

**RESOLUTION NO. 2018-018**

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 ONEYDA M. PANEQUE, Ed. D., AS AN EVALUATION CONSULTANT TO ASSESS AND REPORT ON THE EFFECTIVENESS OF AFTER-SCHOOL AND SUMMER PROGRAMING FUNDED THROUGH THE 21<sup>ST</sup> CENTRY SOARING BEYOND EXPECTATIONS GRANT YOUNG LEADERS WITH CHARACTER ("YLC") STEAM AHEAD FROM THE FLORIDA DEPARTMENT OF EDUCATION, FOR A TERM OF ONE YEAR, COMMENCING ON AUGUST 1, 2017 AND ENDING ON JULY 31, 2018, IN AN AMOUNT NOT TO EXCEED \$6,412.00, IN SUBSTANTIAL CONFORMITY WITH THE AGREEMENT ATTACHED HERETO AND MADE A PART HEREOF AS EXHIBIT "1".

**WHEREAS**, Pursuant to Hialeah, Fla. Resolution 2017-074 (September 26, 2017), 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, and to enter into any agreements in furtherance thereof;

**WHEREAS**, Oneyda M. Paneque, Ed. D., will provide the City with consulting services as program evaluator to assess and report on the effectiveness of after-school summer programming funded through the 21<sup>st</sup> Century Soaring Beyond Expectations Grant Young Leaders with Character ("YLC") Steam Ahead from the Florida Department of Education, as detailed in the Agreement;

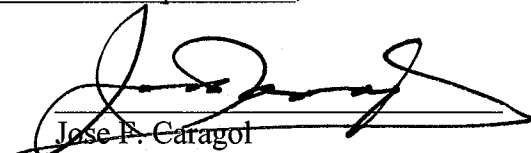
**WHEREAS**, the City, having investigated the qualifications of Oneyda M. Paneque, Ed. D., to perform all the work necessary to fully carry out her obligations and responsibilities under the Agreement and having found Oneyda M. Paneque, Ed. D., to be qualified and competent; and

**WHEREAS**, the City of Hialeah finds it in the best interest if the health, safety and welfare of the community to execute this Agreement to assure the quality and integrity of the City's grant-funded afterschool and summer programs.

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

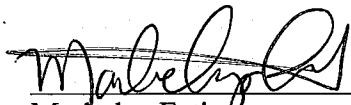
**Section 1:** The City of Hialeah, Florida hereby authorizes the Mayor and the City Clerk, as attesting witness, on behalf of the City, to enter into a Professional Services Agreement with Oneyda M. Paneque, Ed. D., as an evaluation consultant to assess and report on the effectiveness of after-school and summer programming funded through the Young Leaders with Character 21<sup>st</sup> Century Steam Ahead Grant from the Florida Department of Education, for a term of one year, commencing on August 1, 2017 and ending on July 31, 2018, in an amount not to exceed \$6,412.00, in substantial conformity with the agreement attached hereto and made a part hereof as Exhibit "1".

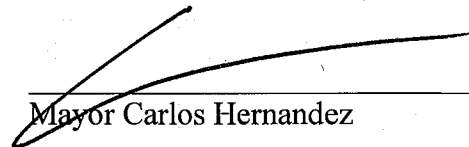
PASSED AND ADOPTED this 27 day of February, 2018.

  
Jose P. Caragol  
Council Vice President


Attest:

Approved on this 5 day of March, 2018.

  
Marpelys Fatjo  
City Clerk

  
Mayor Carlos Hernandez

Approved as to form and legal sufficiency:

  
Lorena E. Bravo, City Attorney

Resolution was adopted by a 5-0-2 vote with Councilmembers, Caragol, Zogby, Lozano, Cue-Fuente, and Hernandez voting "Yes" and Casáls-Munoz and Garcia-Martinez being absent.

**PROFESSIONAL SERVICES AGREEMENT  
BETWEEN ONEYDA M. PANEQUE, Ed. D.  
AND THE CITY OF HIALEAH**

This Agreement entered into this \_\_\_\_ day of \_\_\_\_\_, 2018 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 Onedyda M. Paneque, Ed. D. ("Provider"), residing at 250 S.W. 129 Avenue, Miami, Florida 33184.

**WHEREAS**, pursuant to Hialeah, Fla., 2017-074 (September 26, 2017) 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 aftercare and tutoring programs and to enter into all agreements in furtherance thereof; and

**WHEREAS**, the Florida Department of Education has awarded the City for year two of the Florida's Twenty-First (21<sup>st</sup>) Century Soaring Beyond Expectations Grant Young Leaders with Character ("YLC") Steam Ahead, a grant in the amount of \$400,760.00; and

**WHEREAS**, the City, having investigated the qualifications of the Provider to perform the work of the project evaluator and the work 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.

