

## City of Palm Coast, Florida Agenda Item

**Agenda Date:** September 9, 2025

|  |                    |                  |
|--|--------------------|------------------|
| <b>Department</b>  | PARKS & RECREATION | <b>Amount</b>    |
| <b>Division</b>  |                    | <b>Account #</b> |
| <b>Subject:</b> PRESENTATION - ADMINISTRATION OF THE CULTURAL ART GRANT PROGRAM AGREEMENT WITH FLAGLER COUNTY CULTURAL COUNCIL   |                    |                  |
| <b>Presenter:</b> James Hirst, Director of Parks & Recreation  |                    |                  |
| <b>Attachments:</b> <ol style="list-style-type: none"><li>1. Presentation</li><li>2. Agreement</li></ol>   |                    |                  |
| <b>Background:</b> <p>At the August 19, 2025, City Council Business Meeting, City Council requested that Staff provide a presentation on the agreement with the Flagler County Cultural Council (FC3) for the Administration of the Cultural Art Grant Program. The presentation will include the current terms of the agreement for City Council's consideration and direction.</p> |                    |                  |
| <b>Recommended Action:</b><br><b>FOR PRESENTATION</b>  |                    |                  |

# **Flagler County Cultural Council Administration of the Cultural Art Grant Program**



# Agenda

- Agreement Term
- Administration of the Cultural Art Grant
- Scope of Services – FC3
- Scope of Services – City
- Financial Responsibilities & Records





# Agreement Term

- Approved October 1, 2024 – valid through September 30, 2025.
- Option to renew for two additional one-year terms with sixty (60) days' notice.
- Either party may terminate without cause with ninety (90) days' written notice.



# Administration of the Cultural Art Grant

- City Council shall have the ultimate discretion to determine proposals shall be awarded, the amount of each grant award, modify recommendations, and reserves the right not to award any grant funding.
- City retains complete control and final decision-making authority over all financial aspects of the grant program.
- FC3 and the City meet once a quarter.
- FC3 shall not award grant funds to itself, nor shall it award any grant funds to the current individuals and/or organizations of the established panel.
- FC3 shall not utilize Grant funding to re-grant or underwrite other FC3 programs
- City has the right to refuse any grant award for any reason



# Scope of Services – FC3

**FC3, the official Arts Council for Flagler County, is dedicated to enriching the lives of its residents and visitors. The mission of FC3 is to seek and provide resources that promote and support arts, culture and history in the community. In line with this mission, FC3 will oversee the Cultural Arts Grant program and ensure its success by providing the following services and deliverables**

- FC3 shall develop and maintain the Cultural Art Grant proposal application
- FC3 will establish an impartial panel of subject matter experts who are tasked with accepting, reviewing, and scoring applications
- FC3, in collaboration with City, will organize a public meeting before they City's governing board
- FC3 will prepare a comprehensive presentation for the City council that summarizes the grant process





# Scope of Services – City

- City will follow its financial policies and monitor its budget calendar to ensure that grant funds are secured in a timely manner
- City shall develop and maintain the Cultural Art Grant Agreements with approved Grantees.
- City representative shall coordinate meetings with FC3 once per quarter
- City shall create the purchase orders and receive, review, and process the invoices for the organizations awarded grant funding



