

## CARES ACT SUBRECIPIENT AGREEMENT

THIS CARES ACT SUBRECIPIENT AGREEMENT (the “**Agreement**”) is made and entered into on this \_\_\_ day of \_\_\_\_\_, 2021 (the “**Effective Date**”), between the CITY OF JACKSONVILLE, a consolidated political subdivision and municipal corporation existing under the laws of the State of Florida (the “**City**”), and the CULTURAL COUNCIL OF GREATER JACKSONVILLE, INC., a Florida not-for-profit corporation (the “**Recipient**”).

### RECITALS:

WHEREAS, pursuant to City Ordinances 2020-235-E and 2020-378-E, the City appropriated approximately \$167,120,186.00 of Coronavirus Aid, Relief and Economic Security (“**CARES**”) Act grant funding to fund various grants and other programs designed to provide economic relief and assistance to individuals and businesses in Duval County, Florida that suffered and continue to suffer economic losses and business interruption due to COVID-19; and

WHEREAS, pursuant to Ordinance 2021-354-E (the “**Appropriation Ordinance**”), the City reappropriated \$19,900,000.00 in unexpended CARES Act grant funds to provide economic relief and assistance to various businesses and programs as set forth in the Appropriation Ordinance; and

WHEREAS, pursuant to the Appropriation Ordinance, the Jacksonville City Council set aside \$800,000.00 of the reappropriated CARES Act funds (the “**City Funds**”) to be disbursed by Recipient to non-profit arts and cultural organizations in Duval County, Florida funded through Recipient’s FY 2020-2021 Cultural Service Grant Program to cover qualifying expenses and economic losses from business interruption due to COVID-19 in accordance with the CARES Act and the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the mutual covenants and promises contained in this Agreement and other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the parties agree as follows:

### 1. INCORPORATION OF RECITALS; FEDERAL GRANT ACKNOWLEDGEMENT

The above-stated recitals are true, accurate and correct and are incorporated herein by this reference. Recipient acknowledges that the funds provided by the City pursuant to this Agreement are federal funds, subject to the terms and conditions contained in the CARES Act, as may be amended, and any rules or guidance from the U.S. Department of Treasury applicable to distribution or expenditure of the City Funds (collectively, the “**CARES Act Guidelines**”).

### 2. EFFECTIVE DATE/AGREEMENT TERM

This Agreement is effective as of the Effective Date and shall continue in full force and effect as to all its provisions, terms and conditions until December 15, 2021 (the “**Term**”) unless terminated earlier as provided in this Agreement. Any City Funds not disbursed or expended by Recipient or

any subrecipient by November 30, 2021 shall be returned to the City with the final financial report described in **Exhibit A**.

### **3. PERFORMANCE OF SERVICES**

The City hereby engages Recipient to oversee and administer distribution of City Funds in accordance with the CARES Act, the Appropriation Ordinance and this Agreement as outlined in the Scope of Services and Budget attached hereto as **Exhibit A** (collectively, the “**Services**”). Recipient shall only disburse City Funds to non-profit arts and cultural organizations in Duval County funded in FY 2020-2021 through the Recipient’s Cultural Service Grant Program to cover qualifying expenses and economic losses from business interruption due to COVID-19 in accordance with the CARES Act, CARES Act Guidelines, and other applicable federal, state and local laws. The Services shall be performed by Recipient subject to the terms of the CARES Act, the Appropriation Ordinance, the CARES Act Guidelines, if any, and this Agreement.

### **4. PAYMENT**

- A. The City agrees to pay Recipient a total amount not to exceed **Eight Hundred Thousand and 00/100 Dollars (\$800,000.00)** for distribution to non-profit arts and cultural organizations in Duval County, Florida funded through the Cultural Service Grant Program to cover qualifying expenses and economic losses from business interruption due to COVID-19 in accordance with the CARES Act, and to cover Recipient’s administrative costs as outlined in **Exhibit A**. Pursuant to Section 106.431, City of Jacksonville *Ordinance Code*, the total amount of City Funds provided pursuant to this Agreement shall constitute the City’s maximum indebtedness pursuant to this Agreement and the only obligation of the City hereunder. All of the City’s obligations under this Agreement are contingent upon the availability of lawfully appropriated funds for the Services and this Agreement.
- B. Payment of City Funds to Recipient for subsequent disbursement to any subrecipient will only be made upon the City’s receipt and approval of a disbursement request. Each disbursement request shall contain or be accompanied by documentation of award of City Funds made to any subrecipient(s), to include sufficient information as may reasonably be necessary for the City to confirm the City Funds will be disbursed to qualified non-profit art and cultural organizations in Duval County as provided in this Agreement, along with documentation of the qualifying expenses of each subrecipient arising from economic losses and business interruption expenses stemming from COVID-19, in accordance with the CARES Act and the CARES Act Guidelines. The City will disburse the City Funds to Recipient disbursement to subrecipients for qualified expenses in accordance with the CARES Act within five (5) days after the date of receipt of an approved disbursement request.
- C. Payment of City Funds to Recipient to cover Recipient’s administrative costs for the Services will only be made upon the City’s receipt and approval of a payment request/invoice for administrative costs and expenses. Each payment request/invoice shall contain or be accompanied by any documentation or information as may reasonably be necessary for the City to determine the funds have been spent for the Services in compliance with the terms of this Agreement, the Appropriation Ordinance, the CARES Act, and the CARES Act Guidelines

and shall also indicate the amount of City Funds previously disbursed to cover Recipient's administrative costs and the amount of funds remaining for administrative costs. The City will pay Recipient for Services rendered in accordance with this Agreement, the CARES Act, the CARES Act Guidelines and the Appropriation Ordinance within fifteen (15) days after the date of receipt of an approved payment request/invoice. The City will not pay service charges, interest or late fees unless required by law.

