

**CITY OF TEMPE
CHILDSPLAY, INC. - PERFORMANCE AGREEMENT
Contract No. C2016-xx**

This Performance Agreement (“Agreement”) is entered into as of January 14, 2016 (the “Effective Date”), by and between Childsplay, Inc., an Arizona non-profit corporation, (“Childsplay”), and the City of Tempe, an Arizona municipal corporation (“City”). Childsplay and the City may be referred to jointly as the “Parties”, and each separately as a “Party”.

RECITALS

- A. The City and Childsplay are parties to certain agreements, including the Development and Disposition Agreement, dated March 2, 2006, as amended (C2006-20a, C2006-60C), and to a Settlement Agreement (C2006-60B);
- B. Childsplay is recognized as an integral component of the Tempe arts community and is committed to the cultivation of performance-based art for the benefit of young people in Tempe and the surrounding community, and is nationally renowned for contributing to the arts;
- C. The City of Tempe and Childsplay are committed to making the arts accessible to Tempe youth, to facilitating the provision of a variety of free or reduced-rate community arts events, to introducing new arts initiatives to benefit Tempe youth and the public, and to providing other public benefits to promote and encourage the arts in Tempe; and,
- D. In keeping with the Parties’ contributions toward performance arts programming, the Parties desire to enter into an Agreement for the provision of such programming for the students of Tempe schools, under the terms and for the consideration set forth herein.

AGREEMENT

1. Performances. Childsplay shall provide one thousand (1,000) free tickets for school performances in Tempe elementary schools each year, for ten (10) years and five (5) months. Tickets are valued at \$20 per student. Performances shall be scheduled at least two (2) times per year coordinated with the City and Childsplay. Childsplay hereby agrees to work with the City to coordinate dates that work for the Tempe Elementary schools.

2. Fee. In consideration for the provision of performance as set forth herein, the fee for the entire ten (10) year and five (5) months term is Two Hundred Thousand (\$200,000) dollars, which shall be payable by the City to Childsplay, immediately upon the effective date of this Agreement.

3. Term. The term of this Agreement will begin on the date indicated herein and end no later than June 30, 2026, at which time the obligation to provide the free tickets under this Agreement will automatically expire, unless otherwise agreed to by the Parties in writing. This Agreement may be terminated earlier by either Party upon thirty (30) days’ prior written notice to the other Party. In the event of termination by the City, Childsplay agrees to refund the fee for

the remaining term of the Agreement. Calculated on a pro-rata basis, with the total fee refunded to the City within one hundred twenty (120) days of the termination date.

4. Default. If either Party fails to comply with or observe any other provision of this Agreement, in addition to any other remedy that may be available to the non-defaulting Party, whether at law or in equity, either Party may terminate this Agreement upon providing writing notice to the other as set forth herein. The defaulting Party shall have thirty (30) days from receipt of such notice to cure any default. In the event of default on the part of Childsplay, the fee for the remaining Term of the Agreement shall be refunded to the City calculated on a pro-rata basis, as set forth in Section 4 herein, with the total fee refunded to the City within sixty (60) days of the termination date.

5. Interpretation. This Agreement constitutes the entire agreement and understanding of the parties with respect to its subject matter. No prior or contemporaneous agreement or understanding will be effective. This Agreement may not be modified or amended except by written instrument signed by both parties. This Agreement shall be governed by the laws of Arizona.

6. Authority. The individual signing below on behalf of City and Childsplay hereby represents and warrants that he/she is duly authorized to execute and deliver this Agreement on behalf of City and Childsplay and that this Agreement is binding upon City and Childsplay in accordance with its terms.

7. Miscellaneous Provisions.

- (a) Nondiscrimination. The Parties agree to comply with all applicable city, state and federal laws, regulations and executive orders governing equal employment opportunity, immigration, nondiscrimination, including the American Disabilities Act, as amended from time to time, and agree to fully abide by the Tempe City Code, Sec. 2-600, *et seq.*, Human Relations.
- (b) Conflict of Interest. This Agreement may be cancelled pursuant to the provisions of A.R.S. § 38-511.
- (c) Notice. All notices given or to be given under this Agreement shall be in writing, by certified mail return receipt requested, and shall be addressed to each Party at the address provided herein or as amended. Notices shall be addressed as follows:

If to Childsplay:
Childsplay, Inc.
Attn: Managing Director
900 S. Mitchell Drive
Tempe, Arizona 85281

If to City:

City of Tempe
Attn: City Manager
31 East 5th Street
Tempe, Arizona 85281

IN WITNESS WHEREOF, Childsplay and City have executed this Agreement as of the date first above written.

CHILDSPLAY, Inc., an Arizona non-profit corporation

Signature: _____
Printed Name: _____
Title: _____

CITY OF TEMPE, an Arizona municipal corporation

Signature: _____
Mark W. Mitchell, Mayor

ATTEST:

Brigitta M. Kuiper, City Clerk

APPROVED AS TO FORM:

Judith R. Baumann, City Attorney