Agenda Item #3.M.8.

PALM BEACH COUNTY BOARD OF COUNTY COMMISSIONERS

AGENDA ITEM SUMMARY

] Ordinance	[] Regular [] Public Hearing
	Ordinance

I. EXECUTIVE BRIEF

Motion and Title: Staff recommends motion to approve: an Agreement with Arts4All Florida for the use of Club Managers Association of America Therapeutic Recreation Complex for the implementation of visual and performing art programs for individuals with disabilities. The term of this Agreement is for three years effective on the date of execution and shall be automatically renewed unless either party provides written notice of intent to terminate the Agreement.

Summary: Arts4All Florida, formerly VSA-Florida, has provided programs for over 36 years that make it possible for people with disabilities to contribute to the social, cultural, and economic life of Florida. A private not-for-profit organization, Arts4All Florida conducts art education programs in schools, Department of Juvenile Justice facilities, and community centers; promotes the accomplishments of artists with disabilities through an artist registry, exhibitions, and performances; and increases access to the arts through professional development workshops. Arts4All-Florida and the Parks and Recreation Department have collaborated for 34 years. This Agreement enables Arts4All-Florida and the Parks and Recreation Department to utilize each other's resources for the provision of visual and performing arts programming for people with disabilities. The Parks and Recreation Department and Arts4All-Florida recognize the benefits to be derived by utilizing each other's personnel, expertise and services thereby minimizing the duplication of services for people with disabilities. District 3 (AH)

Background and Justification: Arts4All Florida, formerly VSA-Florida, has provided programs for over 36 years that make it possible for people with disabilities to contribute to the social, cultural, and economic life of Florida. A private not-for-profit organization, Arts4All Florida conducts art education programs in schools, Department of Juvenile Justice facilities, and community centers; promotes the accomplishments of artists with disabilities through an artist registry, exhibitions, and performances; and increases access to the arts through professional development workshops. Arts4All-Florida and the Parks and Recreation Department have collaborated for 34 years.

Attachment: Arts4All Agreement		
Recommended by:	Department Director	4-10-19 Date
Approved by:	Assistant County Administrator	4/22/19 Date

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2019	2020	2021	2022	2023
Capital Expenditures Operating Costs External Revenues Program Income (County) In-Kind Match (County)	-0- -0- -0- -0- -0-	-0- -0- -0- -0- -0-	-0- -0- -0- -0- -0-	-0- -0- -0- -0- -0-	-0- -0- -0- -0- -0-
NET FISCAL IMPACT	0	-0-	0	0	0-
# ADDITIONAL FTE POSITIONS (Cumulative)		0	0	0	0
Is Item Included in Current Budget? Does this item include the use of federal funds? Yes No _X					
Budget Account No.:	Fund De Object	partment Program	Unit		
B. Recommended Sources of Funds/Summary of Fiscal Impact:					
*There is no fiscal impact associated with this item.					
C. Departmental Fiscal Review:					
III. DEVIENA CONANCENTO					

III. REVIEW COMMENTS

A. OFMB Fiscal and/or Contract Development and Control Comments:

OFMB ADU/16 B. Legal Sufficiency:	94/12 BR 4/15	Contract Development and Control 4/19/19/19
	•	

Assistant County Attorney

C. Other Department Review:

Department	Director	

This summary is not to be used as a basis for payment

G:_Agenda Item Summary\05-07-19\05-07-19 Arts4All Agreement.docx

AGREEMENT BETWEEN PALM BEACH COUNTY AND ARTS4ALL FLORIDA, INC. FOR COORDINATION OF VISUAL AND PERFORMING ARTS PROGRAMS TO INDIVIDUALS WITH DISABILITIES

This Agreement is made the _	day of		, 20 ,
between Palm Beach County, a politic	cal subdivision of the	State of Florida	, ("County")
and Arts4All Florida Inc., a not-for-profi	t corporation ("Corpo	ration").	

