

Economic Development Agreement

between

The City of Jacksonville

and

**Kappa Alpha Psi Jacksonville
Foundation, Incorporated**

Economic Development Agreement

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- Exhibit A - Description of the Project Parcel
- Exhibit B – Improvements
- Exhibit C – Ineligible Business Activities
- Exhibit D – JSEB Reporting Form
- Exhibit E - Annual Survey

ECONOMIC DEVELOPMENT AGREEMENT

This **ECONOMIC DEVELOPMENT AGREEMENT** (this “Agreement”) is made this ___ day of _____, 2023 (the “Effective Date”), between the **CITY OF JACKSONVILLE**, a municipal corporation and a political subdivision of the State of Florida (the “City”) and **KAPPA ALPHA PSI JACKSONVILLE FOUNDATION, INCORPORATED**, a Florida not-for-profit corporation (the “Company”).

Article 1. PRELIMINARY STATEMENTS

1.1 The Project.

The Company, together with Wolfson’s Children’s Hospital of Jacksonville, proposes to establish a community enrichment center and state-of-the-art healthcare facility to serve the Northwest Jacksonville community at the proposed location of 3717 Moncrief Road, Jacksonville, Florida, 32209 as more particularly described on **Exhibit A** attached hereto (the “Project Parcel”). The Project Parcel is located in the Northwest Jacksonville Economic Development Trust Fund (“NWJEDF”) boundary area and is in Health Zone 1, which is deemed to have the highest level of health disparities in Duval County, Florida. The Sulzbacher Health Center has agreed to manage the healthcare facility and maintain a sliding fee discount schedule to ensure that patients will not be refused medical or health services due to an inability to pay. The construction and installation of the Improvements, the razing of the existing building on the Project Parcel, the grading of the Project Parcel, and the connection of water and sewer lines to the Project Parcel and the obligations of the Company under this Agreement are collectively referred to herein as the “Project.” The Project is expected to represent an estimated total Capital Investment of \$8,300,000 by or on behalf of the Company.

1.2 Authority.

The City Council has authorized execution of this Agreement pursuant to City Resolution 2023-____-A (the “Resolution”).

1.3 City Determination.

The City has determined that the Project is consistent with the goals of the City in that the Project will, among other things:

- (a) generate significant new ad valorem taxes, including significant new tax revenues for the public school system;
- (b) help meet the overall community goal of business development and growth in Northwest Jacksonville;
- (c) provide accessible healthcare to an area that has the highest level of health disparities in Duval County, Florida;
- (d) create induced and indirect job effects which will have a positive impact on local small businesses; and

(e) promote and encourage private Capital Investment of \$8,300,000 within a Level 1 Economically Distressed Area in Northwest Jacksonville.

1.4 **Jacksonville Small and Emerging Business Program.**

As more fully described in City Ordinance 2004-602-E, the City has determined that it is important to the economic health of the community that whenever a company receives incentives from the City, that company provides contracting opportunities to the maximum extent possible to small and emerging businesses in Duval County as described in Section 6.1.

1.5 **Coordination by City.**

The City hereby designates the Economic Development Officer of the OED or his or her designee to be the Project Coordinator who will, on behalf of the City, coordinate with the Company and administer this Agreement according to the terms and conditions contained herein and in the Exhibit(s) attached hereto and made a part hereof. It shall be the responsibility of the Company to coordinate all project related activities and all matters under this Agreement with the designated Project Coordinator, unless otherwise stated herein. Notwithstanding the foregoing or any other statements herein to the contrary, the OED is an office of the City and has no separate liability under this Agreement.

1.6 **Maximum Indebtedness.**

The maximum indebtedness of the City for all fees, reimbursable items or other cost pursuant to this Agreement shall not exceed the sum of FIVE HUNDRED THOUSAND AND NO/100 (\$500,000.00).

1.7 **Availability of Funds.**

The City's obligations under this Agreement are contingent upon availability of lawfully appropriated funds for the Project and this Agreement.

**Article 2.
DEFINITIONS**

As used in this Agreement, the following terms shall have the meaning set opposite each:

2.1 **Capital Investment.**

Money invested by a company to purchase items that may normally be capitalized by a company in the normal conduct of its business.

2.2 **City Council.**

The body politic, as the same shall be from time to time constituted, charged with the duty of governing the City.

2.3 **Improvements.**

All of the improvements that are incorporated into the Project, as further detailed in **Exhibit B** hereof.

2.4 **OED.**

The Office of Economic Development and any successor to its duties and authority.

2.5 **Substantial Completion.**

“Substantially Completed”, “Substantial Completion” or “Completion” means that all permits have been finalized, a certificate of substantial completion has been issued by the contractor and verified by the architect of record, a certificate of occupancy has been issued and the Improvements are available for use in accordance with their intended purpose; subject to commercially reasonable punch list items and similar items.

Other capitalized terms not defined in this Article shall have the meanings assigned to them elsewhere in this Agreement.

Article 3.
APPROVALS; PERFORMANCE SCHEDULES

3.1 **Performance Schedule.**

The Company and the City have jointly established the following dates for the performance of each party’s respective obligations under this Agreement (herein called the “Performance Schedule”):

Completion of the construction of the Improvements shall be no later than March 31, 2025.

The City and the Company have approved this Performance Schedule. By the execution hereof, and subject to the terms of this Agreement, the Company hereby agrees to undertake and complete the development of the Project in accordance with this Agreement and the Performance Schedule, and to comply with all of the Company’s obligations set forth herein. The Company shall have the option to extend the Performance Schedule by up to one (1) year, for good cause shown by the Company (the “Extension Option”). Such request shall be made by the Company in writing to OED, and shall be granted at the discretion of Economic Development Officer of the OED.

