

AGREEMENT

THIS AGREEMENT (“Agreement”) is made and entered into on this 12th day of January, 2020^{AM} (“Effective Date”) by and between Deuces Live, Inc., a 501(c)(3) certified Florida Main Street (“Agency”) and the City of St. Petersburg, Florida (“City”) (collectively, “Parties”).

WHEREAS, the City of St. Petersburg is proud of its heritage and history, and its self-designation as a City of the Arts; and

WHEREAS, the National Endowment of the Arts (“NEA”), an independent agency of the United States federal government that offers support and funding for projects exhibiting artistic excellence, annually awards “Our Town” creative place making grants; and

WHEREAS, Our Town grants support projects that integrate arts, culture and design activities into efforts that strengthen communities by advancing local economic, physical and/or social outcomes; and

WHEREAS, successful Our Town projects ultimately lay the groundwork for systemic changes that strengthen communities; and

WHEREAS, Our Town grant project applications require a partnership between a local government entity and a non-profit organization, where the local government pledges to make a financial match of the award; and

WHEREAS, in June 2020, the NEA announced Agency as a 2020 Our Town grant recipient in support of Agency’s “Arts Explosion on the Deuces Live” project, more particularly described in Agency’s project proposal (attached hereto as Appendix A and incorporated herein) (the “Project”); and

WHEREAS, the City made a commitment to partner with Agency on its NEA Our Town grant application and has pledged to provide to Agency \$25,000 to match Our Town grant funds received by Agency from NEA (“NEA Match Funds”); and

WHEREAS, the City also desires to provide funds to agency of up to \$75,000 toward implementation of the Project (as defined herein) (“Alternative Match Funds”) to match funds Agency raises from additional sources; and

WHEREAS, the Project will further Agency and City initiatives to help sustain the economic and cultural growth of the City of St. Petersburg’s 22nd Street South Corridor – a critical hub of the community positioned for growth.

NOW, THEREFORE, in consideration of the foregoing recitals (which are an integral part of this Agreement and are incorporated herein by reference) and the promises and covenants contained herein and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Parties agree as follows:

1. **Grant of Funds.**

- A. The City shall pay Agency a one-time award of twenty-five thousand dollars (\$25,000) (“NEA Match Funds”) to be used by Agency for implementation of the Project. Agency acknowledges that the award by the City to Agency of the NEA Match Funds fulfills the City’s obligations to match, dollar for dollar, the \$25,000 Our Town grant awarded to Agency by NEA in June 2020. The City will distribute the NEA Match Funds to agency no later than thirty (30) days after the Effective Date of this Agreement.
- B. Additionally, the City shall pay Agency an amount not to exceed \$75,000 (“Alternative Match Funds”) to be used by Agency for implementation of the Project. Disbursement of Alternative Match Funds will be made in 3 incremental payments of \$25,000 each only after the City’s review and approval of documentation evidencing funds raised for the Project by Agency from other sources.
- C. For the purposes of this Agreement, the NEA Match Funds and any Alternative Match Funds awarded to the Agency by the City together constitute the “Grant.”

2. **Agency’s Obligations.** Agency shall use the Grant funds for the sole purpose of advancing the Project in accordance with Appendix A, which may include, community engagement, marketing and events, artist stipends, hiring of consultants, design and construction of improvements, staff and administrative costs, and any other costs agreed to by the Parties; provided, however, that Agency may only expend up to a maximum of 10% of the total amount of the Grant on staff and administrative costs.

3. **Term.** The term of this Agreement shall commence on the Effective Date, and terminate on August 31, 2021 (“Term”), unless this Agreement is earlier terminated as provided for herein.

4. **Repayment of Grant Funds.** If, after the disbursement of the Grant funds to Agency, the City determines that Agency has failed to comply with any of the terms and conditions of this Agreement, the City may, in its sole discretion, require Agency to repay all or a portion of the Grant funds to the City within thirty (30) days after written notice from the City to repay such funds. This paragraph survives expiration of this Agreement.

