

2015-2025
AGREEMENT BETWEEN THE CITY OF BELLEVUE AND
KIDSQUEST CHILDREN'S MUSEUM

THIS AGREEMENT is entered into this ____ day of _____, 2015, by and between the CITY OF BELLEVUE, a municipal corporation of the State of Washington, hereinafter "the City" and KIDSQUEST CHILDREN'S MUSEUM, a non-profit corporation organized under the laws of the State of Washington, hereinafter "KidsQuest".

WHEREAS, KidsQuest is a non-profit corporation authorized to design, develop, construct and operate a children's museum for the purpose of engaging children in exploration and discovery through exhibits relating to art, science, technology and daily life experience; and

WHEREAS, the City is authorized by state statute to construct and operate museums and to provide by contract for such facilities; and

WHEREAS, KidsQuest and the City previously entered into a Funding Agreement in 2007 which was subsequently amended by agreement of the parties in 2008 whereby the City contributed \$500,000 - \$250,000 of which was dedicated to providing free and reduced cost access to the Museum and its programs to low income families, and \$250,000 of which was utilized to construct new exhibits in its Factoria Mall location; and

WHEREAS, KidsQuest has determined that the existing Museum location at Factoria Mall lacks the space necessary to provide the programs and exhibits sought by the community and as a result has entered into financing arrangements to purchase and improve a building previously housing the Rosalie Whyel Doll Museum for purposes of moving KidsQuest Children's Museum to that location (hereafter "the Project"); and

WHEREAS, KidsQuest has embarked on a campaign to obtain substantial private contributions for the purpose of designing, developing, constructing and operating expanded facilities, including new exhibits constituting the Project; and

WHEREAS, by relocating and expanding its facilities, KidsQuest will increase public accessibility to arts, science and technology geared

towards children and contribute to the attractiveness and economic vitality of the City of Bellevue; and

WHEREAS, the parties agree that the City's four investment principles for requests from cultural arts organizations applicable to this Agreement are as follows:

- a. The organization must have a sustainable long-term financial model, including strong private sector financial commitment.
- b. Any agreement for funding must clearly define public benefit to be received in exchange for investment.
- c. Any agreement for funding should provide for City involvement in financial oversight.
- d. The City's funding must be an investment in a facility, or for support of the operation of the facility. The funds cannot fund fund-raising activities; and

WHEREAS, the City has determined that the provision of an expanded children's museum in the City is in the public interest and will provide public benefit, and therefore has designated City funds to ensure continued and increased access to the museum and its programs by low income families, all subject to certain agreements by KidsQuest which will assure that all funds are expended and the Children's Museum is operated consistently with the public interest and for the benefit of the public; and

WHEREAS, all conditions of the current Amended Funding Agreement, which expires in October 2016, regarding designation and use of the funds have been met by KidsQuest, with the exception of the requirement that the Museum operate in its current location through that time; and

WHEREAS, by this Agreement the parties intend to supersede and replace the prior Amended Funding Agreement dated 2007 and herein set forth the understandings and conditions that will govern KidsQuest's use of funds provided by the City to ensure such funds are used in a manner consistent with the use of such public funds; now, therefore,

IN CONSIDERATION OF THE MUTUAL PROMISES AND CONDITIONS CONTAINED HEREIN, THE PARTIES AGREE AS FOLLOWS:

1. City Funds. The City agrees to provide two million dollars (\$2,000,000) hereinafter "the Funds" to KidsQuest subject to the conditions and provisions set forth in this Agreement.
2. Payment and Use of Funds. The Funds shall be used exclusively for the following purpose: Costs incurred by KidsQuest relating to the design, engineering, and construction of the Project and exhibits. Attached hereto as Exhibit "A" are the City's requirements for submittal of reimbursement requests. All Funds shall be expended by 2018. The Funds shall not be used for any other costs, including costs related to marketing or fundraising or other similar costs.
3. Consideration for City Investment. In consideration of the City's investment in the Project, KidsQuest shall be obligated to undertake the following responsibilities:
 - a. Upon completion of the Project, the City's security interest in the exhibits shall be secured by KidsQuest's execution of security instruments under RCW Chapter 62.A "Uniform Commercial Code" in a form to be approved by the City. The identification of, monetary value and lifespan of the exhibits to be so secured shall be agreed upon by the Parties and memorialized in Exhibit B hereto.
 - b. Consistent with Section 11 herein, KidsQuest shall ensure access to its facilities, services and programming by low income, disadvantaged and disabled children through reduced cost or free admission in an amount totaling not less than \$100,000 per year for the duration of this Agreement.
4. Term of Agreement. This Agreement supersedes and replaces the Amended Funding Agreement entered into by and between the City and KidsQuest in 2007 for a period of nine (9) years. The term of this Agreement shall commence upon execution by both parties and shall continue in full force and effect for a period of 20 years from the date of execution.

