

ARTS PROJECT MANAGEMENT AGREEMENT THE CITY OF HYATTSVILLE

This **ARTS PROJECT MANAGEMENT AGREEMENT** ("Agreement") is entered into this ____ day of November 2020 by and between the City of Hyattsville (hereinafter referred to as the "City") and the Hyattsville Community Development Corporation (hereinafter referred to as the "CDC") (collectively referred to hereinafter as the "Parties").

WHEREAS, the City is a municipal corporation formed under the laws of the State of Maryland; and

WHEREAS, the CDC is a private non-profit 501(C)(3) corporation organized located in the State of Maryland with a mission to spur economic development, improve the quality of community life in the Hyattsville area, and to revitalize commercial areas in the community; and

WHEREAS, the City, through the sponsorship of the Jane Henson Foundation, wishes to provide high-quality, accessible interpretive signage to enhance the Jim Henson Courtyard in Magruder Park, which is located within the City of Hyattsville; and

WHEREAS, the City requires CDC, on its behalf, to select an artist and to oversee the said artists' design, implementation, and installation of interpretive signage for the Jim Henson Courtyard at Magruder Park (hereinafter referred to as the "Project").

NOW, THEREFORE, for and in consideration of the covenants contained herein, the parties do hereby mutually agree as follows:

1.0. CDC's Duties and Responsibilities.

It is agreed that the CDC will have the following duties and responsibilities:

1.1 CDC shall select an artist to implement the Project, subject to the City's approval in writing.

1.2 CDC shall identify and recommend locations in which the signs should be placed and communicate these locations to the City for its approval.

1.3 CDC shall provide other necessary specifications to the City regarding the procurement and installation of signage suitable for permanent outdoor public display.

1.4 CDC shall develop and provide to the City provisions or specifications regarding the City's future ownership and maintenance of such signage, subject to the City's approval.

1.5 CDC shall provide the City with an outline detailing the method through which it will select any artwork that will be placed on the signage, subject to the City's approval.

1.6 CDC shall draft contracts with any artists it has selected, and the City has approved,

concerning the relationship between CDC and such artists. Any selection of artists or contract entered into between CDC and said artists shall be subject to the City's approval in writing.

1.7 CDC shall be responsible for obtaining all necessary permits required to complete the Project and ensuring compliance with said permits throughout the performance of its duties under this Agreement.

1.8 CDC shall design and oversee any installation activities performed by it, contracted artists, or other subcontractors.

1.9 CDC shall be responsible for administering payments to any artists and subcontractors it has selected to assist it throughout the Project.

1.10 CDC shall maintain prompt communication with the City.

1.11 CDC agrees that it will begin the Project immediately starting on the date of execution of this Agreement, unless there are coronavirus restrictions that prohibit design or installation of the signage until a later date. Any changes to the Project or extensions of the deadline must be requested in advance and are subject to the City's approval in writing.

1.12 In rendering the services described herein to the City, CDC agrees to the following:

1.12.1 CDC shall select any artists required to produce such signage and manage any contractual relationships between it and said artists upon receiving the City's consent to such relationship in writing.

1.12.2 CDC shall be responsible for the technical completeness, sufficiency, and accuracy of all documents proposed by the CDC.

1.12.3 CDC shall promptly report to the City any problems or issues arising out of or concerning the Project or the performance of its duties under this Agreement.

2.0. City's Duties and Responsibilities.

The City shall perform the following in connection with CDC's participation in the Project:

2.1 The City shall, in exchange for the services referenced in Section 1, pay to CDC a one-time payment in the amount of Three Thousand US Dollars and Zero Cents (\$3,000.00).

2.2 The City shall provide information to CDC regarding its requirements for the Project and agrees to cooperate to the fullest extent possible with CDC throughout the duration of the Project.

3.0. Cancellation.

3.1 CDC agrees that it shall not be excused from performance hereunder except in the

case of emergency and/or illness and/or government order relating to the coronavirus. In the case of any cancellation, CDC will provide the City notice thereof as early as possible and shall cooperate with the City in scheduling a future date for the performance of its duties under this Agreement in accordance with the terms hereof, if requested by the City.

3.2 In the event of cancellation by the CDC, CDC shall refund the City any payment made under Section 2 less any reasonable costs incurred by CDC. If CDC cancels the Agreement without engaging in any work, CDC shall refund the full amount to the City.

