

K22-576



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Research. Development. Justice. Reform.

Courtney Bryan. Director

November 17, 2021

City of New Orleans, Office of Criminal Justice Coordination
1300 Perdido Street, Suite 8W03
New Orleans, LA 70112
Attn: Kate Hoadley

Dear Kate Hoadley:

We are pleased to confirm the appointment of City of New Orleans, Office of Criminal Justice Coordination as a subcontractor ("Subcontractor") to the Center for Court Innovation (the "Center"), a project of the Fund for the City of New York (the "Fund"), in connection with the Focused Racial Equity Cohort of the Safety & Justice Challenge. The funding (the "Funding") under this subcontract (the "Subcontract") is supported by a contract between the Fund and the John D. and Catherine T. MacArthur Foundation (the "Funder" or the "Foundation"), as amended from time to time (the "Prime Contract").

1. Services: Subcontractor will (a) provide the services, in coordination with Total Community Action, Inc. ("Partner"), to carry out the the strategies put forth in the joint proposal submitted by Subcontractor and Partner to the Foundation and attached hereto (the "SJC Project"), and (b) otherwise participate fully in the Focused Racial Equity Cohort, as more fully described in the attached Scope of Work for Cohort Participation (the "Cohort Work" and, together with the SJC Project, collectively the "Project"). Such services include without limitation the training and supervision of the Subcontractor's own staff, coordination functions for development of the Project, collaborative activities with Project partners, including Partner, and participation in activities with the Center, all as further described in the attached proposal and scope of work.
2. Persons in Charge:
(a) The Center identifies JūLondré Brown or his/her designee, as the member of the Center's staff who will have primary responsibility within the Center to supervise and coordinate the Center's rights and responsibilities.

Operating Programs Bronx Child Trauma Support, Bronx Community Solutions, Brooklyn Justice Initiatives, Brooklyn Mental Health Court, Brooklyn Young Adult Court, Brownsville Community Justice Center, Domestic Violence Court, Harlem Community Justice Center, Legal Hand, Make It Happen, Midtown Community Court, Neighborhood Safety Initiatives, Neighbors in Action, Newark Community Solutions, Parent Support Program, Peacemaking Program, Project Reset, Queens Youth Justice Center, Red Hook Community Justice Center, RISE, Save Our Streets, Staten Island Justice Center, Strong Starts Court Initiative, Supervised Release, UPNEXT, Westchester Court Education Initiative, Youth Impact, Youth Justice Board

(b) Subcontractor identifies Kate Hoadley, Racial Justice Program Manager as the member of its staff who will have primary responsibility to supervise and coordinate the performance of the Project, and to collaborate with the Center. In addition, Kate Hoadley, Racial Justice Program Manager will be the primary point of contact of behalf of Subcontractor for fiscal matters. Substitution of said person(s) shall be made only with the approval of the Center. Failure to make such person(s) available to the extent necessary to perform the activities to implement the Project skillfully and promptly shall be a material violation of the terms of this Subcontract.

3. Term and Termination:

(a) Subject to Funder's approval, Subcontractor's appointment will run from November 15, 2021 to November 14, 2023 unless terminated earlier in accordance with this Subcontract.

(b) This Subcontract will be terminated, suspended, or modified:

i. After ten (10) days' prior written notice by the Center to Subcontractor if:

(i) in the sole judgment of the Center or Funder, Subcontractor has failed to perform in accordance with the terms and conditions of this Subcontract;

(ii) the Project budget is reduced;

(iii) Partner's subcontract for work on the SJC Project is terminated and Subcontractor is not able to identify an acceptable alternate partner and/or to identify another means to satisfactorily complete the SJC Project, in each case as recommended by the Racial Equity Cohort's Steering Committee and/or determined by the Foundation; or

ii. Immediately upon termination of the Prime Contract.

(c) In the event of early termination, Subcontractor shall immediately cease the provision of all services hereunder, and the Center shall be liable to Subcontractor only for the services actually performed up to and including the effective date of the termination.

4. Compensation: Subject to Funder approval of this Subcontract, including the budget attached hereto and made a part hereof, and the availability of Funding, the Center will pay Subcontractor a total maximum amount of Funding not to exceed \$113,542 in accordance with the attached budget and the payment schedule set forth below. For the avoidance of doubt, Subcontractor may not invoice the Center for more than \$90,092 for services provided during the first year of this Subcontract (November 15, 2021 – November 14, 2022). Notwithstanding any provision to the contrary in this Subcontract, if for any reason the Funder shall not make available to the Center any portion of the Funding, the Center shall be under no obligation to make any disbursements to Subcontractor in excess of a prorated portion of the Funding that the Center actually receives from the Funder for the Project. The failure of the Center to receive any portion of the Funding from the Funder shall be deemed to be the failure of an essential condition for the Center's obligations under this Subcontract. Subcontractor shall have no claim or cause of action or commence any proceeding against the Center or the Funder arising out of the failure of the Funder to provide all or any portion of the Funding to the Center.

