

**COOPERATIVE AGREEMENT  
BY AND BETWEEN  
THE CITY OF MERCER ISLAND  
AND  
THE MERCER ISLAND YOUTH AND FAMILY SERVICES FOUNDATION**

This Cooperative Agreement (“Agreement”) is made this \_\_\_\_ of \_\_\_\_\_, 2022 by and between City of Mercer Island, Washington (“City”), a municipal corporation of the State of Washington, and the Mercer Island Youth and Family Services Foundation (“Foundation”), a Washington nonprofit corporation, and is intended to set forth policies and procedures that will govern the parties’ cooperative relationship and contribute to the coordination of their activities.

WHEREAS the Youth and Family Services Department (“YFS Department”) of the City of Mercer Island is dedicated to helping Islanders grow, thrive, and contribute to the community; and

WHEREAS the Foundation was organized and founded in 1989 to support and enhance the work of the YFS Department through fundraising efforts; and

WHEREAS the Foundation exists to raise and manage private financial resources to fund the mission and priorities of the YFS Department and to support its vision of a healthy community for all youth, adults, and families on Mercer Island; and

WHEREAS the Foundation is dedicated to funding the work of the human services professionals in YFS Department who strengthen the social and emotional wellbeing of Islanders of all ages, abilities, and backgrounds by providing assistance that is tailored to specific needs and circumstances; and

WHEREAS the Foundation’s articles of incorporation state that the Foundation is a separately incorporated 501(c)(3) organization and is responsible for identifying and nurturing relationships with potential donors of the YFS Department; soliciting cash, securities, real and intellectual property, and other private resources for the support of the YFS Department; and acknowledging and stewarding such gifts in accordance with donor intent and its fiduciary responsibilities; and

WHEREAS in connection with its fund-raising and asset-management activities, the Foundation retains personnel experienced in planning for and managing private contributions and works with the YFS Department, which may assist and advise in such activities.

NOW THEREFORE, the parties agree as follows:

- 1. Foundation Governance.** The Mercer Island Youth and Family Services Foundation Board of Directors is responsible for overseeing and establishing the priorities and long-term plans of the Foundation and the control and management of all assets of the Foundation, including the prudent management of all gifts consistent with donor intent. The business and affairs of the Foundation are managed by the Board of Directors and its duly elected officers, consistent with its adopted bylaws.
- 2. City Governance.** The City Council of the City of Mercer Island is responsible for overseeing the priorities and long-term plans of the YFS Department. The City Manager of the City of Mercer

Island is responsible for leadership and operations of the YFS Department and execution of the City Council's priorities and plans.

### **3. The Foundation's Relationship to the City**

- 3.1 The Foundation is a separately established Washington nonprofit corporation and a 501(c)(3) organization created to raise, manage, distribute, and steward private resources to support the various missions of the YFS Department. The Foundation operates independently of the City, and oversight of all aspects of its operations is based on a comprehensive set of bylaws and policies that address the Board's fiduciary responsibilities, including the obligations of Board members to comply with ethical guidelines and policies. The City plays no role in the governance or decision-making of the Foundation's Board or the operations of the Foundation.
- 3.2 The Foundation is responsible for the employment, compensation, and evaluation of all its employees. The City plays no role in the Foundation's decision-making regarding supervision or compensation of its employees, agents, or volunteers.

### **4. The City's Relationship to the Foundation**

- 4.1 The City Manager (or designee) communicates the City's priorities and long-term plans for the YFS Department, as approved by the City Council, to the Foundation.
- 4.2 The City recognizes that the Foundation is a private corporation with the authority to keep all of its records and data confidential consistent with the law.
- 4.3 The City respects and supports the Foundation's ability to preserve the privacy and confidentiality of donor records.
- 4.4 The Foundation does not receive any funding from the City.
- 4.5 In consideration for Foundation services, the City will provide the Foundation in-kind support as detailed in Section 6.

### **5. Foundation Responsibilities**

- 5.1 **Fundraising.** The Foundation shall use its best efforts to create an environment conducive to fostering levels of private support for the mission and priorities of the YFS Department and, in consultation with the City Manager (or designee), is responsible for planning and executing comprehensive fundraising programs in support of the YFS Department's mission. These programs include annual giving, major gifts, planned gifts, special projects, and campaigns as appropriate. In conducting its fundraising activities, the Foundation shall at all times ensure that such activities respect and support the values and goals of the YFS Department and do not conflict with the mission and purposes of the programs and services offered by the Department.
- 5.2 **Donor Privacy.** The Foundation shall establish and enforce policies to protect donor confidentiality and privacy rights. The Foundation shall not disclose donor records to the City

unless disclosure is directed by the donor as a condition of the donation. The Foundation may share non-personally identifiable, aggregate donor statistics with the City upon request.

