RESOLUTION NO. 2015-43

RESOLUTION OF THE MAYOR AND THE CITY COUNCIL OF THE CITY OF HIALEAH, FLORIDA AUTHORIZING THE MAYOR AND THE CITY CLERK, AS ATTESTING WITNESS, ON BEHALF OF THE CITY, TO ENTER INTO A PROFESSIONAL SERVICES AGREEMENT WITH ARTS FOR LEARNING/MIAMI, INC. TO DEVELOP AND PROVIDE AFTER-SCHOOL RESEARCH-BASED VISUAL AND PERFORMING ARTS INTEGRATED PROGRAMING AT THREE SITES DURING THE 2014-2015 SCHOOL YEAR, FOR A TERM OF ONE YEAR, COMMENCING ON AUGUST 1, 2014 AND ENDING ON JULY 31, 2015, IN AN AMOUNT NOT TO EXCEED $7,500.00, IN SUBSTANTIAL CONFORMITY WITH THE AGREEMENT ATTACHED HERETO AND MADE A PART HEREOF AS EXHIBIT "1".

WHEREAS, PURSUANT TO Hialeah, Fla. Resolution 2015-18 (February 10, 2015), the City Council authorized the Mayor to accept a grant from the Florida Department of Education in the amount of $695,250.00 to fund after school and summer programing during the Department's fiscal year commencing on August 1, 2014 and ending on July 31, 2015, and to enter into any agreement sin furtherance thereof;

WHEREAS, Arts for Learning/Miami, Inc. will provide the City with after-school research-based visual and performing arts integrated programming at three (3) sites during the 2014-2015 school year in connection with the City of Hialeah's Education & Community Services Young Leaders with Character STEAM Ahead program as detailed in the Agreement;

WHEREAS, the City, having investigated the qualifications of the Arts for Learning/Miami, Inc. to perform the all the work necessary to fully carry out its obligations and responsibilities under the Agreement and found Arts for Learning/Miami, Inc. to be qualified and competent; and

WHEREAS, the City of Hialeah finds it in the best interest if he health, safety and welfare of the community to execute this Agreement to benefit students with quality afterschool and summer programs.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND THE CITY COUNCIL OF THE CITY OF HIALEAH, FLORIDA, THAT:

Section 1: The City of Hialeah, Florida hereby authorizes the Mayor and the City Clerk, as attesting witness, on behalf of the City, to enter into a professional services agreement with Arts For Learning/Miami, Inc., a Florida Corporation, to develop and provide after-school research-based visual and performing arts integrated programing at three sites during the 2014-2015 school year, for a term of one year, commencing on August 1, 2014 and ending on July 31, 2015, in an amount not to exceed $7,500.00, in substantial conformity with the agreement attached hereto and made a part hereof as Exhibit "1".

PASSED AND ADOPTED this 24 day of March, 2015.

Isis Garcia-Martinez
Council President

Attest:

Carmen B. Hernandez
Acting Deputy City Clerk

Approved on this 01 day of April, 2015.

Mayor Carlos Hernandez

Approved as to form and legal sufficiency:

Lorena E. Bravo, City Attorney

Resolution was adopted by a (7-0) unanimous vote with Councilmembers, Caragol, Casáls-Muñoz, Cue-Fuente, Garcia-Martinez, Gonzalez, Hernandez and Lozano voting "Yes".

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PROFESSIONAL SERVICES AGREEMENT
BETWEEN ARTS FOR LEARNING/MIAMI, INC.
AND THE CITY OF HIALEAH

This Agreement entered into this ____day of _____, 2015 by and between the City of Hialeah, a municipal corporation organized and existing under and by virtue of the laws of the State of Florida ("City"), 501 Palm Avenue, Hialeah, Florida 33010 and Arts for Learning/Miami, Inc., a Florida corporation ("Provider"), by and through its duly authorized undersigned representative, having its business address at 404 Northwest 26 Street, Miami, Florida 33127.

