

RESOLUTION R- 3815

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF KIRKLAND RELATING TO THE PROPOSED KIRKLAND CENTER FOR THE PERFORMING ARTS AND DIRECTING THE SIGNING OF THE ATTACHED AGREEMENT WITH KCPA.

Whereas, Kirkland Center for the Performing Arts, a non-profit corporation for the development of a performing arts center in Kirkland, has requested use of the building which will be vacated by the library for a performing arts center; and

Whereas, the City Council has agreed that use of the old library as a theater would be of benefit to the general public; and

Whereas, KCPA is committed to fund raising to make it possible to renovate the old library for use as a performing arts center and then to involve the community with the programing to be developed with the control of KCPA; and

Whereas, an agreement with KCPA concerning the steps necessary to accomplish renovation of the old library for a theater and then a lease under which KCPA can operate the theater are beneficial to the general public,

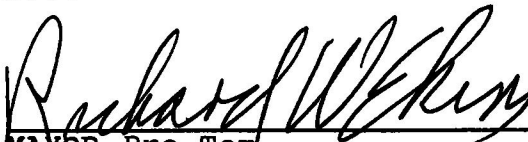
Now, therefore, be it resolved by the City Council of the City of Kirkland as follows:

Section 1. The City of Kirkland has pledged \$500,000.00 towards the renovation of the old library for use as a theater as provided in the attached Agreement Relating to Construction and Operation of the Proposed Center for the Performing Arts with KCPA. The City Manager is authorized and directed to sign that certain Agreement on behalf of the City of Kirkland.

Section 2. The City Council intends that the City of Kirkland enter into a lease of the theater to KCPA as described in the aforementioned Agreement. The principal terms of such lease are expected to be substantially similar to those attached to the aforementioned Agreement. It is anticipated that the parties will agree on the final form of a lease to be effective at such time as the conditions outlined in the Agreement have been satisfied.

Passed by majority vote of the Kirkland  
City Council in regular, open meeting this 18th  
day of May, 1993.

Signed in authentication thereof this 18th  
day of May, 1993.

  
MAYOR Pro Tem

Attest:

  
City Clerk

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AGREEMENT RELATING TO CONSTRUCTION  
AND OPERATION OF THE  
PROPOSED CENTER FOR THE PERFORMING ARTS

THIS AGREEMENT is made and entered into on the date last below signed between the City of Kirkland ("City") and Kirkland Center for the Performing Arts ("KCPA").

WITNESSETH:

Whereas, the City is the owner of a building (hereinafter referred to as the "old library") which is situate upon the real property in King County, State of Washington, that is legally described in Attachment A;

Whereas, KCPA has been organized for the express purpose of promoting the development of and operating a performing arts center in Kirkland; and

Whereas, both parties desire that the proposed Center for the Performing Arts ("theater") be managed and operated as a place for public entertainment and cultural events in accordance with the provisions, terms and conditions of this agreement.

Now, therefore, in consideration of the mutual undertaking and promises contained herein, and the benefits to be realized by each party and in future consideration of the benefit to the general public by the creation and operation of the theater, and as a direct benefit to the City, the parties agree as follows:

1. The parties support the renovation of the old library into an approximately 315 seat theater to be used as a performing arts center. KCPA has proposed that funding needed for the theater to be made ready for operation is \$2,500,000.00. City will pay \$500,000.00 solely towards actual construction costs of renovation after KCPA has obtained the balance of the funding needed. Once City is satisfied that KCPA has irrevocable commitments for all but \$500,000.00 of the project cost, City will pass a resolution committing to payment of \$500,000.00 in construction costs.

2. KCPA will report quarterly to City on fundraising activities. By March 31, 1994, City will review the status of KCPA project funding. By September 30, 1994, KCPA will have in hand, or by government appropriations or other commitments which City is satisfied are binding, ~~(or-in-firm-written commitments)~~, 100% of the funding required for the theater to be ready for operation, recognizing that after December 31, 1994, this Agreement will terminate

and the City will reevaluate the use of the building if KCPA has not satisfied this requirement by December 31, 1994 achieved-100%-of-funding-needed.

