

CITY OF KIRKLAND, WASHINGTON
LIMITED TAX GENERAL OBLIGATION BOND, 2001

ORDINANCE NO. 3783

AN ORDINANCE OF THE CITY OF KIRKLAND, WASHINGTON, PROVIDING FOR THE ISSUANCE AND SALE OF A LIMITED TAX GENERAL OBLIGATION BOND OF THE CITY IN THE PRINCIPAL AMOUNT OF \$2,750,000 FOR THE PURPOSE OF ACQUIRING CERTAIN REAL PROPERTY FOR THE CITY; PROVIDING THE DATE, FORM, TERMS AND MATURITIES OF SAID BOND AND FOR LIMITED TAX LEVIES TO PAY THE PRINCIPAL THEREOF AND INTEREST THEREON; PROVIDING FOR THE DISPOSITION OF THE PROCEEDS OF SALE; AND APPROVING THE SALE OF THE BOND.

APPROVED ON APRIL 17, 2001

PREPARED BY:

PRESTON GATES & ELLIS LLP
Seattle, Washington

TABLE OF CONTENTS*

	<u>Page</u>
Section 1. Definitions.....	1
Section 2. Authorization of Bonds and Bond Details	4
Section 3. Registration, Exchange and Payments	4
Section 4. Redemption Prior to Maturity and Purchase of Bonds	5
Section 5. Form of Bonds	5
Section 6. Execution of Bonds.....	8
Section 7. Tax Covenants	8
Section 8. Creation of Bond Fund and Provision for Tax Levy Payments	11
Section 9. Defeasance	12
Section 10. Sale of Bonds	12
Section 11. Application of Proceeds of Bonds	13
Section 12. Lost, Stolen or Destroyed Bonds	13
Section 13. Severability	13

* This Table of Contents is provided for convenience only and is not a part of this ordinance.

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WHEREAS, the City Council of the City of Kirkland, Washington (the "City") has undertaken to acquire certain real property (the "Property") for use by inhabitants of the City pursuant to an Offer to Purchase and Agreement to Sell Real Property (the "Offer") dated March 2, 2001, between the City and Gerald J. McAuliffe and JoAnn McAuliffe (the "McAuliffes"); and

WHEREAS, a portion of the purchase price for the Property is to be paid in the form of a general obligation bond of the City in the principal amount of \$2,750,000; and

WHEREAS, it is necessary that the date, form, terms and maturities of such general obligation bond be fixed; and

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF KIRKLAND, WASHINGTON, DO ORDAIN as follows:

Section 1. Definitions. As used in this ordinance, the following words shall have the following meanings:

Bond means the City of Kirkland, Washington Limited Tax General Obligation Bond, 2001 in the amount of \$2,750,000 issued pursuant to this ordinance for the purpose of paying part of the costs of the acquiring the Property.

Bond Fund means the City of Kirkland Limited Tax General Obligation Bond Redemption Fund, 2001 created pursuant to Section 9 of this ordinance.

Bond Register means the registration books showing the name, address and tax identification number of the Registered Owner of the Bond, maintained pursuant to Section 149(a) of the Code.

Bond Registrar means, initially, the fiscal agency of the State of Washington in either Seattle, Washington or New York, New York, for the purposes of registering and authenticating the Bond, maintaining the Bond Register, effecting transfer of ownership of the Bond and paying interest on and principal of the Bond.

Bond Year means each one-year period that ends on the date selected by the City. The first and last Bond Years may be short periods. If no day is selected by the City before the earlier of the final maturity date of the Bond or the date that is five years after the date of issuance of the Bond, Bond Years end on each anniversary of the date of issue and on the final maturity date of the Bond.

City means the City of Kirkland, Washington, a municipal corporation of the State of Washington.

Code means the Internal Revenue Code of 1986, as amended, and shall include all applicable regulations and rulings relating thereto.

Council means the City Council as the general legislative authority of the City, as the same shall be duly and regularly constituted from time to time.

