

K21-684

COOPERATIVE ENDEAVOR AGREEMENT

BY AND BETWEEN

THE CITY OF NEW ORLEANS

AND

ARTS COUNCIL OF NEW ORLEANS

THIS COOPERATIVE ENDEAVOR AGREEMENT (the “**Agreement**”) is entered into by and between the City of New Orleans, represented by LaToya Cantrell, Mayor (the “**City**”), and Arts Council of New Orleans, represented by Joycelyn Reynolds, Interim Executive Director (the “**Arts Council**”). The City and the Arts Council may sometimes each be referred to as a “**Party**,” and collectively, as the “**Parties**.” The Agreement is effective as of the date of execution by the City (the “**Effective Date**”).

RECITALS

WHEREAS, the City is a political subdivision of the State of Louisiana;

WHEREAS, the Arts Council is a private, non-profit corporation in Louisiana, whose principal address is located at P.O. Box 58379, New Orleans, LA 70158;

WHEREAS, pursuant to Article 7, Section 14(C) of the Louisiana Constitution of 1974, and related statutes, and Section 9-314 of the Home Rule Charter of the City of New Orleans, the City may enter into cooperative endeavors with the State of Louisiana, its political subdivisions and corporations, the United States and its agencies, and any public or private corporation, association, or individual with regard to cooperative financing and other economic development activities, the procurement and development of immovable property, joint planning and implementation of public works, the joint use of facilities, joint research and program implementation activities, joint funding initiatives, and other similar activities in support of public education, community development, housing rehabilitation, economic growth, and other public purposes;

WHEREAS, the City has directed capital funds for works of art, to provide for a 1.5% of all future appropriations for eligible capital projects to be dedicated to the acquisition of art, and to modify the scope of eligible capital by Ordinance No. 28033 Mayor Council Series (the “**Ordinance**”, attached as Exhibit 1);

WHEREAS, the City, pursuant to election held April 9, 2016, issued bonds in 2019 for the purpose of (a) making capital improvements, including constructing, renovating, acquiring and/or improving (i) roads, streets and bridges, base stabilization, drainage adjustments and related sidewalks, curbing, street lighting, stormwater management, and landscaping associated therewith, (ii) public buildings and facilities and parks and recreational facilities, and (iii) fire trucks and firefighting equipment, including acquiring all necessary land, equipment and furnishings for any of the foregoing, and (b) paying the cost of issuance of the Bonds;

WHEREAS, the City and the Arts Council desire to accomplish a valuable public purpose of promoting public art by establishing the procedure and funding for the execution and acquisition

of works of art in public places;

WHEREAS, the Arts Council will select and obtain works of art for the City's public places; and

WHEREAS, the City will provide funding and cooperation to promote public art in public places.

NOW THEREFORE, the City and the Arts Council, each having the authority to do so, agree as follows:

ARTICLE I - THE ARTS COUNCIL'S OBLIGATIONS

A. Services. The Arts Council will:

1. Perform all other services and obligations as set forth below, and in the Ordinance, as it may be amended:

- a. Formulate an Annual Public Art Plan, and obtain appropriate approvals for the plan, as provided in the Ordinance;
- b. Establish such reasonable procedures and standards for the selection of jury pools to select specific artists and artwork to implement approved Annual Public Art Plans, as provided in the Ordinance;
- c. Prepare or obtain a maintenance needs assessment for each project, as provided in the Ordinance.
- d. Review and approve recommendations for artists or artwork for each proposed project, as provided in the Ordinance. Once a recommendation is made, the Arts Council must refer its recommendation to the affected City department for technical review;
- e. After receipt of appropriate reviews and approvals, the Arts Council will commission or procure the artists or artworks for the specific project. Such commission or procurement must ensure:
 - i. That the City receives full ownership of the artwork or creation, free and clear of any liens or privileges;
 - ii. That the artist is responsible for the delivery and installation of the artwork. The artist may not install the artwork until authorized to do so by the Arts Council. The artist shall be present to supervise the installation of the artwork. Upon written acceptance of the installation, the artwork shall be deemed to be in the custody of the Arts Council.
 - iii. That custody and title of the artwork shall transfer to the City upon final payment to the artist by the Arts Council.
- f. Track project and administrative costs.
 - i. For previous administrative costs, Arts Council will provide City a report containing the following information:

- A. Personnel Costs: Employee/Contractor, Salary/Fees, Portion of Salary/Fees Dedicated to Percent for Art, Description of Duties Performed.
- B. Non-Personnel Costs: Vendor, Expense, Portion of Expense Dedicated to Percent for Art, Date.
- ii. For future administrative costs, Arts Council will input their expenses into the City provided QuickBase system, which will include the following information: Employee, Rate, Hours Worked, and Work Task Description.
- iii. For project costs, Arts Council will input their expenses into the City provide QuickBase system, which will include the following information: Vendor, Contracts, Invoices, Invoice Date, Payment Information (Bank Statement or Cancelled Checks), and Payment Date.

