

K19-297

**COOPERATIVE ENDEAVOR AGREEMENT  
BY AND BETWEEN  
THE CITY OF NEW ORLEANS  
AND  
THE 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 The Arts Council of New Orleans, represented by Heidi Schmalbach, its Executive Director ("Subrecipient" or "ACNO"). The City and ACNO may sometimes be collectively referred to 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, ACNO is a private non-profit organization whose mission is to support arts and culture and demonstrate how these transform communities, whose principal address is located at 1307 Oretha Castle Haley Blvd., Suite 100, New Orleans, LA 70113;

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 was awarded \$141,260,569 in National Disaster Resilience funds ("NDR program") made available by the Disaster Relief Appropriations Act, 2013 (Public Law 113-2, approved January 29, 2013) (Appropriations Act) and awarded under the National Disaster Resilience Competition as CDBG National Disaster Resilience ("CDBG-NDR") grants from the United States Department of Housing and Urban Development ("HUD") and has selected ACNO to be a "subrecipient" under the NDR program to receive certain funds in order to implement the program as set forth below;

WHEREAS, ACNO, by agreeing to undertake the implementation of this Agreement utilizing CDBG-NDR funds provided by HUD, will be acting as a subrecipient of the City as defined by 24 C.F.R. part 570, and hereby agrees to carry out this Agreement in full compliance with the laws and regulations of the NDR program and exhibits incorporated to this Agreement;

WHEREAS, the activities hereunder are eligible under the NDR program;

WHEREAS, the City and ACNO desire to accomplish the valuable public purpose of advancing the work of the Gentilly Resilience District ("GRD") and increase citizen awareness and

understanding of resilience and sustainability through education, training and creative placemaking; create artists and youth-led interventions in public space that serve multiple functions; sustainable infrastructure development;

WHEREAS, the City and ACNO desire to demonstrate the efficacy of engaging youth and artists in the process of designing a site to engage residents in a conversation about “living with water,” while creating a community asset and recreational opportunity.

WHEREAS, the City will provide ACNO with National Disaster Resilience grant funding in exchange for the aforementioned services.

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

### ARTICLE I – ACNO’S OBLIGATIONS

A. Tasks. ACNO shall:

1. Establish a pilot two-pronged artist and design professional training program with a series of workshops;
2. Coordinate with the Office of Resilience and Sustainability to discuss concept and strategy informing the Resilience Plan and would cover examples of how art has been integrated into resilience/sustainability projects in other places and details on how to participate in the RFP/RFQ process by crafting a compelling proposal;
3. Prepare a RFQ/RFP with selected youths and a youth advisory members to assist with artist selection
4. Create and Manage all artist contracts and oversee project implementation ;
5. Partner with the NET Charter High School to develop a youth training and leadership out of school internship. Approximately 10 students will engage in a paid internship program to work closely with artist/designer mentors. The iterative process includes stages of investigation and research, community engagement, prototyping, and final design execution.
6. Artist training on city-wide resilience work to build capacity of local artists to respond to upcoming calls.

B. Deliverables. ACNO shall provide:

1. Full procurement documentation for all artists selected;
2. Names of youth selected for the youth training process, along with timesheets for all time spent working on site
3. Documentation for each stage of design execution.

C. Key Personnel. ACNO identifies the following key personnel to provide the services:

1. Project Administration and Operations:
  - a. Heidi Schmalbach, Executive Director; and
  - b. Alphonse Smith, Director

2. **Change to Key Personnel:** ACNO shall notify the City in writing of any change of the above listed "Key Personnel." The City retains the right to reject any such substitution within 30 days of receipt of written notice of substitution.

## **ARTICLE II - THE CITY'S OBLIGATIONS**

A. **Administration.** The City will administer this Agreement through the Mayor's Office of Resilience and Sustainability ("ORS").

B. **Access to Information.** The City shall provide ACNO with all material and information reasonably necessary to allow ACNO to perform its obligations under this Agreement.

## **ARTICLE III - COMPENSATION**

A. **Maximum Amount Payable.** The maximum amount payable by the City under this Agreement is TWO HUNDRED FIFTY THOUSAND DOLLARS EVEN (\$250,000). See Exhibit A for a full budget breakdown.

B. **Other Costs.** ACNO understands and agrees that the compensation shall be inclusive of all personnel costs, fringe benefits, equipment costs, travel costs, supply costs, and indirect costs identified as those not directly incurred as a result of providing the services listed in this Agreement and deemed ineligible for federal modified total direct costs for on-campus research.

## **ARTICLE IV - DURATION AND TERMINATION**

A. **Term.** The term of this Agreement shall be for one year from the Effective Date.

B. **Termination for Convenience.** The City may terminate this Agreement at any time during the term of the Agreement by giving ACNO written notice of the termination at least 30 calendar days before the intended date of termination.

C. **Termination for Cause.** The City may terminate this Agreement immediately for cause by sending written notice to ACNO. "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.