Director of Finance means the Director of Finance of the City.

Government Obligations means those obligations now or hereafter defined as such in chapter 39.53 RCW.

Net Proceeds, when used with reference with the Bond, means the principal amount of the Bond, plus accrued interest, if any.

Offer means the Offer to Purchase and Agreement to Sell Real Property dated March 2, 2001, between the City and Gerald J. McAuliffe and JoAnn McAuliffe.

Private Person Use means the use of property in a trade or business by a Private Person if such use is other than as a member of the general public. Private Person Use includes ownership of the property by the Private Person as well as other arrangements that transfer to the Private Person the actual or beneficial use of the property (such as a lease, management or incentive payment contract or other special arrangement) in such a manner as to set the Private Person apart from the general public. Use of property as a member of the general public includes attendance by the Private Person at municipal meetings or business rental of property to the Private Person on a day-to-day basis if the rental paid by such Private Person is the same as the rental paid by any Private Person who desires to rent the property. Use of property by nonprofit community groups or community recreational groups is not treated as Private Person Use if such use is incidental to the governmental uses of property, the property is made available for such use by all such community groups on an equal basis and such community groups are charged only a *de minimis* fee to cover custodial expenses.

Property means the real property being acquired pursuant to the Offer.

Registered Owner means Gerald J. and JoAnn McAuliffe, husband and wife.

Section 2. Authorization of Bond and Bond Details. The City hereby authorizes the issuance and sale of the Bond in the principal amount of \$2,750,000 pay a portion of the purchase price for the Property. The Bond shall be a general obligation of the City, shall be designated the "City of Kirkland, Washington, Limited Tax General Obligation Bond, 2001;" shall be dated as of the date of original issuance and delivery (currently estimated to be May 3, 2001); shall be fully registered as to both principal and interest; shall be in the denomination of \$2,750,000; and shall bear interest from its date at 5.50% per annum rate, payable on May 1, 2002, and annually thereafter on each May 1 and shall mature on May 1, 2006.

Section 3. Registration, Exchange and Payments.

(a) *Bond Registrar/Bond Register.* The City hereby specifies and adopts the system of registration approved by the Washington State Finance Committee from time to time through the appointment of state fiscal agencies. The City shall cause a bond register to be maintained by the Bond Registrar. The Bond shall not be transferable, except by operation of law. The Bond Registrar may be removed at any time at the option of the City upon prior notice to the Bond Registrar and a successor Bond Registrar appointed by the City. No resignation or removal of the Bond Registrar shall be effective until a successor shall have been appointed and until the successor Bond Registrar shall have accepted the duties of the Bond Registrar hereunder. The Bond Registrar shall be responsible for its representations contained in the Certificate of Authentication of the Bond.

(b) *Registered Ownership.* The City and the Bond Registrar, each in its discretion, may deem and treat the Registered Owner of the Bond as the absolute owner thereof for all purposes, and neither the City nor the Bond Registrar shall be affected by any notice to the

contrary. Payment of the Bond shall be made only as described in this Section 3, but the Bond may be transferred as herein provided. All such payments made as described in this Section 4 shall be valid and shall satisfy and discharge the liability of the City upon the Bond to the extent of the amount or amounts so paid.

If the Bond shall be duly presented for payment and funds have not been duly provided by the City on such applicable date, then interest shall continue to accrue thereafter on the unpaid principal thereof at the rate stated on the Bond until it is paid.

(c) *Registration Covenant.* The City covenants that, until the Bond has been surrendered and canceled, it will maintain a system for recording the ownership of the Bond that complies with the provisions of Section 149 of the Code.

(d) *Place and Medium of Payment.* Both principal of and interest on the Bond shall be payable in lawful money of the United States of America. Interest on the Bond shall be calculated on the basis of a year of 360 days and twelve 30-day months. Interest on the Bond shall be paid by check or draft mailed to the Registered Owner at the addresses for such Registered Owner appearing on the Bond Register on the fifteenth day of the month preceding the interest payment date. Principal of the Bond shall be payable upon presentation and surrender of the Bond by the Registered Owner at the principal office of the Bond Registrar.