5. **Indemnification.**

- A. Agency shall defend at its expense, pay on behalf of, hold harmless and indemnify the City, its officers, employees, agents, elected and appointed officials and volunteers (collectively, "Indemnified Parties") from and against any and all claims, demands, liens, liabilities, penalties, fines, fees, judgments, losses and damages (collectively, "Claims"), whether or not a lawsuit is filed, including but not limited to costs, expenses and attorneys’ and experts’ fees at trial and on appeal and Claims for damage to property or bodily or personal injuries, including death

at any time resulting therefrom, sustained by any persons or entities, which Claims are alleged or claimed to have arisen out of or in connection with, in whole or in part, directly or indirectly:

- i. The performance of this Agreement (including any amendments hereto) by Agency, its employees, agents, representatives or subcontractors; or
 - ii. The failure of Agency, its employees, agents, representatives or subcontractors to comply and conform with applicable Laws, as hereinafter defined; or
 - iii. Any negligent act or omission of Agency, its employees, agents, representatives, or subcontractors, whether or not such negligence is claimed to be either solely that of Agency, its employees, agents, representatives or subcontractors, or to be in conjunction with the claimed negligence of others, including that of any of the Indemnified Parties; or
 - iv. Any reckless or intentional wrongful act or omission of Agency, its employees, agents, representatives, or subcontractors.
- B. The provisions of this paragraph are independent of, and will not be limited by, any insurance required to be obtained by Agency pursuant to this Agreement or otherwise obtained by Agency, and shall survive the expiration or earlier termination of this Agreement with respect to any claims or liability arising in connection with any event occurring prior to such expiration or termination.

6. Insurance.

- A. The Agency shall maintain insurance coverage in the form and amount deemed adequate by the City for all risks inherent in the functions and aspects of its operation, including but not limited to risks of fire and casualty, automobile coverage as required by law, workers' compensation insurance as required by law, employers' liability insurance, and general liability insurance for personal injury, property damage and contractual liability under this Agreement.
- B. The City hereby reserves the right to require the Agency to have the Indemnified Parties named as additional insured under all policies required to be obtained by the Agency pursuant to this Agreement (except workers' compensation insurance). This right may be exercised at any time and may be exercised in the absolute discretion of the City, with or without stated reasons, by providing written notice to the Agency. The Agency shall have ten (10) days in which to comply. All required insurance policies shall provide that the City shall be afforded at least thirty (30) days advance written notice in the event of cancellation, reduction or material change in any policy. All insurance required shall be provided by responsible insurers licensed in the State of Florida and rated at least A - in the then current edition of Best's Insurance Guide.

- C. Prior to the City's distribution of any funds pursuant to this Agreement, the Agency shall provide the City with a certificate of insurance on a standard ACORD form reflecting all required coverage. At the City's request, the Agency shall provide copies of current policies with all applicable endorsements. The City reserves the right to request proof that the insurance premiums for the required policies have been paid.
7. **Notices.** Unless and to the extent otherwise provided in this Agreement, all notices, demands, requests for approvals and other communications which are required to be given by either party to the other shall be in writing and shall be deemed given and delivered on the date delivered in person, upon the expiration of five (5) days following the date mailed by registered or certified mail, postage prepaid, return receipt requested to the address provided below, or upon the date delivered by overnight courier (signature required) to the address provided below.

CITY:

Attn: Dr. Kanika Tomalin
Deputy Mayor & City Administrator
City of St. Petersburg
175 Fifth St. N.
St. Petersburg, FL 33701
kanika.tomalin@stpete.org

AGENCY:

Attn: Veatrice Farrell
Executive Director
Deuces Live, Inc.
833 22nd Street South
St. Petersburg, Florida 33712
727-433-8237 that's 727-4DEUCES
www.deuceslive.org
[Facebook.com/thedeuceslive](https://www.facebook.com/thedeuceslive)

8. **Severability.** Should any paragraph or portion of any paragraph of this Agreement be rendered void, invalid or unenforceable by any court of law for any reason, such determination shall not render void, invalid or unenforceable any other paragraph or portion of this Agreement.
9. **Due Authority.** Each party to this Agreement that is not an individual represents and warrants to the other party that (i) it is a duly organized, qualified and existing entity authorized to do business under the laws of the State of Florida, and (ii) all appropriate authority exists so as to duly authorize the person executing this Agreement to so execute the same and fully bind the party on whose behalf he or she is executing.