# Financial Responsibilities & Records

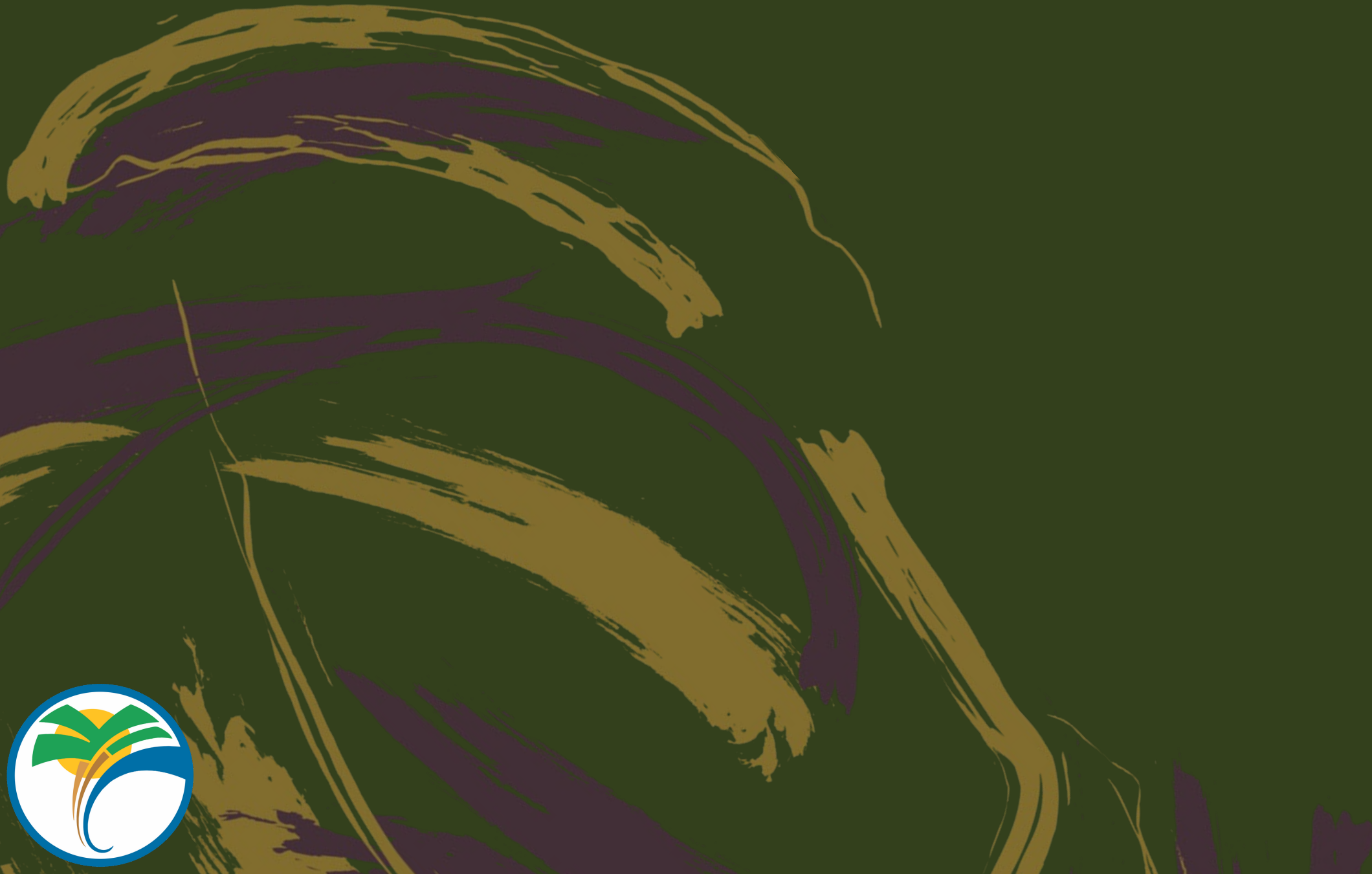
- City shall create the Cultural Art Grant Agreements and the purchase orders and shall process the payment of invoices to the organization
- FC3 shall provide the City with the most current documentation that is required for these processes each fiscal year
- Upon written request from the City's Manager or Designee to reasonably inspect any book, documents, papers, and records that pertain to FC3's management of the Cultural Art Grant for the purpose of the City performing an audit examination, or other review of the program





# Next Steps

- Approval at the October 7<sup>th</sup> business meeting



## **AGREEMENT FOR ADMINISTRATION OF CULTURAL ART GRANT PROGRAM**

**THIS AGREEMENT FOR ADMINISTRATION OF CULTURAL ART GRANT PROGRAM ("Agreement")** is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 202~~5~~<sup>4</sup>, ("Effective Date") by and between the CITY OF PALM COAST, a Florida municipal corporation, whose address is 160 Lake Avenue, Palm Coast, Florida, 32164, ("CITY"), and the Flagler County Cultural Council, Inc., a Florida Not for Profit Corporation, whose address is, 120 Airport Rd, STE 3, Palm Coast, FL, 32164, ("FC3").

### ***WITNESSETH:***

**WHEREAS**, CITY desires to provide a wide array of benefits to the citizens of CITY in order to enhance the ~~the~~ high quality of life that its residents enjoy and improve the CITY's image as an innovative and historical, artistic, and cultural center; and

**WHEREAS**, FC3 is a Florida not-for-profit corporation designated by the Flagler County Board of County Commissioners as the countywide Arts Council (a.k.a. Local Arts Agency) for Flagler County pursuant to Section 265.32, Florida Statutes; and

**WHEREAS**, it is of great value to have a Local Arts Agency that is designated to serve as an umbrella organization to foster arts, history, and culture in Flagler County, which will in turn support CITY's goals of growing as an historical, artistic, and cultural hub in the region; and

**WHEREAS**, FC3 desires to collaborate with CITY to support history, arts, and culture organizations in Flagler County that host programs and/or events for the citizens of CITY related to history, arts, and culture; and

**WHEREAS**, the CITY currently runs a Cultural Arts Grant Program ("Grant") whereby the City awards and distributes Grant funding to history, arts, and culture organizations in the CITY; and

**WHEREAS**, the CITY desires to contract and coordinate with FC3 so that FC3 may assume the responsibility of reviewing Grant proposals and awarding Grant funds so that the CITY itself may focus on other priorities while also supporting and fostering the development of arts, history, and cultural activities in the City; and

**WHEREAS**, FC3 has the expertise necessary to administer the Grant program, to review Grant proposals, and to award Grant funding; and

