property, subject to Tenant’s rights under the Lease, Landlord succeeded to South Central’s rights and obligations as Lessor under the Lease; and

WHEREAS, Tenant attorned to Landlord, paid rent to Landlord, and otherwise recognized Landlord as the Lessor under the Lease; and

WHEREAS, Tenant exercised its right to renew the lease for two Renewal Terms, as set forth in the Lease, as amended; and

WHEREAS, Ra-Tel Broadcasting Company, Inc. and Tenant entered into a Second Amendment to Lease Agreement signed by Landlord on September 17, 2018; and

WHEREAS, Landlord and Tenant wish to amend and supplement the Lease as more particularly described below;

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, Landlord and Tenant do hereby agree as follows:

1. **Incorporation of Recitals.** The foregoing introductory paragraph and recitals, including the definitions contained therein, are hereby incorporated into the body of this document as though fully set forth herein.
2. **Exhibit A.** Effective as of October 8, 2019, Exhibit A to the Lease is hereby amended to read in its entirety as follows:

“Exhibit A

1. Three (3) transmitters.
2. One enclosure of approximately 12” x 18” x 12”, with a small UPS.
3. Three (3) 19” floor racks.
4. Wall space inside the building to mount a 100-amp electrical transfer switch / breaker subpanel combination box that will provide emergency backup power for Public Safety Equipment.”

3. **Granting Clause.** Effective as of October 8, 2019, the granting clause of the Lease is hereby amended to read in its entirety as follows:

“Now, therefore, Lessor subject to the terms, provisions, and conditions hereinafter set forth and in consideration of the covenants of payment and performance of Lessee set forth herein, does hereby lease, demise, and let unto Lessee the following described property:

(a) Such space on the Tower, as designated by Lessor, as is required to affix and install two (3) omni-directional antennas (“Antennae”) (it being understood that such Antennae will remain at their current height on the Tower during the life of the Lease); and

(b) Such space in the Building as is necessary to locate the equipment listed on Exhibit “A” attached hereto and made a part hereof.

(c) Such space on the Tower, between an elevation of 100’ to 150’ as designated by Lessor, as is required to affix and install the following three (3) radio units (the “Radio Units”)

   (i) Unit 1: Proxim Tsunami QB-8150 endpoint (or its equivalent). This is a radio and antenna module, cabled with one run of shielded cat 5.

   (ii) Unit 2: Proxim Tsunami MP-8150 base station (or its equivalent), with two 24” omni antennas co-located with the radio unit location (assembled as one array), cabled with one run of shielded cat 5.

   (iii) Unit 3: Proxim Tsunami, MP-11 5054 – R base station (or its equivalent), with a single 24” omni antenna co-located with base station and assembled as one array, cabled with one run of shielded cat 5.
(d) Such space on the Tower at an elevation of 100’ as designated by Lessor, as is required to affix and install a 3 foot 11GHz microwave dish, specifically, a high performance parabolic reflector antenna. The specifications for the microwave dish are included as attachment B.

(e) Outside ground space adjacent and near the building for a generator and pad.

(f) Outside ground space near the building for a 500 gallon propane tank and pad.

The space as described in paragraphs (a), (b), (c), (d), (e), (f) above shall collectively be referred to as “Leased Space”.

4. **Term.** Section 1 of the Lease is here by deleted and replaced in its entirety as follows:

On May 26, 2018, the Lease was renewed for an additional term of five (5) years, beginning May 26, 2018 to end May 25, 2023. The Amendments herein apply to the remainder of the second renewal term, years 11 through 14. Assuming that Lessee is not then in default of this Lease agreement, Lessee shall be entitled to renew this Lease agreement for two additional consecutive periods of five (5) years each, renewal terms commencing upon the expiration of this second renewal term, as applicable. Lessee shall exercise such right of renewal, if at all, by giving written notice to Lessor at least 60 days prior to the expiration of this second renewal term, as applicable.

5. **Rent.** All rent is payable in advance for the year to which it applies. The payment for year 11 shall be prorated for the period remaining in year 11. The remaining payment due for year 11 is $7,862.27, due upon execution of this agreement. Thereafter, annual payments shall be due on May 26th of each year.

The rent for the remaining three (3) years of this second renewal term shall remain at $19,200, with no annual increase. If the third renewal term is exercised, there will be an annual increase of 3.5%.