- D. Pursuant to Title 2 U.S. Code of Federal Regulations (CFR) Part 200, (Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards), Recipient shall deposit the City Funds in a separate secured bank account to ensure expenditures and disbursements of the City Funds can be accurately and adequately determined by reference to Recipient's book of accounts.

## 5. GENERAL CONDITIONS

### A. Recipient agrees to do as follows:

1. To accept the City Funds as appropriated in accordance with the terms of this Agreement and all federal and local laws governing the City Funds, including but not limited to, the CARES Act, the Appropriation Ordinance, and the CARES Act Guidelines (collectively, the "**Governing Laws**").
2. To abide by Chapter 119, Florida Statutes, as amended from time to time, a copy of which can be obtained online at <http://www.leg.state.fl.us/Statutes/>, which by this reference is made a part of this Agreement. All documents not expressly exempt from the Public Records Act relative to this Agreement and the City Funds are considered to be public records as defined in said Chapter 119, Florida Statutes; and
3. To obtain any permits and licenses, as may be required, from the State of Florida and the City of Jacksonville and abide by all applicable state laws and local ordinances, as from time to time amended; and
4. To return to the City within fifteen (15) days of written demand all City Funds paid to the Recipient under the terms of this Agreement upon the City finding that the Recipient or any subrecipient has violated the terms of the Governing Laws, including, but not limited to, making expenditures that are specifically disallowed by this Agreement or the Governing Laws. Additionally, the Recipient shall promptly return to the City any City Funds unspent and unencumbered upon the expiration of this Agreement to enable the City to promptly return said funds to the U.S. Department of Treasury pursuant to the terms of the CARES Act.
5. The Recipient shall not utilize the City Funds, and shall not allow any subrecipient to utilize the City Funds, for any of the following categories of expenditures:
  - a) contributions to a contingency reserve or a similar provision for unforeseen events.
  - b) costs of amusements, social activities and incidental costs relating thereto, such as

meals, beverages, lodgings, rentals, transportation and gratuities.

- c) costs resulting from violations of or failure to comply with federal, state and local laws and regulations.
  - d) the salaries and costs of the office of the governor of a state or the chief executive of a political subdivision (as these costs are considered a cost of general state or local government).
  - e) the salaries and other costs of the Legislature or similar local governmental bodies such as City Councils whether incurred for purposes of legislation or executive direction.
  - f) Non-cash Expenses as defined in Section 118.104, *Ordinance Code*.
  - g) Costs of any audits required under this Agreement.
6. Recipient consents to, and shall require any and all subrecipients of City Funds to consent to:
- a) Such audits of the Recipient's or subrecipient's financial affairs by the City, the City Council Auditor's Office, the Office of Inspector General, the State of Florida, or the United States Government may require as they relate to the City Funds; and
  - b) Producing all documents required by the City, the City Council Auditor's Office, the City's Ethics Office or the City's Office of Inspector General. The Recipient agrees, and shall require its subrecipients to agree, to give the City complete and unfettered access to all records regarding City Funds provided under this Agreement, at all times, during regular business hours, to ensure the City Funds are properly spent; and
  - c) By no later than December 15, 2021, the Recipient shall furnish to the City a final report of expenditures of all City Funds by the Recipient and all subrecipients of City Funds in such form as the City's Finance and Administration Department shall prescribe. This report shall be certified as to its accuracy by the Recipient's Financial Officer/Treasurer and by the respective subrecipients' Financial Officer/Treasurer, as applicable. This report shall include the time period from the Effective Date of this Agreement until all of the City Funds have been expended by the Recipient and subrecipients. The reporting obligation set forth in this paragraph shall survive the expiration or earlier termination of this Agreement.
7. Recipient shall adhere to the requirements on the Scope of Services on **Exhibit A** regarding maintaining separate bank accounts for the City Funds.
8. Recipient's violation of any of the provisions contained in this Agreement, including the failure to adhere to the reporting requirements of this Agreement, the CARES Act, or any applicable code or statutory provision, whether or not incorporated into this Agreement, shall be a material breach and may result in immediate termination of this Agreement and the Recipient's return of all City Funds granted by this Agreement.

- B. Each party will designate a Contract Manager during the Term whose responsibility shall be to oversee the party's performance of its duties and obligations pursuant to the terms of this Agreement. As of the Effective Date, the City's Contract Manager is Stephanie Burch, Deputy Chief Administrative Officer, Jacksonville, FL 32202, e-mail: [stephanieb@coj.net](mailto:stephanieb@coj.net); and the Recipient's Contract Manager is Diana Donovan, Executive Director, 40 East Adams Street, Suite 140, Jacksonville, Florida 32202, e-mail: \_\_\_\_\_. Each party shall provide prompt written notice to the other party of any changes to the party's Contract Manager or his or her contact information.

