

RESOLUTION NO. 3880

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF KIRKLAND AUTHORIZING EXECUTION OF A GROUND LEASE WITH THE KING COUNTY LIBRARY SYSTEM.


WHEREAS, the City of Kirkland has authorized construction of a new resource library upon City-owned property; and

WHEREAS, the King County Library System has assumed responsibility for construction of this facility;

NOW, THEREFORE, BE IT RESOLVED, that the City Council of the City of Kirkland does hereby authorize the City Manager to execute an agreement with the King County Library System to provide for a ground lease to operate during the term of construction.

PASSED by majority vote of the Kirkland City Council in regular, open meeting this 7th day of June, 1994.

SIGNED in authentication thereof the 7th day of June, 1994.

  
\_\_\_\_\_  
Mayor

ATTEST:

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

GROUND LEASE

THIS GROUND LEASE (the "Lease") is made this \_\_\_\_\_ day of May, 1994, by and between the CITY OF KIRKLAND (the "City"), and KING COUNTY RURAL LIBRARY DISTRICT (the "District").

A. The City owns that certain real property located in Kirkland, King County, Washington, legally described on Exhibit A attached hereto and made a part hereof (the "Property") and commonly known as the Peter Kirk Park parking lot area.

B. Pursuant to that certain Supplement to Interlocal Government Agreement between the City of Kirkland and King County Rural Library District, dated October 5, 1993 (the "Supplement to Interlocal Agreement"), the District has agreed to construct on the Property, among other things, a 15,000 square foot library building (the "Building") and supporting multi-level parking facility (the "Garage"). The Building and the Garage and all other improvements and amenities the District is required to construct under the Agreement shall sometimes collectively be referred to as the "Improvements."

C. For the purpose of constructing the Improvements pursuant to the Agreement, the City desires to lease to the District and the District desires to lease from the City the Property, in accordance with the terms and conditions set forth below.

For good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby agree as follows:

1. Premises. The City hereby leases to the District and the District hereby leases from the City the Property.

2. Term. The term of the Lease commences on the date hereof and shall terminate upon the last date on which all of the following events have occurred: the completion of the construction and acceptance by the City of the Garage; the completion of the construction and acceptance by the District of the Building and the top level parking area of the Garage; and the commencement of that certain Lease and Access Easement Agreement between the parties. The City shall be entitled to occupy the two lower levels of the Garage immediately upon the completion of the construction and acceptance by the City of the Garage, provided however that the City shall take reasonable precautions to protect Garage users from safety hazards caused by ongoing construction work on or about the Property.

3. Rent. The District shall pay \$1.00 in advance in total rent to the City for the term of this Lease.

4. Taxes and Assessments. To the extent required by applicable law (including any exemption which might apply), the City shall pay all real and personal property taxes, general and special assessments and other charges levied on or assessed against the Property.

5. Use. The District shall use the Property for the purpose of constructing the Improvements.

6. Assignment. Neither party shall have the right to assign, convey, or otherwise transfer its interest in the Property, the Building or the Garage without the prior written consent of the other party, which consent shall not unreasonably be withheld, conditioned or delayed.

7. Builder's Risk Insurance. Throughout the term, at the District's sole cost and expense, the District shall maintain "all risk" builder's risk insurance including vandalism and malicious mischief, covering improvements in place and all material and equipment at the job site furnished under contract, with limits in the amount of the full replacement value of such improvements, material and equipment. The City shall be named an additional insured to the extent of its interest in the insured property. The City shall repay the District that portion of the insurance costs attributable to the Garage, and the materials therefor, within thirty (30) days of the District's written demand therefor.

8. Liability Insurance. Throughout the term, at the District's sole cost and expense, the District shall keep or cause to be kept in force a commercial general liability insurance policy, naming the City as an additional insured, insuring against claims and liability for personal injury, death or property damage arising from the District's activities on the Property in an amount not less than Two Million Dollars (\$2,000,000) per occurrence. Throughout the term, at the City's sole cost and expense, the City shall keep or cause to be kept in force a commercial general liability insurance policy, naming the District as an additional insured, insuring against claims and liability for personal injury, death or property damage arising from the City's activities on the Property, in an amount not less than Two Million Dollars (\$2,000,000) per occurrence.

