

## MILWAUKEE BOARD OF SCHOOL DIRECTORS PROFESSIONAL SERVICES CONTRACT

**This Contract** is entered into this 1<sup>st</sup> day of October 2016, by and between Milwaukee Art Museum, Inc., (hereinafter referred to as “Contractor”), and the Milwaukee Board of School Directors, contracting authority for Milwaukee Public Schools, (hereinafter referred to as “MPS”).

### 1. SCOPE OF SERVICES

Contractor shall specifically perform the following services:

Internships provide opportunities for arts-interested Milwaukee teens to develop important leadership, art, and career skills in a collaborative learning environment. Interns build creativity and confidence through trans-disciplinary work with professional artists, poets, musicians, dancers, and educators; producing magnificent works of public art with social justice messages; and lending their voices within MAM.

Contractor was selected pursuant to its 2016-17 Partnership for the Arts and Humanities Application, which application, as submitted by Contractor, is incorporated herein by reference.

Contractor shall provide, at its own expense, all personnel required to perform the services under this Contract.

### 2. TERM

This Contract shall be in effect from October 1, 2016 through August 31, 2017.

### 3. COMPENSATION

Contractor shall be compensated in an amount not to exceed \$25,000.00.

MPS does not pay in advance for services. Reimbursement for expenditures will be made on a bi-monthly basis, provided Contractor has complied with all MPS’s reimbursement procedures and fiscal requirements set forth below and contained in the instructions to the Cost Report, which can be found here: <http://www.milwaukee recreation.net/artsandhumanities/>. MPS shall make reasonable efforts to reimburse Contractor for approved expenditures within 30 days of receipt of a properly submitted Cost Report. Notwithstanding the foregoing, Wisconsin’s prompt pay law does not apply to this Contract.

#### A. Reimbursement Procedures.

1. Contractor shall personally deliver or submit via U.S. Mail completed Cost Reports according to the schedule set forth therein to:  
Milwaukee Public Schools  
Department of Recreation and Community Services  
Attention: Community Arts and Humanities Associate  
5225 W. Vliet Street, Room 162  
Milwaukee, WI 53208
2. Contractor shall have each Cost Report signed by the authorized organizational officer and identify the name and telephone number of the person responsible for its preparation.

3. Contractor shall include, with each Cost Report submitted, the following documentation:
  - a. Copies of all paid receipts/invoices submitted for reimbursement which comply with the requirements identified in ¶ 3B2a. Receipts and invoices should also be accompanied by the Schedule of Paid Costs, a component of the Cost Report, detailing the purpose of the purchase(s);
  - b. Copies of Organizational Checks used for payment of authorized expenses; and
  - c. Copies of Payroll ledger forms and other relevant data (*i.e.*, identifying payee, check number, hourly rate, gross wages and authorized deductions).
4. Contractor shall ensure the Cost Report and all documents related thereto are legible, and clearly organized in their submission. Contractor acknowledges that any required document that is not submitted or contains error will reduce or delay the reimbursement request.

B. Fiscal Requirements.

1. Contractor agrees to spend all funds received under this Contract in accordance with the authorized expense categories identified on the Cost Report.
2. Contractor shall maintain adequate source records supporting all expenditures under this Contract, including, at a minimum: invoices; payroll records; time sheets; and receipts. Such records shall be retained by Contractor for at least three years after the termination of this Contract.
  - a. Copies of all receipts submitted by the Contractor must be legible and provide the following information:
    - i. Name of vendor from which the item was purchased;
    - ii. Date of the purchase which coincides with the period in which the reimbursement is requested;
    - iii. Identification and quantity of items purchased; and
    - iv. Amount spent (excluding all taxes, late payment fees, penalties, etc.)
  - b. All purchases on the Cost Report must include a written description of the purpose of the expenditure. Any purchase that does not include a description will be not be reimbursed.
3. Contractor shall use appropriate cash management procedures so that public funds disbursed under this Contract are discernible from other funds, including matching funds.

