

RESOLUTION R - 3483

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF KIRKLAND AUTHORIZING THE CITY MANAGER TO SIGN ON BEHALF OF THE CITY OF KIRKLAND A CONTRACT WITH THE KIRKLAND DOWNTOWN ASSOCIATION TO ADMINISTER THE OPERATION OF THE BUSINESS IMPROVEMENT AREA CREATED BY ORDINANCE No. 3128.

Whereas, the Kirkland City Council by Ordinance No. 3128 created, pursuant to RCW Chapter 35.87A, a Business Improvement Area within and adjacent to the Kirkland Central Business District, and

Whereas, Section 4 of said Ordinance authorizes the City to contract with the Kirkland Downtown Association to administer the operation of the Business Improvement Area consistent with the provisions of RCW 35.87A, now, therefore

Be it resolved by the City Council of the City of Kirkland as follows:


Section 1. The City Manager for the City of Kirkland is hereby authorized and directed to sign on behalf of the City of Kirkland, an agreement with the Kirkland Downtown Association to administer and operate the Kirkland Downtown Business Improvement Area established by Ordinance No. 3128. Said contract shall be substantially in the form attached to the original of this Resolution as Exhibit A and by this reference incorporated herein.

Passed by majority vote of the Kirkland City Council in regular, open meeting this 3rd day of October, 1988.

Signed in authentication thereof this 3rd day of October, 1988.


MAYOR

ATTEST:


City Clerk

AGREEMENT FOR ADMINISTRATION AND OPERATION OF THE KIRKLAND
DOWNTOWN BUSINESS IMPROVEMENT AREA

This Agreement entered into this _____ day of _____, 1988 by and between the City of Kirkland, a code city of the State of Washington, hereinafter referred to as "City", and the Kirkland Downtown Association, hereinafter referred to as "KDA".

Whereas, the City Council of the City of Kirkland by Ordinance _____ adopted _____, 1988 provided for the establishment of a Business Improvement Area (hereinafter referred to as the "BIA") encompassing an area within and adjacent to the Kirkland Central Business District, and

Whereas, all parties agree that to accomplish the intent of the Ordinance effectively and as provided by RCW 35.87A.100, the City has determined to contract with a Business Association, operating primarily within the boundaries of the City, for administration and operation of the BIA, and

Whereas, the City has determined that the KDA is the proper association to administer the BIA at this time, now, therefore,

In consideration of the covenants herein contained, the parties hereto mutually agree as follows:

1. Responsibilities of KDA. In carrying out its duties under this agreement:

a. The KDA shall comply with all applicable provisions of law, including RCW Chapter 35.87A, all City Resolutions and Ordinances, and with all regulations lawfully imposed by the State Auditor and other State agencies. The KDA shall, with respect to all monies received from City under this Agreement, be subject to the constitutional and statutory limitations on the expenditure of public funds.

b. The KDA shall conduct its activities for the purposes of this Agreement within the area described in Exhibit A to City of Kirkland Ordinance _____, a copy of which is hereto attached and incorporated herein as though fully set forth.

c. The KDA duties shall be those duties assigned by this Agreement, and shall include the duties, requirements and responsibilities of Section 2 of City of Kirkland Ordinance _____. Provided that with respect to the "METRO" approved and authorized local non-rail trolley or bus to be

operated within and adjacent to the several areas of the BIA, the KDA shall enter into a contract for the actual operation thereof with an existing public or private transit agency or company; both the contract operating agency and the contract to be entered into between the KDA and said transit agency shall be subject to prior approval by the City and the Municipality of Metropolitan Seattle (METRO).

d. The KDA in consultation with the BIA assessment payers advisory group created by City of Kirkland Ordinance _____ may serve as an information resource for downtown revitalization projects, and pursue the economic revitalization of the Central Business District in all ways that are within the scope of the duties, requirements, and responsibilities assigned to the KDA by this Agreement.

e. The KDA shall contact all businesses which are delinquent in payment of their BIA assessments and encourage that such assessments be paid. The KDA shall not be responsible for collection of assessments.

f. The KDA shall submit quarterly reports on the projects and activities and expenditures for each previous quarter to the City Manager on or before the end of the month following each quarter. The KDA shall also submit an annual report. Additionally, the KDA shall submit its proposed budget for each ensuing year to the Kirkland Director of Administration and Finance on or before the first day of September, prior to the commencement of the next calendar budget year. Financial reports and budget requests shall be in forms or formats approved by the Director of Administration and Finance. The budget contained in Section 2 of Kirkland Ordinance _____ may be amended annually by the City Council.

g. The BIA, as created by City, has no authority to borrow money or issue notes or other evidences of indebtedness. The KDA shall neither assign nor pledge as security or collateral for borrowings by the KDA either the BIA assessments receivable, nor the funds received by or to be received by KDA as quarterly distributions of assessments collected by City.