<table>
<thead>
<tr>
<th>Year</th>
<th>Rental</th>
</tr>
</thead>
<tbody>
<tr>
<td>Year 11</td>
<td>$19,200.00</td>
</tr>
<tr>
<td>Year 12</td>
<td>$19,200.00</td>
</tr>
<tr>
<td>Year 13</td>
<td>$19,200.00</td>
</tr>
<tr>
<td>Year 14</td>
<td>$19,200.00</td>
</tr>
<tr>
<td>Year 15 (if exercised)</td>
<td>$19,872.00</td>
</tr>
<tr>
<td>Year 16 (if exercised)</td>
<td>$20,567.52</td>
</tr>
<tr>
<td>Year 17 (if exercised)</td>
<td>$21,287.38</td>
</tr>
</tbody>
</table>
Year 18 (if exercised) $22,032.44
Year 19 (if exercised) $22,803.58

Rent payments shall be sent to the following address:

Ra-Tel Broadcasting Co., Inc
5106 Middlebrook Pike
Knoxville, Tennessee 37921

All notices to be given pursuant to Section 20 of the Lease shall be given to Landlord at the address listed above.

6. **Use.** Effective as of October 8, 2019, Section 3 of the Lease is hereby deleted and replaced in its entirety as follows:

   “**Use.** The Lessee shall use the Leased space only for (i) the operation of the previously installed Antennae, (ii) the operation of the equipment itemized on Exhibit “A”, (iii) the radio units collectively referred to as the “Equipment”, (iv) the installation and operation of a microwave dish, (v) the installation and operation of a generator pad, (vi) the installation and operation of a 500 gallon propane tank, and for no other purpose. Any and all installation and use of the Leased Space shall be within the design capabilities of the Leased Space and shall be subject to the Lessor’s prior written approval. Any proposed changes in use, or in the substitution of Equipment or addition of other equipment shall be in the discretion of Landlord. Lessee shall not engage in any activity that will interfere with the current use of the Tower or Premises by Lessor or any other current users of the Tower or Premises. In the event Lessee engages in activity that causes such interference, Lessee shall, upon notice by Lessor, eliminate such interference at the sole cost and expense of Lessee. Lessor shall not permit any future use of the Tower or premises or any future tenants to interfere with Lessees permitted use of the Tower or Premises, and, upon notice by Lessee of any such interference, Lessor will use best efforts to eliminate such interference.”

7. **Provisions.** Lessee or its agents shall provide the UHF antennas, mounts, feed lines, and radio infrastructure inside the building. Lessee or its agents shall provide the generator infrastructure and electrical transfer switch/breaker subpanel and oversee its proper installation. Lessee shall allow use by Lessor of the generator and propane tank in the event of power loss.
8. **Installation, Maintenance and Repairs.** Effective as of October 8th, 2019, section 9 of the Lease is hereby deleted and replaced in its entirety as follows:

“Installation, Maintenance, and Repairs. Lessee, at its sole cost and expense, shall install, maintain and repair the Equipment. Lessee will clear trees and brush and maintain the 25 foot perimeter around the guy wires. Lessee will clear and clean the building, grading and maintenance of the access. Lessee shall clear a 25 foot perimeter around the guy wires as specified by and to the satisfaction of the Ra-Tel Broadcasting Co., Inc. Engineer, Frank Folsom. Lessee shall clear the building of unused equipment as specified by the Engineer. Lessee shall grade and maintain the road leading up to the building and Tower. Upon removal of the Equipment, Lessee, at its sole cost and expense, agrees to repair any damage to the Leased Space caused by such removal and restore the Leased Space to the reasonably same condition as received.”

9. **Continue in Effect.** Except as amended herein, the Lease, as amended by the Second Amendment to Lease agreement, remains in full force and effect according to its terms.

10. **Counterparts.** This agreement may be executed in two or more counterparts, each of which shall constitute an original but all of which together shall constitute one and the same agreement.

IN WITNESS WHEREOF, the parties have executed this Third Amendment to Lease Agreement on the dates indicated below.