4.0. Promotion and Copyrights.

4.1 The Parties agree that the signage itself, which will be located on City property, will exclusively be the property of the City.

4.2 The Parties acknowledge that all designs, logos, patterns, or composition incorporated into such signage shall be the property of any artists responsible for the creation of such designs and/or artwork. The Parties agree that such artists will be permitted to license the use of any such design, logos, patterns, or compositions.

4.2 The City shall grant to CDC the right to use and reproduce images of the signage developed and installed within the City for the CDC's own purposes and benefit, without cost and further permission.

5.0. Independent Contractor.

5.1 CDC is an independent contractor to the City and shall not be deemed an employee of the City for any purpose whatsoever. CDC shall have the ability to select the means, manner, and method of performing the services contracted for, unless specifically referenced herein as being subject to the City's approval. In doing so, CDC agrees to adhere to the policies and procedures established by the City, to use their best efforts to promote the interest of the City, and to give the City the full benefit of its experience, knowledge, and skills. Neither party, nor such party's members, directors, officers, employees, or agents, shall bind or make any commitment on behalf of the other party. Accordingly, with respect to the services covered by this Agreement, the Parties each acknowledge and agree that CDC will not be treated as an employee for purposes of the Federal Insurance Contributions Act, the Social Security Act, the Federal Unemployment Tax Act, federal and state income tax withholding, state unemployment taxes, State Workers' Compensation Insurance, and similar laws covering the employer-employee relationship. CDC further acknowledges that it is solely responsible for the payment of any state or federal income tax or self-employment tax; and that they understand their responsibilities with respect to the payment of these taxes. The Parties agree that by virtue of this provision of services under this Agreement, CDC, their employees, agents and assigns shall not be entitled to any benefits provided by the City, including life insurance, death benefits, accident or health insurance, qualified pension or retirement plans or other employee benefits.

6.0. Contact Information.

The designated contact for the City of Hyattsville:

Tracey Douglas
City Administrator, City of Hyattsville
4310 Gallatin Street
Hyattsville, MD 20781
(301) 985-5021
tdouglas@hyattsville.org

The designated contact for Hyattsville CDC:

Stuart Eisenberg,
Hyattsville CDC
4314 Farragut Street
Hyattsville, MD 20781
(301) 683-8267
eisenberg@hyattvillecdc.org

7.0. Certifications.

7.1 CDC, and the individual executing this Agreement on CDC's behalf, warrants it has not employed or retained any person, partnership, corporation, or other entity, other than a bona fide employee or agent working for it, to solicit or secure this Agreement, and that it has not paid or agreed to pay any person, partnership, corporation or other entity, other than a bona fide employee or agent, any fee or other consideration contingent on making this Agreement.

8.0. Indemnification.

8.1 CDC shall indemnify, hold harmless and defend the City, its officials, agents, employees, successors, and assigns against and with respect to any and all losses, damages, suits, claims, judgments, and expenses whatsoever, hereinafter referred to as "losses," including without limitation costs of investigation, litigation and reasonable attorney's fees, arising directly or indirectly from the negligent performance of the services required under this Agreement by CDC, its officers, employees, agents, contractors, or consultants. The foregoing shall apply, without limitation, to losses of all types.

8.2 CDC shall be considered for all purposes of this Agreement as an independent contractor, shall not be an agent of the City, and shall have no right or authority to enter into any agreements or otherwise bind the City or create any obligations on behalf of the City with other parties whatsoever. Nothing contained in this Agreement will be construed to create the relationship of employer and employee, principal and agent, partnership or joint venture, or any other fiduciary relationship.

8.3 This Section shall survive the termination of this Agreement.

9.0. Set Off.

9.1 In the event that CDC shall owe an obligation of any type whatsoever to the City at any time during the term hereof, or after the termination of the relationship created hereunder, the City shall have the right to offset any amount so owed CDC against any compensation due to CDC for the provision of goods and services covered by the terms of this Agreement.

10.0. Successors and Assigns.

10.1 The Parties bind themselves, their partners, successors, assigns, and legal representatives to this Agreement and to the partners, successors, assigns, and legal representatives of such other party with respect to all covenants of this Agreement. Neither party shall assign, sublet, or transfer its interest, including, but not limited to, the proceeds thereof, in this Agreement without the written consent of the other party, such consent may not be unreasonably delayed, withheld, or conditioned.

