

RESOLUTION NO. 2011- 173

**A RESOLUTION BY THE BOARD OF COUNTY COMMISSIONERS OF ST. JOHNS COUNTY, FLORIDA, APPROVING THE TERMS, CONDITIONS, PROVISIONS AND REQUIREMENTS OF AN AGREEMENT BY AND BETWEEN ST. JOHNS COUNTY, FLORIDA AND ST. JOHNS CULTURAL COUNCIL, INC. TO MARKET ST. JOHNS COUNTY AS AN ARTS, CULTURAL AND HERITAGE TOURIST DESTINATION, MANAGE THE ARTS AND CULTURE GRANT PROGRAM, AND PERFORM OTHER DUTIES AS DIRECTED BY THE ST. JOHNS COUNTY TOURIST DEVELOPMENT COUNCIL; AND AUTHORIZING THE COUNTY ADMINISTRATOR OR DESIGNEE TO EXECUTE THE AGREEMENT ON BEHALF OF THE COUNTY.**

**RECITALS**

**WHEREAS**, St. Johns County Request for Proposals Number 11-11 ("RFP #11-11") was circulated seeking a non-profit organization to (i) market St. Johns County, a political subdivision of the State of Florida ("County"), as an arts, cultural and heritage tourist destination, (ii) to manage the Arts and Culture Grant Program, and (iii) to perform other duties as specifically set forth in RFP #11-11; and

**WHEREAS**, the St. Johns County Tourist Development Council ("TDC") reviewed and evaluated all responses to RFP #11-11, and based upon such review and evaluation, selected St. Johns Cultural Council, Inc. ("Cultural Council") as the most qualified respondent to perform the Scope of Services detailed in RFP #11-11; and

**WHEREAS**, the Cultural Council represents and warrants that it has the necessary staff and experience to perform the Scope of Services detailed in RFP #11-11; and

**WHEREAS**, the TDC recommends that the Board of County Commissioners ("Board"), on behalf of the County, enter into an agreement with the Cultural Council to, among other things, market the County as an arts, tourist and heritage destination; and

**WHEREAS**, a draft of the proposed Agreement is attached hereto as Attachment 1, and is incorporated herein by this reference; and

**WHEREAS**, the Board has reviewed the terms, conditions, provisions and requirements of the Agreement; and

**WHEREAS**, entering into the Agreement serves a public purpose for the benefit of the citizens of the County.

**NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF ST. JOHNS COUNTY, FLORIDA, AS FOLLOWS:**

**Section 1.** The above Recitals are hereby incorporated into the body of this Resolution, and are adopted as Findings of Fact.

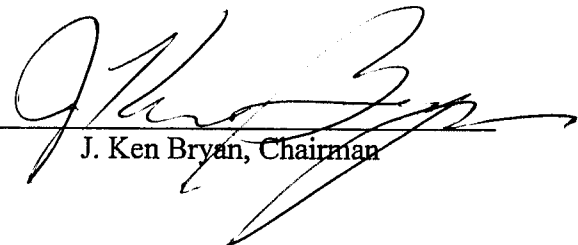
**Section 2.** The Board of County Commissioners hereby approves the terms, conditions, provisions and requirements of the attached Agreement by and between the County and the Cultural Council.

**Section 3.** The Board authorizes the County Administrator or designee to execute the Agreement on behalf of the County. Moreover, to the extent that there are typographical and/or administrative errors or omissions that do not change any material term of the Agreement, the Board further authorizes the County Administrator or designee to revise the Agreement without subsequent approval by the Board.


**Section 4.** To the extent that there are typographical and/or administrative errors and/or omissions that do not change the tone, tenor, or concept, of this Resolution, then this Resolution may be revised without subsequent approval of the Board of County Commissioners.

**PASSED AND ADOPTED BY THE** Board of County Commissioners of St. Johns County, Florida, this 21<sup>st</sup> day of June, 2011.

BOARD OF COUNTY COMMISSIONERS  
ST. JOHNS COUNTY, FLORIDA

By:   
J. Ken Bryan, Chairman

Attest: Cheryl Strickland, Clerk

By:   
Deputy Clerk

RENDITION DATE 6/23/11

**THIS AGREEMENT** ("Agreement") is entered into by and between **St. Johns County, Florida**, a political subdivision of the State of Florida ("**County**"), by and through its Board of County Commissioners ("**BCC**"), whose address is 500 San Sebastian View, St. Augustine, Florida 32084, and **St. Johns Cultural Council, Inc.**, a not-for-profit corporation organized and existing under the laws of the State of Florida ("**Cultural Council**") whose primary business address is 370 A1A Beach Boulevard, St. Augustine, Florida 32080.

#### **RECITALS:**

**WHEREAS**, the **County** issued a Request for Proposals ("**RFP #11-11**") that sought a not-for-profit agency to (i) market St. Johns County as an arts, cultural and heritage tourist destination, (ii) manage the Arts and Culture grant program, and (iii) perform other duties as directed by the St. Johns County Tourist Development Council ("**TDC**"); and

**WHEREAS**, the **Cultural Council** responded to RFP #11-11, representing and warranting that it has the necessary staff and experience to, among other things (i) recommend Arts and Culture grant application guidelines, (ii) provide a 5-year strategic plan for marketing St.(iii) market St. Johns County's arts, cultural and heritage assets as a visitor demand generator, and (iv) prepare detailed annual budgets for consideration by the TDC and for final approval by the BCC; and

**WHEREAS**, based upon representations made in the **Cultural Council's** response to RFP#11-11, the **County** desires to enter into an agreement with the **Cultural Council** for the purpose of performing the services that were specifically detailed in the Scope of Services set forth in RFP #11-11 and that is attached hereto as Attachment A and is incorporated herein by this reference ("**Services**"); and

**WHEREAS**, the **County** has determined that the provision of the Services by the **Cultural Council** is a proper public purpose and is in the best interests of the residents of St. Johns County.