## **6. RECORDS**

- A. By the acceptance of the City Funds, Recipient agrees, and Recipient shall require all subrecipient's receiving City Funds to agree, to adhere to all provisions of the Florida Public Records Law (Chapter 119, Florida Statutes), with respect to the receipt, expenditure, and use of public funds from the City. Therefore, except to the extent prohibited by the Health Insurance Portability and Accountability Act of 1996 (HIPAA), a copy of which can be obtained online at <http://www.cms.gov/HIPAAGenInfo/>, which regulations are incorporated herein by reference, as applicable, all the financial, business, and membership records of the person, corporation, foundation, trust, association, group, or organization, relative to this Agreement and the Services shall be public records and subject to the provisions of the Public Records Law. Recipient's failure to comply with this requirement will constitute a breach of this Agreement and may result in cancellation of this Agreement and refund to City of the City Funds.
- B. Recipient and all subrecipients receiving City Funds shall maintain financial and accounting records and conduct transactions in accordance with generally accepted accounting principles, Florida Statutes, and the requirements of the City's *Ordinance Code*. These financial records shall be maintained in a manner permitting positive and ready identification of the City Funds received by Recipient and any subrecipient from the time such funds are actually received by Recipient or subrecipient until the time they are actually expended or disbursed by Recipient and any subrecipient according to the terms of this Agreement.
- C. In addition to other requirements specified in this Agreement, Office of Management and Budget (OMB) Circulars, including A-102, A-87, A-110, A-122, A-133 and A-21 and Title 2 U.S. Code of Federal Regulations (CFR) Part 200, Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards (Uniform Guidance), may be used as a guide concerning the records to be maintained. The aforesaid records shall be made available for audit, copying or inspection purposes at any time during normal business hours and as often as the City or the City's Council Auditor's Office may deem necessary.
- D. Recipient, and any subrecipient receiving City Funds, shall retain for inspection all of its records and supporting documentation applicable to this Agreement for five (5) years after disbursement of the City Funds to the Recipient and any subrecipient.
- E. All documents, data and other records received by the City in connection with this Agreement are public records and available for public inspection unless specifically exempt by law. Recipient shall allow public access to all documents, data and other records made or received by Recipient in connection with this Agreement unless the records are exempt from Section

249(a) of Article I of the Florida Constitution or subsection 119.07(1), Florida Statutes. The City may unilaterally terminate this Agreement if Recipient refuses to allow public access as required under this Agreement. This Section 6.E. shall apply to any subrecipient receiving City Funds.

If Recipient believes that any portion of any documents, data or other records submitted to the City in connection with this Agreement are exempt from disclosure under Chapter 119, Florida Statutes, the Florida Constitution and related laws (“**Florida’s Public Records Laws**”), Recipient must: (1) clearly segregate and mark the specific sections of the document, data and records as “Confidential”, (2) cite the specific Florida Statute or other legal authority for the asserted exemption, and (3) provide the City with a separate redacted copy of the documents, data, or records (the “**Redacted Copy**”). The Redacted Copy shall contain the City’s contract name and number and shall be clearly titled “Redacted Copy”. Recipient should only redact those portions of records that Recipient claims are specifically exempt from disclosure under Florida’s Public Records Laws. If Recipient fails to submit a Redacted Copy of documents, data, or other records it claims is confidential, the City is authorized to produce all documents, data, and other records submitted to the City in answer to a public records request for these records.

In the event of a public records or other disclosure request under Florida’s Public Records Laws or other authority to which Recipient’s documents, data or records are responsive, the City will provide the Redacted Copy to the requestor. If a requestor asserts a right to any redacted information, the City will notify Recipient that such an assertion has been made. It is then Recipient’s responsibility to respond to the requestor to assert that the information in questions is exempt from disclosure under applicable law. If the City becomes subject to a demand for discovery or disclosure of the redacted information under legal process, the City shall give Recipient prompt notice of the demand prior to releasing the redacted information (unless otherwise prohibited by applicable law). Recipient shall be responsible for defending its determination that the redacted portions of the information are not subject to disclosure.

In the event Recipient claims an exemption under this Section, it shall protect, defend, and indemnify the City from and against all claims, demands, actions, suits, damages, liabilities, losses, settlements, judgments, costs, and expenses (including but not limited to reasonable attorney’s fees and costs) arising from or relating to the assertion that all or any portion of its information is not subject to disclosure.

- F. In accordance with Section 119.0701, Florida Statutes, Recipient shall, and shall require any subrecipient receiving City Funds to:
1. Keep and maintain public records required by the City to perform the Services under this Agreement; and
  2. Upon request from the City’s custodian of public records and in accordance with applicable patient privacy and confidentiality laws, provide the City with a copy of the requested records or allow records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided for in Chapter 119, Florida Statutes, or as otherwise provided by law; and

3. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the Agreement Term and following completion of this Agreement if Recipient does not transfer the records to the City; and
4. Upon completion of this Agreement, keep and maintain public records required by the City to perform the Services. Upon request by the City, Recipient may also transfer public records to the City in accordance with applicable laws. If Recipient transfers all public records to the City upon completion of this Agreement, Recipient shall destroy any duplicate public records in its possession that are exempt or confidential and exempt from public records disclosure requirements. If Recipient keeps and maintains public records upon completion of this Agreement, Recipient shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the City upon request from the City's custodian of public records in a format that is compatible with the City's information technology systems.

The above requirements apply to Recipient to the extent it is a "Contractor" as defined in Section, 119.0701, Florida Statutes.

**IF THE RECIPIENT HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO ITS DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, IT MAY CONTACT THE CITY'S CUSTODIAN OF PUBLIC RECORDS AT (904) 630-7678; REQUEST@COJ.NET; CITY OF JACKSONVILLE, PUBLIC RECORDS REQUEST, 214 N. HOGAN STREET, SUITE 1180, JACKSONVILLE, FLORIDA 32202.**

## **7. AUDIT**

- A. Recipient shall adhere to the audit requirements set forth on **Exhibit B** attached hereto.
- B. Upon the City's request, Recipient shall obtain and provide to the City a copy of the latest available audited financial statements of the Recipient. Upon the City's request, or if Recipient expends more than \$750,000.00 of Federal grant expenditures (inclusive of any Federal funds disbursed to Recipient apart from those authorized by this Agreement) during its fiscal year, Recipient shall obtain and provide to the City an original independent single audit conducted in accordance with both GAAS and Government Auditing Standards ("GAS") issued by the Comptroller General of the United States; and Title 2 U.S. Code of Federal Regulations (CFR) Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (Uniform Guidance), of its financial affairs for its fiscal year ending within the current City fiscal year. Such report shall be made by an independent certified public accountant. If requested, such report shall be due within 120 days of the close of Recipient's fiscal year. This paragraph shall survive the expiration or earlier termination of this Agreement for a period of five (5) years from the date of expiration or termination.