Section 4. Redemption Prior to Maturity and Purchase of Bond. The Bond is not prepayable prior to its stated maturity.

Section 5. Form of Bond. The Bond shall be in substantially the following form:

NO.R-1

\$2,750,000

STATE OF WASHINGTON
CITY OF KIRKLAND
LIMITED TAX GENERAL OBLIGATION BOND, 2001

INTEREST RATE:
5.5%

MATURITY DATE:
May 1, 2006

REGISTERED OWNER: Gerald J. and JoAnn McAuliffe
11812 108th Avenue NE
Kirkland, WA 98034

EIN: 535-32-5876

PRINCIPAL AMOUNT: TWO MILLION SEVEN HUNDRED FIFTY THOUSAND AND
NO/100 DOLLARS

THE CITY OF KIRKLAND, a municipal corporation organized and existing under and by virtue of the laws of the State of Washington (the "City"), promises to pay to the Registered Owner identified above, on the Maturity Date identified above the Principal Amount indicated above and to pay interest thereon from the date hereof, or the most recent date to which interest has been paid or duly provided for or until payment of this bond at the Interest Rate set forth above, payable on May 1, 2002, and annually thereafter on each May 1. Both principal of and interest on this bond are payable in lawful money of the United States of America, and interest shall accrue on the basis of a year of 360 days and twelve 30-day months. Principal shall be paid to the Registered Owner or assigns upon presentation and surrender of this bond at the principal office of the fiscal agency of the State of Washington in either Seattle, Washington, or New York, New York (collectively the "Registrar"). Interest shall be paid by check or warrant mailed as of the date due to the Registered Owner (at the address of the Registered Owner specified in writing to the Registrar no later 15 days prior to each interest payment date).

This bond is the bond authorized by Ordinance No. 3783 of the City (the "Bond Ordinance") for the purpose of paying part of the cost of acquiring certain real property for the City.

This bond shall not be valid or become obligatory for any purpose or be entitled to any security or benefit under the Bond Ordinance (as hereinafter defined) until the Certificate of Authentication hereon shall have been manually signed by or on behalf of the Registrar.

This bond shall not be prepayable prior to its scheduled maturity.

THIS BOND IS NOT TRANSFERABLE.

The City hereby irrevocably covenants and agrees with the Registered Owner of this bond that it will include in its annual budget and levy taxes annually, within and as a part of the tax levy permitted to the City without a vote of the electorate, upon all the property subject to taxation in amounts sufficient, together with other money legally available therefor, to pay the principal of and interest on this bond as the same shall become due. The full faith, credit and resources of the City are hereby irrevocably pledged for the annual levy and collection of such taxes and the prompt payment of such principal and interest.

The pledge of tax levies for payment of principal of and interest on this bond may be discharged prior to maturity of this bond by making provision for the payment thereof on the terms and conditions set forth in the proceedings of the City authorizing this bond.

It is hereby certified that all acts, conditions and things required by the Constitution and statutes of the State of Washington to exist, to have happened, been done and performed precedent to and in the issuance of this bond have happened, been done and performed and that the issuance of this bond does not violate any constitutional, statutory or other limitation upon the amount of bonded indebtedness that the City may incur.

IN WITNESS WHEREOF, the City of Kirkland, Washington has caused this bond to be executed by the manual or facsimile signatures of the Mayor and City Clerk as of this ____ day of _____, 2001.

CITY OF KIRKLAND, WASHINGTON

By: _____

Its: _____

ATTEST:

City Clerk

CERTIFICATE OF AUTHENTICATION

Date of Authentication: _____

This bond is the bond described in the within mentioned Bond Ordinance and is the Limited Tax General Obligation Bond, 2001 of the City of Kirkland, dated _____, 2001.