**THEREFORE**, in consideration of the premises and mutual promises contained herein, the **County** and the **Cultural Council** agree as follows:

#### **ARTICLE 1. Incorporation of Recitals.**

The above Recitals are incorporated into the body of this Agreement, and such Recitals are adopted as Findings of Fact.

#### **ARTICLE 2. Appointment.**

The **County** hereby appoints the **Cultural Council**, and the **Cultural Council** hereby accepts such appointment, to provide all Services under this Agreement in accordance with industry standards of professional practice and in accordance with any

laws, regulations or other requirements of any governmental agencies that have jurisdiction over such the Services as hereinafter defined.

**ARTICLE 3. Term of Agreement.**

The initial term of this Agreement shall begin on \_\_\_\_\_, 2011, and shall end at 11:59 pm on September 30, 2014.

**ARTICLE 4. Renewal of Agreement.**

Provided that this Agreement has not been terminated by either party in accordance with the terms hereof prior to the end of the initial term hereof or prior to the end of any subsequent one (1) year term, this Agreement shall renew automatically for successive terms of one (1) year, each beginning on October 1<sup>st</sup> and ending on September 30<sup>th</sup>, on the same terms and conditions as are contained in this Agreement.

**ARTICLE 5. Scope of Services/Required Resources.**

a. The **Cultural Council** shall use all reasonable efforts (1) to perform all tasks included within the Services, (2) to perform any duties or obligations arising from the Services or as described elsewhere in this Agreement; and (3) to timely deliver the reports and other items included within the Services.

b. Within one hundred eighty (180) calendar days following the full execution of this Agreement, the **Cultural Council** shall provide notice to the **County** that it has secured all of the resources, including but not limited to a qualified executive and support staff, that are necessary to perform the Services. Failure by the **Cultural Council** to timely provide such notice to the **County** shall constitute cause for termination of this Agreement by the **County**.

**ARTICLE 6. Compensation.**

a. It is expressly noted that the **County** will compensate and reimburse the **Cultural Council** from only those tax revenue sources that are legally available and appropriated for this purpose in the official **County** budget at the time payment is due to the **Cultural Council**.

b. For the duration of this Agreement, the maximum amount available as compensation and reimbursable expenses to the **Cultural Council** shall be the amount that is officially appropriated by the BCC to the Arts and Culture Category of Uses in accordance with the St. Johns County Tourist Development Plan and in accordance with section 125.0104 of the Florida Statutes.

c. The **Cultural Council** shall not be entitled to such compensation and reimbursable expenses as a matter of right, but only to the extent of the **Cultural Council's** satisfactory provision and performance of the Services.

**ARTICLE 7. No Commitment of County Funds.**

It is hereby noted and understood by the parties that the **County** makes no express commitment to provide funds (in the form of tax revenue proceeds or otherwise) in any given **County** Fiscal Year. Moreover, it is expressly noted that the **Cultural Council** cannot demand that the **County** provide any such funds in any given **County** Fiscal Year.

**ARTICLE 8. Billing/Invoicing Schedule and Payment.**

a. To the extent that the **Cultural Council** is not in material violation of this Agreement and this Agreement has not been terminated, the **Cultural Council** may bill the **County** in accordance with the St. Johns County **Cultural Council** Budgeting Procedures and Payment Processing guidelines attached hereto as Attachment B, and incorporated herein by this reference.

b. Unless otherwise notified, bills and invoices shall be delivered to:

**Executive Director – Tourist Development Council  
500 San Sebastian View  
St. Augustine, Florida 32084**

c. Within fifteen (15) days following its receipt of the **Cultural Council's** bill or invoice, the **County** shall verify it. Within fifteen (15) days following the **County's** verification of the bill or invoice, the **County** shall forward payment thereof to the **Cultural Council**.

d. Notwithstanding any other provision of this Agreement concerning the amendment of this Agreement, the **County** at any time may reasonably modify the procedure set forth in this Article 8, upon thirty (30) days advance notice to the **Cultural Council**, in order to accommodate the budgetary concerns or procedures of the **County**.

**ARTICLE 9. Purchasing Procedures.**

In performance under this Agreement, the **Cultural Council** shall abide by and follow all of the applicable provisions set forth in the St. Johns County Cultural Council Agreement Purchasing Procedures attached hereto as Attachment C and incorporated herein by this reference.

**ARTICLE 10. Insurance.**

The **Cultural Council**, its consultants and sub-consultants shall, at their sole expense, procure and maintain, for the duration of this Agreement (including any extension of this Agreement), insurance coverage of the types and in the minimum amounts set forth below:

- A. Workers' Compensation—Employer Liability coverage shall provide minimum limits of \$100,000 for each accident; \$500,000 disease policy limit; and \$100,000 each employee disease limit.
- B. Commercial General Liability coverage shall provide minimum limits of \$1,000,000 per occurrence; \$2,000,000 aggregate for bodily injury and property damage. This shall include coverage for:
  - 1. Premises/operations
  - 2. Products/complete operations
  - 3. Contractual liability
  - 4. Independent Contractors
- C. Business Auto Liability coverage shall provide minimum limits of \$1,000,000 per occurrence; and \$2,000,000 aggregate for bodily injury and property damage. This shall include coverage for:
  - 1. Owned autos
  - 2. Hired autos
  - 3. Non-owed autos
- D. Umbrella or Excess Liability Insurance covering workers compensation, commercial general liability and business auto liability with minimum limits of liability of \$1,000,000.

