

## **AGREEMENT**

This Agreement (the “Agreement”) is effective February 1, 2024, between YWCA Billings, 909 Wyoming Avenue, Billings, Montana (“YWCA”), and City of Billings, Montana (“City”). YWCA and Billings may be referred to herein individually as a “Party” and collectively as the “Parties”. The purpose of this partnership is to outline the roles, activities, and reimbursement between Parties for the employment of one (1) full-time position to coordinate the planning process for a potential Family Justice Center (FJC) in Billings.

## **RECITALS**

1. A family justice center is a concept that co-locates government and community-based organizations under one roof to provide coordinated services to survivors of family violence, including domestic violence, sexual assault, child abuse, elder abuse, and human trafficking.

2. In February 2023, the City began hosting an AmeriCorps VISTA volunteer to serve for one year to research the funding and planning process of an FJC as well as network with community partner agencies and to evaluate community support for the concept.

3. In June 2023, the City contracted with the Family Justice Center Alliance (“Alliance”) to assess community readiness for and assist in the development of an FJC to serve victims of domestic violence and sexual assault and their children.

4. After studying the community and conducting a study tour, focus groups, and strategic planning meetings, the Alliance provided a strategic planning report which included several recommendations to move forward with planning an FJC to serve Yellowstone County. Among the recommendations, the Alliance identified the need for a coordinator to be hired to work full-time to continue the planning process to replace the VISTA volunteer in February 2024.

5. YWCA is a 501(c)(3) non-profit organization that provides vital support and services to survivors of domestic violence, sexual assault, and human trafficking to assist them towards a brighter, violence-free future.

6. YWCA has a vacant building as a result of the construction of a new shelter and housing units for individuals experiencing domestic violence, sexual assault, and human trafficking and is willing to provide an initial location to house an FJC on its campus.

7. YWCA is also willing to employ a full-time position to serve as coordinator of planning the planning process for an FJC in partnership with the City.

8. The City and YWCA share an interest in mitigating the factors leading to public safety issues in our community, including supporting families in creating stable, caring, and safe environments in which to raise children by partnering to fund a full-time position to coordinate the planning for an FJC in Billings.

## **AGREEMENT**

IT IS HEREBY AGREED AS FOLLOWS:

1. **Incorporation of Recitals.** The recitals are incorporated into this Agreement by this reference.
  
2. **Term.** The Agreement is effective February 1, 2024, through January 31, 2026. The parties may extend this Agreement by mutual concurrence for one (1) additional two-year period, in writing, prior to termination of the term.
  
3. **Amount.** The City agrees to pay YWCA an amount not to exceed \$55,000 per year for the funding of a full-time employee of the YWCA to coordinate the planning for an FJC in Billings.
  
4. **YWCA Rights and Duties.**
  - a. YWCA agrees to employ a full-time position (“Coordinator”) to coordinate the planning for an FJC in Billings in accordance with the strategic plan provided by the Alliance, attached as **Exhibit A**, by:
    - i. regularly convening Steering Committee and Work Group meetings;
    - ii. reviewing and following recommendations of the Alliance, prioritizing and implementing necessary changes;
    - iii. creating an awareness video for the FJC model to build buy-in;
    - iv. launching a VOICES Survivor Advocacy Committee;
    - v. keep sharing the vision for the Billings FJC;
    - vi. staying engaged with the Alliance; and
    - vii. working toward creating a funding and sustainability plan.
  
  - b. The Coordinator will provide a report on the progress of the planning to the Billings City Council on a semi-annual basis, once in August or September and once in February or March. This report shall be in writing and include a presentation to Council, if requested by the City.
  
  - c. YWCA will submit an invoice for payment upon hiring the Coordinator and every six (6) months thereafter that includes the salary or hourly wage and hours worked for the previous six (6) months.
  
5. **City’s Rights and Duties.**
  - a. The City agrees to pay \$55,000 in two (2) payments of approximately \$25,000, not to exceed \$55,000 per year.

- b. The first payment shall be made upon receipt of the invoice from YWCA requesting payment but no earlier than February 1, 2024.
- c. Unless otherwise agreed by the Parties, all subsequent payments shall be made on a semi-annual basis upon receipt of invoice requesting payment if the position has been filled and is working full time for a majority of the previous six (6) months.