WASHINGTON STATE FISCAL
AGENCY, Registrar

By _____
Authorized Signer

Section 6. Execution of Bond. The Bond shall be executed on behalf of the City with the manual or facsimile signatures of the Mayor and City Clerk of the City Council.

Only as the Bond shall bear thereon a Certificate of Authentication in the form hereinbefore recited, manually executed by the Bond Registrar, shall it be valid or obligatory for any purpose or entitled to the benefits of this ordinance. Such Certificate of Authentication shall be conclusive evidence that the Bond so authenticated has been duly executed, authenticated and delivered hereunder and is entitled to the benefits of this ordinance.

In case either of the officers who shall have executed the Bond shall cease to be an officer or officers of the City before the Bond so signed shall have been authenticated or delivered by the Bond Registrar, or issued by the City, the Bond may nevertheless be authenticated, delivered and issued and upon such authentication, delivery and issuance, shall be as binding upon the City as though those who signed the same had continued to be such officers of the City. The Bond may also be signed and attested on behalf of the City by such persons who are at the actual date of delivery of the Bond are the proper officers of the City although at the original date of the Bond any such person shall not have been such officer of the City.

Section 7. Tax Covenants. The City covenants that it will not take or permit to be taken on its behalf any action that would adversely affect the exemption from federal income taxation of the interest on the Bond and will take or require to be taken such acts as may

reasonably be within its ability and as may from time to time be required under applicable law to continue the exemption from federal income taxation of the interest on the Bond.

(a) *Arbitrage Covenant.* Without limiting the generality of the foregoing, the City covenants that it will not take any action or fail to take any action with respect to the proceeds of sale of the Bond or any other funds of the City which may be deemed to be proceeds of the Bond pursuant to Section 148 of the Code and the regulations promulgated thereunder which, if such use had been reasonably expected on the dates of first delivery of the Bond to the Registered Owner, would have caused the Bond to be treated as an "arbitrage bond" within the meaning of such term as used in Section 148 of the Code.

The City represents that it has not been notified of any listing or proposed listing by the Internal Revenue Service to the effect that it is an issuer whose arbitrage certifications may not be relied upon. The City will comply with the requirements of Section 148 of the Code and the applicable regulations thereunder throughout the term of the Bond.

(b) *Private Person Use Limitation for Bond.* The City covenants that for as long as the Bond is outstanding, it will not permit:

(1) More than 10% of the Net Proceeds of the Bond to be used for any Private Person Use; and

(2) More than 10% of the principal or interest payments on the Bond in a Bond Year to be directly or indirectly: (A) secured by any interest in property used or to be used for any Private Person Use or secured by payments in respect of property used or to be used for any Private Person Use, or (B) derived from payments (whether or not made to the City) in respect of property, or borrowed money, used or to be used for any Private Person Use.

The City further covenants that, if:

(3) More than five percent of the Net Proceeds of the Bond are to be used for any Private Person Use; and

(4) More than five percent of the principal or interest payments on the Bond in a Bond Year are (under the terms of this ordinance or any underlying arrangement) directly or indirectly:

(A) secured by any interest in property used or to be used for any Private Person Use or secured by payments in respect of property used or to be used for any Private Person Use, or

(B) derived from payments (whether or not made to the City) in respect of property, or borrowed money, used or to be used for any Private Person Use, then, (i) any Private Person Use of the Property described in subsection (3) hereof or Private Person Use payments described in subsection (4) hereof that is in excess of the five percent limitations described in such subsections (3) or (4) will be for a Private Person Use that is related to the state or local governmental use of the Property, and (ii) any Private Person Use will not exceed the amount of Net Proceeds of the Bond used for the state or local governmental use portion of the Property to which the Private Person Use of such portion of the Property relate. The City further covenants that it will comply with any limitations on the use of the Property by other than state and local governmental users that are necessary, in the opinion of its bond counsel, to preserve the tax exemption of the interest on the Bond. The covenants of this section are specified solely to assure the continued exemption from regular income taxation of the interest on the Bond.