3. KCPA and City will each appoint three persons to a project management committee to oversee agreed upon aspects of design and construction, including major change orders. The City Council and the KCPA Board must review and approve the project design. ~~KCPA will provide to City any additional funds needed due to change orders or cost overruns before such funds are due third parties.~~ Any work, design, or change orders that may increase costs over the agreed upon budget shall require reduction in the scope of work so that actual costs of the project do not exceed said budget. Reductions to the project budget will be made as necessary in lieu of incurring cost overruns. In case of a tie vote by the committee, the City Manager (or Acting City Manager) will cast the deciding vote. This committee may authorize physical access to the project site by persons for whom KCPA so requests, for purposes such as space planning.

4. City will conduct value engineering of the proposed renovation, the cost for which will be included in the total project costs for architectural services. KCPA will be consulted as to criteria for selection of an architectural firm to design the renovation for a theater. City will design, bid, and construct the renovation project, and these costs will be included in the total project cost. City must be satisfied that KCPA has in hand or binding commitments for 100% of construction costs total-project-funds-must be-in-hand before the call for bids. City will call for bids on tenant improvements as an alternate project, and KCPA will be consulted as to whether one such alternate bid should be accepted. If no bid to the City for tenant improvements is accepted, then KCPA may contract for and do construction management of tenant improvements. Elements of this renovation project which are not tenant improvements include the structure, core, HVAC, plumbing, electrical and mechanical systems, elevator and stage. Examples of tenant improvements include seating, carpet, sound system, lighting and audio/visual systems.

5. The parties intend to enter into a lease no later than September 30, 1994 ~~March 31, 1994~~, the principal terms of which are substantially similar to those attached hereto as Attachment B. Effectiveness of the lease is contingent on KCPA presenting its anticipated budget, including anticipated M&O costs, to City and it being to the City Council's satisfaction. KCPA is to have cash in hand or binding commitments

(approved by the City) for at least the amount of the projected budget \$200,000- for first year operations before opening. The effective date of the lease would be the date upon which City advises KCPA that an occupancy certificate could issue for the renovated structure. ~~For illustrative purposes, Attachment B is shown with a date of March 1, 1996, however, the actual date on which the lease will be effective may be earlier or later, depending on the progress of construction.~~

6. This Agreement shall terminate no later than December 31, 1996. This Agreement shall be earlier terminated if fund raising is not accomplished by the deadlines provided hereinabove. This Agreement shall terminate upon the effective date of the lease described hereinabove.

IN WITNESS WHEREOF, the parties have executed this Agreement.

CITY OF KIRKLAND

KIRKLAND CENTER FOR THE PERFORMING ARTS

By: \_\_\_\_\_  
Date: \_\_\_\_\_

By: \_\_\_\_\_  
Date: \_\_\_\_\_

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R-3815

Attachment A to Agreement

A portion of S.E.  $\frac{1}{4}$  of S.W.  $\frac{1}{4}$  of Sec. 5, Twp. 25 North, Range 5 E.W.M. described as follows: Beginning at a point in the south line of Section 5, Twp. 25 North, Range 5 E.W.M., N. 89°39' E. 1511.50 Ft. from the meander corner between Section 5 and 8, said point being the southeasterly corner of Kirkland Recreation Field and running thence S. 89°39' W. 84.12 Ft., thence N. 0°31'40" W. 265.23 Ft. along existing fence, thence continuing along the existing fence N. 30°23' W. 243.22 ft., thence N. 0°21' W. 56.0 ft., thence N. 89°39' E. 206.29 ft. to a point which bears N. 0°21' W. from the point of beginning being on the east line of said Kirkland Recreation Field, thence S. 0°21' E. 531.80 ft. to the point of beginning. Except therefrom the right-of-way of Kirkland-Redmond Short Line Road. Containing 1.18 Acres more or less.

