

CONSULTANT ORGANIZATION SERVICES AGREEMENT

THIS AGREEMENT is made at Phoenix, Arizona, by and between the CITY OF PHOENIX, a municipal corporation, ("City"), and the NAME OF ARTS ORGANIZATION, (Consultant Organization"), who agree as follows:

- 1. Services.** At the direction of the Director of Arts Education, City of Phoenix Office of Arts and Culture or the 21st Century Community Learning Centers Grant Project Manager, Consultant Organization shall provide services to a designated school that has been established as a 21st Century Community Learning Center in the Phoenix Elementary School District No. 1. and other services as further described in Attachment A ("Scope of Work and Fee Schedule"), incorporated herein by this reference, unless modified by mutual agreement of the parties or terminated pursuant to the terms of this Agreement.
- 2. Term of Agreement.** The term of this Agreement shall be from the date of execution through May 31, 2008. At the City's discretion and in mutual agreement with Consultant Organization, this Agreement may be extended for up to an additional year.
- 3. Compensation.** Consultant Organization shall be paid the fees specified in Attachment A documented and invoiced as provided in paragraph 4 below. In no event shall the total of all compensation paid under this Agreement or any modification made hereto exceed \$30,800.
- 4. Method of Payment.** Consultant Organization shall be paid as provided in Attachment A, Fees, Expenses and Payment.
- 5. Covenant Against Contingent Fees.** Consultant Organization warrants that no person or selling agent has been employed or retained to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee. For breach or violation of this warranty, the City shall have the right to annul the contract without liability or, in its discretion, to deduct the commission, brokerage or contingent fee from its payment to Consultant Organization.
- 6. Intellectual Property.** Consultant Organization will retain rights to all programming brought into this consultation that has been developed or utilized by them prior to entering into this agreement. All products of consulting, including but not limited to programs, content concepts, lesson plans, procedures and materials produced by Consultant

Organization which result from performance under this Agreement, including all rights in copyright that may subsist therein, are deemed to be the sole property of the Consultant Organization. The City of Phoenix Office of Arts and Culture and the 21st Century Community Learning Centers grant must be credited with the following sentence if and when such products of consulting are published or disseminated beyond the scope of the work of this Agreement: "The content of this information was developed with support from a 21st Century Community Learning Center grant awarded to the City of Phoenix, Arizona, Office of Arts and Culture by the Arizona Department of Education and the Federal No Child Left Behind Act of 2001."

- 7. Products of Consulting.** All data, including, but not limited to, student profiles, surveys, attendance, discipline referrals, and anecdotal records collected by Consultant Organization as directed by the requirements of the 21st Century Community Learning Center grant shall be submitted to the grant administrator(s) upon reasonable request and become the property of the City of Phoenix Office of Arts and Culture and the Arizona Department of Education.
- 8. Payment Deduction Offset Provision.** Consultant Organization recognizes the provisions of the City Code of the City of Phoenix which require and demand that no payment be made to any contractor as long as there is any outstanding obligation due the City and directs that any such obligation be offset against payment due the Consultant Organization.
- 9. Confidentiality.** All reports, and other written products provided to the City, under work performed for this Agreement shall be considered confidential and shall not be published or otherwise disclosed by the Consultant Organization or any other person or party except the City unless required by law, ordinance, regulation, or permitted by the City's written authorization. When appropriate and not preceding announcements by the City, Consultant Organization will be allowed to keep its contributors, patrons, administrative staff and Board of Directors informed as to the overall description and reach of the program through whatever means of communication it employs.
- 10. Assignment Prohibited.** No party to this Agreement may assign any right or obligation pursuant to this Agreement. Any attempted or purported assignment of any right or obligation pursuant to this Agreement shall be void and of no effect.
- 11. Changes.** The City may, from time to time, request changes in the Scope of Services of the Agreement to be performed hereunder. Such changes, including any increase or decrease in the amount of

Consultant Organization's compensation, which are mutually agreed upon by and between the City and the Consultant Organization, shall be incorporated in written amendments to this Agreement.

12. Independent Contactor; No Agency. At all times during the term of this Agreement, Consultant Organization shall be an independent contractor and shall not be an employee of the City. City shall have the right to control Consultant Organization only insofar as to the results of Consultant Organization's services rendered pursuant to this Agreement. Consultant Organization shall have no authority, express or implied, to act on behalf of City in any capacity whatsoever as an agent. Consultant Organization shall have no authority, express any capacity whatsoever as an agent. Consultant Organization shall have no authority, express or implied, pursuant to this Agreement to bind City to any obligation whatsoever.

13. Consultant Organization's Liability. The Consultant Organization shall be responsible for all injuries to persons and for all damage to real or personal property of the City or others, caused by or resulting from the negligence of itself, its employees, or its agents during the progress of or connected with the rendition of services hereunder. To the extent permitted by law, Consultant Organization shall defend and hold harmless and indemnify the City, and all officers and employees from all costs and claims for damages to real or personal property, or personal injury to any third party, resulting from the acts of itself, its employees, or its agents, arising out of the Consultant Organization's performance of work under this Agreement.