5. Invoicing & Payment:

(a) Subcontractor may request an advance of up to \$22,523 upon execution of this Subcontract for Year 1 funding. In Year 2, Subcontractor may request an advance of up to \$5,862.50 on November 15, 2022 for Year 2 funding. Advanced funds shall be used exclusively for the payment of expenditures and obligations authorized by and properly incurred in accordance with the attached budget, and the amount of the advance will be recouped against subsequent Invoice/Expense Statements submitted by the Subcontractor.

(b) The Subcontractor shall submit to the Center a report of actual expenditures as compared to budgeted expenditures ("Invoice/Expense Statement"), on a quarterly basis, no later than twenty (20) days following the end of each quarter. Each Invoice/Expense Statement shall include a narrative explanation of any variances that exceed 10% of the budgeted amount. The Invoice/Expense Statement shall be in a form approved by the Center, and must include supporting documentation reflecting proof of performance of services in accordance with the scope of work herein, and any other supporting documentation deemed necessary by the Center. A sample Invoice/Expense Statement (including a list of required fiscal supporting documentation) is attached. The Center shall review the Invoice/Expense Statement and supporting documentation as required, and may disallow for payment any charges which were not rendered, documented and/or authorized in accord with the terms of this Subcontract, or for failure to deliver any required service, deliverable, or work product. Failure to submit invoices in accordance with the provisions of this Subcontract may result in the termination of this Subcontract by the Center.

(c) The Center will disburse payments in quarterly installments provided that (i) the funds are made available to the Center pursuant to the Prime Contract, and (ii) Subcontractor has submitted all Invoice/Expense Statements and supporting documentation required under this Subcontract. Invoice/Expense Statements will be payable under Net 30 day terms and should be emailed to the Center contact listed in the "Notices" section below, with a copy to CCIAP@courttinnovation.org. If Subcontractor would like to be paid via direct deposit (also known as electronic funds transfer (EFT) and automated clearing house (ACH)) in lieu of receiving a physical check, Subcontractor must complete and submit the "Fund for the City of New York ACH Authorization Form" (a sample form is attached) with any required supporting documentation at <https://fcnyforms.seamlessdocs.com/f/achform> or send a completed form by email to concurteam@fcny.org.

6. Right to Discontinue Funding, Rescind Payments and Require Return of Funds: The Center may, in its sole discretion and/or in consultation with the Funder, discontinue or suspend funding, rescind payments made or demand return of any unspent funds based on any of the following: (a) the written reports required herein are not submitted to the Center on a timely basis, (b) the reports do not comply with the terms of this Subcontract or fail to contain adequate information to allow the Center to determine the funds have been used for their intended purposes, (c) funds have not been used for their intended purposes or have been used inconsistent with the terms of this Subcontract, (d) the Center or Foundation is not satisfied with the progress of the activities funded by this Subcontract, (e) the Project cannot be accomplished, or (f) making any payment might, in the judgment of the Foundation, expose the Foundation to liability, adverse tax consequences, or constitute a taxable expenditure. The Center will provide notice of any determinations made under this section. In the event the Center takes action permitted by this section solely based on (d) and (e), and Subcontractor provides documentation that it has incurred obligations consistent with the terms of this Subcontract in good faith reliance on this Subcontract and the attached budget, the Center, in consultation with the Foundation, will consider in good faith permitting funds to be used to pay such obligations. Subcontractor will repay the Center,

upon demand, the amount of any funds spent for purposes inconsistent with or contrary to the this Subcontract or the attached budget.

7. Reporting: Subcontractor shall provide to the Center: (a) any reports in accordance with the attached scope of work and (b) such additional information or reports relating to Subcontractor or the Project as the Center and the Funder may reasonably request from time to time.

8. Restrictions on Use of Funds:

(a) In connection with the activities to be funded under this Subcontract, Subcontractor acknowledges that it is responsible for complying with all relevant laws and regulations of the countries in which such activities are conducted.

