

**AGREEMENT FOR THE CITY OF KINGSPORT'S CDBG-CV COVID-19
SMALL BUSINESS ASSISTANCE GRANT PROGRAM**

THIS AGREEMENT, made and entered into this **1st** day of **June 1, 2021**, by and between the City of Kingsport, Tennessee, with principal offices at 225 West Center Street, Kingsport, Tennessee, hereinafter called the "City", and the **Small Business of Kingsport**, hereinafter called the "Awardee", having its principal offices at **123 Main Street, Kingsport, Tennessee**.

WHEREAS, the City has applied for and received funds from the United States Government under Title I of the Housing and Community Development Act of 1974, as amended (HCD Act), Public Law 93-383; and

WHEREAS, the City has established a program to provide business assistance to qualified businesses from its Community Development Block Grant ("Program").

WHEREAS, the Awardee has applied for and, based on the information provided by the Awardee, is qualified to receive Program funding.

WHEREAS, the City has agreed to provide the Awardee with a total grant for business assistance (the "Grant") to assist the Awardee in maintaining business operations subject to and in accordance with the conditions and covenants set forth herein.

NOW, THEREFORE, it is agreed between the parties hereto that;

I. CONDITIONS PRECEDENT

- A. The Awardee has applied for assistance from the Program and, relying on the accuracy and truthfulness of Awardee's information provided, the City has determined that the Awardee is a small business impacted by the COVID-19 pandemic. The Awardee is eligible for assistance because the Awardee qualifies as a "small business" and will document as a result of this assistance the retention of at least one (1) job / position for a period of no less than six (6) months for a person earning under 80% of the area median income. Said retained job / position may be held by the owner of the Awardee.
- B. In conjunction with the execution of this Agreement, and prior to the release of any Grant funds, the Awardee shall have the originals or copies of the following documents (which shall include any and all exhibits and attachments thereto) delivered to the City:
 - a. A completed Small Business Incentive Program COVID Relief Grant Application, which shall be attached as Exhibit 1 to this Agreement;
 - b. Documentation evidencing that the Awardee is eligible to receive the Grant and that the Awardee satisfies the City, Program, and HUD requirements for assistance, including income eligibility and those set forth in HUD Regulations, which shall be retained on file

in the City's Community Development Department in the case file for this grant (a brief summary of said items can be found at the end of this agreement);

- c. Documentation of agreement to complete KOSBE Economic Verification Survey, 6 months after date of funding agreement
- d. Completed KOSBE Request for Counsel Form
- e. Other documents as may be required by City.

II. AWARDEE REQUIREMENTS

- A. The Awardee shall use the Grant funding for the purpose of mitigating the adverse effects to its business of the COVID-19 pandemic, following the **Gubernatorial Disaster Proclamation** issued March 12, 2020, and as subsequently renewed.
- B. The Awardee shall maintain complete records relating to this grant assistance for a minimum of five (5) years, commencing on the date of this signed Agreement and shall promptly provide said records to the City for inspection and copying upon the City's request. Records include documentation of the expenditure of Grant funds, such as but not limited to original receipts for purchases and payments, and invoices associated with professional services.
- C. The Awardee shall provide the City with such reports and information as the City may request in order to allow the City to comply with HUD Regulations and any and all applicable requirements of the City and/or Program.
- D. The Awardee will provide the City with small business job retention forms to be completed by the business owner as required and appropriate. These forms include the self-certification of income form. These forms will be provided to the Awardee by the City.
- E. The Awardee will document that as a result of this assistance, the Awardee will retain at least one (1) job / position for a period of no less than six (6) months after the date of this Agreement to be held by a person earning under 80% of the area median income. Said retained job / position may be held by the owner of the Awardee.
- F. The Awardee shall comply with all relevant statutes, administrative rules, regulations, and executive orders (hereinafter collectively referred to as "laws") of the City, State of Tennessee and federal government designed to stop or slow the transmission of COVID-19. The conviction of a violation of any laws related to COVID-19 in circuit court or a finding of violation by any City administrative court, board or commission that occurs on or after March 12, 2020, may be cause for the City to deny current or future grant requests and/or terminate assistance.

III. PAYMENT

- A. It is expressly agreed and understood that the total amount to be paid by the City to the Awardee under this Agreement shall not exceed **\$5,000.00**. This payment shall be made in one lump sum following the execution of this Agreement and the submission of all documents required by this Agreement and the City.

IV. TERM, REPAYMENT AND SECURITY

- A. If the Awardee complies with all requirements set forth herein, this Agreement shall terminate one (1) year after the date of this Agreement, except those provisions that specifically state they are applicable for a period of years or that otherwise survive this Agreement. Notwithstanding the foregoing, the City expressly reserves and does not waive its rights to recover any damages

arising from or relating to the Awardee's breach of this Agreement and/or any attachment hereto which arose or occurred (in whole or in part) before said termination. If the Awardee fails to comply with all the requirements set forth in this Agreement, said failure to comply shall be deemed an Event of Default, as described below, and the Awardee shall immediately repay the amount of the Grant in full and comply any additional requirements as set forth.

