

## **MILWAUKEE BOARD OF SCHOOL DIRECTORS PROFESSIONAL SERVICES CONTRACT**

**This Contract** is entered into this 1<sup>st</sup> day of September 2018, by and between, (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:

[INSERT PROJECT SUMMARY HERE]

Services shall be performed between September 1, 2018, and August 31, 2019 (“Program Period”).

Contractor was selected pursuant to its 2018-19 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 September 1, 2018, through September 30, 2019.

### **3. COMPENSATION**

Contractor shall be compensated in an amount not to exceed \$ \_\_\_\_\_.

MPS does not pay in advance for services. Services should not begin until this Contract is fully executed and all criminal background checks, as set forth in ¶ 4E, have been submitted and approved. MPS shall make reasonable efforts to reimburse Contractor for approved expenditures within 45 days of receipt of a properly submitted Cost Report, a sample of which is included as Exhibit A. Notwithstanding the foregoing, Wisconsin’s prompt pay law does not apply to this Contract.

#### **A. Reimbursement Procedures.**

1. Cost Reports are due to MPS via the address below no later than 15 days after the end of the bi-monthly reporting period unless an alternative reporting schedule is approved, in writing, by MPS’ Supervisor of the Partnership for the Arts & Humanities. [Cost Reports for summer-only programs are due on September 30, 2019.] A Cost Report that is not received by the 15<sup>th</sup> of the month in which it is due may, in MPS’s sole discretion be included in the next review cycle; however, MPS reserves the right to reject such report as untimely.
2. 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: Brenda Saucedo

5225 W. Vliet Street, Room 162  
Milwaukee, WI 53208

3. 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.
  4. Contractor shall include, with each Cost Report submitted, the following documentation:
    - a. Copies of all paid receipts/invoices submitted for reimbursement which complies with the requirements identified in ¶ 3B3a. 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); and
    - 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 the payee, check number, hourly rate, gross wages and authorized deductions).
  5. 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.
  6. Notwithstanding the anything to the contrary herein, MPS reserves the right to withhold payment of the final Cost Report under this Contract until receipt of the Final Report pursuant to ¶ 4D.
- 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. MPS will not reimburse Contractor for any costs incurred outside of the Program Period.
  3. 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 seven 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 the 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 must include a written description of the purpose of the expenditure on the Cost Report. Any purchase that does not include a description will be not be reimbursed.
4. Contractor shall use appropriate cash management procedures so that public funds disbursed under this Contract are discernible from other funds, including matching funds. MPS reserves the right to request documentation relating to matching funds at any time throughout the Term.
  5. Subject to ¶ 4A1 below, Contractor must submit a revised budget to MPS for written approval prior to making any adjustments in the budget category amounts set forth in its originally submitted 2018-19 Partnership for the Arts and Humanities Application.
  6. Any funds allocated to Contractor, but not expended during the Program Period, 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 2018-19 Partnership for the Arts and Humanities Guidebook for Grantees, found here: <http://www.milwaukeeerecreation.net/artsandhumanities/> and incorporated by reference, and Contractor's submitted 2018-19 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) 2018-19 Partnership for the Arts and Humanities Guidebook for Grantees; (3) Contractor's submitted 2018-19 Partnership for the Arts and Humanities Application.
1. In the event Contractor seeks minor modifications to the programming set forth in ¶1, Contractor shall electronically submit a signed letter requesting such approval with a detailed explanation for the requested change to April Heding, Supervisor of the Partnership for the Arts & Humanities, MPS Department of Recreation and Community Services. Minor modifications may include but are not limited to, a change in school(s) to be served, a change in community partners, or other deviations from the originally proposed services which closely follow the intent of the programming approved by the Milwaukee Board of School Directors.
  2. Whether such modifications are acceptable to MPS shall be in the sole discretion of MPS. Contractor shall not implement any changes unless and until it receives confirmation from MPS, in writing, that such modifications are acceptable. MPS

reserves the right to request additional information, including a revised budget, prior to making a determination.