11.0. Records and Audit.

11.1 CDC shall maintain books, records, documents and other evidence directly pertinent to costs, estimates and performance under this Agreement and any Federal, State or local rule or regulation, in accordance with accepted professional practice, appropriate accounting procedures and practices. The City, or any of its duly authorized representatives, shall have access to such books, records, documents, and other evidence for the purpose of inspection, audit and copying at its request. CDC will provide proper facilities for such access and inspection.

11.2 Records referenced under subsection 11.1. above shall be maintained and made available during performance under this Agreement and until five (5) years from the effective date of this Agreement. In addition, those records that relate to any dispute or litigation, or the settlement of claims arising out of such performance, or costs or items to which an audit exception has been taken shall be maintained and available until five (5) years after the date of resolution of such dispute, litigation, claim or exception.

12.0. Applicable Law.

12.1 The laws of the State of Maryland, excluding conflicts of law rules, shall govern this Agreement as if this Agreement were made and performed entirely within the State of Maryland. Any suit to enforce the terms hereof or for damages or other relief as a consequence of the breach or alleged breach hereof shall be brought exclusively in the courts of the State of Maryland in Prince George's County, and the Parties expressly consent to the jurisdiction thereof and waive any right that they have or may have to bring such elsewhere.

13.0. Miscellaneous.

13.1 The recitals above are hereby incorporated into this Agreement.

13.2 If any term or provision of this Agreement or its application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remaining terms and

provisions of this Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is held or unenforceable, shall not be affected thereby, and each term and provision of this Agreement shall be valid and enforced to the fullest extent permitted by law.

13.3 All representations, warranties, covenants, conditions and agreements contained herein which either are expressed as surviving the expiration and termination of this Agreement or, by their nature, are to be performed or observed, in whole or in part, after the termination or expiration of this Agreement shall survive the termination or expiration of this Agreement.

13.4 This Agreement represents the entire Agreement between the City and CDC, and this Agreement supersedes all prior negotiations, representations, or agreements, either written or oral. This Agreement may be amended only by written instrument signed by the duly authorized representatives of the City and CDC.

13.5 All section and paragraph captions, marginal references, and table of contents in this Agreement are inserted only as a matter of convenience, and in no way amplify, define, limit, construe, or describe the scope or intent of this Agreement nor in any way affect this Agreement.

13.6 CDC is not now, and shall not so long as this Agreement remains in effect, engage in the development, research, testing, evaluation, production, maintenance, storage, transportation, and/or disposal of nuclear weapons or their components, or the sale of merchandise produced by companies so involved. CDC's Certification of Non-Involvement in the Nuclear Weapons Industry is attached to and made a part of this Agreement.

13.7 CDC agrees that it will comply with all applicable laws in the performance of its duties under this Agreement.

13.8 CDC assures the City that, in accordance with applicable law, it does not, and agrees that it will not, discriminate in any manner on the basis of race, color, religious creed, ancestry, national origin, age, sex, marital status, disability, the presence of children, source of income, sexual orientation or gender identification.

13.9 Neither the City nor CDC has made any representations or promises with respect to this Agreement except as herein expressly set forth.

13.10 The neuter, feminine, or masculine pronoun when used herein shall each include each of the other genders and the use of the singular shall include the plural.

13.11 This Agreement shall not be construed in favor of or against either party based on the fact that it was drafted by the City.

13.12 The waiver of any breach of this Agreement shall not be held to be a waiver of any other or subsequent breach. Any waiver by the City of a requirement of this Agreement, including without limitation, any requirement that a notice be made in writing or that a notice or submission be made within a certain time, shall not operate as a waiver of the same or any other requirement

of this Agreement, in any other circumstance or at any other time.

13.13 This Agreement may be executed electronically and in counterparts. All such counterparts will constitute the same contract and the signature of any party to any counterpart will be deemed a signature to, and may be appended to, any other counterpart. Executed copies hereof may be delivered by e-mail and upon receipt will be deemed originals and binding upon the Parties hereto, regardless of whether originals are delivered thereafter.

IN WITNESS WHEREOF, the City and CDC have executed this Agreement as of the date first written above.

Witness:

City of Hyattsville:

By: _____

By: _____

Tracey Douglas
City Administrator

Witness:

Hyattsville CDC:

By: _____

By: _____

Stuart Eisenberg