2. *Intellectual Property.* The Arts Council shall provide, or cause to be provided, the following intellectual property rights to City for all artwork commissioned or procured under this Agreement:

- a. Title to all materials, products, deliverables, and works of art, including, but not limited to, reports, designs, programs, specifications, documentation, manuals, visual aids, sketches, drawings, molds, forms, and any other materials developed and/or prepared for City by the Arts Council or its contractors, including any artists ("Works"), and all interest therein shall vest in City and shall be deemed to be a work made for hire and made in the course of the services rendered hereunder. Arts Council and its contractors, including any artists, shall retain a non-exclusive, royalty-free, world-wide, perpetual license to use, sell, modify, distribute and create derivative works based upon any of the foregoing Works in its business, provided that in so doing the Arts Council and its contractors, including any artists, shall not use or disclose any City Confidential Information or deliverables unique to or owned by City. To the extent that title to any such Works may not, by operation of law, vest in City or such Works may not be considered works made for hire, all rights, title and interest therein are hereby irrevocably assigned to City. All such Works shall belong exclusively to City, except as set forth herein, with City having the right to obtain and to hold in its own name, copyrights, registrations or such other protection as may be appropriate to the subject matter, and any extensions and renewals thereof. The Arts Council and its contractors, including any artists, agree to give City and any person designated by City, reasonable assistance, at City's expense, required to perfect the rights defined in this Article I(A)(1)(g).

- b. Notwithstanding the foregoing, the following shall not constitute the property of City: (i) Contractor software, including but not limited to any proprietary code (source and object), which is subject to third-party license agreements with Contractor; and (ii) those portions of the deliverables or works of art which include information in the public domain or which are generic ideas, concepts, know-how, and techniques within the art industry generally.

3. Use the funds received under this Agreement pursuant to all applicable state and City laws, regulations, policies, and procedures. The Arts Council shall ensure that all purchases, commissions, and procurements are in accordance with all applicable laws, rules, and procedures for expenditure of such funds.

4. Compliance with requirements of any restrictions, limitations, or obligations associated with the 2019 Bonds.

5. Financial Reporting Deadline Requirements:

- i. Project costs will be tracked online in Quick Base. Project costs will be reported to the City on a quarterly basis.
- ii. Administrative costs will be reported to the City annually for the prior fiscal year.

6. Submit complete and accurate invoices, maintain records, submit to audits and inspections, maintain insurance, and perform all other obligations of the Arts Council as set forth in this Agreement;

7. Promptly correct any errors or omissions and any work deemed unsatisfactory or unacceptable by the City, all at no additional compensation;

8. Monitor, supervise, and otherwise control and be solely responsible for all persons performing work on its behalf;

9. Perform all requirements set forth in La. R.S. 38:2192, including, without limitation, the payment of any associated costs, and submit a copy of any recorded documents to the City within 30 days after the approval of the associated plan change or amendment; and

10. Cooperate with the City and any person performing work for the City.

B. Compliance with Laws. The Arts Council, and any person performing work on its behalf, will comply with all applicable federal, state, and local laws, regulations, and ordinances.

C. Invoices.

1. The Arts Council must submit invoices monthly (unless agreed otherwise between the Parties to this Agreement) to the City electronically, via its supplier portal, for goods or services provided under this Agreement no later than 10 calendar days following the end of the period covered by the invoice. Untimely invoices may result in delayed payment for which the City is not liable. At a minimum, each invoice must include the following information:

- a. Arts Council Name;

- b. Date of Invoice;
 - c. Invoice Number;
 - d. Contract or BRASS Number issued by the City (*i.e.*, K#);
 - e. Name of the City Department to be invoiced (*i.e.*, City Civil Service);
 - f. Description of the Services completed; and
2. Invoices will be processed in accordance with Article III Section B of the Agreement.
3. All invoices must be signed by an authorized representative of the Arts Council under penalty of perjury attesting to the validity and accuracy of the invoice.
4. The City may require changes to the form of the invoice and may require additional supporting documentation to be submitted with invoices.
1. **Records and Reporting.** The Arts Council will maintain all books, documents, papers, accounting records, invoices, materials records, payrolls, work papers, personnel records, and other evidence pertaining to the performance of services under this Agreement, including, without limitation, of costs incurred through the later of 3 years from: (a) the completion of this Agreement (including any renewal or extension periods); or (b) from the resolution of any disputes relating to the Agreement. If this Agreement is terminated for any reason, the Arts Council will deliver to the City all plans and records of work compiled through the date of termination.
2. The Arts Council will identify any reporting requirements, including the frequency, methods, and contents.
3. The Arts Council is solely responsible for the relevance and accuracy of all items and details included in any reports relating to the work performed under this Agreement, regardless of any review by the City.