## Attachment B to Agreement

PRINCIPAL TERMS EXPECTED IN LEASE OF  
CENTER FOR THE PERFORMING ARTS

This Lease is made and entered into on the date last below signed between the City of Kirkland, lessor ("City"), and the Kirkland Center for the Performing Arts, lessee ("KCPA").

Whereas, the City is the owner of a building (hereinafter referred to as the "old library") which is situate upon the real property in King County, State of Washington, legally described in Attachment A;

Whereas, KCPA has been organized for the express purpose of promoting the development of and operating a performing arts center in Kirkland; and

Whereas, both parties desire that the proposed Center for the Performing Arts ("theater") be managed and operated as a place for public entertainment and cultural events in accordance with the provisions, terms and conditions of this agreement.

Now, therefore, in consideration of the mutual undertaking and promises contained herein, and the benefits to be realized by each party and in future consideration of the benefit to the general public by the creation and operation of the theater, and as a direct benefit to the City, the parties enter into this Lease on the following terms and conditions:

1. KCPA will lease the theater from City for \$1.00 per year. KCPA shall occupy, manage and operate the theater according to the provisions, terms and conditions of this Lease.

2. KCPA will have exclusive operational control of the facility and total artistic control of programing. City will be allowed use for City purposes of the theater at least seven days per year, on a prescheduled basis, with priority second to scheduling of arts organizations series performances, without rental charge, but will pay resulting special expenses such as but not limited to extra staffing or janitorial services. City may also use the theater additional times on a space available basis, without rental charge, but paying any special expenses. This "space available" use may not be reserved more than 60 days in advance of the use date and should not compete for KCPA rental customers.

3. This Lease implies no City commitment for financial support of KCPA operations. The City Council has the right to appoint one person as a member of the KCPA Board of Directors ~~Executive Board, which shall have equivalent authority as it did on March 23, 1993, and which shall consist of no more than 7 persons.~~

4. KCPA will actively encourage and provide for youth experiences with the performing arts.

5. KCPA will provide an annual report, by a date to be determined May 1 of each year, to the City, summarizing KCPA's activities and status, and including a financial report with specific discussion of projected annual M&O costs. KCPA will maintain a trust fund or endowment sufficient to cover shortfalls in annual operations funding.

6. City is responsible for structural maintenance, upkeep and repair which shall include the roof, foundation, core HVAC system, and elevator; provided that, KCPA will pay to City an amount which would provide for an annual service contract for preventative maintenance on the HVAC system and elevator. City is also responsible for capital maintenance on mechanical, electrical, and plumbing systems, exterior entrances and exits, and permanent stairways. KCPA will not alter any structural features without City approval. KCPA is responsible for maintenance, upkeep and repair of tenant improvements, audio/visual systems, sound system, telephone equipment, and lighting and plumbing fixtures and appliances. KCPA's responsibility for plumbing fixtures and appliances extends through fixture drain and trap down to the junction with the line into wall or floor, and includes attempting to clear clogs by means of plunger and toilet auger. KCPA's janitorial and routine maintenance responsibilities include: timely repair or replacement of light fixtures or bulbs, electrical switches or controls; cleaning, repair, or replacement of seating, curtains, carpets, flooring, and faucets, and drains; cleaning windows and walls; and servicing of audience areas and restrooms, ~~including correction of stopped-up toilets.~~ KCPA may redecorate any interior surfaces of walls, ceilings, windows and doors. KCPA will timely pay all utility charges including electricity, water, sewer, garbage, and telephone.

7. City is responsible for and will pay for landscaping and landscape maintenance; provided that, should KCPA want special plantings or landscaping features, KCPA will be responsible for and will pay for those.



8. City shall maintain fire and casualty insurance on the building in an amount sufficient to rebuild the theater structure; provided that, KCPA will reimburse City for any portion of the cost therefor which exceeds the standard cost for a comparable structure. KCPA shall maintain property insurance on the leasehold improvements in an amount sufficient to cover the full value of the contents of the theater, including personal property owned by third parties. KCPA shall maintain general liability insurance from an insurance company that has no less than a Bests' rating of A VII and is authorized to do business in Washington state, with limits of at least \$5,000,000.00, and with the City of Kirkland named as a co-insured under such policy.