RA-TEL BROADCASTING COMPANY, INC.                        CITY OF SEVIERVILLE

By: ____________________________                        By: ____________________________
Title: ____________________________                        Title: ____________________________
Date: ____________________________                        Date: ____________________________
Exhibit A

1. Three (3) transmitters.
2. One enclosure of approximately 12” x 18” x 12”, with a small UPS.
3. Three (3) 19” floor racks.
4. Wall space inside the building to mount a 100-amp electrical transfer switch / breaker subpanel combination box that will provide emergency backup power for Public Safety Equipment.”
HP3-11
0.9 M | 3 FT HIGH PERFORMANCE PARABOLIC REFLECTOR ANTENNA, SINGLE-POLARIZED, 10.7-11.7GHZ

The HP High Performance Series by RadioWaves offers a full line of high performance parabolic antennas engineered to provide ETSI class 2/3 radiation pattern performance as well as excellent gain. RadioWaves field-proven pre-assembled antennas and robust pole-mounts ensure "set and forget" installation with minimal post-installation maintenance. The included radome ensures robust and reliable performance under the most challenging conditions. If it's rugged, it must be RadioWaves!

FEATURES AND BENEFITS

- High Performance ETSI Class 2/3* Parabolic Antennas – Excellent performance for a wide range of applications
- Fully Preassembled at the Factory – Simplifies installation on site and guarantees "factory-tested" quality
- Warranty – Industry leading 7-year warranty

*ETSI Class depends on frequency band

SPECIFICATIONS

<table>
<thead>
<tr>
<th>General</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Antenna Type</td>
<td>High Performance Parabolic Reflector Antenna</td>
</tr>
<tr>
<td>Size, nominal</td>
<td>3 ft</td>
</tr>
<tr>
<td>Polarization</td>
<td>Single</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Standard RF Connector Type</th>
<th>CPR90G</th>
</tr>
</thead>
<tbody>
<tr>
<td>Standard RF Connector Suffix</td>
<td>RS (append suffix to model number)</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Electrical</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Operating Frequency Band</td>
<td>10.7 - 11.7 GHz</td>
</tr>
<tr>
<td>Half Power Beamwidth, Horizontal</td>
<td>2.1 degrees</td>
</tr>
<tr>
<td>Half Power Beamwidth, Vertical</td>
<td>2.1 degrees</td>
</tr>
<tr>
<td>Cross-Polarization Discrimination</td>
<td>30 dB</td>
</tr>
<tr>
<td>Front to Back Ratio (F/B)</td>
<td>62 dB</td>
</tr>
<tr>
<td>Gain, Low Frequency</td>
<td>38.1 dBi</td>
</tr>
<tr>
<td>Gain, Mid Frequency</td>
<td>38.5 dBi</td>
</tr>
<tr>
<td>Gain, High Frequency</td>
<td>39 dBi</td>
</tr>
<tr>
<td>VSWR</td>
<td>1.37:1</td>
</tr>
<tr>
<td>Return Loss</td>
<td>-16.1 dB</td>
</tr>
</tbody>
</table>
### Mechanical

<table>
<thead>
<tr>
<th>Specification</th>
<th>Value</th>
</tr>
</thead>
<tbody>
<tr>
<td>Fine Azimuth Adjustment</td>
<td>+/- 10 degrees</td>
</tr>
<tr>
<td>Fine Elevation Adjustment</td>
<td>+/- 10 degrees</td>
</tr>
<tr>
<td>Mounting Pipe Diameter, Min</td>
<td>4.5 inch</td>
</tr>
<tr>
<td>Mounting Pipe Diameter, Max</td>
<td>4.5 inch</td>
</tr>
<tr>
<td>Net Weight</td>
<td>50 lbs</td>
</tr>
<tr>
<td>Wind Velocity Operational</td>
<td>90 mph</td>
</tr>
<tr>
<td>Wind Velocity Survival Rating</td>
<td>125 mph</td>
</tr>
<tr>
<td>Mechanical Configuration</td>
<td>HP3</td>
</tr>
<tr>
<td>Axial Force (FA)</td>
<td>403 lbs</td>
</tr>
<tr>
<td>Side Force (FS)</td>
<td>200 lbs</td>
</tr>
<tr>
<td>Twisting Moment (MT)</td>
<td>344 ft-lbs</td>
</tr>
<tr>
<td>Operating Temperature Range</td>
<td>-40 to +60 C</td>
</tr>
<tr>
<td>Max Pressure, PSIG, (if waveguide interface)</td>
<td>5</td>
</tr>
</tbody>
</table>

### Regulatory Compliance

<table>
<thead>
<tr>
<th>Standard</th>
<th>Compliant</th>
</tr>
</thead>
<tbody>
<tr>
<td>FCC</td>
<td>Part 101 Cat. A</td>
</tr>
<tr>
<td>ETSI</td>
<td>302217 R1 C3</td>
</tr>
<tr>
<td>Industry Canada Compliance</td>
<td>SRSP310.7 B</td>
</tr>
<tr>
<td>RoHS-compliant</td>
<td>Yes</td>
</tr>
</tbody>
</table>