WHEREAS, pursuant to Hialeah, Fla., Resolution 2015-18 (February 10, 2015), the City Council authorized the Mayor to accept a grant from the Florida Department of Education in the amount of $695,250.00 to fund after school and summer programming during the Department's fiscal year from August 1, 2014 through July 31, 2015 and to enter into any agreements in furtherance thereof;

WHEREAS, the City Council approved at its regular meeting of Tuesday, _____, 2015 the selection of Arts for Learning/Miami, Inc., an active corporation in the State of Florida, to develop and provide after-school research-based visual and performing arts integrated programming at three (3) sites during the 2014-2015 school year to the City of Hialeah's Education & Community Services Young Leaders with Character STEAM Ahead program, in an amount not to exceed $7,500.00;

WHEREAS, the City, having investigated the qualifications of the Provider to perform the all the work necessary to fully carry out the Scope of Services herein contemplated and found the Provider to be qualified and competent; and

WHEREAS, the City agrees to enter into this Agreement with the Provider and the Provider agrees to accept engagement under the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the mutual covenants and obligations herein contained, and subject to the terms and conditions hereinafter stated, intending to be legally bound, the parties hereto agree as follows:

I. TERM

The Provider agrees to provide professional services within the term of one year, commencing on August 1, 2014 and ending on July 31, 2015. This Agreement will be in effect during the term indicated above. All services, work and activities as described in the Scope of Services shall be undertaken, performed and completed within the term provided herein and prior to the expiration of this Agreement. The City reserves the right to extend the commencement date of the services provided.

EXHIBIT
1

II. SCOPE OF SERVICES

The professional services to be performed by the Provider are contained within a proposal submitted by the Provider, a copy of which is attached hereto and made a part hereof as Exhibit "1". The Provider agrees to undertake, perform and complete all necessary work, functions and activities, including providing all materials, supplies, or labor, that may be necessary or reasonably inferred from this Agreement, at Provider's sole cost and expense, to provide the contemplated services under the Scope of Services, whether or not the work, function, activity, material, supply or labor is specifically identified and required in this Agreement. The City shall provide postage, photocopying and office supplies and provide for conference rooms for training, additional personnel and transcription. The City shall not pay for travel expenses.

III. COMPENSATION AND TERMS OF PAYMENT

A. City shall pay the Provider on a per session basis, for all sessions delivered each month, not exceeding a maximum total compensation for all services delivered of $7,500.00 during the term of this Agreement. The Provider shall be paid at the rate of $208.33 for each session with instruction at different sites and locations not to exceed 36 sessions at a location or locations of the City's choice. The location, frequency of instruction, and number of sessions at each location is to be determined by the City.

B. Groups shall be limited to a maximum of twenty-five (25) participants in each session. Provider shall assign at least one instructor per session.

C. The provider must provide an invoice to the City which is to be paid within 30 days upon receipt after verification by the City of satisfactory delivery of the services invoiced. The Provider must obtain prior written approval of the City prior to performing services that are outside the Scope of Services in this Agreement.

D. Compensation is contingent upon funding from Florida Department of Education and to the extent that the City does not receive sufficient funding to pay for future services not yet rendered during the term of this Agreement, the City is entitled to cancel this Agreement based on lack of or insufficient funding.

IV. COMPLIANCE WITH FEDERAL, STATE AND LOCAL LAWS

The Parties shall comply with all applicable laws, ordinances, codes, rules and regulations of federal, state and local governments, including the City, now in effect or hereafter enacted, which are applicable in any way to Provider, its officers, employees, agents, or subcontractors.

V. NOTICE

All notices or other communications which shall or may be given pursuant to this Agreement shall be in writing and shall be delivered by personal service, or by registered mail addressed to the other party at the address indicated herein or as the same may be changed from time to time. Such notice shall be deemed given on the day on which personally served; or if by mail, upon the date of actual receipt.

