

StreetARToronto Partnership Program 2020

Appendix 1

StreetARToronto Partnership Program

Terms and Conditions of Funding:

By signing and submitting the StreetARToronto Partnership Program 2020 Letter of Understanding (the "LOU"), the Proponent acknowledges and agrees to the following terms and conditions:

1.0 Use and Purpose of Funding

- 1.1 This funding provided by the City (the "Funding") must be used only for the purposes of the StART Project as described in the application form.
- 1.2 Designs and artwork are subject to final approval by the City.
- 1.3 Through community consultation the submitted design may differ. StART staff must be notified and provide approval no later than 3 weeks prior to execution.
- 1.4 This program does not cover temporary street art.
- 1.5 The recipient of Funding (the "Recipient") must notify StreetARToronto staff, as identified in section 18.0, of any proposed material changes to the StART Project from what is contained in the application. The Funding can be used for such changes only with the prior written consent of the Director of the Neighbourhood Projects Section of Transportation Services of the City or their designate (the "Director").
- 1.6 The Recipient must not transfer or assign the Funding or any part thereof to another individual or corporation, without the prior written consent of the Director.
- 1.7 The street art shall not promote violence, hatred or contempt against any identifiable group distinguished on the basis of colour, race, ancestry, religion, ethnic origin, sexual orientation, age, language or disability.

2.0 Ownership and Disclosure of Application Documentation

The documentation comprising any Application, along with all correspondence, documentation and information provided to the City by any Proponent in connection with, or arising out of this StART Partnership Program, once received by the City:

- a) shall become the property of the City and may be appended to the Letter of Understanding with the successful Recipient;
- b) shall become subject to the *Municipal Freedom of Information and Protection of Privacy Act* ("MFIPPA"), and may be released, pursuant to that Act.

Because of *MFIPPA*, prospective Recipients are advised to identify in their Application any scientific, technical, commercial, proprietary or similar confidential information, the disclosure of which could cause them injury.

Each Proponent's name and the Application evaluation results at a minimum shall be made public.

3.0 Anti-Racism, Access and Equity Guidelines

The Recipient must complete and submit with this Application a Declaration of a Non-Discrimination Policy provided by the City confirming that the Recipient has adopted and upholds a policy of access and non-discrimination based on the City’s Human Rights Policy. The Recipient will work actively to integrate anti-racism, access and equity, throughout their operations, in accordance with the City’s approved Anti-Racism, Access and Equity Policy as it relates to all funding recipients.

4.0 Payments – Street Art Projects

If Funding is approved, the Recipient will be advised in writing as to the amount. For art projects, the Funding will be disbursed by cheque in one instalment upon compliance with all Terms and Conditions of Funding and receipt of the following by the Director:

- (a) an executed copy of a Letter of Understanding in accordance with section 14.0; and
- (b) a copy of a signed agreement or letter of understanding between the Recipient and the Artist that includes an undertaking that all artwork for the StART Project will be original and that no copyrights will be infringed upon;
- (c) a licensing agreement between the Artist and the City in accordance with section 15.0.
- (d) StART will withhold 25% of the project funding awarded above \$25,000 until project completion. For example, on a \$40,000 project, the hold-back would be \$10,000 (25% of \$40,000).

5.0 Acknowledgement of Funding

The Recipient must acknowledge the support of the City on any materials, reports, events, publicity or signage related to this project.

6.0 Accounting

- 6.1 The Recipient must keep and maintain all records, invoices and other documents relating to the Funding in a manner consistent with generally accepted accounting principles and clerical practices, and must maintain such records for a period of three (3) years from the date of receipt of the Funding.
- 6.2 The Recipient authorizes the City and its agents at all reasonable times to inspect and copy any and all records, invoices and documents in the custody or control of the Recipient which relate to the Funding. The right of inspection includes the right to perform a full or partial audit of the aforementioned records, as considered appropriate by the City.

7.0 Project Completion Time

- 7.1 The StART Project must be completed no later than October 31, 2020 (the "Final Completion Date") unless the Director has provided prior written approval of an extension.
- 7.2 In the event that any portion of the StART Project is incomplete or unsatisfactorily completed, as determined by the Director, on the Final Completion Date or the extension thereof in accordance with section 7.1, the Recipient shall upon

request by the Director immediately repay the Funding, in whole or in part, plus interest as determined by the City.

8.0 Consultation

- 8.1 The City may involve individuals with appropriate expertise in the grant review process, which may include a peer/citizen review mechanism.
- 8.2 The City reserves the right to consult with other funding agencies to determine the eligibility of the Proponent to receive funding.