3.2 **Approval of Agreement.**

By the execution hereof, the parties certify as follows:

(a) Company certifies that

(i) the Company owns the Project Parcel;

(ii) the execution and delivery hereof has been approved by all parties whose approval is required under the terms of the governing documents creating the particular Company entity;

(iii) this Agreement does not violate any of the terms or conditions of such governing documents and the Agreement is binding upon the Company and enforceable against it in accordance with its terms;

(iv) the person or persons executing this Agreement on behalf of the Company are duly authorized and fully empowered to execute the same for and on behalf of the Company;

(v) the Company and each entity composing the Company is duly authorized to transact business in the State of Florida and has received all necessary permits and authorizations required by appropriate governmental agencies as a condition to doing business in the State of Florida; and

(vi) the Company, its business operations, and each person or entity composing the Company are in compliance with all federal, state and local laws.

(b) The City certifies that the execution and delivery hereof is binding upon the City to the extent provided herein and enforceable against it in accordance with its terms.

Article 4.

NORTHWEST JACKSONVILLE LARGE SCALE ECONOMIC DEVELOPMENT FUND GRANT

4.1 Northwest Jacksonville Large Scale Economic Development Fund Grant; Amount.

The Company will become eligible for a Northwest Jacksonville Large Scale Economic Development Fund Grant (“LSEDF Grant”) in the maximum amount of the lesser of (i) \$500,000, and (ii) ten percent (10%) of the total project costs associated with the Improvements as demonstrated by the Company and approved by OED, upon Substantial Completion of the Improvements and satisfaction of the conditions set forth in Section 4.2. The Company shall pay, at its sole cost and expense, the cost of the Improvements in excess of the LSEDF Grant amount. The City’s obligation to disburse the LSEDF Grant is subject to the terms and conditions of this Agreement. The Company agrees that the LSEDF Grant shall only be used by the Company to reimburse expenses related to the Improvements that are eligible for reimbursement as determined by OED, including infrastructure related costs, construction and renovation of commercial buildings, and hard costs.

4.2 Disbursement of LSEDF Grant.

Upon Substantial Completion of the Improvements in accordance with the terms and conditions of this Agreement, the Company shall be eligible for the \$500,000 LSEDF Grant, subject to the terms and conditions of this Agreement. The City’s obligation to make the disbursement of the LSEDF Grant to Company is conditioned upon the prior occurrence of the following conditions precedent:

(a) The Improvements shall have been Substantially Completed in all material respects in accordance with this Agreement and in accordance with the Performance Schedule, as verified by a final inspection report satisfactory to the City, certifying that the Improvements have been constructed in a good and workmanlike manner and are in satisfactory condition. The Company shall furnish to the OED a certificate of occupancy for the Improvements or such other permits and/or certificates (including a certificate of substantial completion from the architect) as shall be required to establish to the OED’s satisfaction that the Improvements have been properly completed and are not subject to any material violations or uncorrected conditions noted or filed in any City department. In the event the OED determines that there is a deficiency with the Improvements in its reasonable discretion the OED reserves the right to require that an escrow be established in an amount satisfactory to the OED to remedy such deficiency.

(b) All property taxes on the Project Parcel must be current, and the Company must be utilizing the Improvements in accordance with the uses described in this Agreement.

(c) No Event of Default with respect to Company's obligations under this Agreement or an event which, with the giving of notice or the passage of time, or both, would constitute an Event of Default with respect to Company's obligations under this Agreement, has occurred or is continuing.

(d) The Company shall submit to the OED a proper contractor's final affidavit and full and complete releases of liens from each contractor, subcontractor and supplier, or other proof satisfactory to the OED, confirming that final payment has been made for all materials supplied and labor furnished in connection with the Improvements, as applicable, or that, in the event of a dispute in any amount owed, such amount is properly bonded off pursuant to Florida law so that it will not become a lien on the Project Parcel.

(e) Company shall take all action necessary to have any mechanic's and materialmen's liens, judgment liens or other liens or encumbrances filed against the Project Parcel (other than any consensual mortgage) released or transferred to bond within thirty (30) days of the date Company receives notice of the filing of such liens or encumbrances. If any such lien or encumbrance is filed, the City shall not be required to make any disbursement of the LSEDF Grant funds until such lien or encumbrance is bonded over or removed and the City receives a copy of the recorded release. The City shall not be obligated to disburse any of the LSEDF Grant funds to Company if, in the reasonable opinion of the City, any such disbursement or the Project or Project Parcel would be subject to a mechanic's or materialmen's lien or any other lien or encumbrance other than inchoate construction liens. Company shall be fully and solely responsible for compliance in all respects whatsoever with the applicable mechanic's and materialmen's lien laws.

(f) The Company, the Company's general contractor or the Company's construction lender shall submit invoices, contractor's affidavit and/or receipts that are acceptable to the City demonstrating a Capital Investment in the Project of at least \$7,500,000.

(g) The Company shall have provided to the OED, in form and substance reasonably satisfactory to the OED, any such other document, instrument, information, agreement or certificate the OED may reasonably require related to the construction or completion of the Improvements.

4.3 **No Warranty by City.**

Nothing contained in this Agreement or any other document attached hereto or contemplated hereby shall constitute or create any duty on or warranty by City regarding: (a) the accuracy or reasonableness of the Project budgets; (b) the feasibility or quality of the construction documents for the Project; (c) the proper application by the Company of the LSEDF Grant funds; (d) the quality or condition of the work; or (e) the competence or qualifications of any third party furnishing services, labor or materials in connection with the construction of the Project. Company acknowledges that it has not relied and will not rely upon any experience, awareness or expertise of the City, or any City inspector, regarding the aforesaid matters.

