

Contract No. 9249

Brief Description: Shoreline-Lake Forest Park Arts Council Services 2019-2020

**CITY OF SHORELINE
AGREEMENT FOR SERVICES**

This Agreement is entered into by and between the City of Shoreline, Washington, a municipal corporation hereinafter referred to as the “CITY,” and Shoreline-Lake Forest Park Arts Council, hereinafter referred to as the “Arts Council.”

WHEREAS, the City desires to retain the services of a consultant to provide education, arts, and cultural services to citizens of Shoreline and

WHEREAS, the City has selected the Shoreline-Lake Forest Park Arts Council to perform the above-mentioned services;

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, it is mutually agreed as follows:

1. Scope of Services to be Performed by the Arts Council.

The Arts Council shall perform the services outlined in Exhibit A. In performing these services, the Arts Council shall at all times comply with all federal, state and local statutes, rules and ordinances applicable to the performance of such services. In addition, these services and all duties incidental or necessary therefore, shall be performed diligently and completely and in accordance with professional standards of conduct and performance. All services performed under this Agreement will be conducted solely for the benefit of the City and will not be used for any other purpose without written consent of the City.

2. Compensation.

- A. Services will be paid at the rate set forth in Exhibit A, not to exceed a maximum of \$60,000 per year, including all fees and those reimbursable expenses listed in Exhibit A.
- B. The City shall pay the Arts Council for services rendered after receipt of an itemized invoice or billing voucher in the form set forth on Exhibit B. Payments will be processed within 30 (thirty) days from receipt of billing voucher. The Arts Council shall be paid for services rendered but, in no case shall the total amount to be paid exceed the amount(s) noted in the Exhibit(s) and approved by the City. The Arts Council shall complete and return a W-9 to the City prior to contract execution by the City. Mail all invoices or billing vouchers to: Accounts Payable, 17500 Midvale Avenue North, Shoreline, Washington 98133-4905 or email to accountspayable@shorelinewa.gov.

3. Term.

- A. The term of this Agreement shall commence March 25, 2019 and end at midnight on the 31st day of December, 2020.

4. Termination.

- A. The City reserves the right to terminate this Agreement at any time, with or without cause by giving fourteen (14) days notice to the Arts Council in writing. In the event of such termination or suspension, all finished or unfinished documents, data, studies, worksheets, models and reports, or other material prepared by the Arts Council pursuant to this Agreement shall be submitted to the City.
- B. In the event this Agreement is terminated by the City, the Arts Council shall be entitled to payment for all hours worked and reimbursable expenses incurred to the effective date of termination, less all payments previously made. This provision shall not prevent the City from seeking any legal remedies it may have for the violation or nonperformance of any of the provisions of this Agreement and any such charges due the City shall be deducted from the final payment due the Arts Council. No payment shall be made by the City for any expenses incurred or work done following the effective date of termination unless authorized in advance in writing by the City.
- C. The Arts Council reserves the right to terminate this Agreement with not less than sixty (60) days written notice, or in the event outstanding invoices are not paid within 30 days.
- D. If the Arts Council is unavailable to perform the scope of services, the City may, at its option, cancel this Agreement immediately.

5. Ownership of Documents and Public Records.

- A. Except as provided in Section 6, all documents, data, drawings, specifications, software applications and other products or materials produced by the Arts Council in connection with the services rendered under this Agreement shall be the property of the City whether the services for which they are made are executed or not. All such documents, products and materials shall be forwarded to the City at its request and may be used by the City as it sees fit. The City agrees that if the documents, products and materials prepared by the Arts Council are used for purposes other than those intended by the Agreement, the City does so at its sole risk and agrees to hold the Arts Council harmless for such use.
- B. The Arts Council acknowledges that the City is a public agency subject to Washington's Public Records Act, chapter 42.56 RCW, and that all documents produced by the Arts Council in connection with the services rendered under this Agreement may be deemed a public record as defined in the Public Records Act and that if the City receives a public records request, unless a statute exempts disclosure, the City must disclose the record to the requestor. All or portions of materials, products and documents produced under this Agreement may be used by the Arts Council if the City confirms that they are subject to disclosure under the Public Disclosure Act.
- C. The Arts Council shall preserve the confidentiality of all City documents and data accessed for use in Arts Council's work product. Any requests for City documents and data held by Arts Council shall be forwarded to the City which shall be solely responsible for responding to the request.

