

## **Memorandum of Understanding Regarding a Center for the Arts**

This Memorandum of Understanding Regarding a Center for the Arts ("MOU"), dated this \_\_\_\_ day of \_\_\_\_\_, 2016 ("Effective Date"), is entered by and between the CITY OF MERCER ISLAND, a Washington municipal corporation ("City"), and the MERCER ISLAND CENTER FOR THE ARTS, a Washington nonprofit corporation ("MICA"). The City and MICA are referred to collectively as the "Parties."

### **RECITALS**

A. The City owns property commonly known as the "Recycling Center," "Bicentennial Park" and the "Northwest Native Garden," located generally at the southwest corner of 77<sup>th</sup> Ave. SE and SE 32<sup>nd</sup> St. (northwest corner of Mercerdale Park), all in the City of Mercer Island, Washington.

B. The City and MICA share a long-term mission to nurture, promote, and support high-quality cultural arts activities for the community. MICA's mission is to construct and operate a center for the performing and visual arts and for arts education programs, including theatres, a recital hall, classrooms, a food and beverage venue and other arts and arts education spaces (the "Center"). MICA will be solely responsible for the cost of design, permitting, site development, construction and operation of the Center. The Parties intend that the Center will allow Mercer Island residents and people from throughout the Puget Sound area the opportunity to gather, to converse and create, to celebrate excellence in the lively arts, and to inspire generations of artists, audiences, and students through exceptional live performances, special events, exhibitions, and educational experiences.

C. Subject to the satisfaction of various conditions precedent, including but not limited to environmental review as set forth in Section 3 below, the Parties desire to enter into an Agreement to Lease Subject to Certain Conditions Precedent in substantially the form attached hereto and incorporated herein by reference as Exhibit 1 (the "Lease Agreement") to allow MICA to construct and operate the Center on the Premises legally described in Exhibit A to the Lease Agreement (the "Premises").

D. This MOU is intended to be a binding and enforceable agreement of the Parties establishing the process to be followed by the Parties in order to complete environmental review of the Center. As appropriate following the completion of such environmental review and related appeals and/or appeal periods, the Parties may approve the Lease Agreement at Exhibit 1. Taken together, both this MOU and the Lease Agreement reflect the mutual understandings of the Parties as to the agreements, actions, permits, and/or approvals lawful and necessary to accomplish the financing, permitting, construction, lease, operation, maintenance use and occupancy of the Center (collectively, the "Project"). The Parties intend to actively participate and to work together collaboratively, in good faith and with due diligence, to carry out the

process described herein consistent with this MOU. These undertakings are personal to the Parties, and this MOU shall not be assigned to any other person or entity unless both Parties agree.

## **UNDERSTANDINGS**

1. **Purpose and Term of this MOU Agreement.** This MOU sets forth the environmental review to be completed with respect to the Center. This MOU will terminate upon the earlier of (a) the completion of the environmental review and related appeals and/or appeal periods described in Section 3 herein resulting in an outcome that is not reasonably acceptable to the Parties; or (b) the Effective Date of the Lease Agreement substantially in the form at Exhibit 1; or (c) in the event of a material adverse condition as specified in Section 5 below.

2. **Location.** MICA is proposing to construct and operate the Center on the Premises, which comprises approximately 41,346 square feet of land within the southwest corner of Mercedale Park. Considering that the Premises is located on a portion of public park land owned by the City, the City hereby authorizes MICA to apply for SEPA review at its sole cost, and the City will evaluate this location as part of the SEPA review for the Center as more particularly described in Section 3 below.

3. **Environmental Review.** The Parties acknowledge that the Center and any proposed lease of the Center is subject to environmental review and potential mitigation under the State Environmental Policy Act, Chapter 43.21C RCW, and the state and local implementing rules promulgated thereunder (collectively, "SEPA"). Before the City Council considers approval of the Lease Agreement at Exhibit 1, the City will complete a full SEPA review, including but not limited to a comprehensive traffic impact analysis, identification of adequate parking to meet the City code, and identification of possible mitigating actions, including but not limited to mitigation for impacts to the nearby Category III wetland and its associated buffer and impacts related to any geotechnical hazards. Further, prior to the City Council's consideration of approval of the Lease Agreement, any environmental-related appeals related to the Center must result in an outcome that is reasonably acceptable to the Parties. The City may not take any action within the meaning of SEPA except as authorized by law, and nothing in this MOU is intended to limit the City's exercise of substantive SEPA authority. MICA will reimburse the City for all costs incurred by the City as part of the SEPA review, including but not limited to peer reviews, and MICA will be solely responsible for funding any required mitigation imposed through the City's exercise of substantive SEPA authority.

4. **Approval and Execution of the Lease Agreement.** Provided the environmental review set forth in Section 3 above is satisfied, MICA's President, after approval of the MICA Board of Directors, and the City Manager, after approval of the City Council, may approve and execute the Lease Agreement in substantially the form at Exhibit 1.

5. **Material Adverse Conditions.** In the case of a natural disaster, the discovery and remediation of any hazardous materials on the Premises and unanticipated costs associated

therewith, or a significant, material change in the legal or financial position of MICA such as disincorporation, bankruptcy or insolvency and in the event the Parties are unable to agree in good faith on viable alternatives for addressing any of the foregoing material adverse conditions, this MOU will terminate upon at least thirty (30) days' prior written notice at the option of either Party in the sole discretion of the terminating Party.

6. **Amendments.** The Parties anticipate that the terms of this MOU may need to be modified in the future. MICA's President, after approval of the MICA Board of Directors, and the City Manager, after approval of the City Council, are hereby authorized to approve mutually agreed amendments to this MOU and to supplement this MOU where necessary to improve the administration of this MOU and the collaboration between the Parties. All amendments must be in writing signed by the President of MICA and the City Manager.

7. **Counterparts.** The Parties may execute this MOU in two or more counterparts, which shall, in the aggregate, be signed by both Parties. Each counterpart shall be deemed an original instrument as against any Party who has signed it.

8. **Notices.** All notices and communications between the Parties will be between the persons identified immediately below or such successor persons as may be identified in writing by either Party. Each of the persons designated below and any successors will have authority to bind their respective organizations or will obtain any necessary authority on an ad hoc basis and in a timely manner. Each such notice or other communication which may be or is required to be given under this Agreement shall be in writing and shall be deemed to have been properly given when delivered personally or by email during normal business hours to the party to whom such communication is directed, or three (3) days after being sent by regular mail, to the appropriate Party at the following address:

If to MICA:

Mercer Island Center for the Arts  
P.O. Box 1702  
Mercer Island, WA 98040  
Attn: \_\_\_\_\_  
Email: \_\_\_\_\_

If to the City:

City of Mercer Island  
9611 SE 36<sup>th</sup> St.  
Mercer Island, WA 98040  
Attn: City Manager  
Email: \_\_\_\_\_

Either party may change its address for notices from time to time by notice to the other party given as above provided.

IN WITNESS WHEREOF, both the City and MICA have caused this MOU to be executed by authorized officers as of the date first written above.

CITY OF MERCER ISLAND  
a Washington municipal corporation

By: \_\_\_\_\_  
Title: \_\_\_\_\_

Approved as to form:

By: \_\_\_\_\_  
Title: City Attorney

MERCER ISLAND CENTER FOR THE ARTS  
a Washington nonprofit corporation

By: \_\_\_\_\_  
Title: \_\_\_\_\_