4.4 **Further disclaimer.**

The LSEDF Grant shall not be deemed to constitute a debt, liability, or obligation of the City or of the State of Florida or any political subdivision thereof within the meaning of any constitutional or statutory limitation, or a pledge of the faith and credit or taxing power of the City or of the State of Florida or any political subdivision thereof, but shall be payable solely from the funds provided therefor in this Article 4. The City shall not be obligated to pay the LSEDF Grant or any installment thereof except from the non-ad valorem revenues or other legally available funds provided for that purpose, and neither the faith and credit nor the taxing power of the City or of the State of Florida or any political subdivision thereof is pledged to the payment of the LSEDF Grant or any installment thereof. The Company, and any person, firm or entity claiming by, through or under the Company, or any other person whomsoever, shall never have any right, directly or indirectly, to compel the exercise of the ad valorem taxing power of the City or of the State of Florida or any political subdivision thereof for the payment of the LSEDF Grant or any installment thereof.

Article 5. THE DEVELOPMENT

5.1 **Scope of Development.**

(a) The Company shall construct and install, or cause to be constructed and installed, the Improvements in accordance with the terms and conditions of this Agreement.

(b) The Company shall construct and install all Improvements in accordance with all applicable building and permitting codes.

5.2 **Cost of Development.**

Except as otherwise set forth in this Agreement, the Company shall pay at its sole cost and expense the cost of the Project, including, without limitation, all costs associated with constructing and installing the Improvements at no cost to the City.

5.3 **Approval by Other Governmental Agencies.**

All of the parties' respective rights and obligations under this Agreement are subject to and conditioned upon approval of the Project and all Project Documents by such other governmental agencies, whether state, local or federal, as have jurisdiction and may be required or entitled to approve them. Notwithstanding any provision of this Agreement to the contrary, the City does not guarantee approval of this Agreement or any aspect of the Project by any government authorities and agencies that are independent of the City.

5.4 **Authority of OED to Monitor Compliance.**

During all periods of construction and installation of the Improvements, the Economic Development Officer of the OED and the City's Director of Planning and Development shall have the authority to monitor compliance by the Company with the provisions of this Agreement and the Project Documents. Insofar as practicable, the OED shall coordinate such monitoring and supervising activity with those undertaken by the City so as to minimize duplicate activity. To that end, during the period of construction and installation and with prior notice to the Company, representatives of the City shall have

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the right of access to the Project Parcel and to every structure on the Project Parcel during normal business hours.

5.5 Timing of Completion.

The construction and installation of all Improvements shall be completed in accordance with the terms of the Performance Schedule.

5.6 Construction and Operation Management.

Except as otherwise expressly provided herein, the Company shall have discretion and control, free from interference, interruption or disturbance, in all matters relating to the management, development, redevelopment, construction and operation of the Project, provided that the same shall, in any event, conform to and comply with the terms and conditions of this Agreement, and all applicable state and local laws, ordinances and regulations (including without limitation, applicable zoning, subdivision, building and fire codes). The Company's discretion, control and authority with respect thereto shall include, without limitation, the following matters:

(a) the construction and design of the Project, subject to the express terms and conditions of this Agreement;

(b) the selection, approval, hiring and discharge of engineers, architects, contractors, subcontractors, professionals and other third parties (collectively the "Vendors") on such terms and conditions as the Company deems appropriate; provided however, that to the extent that the City furnishes to the Company the names and identities of Jacksonville-based Vendors, including without limitation Jacksonville-based minority Vendors, and to the extent that Company has the need to enter into contracts with Vendors outside of persons employed by Company or companies affiliated with or controlled by Company or its principals, then Company agrees to include all such Jacksonville-based Vendors in the process established by Company for obtaining bids for any of the Improvements;

(c) the negotiation and execution of contracts, agreements, easements and other documents with third parties, in form and substance satisfactory to Company; and

(d) the preparation of such budgets, cost estimates, financial projections, statements, information, and reports as the Company deems appropriate.

5.7 Ineligible Business Activities.

Until the expiration or earlier termination of this Agreement, Company agrees to prohibit the use of the Project Parcel for the uses set forth on **Exhibit C** attached hereto.

**Article 6.
JSEB PROGRAM**

6.1 Jacksonville Small and Emerging Businesses (JSEB) Program.

The Company, in further recognition of and consideration for the public funds provided to assist the Company pursuant to this Agreement, hereby acknowledges the importance of affording to small and emerging vendors and contractors the full and reasonable opportunity to provide materials and services ("Opportunity"). Therefore, the Company hereby agrees as follows:

(a) The Company shall obtain from the City's Procurement Division the list of certified Jacksonville Small and Emerging Businesses ("JSEB"), and shall exercise good faith, in accordance with Municipal Ordinance Code Sections 126.608 et seq., to enter into contracts with City certified JSEBs to provide materials or services in an aggregate amount of not less than \$100,000, which amount represents 20% of the City's maximum contribution to the Project with respect to the development activities or operations of the Project over the term of this Agreement.

(b) The Company shall submit a JSEB report regarding the Company's actual use of City certified JSEBs upon Completion of Construction. The form of the report to be used for the purposes of this section is attached hereto as **Exhibit D** (the "JSEB REPORTING FORM").