(b) Subcontractor agrees that no Funding made available hereunder will be used for any of the following purposes:

- i. To carry on propaganda, or otherwise to attempt to influence any legislation (within the meaning of Section 4945(d)(1) of the United States Internal Revenue Code ("Tax Code"));
- ii. To influence the outcome of any specific public election or to carry on, directly or indirectly, any voter registration drive (within the meaning of Section 4945(d)(2) of the Tax Code);
- iii. To undertake any activity for any purpose other than one specified in Section 170(c)(2)(B) of the Tax Code;
- iv. To offer or provide money, gifts, or any other things of value, directly or indirectly, to anyone in order to improperly influence any act or decision relating to the Center, the Foundation or the Project, including by assisting any party to secure an improper advantage in violation of the Foreign Corrupt Practices Act or similar laws of the countries in which the Subcontractor operates;
- v. To use directly or indirectly to assist in, sponsor, or provide support for acts of terrorism or to support organizations or persons listed as terrorists on lists maintained by the United States government, the United Nations, the European Union, and other entities; or
- vi. To use in or with respect to countries or individuals under sanctions by the U.S. government, including prohibited travel to and from those countries, or for the unauthorized provision of funds or services to any person, entity, or organization from those countries.

9. Independent Contractor Status:

(a) Subcontractor and any of its agents and employees involved in the Project shall be deemed at all times to be an independent contractor, and Subcontractor is wholly responsible for the manner in which it performs the services and work under this Subcontract. Neither Subcontractor nor any of its agents or employees will hold themselves out as, or claim to be, officers or employees of the Center or the Fund nor make any claim to any right or privilege applicable to an officer or employee of the Center or the Fund, including, but not limited to, workers' compensation coverage, unemployment insurance benefits, social security coverage or employee benefits, retirement membership or credit.

(b) No experts or consultants or employees who are employed or engaged by Subcontractor to carry out the Project under this Subcontract will be employees of the Center or the Fund and will not otherwise be under contract to the Center or the Fund. Subcontractor shall be responsible for the experts', consultants' and employees' work, direction, compensation and personal conduct in

connection with this Subcontract. Nothing in this Subcontract shall impose any liability or duty on the Center or the Fund for acts, omissions, liabilities or obligations of Subcontractor, or the acts, omissions, liabilities or obligations of any person, firm, company, agency, association, expert, consultant, independent contractor, specialist, trainee, employee, servant, or agent employed or engaged by Subcontractor, or for taxes of any nature, including, but not limited to, worker's compensation, unemployment insurance, disability benefits and social security, or, except as specifically stated in this Subcontract, to any person, firm or corporation.

10. Indemnification Clause: Subcontractor shall indemnify, defend, save and hold harmless the Center and the Fund, its officers, agents, employees and volunteers (hereinafter referred to as "Indemnatee") from and against any and all claims, actions, liabilities, damages, losses, or expenses (including court costs, attorneys' fees, and costs of claim processing, investigation and litigation) (hereinafter referred to as "Claims") for bodily injury or personal injury (including death), or loss or damage to tangible or intangible property caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of Subcontractor or any of its owners, officers, directors, agents, employees or subcontractors. This indemnity includes any claim or amount arising out of or recovered under the Workers' Compensation Law or arising out of the failure of Subcontractor, as the subcontractor hereunder, to conform to any federal, state or local law, statute, ordinance, rule, regulation or court decree. It is the specific intention of the parties that the Indemnatee shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of the Indemnatee, be indemnified by the Subcontractor from and against any and all claims. It is agreed that the Subcontractor will be responsible for primary loss investigation, defense and judgment costs where this indemnification is applicable. In consideration of the award of this Subcontract, the Subcontractor agrees to waive all rights of subrogation against the Center and the Fund, its officers, officials, agents and employees for losses arising from the Project.

11. Intellectual Property:

(a) In countersigning this Subcontract, Subcontractor acknowledges that it has read the Foundation's Policy Regarding Intellectual Property Arising Out of Foundation Grants (the "Policy") attached hereto. Except as may otherwise be provided herein, all copyright interest in materials produced as a result of this Subcontract (the "Work Product") shall be owned by Subcontractor and made available consistent with the terms of the Policy. To effect the widest possible distribution of the Work Product and to ensure that it furthers charitable purposes and benefits the public, Subcontractor hereby grants to the Foundation a non-exclusive, transferable, perpetual, irrevocable, royalty-free, paid-up, worldwide license to use, display, perform, reproduce, publish, copy, and distribute, for non-commercial purposes, the Work Product and any other work product arising out of or resulting from Subcontractor's use (including digital, electronic or other media) of the funding made available hereunder, including all intellectual property rights appurtenant thereto, and to sublicense to third parties the rights described herein. Without limiting the foregoing, such license includes the right of the Foundation to publish the Work Product on the Foundation's website in connection with the Foundation's work with and support of Subcontractor, and for use in periodic public reports, press releases, and fact sheets about the Foundation's grantmaking. Subcontractor further acknowledges and agrees, at the Center's and/or the Foundation's request, to execute any additional documents necessary to effect such license.

