

K21-195

FIRST AMENDMENT TO SUBRECIPIENT AGREEMENT

BY AND BETWEEN

THE CITY OF NEW ORLEANS

AND

ARTS COUNCIL OF NEW ORLEANS

FOR

NDR ORLEANS & LONDON AVENUE CANALS

THIS FIRST AMENDMENT (the “**Amendment**”) is entered into by and between the City of New Orleans, represented by LaToya Cantrell, Mayor (the “**City**”), and Arts Council New Orleans represented by Joycelyn Reynolds, its Executive Director (the “**Subrecipient**”). The City and the Subrecipient are sometimes collectively referred to as the “**Parties**.” The Amendment is effective upon execution by the City (the “**Effective Date**”).

RECITALS

WHEREAS, on May 18, 2020, the City and the Subrecipient entered into a Subrecipient Agreement for placemaking in the Gentilly Resilience District (the “**Agreement**”); and

WHEREAS, the City and the Subrecipient, each having the authority to do so, desire to enter this Amendment to increase the funding amount, extend the term for continuity of services, and update and add terms and provisions;

NOW THEREFORE, for good and valuable consideration, the City and the Subrecipient amend the Agreement as follows:

1. **Funding**. The compensation of \$181,107.00 described in Article IV of the Agreement is increased by two hundred and fifty thousand dollars even (\$250,000.00) to a total amount not to exceed four hundred thirty-one thousand one hundred seven dollars even (\$431,107.00).

2. **Obligations**. The obligations described in Article II Section B shall be amended to add “7. Identify no less than two additional locations in Gentilly for art installation to promote awareness of climate risk and adaptive strategies, including but not limited to canals, lagoons and other water features in the Gentilly Resilience District.”

3. **Key Personnel**. The key personnel identified in Article II Section E shall be amended to delete “Alphonse Smith, Executive Director” and replace with “Joycelyn Reynolds, Executive Director”.

4. **Updated Budget Exhibit**. The Budget, attached to the Agreement as Exhibit B, is deleted in its entirety and replaced with the Updated Exhibit B attached to this Amendment.

5. **Notice**. The notice described in Article XIII Section A.2. shall be amended to delete “Alphonse Smith” and replace with “Joycelyn Reynolds”.

6. **Extension**. The contract is extended for one year from May 18, 2020 through May 17, 2021

7. Updated Provisions.

A. Living Wage. The language of Article X – Living Wage is deleted in its entirety and replaced with:

Article X – Living Wage

A. Definitions. Unless otherwise expressly provided in this Agreement, Capitalized terms used but not defined herein, shall have the definition attributed to them in Article VIII, Section 70-802 of the City Code.

B. Compliance. To the fullest extent permitted by law, the Subrecipient agrees to abide by City Code Sections 70-801, *et seq.*, which requires, in pertinent part, the following:

1. Payment of an hourly wage to Covered Employees equal to the amounts defined in the City Code ("**Living Wage**");
2. Receipt of at least seven (7) days per year of compensated leave for Covered Employees, as required by Section 70-807 of the City Code; and
3. Post notice in a prominent place regarding the applicability of the Living Wage Ordinance in every workplace in which Covered Employees are working that is within the Covered Employer's custody and control, as required by Section 70-810 of the City Code.

C. Current Living Wage. In accordance with the Living Wage Ordinance, the current Living Wage per the Consumer Price Index data is equal to \$11.19. The Subrecipient shall be responsible for confirming the Current Living Wage by visiting <https://www.nola.gov/economic-development/workforce-development/>.

D. Adjusted Living Wage. In accordance with Section 70-806(2) of the City Code, the Subrecipient acknowledges and agrees that the Living Wage may be increased during the term of the Agreement. Any City contract or City financial assistance agreement (a) extending from one calendar year into the next or (b) with a term of longer than one year, inclusive of any renewal terms or extensions, shall require the Covered Employer to pay the Covered Employee an Adjusted Living Wage, accounting for the annual Consumer Price Index adjustment. The indexing adjustment shall occur each year on July 1st using the Consumer Price Index figures provided for the calendar year ended December 31st of the preceding year, and thereafter on an annual basis.

E. Subcontract Requirements. As required by Section 70-804 of the City Code, the Subrecipient, beneficiary, or other Covered Employer, prior to entering into a subcontract, shall notify sub-Subrecipients in writing of the requirements and applicability of Article VIII – The Living Wage Ordinance ("**Article**"). City Subrecipients and beneficiaries shall be deemed responsible for violations of this Article by their sub-Subrecipients.

