

**AMERICAN RESCUE PLAN ACT
GRANT AGREEMENT**

THIS AMERICAN RESCUE PLAN ACT GRANT AGREEMENT (the “**Agreement**”) is made and entered into on this _____ day of _____, 2021 (the “**Effective Date**”), by and between the **CITY OF JACKSONVILLE**, a consolidated political subdivision and municipal corporation existing under the laws of the State of Florida (the “**City**”) and _____, whose address is _____ (“**Recipient**”).

RECITALS:

WHEREAS, on March 11, 2021, the federal American Rescue Plan Act (the “**ARP Act**”) was signed into law and provided for the distribution of Coronavirus relief, fiscal recovery, and critical capital projects funds to state, territorial, tribal and local governments of the United States; and

WHEREAS, the ARP Act provides that these funds may be used by recipient governments and tribal agencies for various projects and purposes that include efforts to respond to the COVID-19 public health emergency and its negative economic impacts, including providing aid and assistance to households, small businesses, and non-profits suffering economic losses and harm due to the COVID-19 pandemic; and

WHEREAS, the City is the recipient of approximately \$171,897,895.00 in ARP Act grant funds to be used to offset lost revenues and other eligible expenses in accordance with the ARP Act; and

WHEREAS, pursuant to City Ordinance 2021-463-E (the “**Appropriation Ordinance**”), the City appropriated \$30,000,000.00 in ARP Act local fiscal recovery grant funds, a portion of which was set aside to provide economic relief and assistance to various small businesses and non-profits in Duval County, Florida, in accordance with the ARP Act; and

WHEREAS, Recipient has applied to the City to receive a portion of the ARP Act funds to offset eligible expenses and to assist Recipient in recovering from the negative economic impacts of the COVID-19 pandemic; and

WHEREAS, pursuant to the Appropriation Ordinance and the specific grant allocations authorized by the City Council pursuant to Ordinance 2021-__-E, the City has determined the economic aid and assistance to Recipient as set forth herein is necessary to assist Recipient in recovering from the negative economic impacts of the COVID-19 pandemic and to maintain the viability of Recipient and therefore the City has appropriated and hereby provides an American Rescue Plan Act Grant to Recipient in the amount of \$ _____ (the “**Grant Funds**”) pursuant to the terms and conditions set forth herein.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

I. INCORPORATION OF RECITALS

The above stated recitals are accurate and by this reference made a part this Agreement.

II. GENERAL CONDITIONS

A. Recipient agrees to do as follows:

1. To accept the Grant Funds as appropriated in accordance with the terms of this Agreement, the ARP Act, and the Appropriation Ordinance.

2. To abide by Chapter 119, Florida Statutes, as amended from time to time, a copy of which can be obtained by Recipient 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 Grant Funds are considered to be public records as defined in said Chapter 119, Florida Statutes; and

3. To obtain permits, 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 Grant Funds paid to Recipient under the terms of this Agreement upon the City finding that Recipient has violated the terms of this Agreement, the provisions of the ARP Act, or the provisions of the Appropriation Ordinance; including, but not limited to, making expenditures that are specifically disallowed by this Agreement or the ARP Act. Recipient may utilize the Grant Funds for eligible expenses in accordance with the Appropriation Ordinance and the ARP Act from the period of March 1, 2020 through September 30, 2022. Recipient understands and agrees that it shall not use any Grant Funds provided pursuant to this Agreement to offset any costs or expenses for which Recipient has already received federal, state or local funding. Any Grant Funds remaining unspent/unexpended as of September 30, 2022 shall be immediately returned to the City.

5. As a condition precedent to the City's execution of this Agreement and/or disbursement of any Grant Funds to Recipient, Recipient shall complete the ARP Act Grant Application, attached hereto as **Exhibit A** and incorporated herein by this reference (the "**Grant Application**"), and submit it to the City contemporaneously with the executed Agreement.