In the event of unusual circumstances, the **County** may adjust the insurance requirements set forth above. Prior to the execution of this Agreement, the **Cultural Council** shall provide to the **County** a certificate of insurance, naming the **County** as an additional insured on the commercial general liability, business auto liability and umbrella or excess liability policies. Failure to maintain any or all required insurance shall result in the automatic termination of this Agreement, without the necessity of providing any further written notification of termination.

**ARTICLE 11. Relationship of the County and the Cultural Council.**

This Agreement shall not be deemed or construed to create any agency relationship, partnership (limited or otherwise), association or joint venture between the **County** and the **Cultural Council**.

**ARTICLE 12. No Conflict of Interest.**

The **Cultural Council** represents and warrants to the **County** that the **Cultural Council** has not employed or retained any elected official, officer or employee of the **County** in order to secure this Agreement. Moreover, the **Cultural Council** represents and warrants to the **County** that the **Cultural Council** has not paid, or offered to pay or agreed to pay any person any fee, commission, percentage, brokerage fee, incentive fee

or gift of any kind contingent upon or in connection with securing and executing this Agreement.

**ARTICLE 13. Access to Public Records.**

Access to, disclosure, non-disclosure, or exemption of records, data, documents, or materials associated with this Agreement, shall be subject to applicable provisions of the Florida Public Records Law (Chapter 119, Florida Statutes), and other applicable State or Federal law. Access to such records may not be blocked, thwarted or hindered by placing the records in the possession of a third party, or an unaffiliated party.

**ARTICLE 14. Review of Cultural Council Records.**

As a condition of entering into this Agreement, and to ensure compliance, especially as it relates to any applicable law, rule, regulation, or policy, the **Cultural Council** authorizes the **County** to examine, review, inspect, or audit the books and records of the **Cultural Council** in order to determine whether compliance has been achieved with respect to the terms, conditions, provisions, rights, and responsibilities set forth in this Agreement. The **Cultural Council** shall be under no duty to provide access to any documentation that is not related to this Agreement or that is otherwise protected by applicable Local, State or Federal regulations.

**ARTICLE 15. Discrimination.**

The **Cultural Council** shall conform to the following Equal Employment Opportunity Statement: No person shall, on the grounds of race, creed, color, handicap, national origin, sex, age, political affiliation or beliefs be excluded from participation in, be denied the benefits of, or be subjected to discrimination under, any program or activity funded in whole, or in part, with funds made available by the **County**.

**ARTICLE 16. Compliance with Local, State, and Federal Rules, Regulations, and Laws.**

The **County** and the **Cultural Council** shall abide by, and comply with, all Local, State and Federal laws, statutes, rules, regulations, orders, and policies by which that party is legally bound and governed.

**ARTICLE 17. Indemnification.**

To the extent permitted by law, the Cultural Council shall indemnify and hold harmless the County, its officials, agents, servants and employees from and against any and all losses, costs, suits, and administrative actions, arbitration, or mediation, arising from, or incident to, connected with, associated with, or growing out of any direct and/or indirect negligent or intentional acts or omissions on the part of the Cultural Council, its agents and/or representatives, in connection with its performance of, or its failure to perform, the Services, terms and conditions set forth in this Agreement.

**ARTICLE 18. Ownership of Documents and Equipment**

a. Upon completion of the Services, all renderings, drawings, designs, specifications, renderings, notebooks, tracings, photographs, negatives, reports, findings, recommendations, software, furnishings, source codes, data and memoranda of every description, arising out of or relating to the Services, as well as all reference books, equipment, expendable equipment and materials purchased with Tourist Development Tax revenues shall become the property of the **County**.

b. The use of such materials described above by the **County** in any manner shall not support any claim by the **Cultural Council** for additional compensation.

c. The **Cultural Council** shall have no liability to the **County** for damages, claims or losses, including defense costs, arising out of any use by the **County**, without the prior written authorization of the **Cultural Council**, of any of the aforementioned items for any purpose other than as set forth in this Agreement.

**ARTICLE 19. Ownership of Deliverables/Work Product**

a. It is expressly noted that all work product and deliverables, including final work product, submitted by the **Cultural Council** to the **County** that are associated with the Services detailed in this Agreement, shall become the property of, and owned and controlled by the **County**, upon receipt and payment by the **County**.

b. By way of illustration, but not limitation, all slogans, ideas, or plans submitted or developed by the **Cultural Council** for the **County** during the term of this Agreement, whether or not used, and, any and all, layouts, copy, art work, electronic files, films, digital impressions, and other tangible material, of whatever form, format, content, or creative or technological design, which the **Cultural Council** prepares for the **County** that is associated with the above-referenced Services, shall become the property of, and owned and controlled by the **County**, upon receipt and payment to the **Cultural Council** of any applicable periodic bill/invoice.

c. All tangible and intangible property acquired in conjunction with the Services, detailed in this Agreement, shall be the property of the **County**, and may be used for the promotion of the **County**. The **County** reserves the right of final approval of the disposition of said property.

**ARTICLE 20. Use of the County Logo**

Pursuant to, and consistent with, County Ordinance 92-2 and County Administrative Policy 101.3, the **Cultural Council** may not manufacture, use, display or otherwise use any facsimile or reproduction of the County Seal/Logo without the express written approval of the Board of County Commissioners.