WITNESSETH

WHEREAS, the County owns and operates the Club Managers Association of America Therapeutic Recreation Complex, an institute dedicated to enhancing the quality of life for people with disabilities and their families, hereinafter referred to as "CMAA Therapeutic Recreation Complex"; and

WHEREAS, the Corporation was established as a private not-for-profit organization to conduct visual and performing arts programs in schools, Department of Juvenile Justice facilities, and community centers; promote the accomplishments of artists with disabilities through its artist registry, exhibitions, and performances; and increase access to the arts through professional development workshops; and

WHEREAS, the County and Corporation desire to clearly define their respective roles for the effective and efficient delivery of programs, support, management, operation, and use of said CMAA Therapeutic Recreation Complex Premises and other County facilities; and

WHEREAS, the County and Corporation, recognize the benefits to be derived by utilizing each other's personnel expertise and services thereby minimizing the duplication of services for individuals with disabilities; and

WHEREAS, the County and Corporation desire to provide individuals with disabilities an environment to further develop visual and performing arts programs and increase opportunities to access art activities; and

WHEREAS, entering into this Agreement serves a public purpose.

NOW THEREFORE, in consideration of the mutual representations, terms, and covenants hereinafter set forth, the parties hereby agree as follows:

1. <u>Recitals</u>: The foregoing recitals are true and correct and are incorporated herein by reference.

2. <u>Purpose</u>: The purpose of this Agreement is to enable the Corporation and County to utilize each other's personnel, expertise, services, equipment and facilities, to provide year-round mutually agreed upon visual and performing arts programs for individuals with disabilities.

3. <u>Definitions</u>:

- A. "County Facilities": facilities on real property owned or operated by the County, excluding facilities that are leased, licensed or under the contractual control of others.
- B. "CMAA Premises": depicted on Exhibit "A" means County Facilities located at 2728 Lake Worth Road, Lake Worth, FL 33461, and includes an administration building, gymnasium, recreation center, aquatic center, and surrounding property.
- C. "Department": the Palm Beach County Parks and Recreation Department, located at 2700 Sixth Avenue South, Lake Worth, Florida 33461.
- D. "PBC Affiliate of Arts4All Florida, Inc.": Arts4All Florida assigns affiliates to provide specific programs for their counties. Arts4All Florida has designated the Palm Beach County Parks and Recreation Department the program affiliate for Palm Beach County, Florida.

4. The Corporation shall:

- A. Serve as fiscal agent and advisor to the PBC Affiliate of Arts4All Florida, Inc. to conduct fundraising and accept monetary donations, personal property, and tangible objects for the enhancement and beautification of the CMAA Premises or to support Corporation programs sponsored or cosponsored by the County.
- B. Serve as fiscal agent and advisor to the PBC Affiliate of Arts4All Florida, Inc. to provide direct funding for all PBC Affiliate Arts4All Florida, Inc. operating expenses associated with visual and performing arts programs for individuals with disabilities including but not limited to, the direct procurement of independent contractors, part time employees, fundraising expenses, program supplies, and office supplies. In the event Corporation denies approval of funding, County shall not be liable for the above expenses.

5. The County shall:

A. Allow the Corporation use of the CMAA Premises for visual and performing arts programs for individuals with disabilities, fundraising activities, special events, and other related activities. All such functions and activities must follow the Department's established policies and procedures. Any requests for functions, activities or uses of the CMAA Premises must receive prior approval from the Director of the Department/designee.

- B. Allow the Corporation use of County Facilities for visual and performing arts programs for individuals with disabilities. The Corporations use of the County Facilities shall be subject to and in accordance with: (i) the terms and conditions of this Agreement which may be amended or supplemented from time to time upon the mutual written agreement of the County or Department Director/designee and Arts4All Florida Inc.; (ii) the County's rules, regulations and policies governing the use of the County's Facilities; (iii) any grant or bond obligations pertaining to the use of any of the County's Facilities; and (iv) all applicable local, state and federal laws.
- C. As budget permits, dedicate up to three (3) full time employees to conduct visual and performing arts programming and program promotional support.