**WHEREAS**, FC3 will oversee the Grant process by creating the Grant proposal application, establishing a proposal review panel, hosting a public meeting to discuss proposals and make a recommendation to the City Council regarding the award of Grant funding, and presenting the award recommendation to CITY's Council; and

**WHEREAS**, CITY has concluded that the investment of public funds for Cultural Art Grant Program(s) and FC3's administration thereof is in the best interest of the health, safety, and welfare of the citizens of the City of Palm Coast;

**NOW, THEREFORE**, in consideration of the mutual understandings and covenants set forth herein, the receipt and sufficiency of which is hereby acknowledged, CITY and FC3, agree as follows:

- 1. TERM.** This Agreement will take effect on the Effective Date, as so above inscribed, and the initial term of this Agreement shall run through September 30, 202~~6~~<sup>5</sup>. This Agreement may be renewed by the City with sixty (60) days written notice for two additional one-year terms, subject to the express terms herein, upon the approval of City Council's fiscal budget and dependent upon City Council appropriation of funding of its contribution. Nothing herein may be construed to be or constitute a binding obligation on the City to extend this Agreement. This Agreement may be terminated without cause by either party with ninety (90) days' advance written notice provide by the terminating party to all other parties.

**2. ADMINISTRATION OF THE CULTURAL ART GRANT.**

- A.** The CITY and FC3 hereby agree to coordinate and execute the Cultural Art Grant program to award grant funds to Flagler County Non-Profits who host Cultural Art programs and/or events within CITY limits.
- B.** The City Council shall have the ultimate discretion to determine which, if any, proposals shall be awarded a Cultural Arts Grant. The City Council shall have ultimate decision-making authority to determine the amount of each Grant award and to modify the recommendations made by FC3 as the Council sees fit. The Council reserves the right not to award any Grant funding. Grant funding is contingent upon the annual appropriations of the City Council.
- C.** The City retains complete control and final decision-making authority over all financial aspects of the Grant program. The City reserves the right to audit FC3, as related to its administration of the Grant program, at any time.
- D.** CITY and FC3 agree to meet a minimum of once per quarter to discuss the scheduling of public meetings and “The Stage at Town Center,” review financial policies, review the administration of the Grant program, and collaborate on the annual presentation of the Cultural Art Grant Program to the City Council for their approval at a public meeting.
- E.** FC3 shall not award grant funds to itself, nor shall it award any grant funds to the current individuals and/or organizations of the established panel, referenced in Section 3 (A)(ii) of this agreement, who will be approving/denying the applications for that current fiscal year.
- F.** FC3 shall not utilize Grant funding to re-grant or underwrite other FC3 programs. Grant funds from the CITY’s Grant shall not be awarded to FC3 after the Effective Date of this Agreement. Grant funds which have already been awarded to FC3 shall not be affected by this Agreement.
- G.** CITY has the right to refuse any Grant award for any reason.

**3. SCOPE OF FC3’s SERVICES & DELIVERABLES**

- A.** FC3, the official Arts Council (a.k.a. Local Arts Agency) for Flagler County, is dedicated to enriching the lives of its residents and visitors. The mission of FC3 is to seek and provide resources that promote and support arts and culture in the community. In line with this mission, FC3 will oversee the Cultural Arts Grant program and ensure its success by providing the following services and deliverables:
  - i. Application and Criteria**  
FC3 shall develop and maintain the Cultural Art Grant proposal application, including defining the criteria for eligibility and evaluation.
  - ii. Review of Applications**  
FC3 will establish an impartial panel of subject matter experts who are tasked with accepting, reviewing, and scoring the applications. The panel will review each application to determine its eligibility for the Cultural Art Grant.
  - iii. Public Meeting**  
FC3, in collaboration with CITY, will organize a public meeting before the CITY’s governing body, the City Council of the City of Palm Coast. The panel of subject matter experts shall attend such meeting or meetings before the City Council. At the meeting, FC3 will make a recommendation to Council regarding which applications should be awarded Grant funding. Council shall have the ultimate authority to approve or deny the applications for Grant funding.
  - iv. Reporting**

FC3 will prepare a comprehensive presentation for the City Council that summarizes the Grant process and the recommendation for distribution of funds for the current fiscal year's Grant applicants. Additionally, the presentation will showcase some of the events/programs that have been awarded Grants in previous fiscal years and shall describe how the events/programs have impacted the community. FC3 shall present this presentation to the City Council, in conjunction with CITY representatives, at the public meeting where FC3 is seeking Council's approval to fund its recommendations.

#### **4. SCOPE OF CITY's SERVICES & DELIVERABLES**

A. CITY, a Florida municipal corporation, is dedicated to prioritizing the needs of its citizens and delivering exceptional service. The CITY's goal with the Cultural Art Grant program is to support local organizations that cultivate creativity, economic vitality, and cultural experiences for the residents of Palm Coast. To ensure its success, CITY will provide the following services and deliverables:

**i. Funding**

CITY will follow its financial policies and monitor its budget calendar to ensure that Grant funds are secured in a timely manner. Funding for the Cultural Art Grant program is contingent upon and subject to the CITY's annual budget and appropriations.