F. Reporting. On or before January 31st and upon request by the City, the Subrecipient shall identify (a) the hourly wage earned by the lowest paid Covered Employee and (b) the number of days of compensated leave received by Covered

Employees earning less than 130% of the then-prevailing wage during the current term of the Agreement, and provide the identified information to the following:

Office of Workforce Development

Living Wage - Compliance

1340 Poydras Street – Suite 1800

New Orleans, Louisiana 70112

G. Compliance Monitoring. Covered Employers under this Agreement are subject to compliance monitoring and enforcement of the Living Wage requirements by the Office of Workforce Development (the “OWD”) and/or the Chief Administrative Office (“CAO”). Covered Employers will cooperate fully with the OWD and/or the CAO and other City employees and agents authorized to assist in the administration and enforcement of the Living Wage requirements. Steps and actions include, but are not limited to, requirements that: (i) the Subrecipient will cooperate fully with the OWD and the CAO and other City employees and agents authorized to assist in the administration and enforcement of the Living Wage requirements; (ii) the Subrecipient agrees that the OWD and the CAO and their designees, in the performance of their duties, shall have the right to engage in random inspections of job sites and to have access to the employees of the Subrecipient, payroll records and employee paychecks; and (ii) that the City may audit such records of the Subrecipient as he or she reasonably deems necessary to determine compliance with the Living Wage standards.

H. Remedies. If the Subrecipient fails to comply with the Living Wage requirements during the term of the Agreement, said failure may result in termination of the Agreement or the pursuit of other remedies by the City, including, but not limited to, the penalties and enforcement mechanisms set forth in Section 70-811 of the City Code.

B. Special Conditions for HUD NDR Contracts. The language of Article XVI, Section V, is deleted in its entirety and replaced with:

V. The “HUD Compliance Provisions for Professional Services Contracts,” attached as Exhibit C to this Agreement, are expressly incorporated into the Agreement and effective as of the Effective Date of the Agreement.

8. Additional Provisions. The following terms and conditions are added to the Agreement.

A. Disadvantaged Business Enterprises. The following language is added to the Agreement as Article XVII.

ARTICLE XVII - DISADVANTAGED BUSINESS ENTERPRISE ("DBE") PROGRAM

A. **In General.** The Subrecipient agrees to abide by the City Code Sections 70-456, *et seq.*, to use its best efforts to carry out all applicable requirements of the City's DBE Program for the administration of this Agreement, as set forth in the City Code and any applicable rules adopted thereunder. The City's Office of Supplier Diversity ("**OSD**") oversees the DBE Program and assigns a DBE Compliance Officer ("**DBECO**") to ensure compliance.

B. **Monitoring.** To ensure compliance with DBE requirements during the term of this Agreement, the DBECO will monitor the Subrecipient's use of DBE subSubrecipients/suppliers ("**DBE Entities**") through the following actions:

1. Job site visits;
2. Electronic payment tracking via the Contract Compliance Monitoring System or other means as approved by the OSD;
3. Routine audits of contract payments to all subSubrecipients;
4. Reviewing of records and reports; and/or
5. Interviews of selected personnel.

The DBECO may schedule inspections and on-site visits with or without prior notice to the Subrecipient or DBE Entities.

C. **Cooperation.** The Subrecipient shall:

1. Designate an individual as the "DBE Liaison" who will monitor the Subrecipient's DBE participation as well as document and maintain records of "Good Faith Efforts" with DBE Entities.
2. Execute written contracts with DBE Entities that meet the applicable DBE goals.
 - a. The Subrecipient shall provide the DBECO with copies of said contracts within 30 days from the date this Agreement is fully executed between the City and the Subrecipient.
 - b. The Subrecipient shall agree to promptly pay subSubrecipients, including DBE Entities, in accordance with law.
3. Establish and maintain the following records for review upon request by the OSD:
 - a. Copies of written contracts with DBE Entities and purchase orders;
 - b. Documentation of payments and other transactions with DBE Entities;
 - c. Appropriate explanations of any changes or replacements of DBE Entities, which may include a record of "Post-Award Good Faith Efforts" for each certified firm that the Subrecipient does not use in accordance with the approved DBE participation submission;

- d. Any other records required by the OSD.