**ARTICLE 21. Periodic Evaluation.**

a. Bi-annually, the TDC shall evaluate the **Cultural Council's** performance under this Agreement, specifically as it relates to performance of the Services, and the other terms, provisions, conditions, requirements, and obligations set forth in this Agreement.

b. Such Periodic Evaluation shall determine the degree and level of compliance by the **Cultural Council** with the Services and other aspects of this Agreement. The Periodic Evaluation also may examine the **Cultural Council's** degree of effectiveness, as compared to local, state and national trends, with respect to number of room nights, occupancy rates, visitor spending, unique visitors to the official web site of the **Cultural Council** and revenue from the Tourist Development Tax that is imposed and collected by the **County**.

c. If, after any Periodic Evaluation, the **TDC**, determines that there is any substandard, incomplete, or unacceptable performance on the part of the **Cultural Council**, or that the **Cultural Council** has violated one or more provisions of this Agreement, the **TDC** shall make a recommendation to the Board of County Commissioners that prompt, written notice of default be provided to the **Cultural Council**, as provided elsewhere in this Agreement.

**ARTICLE 22. Termination.**

a. This Agreement may be terminated by either party without cause by providing at least sixty (60) days advance written notice to the other party of such notice of termination without cause.

b. This Agreement may be terminated with cause by either party by providing thirty (30) days advance written notice to the other party of such notice of termination for cause. Such written notice shall indicate the exact cause for termination.

c. Consistent with other provisions of this Agreement, the **Cultural Council** shall be reimbursed for any expenses that were both authorized under this Agreement and performed or accrued prior to the effective date of the termination of this Agreement.

**ARTICLE 23. Assignment of Agreement.**

In light of the scope and rationale for this Agreement, neither the **County** nor the **Cultural Council**, without the prior express written approval of the other party, may assign, transfer, or sell any of the rights noted in this Agreement. Should either the **County** or the **Cultural Council** assign, transfer, or sell any of the rights noted in this Agreement, without such prior express written approval of the other party, such action shall result in the automatic termination of this Agreement without further notice or action required.

**ARTICLE 24. Amendment of Agreement.**

Both parties acknowledge that this Agreement constitutes the complete Agreement between them. Both the **County** and the **Cultural Council** mutually agree that any amendments to this Agreement shall be in writing and shall be executed by duly authorized representatives of both the **County** and the **Cultural Council**.

**ARTICLE 25. Default.**

Events of Default shall include any of the following:

- a) Material failure by either party to comply with one or more terms, provisions, conditions, requirements, or obligations set forth in this Agreement;
- b) Substandard performance in one or more evaluative areas, as noted in a Periodic Evaluation as provided for elsewhere in this Agreement;
- c) Assignment of this Agreement by either party without the prior written approval of the other party;
- d) Failure by the **County** to pay, for a period exceeding one hundred twenty (120) days, any amounts due and owing for authorized Services performed by the **Cultural Council**;
- e) Failure by the **County** to budget for the Services or expenses noted in this Agreement;
- f) An exhaustion of funds for the Services or expenses provided for in this Agreement, without approval of a subsequent increase in the amount of funds budgeted for the Services or the expenses provided for in this Agreement; and
- g) A subsequent revision/change/amendment to State law that would prohibit the **County** and the **Cultural Council** from entering into, or continuing, this Agreement;
- h) **Force Majeure.** Neither party shall be held in non-compliance with the terms, conditions, provisions, or requirements of this Agreement, nor suffer any enforcement or penalty relating thereto (including termination, cancellation, or revocation of this Agreement) if such non-compliance or alleged default occurred or was caused by a strike, riot, war, earthquake, flood, tsunami, severe rainstorm, hurricane, or other act of nature, or other event that is reasonably beyond either party's ability to anticipate or control.

**ARTICLE 26. Notice of Default and Right to Cure.**

Should either party default (fail to perform) under the terms of this Agreement, the non-defaulting party shall provide written notice to the defaulting party, which notice shall include a timeframe of no fewer than thirty calendar (30) days in which to cure the default. In the event the defaulting party fails to cure the default within the timeframe provided in the original notice of default (or any such other amount of time mutually agreed to by the parties in writing), the non-defaulting party may exercise any or all of its administrative or legal remedies.

For any alleged breach or violation of this Agreement that may give rise to either an administrative or judicial action, or both, against the **County**, the **Cultural Council** must provide written or electronic notice to the **County** within 30 days following the occurrence of the alleged breach or violation. It is acknowledged that this paragraph provides a means of notice that is different than that which is provided in the preceding paragraph.

**ARTICLE 27. Remedies Upon Default.**

Upon the occurrence of an event of Default or of any other breach or violation of this Agreement, the other party, after giving notice and allowing the defaulting party the opportunity to cure as provided elsewhere in this Agreement, may at any time during the continuance of any default:

- a.) terminate this Agreement for cause; and
- b.) utilize any and all other remedies now or hereafter existing under the common law or statutory law of the State of Florida.

All remedies granted hereunder shall be cumulative and not exclusive.

**ARTICLE 28. Disputes.**

In the event a dispute should arise relating to either party's performance under this Agreement, the parties agree to use good faith efforts to resolve the dispute without resort to judicial or quasi-judicial authorities. In the event such good faith efforts fail to resolve the dispute, either party may seek relief or redress in the courts. Each party irrevocably submits itself to the personal jurisdiction of the courts of the State of Florida, St. Johns County, and the personal jurisdiction of the United States District Court for the Middle District of Florida, Jacksonville Division, for the purpose of any suit, action or other proceedings arising out of or in connection with this Agreement or its subject matter. Each party agrees that it will bring any such proceeding only in one of such courts.

**ARTICLE 29. Governing Law and Venue.**

This Agreement shall be construed according to the laws of the State of Florida. Venue for any administrative and/or legal action arising under this Agreement shall be in St. Johns County, Florida.

**ARTICLE 30. Cultural Council's Status as Independent Contractor.**

The **Cultural Council** shall be, and shall act as, an independent contractor of the **County**, and the employees of the **Cultural Council** shall not be considered to be employees of the **County**.