6. Recipient shall not utilize Grant Funds for any of the following categories:

- i) contributions to a contingency reserve or a similar provision for unforeseen events.
- ii) costs of amusements, social activities and incidental costs relating thereto, such as meals, beverages, lodgings, rentals, transportation and gratuities.
- iii) costs resulting from violations of or failure to comply with federal, state and local laws and regulations.

iv) the salaries and costs of the office of the governor of a state or the chief executive of a political subdivision. These costs are considered a cost of general state or local government.

v) the salaries and other costs of the Legislature or similar local governmental bodies such as County commissioners, City councils and school boards, whether incurred for purposes of legislation or executive direction.

vi) Non-cash Expenses as defined in [Section 118.104](#), *Ordinance Code*.

vii) Costs of any audits required under this Agreement.

7. Recipient consents to:

i) Such audits of Recipient's financial affairs by the City, including the City's Finance and Administration Department (the "**Department**"), 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 Grant Funds; and

ii) Producing all documents required by the City, the Department, the City Council Auditor's Office, the City's Ethic's Office, the Office of Inspector General, the State of Florida or the United States government. Recipient agrees to give the City complete and unfettered access to all records regarding Grant Funds provided under this Agreement, at all times, during regular business hours, to ensure the Grant Funds are properly spent; and

iii) Should the City determine it necessary, Recipient shall furnish to the City a final report of all expenditures of the Grant Funds in such form as the Department shall prescribe within ten (10) business days of the City's request. This report shall be certified as to its accuracy by the Financial Officer/Treasurer of Recipient's organization. This report shall include the time period from initial expenditure of the Grant Funds until all of the Grant Funds have been expended by Recipient. The reporting obligation set forth in this paragraph shall survive the expiration or earlier termination of this Agreement.

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, failure to submit a complete and accurate Grant Application or any other information required by the City, or failure to adhere to the requirements of any applicable code or statutory provision, whether or not incorporated into this Agreement, shall be a material breach of this Agreement and may result in immediate termination of this Agreement and Recipient's return of all Grant Funds granted by this Agreement.

9. All reports, audits, and other information Recipient provides pursuant to this Agreement, including but not limited to the Grant Application, 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*".

III. EFFECTIVE DATE/TERM OF AGREEMENT

This Agreement is effective as of the Effective Date and shall continue in effect as to all its provisions, terms, and conditions until the earlier of the expenditure by Recipient of all Grant Funds received, or September 30, 2022. Any Grant Funds not expended by September 30, 2022 shall be returned to the City on or before October 5, 2022.

IV. PAYMENT

The City agrees to pay Recipient Grant Funds in an amount not to exceed _____ Dollars (\$ _____) within forty-five (45) days of the City's receipt of a complete and accurate Grant Application and any additional information the City may reasonably require from Recipient prior to payment of the Grant Funds. This amount constitutes the maximum indebtedness of the City pursuant to this Agreement, and the only obligation of the City hereunder. The CFDA number of the grant authorized by this Agreement is 21.027. The federal award ID number is SLFRP3403 / SLFRP0197. The Federal awarding agency for the grant authorized hereunder is the U.S. Department of the Treasury.

V. RECORDS

A. By the acceptance of the Grant Funds, Recipient agrees 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 by Recipient 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 the grant 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 the requirement that Recipient refund to the City all Grant Funds provided hereunder.

B. Recipient 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 any Grant Funds received by Recipient from the City from the time such funds are actually received by Recipient until the time they are actually expended or disbursed by Recipient 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 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 of Jacksonville Council Auditor may deem necessary.

D. Recipient shall retain for such inspection all of its records and supporting documentation applicable to this Agreement for five (5) years after disbursement of the Grant Funds to Recipient.

VI. AUDIT

A. Upon the City's request, Recipient shall obtain and provide to the City a copy of the latest available audited financial statements of Recipient or, if Recipient expends more than \$750,000 of Federal grant dollars (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.

B. 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 Grant Funds.

2. Recipient shall retain all Records pertinent to this Agreement for a period of five (5) years after Recipient's submission of a final financial expenditure report as described in Section 6.iii. above. 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, the City Council Auditor's Office, the Office of Inspector General, the State of Florida, the United States government/federal agencies, or their authorized third-party auditors or designees.