## **8. BREACH OF CONTRACT/TERMINATION**

- A. The occurrence of any one or more of the following events prior to the expiration of the term of this Agreement shall constitute an event of default under the provisions of this Agreement:
- i. failure to perform or observe any material term, agreement, covenant or condition of this Agreement, which default continues for fifteen (15) days after written notice thereof (unless a shorter period is set forth elsewhere in this Agreement);
  - ii. a violation of any applicable federal, state or local law, rule, regulation or policy with respect to the subject matter of this Agreement;
  - iii. if any representation or warranty contained in this Agreement shall be false or misleading in any material respect;
  - iv. the application by Recipient for, or consent to, the appointment of a receiver, trustee, liquidator or custodian (or similar official) of its or all or a substantial part of its assets; or if any party shall be unable or admit in writing its inability to pay its debts as they mature, make a general assignment for the benefit of creditors, be adjudicated as bankrupt or insolvent, file a voluntary petition in bankruptcy or a petition or answer seeking reorganization or any arrangement with creditors; or agrees to take advantage of any insolvency law, file an answer admitting the material allegations of a petition filed against it in any bankruptcy, reorganization or insolvency proceeding; or if any corporate action shall be taken by it for any purpose of effecting any of the foregoing; or if any order, judgment or decree shall be entered by a court of competent jurisdiction approving a petition seeking reorganization or appointing a receiver, trustee, liquidator or custodian (or other similar official) of any party to this Agreement or of all or a substantial part of its assets, and such other judgment or decree shall continue unstayed and in effect for a period of thirty (30) consecutive days; or
  - v. an event of default of Recipient under any other agreement or transaction between Recipient and the City.
- B. If the City terminates this Agreement due to an event of default by Recipient, then the City may exercise all rights and remedies it may have at law or in equity. Failure or delay on the part of the City to notify Recipient of a default is not a waiver by the City of the default or of any future default of Recipient.
- C. Termination shall be effective at the close of business on the 15<sup>th</sup> day after date of notice without the necessity of any further notice to Recipient if the breach has not been corrected within the fifteen (15) day period. Notice shall be delivered by certified mail, return receipt requested, or by any other means with proof of delivery. Upon receipt of a notice of termination and, except as otherwise directed, Recipient shall:
- i. Cease working under this Agreement;



- ii. Place no further orders or subcontracts related to the performance of the Services, which was terminated;
  - iii. Terminate all orders and subcontracts related to the performance of the Services that was terminated; and
  - iv. Prepare all necessary reports and documents required under the terms of this Agreement up to the date of termination, including the final report, without reimbursement for the services rendered in completing the reports beyond the termination date.
- D. If Recipient should materially fail to comply with any term of this Agreement, suspension or termination may occur in accordance with 2 CFR 200.212, the provisions of which are incorporated into this Agreement by reference.

## **9. NOTICE**

Any notice required to be given under this Agreement shall be by certified mail, return receipt requested, or by hand delivery with a written receipt. Notices shall be deemed effective upon receipt or three (3) days after posting by certified mail. Notices shall be delivered to:

For the City:

Mayor's Office  
117 W. Duval Street, Suite 400  
Jacksonville, Florida 32202  
Attn: Deputy Chief Administrative Officer

With a required  
copy to:

Office of General Counsel  
117 W. Duval Street, Suite 480  
Jacksonville, Florida 32202  
Attn: Corporation Secretary

For the Recipient:

Cultural Council of Greater Jacksonville, Inc.  
40 East Adams Street, Suite 140  
Jacksonville, Florida 32202  
Attn: Executive Director

## **10. CIVIL RIGHTS AND OTHER FEDERAL PROVISIONS**

- A. There shall be no discrimination against any employee or person served on account of race, color, sex, age, religion, ancestry, national origin, handicap, marital status, citizenship status, creed, sexual orientation, gender identity, disability, veteran status, or any other protected

status under federal, state, or City law, or under Recipient's corporate policies in the performance of this Agreement, or in the distribution of City Funds pursuant to this Agreement.

- B. Recipient shall comply with Title VI of the Civil Rights Act of 1964 (42 U.S.C. §2000d) in regard to the persons served.
- C. Recipient shall comply with Title VII of the Civil Rights Act of 1964 (42 U.S.C. §2000e) in regard to employees or applicants for employment.
- D. Recipient shall comply with Section 504 of the Rehabilitation Act of 1973 in regard to employees or applicants for employment and clients served.
- E. Recipient shall comply with the Americans with Disabilities Act of 1990 (Public Law 101-336) in regard to employees and persons served.
- F. If the City receives evidence of discrimination in violation of this Agreement, the City may terminate this Agreement and Recipient shall immediately return the City Funds to the City upon the City's written demand therefore.
- G. Recipient shall carry out the Services in compliance with all applicable federal laws and regulations, which are incorporated into the Agreement by this reference, as they may be amended from time to time, including, but not limited to:
  - Public Law 88-352 - Title VI of the Civil Rights Act of 1964, as amended.
  - Public Law 90-284 - Title VIII of the Civil Rights Act of 1968.
  - Executive Order 11063 (as amended by Executive Order 12259).
  - Section 109 of Title I of the Housing and Community Development Act of 1974 (as amended by 42 USC 5301-5320).
  - Davis-Bacon Act and related acts (as amended by 40 USC 276a to a-7).
  - Contract Work Hours and Safety Standards Act (40 USC 327 through 333); and Contract Work Hours and Safety Standards Act (40 USC 3702 as supplemented by Department of Labor regulations (29 CFR Part 5).
  - National Flood Insurance Program (as set forth in the Florida Disaster Protection Act of 1973).
  - Displacement, Relocation Assistance and Real Property Acquisition (as set forth in 49 CFR Part 24 and 24 CFR Part 42).
  - Employment and Contracting Opportunities:
    - Executive Order 11246 (as amended by Executive Orders 11375, 11478, 12107, and 12088, and supplemented by 41 CFR Part 60).
    - Section 3 of the Housing and Urban Development Act of 1968 (12 USC 1701u).
  - Copeland "Anti-Kickback" Act (18 USC 874 and 40 USC 276c).
  - Lead Based Paint Poisoning Prevention (as set forth in 24 CFR Part 35).
  - Use of Debarred, Suspended or Ineligible Recipients or Sub-Recipients [in accordance with Executive Orders 12549 and 12689, and as set forth in 24 CFR Part 24 and 29 CFR 5.12(a)(1)].
  - Nondiscrimination Based on Age or Handicap (as set forth in the Age Discrimination Act of 1975, as amended, and 24 CFR Part 146).