4. If requested by MPS, Contractor must submit a revised budget to MPS for approval prior to making any adjustments in the budget category amounts set forth in its originally submitted 2016-17 Partnership for the Arts and Humanities Application.
5. Any funds allocated to Contractor, but not expended during the contract term, shall remain under the jurisdiction of the Milwaukee Board of School Directors to be used for future programming.

#### 4. PROGRAM REQUIREMENTS

- A. General Program Compliance. Contractor shall perform those services set forth in ¶ 1 in accordance with this Contract, the 2016-17 Partnership for the Arts and Humanities Guidelines, found here: <http://www.milwaukeeerecreation.net/artsandhumanities/> and incorporated by reference, and Contractor's submitted 2016-17 Partnership for the Arts and Humanities Application. In the event of a conflict between the documents, the order of priority shall be as follows: (1) this Contract; (2) 2016-17 Partnership for the Arts and Humanities Guidelines; (3) Contractor's submitted 2016-17 Partnership for the Arts and Humanities Application.
- B. Final Report. Contractor shall personally deliver or submit via U.S. Mail a Final Report, found here: <http://www.milwaukeeerecreation.net/artsandhumanities/>, and its final Cost Report to MPS no later than Friday, September 29, 2017.
- C. Criminal Background Checks.
  1. Contractor will conduct, at Contractor's expense, a criminal information background check (hereinafter referred to as "background check"), through the Wisconsin Department of Justice and other states' agencies, as applicable, on all current and potential administrators, board members, officers, full-time employees, part-time employees and volunteers who have, or who are anticipated to have direct, unsupervised contact with MPS students throughout the contract term.
    - a. An out-of-state background check should be completed in the state(s) in which the individual resided for at least 6 months within the last 10 years and was 18 years or older at the time.
    - b. For purposes of this Contract, a volunteer is any non-paid person who provides services on a regular and ongoing basis for more than five hours a week. A volunteer is not a parent or other adult who is a one-time volunteer for a field trip or other one-time only activity. Provider will use good judgment in accepting the services of a volunteer, and will be familiar with the volunteer before accepting services of that volunteer.
  2. No later than one month before work with MPS students begins, Provider will submit completed background checks for all individuals providing services under this Contract in accordance with ¶ 4C1 to the Community Arts and Humanities Associate, MPS Department of Recreation and Community Services. Records that indicate a history of conviction or pending criminal charges will be reviewed

by the MPS Department of Employment Relations. Thereafter, MPS will immediately notify Contractor of any individual(s) who, based on MPS standards, should not have contact with students or children. Failure to submit the results of any crime information records checks prior to the provision of services will result in the termination of services. All determinations made by MPS with regards to whether an individual is fit to provide services under this Contract are made in MPS's sole discretion.

3. The following will each be a material failure to comply with the terms of this Contract and cause for immediate termination of this Contract with no further liability on the part of MPS: failure to perform background checks as outlined in ¶ 4C1; failure to submit background checks to MPS as outlined in ¶ 4C2; allowing services to be performed under this Contract by an individual who has not been subjected to a background check; and allowing services to be performed under this Contract by an individual who has been determined to be unfit by MPS as outlined in ¶ 4C2.

**5. NON-DISCRIMINATION, EQUAL EMPLOYMENT OPPORTUNITY AND AFFIRMATIVE ACTION PROGRAMS**

In the performance of services under this Contract, Contractor shall not discriminate against any employee or applicant for employment on the basis of a person's sex, race, age, religion, national origin, ancestry, creed, pregnancy, marital or parental status, sexual orientation, disability or socio-economic status. Employment activities shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeships. Contractor will post in conspicuous places, available for employees of Contractor and applicants for employment notices setting forth the provisions of the non-discriminatory clause.