**Article 7.
REPORTING; SITE VISITS**

7.1 Reporting.

On an annual basis, and prior to March 1 each year this Agreement is in effect, the Company shall submit reports to the OED regarding all activities affecting the implementation of this Agreement, including a narrative summary of progress on the Project. Samples of the general form of this report is attached hereto as **Exhibit E** (the "Annual Survey"); however the City reserves the right to request specific data that may vary from the forms attached. Company shall also submit to the City its notice of ad valorem taxes paid as set forth in Section 4.2 hereof.

The Company's obligation to submit such reports shall continue until the Company has complied with all of the terms of this Agreement concerning the Project and the LSEDF Grant.

Within thirty (30) days following the request of the City, the Company shall provide the City with additional information requested by the City.

7.2 Site Visits.

For so long as City has any payment obligations to Company pursuant to this Agreement, Company shall permit representatives from the City's OED and other designated City personnel, to monitor compliance by Company with the provisions of this Agreement. With prior notice to Company, representatives of City shall have the right to tour the Project and access Company's records and employees related to the Project and this Agreement, during normal business hours, provided, however, that Company shall have the right to have a representative of Company present during any such inspection.

Article 8.
DEFAULTS AND REMEDIES

8.1 General.

A default shall consist of the breach of any covenant, agreement, representation, provision, or warranty contained in (i) this Agreement (including, but not limited to, any failure to meet the reporting requirements described herein), (ii) the documents executed in connection with the Agreement and any other agreement between the City and the Company related to the Project, or (iii) any document provided to the City relating to the Project (collectively, the “Documents”). A default shall also exist if any event occurs or information becomes known which, in the reasonable judgment of the City, makes untrue, incorrect or misleading in any material respect any statement or information contained in any of the documents described in clauses (i) – (iii) above or causes such document to contain an untrue, incorrect or misleading statement of material fact or to omit to state a material fact necessary to make the statements therein, in light of the circumstances under which they were made, not misleading.

If any such default or breach occurs under this Agreement, the City may refuse to pay any portion of the LSEDF Grant and additionally, may at any time or from time to time proceed to protect and enforce all rights available to the City under this Agreement by suit in equity, action at law or by any other appropriate proceeding whether for specific performance of any covenant or agreement contained in this Agreement, or damages, or other relief, or proceed to take any action authorized or permitted under applicable laws or regulations, including, but not limited to, terminating this Agreement. The City shall not act upon a default until it has given the Company written notice of the default and fifteen (15) business days within which to cure the default; provided, however, that the City may withhold any portion of the LSEDF Grant immediately upon the occurrence of a default and throughout any notice or cure period. However, if any default cannot reasonably be cured within the initial fifteen (15) business days, Company shall have a total of forty-five (45) days in which to cure such default, so long as Company has commenced and is diligently proceeding to cure such default within the initial fifteen (15) day period. Notwithstanding the foregoing, Company shall immediately and automatically be in default, and the City shall not be required to give Company any notice or opportunity to cure such default (and thus the City shall immediately be entitled to act upon such default), upon the occurrence of any of the following:

(a) The entry of a decree or order by a court having jurisdiction in the premises adjudging the Company or any guarantor (“Guarantor”) of Company’s obligations hereunder or under the Documents, a bankrupt or insolvent, or approving as properly filed a petition seeking reorganization, arrangement, adjustment or composition of or in respect of the Company or Guarantor under the United States Bankruptcy Code or any other applicable federal or state law, or appointing a receiver, liquidator, custodian, assignee, or sequestrator (or other similar official) of the Company or Guarantor or of any substantial part of its property, or ordering the winding up or liquidation of its affairs, and the continuance of any such decree or order unstayed and in effect for a period of 90 consecutive days; and

(b) The institution by Company or Guarantor of proceedings to be adjudicated a bankrupt or insolvent, or the consent by it to the institution of bankruptcy or insolvency proceedings against it, or the filing by it of a petition or answer or consent seeking reorganization or relief under the United States Bankruptcy Code or any other similar applicable federal or state law, or the consent by it to the filing of any such petition or to the appointment of a receiver, liquidator, custodian, assignee, trustee or sequestrator (or other similar official) of the Company or Guarantor or of any substantial part of its property, or the

making by it of an assignment for the benefit of creditors, or the admission by it in writing of its inability to pay its debts generally as they become due.

8.2 **Specific Defaults.**

Additionally, for any of the specific events of default described in this Section 8.2 below, the parties agree that the City's damages recoverable from the Company shall include, but not be limited to, the following:

(a) In the event reporting requirements are not met in the time period specified in Article 9 of this Agreement, the City will be entitled to withhold the disbursement of the LSEDF Grant.

(b) If, by March 31, 2025, the Company fails to demonstrate Capital Investment of at least \$7,500,000 of private funding in the Project, as determined by the OED in its reasonable discretion, the LSEDF Grant will be terminated and the Company will repay the City the entire amount of the LSEDF Grant that has been previously paid to the Company, if any.

(c) In the event the Project or the Project Parcel is used for any use set forth on **Exhibit C** attached hereto, the Company shall repay the full amount of the LSEDF Grant to the City.

(d) In the event the Company sells, conveys, or otherwise transfers any portion of the Project Parcel (collectively, the "Sale") during the five (5) year period immediately following the date of disbursement of the LSEDF Grant (the "Grant Disbursement Date"), the Company shall pay to the City at the closing of the Sale all or a portion, as applicable, of the LSEDF Grant as follows:

- (i) \$500,000, if the Sale occurs less than one (1) year after the Grant Disbursement Date;
- (ii) \$400,000, if the Sale occurs at least one (1) year but less than two (2) years immediately after the Grant Disbursement Date;
- (iii) \$300,000, if the Sale occurs at least two (2) years but less than three (3) years immediately after the Grant Disbursement Date;
- (iv) \$200,000, if the Sale occurs at least three (3) years but less than four (4) years immediately after the Grant Disbursement Date; or
- (v) \$100,000, if the Sale occurs at least four (4) years but less than five (5) years immediately after the Grant Disbursement Date.

