

**PROFESSIONAL SERVICES AGREEMENT
BETWEEN THE CITY OF MIAMI BEACH
AND
ARTS FOR LEARNING/MIAMI, INC.
FOR ARTS EDUCATION PROGRAMS,
PURSUANT TO RESOLUTION NO. 2017-_____**

This Professional Services Agreement ("Agreement") is entered into this 11th day of January, 2017, by and between the **CITY OF MIAMI BEACH, FLORIDA**, a municipal corporation organized and existing under the laws of the State of Florida, having its principal offices at 1700 Convention Center Drive, Miami Beach, Florida, 33139 ("City"), and **ARTS FOR LEARNING/MIAMI, INC.**, a Florida not-for-profit corporation whose address is 404 NW 26 Street, Miami, Florida, 33127 ("Consultant").

**SECTION 1
DEFINITIONS**

Agreement: This Agreement between the City and Consultant, including any exhibits and amendments thereto.

City Manager: The chief administrative officer of the City.

Consultant: For the purposes of this Agreement, Consultant shall be deemed to be an independent Consultant, and not an agent or employee of the City.

Services: All services, work and actions by the Consultant performed or undertaken pursuant to the Agreement.

Fee: Amount paid to the Consultant as compensation for Services.

Risk Manager: The Risk Manager of the City, with offices at 1700 Convention Center Drive, Third Floor, Miami Beach, Florida 33139, telephone number (305) 673-7000, Ext. 6435, and fax number (305) 673-7023.

**SECTION 2
SCOPE OF SERVICES (SERVICES)**

2.1 In consideration of the Fee to be paid to Consultant by the City, Consultant shall provide the work and services described in Exhibit "A" hereto (the Services).

2.2 Consultant's Services, and any deliverables incident thereto, shall be completed in accordance with the timeline and/or schedule in Exhibit "A" hereto.

SECTION 3

TERM

The term of this Agreement (Term) shall commence upon execution of this Agreement by all parties hereto, and shall have an initial term of **one (1) year**, with **two (2) one-year** renewal options, to be exercised at the City Manager's sole option and discretion, by providing Consultant with written notice of same no less than thirty (30) days prior to the expiration of the initial term. The City's exercise of any such renewal option shall be contingent upon any and all required funding appropriations by the Mayor and City Commission.

Notwithstanding the Term provided herein, Consultant shall adhere to any specific timelines, schedules, dates, and/or performance milestones for completion and delivery of the Services, as same is/are set forth in the timeline and/or schedule referenced in Exhibit "A" hereto.

SECTION 4

FEE

4.1 In consideration of the Services to be provided, Consultant shall be compensated on a fixed fee basis, in the amount of \$81,000.

4.2 25% of the fee will be paid to Consultant every three months, provided that work is completed in accordance with the timeline and/or schedule in Exhibit "A" hereto.

4.3 INVOICING

Upon receipt of an acceptable and approved invoice, payment(s) shall be made within thirty (30) days for that portion (or those portions) of the Services satisfactorily rendered (and referenced in the particular invoice).

Invoices shall include a detailed description of the Services (or portions thereof) provided, and shall be submitted to the City at the following address:

Brandi Reddick, Cultural Affairs Program Manager
Tourism, Culture and Economic Development
City of Miami Beach
1700 Convention Center Drive
Miami Beach, FL 33139
brandireddick@miamibeachfl.gov

SECTION 5

TERMINATION

5.1 TERMINATION FOR CAUSE

If the Consultant shall fail to fulfill in a timely manner, or otherwise violates, any of the covenants, agreements, or stipulations material to this Agreement, the City, through its City Manager, shall thereupon have the right to terminate this Agreement for cause. Prior to exercising its option to terminate for cause, the City shall notify the Consultant of its violation of the particular term(s) of this Agreement, and shall grant Consultant ten (10) days to cure such default. If such default remains uncured after ten (10) days, the City may terminate this Agreement without further notice to Consultant. Upon termination, the City shall be fully discharged from any and all liabilities, duties, and terms arising out of, or by virtue of, this Agreement.

Notwithstanding the above, the Consultant shall not be relieved of liability to the City for damages sustained by the City by any breach of the Agreement by the Consultant. The City, at its sole option and discretion, shall be entitled to bring any and all legal/equitable actions that it deems to be in its best interest in order to enforce the City's right and remedies against Consultant. The City shall be entitled to recover all costs of such actions, including reasonable attorneys' fees.