- 5.3 **Transfer of Funds.** The Foundation is the primary depository of private gifts and will, at least once per year or on such other schedule as the parties may mutually agree, transfer funds to the City in compliance with applicable laws, City policies, and gift agreements.
- 5.4 **Emergency Assistance Pass-through Funds.** The Foundation shall pass through to the City all funds that have been designated by donors for the Emergency Assistance Program. For purposes of this Agreement, "Emergency Assistance Program" means the funds held by the City in restricted accounts and which are designated for assisting residents with making rent or utility bill payments, food pantry support, and other similar programs.
- 5.5 **Special Campaign Passthrough Funds.** If the Foundation runs a special campaign for YFS Department programming or services, the Foundation shall pass through to the City all funds that have been designated by donors for the special campaign.
- 5.6 **Grants.** If a grant is identified that aligns with YFS Department services or programs but requires a 501(c)(3) organization to apply for the grant, the Foundation and the City Manager (or designee) shall work together to determine eligibility and submit necessary paperwork.

## 6. City Responsibilities.

- 6.1 **Fundraising Event Support.** The City will provide in-kind support as detailed below for the following Foundation Fundraising events:
  - 6.1.1 **Annual Foundation Breakfast.** For the Foundation's annual breakfast fundraiser, the City will:
    - A. Collaborate with the Foundation on current programming and services to highlight needs and successes while maintaining YFS client confidentiality.
    - B. Authorize YFS Department staff who are available to attend the event.
    - C. Promote the event in the month prior to the event through the City's social media and MI Weekly.
    - D. Print twenty 20" x 30" posters to promote the event.
    - E. Allow the use of City-owned A-frame boards for two weeks before the event.
    - F. Book the entire MICEC facility from 12:00 pm the day before the event until 3:00 pm on the day of the event and assign a staff member to be on hand as an Event Host to assist the Foundation during set up, the event, and take down (≈\$6,700 in-kind contribution).
    - G. Prepare the gym for the event by removing bleachers and equipment and laying carpet squares over the gym floor; remove the carpet squares and return the bleachers and equipment to the gym following the event (≈\$500 in-kind contribution).
    - H. Prepare the meeting rooms and dance room for the event by removing tables, chairs, and equipment; return the tables, chairs, and equipment to the meeting rooms and dance room following the event (≈\$200 in-kind contribution).
    - I. Provide custodial services to clean the facility following the event (≈\$400 in-kind contribution).

- J. Provide staff and equipment for traffic management in the North Mercer neighborhood from 6:00 am to 10:00 am (≈\$1,200 in-kind contribution).
- K. Notify the surrounding neighborhood of the day and time of the event and that North Mercer Residential Parking Zone will not be enforced until noon on the day of the event.

6.1.2 **Annual Tree Sales.** For the Foundation’s annual tree sale fundraiser, the City will provide:

- A. Printing of ten 20” x 30” posters to promote and designate the sale area.
- B. Usage of City-owned A-frame boards for the duration of the sales.
- C. Promote the event through the City’s social media and MI Weekly newsletter.

6.2 **Meeting Space.** The City will provide in kind-support to the Foundation by providing meeting space in one of the following meeting rooms at the Mercer Island Community & Event Center (MICEC): 101, 102, 103, 104, or 120 for a Foundation Board meeting each month. These meetings shall be limited to 2 hours and may take place between 7:00 am and 11:00 am on Wednesdays. If prior to 8:00 am, an MIYFS employee must be available and present to open the facility for the meeting. The City will also provide meeting space for the Foundation’s annual meeting up to four hours to be set in advance with the Recreation Facility Supervisor. Additional time or usage may be added at the applicable rate and in line with MICEC usage policies.

6.3 **Data Points.** The City will provide the Foundation with data points of key outputs (such as number of people served) related to counseling and case management programs.

7. **Communications.** The City Manager (or designee) and the Foundation’s Board President shall hold periodic meetings to foster and maintain productive relationships and to ensure open and continuing communications and alignment of priorities.

8. **Foundation Branding.** Consistent with its mission to help advance funding plans in support of the YFS Department, the Foundation uses the name “Mercer Island Youth and Family Services”; however, the Foundation will operate under its own logo and brand and shall not use the YFS Department seal or logo without permission. At no time shall the Foundation promote itself as being a department or office of City government; rather, its marketing and communication materials, including any websites or electronic communications, shall disclose that it is an independent 501(c)(3) organization.

9. **Content Review.** The Foundation shall provide YFS staff a reasonable opportunity to review in advance of publication any content produced by the Foundation regarding YFS programs for factual errors and omissions, but only insofar as the content describes YFS Department programming, services, personnel, or events or other City functions.