6. Copyright and Reproduction Rights.

- A. The Arts Council reserves the right to retain all rights under the Copyright Act of 1976, 17 U.S.C. § 101 et seq., as the sole author of any original artwork developed pursuant to this Agreement for the duration of the copyright. PROVIDED, the Arts Council grants to the City and its assigns an irrevocable license to make two-dimensional reproductions of any such original artwork for non-commercial purposes, including, but not limited to, reproductions used in brochures, media publicity, and exhibition catalogues or other similar publications.
- B. The Arts Council may, at its sole expense, cause to be registered with the United States Register of Copyrights, a copyright in the Arts Council's name for such original artwork. All reproductions by the City shall contain a credit to the Arts Council and a dated copyright notice in substantially the following form: Copyright © Shoreline-Lake Forest Park Arts Council.
- C. Third Party Infringement. The City is not responsible for any third-party infringement of the Arts Council's copyright, registered or not, and is not responsible for protecting the intellectual property rights of the Arts Council.

7. Independent Contractor Relationship.

- A. The Arts Council is retained by the City only for the purposes and to the extent set forth in this Agreement. The nature of the relationship between the Arts Council and the City during the period of the services shall be that of an independent contractor, not employee. The Arts Council, not the City, shall have the power to control and direct the details, manner or means of services. Specifically, but not by means of limitation, the Arts Council shall have no obligation to work any particular hours or particular schedule, unless otherwise indicated in the Scope of Work where scheduling of attendance or performance is critical to completion, and shall retain the right to designate the means of performing the services covered by this Agreement, and the Arts Council shall be entitled to employ other workers at such compensation and on such other conditions as it may deem proper, provided, however, that any contract so made by the Arts Council is to be paid by it alone, and that employing such workers, it is acting individually and not as an agent for the City.
- B. The City shall not be responsible for withholding or otherwise deducting federal income tax or Social Security or contributing to the State Industrial Insurance Program, or otherwise assuming the duties of an employer with respect to Arts Council or any employee of the Arts Council.

8. Hold Harmless.

The Arts Council shall defend, indemnify, and hold the City, its officers, officials, employees and volunteers harmless from any and all claims, injuries, damages, losses or suits including attorney fees resulting from the negligent, gross negligent and/or intentional acts, errors or omissions of the Arts Council, its agents or employees arising out of or in connection with the performance of this Agreement, except for injuries and damages caused by the negligence of the City.

Should a court of competent jurisdiction determine that this Agreement is subject to RCW 4.24.115, then, in the event of liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of the Arts Council

and the City, its officers, officials, employees, and volunteers, the Arts Council's liability hereunder shall be only to the extent of the Arts Council's negligence. It is further specifically and expressly understood that the indemnification provided herein constitutes the Arts Council's waiver of immunity under Industrial Insurance, Title 51 RCW, solely for the purpose of this indemnification. This waiver has been mutually negotiated by the parties. The provisions of this section shall survive the expiration or termination of this Agreement.

9. Gifts.

The City's Code of Ethics and Washington State law prohibit City employees from soliciting, accepting, or receiving any gift, gratuity or favor from any person, firm or corporation involved in a contract or transaction. To ensure compliance with the City's Code of Ethics and state law, the Arts Council shall not give a gift of any kind to City employees or officials.

10. City of Shoreline Business License.

As mandated by SMC 5.05.030, the Arts Council shall obtain a City of Shoreline Business License prior to performing any services and maintain the business license in good standing throughout the term of its agreement with the City.

11. Insurance.

The Arts Council shall obtain insurance of the types described below during the term of this Agreement and extensions or renewals. These policies are to contain, or be endorsed to contain, provisions that

1) Arts Council's insurance coverage shall be primary insurance with insurance or insurance pool coverage maintained by the City as excess of the Arts Council's insurance (except for professional liability insurance); and 2) Arts Council's insurance coverage shall not be cancelled, except after thirty (30) days prior written notice to the City.

- A. Professional Liability, Errors or Omissions insurance with limits of liability not less than \$1,000,000 per claim and \$1,000,000 policy aggregate limit shall be provided if services delivered pursuant to their Contract involve or require professional services provided by a licensed professional including but not limited to engineers, architects, accountants, surveyors, and attorneys.
- B. Commercial General Liability insurance covering premises, operations, independent contractors' liability and damages for personal injury and property damage with a limit of no less than \$1,000,000 each occurrence and \$2,000,000 general aggregate. The City shall be named as an additional insured on this policy. The Arts Council shall submit to the City a copy of the insurance certificate and relevant endorsement(s) as evidence of insurance coverage acceptable to the City.
- C. Automobile Liability insurance with combined single limits of liability not less than \$1,000,000 for bodily injury, including personal injury or death and property damage shall be required if delivery of service directly involves Arts Council use of motor vehicles.

