

RESOLUTION NO. R-5327

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF KIRKLAND AUTHORIZING THE CITY MANAGER TO SIGN AN AGREEMENT BETWEEN YOUTH EASTSIDE SERVICES AND THE CITY OF KIRKLAND REGARDING THE USE AND OCCUPANCY OF THE FORBES HOUSE LOCATED AT JUANITA BEACH PARK.

1 WHEREAS, The City of Kirkland recognizes the nature and quality  
2 of the services performed by Youth Eastside Services and further  
3 recognizes the City's need for such service to be available to the City  
4 and its residents; and

5  
6 WHEREAS, Youth Eastside Services ("YES") is organized for a  
7 express purpose of providing mental health counseling services for  
8 anxiety, depression, suicide and other concerns; and

9  
10 WHEREAS, both parties agree that the use of the Forbes House  
11 makes access to YES services more accessible to the City and its  
12 residents, and thereby fulfills an important public purpose; and

13  
14 WHEREAS, both parties agree that it would be in the best  
15 interests of the City, as Landlord, and YES, as Tenant, for YES to lease  
16 and have exclusive operational control of the top two floors of the  
17 Forbes House; and

18  
19 WHEREAS, both parties intend that YES occupy the Forbes  
20 House for the purpose of providing direct services to patients; and

21  
22 WHEREAS, the parties hereto desire to document the terms and  
23 conditions they have agreed upon with respect to the use and  
24 occupancy of the Forbes House.

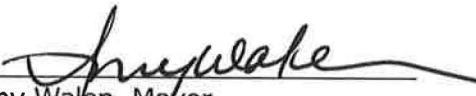
25  
26 NOW, THEREFORE, be it resolved by the City Council of the City  
27 of Kirkland as follows:

28  
29 Section 1. The City Manager is authorized to execute on behalf  
30 of the City the agreement substantially similar to that attached as Exhibit  
31 "A", which is entitled "Lease Agreement Between the City of Kirkland,  
32 Washington and Youth Eastside Services For the Use and Occupancy of  
33 the Forbes House at Juanita Beach Park."

34  
35 Passed by majority vote of the Kirkland City Council in open  
36 meeting this 6<sup>th</sup> day of August, 2018.

37

Signed in authentication thereof on the 6<sup>th</sup> day of August, 2018.

  
\_\_\_\_\_  
Amy Walen, Mayor

Attest:

  
\_\_\_\_\_  
Kathi Anderson, City Clerk

# LEASE AGREEMENT

Between The City of Kirkland

and

Youth Eastside Services

for

The Use and Occupancy of

The Forbes House

at Juanita Beach Park

September 1, 2018 – August 31, 2028



**AGREEMENT BY AND BETWEEN THE CITY OF KIRKLAND, WASHINGTON  
AND YOUTH EASTSIDE SERVICES**

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THIS USE AND OCCUPANCY AGREEMENT is dated as of, September 1, 2018 and entered into by and between the CITY OF KIRKLAND (hereinafter referred to as the "City"), a Washington municipal corporation, and the YOUTH EASTSIDE SERVICES (hereinafter referred to as "YES"), a Washington non-profit corporation.

WHEREAS, The City of Kirkland recognizes the nature and quality of the services performed by YES and further recognizes the City's need for such service to be available to the City and its residents; and

WHEREAS, YES is organized for a express purpose of providing mental health counseling services for anxiety, depression, suicide and other concerns; and

WHEREAS, both parties agree that the use of the Forbes House makes access to YES' services more accessible to the City and its residents, and thereby fulfills an important public purpose; and

WHEREAS, both parties agree that it would be in the best interests of the City, as Landlord, and YES, as Tenant, for YES to lease and have exclusive operational control of the top two floors of the Forbes House; and

WHEREAS, both parties intend that YES occupy the Forbes House for the purpose of providing direct services to patients; and

WHEREAS, the parties hereto desire to document the terms and conditions they have agreed upon with respect to the use and occupancy of the Forbes House;

NOW, THEREFORE, in consideration of the mutual undertakings and promises contained herein, and as a direct benefit to the City, the parties agree as follows:

THIS LEASE AGREEMENT between Youth Eastside Services, a nonprofit corporation organized under the laws of the state of Washington, and the City of Kirkland, a municipal corporation of the state of Washington (hereinafter referred to as "City").