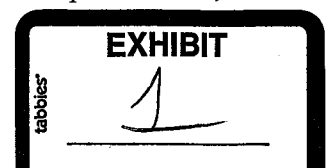
**NOW, THEREFORE**, in consideration of the mutual covenants and obligations herein contained, and subject to the terms and conditions hereinafter stated, the parties hereto understood and agree as follows:

**I. TERM**

The Provider agrees to provide services within the term of one year, commencing on August 1, 2017 and ending on July 31, 2018. 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.

**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 A". 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 work,



whether or not the work, function, activity, material, supply or labor is specifically identified and required in this Agreement.

### III. COMPENSATION

A. City shall pay the Provider, as maximum compensation for the services required pursuant to paragraph II as set forth in Exhibit "A".

B. The Provider must invoice the City for the actual work performed. The invoice shall be paid within 30 days from the date of receipt and only upon verification by City of satisfactory performance. Final payment shall be made upon submission of the Final Evaluation Report.

C. Provider must obtain prior written approval from the City prior to performing services that are outside the Scope of Services in this Agreement. The City shall not pay for any cost or expense not otherwise expressly contemplated herein, including but not limited to travel expenses.

D. Compensation is contingent upon funding from the 21<sup>st</sup> Century Grant 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, at no further cost or expense to the City.

### IV. COMPLIANCE WITH FEDERAL, STATE AND LOCAL LAWS

Provider 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. GENERAL CONDITIONS

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

Sharon Dziedzic, Supervisor  
City of Hialeah  
Education and Community Services Dept.  
7400 West 24 Avenue, 2<sup>nd</sup> Floor  
Hialeah, Florida 33016

#### ONEYDA M. PANEQUE

Oneyda M. Paneque, Ed.D.  
250 S.W. 129 Avenue  
Miami, Florida 33184  
Telephone: (305) 336-8256-cellular  
FAX: (305) 229-8052

Telephone: (305) 818-9143  
FAX: (305) 818-9841

E-mail: ompaneque@bellsouth.net

## **VI. OWNERSHIP OF DOCUMENTS**

A. All documents 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 the City to the 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.

## **VII. NONDELEGABLE**

The Provider acknowledges that in entering upon this Agreement, the City has relied upon the Provider's professional background and experience, including any prior experience in providing these or other similar services to the City. As such, the duties and obligations undertaken by the Provider pursuant to this Agreement shall not be delegated or assigned to any person or entity, in whole or in part, 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 entity. In any instance wherein the Provider desires to effect an assignment or delegate any right or responsibility of performance under this Agreement, Provider shall provide to the City all documents and information that the City may reasonably request to allow the City to evaluate whether the proposed assignee or delegate has the integrity, reliability, experience and capability in all respect to fully perform in good faith. Consent shall not be unreasonably withheld, and 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, its 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 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, for itself, its successors, assigns, executors, administrators, and anyone else who might attempt to sue on its behalf, hereby waives, releases, holds harmless, indemnifies, covenants not to sue, agrees to defend, and forever discharges the City of Hialeah, its officers, elected and appointed, directors, employees, agents, attorneys, contractors and all other persons, entities, organizations and corporation affiliates therewith (all of whom constitute the "Released Parties") from any and all kinds of claims, suits, caused 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 kind (collectively "Claims"), arising out of, resulting from, or relating to Provider's performance of the professional services pursuant to the terms and conditions of this Agreement, whether or not such claim, suit, cause of action, injury, damage, loss liability, cost, expense, judgment, order, or decree was caused by, arose or resulted from the NEGLIGENT ACTS OR OMISSIONS of the Released Parties. This Section shall survive the termination of this Agreement.

Provider covenants and agrees that it will, at its own expense, defend any and all Claims against the Released Parties, which may be brought in connection or as a result of Provider's performance of the professional services pursuant to this Agreement. Provider will satisfy, pay and discharge any and all settlement agreements, judgments, orders or decrees that may be entered against the Released Parties in any such action or proceeding.

Provider agrees, at Provider's expense, after written notice from the City, to defend any action against the City that falls within the scope of an indemnity provided in this Section, or the City, at the City's option, may elect instead to secure its own attorney to defend any such action and the reasonable costs and expenses of such attorney incurred in defending such action shall be payable by Provider.

The parties agree that the provisions of this Section do not benefit any third party, and are not intended to benefit any person or entity that is not a party to this Agreement. Instead, the provisions of this Section are solely for the City's benefit.

## **XII. LIMITATION OF LIABILITY**

The City's total liability to the Provider for any and all liabilities, claims, or damages arising out of or relating to this Agreement, howsoever caused and regardless of the legal theory asserted, including breach of contract or warranty, tort, strict liability, statutory liability or otherwise, shall not in the aggregate, exceed the amount owed to the Provider by the City under this Agreement.

In no event shall be City be liable to the Provider for any punitive, exemplary, special, indirect, incidental, or consequential damages (including, but not limited to, lost profits, lost business opportunities, loss of use or equipment down time, and loss of or corruption of data) arising out or relating to this Agreement, regardless of the legal theory under which such damages are sought, and even of the parties have been advised of the possibility of such damages or loss.

## **XIII. 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; Code 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.