D. **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. To the fullest extent permitted by law, ACNO 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 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 negligent act or omission or the operation of ACNO, 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 ACNO in connection with the performance of work under this Agreement and for any and all claims and/or liens for labor, services, or materials furnished to ACNO in connection with the performance of work under this Agreement.

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

C. Independent Duty. ACNO 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) ACNO is ultimately absolved from liability.

D. Expenses. Notwithstanding any provision to the contrary, ACNO 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. Minimum Scope of Insurance. Coverage shall be at least as broad as the following:

1. Commercial General Liability (CGL): Insurance Services Office Form CG 00 01 or similar acceptable to the City, covering CGL on an "occurrence" basis, including products and completed operations, property damage, bodily injury and personal & advertising injury with limits no less than \$1,000,000 per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.

2. Automobile Liability: ISO Form Number CA 00 01 or similar acceptable to the City covering any auto (Symbol 1, or Symbols 7, 8, 9), or if TU has no owned autos, hired, (Code 8) and non-owned autos (Code 9), with limit no less than \$1,000,000 Combined Single Limit per accident for bodily injury and property damage.

3. If applicable, Professional Liability (Errors and Omissions): with limits no less than \$1,000,000 per claim.

B. Other Insurance Provisions. The insurance policies are to contain, or be endorsed to contain, the following provisions:

1. Additional Insured Status. ACNO will provide, and maintain current, a Certificate of Insurance naming The City of New Orleans, its departments, political subdivisions, officers, officials, employees, and volunteers are to be covered as "Additional Insureds" on the CGL policy

with respect to liability arising out of the performance of this agreement. General liability coverage can be provided in the form of an endorsement to ACNO's 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). 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.

2. **Primary Coverage.** For any claims related to this contract against ACNO for loss of life or injury or damage to persons or property arising from or relating to its negligent act or omission or operations, and/or 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 ACNO in connection with the performance of work under this Agreement, ACNO's 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 ACNO's coverage.

3. **Claims Made Policies.**

- a. The retroactive date must be shown and must be before the date of the contract or the beginning of work.
- b. If the coverage is canceled or non-renewed, and not replaced with another claims-made policy, ACNO must purchase "extended reporting" coverage for minimum of five (5) years after the termination of this agreement.

4. **Notice of Cancellation.** If coverage is provided by a policy of insurance as opposed to acceptable self-insurance, each insurance policy required above shall provide that coverage shall not be canceled, except with prior notice to the City of no less than 30 days.

5. **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.

C. **Other Requirements:**

1. ACNO 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.: within 10 calendar days of the Effective Date and at any other time at the City's request the following documents:
  - a. Proof of coverage for each policy of insurance required by this Agreement;
  - b. Copy of the fully executed Agreement;
  - c. Statements disclosing any policy aggregate limit.
2. Without notice from the City, ACNO will:
  - a. Replenish or have adequate excess to follow, any policy aggregate limit that is impaired before commencement of any work or continuation of any work under this Agreement;
  - b. 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; and

- c. Notify the City's Risk Manager in writing of non-renewal, cancellation, or reduction in coverage or limits affecting any policy of insurance maintained under this Agreement.

#### ARTICLE VII - PERFORMANCE MEASURES

A. Factors. The City will measure the performance of ACNO 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 ACNO fails to perform according to the Agreement, the City will notify ACNO. If there is a continued lack of performance after notification, the City may declare ACNO 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 defaulting contractor for any increase in costs and other damages sustained by the City. Further, the City will seek full recovery from the defaulting contractor.

#### ARTICLE VIII - LIVING WAGES

To the fullest extent permitted by law, ACNO agrees to abide by City Code sections 70-801, *et seq.*, which requires payment of a wage to covered employees equal to the amounts defined in the Code ("Living Wage"). If ACNO fails to comply with the requirements of the Living Wage during the term of the Agreement, said failure may result in termination of the Agreement or the pursuit of other remedies by the City.

#### ARTICLE IX - NON-DISCRIMINATION

A. Equal Employment Opportunity. In all hiring or employment made possible by, or resulting from this Agreement, ACNO (1) will not be 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 ACNO'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, gender, age, physical or mental disability, national origin, sexual orientation, creed, culture, or ancestry.

**B. Non-Discrimination.** In the performance of this Agreement, ACNO 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 ACNO in any of ACNO'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 ACNO. ACNO 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.** ACNO 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.** The City may terminate this Agreement for cause if ACNO fails to comply with any obligation in this Article, which failure is a material breach of this Agreement.

#### **ARTICLE X - INDEPENDENT CONTRACTOR**

**A. Independent Contractor Status.** ACNO 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 ACNO, 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 ACNO will not be considered an employee of the City for the purpose of Worker's Compensation coverage.