**ARTICLE 31. No Third Party Beneficiaries.**

Both the **County** and the **Cultural Council** expressly agree, and this Agreement explicitly states that no third party beneficiary status or interest is conferred to, or inferred to, any other person or entity.

**ARTICLE 32. Headings.**

All Articles and descriptive headings of Articles noted in this Agreement are inserted for the convenience of the parties only, and shall not affect or control the interpretation of this Agreement.

**ARTICLE 33. Effect of Failure to Insist on Strict Compliance with Conditions.**

The failure of the either party to insist upon strict performance of any term, condition, provision and/or requirement of this Agreement shall not be construed as a waiver of such term, condition, provision and/or requirement on any subsequent occasion.

**ARTICLE 34. Severability.**

If any word, phrase, sentence, part, Article, or other portion of this Agreement, or any application thereof, to any person, or circumstance is declared void, unconstitutional, or invalid for any reason, then such word, phrase, sentence, part, other portion, or the proscribed application thereof, shall be severable, and the remaining portions of this Agreement, and all applications thereof, not having been declared void, unconstitutional, or invalid shall remain in full force, and effect.

**ARTICLE 35. Waiver.**

The failure of either the **County** or the **Cultural Council** to object or to take affirmative action with respect to any conduct of the party that is in breach or violation of the terms, conditions, provisions, or obligations of this Agreement, shall not be construed as a waiver of the violation or breach, or waiver of any future violation, breach, wrongful conduct, or omission.

**ARTICLE 36. Notice.**

a. Any notice to the **County** that is permitted or required hereby shall be delivered either by hand (receipt of delivery required) or by certified mail to:

**County Administrator**  
500 San Sebastian View  
St. Augustine, Florida 32084

With a copy to:

**Executive Director—Tourist Development Council**  
500 San Sebastian View  
St. Augustine, Florida 32084

b. Any notice to the **Cultural Council** that is permitted or required hereby shall be delivered either by hand (receipt of delivery required) or by certified mail to:

**Executive Director—St. Johns Cultural Council, Inc.**  
370 A1A Beach Boulevard  
St. Augustine, Florida 32080

c. All other correspondence, not constituting official notice hereunder, may be delivered, disseminated, or submitted by any means acceptable to both parties, specifically including, faxing, e-mailing, or text messaging.

**ARTICLE 37. Survival.**

It is expressly noted that the following provisions of this Agreement, to the extent necessary, shall survive any expiration, suspension, termination, cancellation, revocation, or non-renewal of this Agreement, and therefore, they shall be both applicable and enforceable beyond any expiration, suspension, termination, cancellation, revocation or non-renewal of this Agreement: **(a.) Incorporation of Recitals; (b) Compensation; (c) Billing/Invoicing Schedule and Payment; (d) Access to Public Records; (e) Review of Cultural Council Records; (f) Relationship of the Cultural Council and the County; (g) Compliance with Local, State, and Federal Rules, Regulations, and Laws; (g) Indemnification; (h) Ownership of Documents and Equipment; (i) Ownership of Deliverables/Work Product; (j) Assignment of Agreement; (k) Default; and (l) Notices.**

**ARTICLE 38. Authority to Execute.**

Each of the parties hereto covenants to the other party that it has lawful authority to enter into this Agreement and has authorized the execution of this Agreement by the party's authorized representative.

IN WITNESS WHEREOF, the parties have hereto executed this Agreement on the date and year below written.

St. Johns County, Florida

By: \_\_\_\_\_  
County Administrator

Date: \_\_\_\_\_

**LEGALLY SUFFICIENT**

\_\_\_\_\_  
Name  
Date 4/7/11

ATTEST: Cheryl Strickland, Clerk

By: \_\_\_\_\_  
Deputy Clerk

St. Johns County Cultural  
Council, Inc.

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

Date: \_\_\_\_\_

ATTEST:

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

**ATTACHMENT A**  
**SCOPE OF SERVICES**

The **Cultural Council** shall:

1. Within one hundred eighty (180) calendar days of the full execution of this Agreement, provide notice to the TDC on behalf of the **County** that it has secured adequate resources, including but not limited to qualified executive and support staff, to perform the services described herein.
2. Within one hundred twenty (120) calendar days subsequent to notice of adequate resources, provide to the TDC on behalf of the **County** for final approval a five (5) year Strategic Plan for the development of arts, culture and heritage related initiatives, programs and events designed to attract tourists to the **County**.
3. Within one hundred twenty (120) calendar days subsequent to notice of adequate resources, provide to the TDC on behalf of the **County** for final approval a twelve (12) month marketing plan and corresponding budget, in a format acceptable to the **County**, for Arts and Culture programs and events designed to attract tourists to the **County**.
4. Following submission of the initial marketing plan and corresponding budget described above, by no later than July 1<sup>st</sup> of each subsequent year that this Agreement is in effect, submit to the TDC on behalf of the **County** for final approval a comprehensive marketing plan and corresponding budget for Arts and Culture programs and events designed to attract tourists to the **County**. The comprehensive marketing plan shall include a set of specific actions to increase the number of room nights spent in the **County**.
5. Within one hundred twenty (120) calendar days subsequent to the notice of adequate resources, provide a draft to the TDC on behalf of the **County** for final approval revised Arts and Culture grant application guidelines, policies and procedures.
6. Within one hundred twenty (120) calendar days, subsequent to the notice of adequate resources, provide a draft to the TDC on behalf of the **County** for final approval of accountability measures for Arts and Culture sponsored programs and events.
7. Conduct educational workshops to provide advice and guidance to applicants who are interested in, applied for or have received Arts and Culture grant funding for programs and events.
8. As directed by the TDC, collaborate with **County** staff and the St. Johns County Visitors and Convention Bureau ("VCB") to market, advertise and promote

throughout the state, nation and world arts, culture and heritage related attractions and activities within St. Johns County for the purpose of attracting tourists to the **County**.