CITY

Marla Alpizar, Director
City of Hialeah
Education and Community Services Dept.
7400 West 24 Avenue, 2nd Floor
Hialeah, Florida 33016
Telephone: (305) 818-9143
FAX: (305) 818-9841

ARTS FOR LEARNIING

Shelia Womble, Executive Director
404 NW 26 STREET
Miami, Florida 33127

VI. OWNERSHIP OF DOCUMENTS

A. All drawings, renderings, documents or materials developed by the Provider under this Agreement shall be delivered to City by the Provider upon completion of the services required pursuant to paragraph II hereof and shall become the property of City, without restriction or limitation of its use. City assumes the risk of reuse of all documents developed by the Provider upon delivery after completion of services. The Provider agrees that all documents maintained and generated hereto shall be subject to the applicable provisions of the Public Records Law, Chapter 119, Florida Statutes.

B. It is further understood by and between the parties that any information, writings, tapes, maps, contract documents, reports or any other matter whatsoever which is given by City to Provider pursuant to this Agreement shall at all times remain the property of the City and shall not be used by the Provider for any other purposes whatsoever without the written consent of the City. Notwithstanding the foregoing, the Provider may use such documents for promotional purposes or advertising.

C. Provider shall not have the right to exhibit, record, reproduce broadcast, transmit, publish, sell, distribute, use or re-use, for any purpose, in any manner, the work product, drawings renderings or creations of the participants, without the prior written consent of the participant, participant's parent or legal guardian, and the City. Provider shall indemnify and agree to defend the City from any and all claims and for any damages, injury, loss, cost or expense resulting therefrom, arising from, relating to, or resulting from Provider's unauthorized use of participant's work or infringement of any participant's intellectual property rights, whether or not the use is intentional or negligent.

VII. NONDELEGABLE PERFORMANCE

The duties and obligations undertaken by the Provider pursuant to this Agreement shall not be delegated or assigned to any person or firm unless the City and Florida Department of Education shall first consent in writing to the performance or assignment of such service or any part thereof by another person or firm, except as so permitted in the Scope of Services, which consent shall not be unreasonably withheld, and that all subcontractors or assignees shall be governed by the terms and conditions of this Agreement.

VIII. AWARD OF AGREEMENT

The Provider warrants that it has not employed or retained any person employed by the City to solicit or secure this Agreement and that she has not offered to pay, paid, or agreed to pay any person employed by the City any fee, commission, percentage, brokerage fee, or gift of any kind contingent upon or resulting from the award of this Agreement.

IX. CONSTRUCTION OF AGREEMENT

This Agreement shall be construed and enforced according to the laws of the State of Florida. Venue for any litigation, which may arise in connection with this Agreement, shall be in Miami-Dade County, Florida. The Provider agrees to be subject to the jurisdiction (subject matter and in personam) of the courts in Miami-Dade County, Florida and amenable to process.

X. SUCCESSORS AND ASSIGNS

This Agreement shall be binding upon the parties herein, their heirs, executors, legal representatives, successors and assigns.

XI. INDEMNIFICATION

Provider shall indemnify and hold harmless the City, its officials, whether elected or appointed, directors, employees, representatives, agents and attorneys (collectively "Released Parties"), from and against any and all claims, suits, causes of action, damages, losses, liabilities, costs or expenses, including court costs and attorney's fees at all level of proceedings (including appellate level), and any judgments, orders or decrees entered thereon or resulting therefrom, for any personal injury, loss of life, damage to property, including intellectual property, or any other liability, loss, cost or expense of any kind (collectively "Claims") which result from, arise out of or in connection with Provider's professional services, provision of any material, supply or labor, or performance under this Agreement, including all negligent or intentional acts or omissions to act on the part of the Provider or any person acting for or on Provider's behalf, including any

director, officer, employee, representative or agent, and from and against any orders, judgments, or decrees which may be entered and from and against all reasonable costs, attorney's fees, expenses incurred at the trial, appellate or administrative level or proceedings and liabilities insured in the defense of any such claims or in the investigation thereof.

X1I. CONFLICT OF INTEREST

A. The Provider covenants that no person under her employ who presently exercises any functions or responsibilities on behalf of the City in connection with this Agreement has any personal financial interests, direct or indirect, with the Provider. The Provider further covenants that, in the performance of the Agreement, no person having such conflicting interest shall be employed. Any such interest on the part of the Provider or her employees must be disclosed in writing to the City.