5. Financial Reporting. KidsQuest shall produce the following quarterly financial data to the City within 60 days of the end of each quarter:

- a. Balance Sheet
- b. Statement of Cash Flows
- c. Profit & Loss Statement (Budget versus Actual)

KidsQuest shall provide the following annual financial data to the City within 120 days of the end of the Museum's fiscal year:

- a. Independent Auditor's Report
- b. Independent Auditor's Management Letter
- c. IRS Form 990 (Return of Organization Exempt from Tax)
- d. Updated three-year projections

The financial reports provided by KidsQuest under this Section shall be in the form currently produced and used by KidsQuest.

6. Maintenance of Records—Inspections. KidsQuest shall maintain records for the Funds in a manner that readily allows for inspection. Such records shall be made available for inspection by representatives of the City during normal business hours upon five (5) days written notice of any inspection request made by the City.
7. Project and Recognition. As currently anticipated, the Project includes several galleries, each providing opportunities for different kinds of play and learning. The Project will include more than twice the square footage, and new multi-sensory hands-on exhibits focused on honoring the rich history of our region. Additional classrooms include a dedicated Arts Studio, a recycle/rebuild Makers Studio, and a multipurpose classroom. Outdoor space will be provided for the first time, including the Sticks and Stones Gallery. Upon completion of the Project, KidsQuest shall officially recognize the Funds by providing signage in a visible location within.
8. Use as a Children's Museum. KidsQuest shall use the property as a children's museum and for purposes

customarily associated with such museums for a period of at least 20 years from the date of issuance of a final certificate of occupancy for the facility.

9. Museum Services. For the duration of this Agreement, KidsQuest will provide services consistent with its Mission as amended from time to time by its Board of Directors. These services may include, but are not limited to, the following activities:
 - a. Operation of the Museum as the primary location for KidsQuest Museum operations and as a museum consistent with national museum standards, open to the public during regular hours, subject to reasonable admission standards.
 - b. Provision of education as a primary function through exhibitions and programs.
 - c. Maintenance and operation of the Museum as a center of learning in the community by provision of professional artistic and educational experiences for people of all ages.
 - d. Presentation of exhibitions and programs to children, families and the general public that will increase their understanding of art, science, culture and heritage as it relates to the community and the world.
 - e. Cooperation with the Bellevue School District in providing, for example, teacher training, student workshops and special tours, and encouragement of extensive visitor participation in interpretive and educational programs through lectures, demonstrations, workshops and similar activities.
 - f. Cooperation with public organizations such as the Bellevue Department of Parks & Community Services, Bellevue College, the Pacific Science Center, Bellevue Convention Center Authority, and the King County Public Library in conducting programs of popular interest.
 - g. Provision of meeting rooms and other public spaces in the Museum for public use when available, for which reasonable fees may be charged.
 - h. Museum programs shall be made available to low income residents of Bellevue free or at reduced rates. For purposes of this section "low income person" means any person living in a household having a household

income that does not exceed eighty percent (80%) of the median income for the standard metropolitan statistical area in which Bellevue is located. The Museum shall request verification of income level through a scholarship application, or through documentation of other income-qualified programs such as AFDC, free and reduced price school meals, or food stamps. The Museum shall maintain records of the services provided to low income recipients and make this information available to the City on request.

10. Access to Public. The exhibition and interactive spaces of the Museum shall be open during normal museum hours each week, except for the observance of major holidays. KidsQuest may restrict access as is necessary for security purposes and may close portions of the Museum, ancillary services, and as is necessary for installation or repairs from time to time.
11. Admission Fees. KidsQuest will ensure accessibility to the Museum. The fees charged for regular admission to the Museum shall be reasonable and comparable to the fees charged by similar children's museums in similar circumstances. The admission fee schedule shall make provisions for a reduction or waiver of regular admission fees and fees for special events and exhibitions for low income residents, children, and students. The Museum shall be made available to low income residents of Bellevue and the State of Washington by providing reduced admission to all people presenting an EBT (Electronic Benefits Transfer) as an ongoing benefit to the public.
12. Amortization of Security Interest. In acknowledgement of the limited life of the exhibits to be constructed, the City's security interest in those exhibits shall be released on a schedule consistent with the identified useful life of the exhibits as identified in Exhibit B herein.
13. Compliance with Laws. KidsQuest shall comply with all zoning, land use, environmental and other laws applicable to the construction and operation of the Museum.
14. Independent Contractor. In providing services under this Agreement, KidsQuest is an independent contractor, and