B. Audit and Inspection.

1. The Arts Council will submit to any City audit, inspection, and review and, at the City's request, will make available all documents relating or pertaining to this Agreement maintained by or under the control of the Arts Council, its employees, agents, assigns, successors, and subcontractors, during normal business hours at the Arts Council's office or place of business in Louisiana. If no such location is available in Louisiana, the Arts Council will make the documents available at a time and location that is convenient for the City.
2. The Arts Council will abide by all provisions of City Code Section 2-1120, including, but not limited to, City Code Section 2-1120(12), which requires the Arts Council to provide the Office of Inspector General with documents and information as requested. Failure to comply with such requests shall constitute a material breach of the contract. The Arts Council agrees that it is subject to the jurisdiction of the Orleans Parish Civil District Court for purposes of challenging a subpoena.

ARTICLE II - THE CITY'S OBLIGATIONS

A. Administration. The City will:

1. Administer this Agreement through the Project Delivery Unit;
2. Provide the Arts Council with any documents deemed necessary for the Arts Council's performance of any work required under this Agreement;
3. Undertake such reviews, and provide such approvals or disapprovals, as the City in its sole discretion deems appropriate in accordance with the Ordinance; and
4. Provide reasonable access to Department personnel to discuss the required services during normal working hours, as requested by the Arts Council.

B. Payment. The City will make payments to the Arts Council at the rate of compensation established in this Agreement based upon the Arts Council's certified invoices, except:

1. The City's obligation to pay is contingent upon the Arts Council's: (a) submission of complete and accurate invoices; and (b) satisfactory performance of the services and conditions required by this Agreement;
2. The City, in its discretion, may withhold payment of any disputed amounts, and no interest shall accrue on any amount withheld pending the resolution of the dispute;
3. The City may set-off any amounts due to the Arts Council with any amounts deemed by the City to be owed to the City by the Arts Council pursuant this Agreement; and
4. All compensation owed to the Arts Council under this Agreement is contingent upon the appropriation and allocation of funds for work under this Agreement by the City.
5. The City is not obligated, under any circumstances, to pay for any work performed or costs incurred by the Arts Council that: exceed the maximum aggregate amount payable established by this Agreement; are beyond the scope or duration of this Agreement; arise from or relate to any unauthorized change order within the scope of the Agreement; are for services performed on days on which services were suspended due to circumstances beyond the control of the City, and no work has taken place; arise from or relate to the correction of errors or omissions of the Arts Council or its subcontractors; or the City is not expressly obligated to pay under this Agreement.
6. Unless otherwise agreed by the City, payment terms are NET 30 days upon providing that goods and/or services described under this Agreement have been delivered, installed (if required), rendered, and/or accepted and upon receipt by the City of properly submitted invoice via the City's supplier portal.
7. If this Agreement is terminated for any reason, the City will pay the Arts Council only for the work requested by the City and satisfactorily performed by the Arts Council through the date of termination, except as otherwise provided in this Agreement.

ARTICLE III – FUNDING

A. Maximum Amount. The maximum amount funded by the City under this Agreement is \$738,975.55.

B. The City provided \$216,500.00 to the Arts Council in 2019.

C. The City will provide \$522,475.55 to the Arts Council for past and future administrative costs as well as future project costs. Payment will be made in accordance with the terms of this Agreement.

1. Provided, however, none of the funds described in Art. III(C) will be due or payable to Arts Council until required submittal documents have been provided to the City.

ARTICLE IV - DURATION AND TERMINATION

A. Term. The term of this agreement shall be for 1 year from the Effective Date.

B. Extension. The City can opt to extend the term of this Agreement provided that the City Council approves it as a multi-term cooperative endeavor agreement and that additional funding, if required, is allocated by the City Council.

C. Termination for Convenience. The City may terminate this Agreement at any time during the term of the Agreement by giving the Arts Council written notice of the termination at least 30 calendar days before the intended date of termination. Upon receipt of notice, the Arts Council shall, unless the notice directs otherwise, immediately discontinue its work and placing of orders, commissions, or procurements for any work or services in connection with the performance of this Agreement. The Arts Council shall be entitled to retain funds for deliverables in progress to the extent work has been performed satisfactorily. All remains funds shall be returned to the City.

D. Termination for Cause. The City may terminate this Agreement immediately for cause by sending written notice to the Arts Council. "Cause" includes without limitation any failure to perform any obligation or abide by any condition of this Agreement or the failure of any representation or warranty in this Agreement, including without limitation any failure to comply with any provision of City Code § 2-1120 or requests of the Office of Inspector General. If a termination for cause is subsequently challenged in a court of law and the challenging party prevails, the termination will be deemed to be a termination for convenience effective 30 days from the date of the original written notice of termination for cause was sent to the challenging party; no further notice will be required.

E. Termination for Non-Appropriation. This Agreement will terminate immediately in the event of non-appropriation of funds sufficient to maintain this Agreement without the requirement of notice and the City will not be liable for any amounts beyond the funds appropriated and encumbered for this Agreement.