WITNESSETH:

## **SECTION 1 PREMISES**

- 1.1 The City hereby leases to Youth Eastside Services, upon the terms and conditions set forth, the first and second floors of the building and parking area located at the Forbes House at Juanita Beach Park situated in the City of Kirkland, King County, Washington, and legally described as follows (hereinafter referred to as "Forbes House"):

COURT COMM PLAT SECS 30 & 31-26-5 ALL LOT 34 TGW S 175 FT & N 25 FT OF S 200 FT OF W 185 FT OF LOT 35 TGW ALL LOT 36 TGW POR OF GL 7 OF STR 30-26-05 LY S OF RR FORBES RD & W OF EDMONDS & STEVENS RD & N OF CONOVER RD LESS N 308.29 FT THOF TGW 32-32 A & 36 OF SD PLAT LY SLY OF JUANITA DR NE & POR VAC ST TGW LOTS 29 - 29A-30-30A-31-31A & 33A SD PLAT SLY OF RD TGW LOTS 1 THRU 8 BLK 38 & LOTS 1 THRU 5 BLK 39 OF WATERFRONT ADD TO KIRKLAND TGW BLK N OF LK WASH SH LOS ADD TGW VAC STS ADJ

The basement of the Forbes House will be used by the City of Kirkland, Parks and Community Services Department.

## **SECTION 2 USE OF PREMISES**

- 2.1 The Forbes House shall be used for Youth Eastside Services as a community facility for operation of youth and family counseling and with the general business activities incident thereto and for no other purpose without the prior consent of the City. Consistent with the Master Plan for Juanita Beach Park, Youth Eastside Services is expressly subject to the following conditions and limitations which shall be strictly observed and construed in Youth Eastside Services' use and occupancy of the Forbes House:
- A. Keep the premises neat, clean and in sanitary condition.
  - B. Post the hours of operation on an external sign.
  - C. Work with the King County Historical Society, and the City to ensure the preservation of the historical significance of the Forbes House.
  - D. Work with the City's Fire and Building Department to satisfy the International Building Code requirements for occupancy.
  - E. Work with the City's Planning and Community Development Department to satisfy all Zoning Code provisions related to parking and signage.
  - F. Work with the City to keep the grounds around the Forbes House free of litter and garbage.
  - G. Work with the Parks and Community Services Department on implementation of the Juanita Beach Master Plan.

- H. Noise from the use shall not exceed the State standards found in Chapter 70.107 RCW as regulated in Kirkland Zoning Code 115.95.
- I. Youth Eastside Services shall provide the City's Human Services Council an annual report on the operations of the services, any neighborhood concerns, and how the concerns have been addressed.

### **SECTION 3 TERM**

- 3.1 This lease shall be for a term of ten years, commencing September 2018, and ending August 31, 2028.
- 3.2 This is the first extension of the lease originally executed in 2008. Youth Eastside Services may have the option to renew the lease, by mutual agreement, for a third term of ten years so long as, no later than December 31, 2027, Youth Eastside Services provides written notice to the City of its interest to renew. In order to renew the agreement, Youth Eastside Services shall not be in default hereunder at the time of giving of the notice or on the date of expiration of the original term hereon. If Youth Eastside Services notifies the City of its interest to renew, each party has the option to renegotiate the terms and conditions of this agreement.
- 3.3 Upon the occurrence of any event of default described in this Lease Agreement, the City or Youth Eastside Services may terminate this Lease Agreement. Upon no less than one (1) year's notice to the City, Youth Eastside Services may terminate this agreement. Upon no less than one (1) year's notice to Youth Eastside Services, the City may terminate this agreement. In the event that this Agreement is terminated, Youth Eastside Services shall surrender the Premises to the City.

### **SECTION 4 RENTAL**

- 4.1 In consideration of the value of Youth Eastside Services contribution to the human service needs of residents of the City of Kirkland, to the tenant improvements of the Forbes House, to the maintenance and operations of the Forbes House, and subject to the terms of this Agreement, Youth Eastside Services shall pay no rent for the Premises during the term of this agreement.

### **SECTION 5 UTILITIES**

- 5.1 Youth Eastside Services shall timely pay the charges for all of the following utilities: water, storm sewer, sewer, garbage, electricity, natural gas, internet access and telephone.