9. Attend TDC meetings. Such attendance shall be by the Executive Director or his or her designee.



## ATTACHMENT B

### SJCCC BUDGETING PROCEDURES AND PAYMENT PROCESSING

#### **Budgeting Procedures, Prepaid Expenditures and Monthly Reimbursable Expense Statements**

The Fiscal Year used by the County and the SJCCC is October 1<sup>st</sup> through the following September 30<sup>th</sup>.

- Any expenditures originating after October 1<sup>st</sup> will be counted in the respective fiscal year that started October 1<sup>st</sup>.
- Expenditures originating during a given fiscal year will be counted in that year as long as:
  - Receipts for items are received by the County no later than October 5<sup>th</sup> of the following fiscal year (the date may vary from year to year as established by the County.)
  - Receipts received after this date will be attributed to the new fiscal year without any adjustment to the **Arts and Culture Category** beginning fund balance for the then current fiscal year.

On or about March 1<sup>st</sup> each year, the County will provide the SJCCC with an estimated beginning balance and new revenue amounts for the next fiscal year for purposes of establishing the **Arts and Culture Category** budget.

- The SJCCC will provide to the County, estimated year-end expenditures for the current fiscal year no later than February 20<sup>th</sup> or the next business day following.

#### **A. Budget Amendments**

The SJCCC may amend the individual line budgets not more than twice in any fiscal year with the exception of any reserve lines beginning with the numbers 599. They require BCC approval to modify.

- The total amount budgeted in the Arts and Culture Category can only be amended by the BCC.
- The SJCCC must notify the TDC of their intent to amend the budget ten business days in advance.

The SJCCC will submit their line-item budget for the next fiscal year to the County by March 10th or the next business day using the budget line numbers and descriptions below.

- 1147- 53100 PROFESSIONAL FEES / RESEARCH
- 53120 CONTRACTURAL SERVICE
- 53150 CONSULTING SERVICES
- 54000 TRAVEL & PER DIEM
- 54010 TRADE SHOWS / CONVENTIONS (registrations)
- 54100 COMMUNICATIONS
- 54102 INQUIRY SERVICES
- 54110 POSTAGE
- 54112 BROCHURE DISTRIBUTIONS
- 54300 UTILITIES
- 54400 LEASE / RENTAL EQUIPMENT
- 54401 LEASE / RENTAL BUILDING
- 54500 INSURANCE (Building/equipment/furnishings) (Not Liability or Board)
- 54601 EQUIPMENT MAINTENANCE
- 54804 PUBLIC RELATION SERVICES
- 54805 IN HOUSE PUBLIC RELATIONS
- 54605 SALES MISSIONS
- 54900 ADVERTISING (Agency Fees, Media, Promotions)
- 55100 OFFICE SUPPLIES
- 55401 TRAINING
- 55405 DUES/ MEMBERSHIP
- 56401 OFFICE EQUIPMNT
- 54603 COMPUTER EQUIPMENT
- 59920 RESERVE (Requires BCC Approval to Amend)
- 59923 CONTINGENCY RESERVE (Requires BCC Approval)
- 59927 CAPITAL OUTLAY RESERVE (Requires BCC Approval)

**B. Reserve Funds**

The County may at its discretion, require a budgeted reserve amount be established for emergency situation and / or special events. Amendments from these accounts will require pre-authorization by the County.

### **C. Prepaid Expenses & Monthly Reimbursements**

The SJCCC shall maintain a checking account in their name for the exclusive purpose receiving Tourist Development Tax Funds from the County, and paying expenses related to this agreement.

Near the start of each new fiscal year, The TDC Executive Director will transmit a request to the County's Finance Department Director for funds equaling one-sixth of the Arts and Culture Category fiscal year budget less reserve and grant program funds, to be transferred to the SJCCC's bank account for pre-paid expenses.

Beginning with the first month of the new fiscal year (October) and continuing through the tenth month (July) of the fiscal year, the SJCCC will prepare and send to the TDC Executive Director no later than the 10<sup>th</sup> of the following month, an end-of-month Expense Reimbursement Statement (Exhibit A) showing, by budget line, the amount expended during the month, the budgeted amount for the line, and the year-to-date balance in the line. Once received, the TDC Executive Director will review the Statement, sign, and forward to the County Finance Department for payment to the SJCCC. The SJCCC will continue preparation of the Expense Reimbursement for the final two months of the year; however, the County will not issue a check to the SJCCC for the reimbursement.

The Expense Reimbursement Statement will be signed by an officer of the SJCCC Board of Directors.

At the end of the fiscal year, the County will reconcile the total reimbursable expenditures with the amounts budgeted and the funds paid to the SJCCC. The County will determine the amount, if any, overpaid or underpaid to the SJCCC and the County's sole discretion either request repayment from the SJCCC, adjust the amount initially paid (prepaid expenses) to the SJCCC for the next fiscal year, or make a final year-end payment to the SJCCC.

### **D. Preparation / Approval of Invoices for Payment**

The SJCCC will provide to the County a copy of all contracts / agreements that they may have with vendors for which any TDC funds are expended.

Only expenses incurred in the process of marketing St. Johns County as a travel destination as defined in Exhibit "A" SCOPE will be considered reimbursable by the County. The expense of soliciting members or providing membership services to existing SJCCC partners, communications intended solely for the benefit of SJCCC members, non-marketing activities and administrative costs associated with promotion of the SJCCC as a membership organization will not be considered for reimbursement.