10. **Assignment.** Agency shall make no assignment of any of its rights, duties, or obligations under this Agreement without the City's prior written consent, which consent may be withheld by the City in its sole and absolute discretion.
11. **Default and Termination.** The City may terminate this Agreement and require Agency to repay the Grant funds to the City in the event of failure by Agency to observe or perform any term or condition of this Agreement if such failure shall continue for thirty (30) days after notice thereof from the City to Agency.
12. **Governing Law and Venue.** This Agreement shall be interpreted and construed in accordance with the laws of the State of Florida. Venue for any action brought in state court shall be in Pinellas County, St. Petersburg Division. Venue for any action brought in federal court shall be in the Middle District of Florida, Tampa Division, unless a division shall be created in St. Petersburg or Pinellas County, in which case the action shall be brought in that division. The Parties consent to the personal jurisdiction of the aforementioned courts and irrevocably waive any objections to said jurisdiction.
13. **Entire Agreement and Modification.** This Agreement constitutes the entire agreement between the Parties pertaining to the subject matter covered herein and there are no oral representations, arrangements or understandings between or among the parties relating to the subject matter of this Agreement. No change to this Agreement will be valid unless made by a written amendment executed by the Parties.
14. **Compliance with Laws.** Agency shall comply with all applicable federal, state, and local laws, ordinances, rules and regulations, the federal and state constitutions, and orders and decrees of any lawful authorities having jurisdiction over the matter at issue (collectively, "Laws"), including but not limited to Florida Public Records Laws (e.g. Chapter 119, Florida Statutes).
15. **No Third Party Beneficiaries.** Notwithstanding anything to the contrary contained in this Agreement, persons or entities not a party to this Agreement may not claim any benefit hereunder or as third party beneficiaries hereto.
16. **No Construction against Preparer of Agreement.** This Agreement has been prepared by the City and reviewed by Agency and its professional advisors. The City, Agency and Agency's professional advisors believe that this Agreement expresses their agreement and that it should not be interpreted in favor of either the City or Agency or against the City or Agency merely because of their efforts in preparing it.
17. **Funding Credit.** At the City's written request, Agency shall identify the City as a funding agency in all printed, informational and promotional materials related to the Grant. Agency shall not use the City's name in any printed, informational or promotional materials except to the extent authorized by the City.
18. **Non-appropriation.** The obligations of the City as to any funding required pursuant to this Agreement shall be limited to an obligation in any given year to budget, appropriate

and pay from legally available funds, after monies for essential City services have been budgeted and appropriated, sufficient monies for the funding that is required during that year. Notwithstanding the foregoing, the City shall not be prohibited from pledging any legally available non-ad valorem revenues for any obligations heretofore or hereafter incurred, which pledge shall be prior and superior to any obligation of the City pursuant to this Agreement.

19. **City Consent and Action.**

- A. For purposes of this Agreement, any required written permission, consent, acceptance, approval, or agreement by the City means the approval of the Mayor or his authorized designee, unless otherwise set forth in this Agreement or unless otherwise required to be exercised by City Council pursuant to the City Charter or applicable Laws.
- B. For purposes of this Agreement, any right of the City to take any action permitted, allowed, or required by this Agreement may be exercised by the Mayor or his authorized designee, unless otherwise set forth in this Agreement or unless otherwise required to be exercised by City Council pursuant to the City Charter or applicable Laws.

20. **Captions.** Captions are for convenience only and shall not control or affect the meaning or construction of any of the provisions of this Agreement.

21. **Records and Reports.**

- A. Agency shall maintain financial books, records, and accounting information related to this Agreement. These books, records, and information shall comply with generally accepted accounting principles. Agency shall provide an independent audit of such books, records and information by a Certified Public Accountant upon request by the City, at no cost to the City, within ninety (90) days of such request. Except as otherwise authorized by the City, Agency shall retain all such books, records and information during the Term and for the retention periods set forth in the most recent General Records Schedule GS1-SL for State and Local Government Agencies following expiration or earlier termination of this Agreement. Nothing herein shall be construed to allow destruction of records that may be required to be retained longer by the statutes of the State of Florida.
- B. Agency shall, at any reasonable time requested by the City and as often as the City may deem necessary, make available to the City for examination all of its books, records and information with respect to all matters covered by this Agreement and shall permit the City or its designated authorized representatives to audit and inspect all such books, records and information relating to all matters covered by this Agreement.

22. **Survival.** All obligations and rights of any party arising during or attributable to the period prior to expiration or earlier termination of this Agreement, including but not

limited to those obligations and rights related to indemnification and records, shall survive such expiration or earlier termination.