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 necessary for compliance by the Recipient and the City with the ARP Act, and otherwise as requested by the City, the City Council Auditor's Office, the Office of Inspector General, the State of Florida, the United States government/federal agencies, or their authorized third-party auditors or designees, 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.

8. Recipient shall permit the City to interview any of Recipient's employees, subcontractors, and subcontractors' employees to assure the City of the satisfactory performance of this Agreement. Following such review, if 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 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 the Appropriation Ordinance, the ARP Act, or 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 Grant 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 the Grant Funds, if any, are subject to the audit, inspections, investigations, reporting and record-keeping requirements provided herein and said requirements shall be included in any contract with any subrecipient.

11. Recipient shall comply with all American Rescue Plan 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 agrees to provide such additional information and documentation to the City as required to comply with such requirements. Recipient also acknowledges that payments of Grant Funds 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.

VII. 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 of certified mail. Notices shall be delivered to:

For the City:

City of Jacksonville
Office of Grant and Contract Compliance
214 N. Hogan Street, 10th Floor
Jacksonville, Florida 32202
Attn: Kendra Mervin, Grant Administrator

For Recipient:

Attn: _____

VIII. CIVIL RIGHTS

A. There will 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 disbursement/distribution of the Grant Funds.

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 City receives evidence of discrimination in violation of this Agreement, the City may terminate this Agreement and Recipient shall return the Grant Funds to the City immediately upon written demand therefore.

IX. NON-DISCRIMINATION

Recipient shall not discriminate, directly or indirectly, on the grounds of race, color, sex (including pregnancy), sexual orientation, gender identity or expression, religion, sex, age or 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. Recipient shall post in conspicuous places, available to employees

and applicants for employment, notices as provided by the City setting forth the provisions of this nondiscrimination clause. Recipient shall incorporate this provision in all subcontracts for the services provided under this Agreement.

X. OTHER CONDITIONS

Recipient shall 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 Grant Funds. If any of the obligations of this Agreement are to be performed by a subcontractor or subrecipient, the provisions of this Section shall be incorporated into and become a part of such subcontract or subrecipient contract.

XI. 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 individuals signing on behalf of Recipient have 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 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.

8. Recipient warrants and represents that the Grant Application submitted contemporaneously with the executed Agreement and any additional reports, audits, or information submitted to the City for the purposes of receipt of the Grant Funds or as may otherwise be required pursuant to this Agreement, the ARP Act, or the Appropriation Ordinance, is true, accurate and correct as to the information contained therein.

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 City may unilaterally cancel this Agreement upon thirty (30) days' prior written notice of such cancellation.

C. If Recipient has a religious affiliation, Recipient acknowledges, represents and warrants that all Grant Funds are ineligible to be used for religious purposes, and shall only be disbursed to cover eligible expenses or offset lost revenues in accordance with the ARP Act. Any community programming funded by the Grant Funds shall not discriminate among recipients based upon religion.

XII. INDEMNIFICATION

See **Exhibit B** attached hereto and incorporated herein for the indemnification obligations of Recipient.

XIII. ENTIRE AGREEMENT; COUNTERPARTS

This Agreement contains the entire agreement between the parties with respect to the receipt and expenditure of the Grant 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.

[Remainder of page intentionally left blank. Signature pages follow.]

IN WITNESS WHEREOF the parties hereto have duly executed this Agreement on the day and year first above written.

RECIPIENT

By: _____

Print Name: _____

Title: _____

[City of Jacksonville signatures follow on next page.]

CITY OF JACKSONVILLE, *a consolidated political subdivision and municipal corporation existing under the laws of the State of Florida*

ATTEST:

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

By: _____
Lenny Curry, Mayor

Encumbrance and funding information for internal City use:

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 Agreement. Actual encumbrance(s) shall be made by subsequent purchase order(s) as specified in said Agreement.