ARTICLE V - INDEMNITY

A. In General. To the fullest extent permitted by law, the Arts Council will indemnify, defend, and hold harmless the City, its agents, employees, officials, insurers, self-insurance funds,

and assigns (collectively, the “**Indemnified Parties**”) from and against any and all claims, demands, suits, and judgments of sums of money accruing against the Indemnified Parties: for loss of life or injury or damage to persons or property arising from or relating to any act or omission or the operation of the Arts Council, its agents or employees while engaged in or in connection with the discharge or performance of any Services under this Agreement; and for any and all claims and/or liens for labor, services, or materials furnished to the Arts Council in connection with the performance of work under this Agreement.

B. Limitation. The Arts Councils indemnity does not extend to any loss arising from the gross negligence or willful misconduct of any of the Indemnified Parties, provided that neither the Arts Council nor any of its agents or employees contributed to such gross negligence or willful misconduct.

C. Independent Duty. The Arts Council has an immediate and independent obligation to, at the City’s option: (a) defend the City from or (b) reimburse the City for its costs incurred in the defense of any claim that actually or potentially falls within this indemnity, even if: (1) the allegations are or may be groundless, false, or fraudulent; or (2) the Arts Council is ultimately absolved from liability.

D. Expenses. Notwithstanding any provision to the contrary, the Arts Council shall bear the expenses including, but not limited to, the City’s reasonable attorney fees and expenses, incurred by the City in enforcing this indemnity.

ARTICLE VI – INSURANCE

A. Except as otherwise noted, at all times during this Agreement or the performance of work required by this Agreement, the Contractor will maintain the following insurance in full force and effect for the duration of the work under this Agreement. Evidence of coverage shall be provided prior to the start of any activities/work, in conjunction with the Contractor’s scope of work under the Agreement.

B. If the Contractor maintains broader coverage and/or higher limits than the minimums shown above, the City requires and shall be entitled to the broader coverage and/or the higher limits maintained by the Contractor. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the City:

1. Minimum Requirements:

- a. ***Workers' Compensation & Employers Liability Insurance*** in compliance with the Louisiana Workers' Compensation Act(s). Statutory and Employers Liability Insurance with limits of not less than \$1,000,000.
- b. ***Commercial General Liability Insurance*** including contractual liability insurance, products and completed operations, personal & advertising injury, bodily injury, property damage, abuse and molestation, and any other type of liability for which this Agreement applies with limits of liability of not less than \$1,000,000 each occurrence / \$2,000,000 policy aggregate.

- c. ***Automobile Liability Insurance*** with a combined single limit of liability of not less than \$1,000,000 per accident for bodily injury and property damage. Insurance shall include all owned, non-owned and hired vehicles.
 - d. ***Crime Insurance (Fidelity Bond)*** to include but not limited to employee dishonesty, computer crime, misappropriation of funds, forgery, or alteration with limits of not less than the maximum amount funded by the City under the CEA.
 - e. ***Umbrella/Excess Liability*** – Umbrella/Excess policies must Follow Form of the underlying policies.
 - f. **Important:** Contractors shall be able to meet the above referenced specific policy limits of liability through a combination of primary and umbrella /excess coverage.
 - g. The obligations for the Contractor to procure and maintain insurance shall not be constructed to waive or restrict other obligations.
 - h. It is understood that neither failure to comply nor full compliance with the foregoing insurance requirements shall limit or relieve the Contractor from any liability incurred as a result of their activities/operations in conjunction with the Contractors obligations and/or Scope of Work. Contractor shall be responsible for any losses, expenses, damages, claims and/or suits of any kind which exceed the Contractors limits of liability that arise from the performance of work under the Contract.
2. **Additional Insured Status:** The Contractor and all Subcontractors (where applicable) will provide, and maintain current, a Certificate of Insurance naming the City of New Orleans, its departments, political subdivisions, officers, officials, employees, and volunteers as “Additional Insureds” on the CGL and AL policies with respect to liability arising out of the performance of this agreement. Additional Insured status can be provided in the form of an endorsement to the Contractors insurance (at least as broad as ISO Form CG 20 10 11 85 or both CG 20 10 and CG 20 37 forms if later revisions used).

Contractor shall require and verify that all Subcontractors maintain insurance and coverage limits meeting all the requirements stated herein or the Sub-contractor liability shall be covered by the Contractor. The Certificate of Insurance, as evidence of all required coverage, should name the City of New Orleans Risk Manager as Certificate Holder and be delivered via U.S. Mail to 1300 Perdido Street, 9E06 – City Hall, New Orleans LA 70112.

The Additional Insured box shall be marked “Y” for Commercial General Liability and Auto Liability coverage. The Subrogation Waiver Box must be marked “Y” for Workers Compensation/Employers Liability and Property.

3. **Primary Coverage:** For any claims related to this agreement, the Contractors insurance coverage shall be primary insurance as respects the City, its departments,

political subdivisions, officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the City shall be non-contributing to the Contractors coverage.