**ii. Agreement**

CITY shall develop and maintain the Cultural Art Grant Agreements with approved Grantees. CITY staff will collaborate with FC3 to ensure that the Grant Agreements conform with the proposals outlined in Grant applications and with CITY policies and procedures.

**iii. Quarterly Meetings**

CITY representatives shall coordinate meetings with FC3 representatives no less than once per quarter to review the CITY's Cultural Art Grant program allocations and financial policies, establish dates for public meetings, coordinate usage of "the Stage of Town Center," and collaborate on the annual presentation to the City Council.

**iv. Purchase Orders & Reimbursement Requests**

Once FC3's panel has made their recommendation to the City Council and the proposed Grants have either been approved or denied, CITY shall create the purchase orders and receive, review, and process the invoices for the organizations awarded Grant funding for that current fiscal year. CITY representatives shall follow all CITY financial policies, which may include requesting additional documentation from FC3 or the awarded organizations.

#### **5. FINANCIAL RESPONSIBILITIES & RECORDS**

A. CITY shall create the Cultural Art Grant Agreements and the purchase orders and shall process the payment of invoices to the organizations that have been awarded Grant funding. FC3 shall provide the CITY with the most current documentation that is required for these processes each fiscal year, upon CITY's request. Documentation includes the Cultural Art Grant application and graded criteria.

B. FC3 shall promptly comply with any written request from the CITY's City Manager or Designee to reasonably inspect any books, documents, papers, and records that pertain to FC3'S management of the Cultural Art Grant for the purpose of the CITY performing an audit, examination, or other review of the program.

C. FC3 agrees that this Agreement is subject to and governed by the laws of the State of Florida, including without limitation Chapter 119, Florida Statutes, which generally make public all records or other writings made or received by the parties. FC3 acknowledges its legal obligation to comply with §119.0701, Florida Statutes. FC3 shall keep and maintain public records, as that phrase is defined in the Florida Public Records Act that would be required to be kept and maintained by CITY in order to perform the Cultural Art Grant Program(s). FC3 shall provide public access to the public records on the same terms and conditions that CITY would provide the records and at a cost that does not exceed the cost allowed by



law. FC3 shall not disclose public records that are exempt or confidential and exempt from public records disclosure unless specifically authorized by law. FC3 shall comply with all requirements for retaining public records and shall transfer, at no cost to CITY, all public records in the possession of FC3 upon termination or expiration of this Agreement. FC3 shall destroy any duplicate public records that are exempt, or confidential and exempt, from public records disclosure requirements. All public records stored electronically must be provided to CITY in a format that is compatible with the information technology systems of CITY. Notwithstanding any other provision of this Agreement to the contrary, failure to comply with this requirement shall result in the immediate termination of the Agreement, without penalty to CITY. Further, FC3 shall fully indemnify and hold harmless CITY, its officers, agents and employees from any liability and/or damages, including attorney's fees through any appeals, resulting from FC3's failure to comply with these requirements.

**D. IF FC3 HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO FC3'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CITY CLERK'S OFFICE AT 386-986-3713, CityClerk@palmcoastgov.com, 160 LAKE AVENUE, PALM COAST, FLORIDA 32164.**

**6. SITE SPECIFICS AND USE OF THE STAGE AT TOWN CENTER**

- A. CITY hereby grants FC3 the non-exclusive right to use CITY facility "The Stage at Town Center" as seen in **Exhibit "B"** when the use thereof does not interfere or conflict with any CITY program/events or with the use of The Stage at Town Center by any other organization/entity/person which has received prior CITY approval to use the Stage. CITY use of the Stage shall take precedence to the use of the Stage by any other organization or entity. FC3 shall receive prior written approval from CITY prior to utilizing The Stage at Town Center.
- B. The use of "The Stage of Town Center" shall be in accordance with all applicable rules, regulations, laws, and the policies and procedures of the CITY. The CITY reserves the right to disapprove of any and all activities held on CITY maintained property, including the Stage, which might be in conflict with respective administrative policies and procedures of the CITY, with any Local, State or Federal law, or with the interests and welfare of the residents of CITY.
- C. FC3 agrees to use due care in its use of "The Stage at Town Center" and agrees to be responsible for damages to the facility occurring during the periods the facility is used by FC3 and arising out of the FC3's use of CITY's facility. Should repairs be necessary to correct damages to the facility, the parties shall consult to any repairs being made except in the case of an emergency where repairs can be made immediately by CITY.