- Section 504 of the Rehabilitation Act of 1973.
- Environmental Protection Agency Regulations National Environmental Policy of 1969.
- Title 24, Code of Federal Regulations, Volume 1, Part 135.
- Byrd Anti-Lobbying Amendment (31 USC 1352).
- Clean Air Act (942 USC 7401, *et seq.*), and the Federal Water Pollution Control Act (33 USC 1251 *et seq.*, as amended).
- Whistleblower Rights and Protections under 41 USC 4712.

#### H. Prompt Payment to Subcontractors and Suppliers.

- i. Nothing in this Agreement shall prohibit Recipient from disputing, pursuant to the terms hereof, all or any portion of a payment alleged to be due to its subcontractor and suppliers. If there is a dispute, Recipient may withhold the disputed portion of the payment only after Recipient has provided written notice to the City and to the subcontractor or supplier whose payment is in dispute, stating the amount in dispute and describing the actions required to cure the dispute. The notice shall be delivered to the City and the subcontractor or supplier within (ten) 10 calendar days after Recipient receives payment from the City. Recipient shall pay all undisputed amounts due within the time limits imposed by this Section.
- ii. Notwithstanding Chapter 126, Part 6, Jacksonville *Ordinance Code*, Recipient shall pay all contracts awarded with certified Jacksonville Small and Emerging Business (“JSEB(s)”), as defined, their respective pro-rata shares of the earned portions of the progress payments made by the City under the applicable contract within seven (7) business days after Recipient’s receipt of payment from the City (less proper retainage). The pro-rata share shall be based on all work completed, materials, and equipment furnished, or services performed by the certified JSEB at the time of payment. As a condition precedent to progress and final payments to Recipient, Recipient shall provide to the City, with its requisition for payment, documentation that sufficiently demonstrates that Recipient has made proper payments to its certified JSEBs from all prior payments that Recipient has received from the City. Recipient shall not unreasonably withhold payments to certified JSEBs if such payments have been made to Recipient. If Recipient withholds payment to its certified JSEBs, which payment has been made by the City to Recipient, Recipient shall return the payment to the City. Recipient shall provide written notice to City and to the certified JSEB whose payment is in dispute stating the amount in dispute and describing the actions required to cure the dispute. The notice shall be delivered to the City and the subcontractor or supplier within five (5) calendar days after Recipient receives payment from the City. Recipient shall pay all undisputed amounts due within the time limits imposed by this Section. Failure to pay undisputed amounts to the certified JSEB within seven (7) business days is a breach of contract, compensable at one percent (1%) of the outstanding invoice being withheld by the City. Continued failure by Recipient to adhere to this Section is cause for termination of the Agreement.
- iii. The prompt payment requirements of this Section shall, in no way, create any contractual relationship or obligation between the City and any subcontractor, supplier,

JSEB or any third-party or create any City liability for the Recipient's failure to make timely payments. However, Recipient's failure to comply with these prompt-payment requirements is a material breach of its contractual obligations to the City. Consequently, the City, without waiving any other available remedy it may have against Recipient, may issue joint checks and charge Recipient a two tenths percent (0.2%) daily late payment interest charge or other charges specified in Chapter 126 of the Jacksonville *Ordinance Code* for JSEBs and Chapter 218, Florida Statutes, for non-JSEBs, whichever is greater.

- I. As provided in Section 126.305, Jacksonville *Ordinance Code*, for professional services contracts over \$50,000.00, execution of this Agreement by Recipient is deemed to be simultaneous execution of the required truth-in-negotiation certificate as if the certificate had been executed apart from this Agreement. Pursuant to such certificate, Recipient states that the wage rates and other factual unit costs supporting the compensation under the provisions of this Agreement are accurate, complete and current at the time of contracting. The compensation shall be adjusted to exclude any significant sums where the City determines the contract price was increased due to inaccurate, incomplete or noncurrent wage rates and other factual unit costs, provided that any and all such adjustments shall be made within one (1) year following the completion date of this Agreement.
- J. Pursuant to Section 287.135(2), Florida Statutes, a company is ineligible to, and may not, bid on, submit a proposal for, or enter into or renew a contract with an agency or local government entity for goods or services of:
  - i. Any amount if, at the time of bidding on, submitting a proposal for, or entering into or renewing such contract, Recipient is on the Scrutinized Companies that Boycott Israel List, created pursuant to Section 215.4725, Florida Statutes, or is engaged in a boycott of Israel; or
  - ii. One million dollars or more if, at the time of bidding on, submitting a proposal for, or entering into or renewing such contract, Recipient:
    - (1) Is on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List created pursuant to Section 215.473, Florida Statutes; or
    - (2) Is engaged in business operations in Cuba or Syria.
  - iii. Pursuant to Section 287.135(3)(a)4, Florida Statutes, the City may terminate this Agreement at the City's option if the Agreement is for goods or services in an amount of one million dollars or more and Recipient:
    - (1) Is found to have submitted a false certification under Section 287.135(5), Florida Statutes;
    - (2) Has been placed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List created pursuant to Section 215.473, Florida Statutes; and
    - (3) Is engaged in business operations in Cuba or Syria.