2. Responsibilities of City. In carrying out its duties under this Agreement:

a. The City shall bill and receive all BIA assessments in accordance with City of Kirkland Ordinance _____. The City shall distribute all collected funds to the KDA less the direct cost to City for the billing and collection of assessments, including any late or delinquent assessments, and the actual costs incurred in providing clerical and other support to the BIA assessment payers advisory group. The City shall make payments to the KDA from the City's designated Business Improvement Area Fund in quarterly installments for the uses, programs, and projects designated in this Agreement.

b. The City Director of Administration and Finance shall review the KDA reports and proposed annual budget and shall report on the KDA reports and proposed annual budget to the City Manager and to the City Council.

c. The City shall further be responsible to the same extent as it was prior to creation of the BIA for the following:

i. Street and pedestrian lighting, energy, and maintenance.

ii. Landscaping and other maintenance and repair within public rights-of-way and other publicly owned property within the BIA area.

iii. Sweeping of publicly owned parking lots.

3. Termination of Agreement. This Agreement shall terminate on any one of the following occurrences:

A. Disestablishment of the BIA by the City as provided for in RCW 35.87A.180 as it now exists or may hereafter be amended;

B. Termination of Agreement for cause. If the KDA shall fail to fulfill in a timely and proper manner its obligations under this Agreement, or if the KDA shall violate any of the covenants, agreements or stipulations of this Agreement, the City shall have the right to terminate this Agreement by giving written notice and specifying the effective

date of termination after giving notice and an opportunity to cure the violation. Payment shall be made for services rendered up to the date of termination based upon the City Manager's decision which shall be binding and conclusive;

C. Termination for convenience of the City.

The City may terminate this Agreement at any time by a notice in writing from the City to the KDA. Payment shall be made by the City to the KDA for services rendered up to the date of termination, based upon the City Manager's decision which shall be binding and conclusive. Notice of termination shall be given at least thirty (30) days before becoming effective; and

D. Termination of Agreement by the KDA. If the City shall fail to substantially perform in accordance with the terms of this Agreement through no fault of the KDA, this Agreement may be terminated by the KDA upon thirty (30) days writtin notice. Provided, the KDA shall first give the City written notice of default and a reasonable opportunity to cure the same. Payment shall be made for services rendered up to the date of termination based upon the City Manager's decision which shall be binding and conclusive.

4. Save Harmless Agreement. The KDA shall indemnify and save harmless the City of Kirkland, its officers and employees, from any claim, real or imaginary, made by any person and arising out of any improper or unauthorized use of funds distributed by the City to the KDA pursuant to this Agreement, or arising out of any other violations by KDA, its officers and employees, of the provisions of this Agreement; or any claim for damage or injury, except to the extent such claim for damage or injury arises out of a negligent act or omission of the City, its officers or employees.

5. Term of Agreement. This Agreement shall remain in effect until terminated as provided under paragraph 3.

6. Notices. Written notices, other correspondence or notices of grievance shall be considered effective three days after their deposit in a regular mail drop of the U.S. Post Office and effective immediately if hand delivered. Written notice to the City shall be made to:

City Manager
City of Kirkland
123 Fifth Avenue
Kirkland, Washington 98033

Written notice to the KDA shall be made to:

KDA Chairman

Kirkland, Washington 98033

7. Integration. This Agreement embodies the agreement, terms and conditions between the City and the KDA. No verbal agreement or conversation with any officer, agent or employee of the City prior to the execution of the Agreement shall affect or modify any of the terms or obligations contained in any documents comprising this Agreement. Any such verbal agreement shall be considered unofficial information and is no way binding upon either party. This Agreement may only be modified in writing when signed by both parties.

IN WITNESS WHEREOF, the City of Kirkland and the Kirkland Downtown Association have executed this Agreement as of the date written on page 1.

KIRKLAND DOWNTOWN ASSOCIATION

CHAIRMAN

CITY OF KIRKLAND

CITY MANAGER

ATTEST:

CITY CLERK

APPROVED AS TO FORM:

CITY ATTORNEY