B. The Provider is aware of the conflict of interest laws of the City, Hialeah Code Ch 26, Art. I and II; the Code of Ethics of Miami-Dade County, Florida, § 2-11.1 et seq., and the State of Florida, Chapter 112, Part III, Florida Statutes and agree that it shall fully comply in all respects with the terms of such laws.

XIII. INDEPENDENT CONTRACTOR

The Provider, his employees, agents or representatives, shall be deemed to be independent contractors and not agents or employees of the City and shall not attain any rights or benefits under the civil service or pension ordinances of the City, or any rights generally afforded classified or unclassified employees. The Provider, his employees, agents or representatives, shall not be entitled to Florida Workers' Compensation benefits, any other insurance, benefits or emoluments afforded an employee of the City.

XIV. INSURANCE

The Provider is not obligated to maintain professional liability insurance.

XV. TERMINATION

The City retains the right to terminate this Agreement upon 30 days written notice prior to the completion of the service required pursuant to paragraph II hereof without penalty to the City. In that event, notice of termination of this Agreement shall be in writing to the Provider who shall be paid for those services performed prior to the date of its receipt of the notice of termination. In no case, however, will City pay the Provider an amount in excess of the total sum provided by this Agreement.

It is hereby understood that any payment made to the Provider in accordance with this section shall be made only if the Provider is not in default under the terms of this Agreement. If the Provider is in default, then the City shall in no way be obligated to pay and shall not pay the Provider any sum.

XVI. NONDISCRIMINATION

Provider represents and warrants to City that Provider does not and will not engage in unlawful discriminatory practices and that there shall be no unlawful discrimination in connection with Provider's performance under this Agreement on account of race, color, sex, religion, age, handicap, disability, marital status, national origin, ancestry, familial status, or sexual orientation. Provider further covenants that no otherwise qualified individual shall, solely by reason of his/her race, color, sex, religion, age, handicap, marital status, national origin, ancestry, familial status, or sexual orientation unlawfully be excluded from participation in, be denied services, or be subject to discrimination under any provision of this Agreement.

XVII. DEFAULT

If the Provider fails to comply with the terms and conditions of this Agreement, or fails to perform hereunder, or files for bankruptcy or provides assignment or transfer to creditors, then the City, at its sole option upon written notice, may cancel and terminate this Agreement, and all payments, advances, or other compensation paid to the Provider. Payments made to the Provider while the Provider is in default of the provisions contained herein, shall be returned forthwith to the City.

XVIII. COMPLIANCE WITH AGREEMENT BETWEEN THE CITY AND FLORIDA DEPARTMENT OF EDUCATION

The Provider agrees that as a subcontractor of the City who is the recipient of funding from Florida Department of Education, the Provider shall comply with the applicable provisions of the grant agreement between the City and Florida Department of Education.

XIX. STAFFING AND EMPLOYEE BACKGROUND SCREENING

A. *Appropriate staffing.* The Provider represents that all people performing the Work required under this Agreement possess the knowledge and skills, either by training, experience, education, or a combination thereof, to adequately and competently perform the duties, obligations, and services set forth in the Scope of Services (Exhibit "1") and to provide and perform such services to the satisfaction of the City and The Trust. The Provider further represents that all persons delivering services required by this Agreement have complied with all state and federal requirements, including, but not limited to, Level I and Level II background

screening requirements. The Provider certifies that all such individuals are qualified and approved for providing services herein.

B. *Employee background screening.* According to sections 984.01(2)(a), 985.01(2)(a) and 39.001, Florida Statutes, as amended, only employees, volunteers and subcontracted personnel with a satisfactory background check through a screening agency may work in direct contact with children under the age of eighteen. Background screenings must be completed through the Florida Department of Law Enforcement (FDLE), VECHS Program. However, satisfactory background screening documentation will be accepted for those agencies that already conduct business with either the Department of Children and Families (DCF) or the Department of Juvenile Justice (DJJ) or the Miami-Dade Public School System (MDPS). In addition, an Affidavit of Good Moral Character must be completed and notarized for each employee, volunteer and subcontracted personnel upon hiring.