Invoices for reimbursable SJCCC expenses will be submitted to the TDC on a weekly basis for processing. A cover sheet with the vendor, price, and invoice date should accompany the invoices for tracking purposes. Invoices should be submitted within a week of receipt at the SJCCC offices. When received by the TDC:

- The invoices will have been date stamped indicating the date the invoice was received by the SJCCC.
- Signed by the SJCCC Chief Operating Office indicating that they have been approved for payment.
- The invoice should show the appropriate GL Code (1147-budget line) indicating where the expenditure was originally budgeted.
- Appropriate back-up documentation must accompany each invoice such as proof of publishing for print advertising, notarized affidavits for broadcast media, etc.
- Invoices will be reviewed by TDC staff for accuracy and completeness.
- The TDC staff will prepare checks from the SJCCC's account for review together with backup documentation of the expense, for signature by SJCCC officer(s). The SJCCC will be notified when the checks (not the backup) will be ready for pick up.

#### **E. Reimbursable Travel**

The County will reimburse the SJCCC for travel expenses as authorized under Section 125.0104(9) of the Florida Statutes and applicable provisions of the Florida Administrative Code.

## ATTACHMENT C

### St. Johns County Cultural Council Agreement Purchasing Procedures

All vendors must be offered equal specifications and opportunity to submit bids and/or quotations if they are to compete on equal terms.

#### **Competitive Price Quotations & Bids**

As outlined below, the SJCCC may solicit either oral or written quotations from the open market and shall make use of available current vendors' and suppliers' price lists whenever possible.

Purchases up to \$1,000.00 are exempt from obtaining competitive quotations except as circumstances may require as determined by the SJCCC Executive Director.

When requesting purchase quotations for items costing more than \$1,000.00 but less than \$3,000.00, verbal solicitation of quotations shall be sufficient, however, suppliers will be required to provide a written quote.

- Quotation requests for items costing between \$3,000.00 and \$20,000.00 must have a letter of quote prepared by the requester. Dollar limits shall be based upon the total order value, not on a line item basis. Under urgent conditions requiring immediate ordering action to fill SJCCC requirements, quotations may be solicited orally then followed up with a written request for quotation from the supplier. (In all cases the written requests will be signed by the SJCCC Executive Director or a member of the SJCCC Board in his or her absence.)
- Quotations for items or services exceeding \$20,000 must have a letter of quote prepared by the requester and initialed by the TDC Executive Director and an officer of the SJCCC Board. Awarding a bid for purchases exceeding \$20,000 will require approval of the SJCCC Board of Directors. Quotes will specify terms and conditions as well as the total cost of the item(s) or service(s) including all applicable taxes and shipping/ delivery charges. (Electronically transmitted quotes or requests for quotes are considered "written" for the purpose of this Exhibit.)
- In all the above situations, it is important that each supplier be provided with identical specifications. Failure to adhere to this requirement will cause inequitable results in quotations received from suppliers and cause suppliers to lose faith in the purchasing ethics of the SJCCC.
- If at least three quotations are not possible, the SJCCC will make a notation on the quote request stating reasons for inability to obtain sufficient quotes, such notation will be initialed by the TDC Executive Director and a member of the SJCCC Board. All suppliers stating no quote will be documented.

- The purchase of advertising media in all forms will be considered "sole source" based on the unique characteristics of a publication's readers, broadcast's or other medium's audience or media reach, and will be exempt from these policies. Other exempt sole source purchases are those items, programs or services that are unique and have no comparable item, program or service in the marketplace.
- All requests for purchases or contracts, except as provided below shall be advertised for sealed bids when the sum is in excess of the bid limit (\$50,000.00).

### **Sealed Bid Development**

Formal sealed bid invitations (\$50,000.00 and up) will normally be conveyed to interested vendors by advertising the bid (Notice to Bidders) in a local newspaper or specialized publication by legal advertisement. Additionally, the advertisement will be posted electronically on the Web. Electronic advertising may be used alone or in conjunction with the legal notice.

Bid documents should not be made available to prospective bidders before the first publishing of the legal notice. (The posting electronically of the bid advertising (Notice to Bidders) constitutes a publishing).

### **Sealed Bid Advertisements**

The SJCCC will be responsible for publishing a Request For Proposals or a Request For Qualifications in the case of professional services, submitting the legal advertisements inviting bids and requesting legal notice from the newspaper or a screen print of a web page for each date advertisement is published.

- A Legal Notice-Advertisement for Sealed Bids will be placed once each week for at least two weeks prior to the bid opening date, in a local newspaper of general paid circulation or electronically as noted in the previous section,
  - The advertisement will contain a general description of the equipment, supplies, or services to be procured, state where specifications may be obtained, time and date of bid opening and other information as needed in the bid requirements.
  - The SJCCC shall be responsible for documenting evidence of advertising in any format.

### **County Asset Property Item:**

Equipment or other tangible personal property of a non-consumable nature purchased with public sector funds, the value of which is \$1,000.00 or more, and normal expected life of which is one year or more must carry a St. Johns County Property Tag and number and be available for inventory at any time by the Clerk of The Court.

### **Amendments/Changes to Contracts or Agreements After Award**

The SJCCC Executive Director may authorize changes/amendments for goods and/or services within the overall scope of the project of up to a cumulative amount of ten percent (10%) or Twenty Thousand Dollars (\$20,000) above the original contract, whichever is higher. Any change with a dollar value exceeding twenty thousand dollars (\$20,000) or ten percent (10%) will require approval by the TDC Executive Director and the SJCCC Board of Directors.

If the change is outside the scope of the original project or procurement and other vendors could reasonably be assumed to provide those additional services more efficiently than the current contract holder, a new invitation for bid must be issued unless bidding would cause a significant delay or other adverse impact on the project. To avoid unnecessary delay, the SJCCC may coordinate a change order with the existing contractor provided the existing contractor is qualified and available to perform on the new project, or is capable of securing the services of a qualified subcontractor.