V. NOTICES

- A. Notices required by this Agreement shall be in writing and delivered via first-class mail (postage, prepaid), commercial courier, or personal delivery or sent by facsimile or other electronic means. Any notice sent in this manner shall be effective on the date of sending. All notices and other written communications under this Agreement shall be addressed to the individuals in the capacities indicated below, unless otherwise modified by subsequent written notice. Communication and details concerning this contract shall be directed to the following contract representatives:

City Awardee:

Small Business of Kingsport
123 Main Street
Kingsport, TN 37660
(423)123-4567

Community Development:

City of Kingsport
201 W. Market Street, 2nd Floor
Kingsport, TN 37664
(423)224-2877

With a copy to:

City Attorney

City of Kingsport
Legal Department
123 Center Street
Kingsport, TN 37660

VI. SPECIAL CONDITIONS

- A. Debarment and Suspension Certification
- 1) The Awardee certifies to the best of its knowledge and belief that it and its principals are not presently debarred, suspended, proposed for disbarment, declared ineligible, or voluntarily excluded from covered transactions by any federal or state department or agency.

VII. GENERAL CONDITIONS

- A. General Compliance

- 1) The Awardee agrees to comply with the requirements of Title 24 of the Code of Federal Regulations, Part 570 (the U.S. Housing and Urban Development regulations concerning Community Development Block Grants (CDBG)) including subpart K of these regulations, except that
 - i. the Awardee does not assume the City's environmental responsibilities described in 24 CFR 570.604 and
 - ii. the Awardee does not assume the City's responsibility for initiating the review process under the provisions of 24 CFR Part 52.
 - 2) The Awardee also agrees to comply with all other applicable Federal, state and local laws, regulations, and policies governing the funds provided under this contract, as well as all laws, regulations and policies Awardee may be subject to as a business and employer in the State of Tennessee.
 - 3) The Awardee further agrees to utilize funds available under this Agreement to supplement rather than supplant funds otherwise available.
- B. No Relationship Created
- 1) Nothing contained in this Agreement is intended to, or shall be construed in any manner, as creating or establishing the relationship of employer/employee between the parties.
 - 2) The Awardee shall at all times remain independent of the City with respect to this Agreement.
 - 3) The City shall be exempt from payment of all unemployment compensation, worker's compensation benefits, FICA, retirement, life and/or medical insurance and Workers' Compensation insurance, as the Awardee is operating independently from the City.
 - 4) The City and Awardee are not partners and this Agreement does not create a partnership.
- C. Hold Harmless
- 1) The Awardee shall hold harmless, defend and indemnify the City, including its employees, directors, officers and agents, from any and all claims, actions, suits, charges and judgments whatsoever that arise out of this Agreement, including but not limited to Awardee's performance or nonperformance of this Agreement.
- D. Amendments
- 1) The City may amend this Agreement at any time provided that such amendments make specific reference to this Agreement, and are executed in writing, signed by a duly authorized representative. Such amendments shall not invalidate this Agreement, nor relieve or release the City or Awardee from its obligations under this Agreement except and only to the extent that said obligations are modified in said amendments.
 - 2) The City may, in its discretion, amend this Agreement to conform with Federal, state or local governmental guidelines, policies and available funding amounts, or for other reasons. If such amendments result in a change in the funding, the scope of services, or schedule of the activities to be undertaken as part of this Agreement, such modifications will be incorporated only by written amendment signed by the City.
- E. Suspension or Termination
- 1) Default by Awardee. In accordance with 24 CFR 85.43, the City may suspend or terminate this Agreement because of a default by the Awardee if the Awardee

materially fails to comply with any terms of this Agreement, which include (but are not limited to) the following:

- i. Failure to comply with any of the rules, regulations or provisions referred to herein, or such statutes, regulations, executive orders, and HUD guidelines, policies or directives as may become applicable at any time;
- ii. Failure, for any reason, of the Awardee to fulfill in a timely and proper manner its obligations under this Agreement;
- iii. Ineffective or improper use of funds provided under this Agreement; or
- iv. Submission by the Awardee to the City any information, documents, or reports that are falsified, incorrect or incomplete in any material respect.

The City shall provide the Awardee with written notice of any suspension of this agreement. Said written notice shall describe the basis for the suspension and the actions required to end the suspension. The City shall provide the Awardee with written notice prior to terminating this agreement based upon the Awardee's default. Said written notice shall describe the basis of the default, provide that the Awardee shall have thirty days from the date of said notice to cure said default, and specify what actions are required for said cure.

- 2) Termination for convenience. In accordance with 24 CFR 85.44, this Agreement may also be terminated for convenience by either the City or the Awardee, in whole or in part, by setting forth the reasons for such termination, the effective date, and, in the case of partial termination, the portion to be terminated. However, if in the case of a partial termination, the City determines that the remaining portion of the award will not accomplish the purpose for which the award was made, the City may terminate the award in its entirety.