### **SECTION 6 ALTERATIONS, REPAIRS, AND MAINTENANCE BY CITY OF KIRKLAND**

- 6.1 The City shall maintain in good condition and repair, the structural components and systems and exterior components of Forbes House which include, but are not limited to,

the roof, exterior walls, foundation, beams, siding, stairs and all load bearing members of the structure. The City shall also maintain the mechanical, electrical and plumbing systems (except as set forth in section 7.2) of the Forbes House and will maintain the sidewalks and paths and grounds around the Forbes House in a safe and clean condition.

- 6.2 The City shall strive to coordinate Maintenance work with YES so as not to interfere with YES's operations. At minimum the City shall give YES at least twenty-four (24) hour notice; provided that, such maintenance and repair work shall not unduly interfere with the use of the premises. In the event of an emergency, however, no such notice shall be required.
- 6.3 In the event of any damage to the Forbes House or its grounds or if any of the elements described above needs repair or maintenance, Youth Eastside Services shall notify the City and the City will timely repair all such damage unless it is caused by Youth Eastside Services or its clients, in which case the repair shall be the responsibility of Youth Eastside Services.
- 6.4 Notwithstanding the foregoing provision of this Section, in the event the Forbes House is destroyed or damaged to such an extent that the City deems that it is not economically feasible to restore the same, then the City may terminate the Lease as of the date of the damage or destruction by giving Youth Eastside Services notice to that effect.

#### **SECTION 7 ALTERATIONS, REPAIRS, AND MAINTENANCE BY YOUTH EASTSIDE SERVICES**

- 7.1 Youth Eastside Services shall make no structural changes, improvements or alterations to the Forbes House without the prior consent of the City. All such changes, improvements, alterations and repairs, if any, made by Youth Eastside Services shall remain in the Forbes House and shall become the property of the City upon expiration or sooner termination of this Lease. Youth Eastside Services will retain any removable items provided by them, including furniture, supplies, removable fixtures, and shall repair any damage caused by their removal.
- 7.2 Youth Eastside Services is responsible for daily maintenance and repair of the interior of the Forbes House which shall include tenant improvements, telephone equipment, lighting fixtures, kitchen and bathroom plumbing drain and trap down to the junction with the line into the wall or floor. Youth Eastside Services janitorial and routine maintenance responsibilities include: timely repair or replacement of light fixtures or bulbs, electrical switches or controls; and interior and exterior cleaning of windows, any damage caused by tenant, i.e. broken window, etc.
- 7.3 Youth Eastside Services is responsible for the parking area in front of the Forbes House. Youth Eastside Services will work with the City's Planning and Community Development Department to adequately designate parking and display signage per City Zoning Code.

#### **SECTION 8 TAXES**

- 8.1 Youth Eastside Services shall pay, before delinquency, all taxes, levies, and assessments of whatever kind or nature are imposed or become due during the term of this Lease and arise from any activity on or use of the Forbes House pursuant to this Lease. As the Forbes House is publicly owned property, the Lease is subject to a leasehold excise tax under Ch. 82.29A RCW. Youth Eastside Services shall complete the necessary paperwork to receive an exemption from the leasehold excise tax. In the event the State of Washington makes any demand upon the City for payment of any tax resulting from Youth Eastside Services use or occupancy of the Forbes House, including but not limited to any leasehold interest created thereby under RCW 82.29A, Youth Eastside Services shall indemnify the City for all sums expended by the City or withheld by the State from the City in connection with such taxation.

### **SECTION 9 INDEMNIFICATION**

- 9.1 Youth Eastside Services shall defend, indemnify and hold harmless the City, its officers, officials, employees and volunteers from and against any and all claims, suits, actions or liability for injury or death of any person, or for loss or damage to property, which arises out of the Youth Eastside Services use and occupancy of the Forbes House or from Youth Eastside Services operations or from any activity, work or thing done, permitted or suffered by Youth Eastside Services in or about the Forbes House except Youth Eastside Services shall not be liable for and shall not have any obligation of defense or indemnity for any such injury, loss or damages to property or injury or death of any person caused by or arising from the sole negligence or willful act of the City or that to its officers, officials, employees or volunteers. In the event of concurrent negligence, Youth Eastside Services and the City shall each be liable to the other to the extent of the negligence of each and each shall defend, indemnify and hold the other harmless as to that percentage of the negligence attributable to each to them. For example, if the City were determined to be 30% negligent for injury to a person and Youth Eastside Services were determined to be 70% negligent, Youth Eastside Services would be responsible for 70% of the loss and would indemnify the City for that 70%; the City would be responsible for 30% of the loss and would indemnify Youth Eastside Services for that 30%.