- 7. **INSURANCE.** FC3 shall maintain insurance of the types and in the amounts required by the CITY, as described in **Exhibit "C,"** which is attached hereto and incorporated herein by this reference.\_
- 8. **GOOD FAITH.** The CITY and FC3 intend and agree that their respective rights, duties, powers, liabilities, and obligations shall be performed, carried out, discharged, and exercised reasonably and in good faith.
- 9. **COMPLIANCE WITH LAWS.** It shall be each party's responsibility to be aware of and comply with all federal, state, and local laws in the exercise of rights and duties under this Agreement.
- 10. **CITY PREMISES.** FC3 acknowledges that its employees and agents will behave in an appropriate manner while on City property and while on any residential or commercial private property relating to the performance of Services in accordance with this Agreement and shall, at all times, conduct themselves in a manner consistent with City policies and within the discretion of the City Project Manager or designee. Professional and personal conduct of FC3'S staff shall conform to City's personnel policies and procedures. It is a material breach of this

Agreement for any agent or employee of FC3 to behave in a manner which is inconsistent with appropriate conduct or decorum or to behave in any manner that will disrupt the functioning of the City or constitute any level of threat to the safety, health, and/or well-being of any citizen, invitee, licensee, agent, or employee of the City. FC3 agrees to immediately remove any agent or employee if directed to do so by the City Project Manager or designee. FC3 acknowledges that the City shall not be responsible for injury (including death) to FC3'S employees, agents, officers, or other personnel, nor shall the City be responsible for damage to FC3'S property, which occurs on the City's property, unless the injury is the result of the City's gross negligence or willful misconduct. At all times while on City's premises, FC3 shall comply with all rules and regulations of City.

11. **ASSIGNMENT.** This Agreement shall be binding on the parties hereto and their representatives and successors. Neither party shall assign this Agreement or the rights and obligation to any other party.
12. **ATTORNEYS FEES.** In the event of any action arising under this Agreement, whether or not a lawsuit or other proceeding is filed, each party shall bear its own costs and expenses of such action including, but not limited to, reasonable attorney's fees incurred in any way in connection with the matter, whether incurred before litigation, during litigation, during appeal, or in connection with enforcement of a judgment, including, but not limited to, attorneys' and experts' fees. This shall include fees and costs incurred in litigating entitlement to attorneys' fees and costs, as well as in determining or quantifying the amount of recoverable attorneys' fees and costs. The reasonable costs shall include costs that are taxable under any applicable statute, rule or guideline, as well as non-taxable costs, including but not limited to, costs of investigation, copying costs, electronic discovery costs, telephone charges, mailing and delivery charges, information technology support charges, consultant and expert witness fees, travel expenses, court reporter fees, and mediator fees, regardless of whether such costs are otherwise taxable.
13. **CHOICE OF LAW/VENUE.** This Agreement and the provisions contained herein shall be construed, controlled, and interpreted according to the laws of the State of Florida. Venue for any legal proceeding related to this Agreement shall be in Flagler County, Florida.
14. **DEFAULT.** Failure of any party to fulfil the obligations set forth in Sections 3, 4, and/or 7 of this Agreement or in Exhibit C to this Agreement shall constitute default. Each of the parties hereto shall give the other party written notice of any default hereunder and shall allow the defaulting party thirty (30) days from the date of receipt to cure such default. In the event of default by FC3, CITY shall be entitled to any and all legal remedies available under Florida law.
15. **DISCLAIMER OF THIRD-PARTY BENEFICIARIES.** This Agreement is solely for the benefit of the formal parties herein, and no right or case of action shall accrue upon or by reason hereon, to or for the benefit of any third party not a formal party hereto.
16. **ENTIRE AGREEMENT.** This instrument constitutes the entire agreement between the parties and supersedes all previous discussions, understandings, and agreements between parties relating to the subject matter of this Agreement. This Agreement may not be amended, changed, or modified, and material provisions hereunder may not be waived, except by a written document executed by all parties to this Agreement.
17. **FORCE MAJEURE.** Any delay or failure of either party in the performance of its required obligations hereunder shall be excused if and to the extent caused by acts of God; fire; flood; windstorm; explosion; riot; war; sabotage; strike (except involving the Service Provider's labor force); extraordinary breakdown of or damage to City's affiliates' facilities; court injunction or order; federal and/or state law and/or regulation; or order by any other regulatory agency, provided that prompt notice of such delay is given by such party to the other and each of the parties hereto shall be diligent in attempting to remove such cause or causes. If any circumstance of Force Majeure remains in effect for sixty (60) days, either party may terminate this Agreement. Monetary damages will not be awarded in the event of Force Majeure.
18. **INDEMNIFICATION.** To the fullest extent permitted by law, FC3 shall indemnify, hold harmless and defend CITY, its agents, servants, and employees, or any of them, from and against all claims, damages, losses, and expenses including, but not limited to, attorney's fees and other legal costs such as those for paralegal, investigative, and legal support services, and the actual cost incurred for expert witness testimony, arising out of or resulting from the performance of this Agreement, provided that same is caused in whole or part by the error, omission,