### **Contract Requirements**

The formal written agreement between a vendor or consultant and the SJCCC Board constitutes a contract for purchasing purposes. All contracts for goods or services for the SJCCC shall be solely between the SJCCC and the vendor. The successful bidder/proposer shall indemnify and hold St. Johns County harmless against all loss, damage, or expense for reason of injury to person or property arising out of the use of or activities on any said premises by the successful bidder/proposer, its agents, representatives, contractors, subcontractors, or employees.

### **Specifications Development**

In considering and developing specifications, it must always be remembered that expenditures are derived from public sources therefore, the general policy of purchasing good standard grades of merchandise that will represent an optimum of quality, price and provide a satisfactory level of service will be considered.

- Bids and quotations should be based on concise but adequate specifications. Specifications should be composed of features and designs that will satisfy the requirements of the SJCCC and done in a manner most advantageous to the mission of bringing more visitors to St Johns County.
- Typically the use of or request for brand name products will not be acceptable. It will be the responsibility of the bidder to convince the specifyee that a particular product is equal for the intended use of the item on a particular requirement or project.
- Avoid non-essential quality restrictions that add to cost and difficulty in procurement without adding to utility and value. Avoid specific requirements that will restrict competition.

- Once an invitation to bid (Notice to Bidders) has been advertised, no changes in the specifications can be made, unless an addendum is issued and all known bidders are notified.
- When possible, addendums will not be issued later than 7 days prior to bid opening. Any addendum should instruct the bidder to acknowledge receipt of addendum.
- Once a decision has been reached on the specifications, all bids being evaluated must be based upon these same specifications and no bidder has a right to substitute other specifications or provide alternate items for those contained in the bid.

### **Procedures Concerning Lobbying**

Bidders, proposers, and those intending to qualify must abide by the following requirements: A lobbying blackout period begins upon issuance of the bid solicitation, request for proposal, request for qualifications, and continues until the SJCCC executes a contract.

Bidders or proposers who do not abide by these rules are subject to having their Bid or Proposal or Qualifications automatically rejected, without further recourse, and shall be subject to debarment for periods up to 12 months. "Blackout" for the purposes of this policy refers to a time period during which vendors, contractors, consultants, or their agents or representatives may not communicate or lobby in any manner with SJCCC Board members, or staff, other than the designated SJCCC staff member(s), or designated purchasing agent. , The blackout period begins once an invitation to bid, request for quote, request for proposal, invitation to negotiate, or request for qualifications has been issued. Any such communication shall disqualify the vendor, contractor, or consultant from responding to the subject invitation to bid, request for quote, request for proposal, invitation to negotiate, or request qualifications.

Immaterial of minor deviations that will not alter a bidder's position with respect to receiving the award may be waived. These deviations may be clarified with the bidder or bidders if required to allow the SJCCC to understand the bid. Illustrative examples included:

- Failure to provide a certificate of affidavit with the bid.
- Failure to submit required proof of financial responsibility with the bid.
- Failure to submit requested brochures or catalogs with the bid.

An award will be made to the lowest responsible and responsive bidder whose bid meets the requirements and criteria set forth in the bid documents. A cost analysis or a price analysis, as appropriate, shall be conducted by the SJCCC prior to the awarding of bids.

Bids may not be withdrawn for the time period as specified in the "Notice to Bidders" in the specifications.



## **Evaluation Team**

An Evaluation Team will be established in accordance with this Section for contracts of services in excess of \$100,000. (There is no reasonable expectation that a physical purchase of goods will meet or exceed \$100,000.)

- The Evaluation Team will have as a minimum, three members. At least one officer of the SJCCC Board of Directors will serve on each Evaluation Team.
- The meeting of each Evaluation Team is a public meeting subject to Florida's Sunshine Law.

Reasonable notice of the date, time, and place of the meeting must be given, and the meeting must be held in a place accessible to the public. Minutes of the meeting shall be taken and maintained in the procurement file. Committee members shall return the evaluation forms and other material considered in the evaluation for the procurement file.

> The Evaluation Team shall rank the proposers and conduct interviews of vendors submitting proposals in accordance with the specifications for the RFP/RFQ. Each direct contract that is anticipated to cost more than \$100,000.00 in the fiscal year as opposed to one made by a qualified contractor of the SJCCC, when the contract is made pursuant to an RFP or RFQ, shall require a ranking and interview of the top three proposers as determined by the Evaluation Team. Following the interviews, the Evaluation Team shall compile the final rankings of the top three proposers based upon the total scoring, which will at that time include a score for the interview. Presentations and interviews will comply with and are subject to the Sunshine Law, and are open meetings.

- The Evaluation Team leader will cause the tally sheets for each RFP and RFQ to be available in the offices of the SJCCC.
- An evaluation process will be used by the Team in assessing and ranking proposals for all competitive negotiations. Selection criteria and the corresponding point score or rating assigned to each, criterion, and any minimum score required for proposals to be considered acceptable, should be provided in the RFP/RFQ specifications if possible. Otherwise, a general weighting of the selection criteria will be included in the RFP/RFQ.
- The evaluation criteria will reflect generic or project-specific indicators. Proposal evaluation criteria and the evaluation scoring system will be used objectively and consistently in assessing each proposal received.
- No member of the Evaluation Team shall have contact with any bidder or proposer, or representative, in any capacity, of any bidder or proposer during the "blackout" period.
- Each member of the Evaluation Team will be provided a copy of each proposal received along with the corresponding RFP or RFQ specifications. The team members then assess and individually score/rate each proposal using the evaluation criteria or maximum point rating system established prior to the receipt of proposals.

- The SJCCC Chairman of the Board will sign an affidavit attesting to the procedure being followed.