

AGREEMENT
BETWEEN
THE CITY OF KINGSPORT, TENNESSEE
AND
DOWNTOWN KINGSPORT ASSOCIATION
“CENTRAL BUSINESS DISTRICT PROJECT”

THIS AGREEMENT made and entered into as of this ____ day of July, 2023, by and between the City of Kingsport, hereafter called “CITY” and the Downtown Kingsport Association, hereafter called “ASSOCIATION”.

WITNESSETH:

WHEREAS, ASSOCIATION 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, ASSOCIATION has requested financial assistance pursuant to said state law which CITY has approved; 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 provide services in the central business district and to state the terms and conditions upon which financial assistance will be provided by CITY, the manner in which the project will be carried out by ASSOCIATION, and responsibilities of each party.
2. **DESCRIPTION OF THE PROJECT.** ASSOCIATION agrees as follows to undertake the following action items and responsibilities:
 - a) Implement the City’s policy and objectives for and in downtown Kingsport.
 - b) Maintain Main Street certification and implement the Main Street action program.
 - c) Undertake a marketing program for downtown Kingsport, which should include:

1. Providing a printed and digital guide to downtown;
 2. Creating and maintaining an up to date website promoting downtown; and
 3. Partnering with other entities (including CITY Public Information Staff) tasked with promoting Kingsport to provide an all-encompassing marketing approach. Meetings to discuss marketing plans and strategies shall occur no less than 6 times a year.
- d) Become the point of education for downtown stakeholders by conducting workshops for business and property owners. Utilize City of Kingsport staff members and other community members as presenters for knowledge based workshops as it relates to downtown.
- e) Work in partnership with other entities of the Chamber of Commerce and City Economic Development Director to promote vacant and leasable first floor storefronts within the central business district.
- f) Facilitate the installation of seasonal décor around downtown including but not limited to hanging flower baskets in the spring/summer months and the Christmas Decorations in the winter months.
1. Hanging flower basket decisions shall be coordinated with the City Landscape Specialist.
 2. Church Circle Tree decoration shall be the responsibility of the ASSOCIATION. The ASSOCIATION shall coordinate the installation of holiday lights with the City allowing for an appropriate amount of time to be agreed upon.
- g) Produce events that promote downtown, including by way of example:
1. Downtown Wine and Whiskey Festival
 2. Farm to Table Events
 3. Downtown Holiday Loft Tours
 4. First Thursdays
 5. Merchant Open House Events
 6. Christmas Tree Lighting & Parade
 7. Small Business Saturday

8. July 4th Celebration

- h) Work in conjunction with other organizations hosting events in the downtown core to assist in promotion when applicable.
 - i) Facilitate projects that directly relate to the Downtown Master Plan, when appropriate.
 - j) Facilitate any maintenance needed with the Church Circle Improvements.
 - k) Maintain an active Design Committee that takes the initiative in looking for ways to improve aesthetics in the Downtown.
 - l) Such other responsibilities as the board of mayor and aldermen may request and the DKA accept.
3. **MAXIMUM PAYMENT.** It is expressly understood and agreed that the total amount to be paid by CITY to ASSOCIATION under this Agreement will not exceed NINETY THOUSAND DOLLARS (\$90,000). FORTY-FIVE THOUSAND DOLLARS (\$45,000) will be paid to the ASSOCIATION upon the proper execution of this Agreement by all parties. FORTY-FIVE THOUSAND DOLLARS (\$45,000) will be paid to the ASSOCIATION on January 1, 2024.
4. **REQUEST FOR REIMBURSEMENT.** ASSOCIATION will submit a report to the CITY showing the actual net operating costs incurred on a biannual basis using forms and procedures specified by CITY. The reports are due upon the proper execution of this Agreement by all parties and on January 3, 2024.
5. **REIMBURSEMENT BY CITY.** CITY will review the semiannual reports, 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 allow ability of such costs and will not constitute a waiver of any violation of the terms of the Agreement.
6. **AUDITS.** ASSOCIATION 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. ASSOCIATION 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 ASSOCIATION 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.** ASSOCIATION 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. ASSOCIATION 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.** ASSOCIATION will not assign any rights to funds 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 termination, ASSOCIATION 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 \$90,000.00.
- 11. **CHANGED CONDITIONS AFFECTING PERFORMANCE.** ASSOCIATION 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.** ASSOCIATION hereby assures CITY that ASSOCIATION is legally entitled to funds from CITY.
- 13. **OPERATING INFORMATION.** ASSOCIATION will provide any relevant information requested by CITY concerning ASSOCIATION'S Central Business District Program including, but not limited to contracts for third party financial arrangements, annual financial statements and audit reports, schedules and fees. ASSOCIATION will hold regularly scheduled meetings with the ASSOCIATION Board, as stated in ASSOCIATION By-Laws, to provide updates on events, financials and other information as deemed necessary.

14. **PROJECT TERM.** CITY and ASSOCIATION have previously agreed that the project term for this Agreement is from July 1, 2023, to June 30, 2024. Accordingly, funds allocated by CITY to ASSOCIATION can be used to reimburse ASSOCIATION 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.** ASSOCIATION will submit to the Board of Mayor and Aldermen a quarterly report setting out how funds allocated by CITY to ASSOCIATION assist in carrying out the purpose of the project as described under the terms of this Agreement. The ASSOCIATION will give a formal presentation to the Board of Mayor and Aldermen.
16. **INDEPENDENT CONTRACTOR.** ASSOCIATION'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. ASSOCIATION is not the agent of the CITY and is not authorized to make any representation, contract or commitment on behalf of CITY. Neither ASSOCIATION 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 wrong doing by ASSOCIATION, or its employees or agents.
17. **INDEMNIFICATION FOR DAMAGES, TAXES AND CONTRIBUTIONS.** ASSOCIATION 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 ASSOCIATION'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 ASSOCIATION and third persons.
 - b) Any and all Federal, State and Local taxes, charges, fees, or contributions required to be paid with respect to ASSOCIATION 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.

[Signatures on next page.]

Downtown Kingsport Association

City of Kingsport, Tennessee

Frank Lett, Secretary

Patrick W. Shull, Mayor

Date

Date

Printed Name

Attest:

Attest:

Angela Marshall, Deputy City Recorder

Robin Cleary, Executive Director

Approved as to form:

Rodney B. Rowlett, III, City Attorney