23. **No Waiver.** No provision of this Agreement will be deemed waived by either party unless expressly waived in writing signed by the waiving party. No waiver shall be implied by delay or any other act or omission of either party. No waiver by either party of any provision of this Agreement shall be deemed a waiver of such provision with respect to any subsequent matter relating to such provision, and the City's consent respecting any action by Agency shall not constitute a waiver of the requirement for obtaining the City's consent respecting any subsequent action.
24. **Successors and Assigns.** This Agreement shall inure to the benefit of and be enforceable by and against the Parties, their heirs, personal representatives, successors, and assigns, including successors by way of reorganization.
25. **Relationship of Parties.** Nothing contained herein shall be deemed or construed by the Parties, or by any third party, as creating the relationship of principal and agent or of partnership or of joint venture between the Parties, it being understood and agreed that nothing contained herein, nor any acts of the Parties, shall be deemed to create any relationship between the Parties other than the relationship of independent contractors and principals of their own accounts.
26. **Nondiscrimination.** Agency, its employees, agents, representatives, contractors, subcontractors and volunteers shall not discriminate because of race, color, religion, gender, national origin, marital status, age, disability, sexual orientation, genetic information or other protected category.
27. **No Responsibility or Liability.** The City shall not be responsible for or incur any liability for any claims or demands arising out of or in connection with this Agreement or the Project.
28. **Order of Precedence.** In the event of an inconsistency or conflict between or among this Agreement and the appendices to this Agreement, this Agreement shall control and govern.
29. **Agreement Execution.** This Agreement may be executed in any number of counterparts, each of which is deemed to be an original, and such counterparts collectively constitute a single original Agreement. Additionally, each party is authorized to sign this Agreement electronically using any method authorized by applicable law or City policy.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their duly authorized representatives on the day and date first above written.

Deuces Live, Inc.:

By: Antwan Wells

Print: ANTWAUN WELLS

Title: PRESIDENT

CITY OF ST. PETERSBURG, FLORIDA:

By: _____

Print: _____

Title: _____

ATTEST: (SEAL)

Approved as Form and Content

City Clerk (Designee)

City Attorney (Designee) 00544950

ST. PETERSBURG CITY COUNCIL

Consent Agenda

Meeting of March 4, 2021

TO: The Honorable Ed Montanari, Chair and Members of City Council

SUBJECT: A resolution approving an agreement between the City of St. Petersburg (“City”) and Deuces Live, Inc. (“Agency”) for the city to contribute funding in an amount not to exceed \$100,000 (“Grant”) toward agency’s implementation, of its Arts Explosion Deuces Live Project; authorizing the Mayor or his designee to execute the agreement and all other documents necessary to effectuate this transaction; approving a transfer in the amount of \$25,000 from the General Fund grant matching funds (0001) to the Economic and Workforce Development Department, Economic and Workforce Development Division (375-2609) to provide the grant; authorizing the city attorney’s office to make non-substantive changes to this agreement; and providing an effective date.

EXPLANATION: The City’s initial investment of \$25,000 will be used to match the NEA OUR TOWN grant in the same amount. The primary purpose of this proposed OUR TOWN project is to develop a continuous performing arts schedule within the community congruent with the many visual arts activities already in-place through our project partners. As the goal of this project is to create an active, multi-dimensional arts scene in the corridor that would serve as a social enterprise project through event production and have a wide-spread positive impact on economic development by attracting patrons and visitors to the neighborhood, stimulating the economy and encouraging further economic development in the corridor.

The balance of the financial commitment (\$75,000) for a total of \$100,000 will be used to match on-going fundraising activities. As the Deuces Live raises additional resources the City intends to match those private funds up to the \$75,000. The City’s grant match will further our initiatives laid out in the “2018 Warehouse Arts District - Deuces Live Action Plan.” Resources will be appropriated as certain fundraising milestones are met.

RECOMMENDATION: Administration recommends that City Council approve an agreement between the City of St. Petersburg (“City”) and Deuces Live, Inc. (“Agency”) for the city to contribute funding in an amount not to exceed \$100,000 (“Grant”) toward agency’s implementation, of its Arts Explosion Deuces Live Project; authorizing the Mayor or his designee to execute the agreement and all other documents necessary to effectuate this transaction; approving a transfer in the amount of \$25,000 from the General Fund grant matching funds (0001) to the Economic and Workforce Development Department, Economic and Workforce Development Division (375-2609) to provide the grant; authorizing the city attorney’s office to make non-substantive changes to this agreement; and providing an effective date.