The maximum combined repayment due under this Section 8.2 shall not exceed the total amount of the LSEDF Grant actually paid to the Company under this Agreement.

Article 9.
ANTI-SPECULATION AND ASSIGNMENT PROVISIONS

9.1 Purpose.

The Company represents and agrees that its undertakings pursuant to this Agreement are for the purpose of developing the Project Parcel pursuant to this Agreement, and not for speculation in land holding. The Company further recognizes, in view of the importance of the development of the Project Parcel to the general health and welfare of the City and that the qualifications, financial strength and identity of the principal shareholders and executive officers of the Company are of particular concern to the City.

9.2 Assignment; Limitation on Conveyance.

The Company agrees that, until the later of (a) substantial completion of the Project, and (b) the payment in full of the LSEDF Grant, it agrees that, without the prior written consent of the City, (i) neither the Company shall not assign, transfer or convey the Project or any portion thereof, (ii) the Company shall not assign, transfer or convey the Project Parcel or any portion thereof, (iii) the Company shall not assign, transfer or convey this Agreement or any provision hereof, and (iv) no controlling interest in the Company shall be assigned, transferred or conveyed. If any such prohibited assignment, transfer or conveyance is made, the obligation of the City to pay any further amounts of the LSEDF Grant under this Agreement shall immediately terminate.

Article 10.
GENERAL PROVISIONS

10.1 Non-liability of City Officials.

No member, official or employee of the City shall be personally liable to the Company or to any Person with whom the Company shall have entered into any contract, or to any other Person, in the event of any default or breach by the City, or for any amount which may become due to the Company or any other Person under the terms of this Agreement.

10.2 Force Majeure.

No party to this Agreement shall be deemed in default hereunder where such a default is based on a delay in performance as a result of war, insurrection, strikes, lockouts, riots, floods, earthquakes, fires, casualty, acts of God, acts of public enemy, epidemic, pandemic, quarantine restrictions, freight embargo, shortage of labor or materials, interruption of utilities service, lack of transportation, severe weather and other acts or failures beyond the control or without the control of any party; provided, however, that the extension of time granted for any delay caused by any of the foregoing shall not exceed the actual period of such delay, and in no event shall any of the foregoing excuse any financial liability of a party.

10.3 Offset.

City shall have the right to offset any amount owed by Company under or in connection with this Agreement against any payments owed by City under this Agreement. Such offsets shall be in addition to any other rights or remedies available under this Agreement and applicable law.

10.4 **Notices.**

All notices to be given hereunder shall be in writing and personally delivered or sent by registered or certified mail, return receipt requested, or delivered by an air courier service utilizing return receipts to the parties at the following addresses (or to such other or further addresses as the parties may designate by like notice similarly sent) and such notices shall be deemed given and received for all purposes under this Agreement three (3) business days after the date same are deposited in the United States mail if sent by registered or certified mail, or the date actually received if sent by personal delivery or air courier service, except that notice of a change in address shall be effective only upon receipt.

(a) the City:

Economic Development Officer
Office of Economic Development
117 West Duval Street, Suite 275
Jacksonville, Florida 32202

With a copy to:

City of Jacksonville
Office of the General Counsel
City Hall-St. James Building
117 West Duval Street, Suite 480
Jacksonville, Florida 32202

(b) The Company:

Kappa Alpha Psi Jacksonville Foundation, Incorporated
Attn: Lawrence E. Dennis
3717 West Moncrief Road
Jacksonville, Florida 32209
Attn: _____

10.5 **Time.**

Time is of the essence in the performance by any party of its obligations hereunder.

10.6 **Entire Agreement.**

This Agreement constitutes the entire understanding and agreement between the parties and supersedes all prior negotiations and agreements between them with respect to all or any of the matters contained herein.

10.7 **Amendment.**

This Agreement may be amended by the parties hereto only upon the execution of a written amendment or modification signed by the parties. Notwithstanding the foregoing, the Economic

Development Officer of the OED is authorized on behalf of the City to approve, in his or her sole discretion, any “technical” changes to this Agreement. Such “technical” changes include without limitation non-material modifications to legal descriptions and surveys, ingress and egress, easements and rights of way, performance schedules (provided that no performance schedule may be extended for more than one year without Council approval), and design standards, as long as such modifications do not involve any increased financial obligation or liability to the City. Notwithstanding any other provision in this Agreement to the contrary, the Extension Option authorized in Section 3.1 hereof and the authority of the Economic Development Officer of the OED to extend the Performance Schedule as authorized by this Section shall not exceed one (1) year in the aggregate.

10.8 **Waivers.**

Except as otherwise provided herein, all waivers, amendments or modifications of this Agreement must be in writing and signed by all parties. Any failures or delays by any party in insisting upon strict performance of the provisions hereof or asserting any of its rights and remedies as to any default shall not constitute a waiver of any other default or of any such rights or remedies. Except with respect to rights and remedies expressly declared to be exclusive in this Agreement, the rights and remedies of the parties hereto are cumulative, and the exercise by any party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by any other party.