6. Insurance:

A. The Corporation shall maintain, on a primary basis and at its sole expense, at all times during the term of this Agreement, the coverages and limits, including endorsements, described herein. The requirements contained herein, as well as County's review or acceptance of insurance maintained by the Corporation, are not intended to and shall not in any manner limit or qualify the liabilities or obligations assumed by the Corporation under this Agreement. The Corporation agrees to provide County a Certificate(s) of Insurance evidencing that all coverages, limits and endorsements required herein are maintained and in full force and effect. It shall be the responsibility of the Corporation to provide initial evidence of the required minimum amounts of insurance coverage to:

Palm Beach County c/o JDi Data Corporation 100 W. Cypress Creek Road, Suite 1052 Fort Lauderdale, FL 33309

- B. <u>Commercial General Liability:</u> Corporation shall maintain Commercial General Liability at a limit of liability not less than \$1,000,000 Each Occurrence, and shall include participant liability Coverage shall not contain any endorsement excluding Contractual Liability or Cross Liability unless granted in writing by County's Risk Management Department. Corporation shall provide this coverage on a primary basis.
- C. <u>Worker's Compensation Insurance & Employer's Liability:</u> Corporation shall maintain Worker's Compensation and Employers Liability in accordance with Florida Statute Chapter 440.
- D. <u>Additional Insured</u>: Except as to Business Auto, Workers' Compensation and Employer's Liability (and Professional Liability, when applicable) the Certificate(s) of Insurance shall clearly confirm that coverage required by

- this Agreement has been endorsed to include County as Additional Insured. As such, said Certificate(s) shall specifically include: "Palm Beach County, a Political Subdivision of the State of Florida, its Officers, Employees, and Agents."
- E. Waiver of Subrogation: Corporation hereby waives any and all rights of Subrogation against the County, its officers, employees and agents for each required policy. When required by the insurer, or should a policy condition not permit an insured to enter into a pre-loss agreement to waive subrogation without an endorsement, then Corporation shall notify the insurer and request the policy be endorsed with a Waiver of Transfer of Rights of Recovery Against Others, or its equivalent. This Waiver of Subrogation requirement shall not apply to any policy which includes a condition to the policy specifically prohibiting such an endorsement or voids coverage should Corporation enter into such an agreement on a pre-loss basis.
- F. Certificate of Insurance: Within forty-eight (48) hours of the County's request to do so, the Corporation shall deliver to the County via the Insurance Company/Agent a signed Certificate(s) of Insurance evidencing that all types and amounts of insurance coverages required by this Contract have been obtained and are in full force and effect. During the term of the Contract and prior to each subsequent renewal thereof, the Corporation shall provide this evidence to the County's representative, prior to the expiration date of each and every insurance required herein. Said Certificate(s) of Insurance shall, to the extent allowable by the insurer, include a minimum thirty (30) day endeavor to notify due to cancellation (10 days for nonpayment of premium) or non-renewal of coverage.
- G. <u>Umbrella or Excess Liability</u>: If necessary, Corporation may satisfy the minimum limits required above for Commercial General Liability, Business Auto Liability, and Employer's Liability coverage under Umbrella or Excess Liability. The Umbrella or Excess Liability shall have an Aggregate limit not less than the highest "Each Occurrence" limit for Commercial General Liability, Business Auto Liability, or Employer's Liability. The County shall be specifically endorsed as an "Additional Insured" on the Umbrella or Excess Liability, unless the Certificate of Insurance notes the Umbrella or Excess Liability provides coverage on a "Follow-Form" basis.
- H. Right to Revise or Reject: County, by and through its Risk Management Department, in cooperation with the contracting/monitoring department, reserves the right to review, modify, reject, or accept any required policies of insurance, including limits, coverage, or endorsements, herein from time to time throughout the term of this Agreement. County reserves the right,

but not the obligation, to review and reject any insurer providing coverage because of its poor financial condition or failure to operate legally.