9. Proceeds of Insurance. The City shall cooperate fully with the District to obtain the largest possible recovery from the District's insurance coverage in the event of an insurable loss. The District shall be entitled to all the proceeds payable in connection with any damage or destruction to the Building (or to any of the materials located on the Property intended for use in the construction of the Building). The City shall be entitled to all the proceeds payable in connection with any damage or destruction to the Garage (or to any materials intended for use in the construction of the Garage). If, during the Lease term, the Building is totally or partially damaged or destroyed, the District shall repair and restore

the Building provided that insurance proceeds are sufficient to cover the actual cost of repair and/or restoration and that existing laws permit the repair and/or restoration. Such repair and restoration shall be commenced with reasonable promptness and prosecuted with reasonable diligence. If insurance proceeds are insufficient to repair or restore the Building to substantially the same condition as existed immediately before such damage or destruction or if existing laws do not permit such repair or restoration, the District may terminate the Lease in which case the District shall use such portion of its insurance proceeds as may be reasonably necessary to remove the Building from the Property, if so requested by the City.

If during the Lease term, the Garage is totally or partially damaged or destroyed, the City shall restore or repair the Garage to substantially the same condition as existed immediately before such damage or destruction, provided insurance proceeds are sufficient to cover the actual cost of repair and/or restoration and if the existing laws permit the repair and/or restoration. Such restoration, repairs, replacement, or rebuilding shall be commenced with reasonable promptness and prosecuted with reasonable diligence. If insurance proceeds are insufficient to repair or restore the Garage to substantially the same condition as existed immediately before such damage or destruction or if the existing laws do not permit the repair or restoration, either party can terminate this Lease immediately by giving notice to the other party. Notwithstanding the foregoing, if the Building has been damaged or destroyed and the District has elected to terminate the Lease as provided above, the City shall have no obligation to restore the Garage.

10. Default by District. The failure of the District to perform or observe any provision of this Lease on its part to be performed or observed within sixty (60) days after written notice thereof has been given by the City to the District particularly specifying the default shall be an event of default under this Lease; provided, however, if the nature of the District's obligation is such that more than sixty (60) days are required to cure the default, then the District shall not be in default hereunder if the District commences performance within the sixty (60) day period and thereafter diligently prosecutes the same to completion.

11. City's Remedies. In the event of a default by the District and to the extent permitted by law, the City may terminate the Lease and/or recover from the District all sums owed by the District to the City under the Lease and/or the City may, but shall not be obligated, to cure the default at the District's cost. If the City, at any time, by reason of the District's default, pays any sum or does any act that requires the payment of any sum, the sum paid by the City shall be due immediately from the District to the City at the time the sum is paid; provided, however, that the District shall have the right to contest the reasonableness of the amount of any such payment or the purpose for which such payment was made.

12. Default by City. The failure by the City to perform or observe any provision of this Lease on its part to be performed or observed within sixty (60) days after written notice thereof has been given by the District to the City particularly specifying the default shall be an event of default under this Lease; provided, however, that if the nature of the City's obligation is such that more than sixty (60) days are required to cure the default, then the City shall not be in default hereunder if the City commences performance within such sixty (60) day period and thereafter diligently prosecutes the same to completion.

13. District's Remedies. In the event of default and to the extent permitted by law, the District may terminate the Lease and/or recover from the City all sums owed by the City to the District under the Lease and/or the District may, but shall not be obligated, to cure any default at the City's cost. If the District, at any time, by reason of the City's default, pays any sum or does any act that requires the payment of any sum, the sum paid by the District shall be due immediately from the City to the District at the time the sum is paid; provided, however, that the City shall have the right to contest the reasonableness of the amount of any such payment or the purpose for which such payment was made.

14. Default Interest. Any sums owed by either party to the other not paid when due shall accrue interest at the rate of twelve percent (12%) per annum from the date such sums were paid until the same are reimbursed by the owing party.

15. Covenants of Title, Authority and Quiet Enjoyment.

a. Covenants of Title and Authority. The City covenants and warrants that the City has full right and lawful authority to enter into this Lease and that the City upon the date of execution (a) is lawfully seized of the Property; (b) has full right and authority to execute this Lease; and (c) has full right and authority to deliver the Property free and clear of all contracts, restrictions, liens, and encumbrances of any nature whatsoever.

b. Quiet Possession. The City further covenants and warrants that the District shall have and enjoy during the Lease term and any extensions thereof the quiet and undisturbed possession of the Property together with all appurtenances appertaining or appended thereto.

16. Notices. All notices and demands shall be in writing and shall be delivered to the parties personally or by certified mail, postage prepaid and return receipt requested, at the addresses below for the respective parties unless such address is changed by ten (10) days' written notice to the other party in the same manner as provided herein:

To the District: King County Rural Library District  
300 8th Avenue North  
Seattle, Washington 98109-519  
Attn: Director

To the City: City of Kirkland  
123 5th Avenue  
Kirkland, Washington  
Attn: City Manager

All such notices shall be deemed received within two (2) business days after deposit in the mail as provided in this Section.