## 10. Term and Termination

10.1 This Agreement is effective as of the date last signed by the parties below and shall continue in force and effect until terminated pursuant to Section 10.2 below.

- 10.2 Either party may, upon 90 days' prior written notice to the other, terminate this Agreement without cause. In the event either party defaults in the performance of its obligations and fails to cure the default within a reasonable time after receiving written notice, the other party may terminate this Agreement effective immediately after the time for cure has elapsed.
- 10.3 If the Foundation (a) undergoes a merger or dissolution, or otherwise ceases to exist; (b) ceases to be exempt from federal income tax under 501(c)(3) of the Internal Revenue Code of 1986, as amended; or (c) undergoes a Change in Charitable Purpose or Mission, the Foundation will transfer or convey to the City all of its assets, less any amounts reasonably necessary for winding up the Foundation's business operations. The Foundation shall provide the City with written notice at least 90 days before the effective date of any proposed dissolution or merger, change in organizational form (including 501(c)(3) status), Change in Charitable Purpose or Mission, or the closing of any major transaction affecting the governance and control of the Foundation or its assets. As used in this Agreement, "Change in Charitable Purpose or Mission" means a change in the Foundation's charitable purposes such that fundraising and collecting donations to support the programs, activities, and operations of the Mercer Island Department of Youth and Family Services is no longer the primary purpose or mission of the Foundation.
- 10.4 Property held by the Foundation for purposes of supporting the programs, activities, and operations of the Department may not be diverted from those charitable purposes. Property held by the Foundation at the time of any dissolution, merger, or Change in Charitable Purpose or Mission shall be disposed of only in accordance with the terms of this Agreement.
- 11. Severability and Savings.** If any provision of this Agreement is held to be unenforceable or invalid for any reason, it shall be revised or reformed, if possible, to achieve the intent of the parties, and the balance of the Agreement shall remain in full force and effect.
- 12. No Third-Party Beneficiaries.** The parties expressly do not intend to create any obligation or liability to any third party under this Agreement, nor do they intend to create any rights or promises that are enforceable by any non-party to this Agreement.
- 13. Assignment.** The Foundation may not assign or transfer its rights or responsibilities under this Agreement to any other person or entity without the prior written consent of the City.
- 14. Non-waiver.** No failure on the part of either party to exercise any of its rights under this Agreement, and no delay in exercising any such rights, shall operate as a waiver thereof, nor shall acceptance by a party of a partial or delayed performance of any term of this Agreement operate as a continuing waiver or a waiver of a subsequent breach.
- 15. Governing Law.** The interpretation, construction, and enforcement of this Agreement shall be governed by the laws of the state of Washington, without reference to its choice-of-law rules.
- 16. Dispute Resolution.** In the event that the parties are unable to resolve any dispute regarding the interpretation, performance, or alleged breach of this Agreement, the aggrieved party shall notify the other party in writing of the nature of the dispute and the City Manager and Board President (or their respective designees) shall meet and confer in good faith to reach a mutually agreeable

resolution. If such informal discussions do not resolve the dispute within 30 days of the written notice of the dispute, the parties shall mediate their dispute with an agreed neutral mediator, each party to pay half the costs of the mediator’s services. If the mediation does not successfully resolve the parties’ dispute, either party may seek judicial relief, but only in the courts of King County, Washington. Nothing in this paragraph shall be construed to preclude a party from seeking emergency equitable relief at any time when necessary to prevent irreparable harm. In any judicial action to interpret, construe, or enforce this Agreement, each party shall bear its own litigation costs, including attorney fees and expert witness fees.

**17. Notices.** Any notice given or required under this Agreement will be deemed effective if delivered personally or by express courier service or by electronic mail and addressed to the following:

To the City:                   City of Mercer Island  
  Attention: City Manager  
  9611 SE 36th Street  
  Mercer Island, WA 98040  
  Email: [citymanager@mercerisland.gov](mailto:citymanager@mercerisland.gov)

To the Foundation:       Mercer Island Youth and Family Services Foundation  
  3010 77th Ave SE, Suite 106  
  Mercer Island, WA 98040

**AGREED TO AND ACKNOWLEDGED BY:**

**CITY OF MERCER ISLAND**

**MERCER ISLAND YOUTH & FAMILY SERVICES  
FOUNDATION**

\_\_\_\_\_  
Jessi Bon, City Manager

\_\_\_\_\_  
Laura Oberto, Board President

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

**APPROVED AS TO FORM**

\_\_\_\_\_  
Bio Park, City Attorney

\_\_\_\_\_  
Date