4. Claims Made Policies: If applicable, the retroactive date must be shown and must be before the date of the agreement or the beginning of work. If the coverage is canceled or non-renewed, and not replaced with another claims-made policy, Contractor must purchase "extended reporting" coverage for minimum of 3 years after the termination of this agreement.
5. Waiver of Subrogation: The Contractor and its insurers agree to waive any right of subrogation which any insurer may acquire against the City by virtue of the payment of any loss under insurance required by this agreement.
6. Notice of Cancellation: Each insurance policy required above shall not be canceled, expire or altered except without prior notice to the City of no less than 30 days.
7. Acceptability of Insurers: Insurance is to be placed with insurers licensed and authorized to do business in the State of Louisiana with a current A.M. Best's rating of no less than A: VII, unless otherwise acceptable to the City.
8. Notice: The Contractor will provide the City's Risk Manager (at City of New Orleans Attn: Risk Manager, 1300 Perdido Street, Suite 9E06, New Orleans, LA 70112- Ref.: CEA) the following documents, within 10 business days of the City's reasonable request:
 - a. Copies of all policies of insurance, including all policies, forms, and endorsements:
 - i. Substitute insurance coverage acceptable to the City within 30 calendar days if any insurance company providing any insurance with respect to this Agreement is declared bankrupt, becomes insolvent, loses the right to do business in Louisiana, or ceases to meet the requirements of this Agreement.
9. Special Risks or Circumstances: The City of New Orleans shall reserve the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer coverage, or other circumstances.

ARTICLE VII - PERFORMANCE MEASURES

A. Factors. The City will measure the performance of the Arts Council according to the following non-exhaustive factors: work performed in compliance with the terms of the Agreement; staff availability; staff training; staff professionalism; staff experience; customer service; communication and accessibility; prompt and effective correction of situations and conditions; timeliness and completeness of submission of requested documentation (such as records, receipts, invoices, insurance certificates, and computer-generated reports).

B. Failure to Perform. If the Arts Council fails to perform according to the Agreement, the City will notify the Arts Council. If there is a continued lack of performance after notification, the City may declare the Arts Council in default and may pursue any appropriate remedies

available under the Agreement and/or any applicable law. In the event of a notification of default, the City will invoice the Arts Council for any increase in costs and other damages sustained by the City. Further, the City will seek full recovery from the Arts Council.

ARTICLE VIII – LIVING WAGES

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 Arts Council 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 per hour. The Arts Council 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 Arts Council 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 Arts Council, beneficiary, or other Covered Employer, prior to entering into a subcontract, shall notify subcontractors in writing of the requirements and applicability of Article VIII – The Living Wage Ordinance ("**Article**"). City contractors and beneficiaries shall be deemed responsible for violations of this Article by their subcontractors.

F. **Reporting.** On or before January 31st and upon request by the City, the Arts Council 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 Arts Council 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 Arts Council 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 Arts Council, payroll records and employee paychecks; and (ii) that the City may audit such records of the Arts Council as he or she reasonably deems necessary to determine compliance with the Living Wage standards.

H. **Remedies.** If the Arts Council 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.

ARTICLE IX – HIRENOLA PROGRAM

To the extent applicable, the Arts Council agrees to abide by City Code sections 70-496, *et seq.*, to demonstrate good faith efforts to fully carry out the applicable requirements of the HireNOLA Program as defined in the City Code. If the Arts Council fails to comply with the requirements of the HireNOLA Program during the term of the Agreement, said failure may result in termination of the Agreement or pursuit of other remedies.

ARTICLE X - NON-DISCRIMINATION

A. **Equal Employment Opportunity.** In all hiring or employment made possible by, or resulting from this Agreement, the Arts Council (1) will not discriminate against any employee or applicant for employment because of race, color, religion, sex, gender, age, physical or mental disability, national origin, sexual orientation, creed, culture, or ancestry, and (2) where applicable, will take affirmative action to ensure that the Arts Council’s employees are treated during employment without regard to their race, color, religion, sex, gender, age, physical or mental

disability, national origin, sexual orientation, creed, culture, or ancestry. This requirement shall apply to, but not be limited to the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. All solicitations or advertisements for employees shall state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, gender, age, physical or mental disability, national origin, sexual orientation, creed, culture, or ancestry.

B. Non-Discrimination. In the performance of this Agreement, the Arts Council will not discriminate on the basis, whether in fact or perception, of a person's race, color, creed, religion, national origin, ancestry, age, sex, gender, sexual orientation, gender identity, domestic partner status, marital status, physical or mental disability, or AIDS- or HIV-status against (1) any employee of the City working with the Arts Council in any of Arts Council's operations within Orleans Parish or (2) any person seeking accommodations, advantages, facilities, privileges, services, or membership in all business, social, or other establishments or organizations operated by the Arts Council. The Arts Council agrees to comply with and abide by all applicable federal, state and local laws relating to non-discrimination, including, without limitation, Title VI of the Civil Rights Act of 1964, Section V of the Rehabilitation Act of 1973, and the Americans with Disabilities Act of 1990.

C. Incorporation into Subcontracts. The Arts Council will incorporate the terms and conditions of this Article into all subcontracts, by reference or otherwise, and will require all subcontractors to comply with those provisions.

D. Termination for Breach. The City may terminate this Agreement for cause if the Arts Council fails to comply with any obligation in this Article, which failure is a material breach of this Agreement.