## **XIV. INDEPENDENT CONTRACTOR**

The Provider, her employees, agents or representatives, shall be deemed to be independent contractors and not agents or employees of the City. The City shall have no obligation to pay or provide for Provider's employees, agents, representatives, or subcontractors. Provider's employees, agents, representatives, or subcontractors shall not attain any right or benefit under the civil service or pension ordinances of the City, or any right or benefit generally afforded classified or unclassified employees of the City, such as pension benefits, worker's compensation, health insurance, unemployment benefits, or any other right or privilege granted to the City's officers and employees.

## XV. INSURANCE

A. The Provider shall provide, pay for and maintain in force at all times during the term of this Agreement, such insurance, including Worker's Compensation Insurance Employer's Liability Insurance, Comprehensive General Liability Insurance, Business Automobile Liability Insurance, in such amount specified in Exhibit "B".

B. Such policy or policies shall be issued by the United States Treasury-approved companies authorized to do business in the State of Florida, and having agents upon whom service of process may be made in the State of Florida. Provider shall specifically protect the City by naming the City as additional insured the Comprehensive General Liability Insurance Policy and shall not include an exception or exclude claims for assault and/or battery.

C. Provider shall provide the City with a certificate of Insurance or copy of all insurance policies required by this Section. All endorsements and certificates shall state that the City shall be given 30 days' notice prior to expiration or cancellation of the policy.

## XVI. TERMINATION

**A. Termination without Cause:** The City retains the right to terminate this Agreement upon 30 days written notice prior to the completion of the service required pursuant to Section I 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.

**B. Termination for Cause:** The City may terminate this Agreement for cause, which shall include but not be limited to the following:

- a. Provider's failure to comply and/or perform in accordance with this Agreement; or
- b. Provider's performance of this Agreement, for any reason, is rendered impossible or not feasible; or
- c. Provider's filing of a voluntary petition in bankruptcy or reorganization, or making any assignment for the benefit of creditors, or seeking any similar relief under any present or future statute, law or regulations relating to relief of debtors; or
- d. Provider is adjudicated bankrupt or has any involuntary petition in bankruptcy filed against it;



- e. If Provider causes or commits one or more of the foregoing acts or events that would give rise to termination for cause, then, after seven (7) days written notice provided to Provider by the City within which to cease and/or correct such deficiencies, and upon failure to do so after such written notice, this Agreement is hereby revoked and canceled without the need for other or further action by City.

**C. Default and Notice to Cure:** Before the City terminates this Agreement pursuant to this Section, it shall give written notice to the Provider that a default exists which will, unless corrected, constitute an event of default. The notice shall inform the Provider that this Agreement shall be terminated unless the default is cured within seven (7) calendar days following the Provider's receipt of the notice. If a cure cannot reasonably be effected within seven (7) days despite the exercise of due diligence, the Provider may request an extension of the cure period in writing providing a detailed explanation why the cure cannot be completed within seven (7) days. The request shall be delivered prior to the expiration of the cure period. If the Provider's request is reasonable, as determined by the City's representative or his/her designee, the time to cure the default shall be extended for such additional time as is reasonably necessary to effect a cure, provided that the Provider exercises continuous diligent efforts to cure the default during the extended cure period. If the Provider fails to cure the default within the cure period, or fails to exercise continuous diligent efforts to cure the default, the City may terminate this Agreement. The termination shall take effect as of the date specified in the notice of default provided by the City. Upon termination, the City may cure the default at the expense of the Provider, and have recourse to every other right and remedy to which the City is entitled under this Agreement, at law, or in equity.

**D. Effect of Termination:** 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.

## **XVII. 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.

## **XVIII. 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 Exhibit "A" and to provide and perform such services to the satisfaction of the City. 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, 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.

## **XIX. 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 City within forty-eight (48) hours.

## **XX. COOPERATION WITH FINANCIAL AUDIT AND REPORTING REQUIREMENTS**

If 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.

**XXI. CONSENT OF PARTICIPANTS**

The Provider agrees and acknowledges that participants in the programs described in the Scope of Services will be requested to provide consent to allowing information relating to such participation to be disseminated and released to the Florida Department of Education, the funding source.

**XXII. ENTIRE AGREEMENT**

This Agreement and its attachments and exhibits constitute the sole and only agreement of the parties and accurately sets 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.

**XXIII. AMENDMENT**

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

**XXIV. SOVEREIGN IMMUNITY**

Nothing in this Agreement shall be interpreted or construed to mean that the City waives its common law sovereign immunity or the limits of liability set forth in Section 768.28, Florida Statutes.

**X. 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.

**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  
City Clerk

\_\_\_\_\_  
Mayor Carlos Hernandez      Date

(SEAL)

Approved as to form and legal sufficiency:

\_\_\_\_\_  
Lorena E. Bravo  
Acting City Attorney

Oneyda M. Paneque, Ed.D.  
250 S.W. 129 Avenue  
Miami, Florida 33184

\_\_\_\_\_  
Witness  
Printed/typed name: \_\_\_\_\_

\_\_\_\_\_  
Oneyda Paneque      Date