negligent act, conduct, or misconduct of FC3, its agents, servants, employees, or subcontractors. In accordance with Section 725.06, Florida Statutes, adequate consideration has been provided to FC3 for this obligation, the receipt and sufficiency of which is hereby specifically acknowledged. Nothing herein shall be deemed to affect the rights, privileges, and immunities of CITY as set forth in Section 768.28, Florida Statutes. In claims against any person or entity indemnified under this section by an employee of FC3 or its agents or subcontractors, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under this Section shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for FC3 or its agents or subcontractors, under Workers Compensation acts, disability benefits acts, or other employee benefit acts. FC3 shall obtain and provide proof of insurance to secure its obligations set forth herein.

**19. INTERPRETATION.** The CITY and FC3 agree that all words, terms and conditions contained herein are to be read in concert, each with the other, and that a provision contained under one (1) heading may be considered to be equally applicable under another in the interpretation of this Agreement. This Agreement shall not be construed more strictly against either party on the basis of being the drafter thereof, and both parties have contributed to the drafting of this Agreement.

**20. NONDISCRIMINATION.** FC3 agrees that it will not discriminate against any employee, or applicant for employment for work under this Agreement because of race, color, religion, sex, age, national origin or disability and will take affirmative steps to ensure that applicants are employed and employees are treated during employment without regard to race, color, religion, sex, age, national origin or disability. This provision shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment advertising; layoff or termination; rates of pay or their forms or compensation; and selection for training, including apprenticeship. FC3, moreover, shall comply with all the requirements as imposed by the Americans with Disability Act, the regulations of the Federal government issued thereunder, and any and all requirements of State law related thereto.

**21. NOTICES.** Any notice required or allowed to be delivered hereunder shall be in writing and be deemed to be delivered upon receipt of such notice when deposited in the United States mail, postage prepaid, certified mail, return receipt requested, addressed to a party at the address set forth opposite the party's name below, or at such other address as the party's name below, or at such other address as the party shall specify by written notice to the other party delivered in accordance herewith.

**FOR CITY:**

The City Manager  
City of Palm Coast  
160 Lake Avenue  
Palm Coast, Florida 32164

**FOR FC3:**

The Chair of the Board  
Flagler County Cultural Council  
120 Airport Rd, STE 3  
Palm Coast, Florida, 32164

**22. SEVERABILITY.** If any part of this Agreement is found invalid or unenforceable by any court, such invalidity or unenforceability shall not affect the other parts of the Agreement if the rights and obligations of the parties contained therein are not materially prejudiced and if the intentions of the parties can continue to be affected. To that end, the terms of this Agreement are declared severable.

**23. CITY LOGO.** Prior to utilizing the CITY's logo on any marketing, promotional, or other materials, FC3 shall receive written approval from the CITY to use the CITY's logo. FC3 shall seek the CITY's approval by submitting a REQUEST TO USE CITY LOGO FORM, which is attached hereto as **Exhibit "A,"** and incorporated herein by this reference.

*[This space left intentionally blank]*

**IN WITNESS WHEREOF**, the parties hereto have hereunder executed this Agreement on the date below written for execution by the CITY.

**CITY OF PALM COAST**

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

Print: Lauren Johnston

Title: Assistant City Manager

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

**FLAGLER COUNTY CULTURAL COUNCIL, INC**

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

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

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

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

**ATTACHMENTS:**

Exhibit A: Request to Use CITY Logo Form

Exhibit B: Stage at Town Center Site Map

Exhibit C: Insurance Requirements



# **EXHIBIT A: REQUEST TO USE CITY LOGO FORM**

## **Acceptance of Terms & Conditions**

The City of Palm Coast is pleased to offer you the opportunity to use the Logo in accordance with the terms and conditions of this agreement. The City of Palm Coast hereby grants you a limited, nonexclusive, nontransferable, royalty free license to use and display the Logo in accordance with the terms set forth herein solely for the Requested Use and for a term of two (2) years only, unless earlier terminated by the City of Palm Coast. You agree not to permit any other party to use or display the Logo. Nothing herein by implication or otherwise, will grant to you any rights other than as explicitly set forth herein. You understand and agree that any other use of the Logo whatsoever beyond the Requested Use is strictly prohibited which use constitutes a breach of this Agreement and grounds for termination of your rights.

### **This license to use the Logo is subject to the following terms and conditions:**

1. You agree to use the Logo separately by itself, without any prefix, suffix or modifying words, terms, designs or symbols and agree not to alter the Logo in any manner.
2. You agree the logo shall not be used for political or commercial purposes.
3. You agree not to use any other trade mark, any trade name, product name or any other means of designation, commercial or business identification in association with the Logo so as to create a trademark merged with the Logo.
5. You agree not to use the Logo in any manner that may disparage the City of Palm Coast, its mayor, council members, employees, agents and others acting on its behalf (collectively, the "Related Parties"); that may be in violation of any of the proprietary rights of the City of Palm Coast or the Related parties; or that violates any applicable law, Ordinance, Land Development Code, or regulation.
6. You agree not to use the Logo in any manner that might imply sponsorship, endorsement or any association between you and the City of Palm Coast or the Related Parties. This includes campaign material.
7. You agree not to assist or allow any other person or legal entity to copy the Logo licensed to you or to use the Logo for any purpose whatsoever.