(c) *Modification of Tax Covenants.* The covenants of this section are specified solely to assure the continued exemption from regular income taxation of the interest on the Bond. To that end, the provisions of this section may be modified or eliminated without

any requirement for formal amendment thereof upon receipt of an opinion of the City's bond counsel that such modification or elimination will not adversely affect the tax exemption of interest on the Bond.

Section 8. Creation of Bond Fund and Provision for Tax Levy Payments. A special fund of the City known as the "City of Kirkland Limited Tax General Obligation Bond Redemption Fund, 2001" (the "Bond Fund"), is hereby authorized and directed to be created in the office of the Director of Finance of the City. The Bond Fund shall be drawn upon for the sole purpose of paying the principal of and interest on the Bond.

The City hereby irrevocably covenants for as long as the Bond is outstanding and unpaid that each year it will include in its budget and levy an ad valorem tax, within and as a part of the tax millage levy permitted to cities without a vote of the people, upon all the property within the City subject to taxation in an amount which will be sufficient to pay the principal of and interest on the Bond as the same shall become due. All of such taxes and any of such other money so collected shall be paid into the Bond Fund. None of the money in the Bond Fund shall be used for any other purpose than the payment of the principal of and interest on the Bond. Money in the Bond Fund not needed to pay the interest or principal next coming due may temporarily be deposited in such institutions or invested in such obligations as may be lawful for the investment of City money.

The City hereby irrevocably pledges that a sufficient portion of each annual levy to be levied and collected by the City prior to the full payment of the principal of and interest on the Bond will be and is hereby irrevocably set aside, pledged and appropriated for the payment of the principal of and interest on the Bond. The full faith, credit and resources of the City are hereby

irrevocably pledged for the annual levy and collection of such taxes and for the prompt payment of the principal of and interest on the Bond as the same shall become due.

Section 9. Defeasance. In the event that the City, in order to effect the payment, retirement or redemption of the Bond or any portion thereof, sets aside in the Bond Fund or in another special account, cash or noncallable Government Obligations, or any combination of cash and/or noncallable Government Obligations, in amounts and maturities which, together with the known earned income therefrom, are sufficient to redeem or pay and retire the Bond or any portion thereof in accordance with its terms and to pay when due the interest and redemption premium, if any, thereon, and such cash and/or noncallable government obligations are irrevocably set aside and pledged for such purpose, then no further payments need be made into the Bond Fund for the payment of the principal of and interest on such portion of the Bond. The owner of such portion of the Bond so provided for shall cease to be entitled to any lien, benefit or security of this ordinance except the right to receive payment of principal, premium, if any, and interest from such special account, and such portion of the Bond shall be deemed to be not outstanding under this ordinance.

Section 10. Sale of Bond. The Bond shall be delivered to Gerald J. McAuliffe and JoAnn McAuliffe (the "McAuliffes"), pursuant to the Offer.

The Director of Finance and other City officials, agents and representative are hereby authorized and directed to do everything necessary for the prompt issuance, execution and delivery of the Bond to the McAuliffes and for the proper application and use of the proceeds of sale of the Bond.

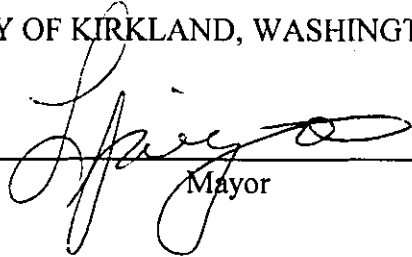
Section 11. Application of Proceeds of Bond. The proceeds of the Bond shall be delivered to the McAuliffes together with other consideration provided for in the Offer, in full payment of the purchase price for the Property.