- B. Mid-term Report: Contractor shall electronically submit to April Heding, Supervisor of the Partnership for the Arts & Humanities, MPS Department of Recreation and Community Services, a Mid-term Report detailing participation, and programmatic challenges and impact by January 28, 2018. This section shall not apply in the event Contractor's program is summer-only.
- C. Check-in Meetings: In-person meetings with the Contractor may be requested by MPS at any time throughout the Program Period.
- D. Final Report: Contractor shall electronically submit to April Heding, Supervisor of the Partnership for the Arts & Humanities, MPS Department of Recreation and Community Services, a Final Report, and its final Cost Report to MPS no later than Friday, September 30, 2018.
- E. 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 (<https://recordcheck.doj.wi.gov/>) 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 Program Period. (Note: No background checks are required for youth mentors/workers who are under the age of 18)
    - a. An out-of-state background check should be completed in the state(s) in which the individual resided for at least six months within the last ten 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 electronically submit completed background checks for all individuals providing services under this Contract in accordance with ¶ 4E1, utilizing the Smartsheet link provided herein: <https://app.smartsheet.com/b/form/9095513a736c49a791df055c1e2fa879>. 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. More information about the background check process can be found in the 2018-19 Partnership for the Arts and Humanities Guidebook for Grantees.

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 ¶ 4E1; failure to submit background checks to MPS as outlined in ¶ 4E2; 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 ¶ 4E2.
- F. Release Forms: Contractor shall be responsible for distributing passive permission forms to the parents/guardians of all participants as it relates to photo/video/social media releases and data collection. The passive permission forms must contain language permitting MPS to rely on the same. In the event a participant's parents/guardians do not grant consent, the participant must still be permitted to take part in all program activities, and it shall be Contractor's sole responsibility to ensure the privacy of the participant is protected at all times. MPS reserves the right to inspect and makes copies of these records at any time.
- G. Outcomes Monitoring: Contractor shall be responsible for outcomes monitoring, as set forth in the 2018-19 Partnership for the Arts and Humanities Guidelines and Contractor's submitted 2018-19 Partnership for the Arts and Humanities Application.
- H. Records: Contractor shall maintain all program records for at least seven (7) years from the end of the Term. In the event Contractor collects and maintains confidential student records, such records must be protected in accordance with the Family Educational Rights and Privacy Act (FERPA), Wis. Stat. § 118.125 and MPS Administrative Policy 8.42.

**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:

<b>INSURANCE TYPE</b>	<b>MINIMUM LIMIT</b>
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
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. Evidence of all required insurances of Contractor shall be submitted electronically to MPS via its third party vendor, EXIGIS Risk Management Services. Waivers and exceptions to the above limits will be in the sole discretion of MPS and shall be recorded in the EXIGIS system, which records are incorporated into this Contract by reference. 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 60 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 ¶ 4E3, 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, Senior Director  
Department of Recreation Services  
5225 West Vliet Street, Room 162  
Milwaukee, WI 53208  
with an electronic copy to [vanderet@milwaukee.k12.wi.us](mailto:vanderet@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 any 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 # \_\_\_\_\_)

**MILWAUKEE BOARD OF SCHOOL DIRECTORS:**

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

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

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

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

VENDOR NAME  
ADDRESS  
CITY, STATE, ZIP  
PHONE NUMBER

By: \_\_\_\_\_  
Keith P. Posley, Ed. D.  
Interim Superintendent of Schools

TAX ID/SSN

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

By: \_\_\_\_\_  
Adria Maddaleni, J.D.  
Director, Procurement & Risk Management

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

**For Office Use Only**

Budget Code: **CSV-0-0-ART-RC-ECTS**

Reviewed by Risk Management:

By \_\_\_\_\_ Date \_\_\_\_\_