**C. Exclusion of Unemployment Compensation Coverage.** ACNO, as an independent contractor, is being hired by the City under this Agreement for hire and defined in La. R.S. 23:1472(E) and neither ACNO 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) ACNO 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 ACNO are outside the normal course and scope of the City's usual business; and (c) ACNO has been independently engaged in performing the services required under this Agreement prior to the date of this Agreement.

**D. Waiver of Benefits.** ACNO, 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 XI - 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:  
Project Delivery Unit Manager  
City of New Orleans  
1300 Perdido Street  
New Orleans, LA 70112  
  
&  
  
City Attorney  
City of New Orleans  
1300 Perdido Street, Suite 5E03  
New Orleans, LA 70112
2. To ACNO:  
Heidi Schmalbach,  
ACNO  
1307 Oretha Castle Haley Blvd  
New Orleans, LA 70113

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 XII - ADDITIONAL PROVISIONS

A. Amendment. No amendment 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 ACNO's interest in it are not assignable or transferable without the City's prior written consent.

C. Audit and Other Oversight. ACNO will abide by all provisions of City Code § 2-1120, including without limitation City Code § 2-1120(12), which requires ACNO 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, ACNO 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. 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 ACNO 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.

F. **Convicted Felon Statement.** ACNO complies with City Code § 2-8(c) and no principal, member, or officer of ACNO 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.

G. **Employee Verification.** ACNO 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 ACNO 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 ACNO being ineligible for any public contract for a period of 3 years from the date the violation is discovered. ACNO 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. ACNO 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 ACNO fails to provide such the requested affidavit or violates any provision of this paragraph.

H. **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.

I. **Exhibits.** The following exhibits are attached and expressly incorporated into this Agreement:

- Exhibit A “HUD NDR Compliance Provisions for Direct Grantee – Subrecipient Agreement and Professional Services Contracts;” and
- Exhibit B – Project Proposal, Budget, and Timeline.
- Exhibit C – Program-specific Performance Measures

J. **Jurisdiction.** ACNO 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 ACNO.

K. **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.

L. **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.

M. Non-Exclusivity. This Agreement is non-exclusive and ACNO may provide services to other clients. The City may engage the services of others for the provision of some or all of the work to be performed under this Agreement.

N. Non-Solicitation Statement. ACNO 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. ACNO 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.

O. 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.

P. Ownership Interest Disclosure. ACNO will provide the City with a sworn affidavit listing all natural or artificial persons with an ownership interest in ACNO and stating that no other person holds an ownership interest in ACNO 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 ACNO fails to submit the required affidavit, the City may, after 30 days' written notice to ACNO, take such action as may be necessary to cause the suspension of any further payments until such the required affidavits are submitted.

Q. Ownership of Records. ACNO shall maintain ownership of all data collected and all products of work prepared, created or modified by ACNO 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 ACNO's personnel and administrative records and any tools, systems, and information used by ACNO 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"). ACNO shall also maintain 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 ACNO's name. However, ACNO acknowledges that the purpose of the Project is for the benefit of the City of New Orleans, and therefore ACNO shall grant the City a no-cost perpetual license to utilize all Work Product in a manner to further the purpose of the Project, provided that the City takes all reasonable precautions to protect ACNO's intellectual property and proprietary interests of the Work Product, subject to all applicable public records laws. ACNO shall also be able present or publish materials deriving from its Work Product at its sole discretion, provided that ACNO provide the City with an advance copy for review and feedback at least seven (7) days prior to presentation or publication.

R. 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 ACNO, 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 ACNO pursuant to this Agreement without regard to ACNO's otherwise satisfactory performance of the Agreement.

**S. 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.

**T. 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.

**U. 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.

**V. Special Conditions for HUD NDR Contracts.** The "HUD NDR Compliance Provisions for Direct Grantee – Subrecipient Agreement and Professional Services Contracts," attached as Exhibit "A" to this Agreement, are expressly incorporated in the Agreement and will be effective, notwithstanding any provision of the Agreement or any incorporated documents, to the contrary, upon the City's notice to ACNO that the City intends to seek reimbursement from the NDR Program in connection with the work to be performed under this Agreement.

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

**X. 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.

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

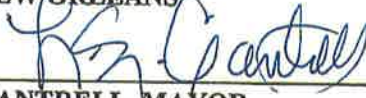
**ARTICLE XIII - ELECTRONIC SIGNATURE AND DELIVERY**

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

CITY OF NEW ORLEANS

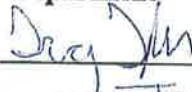


\_\_\_\_\_  
LATOYA CANTRELL, MAYOR

Executed on this 2 of May, 2019.

**FORM AND LEGALITY APPROVED:**

Law Department

By: 

Printed Name: Tracy Tyler

**ARTS COUNCIL OF NEW ORLEANS**

BY:   
\_\_\_\_\_  
HEIDI SCHMALBACH, EXECUTIVE DIRECTOR

\_\_\_\_\_  
FEDERAL TAX I.D. 

[EXHIBITS A - C ATTACHED]