

AGREEMENT

BETWEEN

THE CITY OF KINGSPORT, TENNESSEE,

AND

**HOLSTON BUSINESS GROUP
SMALL BUSINESS INCUBATOR PROGRAM**

THIS AGREEMENT made and entered into as of the 1st day of July, 2023, by the City of Kingsport, hereinafter called "CITY", and HOLSTON BUSINESS GROUP, hereinafter called "HOLSTON".

W I T N E S S E T H:

WHEREAS, HOLSTON is a not-for-profit corporation as defined by Tenn. Code Ann §§6-54-111 and 48-51-101 *et seq.*, and is eligible to receive funds for the purpose contained herein; and

WHEREAS, CITY is authorized by Tenn. Code Ann §6-54-111 *et seq.*, and the official compilation of the Rules and Regulations of the State of Tennessee, Rules of the Comptroller of the Treasury, Division of Special Audit, chapter 0380-3-7, relating to Standard Procedures for Appropriating and Disbursing Municipal Funds to Non-Profit Charitable Organizations, to provide financial assistance to nonprofit organizations and not-for-profit corporations; and

WHEREAS, the parties desire to work together in the common effort of actively assist in the establishment of new small businesses in Kingsport; and

WHEREAS, CITY has decided to contract with and provide financial resources to an outside entity for creation and operation of a small business incubator, and CITY has requested that HOLSTON be that outside entity pursuant to said state law which CITY has approved; and

WHEREAS, HOLSTON is willing to create and operate the Small Business Incubator Program; and

WHEREAS, the parties desire to set forth the responsibilities and obligations of the parties in this effort and the terms and conditions with respect to the use of funds provided.

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

1. **TERM.** This Agreement will be for a term of twelve (12) months commencing July 1, 2023, through June 30, 2024, subject to other termination provisions in this Agreement. The funds allocated by CITY to HOLSTON can be used to reimburse HOLSTON for eligible project

expenses beginning on July 1, 2023. In no event will CITY participate in project expenses incurred after June 30, 2024, without its written consent.

2. **SCOPE OF WORK.** HOLSTON will promote, coordinate, develop and operate the Small Business Incubator Program to assist and develop small businesses.
3. **MONITORING AND REPORTING REQUIREMENTS.** HOLSTON 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. HOLSTON 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 HOLSTON with regard to the project. Such records will be retained for this purpose for a period of not less than three years.

4. COMPENSATION.

- a) CITY will pay HOLSTON Thirty-Three Eight Hundred and Forty Dollars and NO/100 (\$33,840.00) dollars annually for services provided under this Agreement as described in Section II Scope of Work.
- b) CITY will pay HOLSTON one quarter of CITY's annual budgeted amount at the beginning of each quarter of the CITY's fiscal year (July 1, 2023; October 1, 2023; January 1, 2024; and April 1, 2024).
- c) CITY will review all quarterly reports; however, reimbursement of any cost pursuant to this Section 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.

- d) The final determination of the amount subject to reimbursement under the terms of this Agreement will be based on an audit conducted by or acceptable to CITY. HOLSTON 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 HOLSTON with regard to the project. Such records will be retained for this purpose for a period of not less than three years. Subsequent to the close of HOLSTON's fiscal year for which operating assistance is provided, HOLSTON will furnish a final audit report prepared by a governmental audit agency, or an independent public accountant, which will include at minimum a statement of revenue, expense and any changes in financial position for HOLSTON's fiscal year.
- e) HOLSTON 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. HOLSTON 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.

5. ASSIGNMENT, SUBCONTRACTING OR ACQUISITION OF CONSULTANTS. HOLSTON will not assign or subcontract any portion of this Agreement without the prior written approval of the CITY. HOLSTON will not assign any rights to funds provided herein without the prior written authorization of the CITY.

6. CHANGED CONDITIONS AFFECTING PERFORMANCE. HOLSTON will immediately notify CITY of any change in conditions or of any other event that may significantly affect its ability to perform the project in accordance with the provisions of this Agreement.

7. STAFFING.

- a. HOLSTON will pay its employees under this Agreement at least the Federal Minimum Wage.
- b. In carrying out the work of this Agreement, HOLSTON will not discriminate against any employee or applicant for employment because of race, color, religion, creed, gender, national origin, age, disability, or any other legally protected status.

8. TERMINATION OF AGREEMENT FOR CAUSE. If, through any cause, HOLSTON fails to fulfill in a timely and proper manner the obligations of this Agreement, or if HOLSTON violates any of the covenants, agreements, or stipulations of this Agreement, CITY will thereupon have the right to terminate this Agreement. If CITY is entitled to terminate this Agreement for cause, as a condition precedent to the exercise of such right the CITY will give HOLSTON and written notice specifying such default and HOLSTON will have right to cure the specified default within thirty (30) calendar days after service of such notice. If the default is not cured within that time CITY may upon three (3) days written

notice to the other parties terminate this Agreement on a date certain. All payments by CITY to HOLSTON will be suspended until the default is cured if the default is in part caused by HOLSTON, and HOLSTON will not be entitled to further payment if the Agreement is terminated pursuant to this paragraph if the default is in part caused by HOLSTON.

9. **EXTENSION OF AGREEMENT.** The parties may extend this Agreement for subsequent years subject to any applicable negotiated changes.
10. **OPERATING INFORMATION.** The parties agree to respond to inquiries made by designated representatives of the parties or their designees in a timely fashion. CITY designates the City Manager as its representative for this Agreement. HOLSTON designates the Corporate Secretary as its representative for this Agreement. HOLSTON will provide any relevant information requested by CITY concerning the Small Business Incubator Program of HOLSTON, including, but not limited to contracts for third party financial arrangements, annual financial statements, and audit reports, schedules, and fees.
11. **ASSURANCES.** HOLSTON hereby assures CITY that HOLSTON is legally entitled to funds from CITY.
12. **REPORTING.** HOLSTON will submit to the Board of Mayor and Aldermen a quarterly report setting out how funds allocated by CITY to HOLSTON 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.

IN WITNESS WHEREOF, the parties have set their hand to this Agreement in duplicate originals effective the date first above written.

[Signatures on next page.]

Holston Business Group

City of Kingsport, Tennessee

Signature

Patrick W. Shull, Mayor

Date

Date

Printed Name

Attest:

Attest:

Angela Marshall, Deputy City Recorder

Signature/Title

Approved as to form:

Rodney B. Rowlett, III, City Attorney