### **SECTION 10 INSURANCE**

- 10.1 Youth Eastside Services shall, at Youth Eastside Services expense, procure and maintain for the duration of this Lease, insurance against claims for injuries or to persons or damage to property which may arise from or in connection with Youth Eastside Services operation and use of the Forbes House.
- A. **Scope of Coverage**  
Youth Eastside Services shall obtain insurance of the types described below:
1. Commercial General Liability insurance shall be written on Insurance Services Office (ISO) occurrence form CG 00 01 and shall cover premises and contractual liability. The City shall be named as an insured on Youth Eastside Services General Liability insurance policy using ISO Additional Insured-Managers or Lessors Premises Form CG 20 11 or a substitute endorsement providing equivalent coverage.
  2. Property insurance shall be written on an all risk basis.



- B. Minimum Amounts of Insurance  
Youth Eastside Services shall maintain the following insurance limits:
1. Commercial General Liability insurance shall be written with limits no less than \$1,000,000 each occurrence, \$2,000,000 general aggregate.
  2. Property insurance shall be written covering the full value of Youth Eastside Services property and improvements with no coinsurance provisions.
- 10.2 The insurance policies are to contain, or be endorsed to contain, the following provisions for Commercial General Liability Insurance:
- A. Youth Eastside Services insurance coverage shall be primary insurance as respects to the City. Any insurance, self-insurance, or insurance pool coverage maintained by the City shall be in excess of Youth Eastside Services insurance and shall not contribute to it.
  - B. Youth Eastside Services insurance shall be endorsed to state that coverage shall not be cancelled by either party, except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the City.
- 10.3 Insurance to be placed with insurers with a current A.M. Best rating of not less than A:VII.
- 10.4 Youth Eastside Services shall furnish the City with the original certificate or a copy, and a copy of the amendatory endorsements, including but not necessarily limited to the additional insured endorsement, evidencing the insurance requirements of Youth Eastside Services.
- 10.5 Youth Eastside Services and City hereby release and discharge each other from all claims, losses and liabilities arising from or caused by any hazard covered by property insurance on or in connection with the Forbes House. This release shall only apply to the extent that such claim, loss or liability is covered by insurance.
- 10.6 City shall purchase and maintain during the term of the Lease all-risk property insurance for the Forbes House for its full replacement value without any coinsurance provisions.

## **SECTION 11 ASSIGNMENT**

- 11.1 Obligations or rights of Youth Eastside Services under this Lease may not be assigned, subleased, or otherwise transferred by Youth Eastside Services without the prior written consent of the City, which consent may be withheld at the sole discretion of the City.

## **SECTION 12 COMPLIANCE WITH LAWS**

- 12.1 Youth Eastside Services shall comply with all federal, state, and local laws, statutes, ordinances, and regulations in the performance of their obligations under this Lease. This includes working with the King County Historical Society to maintain the historic significance of the Forbes House.

**SECTION 13  
CHOICE OF LAW**

- 13.1 This Lease shall be governed by and construed in accordance with the laws of the State of Washington. The venue of any suit or arbitration arising under this Lease shall be in King County, Washington.

**SECTION 14  
NOTICES**

- 14.1 Any notice, demand, document, or other communication that is required by this Lease to be given shall be in writing and shall be deemed to have been given when delivered, if delivered in person, to the City or Youth Eastside Services, as appropriate, or three days after mailing if sent by registered or certified mail, return receipt requested, addressed as follows:

**If to the City:**

Kurt Triplett  
City Manager  
City of Kirkland  
123 5th Avenue  
Kirkland, WA 98033-6189

**If to Youth Eastside Services:**

Patti Skelton-McGougan  
Executive Director  
Youth Eastside Services  
999 164th Avenue N.E.  
Bellevue, WA 98008

This Lease and any amendments shall be executed in three counterparts. Each such counterpart shall be deemed to be an original instrument. All such counterparts together will constitute one and the same Lease.