10.9 **Indemnification.**

Company shall indemnify, hold harmless and defend the City from and against, without limitation, any loss, claim, suit, action, damage, injury, liability, fine, penalty, cost, and expense of whatsoever kind or nature (including without limitation court, investigation and defense costs and reasonable expert and attorneys’ fees and costs) related to any suits and actions of any kind brought against the City or other damages or losses incurred or sustained, or claimed to have been incurred or sustained, by any person or persons arising out of or in connection with: (i) any breach of any representation or warranty of Company contained or provided in connection with this Agreement; (ii) any breach or violation of any covenant or other obligation or duty of Company under this Agreement or under applicable law; (iii) any negligent act, error or omission, recklessness or intentionally wrongful conduct on the part of Company or those under its control that causes injury (whether mental or corporeal) to persons (including death) or damage to property, whether arising out of or incidental to Company’s performance under this Agreement or relating to the Project, except to the extent caused by the sole negligence of the City. Nothing contained in this paragraph shall be construed as a waiver, expansion or alteration of the City’s sovereign immunity beyond the limitations stated in Section 768.28, Florida Statutes.

This indemnification shall survive the expiration or termination (for any reason) of this Agreement and remain in full force and effect. The scope and terms of the indemnity obligations herein described are separate and apart from, and shall not be limited by any insurance provided pursuant to this Agreement or otherwise. The term “City” as used in this Section 10.9 shall include all City’s members, officers, officials, employees and agents.

10.10 **Severability.**

The invalidity, illegality or unenforceability of any one or more of the provisions of this Agreement shall not affect any other provisions of this Agreement, but this Agreement will be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

10.11 **Compliance with State and Other Laws.**

In the performance of this Agreement, the Company must comply with any and all applicable federal, state and local laws, rules and regulations, as the same exist and may be amended from time to time. Such laws, rules and regulations include, but are not limited to, Chapter 119, Florida Statutes (the Public Records Act) and Section 286.011, Florida Statutes, (the Florida Sunshine Law). If any of the obligations of this Agreement are to be performed by a subcontractor, the provisions of this Section shall be incorporated into and become a part of the subcontract.

10.12 **Non-Discrimination Provisions.**

In conformity with the requirements of Section 126.404, *Ordinance Code*, the Company represents that it has adopted and will maintain a policy of non-discrimination against employees or applicants for employment on account of race, religion, sex, color, national origin, age or handicap, in all areas of employment relations, throughout the term of this Agreement. The Company agrees that, on written request, it will permit reasonable access to its records of employment, employment advertisement, application forms and other pertinent data and records, by the Executive Director of the Human Rights Commission, or successor agency or commission, for the purpose of investigation to ascertain compliance with the nondiscrimination provisions of this Chapter 126, Part 4 of the *Ordinance Code*, *provided however*, that the Company shall not be required to produce for inspection records covering periods of time more than one (1) year prior to the day and year first above written. The Company agrees that, if any of its obligations to be provided pursuant to this Agreement are to be performed by a subcontractor, the provisions of this Section 10.12 shall be incorporated into and become a part of the subcontract.

10.13 **Contingent Fees Prohibited.**

In conformity with Section 126.306, *Ordinance Code*, the Company warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the Company, to solicit or secure this Agreement, and that it has not paid or agreed to pay any person, company, corporation, individual or firm, other than a bona fide employee working solely for the Company, any fee, commission, percentage, gift, or any other consideration, contingent upon or resulting from the award or making of this Agreement. For the breach or violation of these provisions, the City shall have the right to terminate this Agreement without liability and, at its discretion, to deduct from the contract price, or otherwise recover, the full amount of such fee, commission, percentage, gift or consideration.

10.14 **Ethics.**

The Company represents that it has reviewed the provisions of the Jacksonville Ethics Code, as codified in Chapter 602, *Ordinance Code*, and the provisions of the Jacksonville Purchasing Code, as codified in Chapter 126, *Ordinance Code*.

10.15 **Conflict of Interest.**

The parties will follow the provisions of Section 126.110, *Ordinance Code* with respect to required disclosures by public officials who have or acquire a financial interest in a bid or contract with the City, to the extent the parties are aware of the same.

10.16 **Public Entity Crimes Notice.**

In conformity with the requirements of Section 126.104, *Ordinance Code* and Section 287.133, Florida Statutes, the Parties agree as follows:

The parties are aware and understand that a person or affiliate who has been placed on the State of Florida Convicted Vendor List, following a conviction for a public entity crime, may not submit a bid on a contract to provide any goods or services to a public entity; may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work; may not submit bids on leases of real property to a public entity; may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity; and may not transact business with any public entity, in excess of \$35,000.00, for a period of thirty-six (36) months from the date of being placed on the Convicted Vendor List.

10.17 **Survival.**

Any obligations and duties that by their nature extend beyond the expiration or termination of this Agreement shall survive the expiration or termination of this Agreement and remain in effect. Without limiting the foregoing, all obligations for the payment of fees or other sums accruing up to the expiration or termination of this Agreement and all provisions relating to the City's right to conduct an audit shall survive the expiration or termination of this Agreement.

10.18 **Incorporation by Reference.**

All exhibits and other attachments to this Agreement that are referenced in this Agreement are by this reference made a part hereof and are incorporated herein.

10.19 **Order of Precedence.**

In the event of any conflict between or among the provisions of this Agreement and those of any exhibit attached hereto or of any amendment, the priority, in decreasing order of precedence shall be: 1) any fully executed amendment; 2) provisions in this Agreement; and 3) exhibits to this Agreement.

10.20 **Counterparts.**

This Agreement may be executed in several counterparts, each of which shall be deemed an original, and all of such counterparts together shall constitute one and the same instrument.