5.2 TERMINATION FOR CONVENIENCE OF THE CITY

THE CITY MAY ALSO, THROUGH ITS CITY MANAGER, AND FOR ITS CONVENIENCE AND WITHOUT CAUSE, TERMINATE THE AGREEMENT AT ANY TIME DURING THE TERM BY GIVING WRITTEN NOTICE TO CONSULTANT OF SUCH TERMINATION; WHICH SHALL BECOME EFFECTIVE WITHIN THIRTY (30) DAYS FOLLOWING RECEIPT BY THE CONSULTANT OF SUCH NOTICE. IF THE AGREEMENT IS TERMINATED FOR CONVENIENCE BY THE CITY, CONSULTANT SHALL BE PAID FOR ANY SERVICES SATISFACTORILY PERFORMED UP TO THE DATE OF TERMINATION; FOLLOWING WHICH THE CITY SHALL BE DISCHARGED FROM ANY AND ALL LIABILITIES, DUTIES, AND TERMS ARISING OUT OF, OR BY VIRTUE OF, THIS AGREEMENT.

5.3 TERMINATION FOR INSOLVENCY

The City also reserves the right to terminate the Agreement in the event the Consultant is placed either in voluntary or involuntary bankruptcy or makes an assignment for the benefit of creditors. In such event, the right and obligations for the parties shall be the same as provided for in Section 5.2.

SECTION 6

INDEMNIFICATION AND INSURANCE REQUIREMENTS

6.1 INDEMNIFICATION

Consultant agrees to indemnify and hold harmless the City of Miami Beach and its officers, employees, agents, and contractors, from and against any and all actions (whether at law or in equity), claims (including copyright, patent or trademark infringement claims), liabilities, losses, and expenses, including, but not limited to, attorneys' fees and costs, for personal, economic or bodily injury, wrongful death, loss of or damage to property, which may arise or be alleged to have arisen from the negligent acts, errors, omissions or other wrongful conduct of the Consultant, its officers, employees, agents, contractors, or any other person or entity acting under Consultant's control or supervision, in connection with, related to, or as a result of the Consultant's performance of the Services pursuant to this Agreement. To that extent, the Consultant shall pay all such claims and losses and shall pay all such costs and judgments which may issue from any lawsuit arising from such claims and losses, and shall pay all costs and attorneys' fees expended by the City in the defense of such claims and losses, including appeals. The Consultant expressly understands and agrees that any insurance protection required by this Agreement or otherwise provided by the Consultant shall in no way limit the Consultant's responsibility to indemnify, keep and save harmless and defend the City or its officers, employees, agents and instrumentalities as herein provided.

The parties agree that one percent (1%) of the total compensation to Consultant for performance of the Services under this Agreement is the specific consideration from the City to the Consultant for the Consultant's indemnity agreement. The provisions of this Section 6.1 and of this indemnification shall survive termination or expiration of this Agreement.

6.2 INSURANCE REQUIREMENTS

The Consultant shall maintain and carry in full force during the Term, the following insurance:

1. Consultant General Liability, in the amount of \$1,000,000;
2. Workers Compensation & Employers Liability, as required pursuant to Florida Statutes.

The insurance must be furnished by insurance companies authorized to do business in the State of Florida. All insurance policies must be issued by companies rated no less than "B+" as to management and not less than "Class VI" as to strength by the latest edition of Best's Insurance Guide, published by A.M. Best Company, Oldwick, New Jersey, or its equivalent.

All of Consultant's certificates shall contain endorsements providing that written notice shall be given to the City at least thirty (30) days prior to termination, cancellation or reduction in coverage in the policy.

Original certificates of insurance must be submitted to the City's Risk Manager for approval (prior to any work and/or services commencing) and will be kept on file in the Office of the Risk Manager. The City shall have the right to obtain from the Consultant specimen copies of the insurance policies in the event that submitted certificates of insurance are inadequate to ascertain compliance with required coverage.

The Consultant is also solely responsible for obtaining and submitting all insurance certificates for any sub-consultants.

Compliance with the foregoing requirements shall not relieve the Consultant of the liabilities and obligations under this Section or under any other portion of this Agreement.

The Consultant shall not commence any work and or services pursuant to this Agreement until all insurance required under this Section has been obtained and such insurance has been approved by the City's Risk Manager.

SECTION 7

LITIGATION JURISDICTION/VENUE/JURY TRIAL WAIVER

This Agreement shall be construed in accordance with the laws of the State of Florida. This Agreement shall be enforceable in Miami-Dade County, Florida, and if legal action is necessary by either party with respect to the enforcement of any or all of the terms or conditions herein, exclusive venue for the enforcement of same shall lie in Miami-Dade County, Florida. By entering into this Agreement, Consultant and the City expressly waive any rights either party may have to a trial by jury of any civil litigation related to or arising out of this Agreement.

