

RESOLUTION NO. R- 3603

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF KIRKLAND APPROVING AN AMENDMENT TO THE CONTRACT FOR ADMINISTRATION AND OPERATION OF THE KIRKLAND DOWNTOWN BUSINESS IMPROVEMENT AREA RELATING TO THE OPERATION OF THE TROLLEY

WHEREAS, the Board of Directors of the Kirkland Downtown Association, as contract administrator for the Downtown Business Improvement Area, has requested a change in the BID operating agreement, and

WHEREAS, said request would eliminate the requirement that the KDA contract for trolley operation with an existing transit agency in order that the KDA could assume the actual operation and maintenance of the trolley, and

WHEREAS, the KDA has expressed belief that this change could significantly decrease the cost of operation and provide better control over trolley schedule and maintenance,

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

Section 1. The amended contract between the City of Kirkland and the KDA for administration and operation of the Kirkland Downtown Business Improvement Area, including trolley operation, copy of which contract is attached to the original of this Resolution and by this reference incorporated herein, is approved.

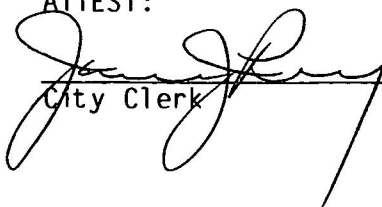
Section 2. The City Manager for the City of Kirkland is hereby authorized and directed to sign said Amended Agreement on behalf of the City of Kirkland at such time as the Amended Agreement is signed by the authorized official of the Kirkland Downtown Association.

Passed by majority vote of the Kirkland City Council in regular, open meeting this 15th day of May, 1990.

Signed in authentication thereof this 15th day of May, 1990.

  
\_\_\_\_\_  
MAYOR

ATTEST:

  
\_\_\_\_\_  
City Clerk

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

This Amended Agreement entered into this \_\_\_\_\_ day of \_\_\_\_\_, 1990 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 3128 adopted October 3, 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 3128, 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 3128. 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, KDA may assume the actual operation of the program, including maintenance of the trolley, provided:

- i. KDA shall obtain and keep current at all time, policies of casualty and comprehensive liability insurance (written on an "occurrence" as opposed to a "claims made" basis), as to its possession and operation of the trolley. The comprehensive liability insurance shall cover all risks relating to personal injury and property damage with respect to passengers riding the trolley, as well as all other persons; the City of Kirkland and the Municipality of Metropolitan Seattle (METRO) shall be included as "additional insured".
- ii. The KDA hereby covenants to defend, indemnify and save harmless the City of Kirkland and the Municipality of Metropolitan Seattle (METRO) and their respective officers, agents and employees, from any claim for personal injury or property damage made against either the City of Kirkland or METRO, and arising out of the operation and/or maintenance of said trolley upon the public streets and other ways open to the public within the City of Kirkland, including reasonable attorney's fees, costs and expenses incurred by either the City of Kirkland or METRO, in the investigation and defense of such claims excluding therefrom, only such loss as may directly and solely result from a negligent act or omission of the City of Kirkland or METRO, as the case may be.
- iii. On an annual calendar year basis any cost or expense of trolley operation, including maintenance, in excess of the amount of the annual "trolley assessment" actually received by the City, pursuant to Kirkland Ordinance No. R3128, as now or hereafter amended, and disbursed to the KDA, shall be borne by and be the sole obligation of the

Kirkland Downtown Association, Inc. Such excess, if any shall be deemed by both parties to fall within the purview of Section 4 of this Agreement.

- d. The KDA in consultation with the BIA assessment payers advisory group created by City of Kirkland Ordinance 3128 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 may 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. During its annual budget review and adoption process, the City Council will review the KDA proposed BIA budget and will then approve an annual budget for the BIA.
- 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 3128. 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 together with the KDA, and shall report on the KDA reports and proposed annual budget to the City Manager and to the City Council. On or before the first day of September of each year, the Director of Administration and Finance shall provide the KDA with an estimate of the cost of billing and collection of assessments anticipated to be incurred during the coming year.
  - 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 violation by KDA, its officers and employees, of the provisions of this Agreement, or any claim for damage or injury arising therefrom, 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

CITY OF KIRKLAND

\_\_\_\_\_  
 CHAIRMAN

\_\_\_\_\_  
 CITY MANAGER

ATTEST:

\_\_\_\_\_  
 CITY CLERK

APPROVED AS TO FORM:

\_\_\_\_\_  
 CITY ATTORNEY