

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

A RESOLUTION APPROVING THE SECOND AMENDMENT TO THE ECONOMIC DEVELOPMENT CONTRIBUTION AGREEMENT WITH THE INDUSTRIAL DEVELOPMENT BOARD OF THE CITY OF KINGSPORT, TENNESSEE; AUTHORIZING THE MAYOR TO EXECUTE THE AMENDMENT; AND ALL OTHER DOCUMENTS NECESSARY AND PROPER TO EFFECTUATE THE PURPOSE OF THE AMENDMENT

WHEREAS, in December, 2013, the board approved a resolution authorizing the mayor to sign an economic development agreement authorizing a contribution to the Industrial Development Board of the City of Kingsport, Tennessee (KEDB) for a portion of the property owned by General Shale; and

WHEREAS, the city and KEDB with First Horizon amended the agreement on December 1, 2020 (Resolution 2021-101) to extend the loan through December 31, 2023; and

WHEREAS, KEDB and First Horizon have negotiated to extend the agreement for an additional 12 months, to expire on December 20, 2024 which KEDB will formally approve at its meeting on December 12, 2023; and

WHEREAS, upon approval of the extension by KEDB the city will need to extend the above referenced contribution agreement for the same period of time; and

WHEREAS, as time is of the essence in securing the extension, it is deemed advisable for the board to approve the second amendment to the contribution agreement contingent upon approval of the extension by KEDB.

Now therefore,

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

SECTION I. That the Second Amendment to the Contribution Agreement with the Industrial Development Board of the City of Kingsport, Tennessee (KEDB) for property it owns formerly owned by General Shale Brick, Inc. is approved contingent upon approval of the loan extension by KEDB.

SECTION II. That the mayor, or in his absence, incapacity, or failure to act, the vice-mayor, is authorized to execute, in a form approved by the city attorney, and subject to the requirements of Article X, Section 10 of the Charter of the City of Kingsport, the Second Amendment to the Contribution Agreement with KEDB for property it owns formerly owned by General Shale Brick, Inc., to deliver the agreement and take any and all action as may be required on the part of the city to carry out, give effect to, and consummate the transactions contemplated by the agreement and this resolution, said agreement being as follows:

**SECOND AMENDMENT TO CONTRIBUTION AGREEMENT**

THIS SECOND AMENDMENT TO CONTRIBUTION AGREEMENT, dated as of December \_\_, 2023, is made by and between THE CITY OF KINGSPORT, TENNESSEE, a municipal corporation of the State of Tennessee ("City"), and THE INDUSTRIAL DEVELOPMENT BOARD OF THE CITY OF KINGSPORT, TENNESSEE, a corporation organized under T.C.A. § 7-53-101 et seq., commonly known as the "Kingsport Economic Development Board" ("KEDB").

RECITALS:

A. KEDB has previously acquired certain real property owned by General Shale Brick, Inc. consisting of approximately 98 acres designated on the Sullivan County Tax Assessor's Tax Maps as Tax Parcel 009.00 of Group F on Map 046P, City of Kingsport, 11th Civil District of Sullivan County, Tennessee (the "Property"), and has held the Property for development (the "Project").

B. To finance KEDB's acquisition of the Property and development of the Project, First Horizon Bank's predecessor, First Tennessee Bank National Association (herein "First Horizon Bank") provided a loan to KEDB in the principal amount of \$4,000,000 (the "Acquisition and Development Loan").

C. To assist KEDB in economic development, including the acquisition of the Property and the pursuit of the Project, the City entered into a Contribution Agreement dated December 20, 2013 whereby the City agreed to assist KEDB in economic development by making certain payments for up to seven years as economic development contributions to KEDB (the "Contribution Agreement").

D. The Acquisition and Development Loan matured on December 30, 2020 and pursuant to Renewal and Extension Promissory Note dated December 10, 2020, First Horizon Bank agreed to renew and extend the Loan for an additional period of three (3) years to a new maturity date of December 30, 2023.

E. The Board of Mayor and Aldermen of the City adopted Resolution No. 2021-101 whereby the City committed to make continued economic development contributions to KEDB in the form of semi-annual contributions of \$43,000.00 each for three (3) years beginning on June 1, 2021 and December 1, 2021 and on each succeeding June 1 and December 1 through December 1, 2023.

F. At KEDB's request, First Horizon Bank agreed to further renew and extend the Loan for an additional period of one (1) year to a new maturity date of December 30, 2024, conditioned upon KEDB being able to demonstrate continued financial support from the City.

G. The Board of Mayor and Aldermen of the City has adopted Resolution No. 2024-\_\_\_\_\_ whereby the City has committed to make certain payments to KEDB during calendar year 2024 as continued economic development contributions to KEDB, as set out herein.