### Shipping Information

<table>
<thead>
<tr>
<th>Specification</th>
<th>Value</th>
</tr>
</thead>
<tbody>
<tr>
<td>Package Type</td>
<td>Wood Crate</td>
</tr>
<tr>
<td>Gross Weight</td>
<td>143 lbs</td>
</tr>
<tr>
<td>Dimensions, L x W x H</td>
<td>47 x 28 x 48in</td>
</tr>
<tr>
<td>Shipping Volume</td>
<td>36.56 cu ft</td>
</tr>
</tbody>
</table>

*Additional OEM interfaces and adapters may be available. Contact RadioWaves for a complete and current list of available adapters.*
DATE: October 21, 2019

AGENDA ITEM: Consider Approval for Purchase of a Radio Communications Tower from LandAir Total Communications in the amount Twenty Thousand Dollars $20,000.00

RESPONSIBILITY: Matt Henderson, Fire Chief

PRESENTATION: To improve coverage of current and future communications needs of city infrastructure and departments it is recommended to build a communications site within Sevierville.

REQUESTED ACTION: Recommend approval.
<table>
<thead>
<tr>
<th>QTY</th>
<th>ITEM NO.</th>
<th>DESCRIPTION</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>TOWER PACKA...</td>
<td>TOWER STEEL PACKAGE, NOT ASSEMBLED, LOCATION IN CORBIN KY.</td>
</tr>
<tr>
<td>1</td>
<td>MISC</td>
<td>ENGINEERING, FOOTER DESIGN, TENNESSEE STAMPED</td>
</tr>
<tr>
<td>1</td>
<td>MISC</td>
<td>FREIGHT - TRANSPORTATION COSTS TO SEVIERVILLE TN *** CITY OF SEVIERVILLE MUST PROVIDE A STORAGE AREA AND EQUIPMENT TO OFFLOAD THE TOWER FROM THE TRUCK, NO ASSISTANCE PROVIDED BY TRANSPORTATION COMPANY ***</td>
</tr>
<tr>
<td></td>
<td></td>
<td>TOWER IS CURRENTLY IN DRY STORAGE IN CORBIN KY, INSPECTION CAN BE ARRANGED UPON REQUEST.</td>
</tr>
</tbody>
</table>

Subtotal: $20,000.00

Sales Tax (0.0%): $0.00

Total: $20,000.00

You're signature is acceptance of the pricing, terms and conditions stated within this Quotation.

ALL QUOTATIONS VALID FOR 30 DAYS UNLESS OTHERWISE SPECIFIED

Signature: __________________________________________ Date: __________

This is a Quotation Only. Do not pay from this Document.
DAT E: October 21, 2019

AGENDA ITEM: Consider approval and/or ratification of the following expenses in excess of $5,000.00.

RESPONSIBILITY: Lynn McClurg, Chief Financial Officer

PRESENTATION:

1. SE Diving Services – Water Tank Inspections - $7,000.00 low price

REQUESTED ACTION: Approval and/or ratification of the above-mentioned expenses.
SE Diving Services, LLC  
126 N. Washington Ave.  
Greenville, SC 29611  
864-220-3451 F: 864-220-3485  
Email: sedivingllc@gmail.com

Ryan D. Blake, PE  
Vice President/Knoxville Manager  
W.K. Dickson & Co., Inc  
2035 Lakeside Ctr Way, Ste. 180  
Knoxville TN 37922  
O: 865-270-3310 D: 864-270-3313 M: 865-803-4262  
Email: rblake@wk dickson.com