iv. Pursuant to Section 287.135(3)(b), Florida Statutes, the City may terminate this Agreement at the City's option if the Agreement is for goods and services of any amount and Recipient:

- (1) Is found to have been placed on the Scrutinized Companies that Boycott Israel List; or
- (2) Is engaged in a boycott of Israel.

## **11. NON-DISCRIMINATION**

As required by Section 126.404, *Jacksonville Ordinance Code*, Recipient represents that it has adopted and will maintain throughout the term of this Agreement a policy of non-discrimination or non-harassment against any person with regard to race, color, sex (including pregnancy), sexual orientation, gender identity or expression, religion, political affiliation, national origin, disability, age, marital status, veteran status, or any other impermissible factor in recruitment, hiring, compensation, training, placement, promotion, discipline, demotion, transfers, layoff, recall, termination, working conditions, and related terms and conditions of employment. The Recipient 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 Jacksonville Human Rights Commission, or successor agency or commission, for the purpose of investigation to ascertain compliance with the non-discrimination provisions of this Agreement; provided however, that Recipient 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. Recipient agrees that if any of the Services to be provided pursuant to 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.

## **12. COMPLIANCE WITH LAWS**

Recipient shall, and shall require any and all subrecipients to, comply with all applicable federal, state, and local laws, rules, regulations, and ordinances, as amended from time to time. Such laws, rules, regulations, and ordinances shall include, but are not limited to, Chapter 119, Florida Statutes, (the Florida Public Records Law) and Section 286.011, Florida Statutes, (the Florida Open Meetings Law). Such laws, rules, regulations, and ordinances also include, but are not limited to, the applicable requirements for licenses and certifications necessary in connection with any activity arising out of expenditure of the City Funds.

## **13. REPRESENTATIONS/WARRANTIES AND UNAUTHORIZED WORKERS**

A. As a material inducement for City to enter into this Agreement, Recipient warrants (and unless otherwise specified, the warranties shall remain true during the term of this Agreement) that:

1. Recipient is a Florida business entity with offices in Duval County incorporated and validly existing under the laws of the State of Florida and authorized to conduct business and in good standing in the State of Florida, or Recipient has tax-exempt status pursuant to Section 501(c)(3) of the Internal Revenue Code. Recipient has authority to enter into this

Agreement and all documents contemplated by this Agreement, and to perform its obligations arising under this Agreement and other documents contemplated by this Agreement. The individual signing on behalf of Recipient has authority to do so.

2. Recipient's execution of this Agreement and performance of its obligations under this Agreement have been duly authorized and approved by the shareholders, members, partners, or directors of Recipient (as the case may be).
  3. This Agreement and all documents contemplated by this Agreement each constitute a legal, valid, and binding obligation of Recipient, enforceable in accordance with its terms.
  4. This Agreement and all documents contemplated by this Agreement do not and will not contravene any provision of the governing documents of Recipient, any judgment, order, decree, writ, or injunction by which Recipient is bound, or any provision of any applicable law or regulation by which Recipient is bound. The execution of this Agreement and all documents contemplated by this Agreement, and performance of the obligations of this Agreement and other contemplated documents, will not result in a breach of or constitute a default under any agreement to which Recipient is a party or require consent from any third party.
  5. Recipient holds all necessary licenses, permits, and authorizations required by applicable governmental bodies as a condition to conduct business in the State of Florida and in the City of Jacksonville.
  6. Recipient has not employed or retained any third party having a relationship with the City to solicit or secure this Agreement and has not paid or agreed or promised to pay any fee, commission, percentage, gift, or any other consideration contingent upon or resulting from the execution of this Agreement.
  7. Recipient is not in default under any agreement with City, and Recipient has satisfied all conditions imposed by any governmental authority in connection with provision of the Services.
- B. The employment by Recipient of unauthorized aliens is a violation of Section 274A(e) of the Federal Immigration and Naturalization Act and a material breach of this Agreement, and the City may unilaterally cancel this Agreement upon thirty (30) days' prior written notice of such cancellation.
- C. If any subrecipient of City Funds has a religious affiliation, Recipient shall ensure the subrecipient acknowledges, represents and warrants that all City Funds are ineligible to be used for religious purposes, and shall only be disbursed to support community programming of the subrecipient negatively impacted or made necessary by COVID-19 response measures, such as food distribution, rent and mortgage assistance, day care, and such other community programming in Duval County, and that such programming shall not discriminate among recipients based upon religion.

## 14. INDEMNIFICATION

Recipient, and any subrecipient of Recipient, shall adhere to the indemnification obligations set forth on Exhibit C, attached hereto. These indemnification obligations shall survive the expiration of this Agreement.