**6. INDEMNITY**

To the fullest extent permitted by law, Contractor agrees to indemnify, defend and hold harmless, MPS, its agents, officers and employees, from and against all loss or expense, including related costs and reasonable attorneys' fees, by reason of liability for damages, including suits at law or in equity, caused by any wrongful, intentional or negligent acts or omissions of Contractor or its agents which may arise out of or are connected with the activities covered by this Contract.

To the extent permitted by the laws of the State of Wisconsin, including, but not limited to, Wis. Stat. §§ 893.80 & 895.46, MPS shall be responsible for defending and paying judgments on behalf of its officers, employees and agents for any claims that may arise out of MPS's negligence for acts, policies, or directives that affect the activities covered by this Contract.

**7. INSURANCE AND PROOF OF FINANCIAL RESPONSIBILITY**

Contractor understands and agrees that financial responsibility for claims or damages to any person, or to Contractor's employees and agents, shall rest with the Contractor. The indemnification obligation, however, shall not be reduced in any way by existence or non-existence, limitation, amount or type of damages, compensation, or benefits payable under Workers' Compensation laws or other insurance provisions.

Contractor shall effect and maintain insurance coverage in the following minimum amounts:

INSURANCE TYPE	MINIMUM LIMIT
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Workers' Compensation	As defined by Wisconsin state statutes
Employers' Liability	\$100,000 per occurrence
General Liability	\$1,000,000 per occurrence/\$2,000,000 aggregate
Professional Liability	\$1,000,000 per occurrence
Auto Liability	\$1,000,000 per occurrence
Umbrella (excess) Liability	\$1,000,000 per occurrence

The Milwaukee Board of School Directors shall be named as an additional insured under Contractor's general liability insurance and umbrella liability insurance policies. A certificate of insurance evidencing all required coverages of Contractor shall be provided to MPS prior to the commencement of the term of this Contract. MPS shall be afforded a thirty (30) day written notice of cancellation, non-renewal or material change to Contractor's insurance coverages required by MPS for the duration of this Contract.

**8. TERMINATION BY CONTRACTOR**

Contractor may, at its option, terminate this Contract upon the failure of MPS to reimburse any amount which may become due hereunder for a period of 45 days following submission of appropriate billing and supporting documentation. Upon said termination, Contractor shall be paid the compensation due for all services rendered through the date of termination.

**9. IRREPARABLE HARM**

It is mutually agreed that the breach of this Contract on Contractor's part will result in irreparable and continuing damage to MPS for which money damages may not provide adequate relief. Therefore, the breach of this Contract on Contractor's part shall entitle MPS to both preliminary and permanent injunctive relief and money damages insofar as they can be determined under the circumstances.

**10. TERMINATION BY MPS FOR BREACH BY CONTRACTOR**

Except as set forth in ¶ 4C3, if Contractor fails to fulfill its obligations under this Contract in a timely or proper manner, or violates any of its provisions, MPS shall thereupon have the right to terminate it by giving 30 days' written notice of termination of contract, specifying the alleged violations, and effective date of termination. The Contract shall not be terminated if, upon receipt of the notice, Contractor promptly cures the alleged violation prior to the end of the 30-day period. In the event of termination, MPS will only be liable for services rendered through the date of termination and not for the uncompleted portion, or for any materials or services purchased or paid for by Contractor for use in completing the Contract.

**11. UNRESTRICTED RIGHT OF TERMINATION BY MPS**

MPS further reserves the right to terminate this Contract, at any time, for any reason in its sole discretion by giving Contractor 30 days' written notice by Registered or Certified Mail of such termination. In the event of such a termination, Contractor shall reduce its activities hereunder, as mutually agreed to, upon receipt of said notice. Upon such a termination, Contractor shall be paid for all services rendered through the date of termination, including any retainage. This paragraph also applies should the Milwaukee Board of School Directors fail to appropriate additional monies required for the completion of the Contract.

**12. INDEPENDENT CONTRACTOR**

Nothing contained in this Contract shall constitute or be construed to create a partnership or joint venture between MPS or its successors or assigns and Contractor or its successors or assigns. In entering into this Contract, and in acting in compliance herewith, Contractor is at all times acting

and performing as an independent contractor, duly authorized to perform the acts required of it hereunder.