8. You agree at all times to defend, indemnify and hold harmless The City of Palm Coast, the Related Parties, and the successors and assigns of each of the foregoing (collectively, the "Indemnified Parties") from and against, and pay and reimburse the Indemnified Parties for, any liabilities, obligations, losses, damages, costs or expenses (including, but not limited to, interest penalties and reasonable legal fees) incurred in connection with any third party claims, arising out of, resulting from or relating to your use of the Logo, or any representation by you contained herein being untrue or any alleged act or omission by you, others who obtain the Logo licensed to you or copied from that Logo, or your agents in the performance of, or failure to perform, your obligations set forth in this Agreement.

9. You will ensure that your use of the Logo will not be in association with any libelous, defamatory, obscene or unlawful material, any material that might in any manner embarrass the City of Palm Coast or the Related Parties, or otherwise violate or infringe any right of any third party;

10. The City of Palm Coast shall have the right to terminate this agreement at any time on ten (10) day's notice to you whereupon you will immediately cease all use of the Logo and destroy all your copies of the Logo.

11. You agree that the Logo is provided to you on an "as is" basis without representation or warranty whatsoever whether express, implied or by operation of law. You agree to assume all of the risks associated with the Logo and your use thereof, and you further agree that neither the City of Palm Coast nor the Related Parties will be liable for any direct, indirect, incidental, consequential or special loss or damage suffered or incurred by you, even if the City of Palm Coast or any of the Related Parties has been apprised of the likelihood of such loss or damage occurring.

12. This Agreement shall be governed by and construed according to the laws of the State of Florida and the United States of America.

I agree to the above conditions.

\_\_\_\_\_  
Authorized Signature

\_\_\_\_\_  
Company or Organizational Name

\_\_\_\_\_  
Date

\_\_\_\_\_  
Title

|

## **EXHIBIT B: THE STAGE AT TOWN CENTER**



EXHIBIT C



## **INSURANCE REQUIREMENTS**

### **1. GENERAL.**

- 1.1. Prior to performance under this Agreement, FC3 shall furnish CITY with a Certificate of Insurance signed by an authorized representative of the insurer evidencing the insurance required in Section 3 below. CITY, its officials, officers, and employees shall be named additional insured under the Commercial General Liability policy using CG 1185 or its equivalent, as well as additional insured under the business auto policy. Except as otherwise specified in the Agreement, the insurance shall become effective prior to the commencement of work by FC3 and shall be maintained in force until the Agreement completion date. The insurance provided by FC3 shall apply on a primary basis and any other insurance or self-insurance maintained by CITY or CITY'S officials, officers, or employees shall be in excess of and not contributing with the insurance provided by or on behalf of FC3. The Workers' Compensation Policy and the Commercial General Liability required by this Agreement shall be provided on an occurrence rather than a claims-made basis. The Certificate of Insurance shall provide that CITY shall be given not less than thirty (30) days written notice prior to the modification, cancellation or restriction of coverage.
- 1.2. Until such time as the insurance is no longer required to be maintained by FC3, FC3 shall provide CITY with a renewal or replacement Certificate of Insurance not less than thirty (30) days before expiration or replacement of the insurance for which a previous certificate has been provided. In addition to providing the Certificate of Insurance, if required by CITY, FC3 shall, within thirty (30) days after receipt of the request, provide CITY with a certified copy of each of the policies of insurance providing the coverage required.
- 1.3. FC3 waives all rights against CITY for recovery of damages to the extent covered by Commercial General Liability, Commercial Umbrella Liability, Business Auto Liability or Workers Compensation and Employers Liability insurance maintained per requirements herein.
- 1.4. Neither approval by CITY nor failure to disapprove the insurance furnished by a subcontractor or another FC3 shall relieve FC3 of FC3'S full responsibility for performance of any obligation including FC3 indemnification of CITY under this Agreement.
- 1.5. It shall also be the responsibility of FC3 to ensure that all of its subcontractors performing Services under this Agreement are in compliance with the insurance requirements of this Agreement as defined above.
- 1.6. Compliance with the insurance requirements set forth herein shall not relieve FC3, its employees or agents of liability from any indemnification obligation under this Agreement.
- 1.7. Nothing herein shall be construed as a waiver of sovereign immunity by CITY beyond the limits set forth in Section 768.28, Florida Statutes.