SECTION 8

LIMITATION OF CITY'S LIABILITY

The City desires to enter into this Agreement only if in so doing the City can place a limit on the City's liability for any cause of action, for money damages due to an alleged breach by the City of this Agreement, so that its liability for any such breach never exceeds the sum of \$10,000. Consultant hereby expresses its willingness to enter into this Agreement with Consultant's recovery from the City for any damage action for breach of contract to be limited to a maximum amount of \$10,000.

Accordingly, and notwithstanding any other term or condition of this Agreement, Consultant hereby agrees that the City shall not be liable to the Consultant for damages in an amount in excess of \$10,000 for any action or claim for breach of contract arising out of the performance or non-performance of any obligations imposed upon the City by this Agreement.

Nothing contained in this section or elsewhere in this Agreement is in any way intended to be a waiver of the limitation placed upon the City's liability, as set forth in Section 768.28, Florida Statutes.

SECTION 9

[INTENTIONALLY DELETED]

SECTION 10

GENERAL PROVISIONS

10.1 AUDIT AND INSPECTIONS

Upon reasonable verbal or written notice to Consultant, and at any time during normal business hours (i.e. 9AM – 5PM, Monday through Fridays, excluding nationally recognized holidays), and as often as the City Manager may, in his/her reasonable discretion and judgment, deem necessary, there shall be made available to the City Manager, and/or such representatives as the

City Manager may deem to act on the City's behalf, to audit, examine, and/ or inspect, any and all other documents and/or records relating to all matters covered by this Agreement. Consultant shall maintain any and all such records at its place of business at the address set forth in the "Notices" section of this Agreement.

10.2 [INTENTIONALLY DELETED]

10.3 ASSIGNMENT, TRANSFER OR SUBCONSULTING

Consultant shall not subcontract, assign, or transfer all or any portion of any work and/or service under this Agreement without the prior written consent of the City Manager, which consent, if given at all, shall be in the Manager's sole judgment and discretion. Neither this Agreement, nor any term or provision hereof, or right hereunder, shall be assignable unless as approved pursuant to this Section, and any attempt to make such assignment (unless approved) shall be void.

10.4 PUBLIC ENTITY CRIMES

Prior to commencement of the Services, the Consultant shall file a State of Florida Form PUR 7068, Sworn Statement under Section 287.133(3)(a) Florida Statute on Public Entity Crimes with the City's Procurement Division.

10.5 EQUAL EMPLOYMENT OPPORTUNITY

In connection with the performance of the Services, the Contractor shall not discriminate against any employee or applicant for employment because of actual or perceived race, color, national origin, religion, sex, intersexuality, gender identity, sexual orientation, marital and familial status, age, disability, ancestry, height, weight, domestic partner status, labor organization membership, familial situation, or political affiliation.

10.6 CONFLICT OF INTEREST / COMPLIANCE WITH APPLICABLE LAWS

The Consultant herein agrees to adhere to and be governed by all applicable Miami-Dade County Conflict of Interest Ordinances and Ethics provisions, as set forth in the Miami-Dade County Code, and as may be amended from time to time; and by the City of Miami Beach Charter and Code (as some may be amended from time to time); both of which are incorporated by reference herein as if fully set forth herein.

In its performance of the work and/or services, Contractor shall comply with all applicable laws, ordinances and regulations of the City, Miami-Dade County, the State of Florida and the federal government, as applicable.

The Consultant covenants that it presently has no interest and shall not acquire any interest, direct or indirectly, which could conflict in any manner or degree with the performance of the Services. The Consultant further covenants that in the performance of this Agreement, no person having any such interest shall knowingly be employed by the Consultant. No member of or delegate to the Congress of the United States shall be admitted to any share or part of this Agreement or to any benefits arising there from.

SECTION 11 **NOTICES**

All notices and communications in writing required or permitted hereunder, shall be delivered personally to the representatives of the Consultant and the City listed below or may be mailed by U.S. Certified Mail, return receipt requested, postage prepaid, or by a nationally recognized overnight delivery service.

Until changed by notice in writing, all such notices and communications shall be addressed as follows:

TO CONSULTANT:

Sheila Womble
Executive Director
Arts for Learning/Miami, Inc.
404 NW 26 Street
Miami, FL 33127
(786) 953-7351 (fax)

TO CITY:

Vanessa Williams, Interim Director
Tourism, Culture and Economic Development
City of Miami Beach
1700 Convention Center Drive
Miami Beach, FL 33139
(305) 673-7063 (fax)

Notice may also be provided to any other address designated by the party to receive notice if such alternate address is provided via U.S. certified mail, return receipt requested, hand delivered, or by overnight delivery. In the event an alternate notice address is properly provided, notice shall be sent to such alternate address in addition to any other address which notice would otherwise be sent, unless other delivery instruction as specifically provided for by the party entitled to notice.