10.21 **Independent Contractor.**

In the performance of this Agreement, the Company will be acting in the capacity of an independent contractor and not as an agent, employee, partner, joint venturer or association of the City. The Company and its employees or agents shall be solely responsible for the means, method, technique, sequences and procedures utilized by the Company in the performance of this Agreement.

10.22 Retention of Records/Audit

The Company agrees:

(a) To establish and maintain books, records and documents (including electronic storage media) sufficient to reflect all income and expenditures of funds provided by the City under this Agreement.

(b) To retain all client records, financial records, supporting documents, statistical records, and any other documents (including electronic storage media) pertinent to this Agreement for a period of six (6) years after completion of the date of final payment by the City under this Agreement, including auditable records pertaining to jobs filled by third-party employers. If an audit has been initiated and audit findings have not been resolved at the end of six (6) years, the records shall be retained until resolution of the audit findings or any litigation which may be based on the terms of this Agreement, at no additional cost to the City.

(c) Upon demand, at no additional cost to the City, to facilitate the duplication and transfer of any records or documents during the required retention period.

(d) To assure that these records shall be subject at all reasonable times to inspection, review, copying, or audit by personnel duly authorized by the City, including but not limited to the City Council auditors.

(e) At all reasonable times for as long as records are maintained, to allow persons duly authorized by the City, including but not limited to the City Council auditors, full access to and the right to examine any of the Company's contracts and related records and documents, regardless of the form in which kept.

(f) To ensure that all related party transactions are disclosed to the City.

(g) To include the aforementioned audit, inspections, investigations and record keeping requirements in all subcontracts and assignments of this Agreement.

(h) To permit persons duly authorized by the City, including but not limited to the City Council auditors, to inspect and copy any records, papers, documents, facilities, goods and services of the Company which are relevant to this Agreement, and to interview any employees and subcontractor employees of the Company to assure the City of the satisfactory performance of the terms and conditions of this Agreement. Following such review, the City will deliver to the Company a written report of its findings and request for development by the Company of a corrective action plan where appropriate. The Company hereby agrees to timely correct all deficiencies identified in the corrective action plan.

(i) If the result of any audit by the City establishes that the number of New Jobs or amount of private capital investment has been overstated by five percent (5%) or more, the entire expense of the audit shall be borne by the Company.

(j) Additional monies due as a result of any audit or annual reconciliation shall be paid within thirty (30) days of date of the City's invoice.

(k) Should the annual reconciliation or any audit reveal that the Company has overstated the number of New Jobs or amount of private Capital Investment, and the Company does not make restitution within thirty (30) days from the date of receipt of written notice from the City, then, in addition to any other remedies available to the City, the City may terminate this Agreement, solely at its option, by written notice to the Company.

10.23 **Non-merger.**

None of the terms, covenants, agreements or conditions set forth in this Agreement shall be deemed to be merged with any deed conveying title to the Project Parcel.

10.24 **Exemption of City.**

Neither this Agreement nor the obligations imposed upon the City hereunder shall be or constitute an indebtedness of the City within the meaning of any constitutional, statutory or charter provisions requiring the City to levy ad valorem taxes nor a lien upon any properties of the City. Payment or disbursement by the City of any loan or grant amount hereunder is subject to the availability of lawfully appropriated funds. If funds are not available pursuant to a lawful appropriation thereof by the City Council, this Agreement shall be void and the City shall have no further obligations hereunder.

10.25 **Parties to Agreement; Successors and Assigns.**

This is an agreement solely between the City and Company. The execution and delivery hereof shall not be deemed to confer any rights or privileges on any person not a party hereto. This Agreement shall be binding upon Company and Company's successors and assigns, and shall inure to the benefit of the City and its successors and assigns. However, Company shall not assign, transfer or encumber its rights or obligations hereunder or under any document executed in connection herewith, without the prior written consent of the City, which consent may be withheld in the sole discretion of the City.

10.26 **Venue; Applicable Law.**

The rights, obligations and remedies of the parties specified under this Agreement shall be interpreted and governed in all respects by the laws of the State of Florida. All legal actions arising out of or connected with this Agreement must be instituted in the Circuit Court of Duval County, Florida, or in the Federal District Court for the Middle District of Florida, Jacksonville Division. The laws of the State of Florida shall govern the interpretation and enforcement of this Agreement. Each party shall be responsible for the payment of its own attorneys' fees and costs incurred in connection with the enforcement of the terms of this Agreement.

10.27 **Civil Rights.**

The Company agrees to comply with all of the terms and requirements of the Civil Rights Act of 1964, as amended, and the Civil Rights Act of 1968, as amended, and the antidiscrimination provisions of Chapter 126, Part 4, of the City Ordinance Code, and further agrees that in its operation under this Agreement it will not discriminate against anyone on the basis of race, color, age, disability, sex or national origin.

10.28 **Further Assurances.**

Company will, on request of the City,

(a) promptly correct any defect, error or omission herein or in any document executed in connection herewith (collectively the "Project Documents");

(b) execute, acknowledge, deliver, procure, record or file such further instruments and do such further acts deemed necessary, desirable or proper by the City to carry out the purposes of the Project Documents and to identify and subject to the liens of the Project Documents any property intended to be covered thereby, including any renewals, additions, substitutions replacements, or appurtenances to the subject property;

(c) execute, acknowledge, deliver, procure, file or record any documents or instruments deemed necessary, desirable or proper by the City to protect the liens or the security interest under the Project Documents against the rights or interests of third persons; and

(d) provide such certificates, documents, reports, information, affidavits and other instruments and do such further acts deemed necessary, desirable or proper by the City to carry out the purposes of the Project Documents and this Agreement.