6. **Default and Termination.** Default shall be deemed to have occurred upon either party's failure or refusal to perform any term or condition of this agreement, provided thirty (30) days' notice of default is given to the defaulting party and the defaulting party fails or refuses to either cure or commence curing such default and diligently pursuing curation efforts to conclusion within ninety (90) days after having been provided written notice of such default. If such default is not cured within such period, either party may terminate this Agreement as of the expiration of such cure period or on such later date as may be specified in such notice.

Either party may terminate this Agreement at any time upon not less than ninety (90) days written notice.

In the event the City terminates this Agreement, the YWCA shall be paid for the amount of work performed or services rendered to date of termination per the Agreement.

7. **Relationship of Parties.** The parties agree that YWCA and the City shall at all times be acting and performing as independent contractors. The City shall neither have nor exercise any control or direction over the methods by which YWCA or its personnel, including the Coordinator position described herein, perform services, nor shall YWCA or its personnel, including the Coordinator position described herein, be deemed employees of the City for any purpose whatsoever. Nothing herein shall be construed to create a joint venture or partnership between the parties or to authorize any party to act as an agent for any other party.

8. **Permits, laws, and taxes.** YWCA shall acquire and maintain in good standing all permits, licenses and other entitlements necessary to its performance under this Agreement. All actions taken by the YWCA under this Agreement shall comply with all applicable statutes, ordinances, rules and regulations. The YWCA shall pay all taxes pertaining to its performance under this Agreement.

9. **Nonwaiver.** The failure of either party at any time to enforce a provision of this Agreement shall in no way constitute a waiver of the provision, nor in any way affect the validity of this Agreement or any part hereof, or the right of such party thereafter to enforce each and every provision hereof.

10. **Attorney's Fees And Costs.** In the event it becomes necessary for either Party to this Agreement to retain an attorney to enforce any of the terms or conditions of the Agreement or to give any notice required herein, then the prevailing Party or the Party giving notice shall be entitled to reasonable attorney's fees and costs.

**11. Litigation Location.** The parties agree that this Agreement shall be governed in all respects by the laws of the state of Montana, and the parties expressly agree that venue shall be in the Montana Thirteenth Judicial District County for Yellowstone County and there shall be no other venue for resolution of disputes arising from the Agreement or the performance of its terms.

**12. Indemnity.**

YWCA shall:

- a. Indemnify and hold the City, its officers, agents, and employees harmless from any and all losses, damage and liability to the extent caused by any intentional or negligent act on the part of YWCA or its agents or employees.
- b. Not indemnify and hold the City harmless from claims, causes of action, lawsuits, damages, judgments, liabilities, and litigation costs and expenses or reasonable attorneys' fees and costs to the extent caused by the wrongful or negligent acts, error or omission of the City occurring during or as a result of the performance of the Agreement.
- c. Where claims, lawsuits or liability, including reasonable attorneys' fees and costs arise from any wrongful or negligent act of both the City and YWCA, YWCA shall indemnify and hold the City harmless from only that portion of claims, causes of action, lawsuits, damages, judgments, liabilities, and litigation costs and expenses including reasonable attorneys' fees and costs, to the extent caused by the YWCA's or any subcontractor's wrongful or negligent acts occurring as a result from the YWCA's performance pursuant to this Agreement.

The City shall:

- d. Indemnify and hold YWCA, its officers, agents, and employees harmless from any and all losses, damage and liability to the extent caused by any intentional or negligent act on the part of the City or its agents or employees.
- e. Not indemnify and hold the YWCA harmless from claims, causes of action, lawsuits, damages, judgments, liabilities, and litigation costs and expenses or reasonable attorneys' fees and costs to the extent caused by the wrongful or negligent acts, error or omission of the YWCA occurring during or as a result of the performance of the Agreement.
- f. Where claims, lawsuits or liability, including reasonable attorneys' fees and costs arise from any wrongful or negligent act of both the YWCA and the City, the City shall indemnify and hold the YWCA harmless from only that portion of claims, causes of action, lawsuits, damages, judgments, liabilities, and litigation costs and expenses including attorneys' fees and costs, to the extent caused by the City's or any subcontractor's wrongful or negligent acts occurring as a result from the City's performance pursuant to this Agreement.