Director of Finance
City Contract # _____
Purchase Order # _____

FORM APPROVED:

By: _____
Office of General Counsel

GC-#1446014-v4A-ARP_Act_-_Grant_Recipient_Agreement_(CC_Appropriations).docx

EXHIBIT A

ARP Act Grant Application

[See attached]

REQUESTING ENTITY NAME:		SSN/EIN:
LEGAL STATUS OF ORGANIZATION:		DUNS:
BUSINESS ADDRESS:		
MAILING ADDRESS:		
EMAIL:	WEBSITE:	
PHONE:	GRANT AMOUNT AWARDED:	
NAME OF INDIVIDUAL COMPLETING THIS APPLICATION:		
SECTOR:	NO. OF LOCATIONS:	NO. OF EMPLOYEES:
2019 TAX RETURN TOTAL INCOME:		2020 TAX RETURN TOTAL INCOME:
DESCRIBE BUSINESS, PRODUCTS, AND/OR SERVICES:		
HOW DOES THE BUSINESS/ORGANIZATION SERVE THE LOCAL COMMUNITY?		
WHAT LOCATIONS/GEOGRAPHIC AREAS ARE SERVED BY YOUR ORGANIZATION?		
DEMOGRAPHICS OF THOSE SERVED BY YOUR ORGANIZATION:		
IF NON-PROFIT: DESCRIBE THE EVIDENCE-BASE FOR ANY INTERVENTIONS EMPLOYED BY YOUR ORGANIZATION:		
DESCRIBE FINANCIAL HARDSHIP EXPERIENCED AS A RESULT OF COVID-19. NOTE ANY DOCUMENTED, QUANTIFIABLE HARDSHIPS, CLEARLY DRIVEN BY COVID-19.		
DESCRIBE HOW FUNDS WILL BE USED:		
HAS YOUR BUSINESS/ORGANIZATION PREVIOUSLY RECEIVED COVID RELIEF FUNDS FROM ANY FEDERAL, STATE, OR LOCAL STIMULUS		<input type="checkbox"/> YES <input type="checkbox"/> NO
<i>If yes, please list the program and amount received from any federal, state, and/or local stimulus programs for the COVID-19 pandemic and subsequent shutdowns. For example: PPP: \$45,000; EIDL: \$20,000</i>		
1	_____	
2	_____	
3	_____	

4
5

ADDITIONAL DOCUMENTS

Please Attach the Following Documents to this Application:

- Articles of Incorporation
- Business License
- W-9
- PHOTO ID OF PRINCIPAL

CERTIFICATION

I understand I am submitting this application for funding under the American Rescue Plan Act of 2021 on behalf of my business/non-profit organization, located in Duval County, Florida, which provides direct services to residents and/or businesses in the Jacksonville area. My business/non-profit is in good standing with both the US Federal Government and the State of Florida and is not debarred or suspended. I certify that all of the above information is true and correct and that any grant allocation my business/non-profit organization may receive shall be expended in accordance with the ARP Act and related guidance from the U.S. Department of Treasury, and all applicable federal, state and local laws, rules or regulations. I further acknowledge that the expenditure of this funding is subject to review by the City of Jacksonville, the State of Florida, and the U.S. Department of Treasury. I further understand and acknowledge that these funds may be audited and any expenditures deemed inconsistent with the requirements of the ARP Act, Federal Guidelines, and/or applicable laws, rules or regulations may result in the requirement that I return to the City of Jacksonville all grant funds allocated to my business/non-profit organization as required pursuant to the agreement between my business/organization and the City.

I certify that the information provided herein is true to the best of my knowledge. I understand that a false statement may disqualify me from receipt of grant funding. I further certify that the information provided to the City of Jacksonville in this application and any supporting documentation submitted herewith is submitted under penalties of perjury under Section 837.06, Florida Statutes.

SIGNATURE:

DATE:

EXHIBIT B

Indemnification

Recipient and its subsidiaries (“Indemnifying Party(ies)”) shall hold harmless, indemnify, and defend the City of Jacksonville and 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 Indemnifying Party exercises its rights under this Agreement, the Indemnifying Party will: (1) provide reasonable notice to the Indemnified Parties of the applicable claim or liability, and (2) allow Indemnified 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.