H. The parties desire to execute this Second Amendment to Contribution Agreement to satisfy the terms and conditions of the Resolution and the requirements of First Horizon Bank.

NOW, THEREFORE, in consideration of the foregoing premises, and in consideration of the parties' mutual covenants and undertakings set forth herein below, the City and KEDB do hereby mutually agree and contract with each other as follows:

1. Renewal and Extension of Acquisition and Development Loan. The City hereby acknowledges and agrees that, pursuant to KEDB's \$4,000,000 Second Renewal and Extension Promissory Note dated December \_\_, 2023, First Horizon Bank will renew and extend the Acquisition and Development Loan for a period of one year with a new maturity date of December \_\_, 2024. Beginning December \_\_, 2023, interest will accrue at a fixed interest rate of 7.50% per annum and will be due and payable semi-annually on June 1, 2024 and December 1, 2024, with all principal due and payable at maturity on December \_\_30, 2024.

2. Contribution Commitments by the City of Kingsport. To support KEDB's acquisition and development of the Property and its ability to pay the debt service due under the Loan, the City hereby agrees to provide to KEDB contributions for economic development, during calendar year 2024, as requested by KEDB, in semi-annual contributions of up to \$150,000 each, effective for June 1, 2024 and December 1. KEDB agrees to use such contributions to pay the interest payments due under the Loan. KEDB shall use all net proceeds realized from the sale of any portion of the Property to repay principal due under the Acquisition and Development Loan; provided, however, KEDB acknowledges that the City is not obligated to pay KEDB for the transfer of a portion of the Property by KEDB to the City for recreational use (the exact boundaries and acreage of such recreational area to be mutually determined by KEDB and the City). KEDB shall use all net proceeds realized from the lease of all or any portion of the Property to pay the interest payments due under the Acquisition and Development Loan from time to time. In the event a principal balance remains outstanding under the Acquisition and Development Loan at maturity, the City shall either: (i) purchase the Property (or the balance of the Property) from KEDB for a purchase price equal to the outstanding principal balance and any accrued interest then owed on the Loan, or (ii) provide an economic development contribution to KEDB in an amount sufficient to pay the outstanding principal balance and any remaining accrued interest then owed on the Acquisition and Development Loan. In either event, KEDB shall use such funds to retire the remaining balance of the Acquisition and Development Loan in full. Notwithstanding any other provision herein, the City's obligation to make such economic development contributions shall terminate when the Acquisition and Development Loan is paid in full.

3. Security Interest and Pledge. The City acknowledges and agrees that KEDB has heretofore assigned, pledged and granted to Lender a security interest in KEDB's rights under this Agreement as collateral for the Acquisition and Development Loan, and the City further agrees that Lender, as the assignee, pledgee and holder of such security interest, shall be entitled to enforce KEDB's rights under the Contribution Agreement and to apply the monies payable by the City under the Contribution Agreement toward the monies due under the Acquisition and Development Loan from time to time. In the event there is a default under the Acquisition and Development Loan, Lender shall be entitled to apply the proceeds so realized to satisfy the indebtedness under the Acquisition Loan and the Acquisition and Development Loan in such order and allocation as Lender may determine.

4. No Personal Liability. No member, director, officer, commissioner, elected representative, or employee, past, present or future, of the City, or KEDB, or any successor body, shall have any personal liability for the performance of any obligations of the City or KEDB, respectively, under this Agreement.

5. Applicable Law. This Agreement is made as a Tennessee contract and shall be construed and applied according to the laws of the State of Tennessee.

6. No Other Amendments. Except as set forth herein, there are no other amendments to the terms of the Contribution Agreement as originally executed.

IN WITNESS WHEREOF, the parties have caused this instrument to be executed by their respective duly authorized representatives as of the date first written hereinabove.

[Acknowledgements Deleted for Inclusion in this Resolution]

SECTION III. That the mayor is further authorized to make such changes approved by the mayor and the city attorney to the amendment/agreement set out herein that do not substantially alter the material provisions of the agreement, and the execution thereof by the mayor and the city attorney is conclusive evidence of the approval of such changes.

SECTION IV. That the board finds that the actions authorized by this resolution are for a public purpose and will promote the health, comfort and prosperity of the citizens of the city.

SECTION V. That this resolution shall take effect from and after its adoption, the public welfare requiring it.

ADOPTED this the 5th day of December, 2023.

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PATRICK W. SHULL, MAYOR

ATTEST:

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ANGELA MARSHALL, DEPUTY CITY RECORDER

APPROVED AS TO FORM:

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RODNEY B. ROWLETT, III, CITY ATTORNEY