9.0 Limitation of Liability and Indemnification

- 9.1 The City will not be liable for any damages, injury or any loss of use or profit of the Recipient arising out of, or in any way related to the Funding or to the Recipient's operations.
- 9.2 The Recipient shall indemnify the City, its officers, employees and agents, against all costs, damages and expenses incurred as a result of a claim or proceeding related to the Funding or to the Recipient's operations, including but not limited to allegations or claims of copyright infringement, unless such costs, damages or expenses arise from the negligence or wilful act of an officer, employee or agent of the City.
- 9.3 The Recipient agrees to purchase and maintain in force, at its own expense and for the duration of the agreement, Comprehensive General Liability including Non Owned Automobile Liability, Employer's Liability and/or Contingent Employer's Liability, Cross Liability and Severability of Interest and any other provision relevant to the services provided with limits of not less than TWO Million Dollars (\$2,000,000.00) per occurrence. The City is added as additional insured but only with respect to liability arising out of the operations of the Named Insured. The policy will include a clause which will provide the City with thirty (30) days' prior written notice of cancellation. A certificate evidencing these policies signed by the insurer or an authorized agent of the insurer must be delivered to the City prior to the commencement of the agreement. At the expiry of the policies of insurance, original signed Certificates evidencing renewal will be provided to the City without notice or demand.

10.0 Maintenance Obligations

Vandalism

If vandalism to the street art occurs, graffiti must be removed within three (3) working days of notification. Where Hate/Racist, Gang-related and/or offensive graffiti is identified, graffiti must be removed within twenty-four (24) hours of being notified.

(a) Recipient Responsibility

It is the responsibility of the Recipient to maintain the project in good repair, including the removal of any graffiti vandalism, for a period of five (5) years from the "Final Completion Date" as per the maintenance plan submitted in the application and approved by the City.

(b) Owner Responsibility

It is the responsibility of the property owner to remove graffiti vandalism following the five (5) year term of the maintenance agreement in accordance with City of Toronto Municipal Code Chapter 485, Graffiti.

11.0 Funding Repayment

11.1 In addition to the provision for repayment set out in section 7.0, at the request of the Director, the Recipient shall repay to the City the whole or any portion of the Funding, as determined by the City, if the Recipient:

- (a) ceases operating;
- (b) winds up or dissolves;
- (c) merges or amalgamates with any other party;
- (d) commences or has commenced against her, him, any proceedings in bankruptcy or is adjusted a bankrupt;
- (e) has knowingly provided false information in its grant application;
- (f) uses Funding for purposes not approved;
- (g) breaches any of the terms or conditions of the grant; or
- (h) breaches any of the provisions of the Ontario *Human Rights Code* in its operations.

11.2 The Recipient must immediately notify the Director in writing of the occurrence of any of the events described in section 11.1.

11.3 The City may, in its sole discretion, require the Recipient to pay interest on any amount required to be repaid pursuant to this section, section 7.0 or section 11.0 at the prime rate of the Bank of Canada from the date for the request for repayment to the date of repayment.

12.0 Unused Funds

12.1 Any unused portion of the Funding remains the property of the City.

12.2 If any unused portion of the grant has already been paid by the City to the Recipient ("Unused Grant Funds"), the Recipient must notify the City immediately and the Unused Grant Funds must be repaid by the Recipient to the City, within five (5) working days of notification to the City.

12.3 Notwithstanding section 12.2, the City may in its sole discretion determine that Unused Grant Funds have been paid by the City to the Recipient, in which case the Recipient must repay the Unused Grant Funds to the City within five (5) working days of notification by the City to the Recipient.

13.0 Status of Proponent

The Recipient must be in good standing with the City, having met the terms and conditions of any previous or current agreements for funding provided by the City.

14.0 Letter of Understanding

The Recipient must execute and return to the Director an executed copy of a Letter of Understanding if funding is approved.

15.0 Copyright Agreement

The Recipient and Artist shall enter into an Agreement with the City to:

1. grant the City an irrevocable paid-up royalty-free and otherwise cost-free licence to use, reproduce, adapt and exhibit still or moving images of the work. its design and installation in public and in any manner related to the promotion of StreetARToronto, the city of Toronto, artists and creative talent or the City;
2. grant sublicenses of their Licence to third party; and
3. restore, replace or remove the work in whole or in part at any time.

16.0 Letter of Agreement with the Property Owner

The Recipient must provide proof of authorization from the property owner indicating terms and conditions of agreement. The Letter of Agreement must state October 31, 2020 as "The Project Completion Date", that the project can remain on wall/site for minimum of five (5) years and that the owner consents to the Project and its completion on the owner's property. Proponents are encouraged to consider the impact of any infrastructure and construction development and how it may impact the visibility and access to the completed project.

17.0 No Waiver

No delay or omission by the City in exercising any right or remedy shall operate as a waiver of them or of any other right or remedy, and no single or partial exercise of a right or remedy shall preclude any other or further exercise of them or the exercise of any other right or remedy.

18.0 Notifications and Communication

Any requests, notifications and materials must be submitted in writing to the attention of StreetARToronto staff by email or hard copy to:

streetart@toronto.ca

or

Neighbourhood Projects Section, Transportation Services
City of Toronto
23rd Floor, East Tower
Toronto City Hall
100 Queen Street West
Toronto, Ontario M5H 2N2
Attention: StreetARToronto, Project Manager