

2016-2026
AGREEMENT BETWEEN THE CITY OF BELLEVUE AND
MUSIC WORKS NORTHWEST

THIS AGREEMENT is entered into this ____ day of _____, 2016, by and between the CITY OF BELLEVUE, a municipal corporation of the State of Washington, hereinafter "the City" and MUSIC WORKS NORTHWEST, a non-profit corporation organized under the laws of the State of Washington, hereinafter "Music Works".

WHEREAS, Music Works is a non-profit corporation authorized to design, develop, and operate a community music school for the purpose of providing music lessons, music therapy and public performance experiences for all ages; and

WHEREAS, Music Works owns certain assets such as musical instruments, including concert pianos and a commercial quality sound system utilized in its music lessons, music therapy and public performances; and

WHEREAS, the City has an interest in seeing its citizens of all ages and abilities provided with ample opportunities to experience cultural arts, including musical experiences as participants and audiences; and

WHEREAS, in 2014 Music Works lost its lease on its long-time location to a new tenant and had to find new space within Bellevue in order to continue to provide its services to music students; and

WHEREAS, Music Works has embarked on a campaign to obtain substantial private contributions for the purpose of designing and constructing improvements in a newly leased facility including studios, classrooms, recording facility, sound proofing, and other improvements consistent with operations of a community music school, constituting the "Project"; and

WHEREAS, Music Works has already secured partial funding for this capital project from a number of public and private partners, including substantial funds from the State of Washington, King County's 4Culture, the Eastside Arts Coalition and Residence Inn Marriott; and

WHEREAS, by remodeling its new facilities, Music Works will increase public accessibility to arts especially 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 continued provision of music programs and therapy 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 Music Works programming by low income families and persons with disabilities, all subject to certain agreements by Music Works which will assure that all funds are expended and Music Works is operated consistently with the public interest and for the benefit of the public; therefore,

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

1. City Funds. The City agrees to provide seventy-five thousand dollars (\$75,000) hereinafter "the Funds" to Music Works 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 Music Works relating to the design, engineering, and construction of the Project. Attached hereto as Exhibit "A" are the City's requirements for submittal of reimbursement requests for costs incurred for the Project. All Funds shall

be expended by within three months of the completion of the Project. 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, Music Works shall be obligated to undertake the following responsibilities:
 - a. Upon completion of the Project, the City's security interest in the assets shall be secured by Music Work'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 assets to be so secured shall be agreed upon by the Parties and memorialized in Exhibit "B" hereto.
 - b. Consistent with Sections 9.e and 10 herein, Music Works shall ensure access to its facilities, services and programming by low income, disadvantaged and disabled children, adults and families through reduced fees, scholarships and free admission to performances in an amount totaling not less than \$7,500 per year for the duration of this Agreement.
4. Term and Termination. This Agreement shall be in full force and effect following authorized execution by the parties and continue for a period of ten (10) years from the date of execution. The parties shall have no further obligations under the terms of this Agreement upon expiration of the ten (10) year period.
5. Financial Reporting. Music Works 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)

Music Works shall provide the following annual financial data to the City within 120 days of the end of the school'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 Music Works under this Section shall be in the form currently produced and used by Music Works.

6. Maintenance of Records—Inspections. Music Works 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 tenant improvements to property it has leased at 1331-118th Avenue SE, Unit #400 in Bellevue, Washington. Upon completion of the Project, Music Works shall officially recognize the Funds by providing signage in a visible location within.
8. Use as a Community Music School. Music Works shall use the property as a community music school and for purposes customarily associated with such schools for a period of at least 10 years from the date of issuance of a final certificate of occupancy for the facility.
9. Music School Services. For the duration of this Agreement, Music Works 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. Maintenance and operation of the school as a center of learning in the community by provision of professional artistic, educational and therapeutic experiences for people of all ages and abilities.
 - b. Presentation of programs and public performances to children, families and the general public that will

increase their understanding of music as it relates to the community and the world.

- c. Cooperation with the Bellevue School District in providing, for example, teacher training, student workshops and participation in interpretive and educational programs through lectures, demonstrations, workshops and similar activities.
- d. Cooperation with public organizations such as the Bellevue Department of Parks & Community Services, the Bellevue Arts Program, the Bellevue Downtown Association and Bellevue College in conducting programs of popular interest.
- e. Admission to musical performances 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. Music Works 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. Music Works shall maintain records of the services provided to low income recipients and make this information available to the City on request.

10. Instruction Fees. Music Works will ensure accessibility to its music programs. The fees charged for regular music lessons and music therapy shall be reasonable and comparable to the fees charged by similar music schools in similar circumstances. The instruction and therapy fee schedules shall make provisions for a reduction or waiver of instruction fees and fees for special events and performances for low income residents, children, and students. The music programs including performances 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.