ARTICLE XI - INDEPENDENT CONTRACTOR

A. Independent Contractor Status. The Arts Council is an independent contractor and shall not be deemed an employee, servant, agent, partner, or joint venture of the City and will not hold itself or any of its employees, subcontractors or agents to be an employee, partner, or agent of the City.

B. Exclusion of Worker's Compensation Coverage. The City will not be liable to the Arts Council, as an independent contractor as defined in La. R.S. 23:1021(6), for any benefits or coverage as provided by the Workmen's Compensation Law of the State of Louisiana. Under the provisions of La. R.S. 23:1034, any person employed by the Arts Council will not be considered an employee of the City for the purpose of Worker's Compensation coverage.

C. Exclusion of Unemployment Compensation Coverage. The Arts Council, as an independent contractor, is being hired by the City under this Agreement for hire and defined in La. R.S. 23:1472(12)(E) and neither the Arts Council nor anyone employed by it will be considered an employee of the City for the purpose of unemployment compensation coverage, which coverage same being hereby expressly waived and excluded by the parties, because: (a) the Arts Council has been and will be free from any control or direction by the City over the performance of the services covered by this contract; (b) the services to be performed by the Arts Council are outside

the normal course and scope of the City's usual business; and (c) the Arts Council has been independently engaged in performing the services required under this Agreement prior to the date of this Agreement.

D. Waiver of Benefits. The Arts Council, as an independent contractor, will not receive from the City any sick and annual leave benefits, medical insurance, life insurance, paid vacations, paid holidays, sick leave, pension, or Social Security for any services rendered to the City under this Agreement.

ARTICLE XII- 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 Arts Council 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.

10. 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 Arts Council 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 Arts Council and without any further compensation due.

11. 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.

ARTICLE XIII - NOTICE

A. In General. Except for any routine communication, any notice, demand, communication, or request required or permitted under this Agreement will be given in writing and delivered in person or by certified mail, return receipt requested as follows:

1. To the City:

Kim T. DeLarge, Jr., MBA
Capital Budget Director, Project Delivery Unit
City of New Orleans
1300 Perdido Street, Suite 6E12
New Orleans, LA 70112

&

City Attorney
City of New Orleans
1300 Perdido Street, Suite 5E03
New Orleans, LA 70112

2. To the Arts Council:

Joycelyn Reynolds, Interim Executive Director
Arts Council of New Orleans
P.O. Box 58379, New Orleans, LA 70158
Joycelyn@artsneworleans.org

&

Sarah Woodward, Program Director
Arts Council of New Orleans
P.O. Box 58379, New Orleans, LA 70158
sarah@artsneworleans.org

B. Effectiveness. Notices are effective when received, except any notice that is not received due to the intended recipient's refusal or avoidance of delivery is deemed received as of the date of the first attempted delivery.

C. Notification of Change. Each party is responsible for notifying the other in writing that references this Agreement of any changes in its address(es) set forth above.

ARTICLE XIV - ADDITIONAL PROVISIONS

A. Amendment. No amendment of or modification to this Agreement shall be valid unless and until executed in writing by the duly authorized representatives of both parties to this Agreement.

B. Assignment. This Agreement and any part of the Arts Council's interest in it are not assignable or transferable without the City's prior written consent.

C. Audit and Other Oversight. The Arts Council will abide by all provisions of City Code § 2-1120, including without limitation City Code § 2-1120(12), which requires the Arts Council to provide the Office of Inspector General with documents and information as requested. Failure to comply with such requests is a material breach of the Agreement. In signing this Agreement, the Arts Council agrees that it is subject to the jurisdiction of the Orleans Parish Civil District Court for purposes of challenging a subpoena.

D. Choice of Law. This Agreement will be construed and enforced in accordance with the laws of the State of Louisiana without regard to its conflict of laws provisions.

E. Compliance with City's Hiring Requirements – Ban the Box.

1. The Arts Council agrees to adhere to the City's hiring requirements contained in City Code Section 2-8(d) and 2-13(a)-(f). Prior to executing this Agreement, the Arts Council must provide a sworn statement attesting to its compliance with the City's hiring requirements or stating why deviation from the hiring requirement is necessary.

2. Failure to maintain compliance with the City's hiring requirements through the term of the Agreement, or to provide sufficient written reasons for deviation, is a material breach of this Agreement. Upon learning of any such breach, the City will provide the Arts Council notice of noncompliance and allow the Arts Council thirty (30) days to come into compliance. If, after providing notice and thirty (30) days to cure, the Arts Council remains noncompliant, the City may move to suspend payments to the Arts Council, void the Agreement, or take any such legal action permitted by law or this Agreement.

3. This section will not apply to any agreements excluded from the City's hiring requirements by City Code Sections 2-8(d) or (g). Should a court of competent jurisdiction find any part of this section to be unenforceable, the section should be reformed, if possible, so that it is enforceable to the maximum extent permitted by law, or if reformation is not possible, the section should be fully severable and remaining provisions of the Agreement will remain in full force and effect.