XX. CHILD ABUSE AND INCIDENT REPORTING

A. *Child abuse reporting.* The Provider and its employees shall immediately report knowledge or reasonable suspicion of abuse, neglect or abandonment of a child, aged person or disabled adult to the Florida Abuse Hotline of the statewide toll-free telephone number (1-800-96-ABUSE).

B. *Incident reporting.* The Provider shall complete an incident report in the event of any serious bodily injury to anyone within the scope of this Agreement or arising out of the performance of this Agreement. The Provider shall provide written notification of the incident together with a copy of the incident report to The Trust within three working days. The Provider shall submit written notification to The Trust, within seven days, if any legal action is filed as a result of such an injury.

XX1. COOPERATION WITH FINANCIAL AUDIT AND REPORTING REQUIREMENTS

If the Florida Department of Education seeks to audit the activities of the City as the grant recipient, the Provider shall fully cooperate and provide all relevant financial documents to facilitate such audit conducted under the Office of Management and Budget Circular A-133, Audit of States, Local Government and Non-Profit Organizations and the Florida Single Audit Act. In addition, the Provider shall fully comply with reporting requirements as determined by the City during the term or this Agreement.

XXII. CONSENT OF PARTICIPANTS

The Provider agrees and acknowledges that participants in the programs described in the Scope of Services will be requested to consent in writing to the release of certain personal

information relating to their participation in the program for use by the Florida Department of Education, the funding source.

XXIII. ENTIRE AGREEMENT

This Agreement and its attachments and exhibits constitute the sole and only agreement of the parties and accurately set forth the rights, duties, and obligations of each to the other. Any prior agreements, promises, negotiations, or representations not expressly set forth in this Agreement are of no force and effect.

XXIV. AMENDMENT

No amendments to this Agreement shall be binding on either party unless in writing and signed by both parties.

XXV. MISCELLANEOUS

A. Captions, title and paragraph headings are for convenient reference and are not a part of this Agreement. Such captions, title or paragraph headings shall not be deemed in any manner to modify, explain, enlarge or restrict any of the provisions contained in this Agreement.

B. In the event of conflict between the terms of this Agreement and any terms or conditions in any attached document; the terms in this Agreement shall prevail.

C. No waiver or breach of any provision of this Agreement shall constitute a waiver of any subsequent breach of the same or any other provision hereof, and no waiver shall be effective unless made in writing.

D. Should any provisions, paragraph, sentence, work or phrase contained in this Agreement be determined by a court of competent jurisdiction to be invalid, illegal or otherwise unenforceable under the laws of the State of Florida or the City of Hialeah, such provisions, paragraphs, sentences, words or phrases shall be deemed modified to the extent necessary in order to conform with such laws, or if not modifiable to conform with such laws, then same shall be deemed severable, and in either event, the remaining terms and provisions of this Agreement shall remain unmodified and in full force and effect.

E. Further Assurances. All parties hereto upon the request of any other party shall execute such further instruments or documents as may be reasonably required by the requesting party to implement the terms, conditions and provisions of this Agreement.

F. All rights, obligations and provisions that by their nature are to be performed after any termination of this Agreement, shall survive any such termination.

G. This Agreement, it interpretation and performance, the relationship between the Parties and any dispute arising from or relating to any of the foregoing, shall be governed,

construed, interpreted, and regulated under the laws of the State of Florida. Venue shall lie exclusively in Miami-Dade County, Florida.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed by the respective officials thereunto duly authorized, this the day and year first above written.

City of Hialeah, Florida
501 Palm Avenue
Hialeah, Florida 33010-0040

Attest:

Authorized signature on behalf of
City of Hialeah

_____
Marbelys Fatjo
Acting City Clerk

_____
Mayor Carlos Hernandez Date

(SEAL)

Approved as to legal sufficiency and as to form:

_____
Lorena Bravo
Acting City Attorney

Arts for Learning/Miami, LLC
404 NW 26 Street
Miami, Florida 33127

_____
Witness
Printed/typed name:_____

_____
Shelia Womble Date
Executive Director