City of Sevier Water Dept.  
2296 McCroskey Island Road  
Sevierville, TN 37862

PROPOSAL: Inspect with ROV

SCOPE OF WORK

**Tanks**

<table>
<thead>
<tr>
<th>Tank</th>
<th>Capacity</th>
<th>Type</th>
<th>Height</th>
<th>Cost</th>
</tr>
</thead>
<tbody>
<tr>
<td>Smithwood</td>
<td>500kg</td>
<td>Steel Ground</td>
<td>32'</td>
<td>$750</td>
</tr>
<tr>
<td>Ridge Road 1</td>
<td>500kg</td>
<td>Steel Ground</td>
<td>36'</td>
<td>$750</td>
</tr>
<tr>
<td>Ridge Road 2</td>
<td>250kg</td>
<td>Steel Ground</td>
<td>28'</td>
<td>$750</td>
</tr>
<tr>
<td>Douglas Dam</td>
<td>500kg</td>
<td>Concrete</td>
<td>16'</td>
<td>$750</td>
</tr>
<tr>
<td>Hodson Hicks</td>
<td>500kg</td>
<td>Steel Ground</td>
<td>35'</td>
<td>$750</td>
</tr>
<tr>
<td>New Center</td>
<td>500kg</td>
<td>Concrete</td>
<td>28.2'</td>
<td>$750</td>
</tr>
<tr>
<td>Boyds Creek</td>
<td>500kg</td>
<td>Glass Lined</td>
<td>37.9'</td>
<td>$750</td>
</tr>
<tr>
<td>Pullen Road</td>
<td>500kg</td>
<td>Elev.</td>
<td>37.5'</td>
<td>$750</td>
</tr>
</tbody>
</table>
| McCroskey Isl WTP | 2.5mg | Clearwell | 120' (est) | $1,000.

**TOTAL Inspect** $7,000.00

Conditions:

- Tank(s) may remain in service.
- All work on video for utility to view in real time.
- Written Report per requirements of the State of Tennessee including recommendations for maintenance/repair.
- During inspection and cleaning, reservoir water levels must be kept at or near full capacity; delays caused by water levels less than three feet from full charged at $375 per hour.
- That all tanks are accessible to divers (safety ladders in good condition, absence of insects or other hazards to climbers). Delays charged at $375 per hour.
- Please advise closest available power source (20 amps).
- That the entry hatches are at least 24” in diameter or width and there is an inside ladder.
- If any information provided to us is incorrect or if any problems exist that inhibit our ability to complete the job on a timely schedule, then we will notify you of the problem and reserve the right to add on to the quote based on our estimate of the additional time it will take to complete the work. Time delays are based on $272 per hour. If this situation arises, we will be notified of the problem prior to our completing the work. This paragraph only applies to any problems that are your responsibility and does not apply to any potential problems that we may encounter with our equipment or with our ability to complete the job.

**NOTIFICATION:** It is the utility’s responsibility to notify state regulatory agencies. If you wish for us to make that notification, please advise us at least two weeks prior to start of work.

All inspections are done according to ASNT/NACE/AWWA standards.

AWWA’s C652-92 standard requires that equipment, including divers in rubber suits, or mechanical equipment, be sprayed with a chlorine solution of no less than 200 ppm before being introduced into potable water reservoirs.
DISINFECTION: The formula SE Diving uses is: no less than 4 oz of a six (6) percent chlorine bleach per two gallons of water to form our disinfectant solution at a minimum strength of 200 ppm. All equipment used in potable water tanks is reserved solely for use in potable water and is not used in other applications.

Inspection reports include a high-resolution color video tape indicating where each feature or problem area may be found. The video tapes are narrated live by the divers, by our personnel or your personnel (in the control trailer) at the time the video is recorded. One copy of each of the handwritten inspection work sheets are provided with the video. And left with the owner. Printed reports will be sent within one week of completing the job.

Our inspection procedure includes the following checklist:

- Exterior Ladder
- Entry Hatch
- Interior Ladder
- Floor and Coating
- Installed Sensors
- Chlorine Injection System
- Overflow
- Man Entry
- Catholic Protection
- Ceiling
- Support Columns
- Exterior Reservoir Overall Appearance & Condition
- Side Vents & Screens
- Roof Vents & Screens
- Interior Walls and Coating
- Manual Level Indicator
- Floor-to-Wall Seams
- Fill/Discharge
- Scour/Drain
- Water Tap
- Floor Seams and integrity of Previous Repairs
- Measurement and Sampling of Bottom Sediment or Debris

INSURANCE: SE Diving provides $1 million in general liability insurance for our mutual protection. Higher limits may be furnished at additional costs.

TERMS: Net 10 days upon completion of project. Accounts not paid within twenty (20) days of billing will accrue interest at the maximum legal rate. In the event collection procedures are instituted to secure payment of any debt created hereunder, applicant hereby agrees to pay all costs of collections, including reasonable attorney’s fees.

SE Diving Services, LLC.
BY: Steve Burdsal, Managing Member

ALL QUOTATIONS VALID FOR 30 DAYS