The Subrecipient is required to maintain such records for 5 years after completion or closeout of this Agreement. Such records are necessary to determine compliance with their DBE obligations.

- 4. Post monthly payments and submit regular reports to the DBECO as required via the online "Contract Compliance Monitoring System" or other means approved by the OSD.

- a. The Subrecipient shall submit the initial report outlining DBE participation within 30 days from the date of notice to proceed (or equivalent document) issued by the City to the Subrecipient. Thereafter, "DBE Utilization" reports shall be due on or before the fifteenth day of each month until all DBE subcontracting work is completed.
- b. Reports are required even when no activity has occurred in a monthly period.
- c. If the established percentage is not being met, the monthly report shall include a narrative description of the progress being made in DBE participation.
- d. The Subrecipient may also be required to attach or upload copies of canceled checks or bank statements that identify payer, payee, and amount of transfer to verify payment information as indicated on the form.

- 5. Conform to the established percentage as approved by the OSD.

- a. The total dollar amount of the Agreement shall include approved change orders and amendments. For a requirements contract, the total dollar amount shall be based in actual quantities ordered.
- b. No changes to the established percentage and DBE Entities submitted on DBE Compliance Form-1 shall be allowed without approval by the OSD.
- c. The City will not adjust the contract for any increase in cost due to replacement of DBE Entities.

D. Post-Award Modification. The OSD may grant a post-award modification request if:

- a. for a reason beyond the Subrecipient's control, the Subrecipient is unable to use the certified DBE entity submitted on DBE Compliance Form-1 to perform the specified work. The Subrecipient must notify the OSD of the intent for removal and substitution of a certified DBE immediately upon determination of that the DBE submitted on Compliance Form -1 is unable to perform the specified work. In such case, the Subrecipient shall use and document "Good Faith Efforts" to find a similarly qualified and certified

DBE entity to perform such specified work. The same criteria used for establishing "Good Faith Efforts" in maximizing the participation of DBE Entities prior to awarding the Agreement will also apply to the substitution of DBE subSubrecipients during the performance of the Agreement; or

- b. the Subrecipient reasonably believes that, due to a change of scope, execution of the work in accordance with the directions from the City is unlikely to meet the established percentage or terms. In such case, the Subrecipient shall use and document "Good Faith Efforts" to achieve a reasonable amount of DBE participation on the remaining work on the Agreement.

B. Force Majeure. The following language is added to the Agreement as Article XVIII.

Article XVIII - Force Majeure

A. Event. An event of Force Majeure will include any event or occurrence not reasonably foreseeable by the City at the execution of this Agreement, which will include, but not be limited to, abnormally severe and unusual weather conditions or other acts of God (including tropical weather events, tornados, hurricanes, and flooding); declarations of emergency; shortages of labor or materials (not caused by City); riots; terrorism; acts of public enemy; war; sabotage; cyber-attacks, threats, or incidents; epidemics or pandemics; court or governmental order; or any other cause whatsoever beyond the reasonable control of City, provided such event was not caused by the negligence or misconduct of City, by the failure of City to comply with applicable laws, or by the breach of this Agreement.

B. Notice. To seek the benefit of this Article, the City must provide notice in writing to the Subrecipient stating: (1) an event triggering this Article has occurred; (2) the anticipated effect of the Force Majeure event on performance; and (3) the expected duration of the delay, if the Agreement is being suspended

C. Effect.

1. Upon the occurrence of a Force Majeure event, for which the City has provided required notice, the City may, at its sole discretion:

- a. Suspend this Agreement for a duration to be set by the City, not to exceed 90 days. During such time of suspension, the Parties will not be liable or responsible for performance of their respective obligations under this Agreement, and there will be excluded from the computation of such period of time any delays directly due to the occurrence of the Force Majeure event. During any such period of suspension, the Subrecipient must take all commercially reasonable actions to mitigate

against the effects of the Force Majeure event and to ensure the prompt resumption of performance when so instructed by the City; or

- b. Terminate this Agreement, either immediately or after one or more periods of suspension, effective on notice to Subrecipient and without any further compensation due.

2. Notwithstanding Section C(1) above, the obligations relating to making payments when due (for services or materials already provided) and those obligations specified to survive in the Agreement will be unaffected by any suspension or termination.