4. The Arts Council will incorporate the terms and conditions of this Article into all subcontracts, by reference or otherwise, and will require all subcontractors to comply with those provisions.

F. Conflicting Employment. To ensure that the Arts Council's efforts do not conflict with the City's interests, and in recognition of the Arts Council's obligations to the City, the Arts Council will decline any offer of other employment if its performance of this Agreement is likely to be adversely affected by the acceptance of the other employment. The Arts Council will promptly notify the City in writing of its intention to accept the other employment and will disclose all possible effects of the other employment on the Arts Council's performance of this Agreement. The City will make the final determination whether the Arts Council may accept the other employment.

G. Construction of Agreement. Neither party will be deemed to have drafted this

Agreement. This Agreement has been reviewed by the Parties and shall be construed and interpreted according to the ordinary meaning of the words used so as to fairly accomplish the purposes and intentions of the Parties. No term of this Agreement shall be construed or resolved in favor of or against the City or the Arts Council on the basis of which party drafted the uncertain or ambiguous language. The headings and captions of this Agreement are provided for convenience only and are not intended to have effect in the construction or interpretation of this Agreement. Where appropriate, the singular includes the plural and neutral words and words of any gender shall include the neutral and other gender.

H. Convicted Felon Statement. The Arts Council complies with City Code § 2-8(c) and no principal, member, or officer of the Arts Council has, within the preceding 5 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.

I. Cost Recovery. 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 Arts Council shall reimburse the City or disgorge anything of value or economic benefit received from the City if the Arts Council fails to meet its contractual obligations.

J. Employee Verification. The Arts Council swears that (i) it is registered and participates in a status verification system to verify that all employees in the State of Louisiana are legal citizens of the United States or are legal aliens; (ii) it shall continue, during the term of this Agreement, to utilize a status verification system to verify the legal status of all new employees in the State of Louisiana; and (iii) it shall require all subcontractors to submit to the Arts Council a sworn affidavit verifying compliance with items (i) and (ii) above. Any violation of the provisions of this paragraph may subject this Agreement to termination, and may further result in the Arts Council being ineligible for any public contract for a period of 3 years from the date the violation is discovered. The Arts Council further acknowledges and agrees that it shall be liable for any additional costs incurred by the City occasioned by the termination of this Agreement or the loss of any license or permit to do business in the State of Louisiana resulting from a violation of this provision. The Arts Council will provide to the City a sworn affidavit attesting to the above provisions if requested by the City. The City may terminate this Agreement for cause if the Arts Council fails to provide such the requested affidavit or violates any provision of this paragraph.

K. Entire Agreement. This Agreement, including all incorporated documents, constitutes the final and complete agreement and understanding between the parties. All prior and contemporaneous agreements and understandings, whether oral or written, are superseded by this Agreement and are without effect to vary or alter any terms or conditions of this Agreement.

L. Exhibits. The following exhibits will be and are incorporated into this Agreement: Exhibit 1 – Ordinance.

M. Jurisdiction. The Arts Council consents and yields to the jurisdiction of the State Civil Courts of the Parish of Orleans and formally waives any pleas or exceptions of jurisdiction on account of the residence of the Arts Council.

N. Limitations of the City's Obligations. The City has no obligations not explicitly set forth in this Agreement or any incorporated documents or expressly imposed by law.

O. No Third-Party Beneficiaries. This Agreement is entered into for the exclusive benefit of the parties and the parties expressly disclaim any intent to benefit anyone not a party to this Agreement.

P. Non-Exclusivity. This Agreement is non-exclusive and the Arts Council may provide services to other clients, subject to the City's approval of any potential conflicts with the performance of this Agreement and the City may engage the services of others for the provision of some or all of the work to be performed under this Agreement.

Q. Non-Solicitation Statement. The Arts Council has not employed or retained any company or person, other than a bona fide employee working solely for it, to solicit or secure this Agreement. The Arts Council 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 Agreement.

R. Non-Waiver. The failure of either party to insist upon strict compliance with any provision of this Agreement, to enforce any right or to seek any remedy upon discovery of any default or breach of the other party at such time as the initial discovery of the existence of such noncompliance, right, default or breach shall not affect or constitute a waiver of either party's right to insist upon such compliance, exercise such right or seek such remedy with respect to that default or breach or any prior contemporaneous or subsequent default or breach.

S. Order of Documents. In the event of any conflict between the provisions of this Agreement any incorporated documents, the terms and conditions of the documents will apply in this order: the Agreement; the Ordinance – Exhibit 1.

T. Ownership Interest Disclosure. The Arts Council will provide the City with a sworn affidavit listing all natural or artificial persons with an ownership interest in the Arts Council and stating that no other person holds an ownership interest in the Arts Council via a counter letter. For the purposes of this provision, an "ownership interest" shall not be deemed to include ownership of stock in a publicly traded corporation or ownership of an interest in a mutual fund or trust that holds an interest in a publicly traded corporation. If the Arts Council fails to submit the required affidavit, the City may, after 30 days' written notice to the Arts Council, take such action as may be necessary to cause the suspension of any further payments until such the required affidavits are submitted.