VIII. PERSONNEL & PARTICIPANT CONDITIONS

A. Civil Rights Compliance

- 1) The Awardee agrees to comply with the State of Illinois Human Rights Act, 775 ILCS 5/1-101 et seq., and with Title VI of the Civil Rights Act of 1964 as amended, Title VIII of the Civil Rights Act of 1968 as amended, Section 104(b) and Section 109 of Title I of the Housing and Community Development Act of 1974 as amended, Section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act of 1990, the Age Discrimination Act of 1975, Executive Order 11063, and Executive Order 11246 as amended by Executive Orders 11375, 11478, 12107 and 12086.

B. Nondiscrimination

- 1) The Awardee agrees to comply with the non-discrimination in employment and contracting opportunities laws, regulations, and executive orders referenced in 24 CFR 570.607, as revised by Executive Order 13279. The applicable nondiscrimination provisions in Section 109 of the HCDA are still applicable.

C. Section 504

- 1) The Awardee agrees to comply with all Federal regulations issued pursuant to compliance with Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), which

prohibits discrimination against the individuals with disabilities or handicaps in any Federally assisted program.

- 2) The City shall provide the Awardee with any guidelines necessary for compliance with that portion of the regulations in force during the term of this Agreement.

D. Employment Restrictions

1) Prohibited Activity

- i. The Awardee is prohibited from using funds provided herein or personnel employed in the administration of the program for: political activities; inherently religious activities; lobbying; political patronage; and nepotism activities.

E. Labor Standards

- 1) The Awardee agrees to comply with the requirements of the Secretary of Labor in accordance with the Davis-Bacon Act as amended, the provisions of Contract Work Hours and Safety Standards Act (40 U.S.C. 327 et seq.) and all other applicable Federal, state and local laws and regulations pertaining to labor standards insofar as those acts apply to the performance of this Agreement.
- 2) The Awardee agrees to comply with the Copeland Anti-Kick Back Act (18 U.S.C. 874 et seq.) and its implementing regulations of the U.S. Department of Labor at 29 CFR Part 5.
- 3) The Awardee shall maintain documentation that demonstrates compliance with hour and wage requirements of this part. Such documentation shall be made available to the City for review upon request.

F. Conduct Assignability

- 1) The Awardee shall not assign or transfer any interest in this Agreement without the prior written consent of the City thereto; provided, however, that claims for money due or to become due to the Awardee from the City under this contract may be assigned to a bank, trust company, or other financial institution without such approval. Notice of any such assignment or transfer shall be furnished promptly to the City.

G. Hatch Act

- 1) The Awardee agrees that no funds provided, nor personnel employed under this Agreement, shall be in any way or to any extent engaged in the conduct of political activities in violation of Chapter 15 of Title V of the U.S.C. 3. Conflict of Interest.
- 2) The Awardee agrees to abide by the provisions of 24 CFR 84.42 and 570.611, which include (but are not limited to) the following:
 - i. No employee, officer or agent of the Awardee shall participate in the selection, or in the award, or administration of, a contract supported by Federal funds if a conflict of interest, real or apparent, would be involved.

H. Lobbying

- 1) The Awardee hereby certifies that:
 - i. No Federal appropriated funds have been paid or will be paid, by or on behalf of it, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any

Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement;

- ii. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, it will complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions; and
- iii. It will require that the language of paragraph (d) of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all Sub-recipients shall certify and disclose accordingly.

2) Lobbying Certification:

- i. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering this transaction imposed by section 1352, title 31, U.S.C. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

I. Copyright

- 1) If this contract results in any copyrightable material or inventions, the City and/or grantor agency reserves the right to royalty-free, non-exclusive and irrevocable license to reproduce, publish or otherwise use and to authorize others to use, the work or materials for governmental purposes.

J. Religious Activities

- 1) The Awardee agrees that funds provided under this Agreement will not be utilized for inherently religious activities prohibited by 24 CFR 570.200(j), such as worship, religious instruction, or proselytization.

IX. SEVERABILITY

- A. If any provision of this Agreement is held invalid, the remainder of the Agreement shall not be affected thereby, and all other parts of this Agreement shall nevertheless be in full force and effect.

X. SECTION HEADINGS AND SUBHEADINGS

- A. The section headings and subheadings contained in this Agreement are included for convenience only and shall not limit or otherwise affect the terms of this Agreement.

XI. WAIVER

- A. The City's failure to act with respect to a breach by the Awardee does not waive its right to act with respect to subsequent or similar breaches. The failure of the City to exercise or enforce any right or provision shall not constitute a waiver of such right or provision.

XII. ENTIRE AGREEMENT

- A. This agreement, in addition to all attached contract documents, constitutes the entire agreement between the City and the Awardee for the use of funds received under this Agreement and it supersedes all prior or contemporaneous communications and proposals, whether electronic, oral, or written between the City and the Awardee with respect to this Agreement.

IN WITNESS WHEREOF, the Parties have executed this contract as of the date first written above.

City of Kingsport, Tennessee

By _____ Date _____
Patrick M. Shull, Mayor

Attest _____ Date _____
Angie Marshall, City Recorder/Clerk

APPROVED AS TO FORM:

_____ Date _____
Michael Billingsley, City Attorney

Exhibit 1: COB CDBG-CV Small Business Relief Fund Program Grant Application