C. Cost Recovery. The following language is added to the Agreement as Article XIV, Section Z.

Z. In accordance with Section 2-8.1 of the Municipal Code entitled "Cost recovery in contracts, cooperative endeavor agreements, and grants," to the maximum extent permitted by law, the Subrecipient shall reimburse the City or disgorge anything of value or economic benefit received from the City if the Subrecipient fails to meet its contractual obligations.

9. Convicted Felon Statement. The Subrecipient swears that it complies with City Code Section 2-8(c). No Subrecipient principal, member, or officer has, within the preceding five years, been convicted of, or pled guilty to, a felony under state or federal statutes for embezzlement, theft of public funds, bribery, or falsification or destruction of public records.

10. Non-Solicitation Statement. The Subrecipient swears that it has not employed or retained any company or person, other than a bona fide employee working solely for it, to solicit or secure this Amendment. The Subrecipient has not paid or agreed to pay any person, other than a bona fide employee working for it, any fee, commission, percentage, gift, or any other consideration contingent upon or resulting from this Amendment.

11. Prior Terms Binding. Except as otherwise provided by this Amendment, the terms and conditions of the Agreement remain in full force and effect.

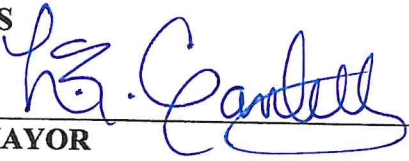
12. Electronic Signature and Delivery. The Parties agree that a manually signed copy of this Amendment and any other document(s) attached to this Amendment delivered by facsimile, email or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this Amendment. No legally binding obligation shall be created with respect to a party until such party has delivered or caused to be delivered a manually signed copy of this Amendment.

[SIGNATURES CONTAINED ON NEXT PAGE]

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IN WITNESS WHEREOF, the City and the Subrecipient, through their duly authorized representatives, execute this Agreement.

CITY OF NEW ORLEANS

BY: 
LATOYA CANTRELL, MAYOR

Executed on this 5th of April, 2021

FORM AND LEGALITY APPROVED:
Law Department

By: 

Printed Name: Travalous Clark

ARTS COUNCIL OF NEW ORLEANS

BY: 
JOYCELYN REYNOLDS, EXECUTIVE DIRECTOR


FEDERAL TAX I.D. NO.

Date 3/18/21

[Updated Exhibit B Attached on the Following Pages]

**Updated Exhibit B to the Subrecipient Agreement by and between City of New Orleans
and Arts Council of New Orleans**

Arts Council New Orleans Budget Public Art and Placemaking Project (London Avenue Canal)		
Amount Billed to Date		
Invoice 996		\$ 8,821.19
Invoice 1000A		\$ 13,995.19
Invoice 1004		\$ 9,076.40
Invoice 1019		\$ 31,833.45
Amount Billed to Date Subtotal		\$ 63,726.23
Professional Artist Commissions		
Deliverables:		
Public Art Commission 1 = \$21,527 (Filmore Playground, Lanaston Alston)		
Park construction timeline is confirmed and artists receive payment to begin design development and production phase	60%	\$ 12,916.20
Fabrication of public art project begins	15%	\$ 3,229.05
Completion of public art project	15%	\$ 3,229.05
Installation of public art project	10%	\$ 2,152.70
Public Art Commission 2 = \$21,527 (Filmore Playground, Courtney Egan)		
Park construction timeline is confirmed and artists receive payment to begin design development and production phase	60%	\$ 12,916.20
Fabrication of public art project begins	15%	\$ 3,229.05
Completion of public art project	15%	\$ 3,229.05
Installation of public art project	10%	\$ 2,152.70
Public Art Commission 3 = \$24,827 (Gatto Park, Brendon Palmer-Angeli)		
Park construction timeline is confirmed and artists receive payment to begin design development and production phase	60%	\$ 14,896.20
Fabrication of public art project begins	15%	\$ 3,724.05
Completion of public art project	15%	\$ 3,724.05
Installation of public art project	10%	\$ 2,482.70
Professional Artist Commissions Subtotal		\$ 67,881.00
Youth Training and Youth Public Art Projects		
Deliverables:		
Resume youth training with COVID-19 safety measures in place	25%	\$ 10,625.00
Complete youth training sessions	25%	\$ 10,625.00
Completion of 2 sculptures (NORA Rain Garden, London Ave. Levee Breach Site)	40%	\$ 17,000.00
Installation of 2 sculptures (NORA Rain Garden, London Ave. Levee Breach Site)	10%	\$ 4,250.00
Youth Training and Youth Public Art Projects Subtotal		\$ 42,500.00
Community Engagement		
Deliverables:		
{1} Community engagement event to gather input for professional	33.33%	\$ 2,000.00
Unveiling celebration of youth sculptures	33.33%	\$ 2,000.00
Unveiling celebration of professional artist commissions	33.33%	\$ 2,000.00
Community Engagement Subtotal		\$ 6,000.00
Project Evaluation & Documentation		
Deliverables:		
Final report assessing impact of public art interventions	100%	\$ 1,000.00
Project Evaluation & Documentation Subtotal		\$ 1,000.00
Public Art and Placemaking Project (London Avenue Canal) Total		\$181,107.00

