

AGREEMENT

THIS AGREEMENT, made on this 21st day of December 2023, between the City of Norman, Oklahoma, a municipal corporation (hereinafter referred to as the "City"), and the Norman Arts Council, Inc., a not-for-profit corporation (hereinafter referred to as the "NAC").

WHEREAS, City and NAC agree that the promotion of arts and humanity activities are an important part of attracting tourists and conventions to the City; and

WHEREAS, the existence of artistic murals fosters increases in residents' quality of life and encourages visitors to a city; and

WHEREAS, NAC was founded in 1976 to enrich the Norman community by stimulating artistic, cultural, and economic growth through the support and promotion of the arts; and

WHEREAS, NAC first contracted with the City in 1989, as the Norman Arts and Humanities Council, for the administration of arts and humanities promotion within the City of Norman, including gathering and distribution of ideas, research, and information designed to educate Norman citizens, assisting with the development and promotion of local arts and humanities activities and attractions through the Transient Guest Room Tax Grants Program, and enhancing the City of Norman's desirability to participants in arts and humanities activities; and has performed such services on behalf of the City of Norman since that time; and

WHEREAS, NAC's exhibits, art walks, art education experiences and festivals have drawn more than One Million visitors each year to Norman; and

WHEREAS, it is the desire of the parties hereto that NAC operates a grant program that encourages the creation of murals throughout the City as hereinafter provided.

THEREFORE, in consideration of the foregoing premises and the mutual promises, covenants, and conditions herein stated, and in consideration of the mutual benefits that will accrue to each of the parties hereof, the parties hereto agree as follows:

1. Operations.

- A. The term "**Mural**" as used in this agreement shall mean an outdoor painting, mosaic, or bas-relief that is applied directly to a wall and is visible from a public right-of-way.
- B. NAC agrees to create, operate, and administer a mural grant program in order to encourage the creation of outdoor murals throughout the City for an initial trial period of two years, starting from the execution of this agreement ("**Operation Term**"). The parties may extend the Operation Term only upon written agreement of both parties.
- C. NAC's Operation of this grant program shall include, but is not limited to, the following:
 - i. Providing qualified and competent staff to be assigned to the program;

- ii. Providing all the management and administrative services necessary to administer the program;
- iii. Adopting operating procedures and guidelines for the operation of the grant program;
- iv. Creating an application process and prescribing methods for the competitive selection of funded projects;
- v. Overseeing grantee compliance with all necessary program requirements; and
- vi. Contracting and coordinating with all necessary parties, such as artists and property owners, to ensure the successful creation and maintenance of murals funded by the project.

2. **Funding.**

The City shall provide NAC with one hundred thousand dollars (\$100,000.00) in funding to be used during the Operations Term. Such funds shall be deposited into an account used solely for this program and said funds may only be used for the purposes described in this agreement. NAC agrees to refund any unused funds provided by the City pursuant to this agreement immediately upon expiration of the Operations Term or upon termination of this agreement, whichever occurs first. NAC may also use private funds or donations for the program, but such funds shall not be commingled with any funds received from the City on any project, other than 1:1 matching funds received from a grantee as required in Section (3)(E) of this agreement.

3. **Minimum Program Requirements.**

- A. Each mural project that receives funds provided by the City pursuant to this contract must meet the following minimum requirements:
 - i. Murals must not serve as solicitation for goods or services;
 - ii. Murals must not serve as signage. Signage can include, *but is not limited to*, the name of a building or company, an address number, a logo of a business, etc.;
 - iii. Murals must be outdoors and viewable from a public right-of-way; and
 - iv. Murals must not contain any of the following:
 - 1. obscene images or other vulgarity;
 - 2. no recognized signs of hatred or discrimination against any race, color, sex, age, national origin, disability, religion, ancestry, marital status, familial status, gender identity or expression, or sexual orientation;
 - 3. depictions of illegal activities; or
 - 4. reproduction, copy, or mass-produced work of visual art of any type.

- B. As a part of the program, NAC must include protections and agreements with all selected grantees that ensure that funded projects remain in place for a time period that is commensurate with the amount of public funding awarded.
- C. NAC shall get all necessary approvals and consent from the property owner(s) of record for the property on which projects shall be placed prior to any award of funds.
- D. The program shall only award funding to projects that exhibit excellence in design, composition, and materials used.
- E. The program shall award funds only to grantees who are able to provide 1:1 fund matching, either cash or in-kind. However, NAC shall have the authority to waive this requirement for grantees who are either public entities or 501(c)(3) nonprofit corporations.
- F. NAC shall require that all funded projects comply with the City's various building codes and processes.