- 7. <u>Indemnification</u>: Corporation shall protect, defend, reimburse, indemnify and hold County, its agents, employees and elected officers harmless from and against all claims, liability, expense, loss, cost, damages, or causes of action of every kind or character, including attorney's fees and costs, whether at trial or appellate levels or otherwise, arising during and as a result of their performance of the terms of this Agreement or due to the acts or omissions of Corporation.
- 8. <u>Default</u>: The parties agree that, in the event either party is in default of its obligations under this Agreement, the non-defaulting party shall provide to the defaulting party thirty (30) days written notice to cure the default. In the event the defaulting party fails to cure the default within the thirty (30) day cure period, the non-defaulting party shall be entitled to seek any remedy available to it at law or equity, including, but not limited to, the right to terminate this Agreement and seek damages, if any.
- 9. <u>Term</u>: The term of this Agreement shall be for a period of three (3) years and shall be automatically renewed annually, unless either party provides a written notice of intent to terminate the agreement to the other party thirty (30) days in advance.
- 10. <u>Availability of Funds</u>: Each party's performance and obligations under this Agreement shall be contingent upon an annual budgetary appropriation by its respective governing body for subsequent fiscal years.
- 11. <u>Notice</u>: All notices required in this Agreement are to be hand delivered or sent by certified mail, return receipt requested.

IF TO COUNTY:

Palm Beach County Department of Parks and Recreation Attn: Director of Parks and Recreation 2700 Sixth Avenue South Lake Worth, Florida 33461

IF TO CORPORATION:

Executive Director Arts4All Florida, Inc. 4202 E. Fowler Avenue EDU 105 Tampa, FL 33620

12. <u>Public Entity Crimes</u>: As provided in F.S. 287.132-133, by entering into this Agreement or performing any work in furtherance hereof, Corporation certifies that it, its affiliates, suppliers, subcontractors and Contractors who will perform hereunder, have not been placed on the convicted vendor list maintained by the State of Florida Department of Management Services within the 36 months

immediately preceding the date hereof. This notice is required by F.S. 287.133(3) (a).

13. Criminal History Records Check: The Corporation's employees or subcontractors of the Corporation and employees of subcontractors shall comply with Palm Beach County Code, Section 2-371 – 2-377, the Palm Beach County Criminal History Records Check Ordinance ("Ordinance"), for unescorted access to critical facilities ("Criminal Facilities") or criminal justice information facilities ("CJI Facilities") as identified in Resolution R2003-1274, as amended. The Corporation is solely responsible for the financial, schedule, and/or staffing implications of this Ordinance. Further, the Corporation acknowledges that its Contract price includes any and all direct or indirect costs associated with compliance with this Ordinance, except for the applicable FDLE/FBI fees that shall be paid by the County.

This Contract may include sites and/or buildings which have been designated as either "critical facilities" or "criminal justice information facilities" pursuant to the Ordinance and Resolution R2003-1274, as amended. County staff representing the County department will contact the Corporation(s) and provide specific instructions for meeting the requirements of this Ordinance. Individuals passing the background check will be issued a badge. The Corporation shall make every effort to collect the badges of its employees and its subcontractors' employees upon conclusion of the contract and return them to the County. If the Corporation or its subcontractor(s) terminates an employee who has been issued a badge, the Corporation must notify the County within two (2) hours. At the time of termination, the Corporation shall retrieve the badge and shall return it to the County in a timely manner.

The County reserves the right to suspend the Corporation if the Corporation 1) does not comply with the requirements of County Code Section 2-371-2-377, as amended; 2) does not contact the County regarding a terminated Corporation employee or subcontractor employee within the stated time; or 3) fails to make a good faith effort in attempting to comply with the badge retrieval policy.

- 14. Regulation: Licensing Requirements: Corporation shall comply with all laws, ordinances and regulations applicable to the services contemplated herein, to include those applicable to conflict of interest and collusion. Corporation is presumed to be familiar with all federal, state, and local laws, ordinances, codes and regulations that may in any way affect the services offered.
- 15. <u>Nondiscrimination</u>: The County is committed to assuring equal opportunity in the award of contracts and complies with all laws prohibiting discrimination. Pursuant

to Palm Beach County Resolution R2017-1770, as may be amended, the Corporation warrants and represents that throughout the term of the Contract, including any renewals thereof, if applicable, all of its employees are treated equally during employment without regard to race, color, national origin, religion, ancestry, sex, age, familial status, marital status, sexual orientation, gender identity or expression, disability, or genetic information. Failure to meet this requirement shall be considered default of the Contract.