10.29 **Exhibits.**

In the event of a conflict between any provisions of this Agreement and any exhibit attached to or referenced in this Agreement, the provisions of this Agreement shall govern.

10.30 **Construction.**

All parties acknowledge that they have had meaningful input into the terms and conditions contained in this Agreement. Company further acknowledges that it has had ample time to review this Agreement and related documents with counsel of its choice. Any doubtful or ambiguous provisions contained herein shall not be construed against the party who drafted the Agreement. Captions and headings in this Agreement are for convenience of reference only and shall not affect the construction of this Agreement.

10.31 **Further Authorizations.**

The parties acknowledge and agree that the Mayor of the City, or his designee, and the City's Corporation Secretary, or their respective designees, are hereby authorized to execute any and all other contracts and documents and otherwise take all necessary action in connection with this Agreement and the Resolution.

10.32 **Attorney's Fees.**

Each party shall be responsible for its own attorneys' fees and costs in connection with any legal action related to this Agreement.

[Signatures appear on the following pages.]

IN WITNESS WHEREOF, this Agreement is executed the day and year above written.

ATTEST:

CITY OF JACKSONVILLE

By: _____
James R. McCain, Jr.
Corporation Secretary

By: _____
Lenny Curry, Mayor

WITNESS:

**KAPPA ALPHA PSI JACKSONVILLE
FOUNDATION, INCORPORATED**, a Florida
not-for-profit corporation

Print Name: _____

By: _____

Print Name: _____

Name: _____

Its: _____

Form Approved:

Office of the General Counsel

GC-#1544230-v3-EDA - _Kappa_Alpha_Psi_Jacksonville_Foundation_Incorporated.docx

Encumbrance and funding information for internal City use:

Account..... _____

Amount.....\$ _____

In accordance with Section 24.103(e), of the *Ordinance Code* of the City of Jacksonville, I do hereby certify that there is an unexpended, unencumbered and unimpounded balance in the appropriation sufficient to cover the foregoing agreement; *provided however*, this certification is not nor shall it be interpreted as an encumbrance of funding under this Contract. Actual encumbrance[s] shall be made by subsequent check request[s], as specified in said Contract.

Director of Finance
City Contract # _____

Contract Encumbrance Data Sheet follows immediately.

LIST OF EXHIBITS

Exhibit A	Description of the Project Parcel
Exhibit B	Improvements
Exhibit C	Ineligible Business Activities
Exhibit D	JSEB Reporting Form
Exhibit E	Annual Survey

Exhibit A
Description of Project Parcel

The Project Parcel is located generally at 3717 Moncrief Road, Jacksonville, Florida 32209, Duval County Real Estate Number 027644-0050.

Exhibit B Improvements

Company proposes to construct a community achievement center and healthcare facility on the Project Parcel, including all demolition, site improvements, building construction, utility installation, and other improvements necessary to support the facility.

Exhibit C
Ineligible Business Activities

Company agrees to prohibit the use of the Project Parcel for the following uses for the term of the Agreement:

- Nightclubs
- Bars
- Tattoo parlors
- Body piercing shops
- Adult entertainment
- Adult gaming rooms
- Pawn shops
- Check Cashing establishments
- Pay Day Loans
- Bikini bars
- Used car lots

**EXHIBIT D
JSEB REPORTING FORM**

Business:

Goal: \$

Contact: _____

Date: _____

Date Contract Awarded	Contractor Name	Ethnicity (1)	Scope of Work (2)	Contract Amount	Amount Paid to Date	% of Work Completed to Date
		(1) AA – African American	(2) Examples: Masonry			
		HANA – Hispanic, Asian, Native American	Painting			
		WBE – Women	Site Clearing			
		C - Caucasian	Electrical			

EXHIBIT E
Annual Survey 2023

Please complete the form below as it relates to the project for which you received City or State assistance. Should you have any questions, please call (904) 255-5447 or email OEDFinance@coj.net. Send completed form to: City of Jacksonville, Office of Economic Development, Finance and Compliance, 117 West Duval Street, Suite 275, Jacksonville, FL 32202, Fax: (904) 630-1019, Email: OEDFinance@COJ.NET

Company name: _____

Mailing Address: _____

Primary Contact Name: _____

Primary Contact Title: _____

Phone: _____ Email: _____

Signature: _____ Reporting Date: _____

As of 12/31/2023:

I. EMPLOYMENT INFORMATION

Number of Jobs at Project Site	[1]
Number of Jobs at Project Site before Project	[2]
Net New Jobs (subtract line [2] from line [1])	
Average Wage of New Employees (excluding benefits)	\$
Estimated cost of benefits as a percentage of Average Wage	%

II. CAPITAL INVESTMENT INFORMATION

Project Land Costs	[3] \$
Project Structure Costs	[4] \$
Project Equipment Costs	[5] \$
Other Costs	[6] \$
Total Project Costs (sum [3] through [6])	\$

III. ASSESSED PROPERTY VALUE

Assessed Value of Property on 2023 Duval County Property Tax Bill:	
--	--

Real Property	[7] \$
Personal Property	[8] \$
Total of [7] & [8]	\$
Amount of Taxes Paid: \$	Date Taxes Paid:

IV. PLEASE PROVIDE A BRIEF DESCRIPTION OF THE STATUS OF THE PROJECT INCLUDING, WHERE APPLICABLE, AN OVERVIEW OF THE TYPE OF JOBS CREATED.

V. PLEASE PROVIDE INFORMATION REGARDING AND COMMUNITY SERVICE ACTIVITIES IN WHICH YOU OR YOUR EMPLOYEES HAVE PARTICIPATED THIS PAST YEAR.