## 15. MISCELLANEOUS PROVISIONS

- A. Governing Law and Venue. This Agreement and the rights and obligations of the parties hereunder shall be governed by the laws of the State of Florida. Venue for the purposes of any action arising from or related to this Agreement shall lie exclusively in the state and federal courts located in Duval County, Florida.
- B. Entire Agreement; Counterparts. This Agreement contains the entire agreement between the parties with respect to the receipt and expenditure of the City Funds. Any amendment to this Agreement must be in writing and duly executed by the parties hereto. This Agreement may be signed in counterparts, including by electronic signature, the counterparts and signatures of which, when taken together, shall constitute but one Agreement.
- C. Binding Effect. This Agreement shall be binding upon and inure to the benefit of each party, its successors and assigns.
- D. Assignment. This Agreement may not be assigned by either party without the prior written consent of the other party. Any purported assignment in violation of this Section is void. Written consent of an assignment, if given, shall not in any manner relieve the assignor from liability for the performance of this Agreement by its assignee.
- E. Severability. In the event any part or parts of this Agreement is/are held to be invalid or unenforceable, the remainder of this Agreement shall remain in full force and effect as if the invalid or unenforceable provision had never been a part of the Agreement.
- F. Waiver. The failure of either party to complain of any default by the other party or to enforce any of such party's rights, no matter how long such failure may continue, will not constitute a waiver of the party's rights under this Agreement. No waiver of any provision of this Agreement shall constitute a waiver of any other provision or a waiver of the same provision at any later time.
- G. Headings. Section headings are provided solely for the convenience of the parties and shall not affect the interpretation of this Agreement.
- H. No Third-Party Beneficiaries. Nothing in this Agreement, express or implied, is intended to confer upon any other person any rights or remedies of any nature whatsoever under or by reason of this Agreement, except as otherwise expressly provided herein.
- I. Survival. The rights and obligations of the parties relating to confidentiality, indemnification, insurance, non-solicitation, use of name, availability of medical records and access to records, along with any other rights and obligations that expressly or by operation of law extend beyond

this Agreement, shall survive the termination, expiration, non-renewal, or rescission of this Agreement.

- J. Attorneys' Fees and Costs. Each party shall bear their own costs, expert fees, attorneys' fees, and other fees incurred in connection with this Agreement and any action or proceeding arising out of or relating to this Agreement.
- K. Incorporation of Exhibits. All exhibits referenced in this Agreement are incorporated herein by reference.
- L. Authorization. The City is authorized to execute this Agreement pursuant to the authority granted in the Appropriation Ordinance.

**[Remainder of page intentionally left blank. Signature page follows.]**



**IN WITNESS WHEREOF**, the parties have executed this Agreement on the year and date first above written.

**CULTURAL COUNCIL OF GREATER JACKSONVILLE, INC.**

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

**ATTEST:**

**CITY OF JACKSONVILLE**

By: \_\_\_\_\_

James R. McCain, Jr.  
Corporation Secretary

By: \_\_\_\_\_

Lenny Curry, Mayor

Encumbrance and funding information for internal City use:

Amount.....**\$800,000.00**

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 Contract; 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 purchase order[s] as specified in said Contract.

\_\_\_\_\_  
Director of Finance

City Contract # \_\_\_\_\_

Purchase Order # \_\_\_\_\_

**FORM APPROVED:**

By: \_\_\_\_\_

Office of General Counsel

GC-#1440306-v1A-Cultural\_Council\_-\_CARES\_Act\_Subrecipient\_Agreement\_(2021-354).docx

## **Exhibit A**

### **Scope of Services and Budget**

#### **Contract Term:**

Upon contract execution by the parties through December 15, 2021 (“Term”).

**Maximum Indebtedness/City Funds:** \$800,000.00 (Administrative costs not-to-exceed \$60,000.00)

#### **Scope of Services/Use of City Funds:**

Funds are being provided from the City of Jacksonville to the Recipient through funding the City has received from the U.S. Department of Treasury pursuant to the CARES Act. Recipient will distribute the City Funds to non-profit arts and cultural organizations in Duval County funded through Recipient’s FY 2020-2021 Cultural Service Grant Program to cover qualifying expenses and economic losses from business interruption due to COVID-19. Recipient will provide all services required to implement, oversee, administer and manage distribution of the City Funds to qualified subrecipients in accordance with this Agreement, the Appropriation Ordinance, the CARES Act, and the CARES Act Guidelines, as applicable. Recipient will be required to provide to the City a monthly report on or before the fifteenth (15<sup>th</sup>) of each month during the Agreement Term with documentation of disbursement amounts to non-profit arts and cultural organizations for eligible expenses, expenditure of any City Funds for Recipients administrative costs, and any other information as required by the City.

#### **Disbursements:**

City Funds will be disbursed in accordance with Section 4 of the Agreement. Administrative costs shall be paid on a reimbursement basis to cover Recipient’s costs to provide the Services during the Agreement Term and shall not exceed Sixty Thousand and 00/100 U.S. Dollars (\$60,000.00). Recipient shall provide the City with a full financial report no later than December 15, 2022, that details all expenditures of the City Funds so that the City may verify that all funds have been expended in accordance with the Agreement, the CARES Act, the CARES Act Guidelines and the Appropriation Ordinance, or if not expended, Recipient shall return any unexpended City Funds with its final financial report so that the City may return said unexpended funds to the U.S. Department of Treasury.

#### **Separate Bank Accounts Required:**

Pursuant to 2 C.F.R. 200, Recipient agrees to maintain a separate bank account so that Recipient’s receipt and disbursement of the City Funds can be accurately and adequately determined by reference to the bank statements or books of accounts, as applicable, regarding the City Funds.

**CARES Act requirements and other applicable laws:** Recipient agrees to comply with all applicable CARES Act requirements, including the audit and reporting requirements provided in Exhibit B to the Agreement, the CARES Act Guidelines, and other applicable laws regarding the City Funds.