Section 12. Lost, Stolen or Destroyed Bond. In case the Bond shall be lost, stolen or destroyed, the Bond Registrar may execute and deliver a new Bond of like date, number and tenor to the Registered Owner thereof upon the Registered Owner's paying the expenses and charges of the City in connection therewith and upon his/her filing with the City evidence satisfactory to the City that the Bond was actually lost, stolen or destroyed and of his/her ownership thereof, and upon furnishing the City with indemnity satisfactory to the City.

Section 13. Severability. If any one or more of the covenants or agreements provided in this ordinance to be performed on the part of the City shall be declared by any court of competent jurisdiction to be contrary to law, then such covenant or covenants, agreement or agreements, shall be null and void and shall be deemed separable from the remaining covenants and agreements of this ordinance and shall in no way affect the validity of the other provisions of this ordinance or of the Bond.

ADOPTED by the City Council of the City of Kirkland, Washington, at a regular meeting thereof held this 17th day of April, 2001.

CITY OF KIRKLAND, WASHINGTON



Mayor

ATTEST:



City Clerk

CITY OF KIRKLAND

Summary of Ordinance No. 3783 passed April 17, 2001
authorizing a limited tax general obligation bond in the amount of \$2,750,000

AN ORDINANCE OF THE CITY OF KIRKLAND, WASHINGTON, PROVIDING FOR THE ISSUANCE AND SALE OF A LIMITED TAX GENERAL OBLIGATION BOND OF THE CITY IN THE PRINCIPAL AMOUNT OF \$2,750,000 FOR THE PURPOSE OF ACQUIRING CERTAIN REAL PROPERTY FOR THE CITY; PROVIDING THE DATE, FORM, TERMS AND MATURITIES OF SAID BOND AND FOR LIMITED TAX LEVIES TO PAY THE PRINCIPAL THEREOF AND INTEREST THEREON; PROVIDING FOR THE DISPOSITION OF THE PROCEEDS OF SALE; AND APPROVING THE SALE OF THE BOND.

Section 1 (Definitions) defines certain capitalized terms used in the Ordinance.

Section 2 (Authorization of Bond and Bond Details) authorizes the City's Limited Tax General Obligation Bond, 2001 (the "Bond") in the principal amount of \$2,750,000 to pay a portion of the purchase price for certain real estate property and provides details regarding its maturity and interest rate.

Section 3 (Registration, Exchange and Payments) adopts a system of registration and exchange for the Bond and describes the arrangements for paying principal of and interest on the Bond.

Section 4 (Redemption Prior to Maturity and Purchase of Bond) states that the Bond is not prepayable prior to its stated maturity.

Section 5 (Form of Bond) describes the form of the Bond.

Section 6 (Execution of Bond) provides details regarding the signatures on the Bond and the terms of its authentication and delivery.

Section 7 (Tax Covenants) covenants that the City will not cause interest on the Bond to become taxable.

Section 8 (Creation of Bond Fund and Provision for Tax Levy Payments) authorizes creation of the Bond Fund and limited tax levies to pay the principal of and interest on the Bond.

Section 9 (Defeasance) provides conditions under which the Bond may be defeased.

Section 10 (Sale of Bond) authorizes the sale of the Bond to Gerald J. McAuliffe and JoAnn McAuliffe pursuant to their offer.

Section 11 (Application of Proceeds of Bond) provides for the application of proceeds of the Bond.

Section 12 (Lost, Stolen or Destroyed Bond) makes provision in case the Bond is lost.

Section 13 (Severability) states that the invalidity of any provision of the ordinance shall not affect the validity of the other provisions of the ordinance or of the Bond.

The full text of Ordinance No 3783 will be mailed without cost to any party upon request made to the City Clerk for the City of Kirkland. The ordinance was passed by the Kirkland City Council at its regular meeting on the 17th day of April, 2001.

I certify that the foregoing is a summary of Ordinance 3783 approved by the Kirkland City Council for summary publication.


City Clerk