COST/FUNDING/ASSESSMENT INFORMATION: Funding for this project will be available after the approval of a transfer in the amount of \$25,000 from the General Fund grant matching funds (0001) to the Economic and Workforce Development Department, Economic and Workforce Development Division (375-2609).

ATTACHMENTS: 1) Resolution,
2) Agreement

APPROVALS:

Administration: /s/ Thomas Greene

Budget:  _____

A RESOLUTION APPROVING AN AGREEMENT BETWEEN THE CITY OF ST. PETERSBURG (“CITY”) AND DEUCES LIVE, INC. (“AGENCY”) FOR THE CITY TO CONTRIBUTE FUNDING IN AN AMOUNT NOT TO EXCEED \$100,000 (“GRANT”) TOWARD AGENCY’S IMPLEMENTATION OF ITS ARTS EXPLOSION DEUCES LIVE PROJECT; AUTHORIZING THE MAYOR OR HIS DESIGNEE TO EXECUTE THE AGREEMENT AND ALL OTHER DOCUMENTS NECESSARY TO EFFECTUATE THIS TRANSACTION; APPROVING A TRANSFER IN THE AMOUNT OF \$25,000 FROM THE GENERAL FUND GRANT MATCHING FUNDS (0001) TO THE ECONOMIC AND WORKFORCE DEVELOPMENT DEPARTMENT, ECONOMIC AND WORKFORCE DEVELOPMENT DIVISION (375-2609) TO PROVIDE THE GRANT; AUTHORIZING THE CITY ATTORNEY’S OFFICE TO MAKE NON-SUBSTANTIVE CHANGES TO THE AGREEMENT; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City of St. Petersburg (“City”) is proud of its heritage and history and its self-designation as a City of the Arts; and

WHEREAS, the National Endowment of the Arts (“NEA”), an independent agency of the United States federal government that offers support and funding for projects exhibiting artistic excellence, annually awards “Our Town” creative place making grants; and

WHEREAS, Our Town grants support projects that integrate arts, culture and design activities into efforts that strengthen communities by advancing local economic, physical and/or social outcomes; and

WHEREAS, successful Our Town projects ultimately lay the groundwork for systemic changes that strengthen communities; and

WHEREAS, Our Town grant project applications require a partnership between a local government entity and a non-profit organization, where the local government pledges to make a financial match of the award; and

WHEREAS, in June 2020, the NEA announced Deuces Live, Inc. (“Agency”) as a 2020 Our Town grant recipient in support of Agency’s “Arts Explosion on the Deuces Live” project (“Project”); and

WHEREAS, City Administration made a commitment to partner with Agency on its NEA Our Town grant application and has pledged to provide to Agency \$25,000 to match Our Town grant funds received by Agency from NEA (“NEA Match Funds”) subject to approval by the St. Petersburg City Council; and

WHEREAS, City Administration also desires to provide funds to Agency of up to \$75,000 toward implementation of the Project to match funds Agency raises from additional sources; and

WHEREAS, the Project will further Agency and City initiatives to help sustain the economic and cultural growth of the City’s 22nd Street South Corridor, which is a critical hub of the community positioned for growth; and

WHEREAS, the city matching grant contribution will be provided by the City from grant matching funds available in the General Fund (0001); and

WHEREAS, the balance of the funds available in the General Fund (0001) for grant matching will be \$137,629 after approval of the transfer.

WHEREAS, Administration recommends approval of this Resolution.

NOW THEREFORE, BE IT RESOLVED, by the City Council of the City of St. Petersburg, Florida, that the agreement between the City and Deuces Live, Inc. ("Agency") for the City to contribute funding in an amount not to exceed \$100,000 ("Grant") towards Agency's implementation of its Arts Explosion on the Deuces Live project ("Agreement") is hereby approved.

BE IT FURTHER RESOLVED that the Mayor or his designee is authorized to execute the Agreement and all other documents necessary to effectuate this transaction.

BE IT FURTHER RESOLVED that there is hereby approved from the previously appropriated balance of the grant matching funds available in the General Fund (0001), the following transfer for FY21:

<u>General Fund (0001)</u>	(\$25,000)
Economic and Workforce Development Department,	
Economic and Workforce Development Division (375-2609)	\$25,000

BE IT FURTHER RESOLVED that the City Attorney's Office is authorized to make non-substantive changes to the Agreement.

This resolution shall become effective immediately upon its adoption.

Approved:

/s/Christina Boussias

Legal 00548975

/s/ Thomas Greene

Administration

E Makofski

Budget