### **2. INSURANCE COMPANY REQUIREMENTS.**

- 2.1. FC3 shall obtain or possess and continuously maintain the coverage from a company or companies, with a Best's Rating of "A" or better and a Financial Size Category of "VII" or better according to A.M. Best CITY. Companies issuing policies other than Workers' Compensation, must be authorized to conduct business in the State of Florida and prove same by maintaining Certificates of Authority issued to the companies by the Department of Insurance of the State of Florida. Policies for Workers' Compensation may be issued by companies authorized as a group self-insurer by Section 440.57, Florida Statutes.

- 2.2.** If, during the period which an insurance company is providing the insurance coverage required by this Agreement, an insurance company shall: 1) lose its Certificate of Authority, 2) no longer comply with Section 440.57, Florida Statutes, or 3) fail to maintain the requisite Best's Rating and Financial Size Category, FC3 shall, as soon as FC3 has knowledge of any such circumstance, immediately notify CITY and immediately replace the insurance coverage provided by the insurance company with a different insurance company meeting the requirements of this Agreement. Until such time as FC3 has replaced the unacceptable insurer with an insurer acceptable to CITY, FC3 shall be deemed to be in default of this Agreement.
- 3. COVERAGE.** Without limiting any of the other obligations or liability of FC3, FC3 shall, at FC3's sole expense, procure, maintain and keep in force amounts and types of insurance conforming to the minimum requirements set forth in this subsection. The amounts and types of insurance shall conform to the following minimum requirements:

**3.1. Workers' Compensation/Employer's Liability.**

**A. Workers Compensation Coverage** FC3's insurance shall cover FC3 for liability which would be covered by the latest edition of the standard Workers' Compensation Policy, as filed for use in Florida by the National Council on Compensation Insurance, without restrictive endorsements. FC3 will also be responsible for procuring proper proof of coverage from its subcontractors of every tier for liability which is a result of a Workers' Compensation injury to the subcontractor's employees. The minimum required limits to be provided by both FC3 and its subcontractors is outlined in subsection (b) below. In addition to coverage from the Florida Workers' Compensation Act, where appropriate, coverage is to be included for the Federal Employers' Liability Act and any other applicable Federal or State law. Subject to the restrictions of coverage found in the standard Workers' Compensation Policy, there shall be no maximum limit on the amount of coverage for liability imposed by the Florida Workers' Compensation Act, the United States Longshoremen's and Harbor Workers' Compensation Act, or any other coverage customarily insured under Part One of the standard Workers' Compensation Policy.

**B. Employers Liability Coverage**

|              |                         |
|--------------|-------------------------|
| \$500,000.00 | (Each Accident)         |
| \$500,000.00 | (Disease-Each Employee) |
| \$500,000.00 | (Disease-Policy Limit)  |

**3.2. Commercial General Liability.**

Using the latest edition of the standard Commercial General Liability Coverage Form (ISO Form CG 00 01), as filed for use in the State of Florida by the Insurance Services Office, without the attachment of restrictive endorsements other than the elimination of Coverage C, Medical Payment and the elimination of coverage for Fire Damage Legal Liability:

**LIMITS**

|                                     |  |
|-------------------------------------|--|
| General Aggregate (per project)     | \$2,000,000.00 or 2x Per Occurrence (whichever is greater) |
| Personal & Advertising Injury Limit | \$1,000,000.00 Each Occurrence                             |
| Limit                               | \$1,000,000.00   |

The CGL limits may be satisfied by a combination of primary CGL and Umbrella/Excess coverage. When Umbrella/Excess is provided it shall follow form.

**3.3. Business Auto Policy.**

FC3'S insurance shall cover FC3 for those sources of liability which would be covered by Part IV of the latest edition of the standard Business Auto Policy (ISO Form CA 00 01), as filed for use in the State of Florida by the Insurance Services Office, without the attachment of restrictive endorsements. Coverage shall include owned, non-owned and hired autos.

The minimum limits to be maintained by FC3 (inclusive of any amounts provided by an Umbrella or Excess policy) shall be per accident combined single limit for bodily injury liability and property damage liability. If the coverage is subject to an aggregate, FC3 shall maintain separate aggregate limits of coverage applicable to claims arising out of or in connection with the work under this Agreement. The separate aggregate limits to be maintained by FC3 shall be a minimum of three (3) times the per accident limit required and shall apply separately to each policy year or part thereof.

The minimum amount of coverage under the Business Auto Policy shall be:

**LIMITS**

|   |                                |
|---|--------------------------------|
| Each Occurrence Bodily Injury and<br>Liability Combined | \$1,000,000.00 Property Damage |
|---|--------------------------------|

**Professional Liability:** FC3 shall provide professional liability insurance as well as errors and omission insurance in a minimum amount of \$1,000,000 CSL or its equivalent, with a combined single limit of not less than \$1,000,000, protecting FC3 against claims of the City for negligence, errors, mistakes, or omissions in the performance of Services to be performed and furnished by FC3.