**SECTION 15  
DEFAULT**

- 15.1 The following events shall constitute a default and material breach of this Lease:
- A. The failure to comply with any of the terms of this Lease regarding insurance.
  - B. The material violation of any law, ordinance, rule or regulation which, after notice and reasonable time to cure, remains uncured;
  - C. The abandonment or vacating of the Forbes House for a period of thirty (30) days or more;
  - D. The assignment for transfer of this Lease without prior written consent of the City as described in Section 10 of this Lease; and
  - E. The failure to perform any other condition or covenant of this Lease where such failure in performance is not remedied within the time allowed by this Lease, or such other period for remedial action as is expressly agreed upon by both parties.

Neither the City nor Youth Eastside Services shall be in default unless such party fails to perform an obligation required of it within (30) days after written notice from the aggrieved party has been sent to the other, specifying the particular obligation that the other has failed to perform.

**SECTION 16  
REMEDIES UPON DEFAULT AND MATERIAL BREACH**

- 16.1 Upon the occurrence of any event of default by Youth Eastside Services, the City shall have the option to pursue any one or more of the following remedies without notice or demand:
- A. Terminate this Lease, in which event Youth Eastside Services shall immediately surrender the Forbes House to the City;
  - B. If Youth Eastside Services fails to immediately surrender the Forbes House upon termination of this Lease, the City may enter and take possession of the Forbes House and expel or remove Youth Eastside Services and any other person who may be occupying the Forbes House or any part thereof by any suitable proceeding at law;
  - C. Commence a legal action against Youth Eastside Services to recover the amount of all loss and damage the City may suffer by reason of such default.
- 16.2 If an action is commenced to enforce any of the provisions of this Lease, the prevailing party shall, in addition to its other remedies, be entitled to recover its reasonable attorneys' fees.

**SECTION 17  
REMEDIES CUMULATIVE**

- 17.1 The rights under this Lease are cumulative; the failure to exercise promptly any right recognized hereunder shall not operate to forfeit any such right. The use of one remedy shall not be taken to exclude the right to use another.

**SECTION 18  
AMENDMENT OR WAIVER**

- 18.1 This Lease may not be modified nor amended except in writing. No course of dealing between the parties or any delay in exercising any rights hereunder shall operate as a waiver of any rights of any party. No term or provision of this Lease shall be deemed waived and no breach excused unless such waiver or consent shall be in writing and signed by the party claimed to have waived or consented. No consent by any party to, or waiver of, a breach by the other whether express or implied, shall constitute a waiver of or consent to any other breach. No amendment or supplement to this Lease shall be effective unless approved in writing by the City.

**SECTION 19  
ENTIRE AGREEMENT**

- 19.1 This Lease contains the entire agreement and understanding of the City and the Youth Eastside Services with respect to the subject matter hereof, and supersede all prior or contemporaneous oral or written understandings, agreements, promises or other undertakings between the parties.

IN WITNESS, WHEREOF, the authorized representatives of the parties hereto have executed this Agreement by affixing their signatures in the spaces below.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2018.

CITY OF KIRKLAND

YOUTH EASTSIDE SERVICES

By: \_\_\_\_\_  
Kurt Triplett, City Manager

By: \_\_\_\_\_  
Patti Skelton-McGougan, Executive Director

STATE OF WASHINGTON )  
 ) ss  
COUNTY OF KING )

I certify that I know or have satisfactory evidence that **Patti Skelton-McGougan** is the person who appeared before me, and said person acknowledged that she signed this instrument, on oath stated that she was authorized to execute this instrument and acknowledged it as the Executive Director of Youth Eastside Services, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

DATED: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_[Print Name]  
NOTARY PUBLIC in and for the State of  
Washington, residing at \_\_\_\_\_  
My commission expires: \_\_\_\_\_

STATE OF WASHINGTON )  
 ) ss  
COUNTY OF KING )

I certify that I know or have satisfactory evidence that **Kurt Triplett** is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he was authorized to execute this instrument and acknowledged it as the City Manager of the City of Kirkland, a Washington Municipal corporation, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

DATED: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_[Print Name]  
NOTARY PUBLIC in and for the State of  
Washington, residing at \_\_\_\_\_  
My commission expires: \_\_\_\_\_