Arts Council New Orleans		
Public Art and Placemaking Project (2nd Round, Location TBD)		
Professional Artist Training		
<i>Deliverables:</i>		
Request for Qualifications for professional artists released	10%	\$ 1,960.00
Introductory workshops for interested applicants	20%	\$ 3,120.00
Selection committee chooses finalists	20%	\$ 3,120.00
80% of training workshops complete	20%	\$ 3,120.00
100% of training workshops complete	20%	\$ 3,120.00
Artists submit final proposals	10%	\$ 1,960.00
Professional Artist Training Subtotal:		\$ 15,600.00
Professional Artist Commissions		
<i>Deliverables:</i>		
Contracts executed with selected artists and artists receive initial installment for concept design	25%	\$ 21,062.50
Artists receive payment to begin design development and production phase	25%	\$ 21,062.50
Fabrication of public art project begins	25%	\$ 21,062.50
Completion of public art project	25%	\$ 21,062.50
Installation of public art project	10%	\$ 8,425.00
Professional Artist Commissions Subtotal:		\$ 84,250.00
Youth Training		
<i>Deliverables:</i>		
Program planning with The NET complete (confirmed program, schedule and space)	25%	\$ 11,925.00
Youth training program begins	25%	\$ 11,925.00
80% of youth training workshops complete	25%	\$ 11,925.00
100% of youth training workshops complete	25%	\$ 11,925.00
Youth Training Subtotal:		\$ 47,700.00
Youth Public Art Project		
<i>Deliverables:</i>		
Request for Qualifications for lead teaching artist released	20%	\$ 4,444.00
Contract executed with lead teaching artist	20%	\$ 8,888.00
Design for public art is complete	20%	\$ 8,888.00
Fabrication of public art project begins	20%	\$ 8,888.00
Completion of public art project	20%	\$ 8,888.00
Installation of public art project	10%	\$ 4,444.00
Youth Public Art Project Subtotal:		\$ 44,440.00
Community Engagement		
<i>Deliverables:</i>		

Kick-off event with artists and residents	20%	\$	3,220.00
1st community engagement event to gather input for professional artist commissions	20%	\$	3,220.00
2nd community engagement event to gather input for professional artist commissions	20%	\$	3,220.00
Unveiling celebration of youth public art project	20%	\$	3,220.00
Unveiling celebration of professional artist commissions	20%	\$	3,220.00
Community Engagement Subtotal		\$	16,100.00
Project Evaluation & Documentation			
<i>Deliverables:</i>			
Video documentation of artists and process	20%	\$	4,000.00
Final report assessing impact of public art interventions	20%	\$	4,000.00
Project Evaluation & Documentation Subtotal		\$	5,000.00
Indirect Costs			
<i>Approved indirect rate = 10% of project budget, billed monthly for one year</i>			
Executive Director (10% of \$87,000 salary)		\$	8,700.00
Creative Director (20% of \$67,000 salary)		\$	13,400.00
Accountant Services (Portion of CPA Contract)		\$	2,900.00
<i>Indirect amount billed monthly for one year</i>	6.33%	\$	2,083.33
Indirect Costs Subtotal		\$	25,000.00
Overhead			
<i>Overhead expenses = 5% of total project expenses, billed monthly for one year</i>			
<i>Indirect amount billed monthly for one year</i>	2.33%	\$	991.67
Overhead Subtotal		\$	11,905.00
Public Art and Placemaking Project (2nd Round, Location TBD) Total			\$250,000.00