The manner in which Contractor performs the services provided for hereunder including work hours, location, and other details of such services, shall be exclusively determined by the Contractor in consideration of the availability of facilities, students, and the normal working hours of the MPS departments involved. MPS shall have the right to control and direct the results of such services because, in the performance thereof, Contractor is and shall remain independent, (with the obligation solely on the Contractor's part to provide for and pay any contribution or taxes required by federal, state or local authorities imposed on or measured by income), providing consultation on the matters made the subject thereof. MPS understands Contractor will engage in other business or trade for other persons or organization, at Contractor's discretion, during the time Contractor is rendering services for MPS, providing such outside functions do not in any way restrict Contractor in performing the services provided for in this Contract.

Contractor further agrees that MPS is not to be charged with the obligation or responsibility of extending any fringe benefits such as hospital, medical and life insurance, or pension plans which may be extended to employees of MPS from time to time and further agrees to indemnify and hold harmless MPS and all its employees, officers and agents from any liability for personal injuries, including death, or for damage to or loss of personal property, which might occur as a result of the performance of the services provided for under this Contract.

Contractor agrees that Contractor will not file any complaint, charge, or claim with any local, state or federal agency or court in which Contractor claims to be or to have been an employee of MPS during the period of time covered by this Contract and that, if any such agency or court assumes jurisdiction of any complaint, charge or claim against MPS on Contractor's behalf, Contractor will request such agency or court to dismiss such matter.

**13. ASSIGNMENT LIMITATION**

This Contract shall be binding upon and inure to the benefit of the parties and their successors and assigns; provided, however, that neither party shall assign its obligations hereunder without the prior written consent of the other.

**14. EMPLOYMENT PRACTICES**

- A. MPS employees are expressly forbidden from accepting gifts, gratuities or favors which might improperly influence MPS's relationships with vendors or create the perception of any impropriety or undue influence in the award of any contracts. Contractor agrees it will not offer such gifts, gratuities or favors.
- B. Contractor, during the period of this Contract, shall not hire, retain or use for compensation any person who, to the knowledge of Contractor, has a conflict of interest or is providing services in violation of MPS Administrative Policy 6.04.
- C. Contractor shall comply with, and ensure its subcontractors performing work under this Contract comply with, Milwaukee Board of School Directors' Administrative Policy 3.09(17), which requires that employees be paid a "living wage."

**15. NOTICES**

- A. Notices to MPS provided for in this Contract shall be sufficient if sent by Certified or Registered mail, postage prepaid, addressed to:  
Lynn A. Greb  
Director, Department of Recreation Services  
5225 West Vliet Street, Room 162  
Milwaukee, WI 53208  
with an electronic copy to [yanderet@milwaukee.k12.wi.us](mailto:yanderet@milwaukee.k12.wi.us)
- B. Notices to Contractor provided for in this Contract shall be sufficient if sent by Certified or Registered mail, postage prepaid, to the signatory of this Contract at the address identified on the execution page.

**16. OWNERSHIP OF INFORMATION/ACKNOWLEDGEMENT**

All information and any derivatives thereof, whether created by MPS or Contractor that are related to the services covered under this Contract, remains the property of MPS and no license or other rights to such information is granted or implied hereby. For purposes of this Contract, "derivatives" shall mean: (i) for copyrightable or copyrighted material, any translation, abridgment, revision, or other form in which an existing work may be recast, transformed, or adapted; and (ii) for patentable or patented material, any improvement thereon.

All promotional materials and publicity of Partnership for the Arts and Humanities Programs must include reference to Milwaukee Public Schools. Notwithstanding the foregoing, prior to releasing any promotional materials relating to this Contract, Contractor shall submit a copy to the MPS Executive Director of Communications & Outreach at [comm@milwaukee.k12.wi.us](mailto:comm@milwaukee.k12.wi.us) for review.