Notice shall be deemed given on the day on which personally served, or the day of receipt by either U.S. certified mail or overnight delivery.

SECTION 12 **MISCELLANEOUS PROVISIONS**

12.1 CHANGES AND ADDITIONS

This Agreement cannot be modified or amended without the express written consent of the parties. No modification, amendment, or alteration of the terms or conditions contained herein shall be effective unless contained in a written document executed with the same formality and of equal dignity herewith.

12.2 SEVERABILITY

If any term or provision of this Agreement is held invalid or unenforceable, the remainder of this Agreement shall not be affected and every other term and provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.

12.3 ENTIRETY OF AGREEMENT

The City and Consultant agree that this is the entire Agreement between the parties. This Agreement supersedes all prior negotiations, correspondence, conversations, agreements or understandings applicable to the matters contained herein, and there are no commitments, agreements or understandings concerning the subject matter of this Agreement that are not contained in this document. Title and paragraph headings are for convenient reference and are not intended to confer any rights or obligations upon the parties to this Agreement.

12.4 CONSULTANT'S COMPLIANCE WITH FLORIDA PUBLIC RECORDS LAW

Pursuant to Section 119.0701 of the Florida Statutes, if the Consultant meets the definition of "Contractor" as defined in Section 119.0701(1)(a), the Consultant shall:

- a) Keep and maintain public records that ordinarily and necessarily would be required by the public agency in order to perform the service;
- b) Provide the public with access to public records on the same terms and conditions that the public agency would provide the records and at a cost that does not exceed the cost provided in this chapter or as otherwise provided by law;
- c) Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law; and
- d) Meet all requirements for retaining public records and transfer to the City, at no City cost, all public records created, received, maintained and/or directly related to the performance of this Agreement that are in possession of the Consultant upon termination of this Agreement. Upon termination of this Agreement, the Consultant shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. All records stored electronically must be provided to the City in a format that is compatible with the information technology systems of the City.

For purposes of this Article, the term "public records" shall mean all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business of the City.

Consultant's failure to comply with the public records disclosure requirement set forth in Section 119.0701 of the Florida Statutes shall be a breach of this Agreement.

In the event the Consultant does not comply with the public records disclosure requirement set forth in Section 119.0701 of the Florida Statutes, the City may, at the City's sole discretion, avail itself of the remedies set forth under this Agreement and available at law.

12.5 PROHIBITIONS REGARDING SALE OR USE OF EXPANDED POLYSTYRENE

FOOD SERVICE ARTICLES

Expanded polystyrene, a petroleum byproduct commonly known as Styrofoam, is neither readily recyclable nor biodegradable and takes hundreds to thousands of years to degrade. Expanded polystyrene is a common pollutant, which fragments into smaller, non-biodegradable pieces that are harmful to marine life, other wildlife, and the environment. The City's goals are to reduce the use of expanded polystyrene and encourage the use of reusable, recyclable, or compostable alternatives.

Expanded polystyrene means blown polystyrene and expanded and extruded foams that are thermoplastic petrochemical materials utilizing a styrene monomer and processed by any number of techniques including, but not limited to, fusion of polymer spheres (expandable bead foam), injection molding, foam molding, and extrusion-blown molding (extruded foam polystyrene).

Expanded polystyrene food service articles means plates, bowls, cups, containers, lids, trays, coolers, ice chests, and all similar articles that consist of expanded polystyrene.

Consultant agrees not to sell, use, provide food in, or offer the use of expanded polystyrene food service articles in connection with fulfilling its obligations under this Agreement. Moreover, Consultant agrees to include the provisions of this Section 12.5 in any contract between Consultant and a subcontractor, independent contractor, vendor, supplier, sponsor or any other individual or entity (collectively referred to herein as the Subcontractors), executed in connection with Consultant's obligations under the terms of this Agreement. **A violation of this section shall be deemed a default under the terms of this Agreement.** This subsection shall not apply to expanded polystyrene food service articles used for prepackaged food that have been filled and sealed prior to receipt by the Consultant or Subcontractors.

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IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their appropriate officials, as of the date first entered above.

FOR CITY:

CITY OF MIAMI BEACH, FLORIDA

ATTEST:

By:

Rafael E. Granado
City Clerk

Philip Levine
Mayor

FOR CONSULTANT:

ARTS FOR LEARNING/MIAMI, INC.