12. Delays.

The Arts Council is not responsible for delays caused by factors beyond the Arts Council’s reasonable control. When such delays beyond the Arts Council’s reasonable control occur, the City agrees the Arts Council is not responsible for damages, nor shall the Arts Council be deemed to be in default of the Agreement.

13. Successors and Assigns.

Neither the City nor the Arts Council shall assign, transfer or encumber any rights, duties or interests accruing from this Agreement without the written consent of the other.

14. Nondiscrimination.

In hiring or employment made possible or resulting from this Agreement, there shall be no unlawful discrimination against any employee or applicant for employment because of sex, age, race, color, creed, national origin, marital status or the presence of any sensory, mental, or physical handicap, unless based upon a bona fide occupational qualification. This requirement shall apply to but not be limited to the following: employment, advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. No person shall be denied or subjected to discrimination in receipt or the benefit of any services or activities made possible by or resulting from this Agreement on the grounds of sex, race, color, creed, national origin, age except minimum age and retirement provisions, marital status, or in the presence of any sensory, mental or physical handicap.

15. Notices.

Any notice required under this Agreement will be in writing, addressed to the appropriate party at the address which appears below (as modified in writing from time to time by such party), and given personally, by registered or certified mail, return receipt requested, by facsimile or by a nationally recognized overnight courier service. All notices shall be effective upon the date of receipt.

City Manager
City of Shoreline
17500 Midvale Avenue N
Shoreline, WA 98133-4905
(206) 801-2700

Name: Lorie Hoffman, Executive Director
Shoreline-Lake Forest Park Arts Council
Address: 18560 1st Ave NE
Address: Shoreline WA 98155
Phone Number: (206) 417-4645

16. Governing Law and Venue.

This Agreement shall be construed and enforced in accordance with the laws of the State of Washington. Venue of any suit between the parties arising out of this Agreement shall be King County Superior Court.

17. General Administration and Management.

The City’s contract manager shall be (name and title): David Francis, Public Art Coordinator.

18. Severability.

Any provision or part of the Agreement held to be void or unenforceable under any law or regulation shall be deemed stricken and all remaining provisions shall continue to be valid and binding upon the City and the Arts Council, who agree that the Agreement shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

19. Entire Agreement.

This agreement contains the entire Agreement between the parties hereto and no other agreements, oral or otherwise, regarding the subject matter of this agreement, shall be deemed to exist or bind any of the parties hereto. Either party may request changes in the agreement. Proposed changes which are mutually agreed upon shall be incorporated by written amendment to this agreement.

20. Captions.

The titles of sections or any other parts of this Agreement are for convenience only and do not define or limit the contents.

21. Counterpart Originals.

This Agreement may be executed in any number of counterpart originals, each of which shall be deemed to constitute an original agreement, and all of which shall constitute one agreement. The execution of one counterpart by a Party shall have the same force and effect as if that Party had signed all other counterparts.

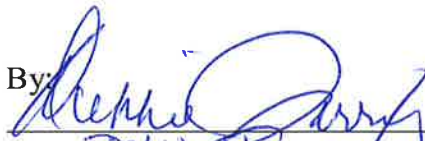
22. Authority to Execute.

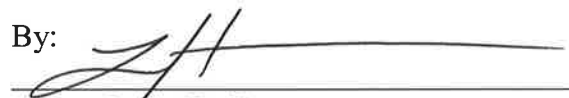
Each person executing this Agreement on behalf of a Party represents and warrants that he or she is fully authorized to execute and deliver this Agreement on behalf of the Party for which he or she is signing. The Parties hereby warrant to each other that each has full power and authority to enter into this Agreement and to undertake the actions contemplated herein and that this Agreement is enforceable in accordance with its terms.

This agreement is executed by

CITY OF SHORELINE

**SHORELINE-LAKE FOREST PARK
ARTS COUNCIL**

By: 
Name: Debbie Fanning
Title: City Manager
Date: 4/18/19

By: 
Name: Lorie Hoffman
Title: Executive Director
Date: 4/17/19

Attachments: Exhibit A (Scope and compensation), Exhibit B (Billing Voucher), Exhibit C (Program Attendance Log)