11. Amortization of Security Interest. In acknowledgement of the limited life of the assets, the City's security interest in those assets shall be released on a schedule consistent with the identified useful life of the assets as identified in Exhibit "B" herein. Where deemed necessary by the City, released assets may be replaced by newly acquired assets also subject to the filing of new security instruments.
12. Compliance with Laws. Music Works shall comply with all zoning, land use, environmental and other laws applicable to the construction and operation of a community school.
13. Independent Contractor. In providing services under this Agreement, Music Works is an independent contractor, and shall determine the means of accomplishing the results contemplated by this Agreement. Neither Music Works nor its officers, agents or employees are employees of the City of Bellevue for any purpose. Music Works shall comply with all applicable federal and state laws and regulations regarding employment, minimum wages and hours, and discrimination in employment. Music Works 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. Music Works 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 Music Works, its employees and/or others by reason of this Agreement.
14. Mutual Indemnity and Hold Harmless.
 - a. To the extent allowed by law, Music Works 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 Music Works and its officers, agents and employees or other suppliers in connection with or support of the performance of this agreement. Music Works 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 Music Works' employees arising from their employment with Music Works.

- b. To the extent allowed by law, the City shall protect, defend, indemnify and save harmless Music Works 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.
15. Insurance Requirements. Music Works shall procure and maintain for the duration of this Agreement insurance as described on Exhibit "C" labeled as "Insurance Requirements" attached hereto.
16. No Future Support. The City makes no commitment and assumes no obligation for the support of Music Works' activities except as set forth in this Agreement.
17. Cessation of Music Instruction and Therapy Services. Music Works and the City agree that, should Music Works ever cease to provide the music services contemplated herein, a primary objective of both parties would be to use the secured assets for a suitable purpose. Accordingly, should Music Works at any time during the 10 year period under Section 4 hereof cease to operate Music Works as a community music school as herein provided for more than 30 consecutive days for reasons other than *force majeure* or construction activities for program expansion or on the Music Works leased property, the City may, at its sole discretion, declare Music Works to be in default and take one or more of the following actions:
- a. The City may take action to ensure that the music school assets are used for a public purpose, commensurate with the City's investment therein and the duration of time that music school services have been provided to the public. Music Works will cooperate with the City in ensuring that this public purpose requirement is met;

18. 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 Music Works 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 Music Works Northwest:

Contact: Michel Martel, Executive Director
Address: 1331 118th Avenue SE, Suite 400
Address: Bellevue, WA 98005
Telephone: 425-644-0988

19. 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.
20. 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 Music Works 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 Music Works.

Music Works Northwest,
a non-profit corporation

City of Bellevue,
a municipal corporation

By _____
Michel Martel,
Executive Director

By _____
Kate Berens,
Deputy City Manager

By _____
Jeffrey Ross,
President
Board of Directors

Approved as to Form:

By _____
Lori M. Riordan,
City Attorney

EXHIBIT A
REIMBURSEMENT DOCUMENTATION

Any request for reimbursement shall be reasonably required to be supported by the following documentation:

1. Bills, invoices, contracts, or other writings evidencing the work performed by contractors or subcontractors on the project; and
2. Proof of payment by Music Works Northwest, including but not limited to financial statements, cancelled checks, receipts from contractor or subcontractor; and
3. A written declaration by Music Works Northwest's Executive Director or Financial Officer under penalty of perjury under the law of the State of Washington that the documentation supporting the reimbursement request is true and correct; that the expenses have been incurred in association with the Project; and that the expenses have been paid in full prior to the submission of the reimbursement request.

EXHIBIT B

VALUATION AND LIFE CYCLE OF SECURED ASSETS

[Michel, to complete this document, I will need identifying information about what assets you are proposing to secure with the City's lien—which items you wish to combine to add up to \$75,000 worth of instruments and equipment, sufficient information about the assets, such as brand name, any serial number or numbers associated with the assets, their expected useful lifespan (number of years you would expect to be using them), actual age of the assets and individual value amortized over their lifespan. I can send you the document prepared for the KidsQuest Museum as something of a guide, but since they are securing exhibits in the Museum constructed with City funds, there will be some differences.]

EXHIBIT C

INSURANCE REQUIREMENTS

Music Works Northwest shall procure and maintain, at its cost, the following insurance coverage for the duration of this Agreement insurance against claims for injuries to persons or damages to property which may arise from or in connection with this agreement:

A. Minimum Insurance:

1. **Commercial General Liability:** Coverage limits not less than \$1,000,000 per occurrence / \$2,000,000 annual aggregate, including Stop Gap coverage.
2. **Crime Policy:** Coverage shall include coverage for Employee Dishonesty, Forgery/Theft at a limit not less than \$500,000.
3. **Workers' Compensation** coverage as required by the Industrial Insurance Laws of the State of Washington.
4. **Director's and Officer's Coverage** in limits not less than \$1,000,000.00 per occurrence.

B. Property Insurance:

In addition to the above required coverage, Music Works Northwest shall maintain in full force and effect insurance to protect its property at the estimated value of said property and its contents from All Risks, including Earthquake and Flood, and shall provide the City with evidence that it is maintaining said coverage on a continuing basis throughout the term of this agreement.

C. Self-Insured Retentions

Any self-insured retentions must be declared to and approved by the City.

D. Acceptability of Insurers:

Insurance shall be placed with insurers with a rating acceptable to the City.

E. Verification:

Music Works Northwest shall furnish the City with certificates of insurance required by this clause. The certificates are to be received and approved by the City prior to the effective date of the Agreement and throughout the term of the Agreement. The City reserves the right to require complete, certified copies of all required insurance policies at any time.

F. Cancellation:

Music Works Northwest shall assure that each insurance policy required herein shall provide that coverage shall not be canceled except after thirty (30) days' written notice has been given to the City.