9. KCPA will indemnify, defend, and save harmless the City or its officers, agents, or employees, for any claim, real or imaginary, filed against the City or its officers, agents, or employees, alleging damage or injury arising out of the subject matter of this Lease; provided, however, the liability of KCPA for damages or injury caused by negligence of itself or its agents or employees shall be limited to amounts equal to its percentage of fault, comparative or otherwise. that-such-provision-shall-not-apply-to-the-extent-that-damage-or-injury-results-from-the-sole-fault-of-the-City-or-its-officers,-agents,-or-employees- "Fault" as herein used shall have the same meaning as set forth in RCW 4.22.015. In any event, KCPA's obligations regarding indemnification under this paragraph shall include any unsafe condition or repair problem which-was-not-known-to-City; provided further, however, if the City knew or should have known about any unsafe condition or repair problem, any obligation of KCPA under the indemnification shall be apportioned on the basis of comparative fault.

10. KCPA shall not deny or substantially impair any person's receipt of services or benefits offered by virtue of this Lease on the grounds of race, color, sexual orientation, nationality, sensory, mental or physical handicap, or sex. KCPA shall not discriminate against any employee or applicant for employment in connection with this Lease because of age, sex, marital status, race, creed, color, sexual orientation, nationality, or the presence of any sensory, mental or physical handicap, except where there is a bona fide occupational limitation.

11. Obligations or rights under this Lease may not be assigned or otherwise transferred by either of the parties hereto, without the express written consent

of the parties. No change, alteration, modification, or addition to this lease will be effective unless it is in writing and properly signed by both parties hereto.

12. The term of this Lease shall be for ten years from its commencement date March-17-1996. KCPA has the option to renew this Lease for three ten-year extensions; provided that, at the end of the initial term, and every five years thereafter, City shall have the right to renegotiate the amount of annual rent and any other terms and conditions of the Lease. City shall notify KCPA at least six months ahead of its intent and desire to reopen specified terms and conditions. KCPA shall notify City of their intent and desire to extend the term of the Lease, at least one year prior to the end of the initial term and of each extension. KCPA may terminate this Lease and vacate the building after one years notice to City; however, no "refund" or other compensation would be due from City. In the event of such termination, KCPA may remove from the theater and keep its own equipment. The parties will maintain a list of such equipment. and KCPA's interests under this provision are would not be assignable. The absence of any KCPA-scheduled performing arts event for a period of ninety days or more, when not due to repair problems or maintenance work for which City is responsible, shall constitute termination of this Lease by KCPA.

13. In the event a dispute arises as to whether the parties are complying with the terms of this Lease, the parties agree to use the following dispute resolution procedure before pursuing any other remedy. First, either party may give notice to the other of the dispute and the City Manager and the KCPA President or their designees will meet within 3 City business days to attempt to resolve the dispute. If the dispute continues, either party may give written notice to the other and a Resolution Panel will be formed consisting of one member selected by the City Manager, one member selected by the KCPA President, and a third member selected by the first two. City shall pay any costs or fees associated with the member it selects. KCPA shall pay any costs or fees associated with the member it selects. City and KCPA shall each pay one half of any costs or fees required for the third member. The parties agree to present the dispute to the Resolution Panel within 20 calendar days after the written notice. The decision of the Resolution Panel will be announced within 10 City business days and it will be given a legal presumption of correctness as to whether the complained of commission or omission, if continued, would constitute breach of the terms of this Lease.

14. This Lease shall also include other normal and usual provisions, such as, but not limited to, reserved parking rights on City property and the sale of merchandise and beverages on the premises.

IN WITNESS WHEREOF, the parties have executed this Lease.

CITY OF KIRKLAND

KIRKLAND CENTER FOR THE  
PERFORMING ARTS

By: \_\_\_\_\_  
Date: \_\_\_\_\_

By: \_\_\_\_\_  
Date: \_\_\_\_\_

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