U. Ownership of Records. Upon final payment, all data collected and all products of work prepared, created or modified by the Arts Council in the performance of this Agreement, including without limitation any and all notes, tables, graphs, reports, files, computer programs, source code, documents, records, disks, original drawings or other such material, regardless of form and whether finished or unfinished, but excluding the Arts Council's personnel and administrative records and any tools, systems, and information used by the Arts Council to perform the services under this Agreement, including computer software (object code and source code), know-how, methodologies, equipment, and processes and any related intellectual property (collectively, "Work Product") will be the exclusive property of City and the City will have all right, title and interest in any Work Product, including without limitation the right to secure and maintain any copyright, trademark, or patent of Work Product in the City's name. No Work Product may be

reproduced in any form without the City's express written consent. The City may use and distribute any Work Product for any purpose the City deems appropriate without the Arts Council's consent and for no additional consideration to the Arts Council.

V. Prohibition of Financial Interest in Agreement. No elected official or employee of the City shall have a financial interest, direct or indirect, in this Agreement. For purposes of this provision, a financial interest held by the spouse, child, or parent of any elected official or employee of the City shall be deemed to be a financial interest of such elected official or employee of the City. Any willful violation of this provision, with the expressed or implied knowledge of the Arts Council, shall render this Agreement voidable by the City and shall entitle the City to recover, in addition to any other rights and remedies available to the City, all monies paid by the City to the Arts Council pursuant to this Agreement without regard to the Arts Council's otherwise satisfactory performance of the Agreement.

W. Prohibition on Political Activity. None of the funds, materials, property, or services provided directly or indirectly under the terms of this Agreement shall be used in the performance of this Agreement for any partisan political activity, or to further the election or defeat of any candidate for public office.

X. Remedies Cumulative. No remedy set forth in the Agreement or otherwise conferred upon or reserved to any party shall be considered exclusive of any other remedy available to a party. Rather, each remedy shall be deemed distinct, separate and cumulative and each may be exercised from time to time as often as the occasion may arise or as may be deemed expedient.

Y. Restrictions on Subleases. The Arts Council may not enter into any lease or sublease of City property without the prior approval of the Council of the City of New Orleans.

Z. Severability. Should a court of competent jurisdiction find any provision of this Agreement to be unenforceable as written, the unenforceable provision should be reformed, if possible, so that it is enforceable to the maximum extent permitted by law or, if reformation is not possible, the unenforceable provision shall be fully severable and the remaining provisions of the Agreement remain in full force and effect and shall be construed and enforced as if the unenforceable provision was never a part the Agreement.

AA. Subcontractor Reporting. The Arts Council will provide a list of all natural or artificial persons who are retained by the Arts Council at the time of the Agreement's execution and who are expected to perform work as subcontractors in connection with the Arts Council's work for the City. For any subcontractor proposed to be retained by the Arts Council to perform work on the Agreement with the City, the Arts Council must provide notice to the City within 30 days of retaining that subcontractor. If the Arts Council fails to submit the required lists and notices, the City may, after thirty 30 days' written notice to the Arts Council, take any action it deems necessary, including, without limitation, causing the suspension of any payments, until the required lists and notices are submitted.

BB. Survival of Certain Provisions. All representations and warranties and all obligations concerning record retention, inspections, audits, ownership, indemnification, payment, remedies, jurisdiction, and choice of law shall survive the expiration, suspension, or termination of this Agreement and continue in full force and effect.

CC. Terms Binding. The terms and conditions of this Agreement are binding on any heirs, successors, transferees, and assigns.

ARTICLE XV – COUNTERPARTS

This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original copy of this Agreement, but all of which, when taken together, shall constitute one and the same agreement.

ARTICLE XVI - ELECTRONIC SIGNATURE AND DELIVERY

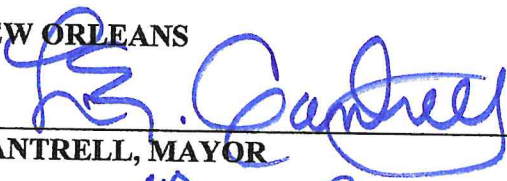
The Parties agree that a manually signed copy of this Agreement and any other document(s) attached to this Agreement delivered by email shall be deemed to have the same legal effect as delivery of an original signed copy of this Agreement. No legally binding obligation shall be created with respect to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

[SIGNATURES CONTAINED ON NEXT PAGE]

[The remainder of this page is intentionally left blank.]

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

CITY OF NEW ORLEANS

BY: 
LATOYA CANTRELL, MAYOR

Executed on this 2nd of June, 2021

FORM AND LEGALITY APPROVED:
Law Department

By: _____

Printed Name: _____

ARTS COUNCIL OF NEW ORLEANS

BY: 
JOYCELYN REYNOLDS, INTERIM EXECUTIVE DIRECTOR


FEDERAL TAX I.D.

[EXHIBIT 1 ATTACHED SEPARATELY]