- 16. <u>Severability</u>: If any term or provision of this Agreement, or the application thereof to any person or circumstance, shall to any extent be held invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision, to any person or circumstance other than those as to which it is held invalid or unenforceable, shall not be affected, and every other term and provision of this Agreement shall be deemed valid and enforceable to the extent permitted by law.
- 17. <u>Termination</u>: Notwithstanding any provision of this Agreement to the contrary, this Agreement may be terminated, in whole or in part, by either party, with or without cause, upon thirty (30) days written notice to the other party. Upon termination of this Agreement, any and all permanent improvements or additions made by Corporation to CMAA Premises shall remain the property of the County. Supplies and equipment either donated by Corporation or purchased with Corporation funds are considered County property and shall remain with the County.
- 18. <u>Dispute Resolution</u>: In the event an issue arises which cannot be resolved between Corporation and the County's Director of Recreation Services regarding the use or availability of a County Facility, the dispute shall be referred to the Executive Director of Arts4All Florida, Inc. and the Director of the Department who shall both make a good faith effort to resolve the dispute.
- 19. Entirety of Agreement: County and Corporation agree that this Agreement sets forth the entire agreement between the parties, and that there are no promises or understandings other than those stated herein. None of the provisions, terms and conditions contained in this Agreement may be added to, modified, superseded or otherwise altered, except by written instrument executed by the parties hereto.
- 20. Access and Audits: If applicable, should any portion of the payments made to Corporation include Corporation's charges, expenses, and costs incurred in estimating and performing the services to be performed hereunder, Corporation will maintain adequate records to justify all such charges, expenses, and costs for at least three (3) years after the expiration or termination of this Agreement. The County shall have access to all such books, records, and documents for the purpose of inspection or audit during normal business hours at Corporation's place of business.

Palm Beach County has established the Office of the Inspector General in Palm Beach County Code, Section 2-421 - 2-440, as may be amended. The Inspector General's authority includes but is not limited to the power to review past, present and proposed County contracts, transactions, accounts and records, to require the production of records, and to audit, investigate, monitor, and inspect the activities of the Corporation, its officers, agents, employees, and lobbyists in order to ensure compliance with contract requirements and detect corruption and fraud.

Failure to cooperate with the Inspector General or interfering with or impeding any investigation shall be in violation of Palm Beach County Code, Section 2-421 - 2-440, and punished pursuant to Section 125.69, Florida Statutes, in the same manner as a second degree misdemeanor.

- 21. <u>Independent Contractor</u>: The Corporation is, and shall be, in the performance of provisions pursuant to this Agreement, an Independent Contractor, and not an employee, agent, or servant of the County. The Corporation does not have the authority to bind the County in any promise, agreement or representation other than specifically provided for in this Agreement. The County shall have no contractual obligation to any person or entity retained or engaged by the Corporation to perform any services pursuant to this Agreement. Any disputes, claims, or liability that may arise as a result of the Corporation's procurement of such services is solely the responsibility of the Corporation and the Corporation hereby holds the County harmless for same to the extent permitted by law.
- 22. <u>No Third Party Beneficiaries</u>: No provision of this Agreement is intended to, or shall be construed to, create any third party beneficiary or to provide any rights to any person or entity not a party to this Agreement, including but not limited to any citizen or employees of the County and/or Corporation.
- 23. Remedies: This Agreement shall be governed by the laws of the State of Florida. Any legal action necessary to enforce the Agreement will be held in a court of competent jurisdiction located in Palm Beach County, Florida. No remedy herein conferred upon any party is intended to be exclusive of any other remedy, and each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity, by statute or otherwise. No single or partial exercise by any party of any right, power, or remedy hereunder shall preclude any other or further exercise thereof.
- 24. Public Records: Notwithstanding anything contained herein, as provided under Section 119.0701, F.S., if the Corporation: (i) provides a service; and (ii) acts on behalf of the County as provided under Section 119.011(2) F.S., the Corporation shall comply with the requirements of Section 119.0701, Florida Statutes, as it may be amended from time to time the Corporation is specifically required to:
 - A. Keep and maintain public records required by the County to perform services as provided under this Contract