(b) To the extent that, as part of any arrangement with any permitted subcontractor (if any) or other party working on matters related to this Subcontract and receiving the benefit of the funding made available hereunder (a "Third Party"), the intellectual property rights in the Work Product is

to be owned by such Third Party, Subcontractor agrees to require that the Foundation be granted a license in such Work Product in a form reasonably acceptable to the Foundation.

(c) In addition, Subcontractor hereby agrees that intellectual property rights in all work products created by or with the contribution of Subcontractor in connection the Cohort Work hereunder ("Cohort Work Products"), including but not limited to data, technical information, policy and procedure manuals, case studies, newsletter features, photographic images, videos and other recordings, methods, programs, techniques, reports, curricula and other documents and materials, shall be jointly owned by Subcontractor, the Center and any other cohort participant(s) that contributed to the creation of such Cohort Work Product. Any copyrighted, trademarked, or otherwise legally protected materials that the Subcontractor owned prior to this Subcontract or develops independently from any agreements with the Center/Fund ("Subcontractor Materials") shall remain the property of Subcontractor or the rightful owner. The Center/Fund will not use or distribute Subcontractor Materials without attribution. Except for material which is in the public domain and non-original material that meets the requirements for legal use, Cohort Work Products shall be wholly original material; shall not violate any copyright, trademark or other applicable law; and shall not, to the best of the Subcontractor's knowledge, constitute a defamation or invasion of the rights of privacy or publicity, or an infringement of any kind, of any rights of any third party. In addition, should the Subcontractor gain access to any of the Center/Fund's property or materials while working on this project, the Subcontractor agrees to refrain from using or distributing any of the materials, except as provided pursuant to the terms and conditions of this Subcontract without prior written approval from the Center/Fund.

(d) The provisions of this section shall survive the expiration or termination of this Subcontract.

12. Notices: All notices, requests and other communications pursuant to this Subcontract shall be in writing, and either: delivered by hand; sent by email; sent by registered or certified mail, return receipt requested; or sent by Airborne Express, Federal Express, Express Mail or other overnight mail service that provides a receipt to the sender. Receipt of a notice by the party to whom the notice is transmitted will be deemed to have occurred upon receipt, if hand delivered; 24 hours after being sent, if sent by email and the sender does not receive any messages indicating the message was not delivered to the intended recipient; five days from the date of mailing, if mailed; or the next business day after transmittal by Airborne Express, Federal Express, Express Mail or other overnight delivery service that provides a receipt to the sender. All notices and correspondence will be delivered to the following addresses and addressees, unless notified in writing of any change:

(a) **If to the Center:**

Center for Court Innovation
520 Eighth Avenue, 18th Floor
New York, New York 10018
Attention: JūLondré Brown
E-mail: sjcracialequity@courtinnovation.org

With the exception of invoices, all notices to the Center must also be sent electronically to the Contracts Department at CCIContracts@courtinnovation.org

(b) **If to Subcontractor:**

City of New Orleans, Office of Criminal Justice Coordination
1300 Perdido Street, Suite 8W03
New Orleans, LA 70112
Attention: Kate Hoadley, Racial Justice Program Manager
E-mail: kate.hoadley@nola.gov

13. Confidential Information: In the course of work under this Subcontract, the Subcontractor may have access to or learn of information and records that are proprietary to the Center, protected under the law or not rightfully in the public domain ("Confidential Information"). The Subcontractor agrees to a) treat Confidential Information as confidential, b) only use Confidential Information for purposes of fulfilling its obligations under this Subcontract, and c) not disclose Confidential Information without prior approval from the Center.

To the extent Confidential Information includes personal identifying information and other protected information of individuals, Subcontractor agrees to comply with all applicable laws and regulations. Such laws and regulations may include but are not limited to "Family Educational Rights and Privacy Act of 1974", 42 U.S.C. §290dd-2, 42 C.F.R. Part 2, "Confidentiality of Substance Use Disorder Patient Records", New York State Mental Hygiene Law §33.13 and the Health Insurance Portability and Accountability Act (HIPAA), 45 C.F.R. Parts 160 & 164., as applicable.