## **Exhibit B**

### **Audit Requirements**

The following audit requirements are in addition and supplemental to other audit requirements in this Agreement:

1. Recipient shall establish and maintain books, records, contracts, subcontracts, papers, financial records, supporting documents, statistical records, goods, services, and all other documents (the “**Records**”) in a format sufficient to reflect all receipts and expenditures of the City Funds.
2. Recipient shall retain all Records pertinent to this Agreement for a period of five (5) years after disbursement of the City Funds. If an audit has been initiated and audit findings have not been resolved at the end of five (5) years, the Records shall be retained, at no cost to the City, until resolution of the audit findings or any litigation based on the terms of this Agreement. Records shall be retained for longer periods when any retention period required by law exceeds the time frames required in this paragraph.
3. Upon demand, at no additional cost to the City, Recipient shall facilitate the duplication and transfer of any Records during the applicable retention period.
4. Recipient shall provide the Records at all reasonable times for inspection, review, copying, or audit by the City.
5. At all reasonable times for as long as Recipient maintains the Records, Recipient shall allow persons authorized by the City to have full access to and the right to examine any of the Records, regardless of the form in which kept.
6. Recipient, at its cost, shall provide audits or reports as requested by the City, and shall insure that all related party transactions are disclosed to the auditor.
7. Recipient shall comply and cooperate immediately with any inspections, reviews, or investigations deemed necessary by the City’s Contract Administrator who for the purposes of this Agreement will be Stephanie Burch.
8. Recipient shall permit the City to interview any of the Recipient’s employees, contractors, and subcontractors’ employees to assure the City of the satisfactory performance of this Agreement. Following such review, if the Recipient’s performance is, in the opinion of the City, deficient, the City will deliver to Recipient a written report of the deficiencies and request for the Recipient’s development of a corrective action plan. Recipient agrees to prepare and submit to the City a corrective plan within five (5) business days of receiving the City’s written report. Recipient shall correct all deficiencies identified in the corrective action plan within five (5) business days from the City’s receipt of the corrective action plan.

9. All reports, audits, and other information Recipient provides pursuant to this Agreement shall contain the following statement: **“The information provided to the City of Jacksonville in this submittal is submitted under penalties of perjury, under Section 837.06, Florida Statutes”**.

10. If Recipient uses any contractors or subcontractors in utilization of the City Funds, Recipient shall include the audit, inspections, investigations, and record-keeping requirements of this Agreement in all such subcontracts and assignments. Recipient shall also ensure any subrecipients of City Funds are subject to the audit, inspections, investigations, reporting and record-keeping requirements of this Agreement and said requirements shall be included in any contract with any subrecipient.

11. Recipient shall comply with all CARES Act requirements, including but not limited to 2 Code of Federal Regulations 200 (Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards), as applicable. Recipient acknowledges the City must comply with the sub-recipient monitoring requirements of 2 CFR 200.331 and at the request of the City agrees to provide such additional information and documentation to the City as required to comply with such requirements. Recipient also acknowledges that payments under this Agreement are subject to the following requirements in the Uniform Guidance (2 C.F.R. Part 200): 2 C.F.R. § 200.303 regarding internal controls, 2 C.F.R. §§ 200.330 through 200.332 regarding sub-recipient monitoring and management, and subpart F regarding audit requirements.

## Exhibit C

### **Indemnification**

Recipient and its subrecipients (the “Indemnifying Party(ies)”) shall hold harmless, indemnify, and defend the City of Jacksonville and the City’s members, officers, officials, employees and agents (collectively, the “Indemnified Parties”) from and against, without limitation, any and all claims, suits, actions, losses, damages, injuries, liabilities, fines, penalties, costs and expenses of whatsoever kind or nature, which may be incurred by, charged to or recovered from any of the foregoing Indemnified Parties for:

1. General Tort Liability, for any negligent act, error or omission, recklessness or intentionally wrongful conduct on the part of the Indemnifying Parties that causes injury (whether mental or corporeal) to persons (including death) or damage to property, whether arising out of or incidental to the Indemnifying Parties’ performance of the Agreement, operations, Services or work performed hereunder; and

2. Environmental Liability, to the extent this Agreement contemplates environmental exposures, arising from or in connection with any environmental, health and safety liabilities, claims, citations, clean-up or damages whether arising out of or relating to the operations, Services or other activities performed in connection with the Agreement; and

3. Intellectual Property Liability, to the extent this Agreement contemplates intellectual property exposures, arising directly or indirectly out of any allegation that the Services, any product generated by the Services, or any part of the Services as contemplated in this Agreement, constitutes an infringement of any copyright, patent, trade secret or any other intellectual property right. If in any suit or proceeding, the Services, any products generated by the Services, or any part of the Services, are held to constitute an infringement and its use is permanently enjoined, the Indemnifying Parties shall, immediately, make every reasonable effort to secure within sixty (60) days, for the Indemnified Parties a license, authorizing the continued use of the disputed part of the Service or product. If the Indemnifying Parties fail to secure such a license for the Indemnified Parties, then the Indemnifying Parties shall replace the disputed Service or product with a non-infringing Service or product or modify such Service or product in a way satisfactory to the Indemnified Parties so that the Service or product is non-infringing.

If an Indemnified Party exercises its rights under this provision and the Agreement, the Indemnified Party will: (1) provide reasonable notice to the Indemnifying Parties of the applicable claim or liability, and (2) allow Indemnifying Parties, at their own expense, to participate in the litigation of such claim or liability to protect their interests. **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 the Agreement or otherwise. Such terms of indemnity shall survive the expiration or termination of the Agreement.**

In the event that any portion of the scope or terms of this indemnity is in derogation of Section 725.06 or 725.08 of the Florida Statutes, all other terms of this indemnity shall remain in full force and effect. Further, any term which offends Section 725.06 or 725.08 of the Florida Statutes will be modified to comply with said statutes.