4. Reporting.

- A. NAC understands and agrees that the establishment of objective criteria by which to judge NAC's performance is necessary and an important part of this Agreement. As part of its reports to the City Council and in any event no less than semi-annually, NAC shall provide Council with the information set forth herein. Reports shall be sent in the same manner as notices described in Section 10 of this agreement.
- B. NAC shall report to the City at least semi-annually, with information describing the activities that NAC has undertaken relating to this program since the prior reporting. This report can be included with other reports given to the City as required elsewhere or in other agreements. The report shall provide NAC's activities in areas such as, but not limited to, the following:
 - i. Development or updating of any administrative guidelines, procedures, or applications;
 - ii. Marketing and communications activities and performance measures; and
 - iii. Detailed status of any potential, ongoing, and completed projects.
- C. NAC shall furnish quarterly financial reports that include revenue and expense reports compared to budget and balance sheets covering the period and the year-to-date. The year-end financial report submitted by NAC to the City shall include an audited financial statement for the previous year. Said audited financial statement shall be furnished by NAC to the City as soon as reasonably possible after the close of the previous fiscal year.
- D. In addition to the specific reports indicated above, NAC shall provide any other reports deemed necessary by the City. The City, or any of its duly authorized representatives, shall at all times have the right and option to monitor, inspect, audit, and review the NAC's performance and operation of the program in accordance with this Agreement;

and in connection therewith, the City shall have the right to inspect any and all records, books, documents, or papers of NAC and the subcontractors of NAC, for the purpose of making audit examinations of NAC's performance under this agreement. NAC shall retain all relevant records, books, and associated financial information relating to the grant program for a period of five (5) after termination of either the program or this contract, whichever is later.

- E. NAC agrees to meet with City Council, City personnel, or any other authorized representatives of the City on any matters connected with carrying out of NAC's services described herein. Such meetings shall be held at the request of either party.

5. Independent Contractor Status.

NAC shall be an independent contractor for the City. NAC agrees to conduct itself in a manner consistent with such status and further agrees that NAC, its agents, or employees will not hold themselves out as, nor claim to be, an officer or employee of the City by reason of this Agreement and that it will not by reasons of this Agreement make any claim, demand, or application for any right or privilege applicable to an officer or employee of the City, including, but not limited to, workers' compensation coverage, unemployment insurance benefits, social security coverage or retirement membership or credit.

6. Compliance with Laws.

All activities of NAC, its employees, subcontractors and/or agents will be carried out in compliance with all applicable federal, state, and local laws and regulations.

7. Integration.

This Agreement represents the entire and integrated Agreement between the parties. It supersedes all prior and contemporaneous communications, representations, and agreements, whether oral or written, relating to the subject matter of this Agreement. This Agreement may only be changed by a written amendment executed by all parties.

8. Waiver.

The Waiver by the City of any breach of any term, condition, or covenant herein contained shall not be deemed a waiver of such term, condition, or covenant or any subsequent breach of the same, or any other term, condition, or covenant.

9. Termination.

The City may, in its sole discretion, immediately terminate this Agreement at any time, without cause.

10. Notices.

If either party shall desire or is required to give notice to the other such notice shall be given in writing, via email and concurrently delivered by overnight Federal Express [or priority U.S. Mail], addressed to recipient as follows:

To CITY:

City Manager's Office
 Darrel Pyle
 201 W. Gray St, Norman, OK 73069
Darrel.Pyle@NormanOK.gov
 With CC to:
Kathryn.Walker@NormanOK.gov
Sara.Kaplan@NormanOK.gov

To NAC:

Norman Arts Council
 Erinn Gavaghan
 122 East Main Street
 Norman, OK 73069
erinn@normanarts.org

Changes to the above information shall be given to the other party in writing ten (10) business days before the change is effective.

11. Modification.

No alteration, change or modification of the terms of this Agreement shall be valid unless made in writing and signed by all parties hereto.

12. Assignability.

NAC shall not assign or transfer this Agreement, or any interest herein.

13. Severability.

Any provision of this contract which is hereafter found by a court of law or otherwise to be in conflict with the laws, rules, and/or regulations of the United States, State of Oklahoma or City of Norman shall be considered null and void. Any provision rendered null and void by the operation of this provision will not invalidate the remainder of this contract to the extent the contract is capable of execution.

14. Warranty of Authority.

The signatories to this Agreement warrant and represent that each is authorized to execute this Agreement and that their respective signatures serve to legally obligate their respective representatives, agents, successors and assigns to comply with the provisions of this Agreement.

15. Nondiscrimination.

The NOC agrees further that it will not discriminate against any persons on the basis of race, color, religion, ancestry, national origin, age, place of birth, disability, sex, sexual orientation, gender identity or expression, familial status, or marital status, including marriage to a person of the same sex.


16. Governing Law; Venue.

This agreement shall be governed and construed in accordance with the laws of the United States of America and the State of Oklahoma. The venue for any action under this agreement shall be in the District Court of Cleveland County, Oklahoma or the United States District Court for the Western District of Oklahoma. The parties agree to submit to the subject matter and personal jurisdiction of said court.

WITNESS our hands the 21st day of December 2023, at Norman, Oklahoma.

NORMAN ARTS COUNCIL, INC.

By:


Erin Gavaghan, Executive Director

ATTEST:


Corporate Secretary

APPROVED this _____ day of _____, 2023, by the Norman City Council.

Larry Heikkila, MAYOR

ATTEST:

Brenda Hall, City Clerk

APPROVED as to form and legality this _____ day of _____, 2023.

CITY ATTORNEY