14. Consent to Jurisdiction/Forum Selection: The Center, the Fund and the Subcontractor agree that all actions or proceedings arising in connection with this Subcontract shall be tried and litigated exclusively in the State and Federal courts located in the City of New York, State of New York. The aforementioned choice of venue is intended by the parties to be mandatory and not permissive in nature, thereby precluding the possibility of litigation between the parties with respect to or arising out of this Subcontract in any jurisdiction other than that specified in this paragraph. Each party hereby waives any right it may have to assert the doctrine of forum non conveniens or similar doctrine or to object to venue with respect to any proceeding brought in accordance with this paragraph, and stipulates that the State and Federal courts located in the City of New York, State of New York shall have in personam jurisdiction and venue over each of them for the purpose of litigating any dispute, controversy, or proceeding arising out of or related to this Subcontract. Each party hereby authorizes and accepts service of process sufficient for personal jurisdiction in any action against it as contemplated by this paragraph by registered or certified mail, return receipt requested, postage prepaid, to its address for the giving of notices as set forth in this Subcontract. Any final judgment rendered against a party in any action or proceeding shall be conclusive as to the subject of such final judgment and may be enforced in other jurisdictions in any manner provided by law.
15. Audits: Subcontractor agrees to keep and maintain efficient, complete and separate books and records concerning any and all costs incurred in the performance of this Subcontract. Such books and records shall be kept available for examination by an independent auditor at all reasonable times and places during the period of this Subcontract and for six (6) years from the date of final payment. Subcontractor agrees to refund promptly to the Center any payments by the Center that are subsequently suspended or disallowed. The Center agrees to act on behalf of Subcontractor to attempt reinstatement of any suspended or disallowed charges, provided that Subcontractor makes available the necessary supporting data justifying reimbursement.
16. Insurance: The Subcontractor shall maintain, throughout this Subcontract, Professional Liability Insurance in an amount no less than \$1,000,000 for each occurrence, and Workers'

Compensation, in accordance with applicable statutory requirements. The Fund for the City of New York and the Center for Court Innovation shall be named as additional insured with respect to work performed pursuant to this Subcontract. The Subcontractor shall provide proof of all insurance upon request by the Center or Fund.

17. COVID-19: Subcontractor agrees to follow rules, regulations and guidance issued by relevant federal, state and local government and health authorities (including any applicable executive orders) and the Center's health and safety protocol, as amended from time to time, as related to COVID-19 while performing any work under this Subcontract that involves in-person contact. Refusal or failure to comply with this provision would be cause for termination of this Subcontract by the Center.
18. Assignment; Subcontracting: The Subcontractor shall not assign, transfer, convey or otherwise dispose of this Subcontract, or the right to execute it, or the right, title, or interest in or to it or any part of it (including via any subcontracting arrangement), or assign, by power of attorney or otherwise, any of the monies due or to become due under this Subcontract, without the prior written consent of the Center. Any assignment, subcontract, transfer, conveyance, or other disposition without such written consent shall be void, and failure to obtain prior written consent to any purposed assignment, subcontract, transfer, conveyance or other disposition may result in the termination of this Subcontract at the option of the Center. This Subcontract may be assigned, in whole or in part, by the Center provided that the Center shall provide the Subcontractor with written notice of any such assignment.
19. Merger Clause: This Subcontract, including all exhibits and attachments, constitutes the entire agreement between the parties with respect to the subject matter hereof, and supersedes all prior negotiations, representations, writings, agreements and understandings between the parties, whether oral or written. No waiver, consent, modification or change of terms of this Subcontract shall bind either party unless in writing and signed by both parties. Such waiver, consent, modification or change, if made, shall be effective only in the specific instance and for the specific purpose given.

If the terms and conditions of this Subcontract are acceptable to the Subcontractor, please sign electronically or sign and mail two signed copy of the Subcontract along with a completed W-9 form to the attention of the Contracts Dept. at the Center for Court Innovation, 520 Eighth Avenue, 18th Floor, New York, NY 10018.

Sincerely,

Center for Court Innovation

The Parties hereby enter into this Subcontract by having their authorized representatives sign below.



Name: Lataya Contreras
Title: Mayor
City of New Orleans, Office of Criminal
Justice Coordination

Name:
Title:
Center for Court Innovation

Exhibits:

- ☒ Joint Proposal for SJC Project
- ☒ Scope of Work for Cohort Participation
- ☒ Budget
- ☒ Sample Invoice
 - ☒ Checklist of Required Documentation for Invoices
- ☒ Funder Policy Regarding Intellectual Property Arising Out of Foundation Grants
- ☒ Sample ACH Authorization Form

For internal use only

CCI Contract Number:
OFY22-88-7128

Cost Center:
CCI-RPS McArthr Sfty & Jstc Rnd3 2-0-002-088-008

ATTORNEY AND LEGALITY APPROVED:



City Attorney, City of New Orleans