shall determine the means of accomplishing the results contemplated by this Agreement. Neither KidsQuest nor its officers, agents or employees are employees of the City of Bellevue for any purpose. KidsQuest shall comply with all applicable federal and state laws and regulations regarding employment, minimum wages and hours, and discrimination in employment. KidsQuest is responsible for determining the compensation of its employees, for payment of such compensation, and for all federal and/or state tax, industrial insurance, and Social Security liability that may result from the performance of and compensation for these services. KidsQuest and its officers, agents and employees shall make no claim of career service or civil service rights which may accrue to a City of Bellevue employee under state or local law. The City assumes no responsibility for the payment of any compensation, wages, benefits, or taxes by, or on behalf of KidsQuest, its employees and/or others by reason of this Agreement.

15. Mutual Indemnity and Hold Harmless.

- a. To the extent allowed by law, KidsQuest shall protect, defend, indemnify and save harmless the City and its officers, agents, and employees from and against any and all claims, costs and/or losses whatsoever occurring or resulting from the negligent or intentional acts or omissions of KidsQuest and its officers, agents and employees or other suppliers in connection with or support of the performance of this agreement. KidsQuest shall also defend, indemnify and save harmless the City and its officers, agents and employees from any and against any and all claims made by KidsQuest's employees arising from their employment with KidsQuest.
- b. To the extent allowed by law, the City shall protect, defend, indemnify and save harmless KidsQuest and its officers, agents, and employees from and against any and all claims, costs and/or losses whatsoever occurring or resulting from the negligent or intentional acts or omissions of the City and its officers, agents and employees or other suppliers in connection with or in support of the performance of this agreement.

16. Insurance Requirements. KidsQuest shall procure and maintain for the duration of this Agreement insurance as

described on Exhibit "C" labeled as "Insurance Requirements" attached hereto.

17. No Future Support. The City makes no commitment and assumes no obligation for the support of KidsQuest's activities except as set forth in this Agreement.
18. Cessation of Museum Services. KidsQuest and the City agree that, should KidsQuest ever cease to provide the museum services contemplated herein, a primary objective of both parties would be to use the exhibitions developed for a suitable purpose. Accordingly, should KidsQuest at any time during the 20 year period under Section 4 hereof cease to operate the Museum as a children's museum as herein provided for more than 30 consecutive days for reasons other than *force majeure* or construction activities for Museum expansion or on the Museum property, the City may, at its sole discretion, declare the Museum to be in default and take one or more of the following actions:
 - a. The City may take action to ensure that the Museum assets are used for a public purpose, commensurate with the City's investment therein and the duration of time that Museum services have been provided to the public. KidsQuest will cooperate with the City in ensuring that this public purpose requirement is met;
19. Notices. Whenever this Agreement provides for notice to be provided by one party to another, such notice shall be in writing and directed to the City Attorney and the Executive Director of KidsQuest at the addresses set forth below.

If to City:

Contact: Lori M. Riordan, Bellevue City Attorney's Office
Address: P. O. Box 90012
Address: Bellevue, WA 98009-9012
Telephone: (425)452-6829
Facsimile: (425)452-7256

If to KidsQuest Children's Museum:

Contact: Putter Bert, KidsQuest Children's Museum
Address: 4091 Factoria Mall SE

Address: Bellevue, WA 98006
Telephone: (425)637-8100
Facsimile: (425) 747-7178

20. Governing Law and Venue. This Agreement will be construed and interpreted in accordance with the laws of the State of Washington. Any mediation, arbitration or legal proceeding that arises out of or in connection with this Agreement will be initiated and maintained in Seattle, Washington. Each party consents to jurisdiction and venue in such courts and waives the right to claim that any such court is an inconvenient forum.
21. Entire Agreement and Modifications. This Agreement constitutes all of the understandings and agreements of any nature existing between the parties with respect to the City's commitment to provide, and KidsQuest use of, the Funds. Unless otherwise provided for herein, no amendments, changes, alterations or modifications of this Agreement shall be effective unless they are in writing executed by the City and KidsQuest.

KidsQuest,
a non-profit corporation

City of Bellevue,
a municipal corporation

By _____
Putter Bert,
President and CEO

By _____
Kate Berens,
Deputy City Manager

By _____
Mike Hubbard,
Board of Trustees
Co –Chair

Approved as to Form:

By _____
Lori M. Riordan,
City Attorney