ATTEST:

By:

Sheila Womble
Executive Director

Print Name/Title

Exhibit "A"

**Arts for Learning/Miami, Inc.
Scope of Services for City of Miami Beach
October 1, 2016-September 30, 2017**

About Arts for Learning:

As Miami-Dade County's leading organization solely dedicated to advancing teaching and learning through the arts, Arts for Learning (A4L) works diligently to ensure that the arts are central to the life of every child. By connecting professional visual and performing artists to children in schools, preschools, and after-school and summer programs, children have the opportunity to experience and understand an art form, create a work of art, and connect that art to other areas of learning. A4L's comprehensive services include arts-integrated instruction, student studio programs, community art classes, internships in the arts, mentoring, and teacher and artist professional development. A4L is a national affiliate of the Wolf Trap Institute for Early Learning and the Young Audiences Arts for Learning network.

Proposed Scope of Work:

Arts for Learning respectfully requests \$81,000 to provide in-depth visual and performing arts programs at City of Miami Beach schools, preschools, and parks to serve 890 of children and youth.

After-School Programming

Arts for Learning will provide 35 after-school courses across six Miami Beach locations including Biscayne Elementary School, Flamingo Park, Fienberg Fisher K-8, North Beach Elementary, Scott Rakow Youth Center and South Pointe Elementary School. Throughout the school year at each after-school location, professional teaching artists will conduct semester-long residencies. These residencies or "courses" are defined as a 1-hour session per week for a unique group of up to 25 students over a period of 12-16 weeks within the fall or spring semester. Through the after-school programming, A4L will serve 670 students.

Site	No. of Students Participating	No. of Students Attending Events
Biscayne Elementary	100	40
Flamingo Park	100	50
Fienberg Fisher K-8	25	20
North Beach Elementary	100	40
Scott Rakow Youth Center	20	15
South Pointe Elementary	80	80

Introduction to Visual & Performing Arts Residencies Serving Children from Infancy to Age 5

Arts for Learning offers various levels of preschool residencies in the visual and performing arts. Master teaching artists embed coaching, modeling and in-class teacher professional development into a sequential residency structure. The efficiency of this approach is that it concurrently combines training for early childhood teachers with high quality arts-based learning activities for students. To introduce preschools to working with an artist in the classroom, A4L has designed introductory residencies and will provide these at three preschools. The artist will serve all classrooms at each preschool. The residency structure is as follows:

- Planning Session (Session 1): The teacher and the artist review residency goals/objectives.
- Classroom Session (Session 2-6): Teaching artist leads 5 45-minute sessions (20 minute sessions in infant rooms). The classroom teacher participates in the sessions and in post-session debriefings.
- Closing Session (Session 7): During this session, the teaching artist has the opportunity to end the residency and to say "goodbye" to the students and determine follow up needs with the teacher.

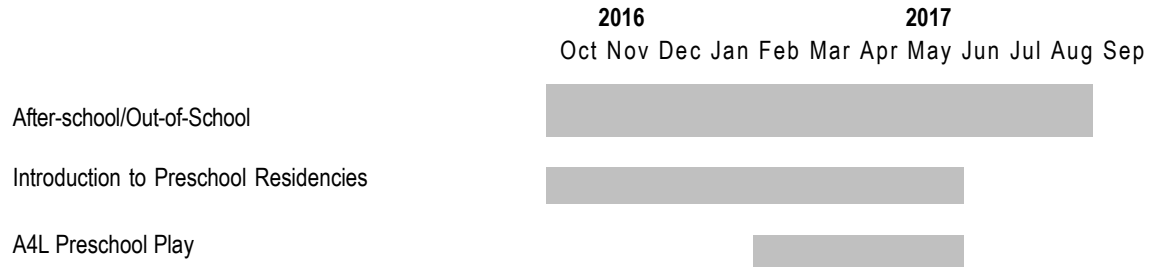
A4L Preschool Play

Arts for Learning will provide preschool aged children at Normandy Isle Park, North Shore Park & Youth Center, South Pointe Park, Flamingo Park and Scott Rakow Park music, drama and movement activities to support their intellectual, social, emotional, and physical development.

Exhibit "A"

Arts for Learning/Miami, Inc. Scope of Services for City of Miami Beach October 1, 2016-September 30, 2017

Timeline for Services:



Budget:

Description of Service	Unit Price	No. of Units	Unit Type	Amount	No. of participants (inc. culminating event)
After-school	\$2,000	35	Courses	\$70,000	670
Introduction to Preschool Residencies	\$2,000	3	Preschools	\$6,000	120
A4L Preschool Play	\$1,000	5	Locations	\$5,000	100
Total				\$81,000	890

