

AGREEMENT
BETWEEN
THE CITY OF KINGSPORT, TENNESSEE
AND
THE KINGSPORT BALLET
“DANCE CO.”

THIS AGREEMENT made and entered into as of this 1st day of July, 2023, by and between the City of Kingsport, hereinafter called "CITY", and the Kingsport Ballet, hereinafter called "KINGSPORT BALLET".

WITNESSETH:

WHEREAS, KINGSPORT BALLET is a not-for-profit agency as defined by Tenn. Code Ann. §§6-54-111 and 48-51-101 *et seq.*, and is eligible to receive funds for this purpose; and

WHEREAS, CITY is authorized by Tenn. Code Ann. §6-54-111 *et seq.* to provide financial assistance to nonprofit organizations and not-for-profit corporations; and

WHEREAS, KINGSPORT BALLET will receive financial assistance from the CITY; and

WHEREAS, the parties desire to set forth the terms and conditions with respect to the use of funds to be provided.

NOW THEREFORE, in consideration of the premises, the parties agree as follows:

1. **PURPOSE OF THE AGREEMENT.** The purpose of this Agreement is to assist KINGSPORT BALLET with operational expenses and to state the terms and conditions upon which financial assistance will be provided by CITY and the manner in which the project will be carried out by KINGSPORT BALLET.
2. **DESCRIPTION OF THE PROJECT.** KINGSPORT BALLET agrees to provide free of charge classical ballet instruction to underserved children in the community through its Developing Artists and Nurturing Cultural Education through Community Outreach (DANCE CO.) program.
3. **MAXIMUM PAYMENT.** It is expressly understood and agreed that the total amount to be paid by CITY to KINGSPORT BALLET under this Agreement will not exceed SEVEN THOUSAND TWO HUNDRED DOLLARS and NO/100 (\$7,200).
4. **REQUEST FOR REIMBURSEMENT.** KINGSPORT BALLET will bill CITY for

payment of funds after July 1, 2023, using forms and procedures specified by CITY.

5. **REIMBURSEMENT BY CITY.** CITY will review all billing submitted, however, reimbursement of any cost, not to exceed the amount as shown in paragraph 3, will not constitute a final determination by CITY of the allowability of such costs and will not constitute a waiver of any violation of the terms of the Agreement.
6. **AUDITS.** KINGSPORT BALLETT prior to receiving funds pursuant to this Agreement it must file with the city clerk a copy of an annual report of its business affairs and transactions that includes, but is not limited to:
 - a) Either a copy of the entity's most recently completed annual audit or an annual report detailing all receipts and expenditures in a form prescribed by the comptroller of the treasury and prepared and certified by the chief financial officer of such nonprofit organization;
 - b) A description of the program that serves the residents of the municipality; and
 - c) The proposed use of the municipal assistance.
 - d) A listing of revenue sources detailing what percent of the total operating budget they cover.

The report filed pursuant hereto shall be open for public inspection during regular business hours of the city clerk's office. Financial reports shall be available to fiscal officers of the CITY and shall be subject to audit under Tenn. Code Ann. § 6-56-105. KINGSPORT BALLETT will permit CITY or its representatives to inspect all work, materials, payrolls, and other records with regard to the project, and to audit the books, records, and accounts of KINGSPORT BALLETT with regard to the project. Such records will be retained for this purpose for a period of not less than three years.

7. **ACCOUNTING, RECORD KEEPING AND REPORTING REQUIREMENTS.** KINGSPORT BALLETT will establish and maintain an accounting, record-keeping, and reporting system consistent with generally accepted accounting principles and no less than those recommended in the Accounting Manual for Recipients of Grant Funds in Tennessee, published by the Comptroller of the Treasury, State of Tennessee. KINGSPORT BALLETT further agrees to submit to CITY a copy of its most recent audited report at the same time said report is submitted to the State government.
8. **CHANGES.** Any changes in this Agreement will require a written amendment executed by all parties hereto.
9. **ASSIGNMENT AND SUBLETTING.** KINGSPORT BALLETT will not assign any rights to

funds, except as set forth herein, without prior written authorization from CITY.