- B. Upon request from the County's Custodian of Public Records, provide the County with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119 or as otherwise provided by law. The Corporation further agrees that all fees, charges and expenses shall be determined in accordance with Palm Beach County PPM CW-F-002, Fees Associated with Public Records Requests, as it may be amended or replaced from time to time
- C. Ensure that public records that are exempt, or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the Contract, if the Corporation does not transfer the records to the public agency
- D. Upon completion of the Contract the Corporation shall transfer, at no cost to the County, all public records in possession of the Corporation unless notified by County's representative/liaison, on behalf of the County's Custodian of Public Records, to keep and maintain public records required by the County to perform the service. If the Corporation transfers all public records to the County upon completion of the Contract, the Corporation shall destroy any duplicate public records that are exempt, or confidential and exempt from public records disclosure requirements. If the Corporation keeps and maintains public records upon completion of the Contract, the Corporation shall meet all applicable requirements for retaining public records. All records stored electronically by the Corporation must be provided to County, upon request of the County's Custodian of Public Records, in a format that is compatible with the information technology systems of County, at no cost to County.

Failure of the Corporation to comply with the requirements of this article shall be a material breach of this Contract. County shall have the right to exercise any and all remedies available to it, including but not limited to, the right to terminate for cause. Corporation acknowledges that it has familiarized itself with the requirements of Chapter 119, F.S., and other requirements of state law applicable to public records not specifically set forth herein.

IF THE CORPORATION HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CORPORATION'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, PLEASE CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT RECORDS REQUEST, PALM BEACH COUNTY PUBLIC AFFAIRS DEPARTMENT, 301 N.

OLIVE AVENUE, WEST PALM BEACH, FL 33401, BY E-MAIL AT RECORDSREQUEST@PBCGOV.ORG OR BY TELEPHONE AT 561-355-6680.

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IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed on the day and year first above written.

ATTEST: Sharon R. Bock Clerk & Comptroller	PALM BEACH COUNTY, FLORIDA, BY ITS BOARD OF COUNTY COMMISSIONERS		
By: Deputy Clerk	By: Mack Bernard, Mayor		
WITNESSES:	Arts4All FLORIDA, INC.		
By: Dee Miller Dee Miller	By: <u>Alaoliq</u> Signature Director Executive Director		
APPROVED AS TO FORM AND LEGAL SUFFICIENCY By: County Attorney	APPROVED AS TO TERMS AND CONDITIONS By: Director, Parks & Recreation Dept		

EXHIBIT "A"

DESCRIPTION OF "PREMISES"

The Murray, Meyer & Rachelle Grodetsky Family Foundation Athletic Center

16,775 square feet (entire building)

Dimensions: 104' (stage to concession) $x\ 80'$ (bleachers included)

Concession Room Accessible restrooms Accessible Changing room

Fountains Country Club Recreation Center

2,200 square feet Meeting/Social Activities Room and Catering Kitchen Accessible Restrooms

The Gleneagles Country Club Aquatic Center

9,760 square feet 178,000 gallon swimming pool Depths from 3'6" to 7'

Arts Center & Administration Building

8,984 square feet

Club Managers Association of America Art Gallery: 785 square feet

Training Room: 583 square feet **Creative Arts Room:** 583 square feet **Pottery Room:** 584 square feet

Joseph E. Biben Computer Laboratory: 518 square feet

Staff Work Room: Occupancy 21 people Staff Conference Room: Occupancy 30 people

Staff Offices: All offices are rated for two people, except offices 1, 2, 3, 9 and 10.

Located in John Prince Park on 8 acres of land

92 parking spaces (14 Handicap Spaces)