14. Gratuities. No agent or representative of the Consultant Organization is allowed to offer gratuities in the form of entertainment, gifts, or otherwise, to any officer or employee of the City with a view toward securing a Contract or securing favorable treatment with respect to the awarding or amending, or the making of any determinations with respect to the performance of such Contract. In the event of such existence of facts, the City shall be entitled to pursue the same remedies against the Consultant Organization as the City could pursue in the event of default by the Consultant Organization.

15. Equal Employment Opportunity. During the performance of this Agreement, the Consultant Organization agrees as follows:

- a) The Consultant Organization will not discriminate against any employee or applicant for employment because of race, color, religion, gender, national origin, age or disability. The Consultant Organization shall take affirmative action to ensure that applicants are employed, and that employees are treated

during employment without regard to their race, color, religion, gender, national origin, age or disability. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment of recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. The Consultant Organization agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provision of this nondiscrimination clause.

- b) The Consultant Organization will in all solicitations or advertisements for employees placed by or on behalf of the Consultant Organization, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, gender, national origin, age or disability.
- c) The Consultant Organization will cause the foregoing provisions to be inserted in all subcontracts for any work covered by this Agreement, provided that the foregoing provisions shall not apply to contracts or subcontracts for standard commercial supplies or new materials.
- d) Upon request by the City, Consultant Organization shall provide City with information and data concerning action taken and results obtained in regard to Consultant Organization's Equal Employment Opportunity efforts performed during the term of this Agreement. Such reports shall be accomplished upon forms furnished by the City or in such other format as the City shall prescribe.

16. Compliance with the Immigration Reform and Control Act of 1986 (IRCA) Required. Consultant Organization understands and acknowledges the applicability of the IRCA and agrees to comply with IRCA in performing under any resultant agreement and to permit City inspection of its personnel records to verify such compliance.

17. Responsibility for Compliance with Legal Requirements. The Consultant Organization's products, services and facilities shall be in full compliance with all applicable federal, state and local health, environmental, and safety laws, regulations, standards, and ordinances in effect during the performance of this Agreement, regardless of whether or not they are referred to by the City.

18. Tax Exemption. The City is exempt from paying federal excise taxes and will furnish an exemption certificate upon request.

19. Applicable Law. Any and all disputes arising under any contract to be awarded hereunder or out of the proposals herein called for, which cannot be administratively resolved, shall be tied according to the laws of the State of Arizona, and the Consultant Organization shall agree that the venue for any such action shall be in the State of Arizona.

20. Continuation During Disputes. Consultant Organization agrees that, notwithstanding the existence of any dispute between the parties, each party shall continue to perform the obligations required of it during the continuation of any such dispute, unless enjoined or prohibited by an Arizona court of competent jurisdiction.

21. Delay in Exercising Contract Remedy. Failure or delay by the City to exercise any right, power or privilege shall not be deemed a waiver thereof.

22. City Audit of Consultant Organization Records. Consultant Organization must keep all contract records separate and make them available for audit by City personnel upon request.

23. Notices. Any notice, consent or other communication required or permitted under this Agreement shall be in writing and shall be deemed received at the time it is personally delivered, on the day it is sent by facsimile transmission, on the second day after its deposit with any commercial air courier or express service or, if mailed, three (3) days after the notice is deposited in the United States mail addressed as follows:

If to the City:

Phoenix Office of Arts and Culture
Attn. Arts & Culture Administrator
200 West Washington, 10th Floor
Phoenix, Arizona 85003-1611
Phone: 602-495-0186
FAX: (602) 262-6914

If to the Consultant Organization:

Arts Organization
Address
City/State/Zip
Phone:

Any time period stated in a notice shall be computed from the time notice is deemed received. Either party may change its mailing address or the person to receive notice by notifying the other party as provided in this paragraph.

23. Termination. The City and the Consultant Organization hereby agree to the full performance of the covenants contained herein, except that the City reserves the right, at its discretion and without cause, to terminate or abandon the services provided for in this Agreement, or abandon any portion of the project for which services have been performed by the Consultant Organization.

a) In the event the City shall abandon the Services or any part of the Services as herein provided, the City shall notify the Consultant Organization in writing, and immediately after receiving such notice, the Consultant Organization shall discontinue advancing work under this Agreement and proceed to close said operations under the Agreement.

b) Upon such termination or abandonment, the Consultant Organization shall deliver to the City all work entirely or partially completed.

c) The Consultant Organization shall determine the percentage of the Services completed and submit an estimate to the City for evaluation. The City shall have the right to inspect the Consultant Organization's work to appraise the work completed.

d) The Consultant Organization shall receive a fee for the percentage of the work actually completed as compensation in full for services performed to the date of such termination. This fee shall be a percentage of the Consultant Organization's fee described in Attachment A, and shall be in an amount to be agreed upon mutually by the Consultant Organization and the City. However, in no event shall the fee ever exceed that set forth in Attachment A of this document. The City shall make this final payment within sixty (60) days after the Consultant Organization has delivered the last of the partially completed items.

e) All parties hereto acknowledge that this Agreement is subject to cancellation by the City of Phoenix pursuant to the provisions of Section 38-511, Arizona Revised Statutes.

DATED this ____ day of _____, 2007.

CITY OF PHOENIX, a municipal
corporation
FRANK FAIRBANKS, City Manager

By _____
Ruth Osuna, Deputy City Manager

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney

CONSULTANT ORGANIZATION

By _____