10. **TERMINATION.** This Agreement may be terminated by either party by giving written notice to the other at least 30 days before the effective date of such termination. In the event of such termination, KINGSPORT BALLETT will be entitled to receive just and equitable compensation for any eligible operating expenses paid or incurred as of the termination date, but in no event will this amount exceed SEVEN THOUSAND TWO HUNDRED DOLLARS and NO/100 (\$7,200).
11. **CHANGED CONDITIONS AFFECTING PERFORMANCE.** KINGSPORT BALLETT will immediately notify CITY of any change in conditions or of any other event which may significantly affect its ability to perform the Project in accordance with the provisions of this Agreement.
12. **ASSURANCES.** KINGSPORT BALLETT hereby assures CITY that KINGSPORT BALLETT is legally entitled to funds from CITY.
13. **OPERATING INFORMATION.** KINGSPORT BALLETT will provide any relevant information requested by CITY concerning KINGSPORT BALLETT's program, including, but not limited to, contracts for third party financial arrangements, annual financial statements and audit reports, schedules, and fees.
14. **PROJECT TERM.** CITY and KINGSPORT BALLETT have previously agreed that the project term for this contract is from July 1, 2023, to June 30, 2024. Accordingly, funds allocated by CITY to KINGSPORT BALLETT can be used to reimburse KINGSPORT BALLETT for eligible project expenses beginning on July 1, 2023. In no event will CITY participate in project expenses incurred after June 30, 2024.
15. **REPORTING.** KINGSPORT BALLETT will submit to the Board of Mayor and Aldermen a quarterly report setting out how funds allocated by CITY to KINGSPORT BALLETT assist in carrying out the purpose of the project as described under the terms of this Agreement. The report shall be transmitted to the Board of Mayor and Aldermen.
16. **INDEPENDENT CONTRACTOR.** KINGSPORT BALLETT'S relationship with CITY is that of an independent contractor and nothing in this Agreement should be construed to create a partnership, joint venture, or employer-employee relationship. KINGSPORT BALLETT is not the agent of the CITY and is not authorized to make any representation, contract, or commitment on behalf of CITY. Neither KINGSPORT BALLETT nor its employees will, under any circumstances, be considered servants, agents, partners or a joint venture of CITY, and CITY will at no time be legally responsible for any negligence or other wrongdoing by KINGSPORT BALLETT, or its employees or agents.
17. **INDEMNIFICATION FOR DAMAGES, TAXES AND CONTRIBUTIONS.**

KINGSPORT BALLETT will indemnify, defend, and hold harmless CITY, including without limitation, its officers, agents, employees, and volunteers from and against:

- a) Any and all claims, demands, losses, damages, defense costs, or liability of any kind or nature which CITY may sustain or incur or which may be imposed upon it for injury to or death of persons, or damage to property as a result of, arising out of, or in any manner connected with KINGSPORT BALLETT'S performance under the terms of this Agreement, excepting any liability arising out of the sole negligence of the CITY. Such indemnification includes any damage to the person(s), or property(ies) of KINGSPORT BALLETT and third persons.
- b) Any and all Federal, State and Local taxes, charges, fees, or contributions required to be paid with respect to KINGSPORT BALLETT and its officers, employees and agents engaged in the performance of this Agreement (including, without limitation, unemployment insurance, social security and payroll tax withholding).

IN WITNESS WHEREOF, the signatures of the parties hereto as of the date and year first written in duplicate original form.

Kingsport Ballet

City of Kingsport, Tennessee

Bertina S. Dew, Executive Director

Patrick W. Shull, Mayor

Date

Date

Printed Name

Attest:

Angela Marshall, Deputy City Recorder

Approved as to form:

Rodney B. Rowlett, III, City Attorney