**17. NON-DISCLOSURE AND NON-USE OF MPS INFORMATION AND WORK PRODUCT DEVELOPED BY CONTRACTOR FOR MPS**

Contractor will not disclose, publish, or disseminate any information it obtains from or develops for MPS under this Contract. Contractor agrees to take all reasonable precautions to prevent any unauthorized use, disclosure, publication, or dissemination of information and work product obtained from or developed for MPS under this Contract. Contractor agrees not to use, publish or disseminate information and work product for its own or any third party's benefit without the prior written approval of MPS.

**18. RETURN OF DOCUMENTS**

Within ten business days of receipt of MPS' written or oral request, Contractor will return all documents, records, and copies thereof it obtained during the development of the work product covered by this Contract.

**19. WAIVER**

The waiver or failure of either party to exercise, in any respect, any rights provided for in this Contract shall not be deemed a waiver of any further right under this Contract.

**20. SEVERABILITY**

If any term or provision of this Contract should be declared invalid by a court of competent jurisdiction or by operation of law, the remaining terms and provisions of this Contract shall be interpreted as if such invalid terms or provisions were not contained herein.

**21. INTEGRATION**

- A. This Contract is intended by Contractor and MPS as a final expression of their agreement and as a complete and exclusive statement of its terms. This Contract supersedes all prior proposals, negotiations, conversations, discussions and contracts among the parties concerning the subject matter hereof.
- B. No amendment or modification of any provision of this Contract shall be effective unless the same shall be in writing and signed by authorized signatories of both parties.

**22. APPLICABLE LAW; VENUE**

This Contract shall be governed solely by the laws of the State of Wisconsin. The state or federal courts of Wisconsin shall be the sole forum for all disputes arising out of this Contract.

**23. CERTIFICATION REGARDING DEBARMENT OR SUSPENSION**

By signing this Contract, Contractor certifies that neither Contractor or its principals; its subcontractors or their principals; the sub-recipients (if applicable) or their principals are suspended, debarred, proposed for debarment, voluntarily excluded from covered transactions, or otherwise disqualified by any federal department or agency from doing business with the Federal Government pursuant to Executive Orders 12549 and 12689. Contractor specifically covenants that neither the Contractor or its principals, its sub-contractors or their principals, or the sub-recipients (if applicable) or their principals are included on the Excluded Parties List System ("EPLS") maintained by the General Services Administration ("GSA").

**24. FORCE MAJEURE**

MPS will not be liable to pay Contractor for any work that Contractor is unable to perform due to act of God, riot, war, civil unrest, flood, earthquake, outbreak of contagious disease or other cause beyond MPS' reasonable control, including any mechanical, electronic, or communications failure, but excluding failure caused by a party's financial condition or negligence.

[signature page follows]



**IN WITNESS WHEREOF**, the parties hereto have executed this Contract on the day, month and year first above written. This page must be submitted to MPS.

**CONTRACTOR:** (MPS VENDOR # V0132780)

**MILWAUKEE BOARD OF SCHOOL DIRECTORS:**

By \_\_\_\_\_  
*Signature*

By: \_\_\_\_\_  
Kristen D. DeCato  
Director, Procurement and Risk Managemnet

Date: \_\_\_\_\_

Date: \_\_\_\_\_

Milwaukee Art Museum, Inc.  
700 N. Art Museum Drive  
Milwaukee, WI 53202  
(414) 224-3249

By: \_\_\_\_\_  
Darienne B. Driver, Ed. D.  
Superintendent of Schools

Date: \_\_\_\_\_

TAX ID/SSN:

By: \_\_\_\_\_  
Mark A. Sain, President  
Board of Milwaukee School Directors

Date: \_\_\_\_\_

**For Office Use Only**

Budget Code:

**CSV-0-0-ART-RC-ECTS**

Reviewed by Risk Management:

By \_\_\_\_\_

Date \_\_\_\_\_