**13. Insurance.** YWCA shall maintain in good standing the insurance described in this Section. Before rendering any services under this Agreement, YWCA shall furnish the City with proof of insurance in accordance with this Section.

- a. YWCA shall provide the following insurance:
- i. Workers' compensation and employer's liability coverage as required by Montana law.
  - ii. Commercial general liability, including contractual liability assumed under an insured agreement and personal injury coverage in the amount of \$750,000 per claim and \$1,500,000 per occurrence.
  - iii. Automobile liability in the amount of \$1,500,000 per accident.
  - iv. Professional liability in the amount of \$1,500,000 per claim.

Each policy of insurance required by this Section shall provide for no less than 30 days' advance written notice to the City prior to cancellation.

The City shall be listed as an additional insured on all policies except Professional Liability and Worker's Compensation Policies.

YWCA shall comply with the applicable requirements of the Workers' Compensation Act, Title 39, Chapter 71, MCA, and the Occupational Disease Act of Montana, Title 39, Chapter 71, MCA. YWCA shall maintain workers' compensation insurance coverage for all members and employees of YWCA's business, except for those members who are exempted as independent contractors under the provisions of §39-71-401, MCA.

YWCA shall furnish the City with copies showing one of the following: (1) proof of registration as a registered contractor under Title 39, Chapter 9, MCA; (2) a binder for workers' compensation coverage by an insurer licensed and authorized to provide workers' compensation insurance in the State of Montana; or (3) proof of exemption from workers' compensation granted by law for independent contractors.

**14. Notice.** Any notice required or permitted to be given under or relating to this Agreement shall be in writing and shall be personally delivered or sent by certified mail, return receipt requested, postage prepaid, or by overnight courier to the other party as follows:

YWCA  
ATTN: Erin Lambert, CEO  
909 Wyoming Ave.  
Billings, MT 59101

City of Billings  
ATTN: Chris Kukulski, City Administrator  
210 North 27<sup>th</sup> Street  
P.O. Box 1178  
Billings, MT 59103-1178

Notices shall be deemed effective as of three (3) business days after the date of mailing (in case of notice given by mail) or on the date of delivery if hand delivered, including delivery by overnight courier. Either party may at any time change its address for notification purposes by mailing or delivering a notice as required hereinabove stating the change and setting forth the new address.

**15. Entire Agreement.** This Agreement, including any exhibits hereto, contains the entire understanding of the parties with respect to its subject matter. This Agreement supersedes all prior and contemporaneous agreements and understandings between the parties, written or oral, with respect to its subject matter, and there are no restrictions, agreements, promises, warranties, covenants, or undertakings between the parties with respect to the subject matter hereof other than those expressly set forth herein.

**16. Amendments.** In the event that the services provided under this Agreement require the parties to revise this Agreement to assure compliance with new laws and regulations, YWCA and the City agree to negotiate in good faith to establish appropriate policies and procedures and to amend this Agreement. If the parties are unable to amend or revise this Agreement to assure compliance, either party may terminate this Agreement prior to the implementation date of any relevant law or regulation. Only a written instrument duly executed by the parties may amend this Agreement.

**17. Assignment.** Except as otherwise provided in this Agreement, neither party may assign, delegate, transfer, or otherwise dispose of any of its rights, duties, or obligations hereunder without the prior written consent of all parties hereto.

**18. Severability.** In the event that any provision of this Agreement or the application thereof to any person in any circumstance is held by a court of competent jurisdiction to be invalid, illegal, or unenforceable, such holding shall not affect any other provision of this Agreement, or the application thereof in any other circumstance.

**19. Advertising and Publicity.** The City and YWCA each reserve the right to use and control the use of its name and all symbols, trademarks, and service marks presently existing or later established by it. Neither the City nor YWCA shall use the other party's name, symbols, trademarks, or service marks in advertising or promotional materials or otherwise without the prior written consent of that party and shall cease any such use immediately upon written notice from the other party or termination of this Agreement, whichever is sooner.

**20. No Third-Party Beneficiaries.** Nothing in this Agreement, expressed or implied, is intended or shall be construed to confer upon any person, firm, or corporation other than the parties hereto and their respective successors or assigns, any remedy or claim under or by reason