17. Attorneys' Fees. If either party institutes an action to enforce its rights under this Lease, the prevailing party at trial and/or on appeal or in a bankruptcy or receivership proceeding shall be entitled to attorneys' fees and costs incurred.

18. Miscellaneous

a. Lease Supersedes Prior Agreements. Except for that Interlocal Agreement and Supplement to Interlocal Agreement previously entered by the parties, this Lease supersedes any other prior agreements regarding the subject matter addressed herein and contains the entire agreement of the parties in regard to such matters. This Lease and the agreements herein are intended by the parties to operate in conjunction with the Interlocal Agreement and Supplemental Interlocal Agreement; provided however that the terms of this Lease shall supersede any inconsistent terms of the interlocal agreements. No other agreement, statement or promise made by any party or any employee, officer or agent of any party that is not in writing and signed by the parties to this Lease shall be binding.

b. Amendments. Any amendments to this Lease shall be in writing and signed by the parties hereto.

c. Construction. The provisions of this Lease were negotiated by the parties hereto and this Lease shall be deemed to have been drafted mutually by the parties hereto.

d. Section Headings. The section headings throughout this Lease are for convenience and reference only and the words contained therein shall not be held to expand, modify, amplify or aid in the interpretation, construction or meaning of this Lease.

e. Successors. This Lease shall inure to the benefit of and be binding upon the successors and assigns of the parties hereto.

f. Time of the Essence. Time is of the essence of this Lease.

g. Governing Law. This Lease shall be governed by and construed in accordance with the laws of the State of Washington.

h. Illegality. If any provision of this Lease shall prove to be invalid, void or illegal, it shall in no manner or way affect, impair or invalidate any other provision of this Lease.

19. Indemnification. The District shall defend, indemnify and hold the City harmless against and from any and all liability and claims of liability, for damages or injury to persons or property in or about the Property to the extent caused by the fault, negligence, willful misconduct, or breach of this Lease by the District, its agents, employees, contractors or consultants. The City shall defend, indemnify and hold the District harmless against and from any and all liability and claims of liability for damages or injury to persons or property in or about the Property to the extent caused by the fault, negligence, willful misconduct, or breach of this Lease by the City, its agents, employees, contractors or consultants. Fault as used in this section includes fault as defined in RCW 4.22.015.

Executed as of the day and year first above written.

City of Kirkland

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

Its: \_\_\_\_\_

King County Rural Library District

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

Its: \_\_\_\_\_

Exhibits:

A - Property Legal Description

STATE OF WASHINGTON )  
 ) ss.  
COUNTY OF KING )

I certify that I know or have satisfactory evidence that \_\_\_\_\_ is the person who appeared before me, and said person acknowledged that \_\_\_\_\_ signed this instrument, on oath stated that \_\_\_\_\_ was authorized to execute the instrument and acknowledged it as the \_\_\_\_\_ of the City of Kirkland, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

DATED: \_\_\_\_\_, 1994.

(Seal or stamp)

\_\_\_\_\_  
Notary Signature

\_\_\_\_\_  
Print/Type Name  
Notary Public in and for the State of  
Washington, residing at \_\_\_\_\_  
My appointment expires \_\_\_\_\_

STATE OF WASHINGTON )  
 ) ss.  
COUNTY OF KING )

I certify that I know or have satisfactory evidence that \_\_\_\_\_ is the person who appeared before me, and said person acknowledged that \_\_\_\_\_ signed this instrument, on oath stated that \_\_\_\_\_ was authorized to execute the instrument and acknowledged it as the \_\_\_\_\_ of the King County Rural Library District, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

DATED: \_\_\_\_\_, 1994.

(Seal or stamp)

\_\_\_\_\_  
Notary Signature

\_\_\_\_\_  
Print/Type Name  
Notary Public in and for the State of  
Washington, residing at \_\_\_\_\_  
My appointment expires \_\_\_\_\_



## Exhibit A

## Property Legal Description

All that portion of the following described parcel:

That portion of Government Lot 5 and of the Southeast  $\frac{1}{4}$  of the Southwest  $\frac{1}{4}$  of Section 05, Township 25 N., Range 5 E., W.M., as described as follows: Beginning at a point distant N  $89^{\circ}39'00''$  E, along the South line of said Section, 1511.50 feet and N  $00^{\circ}21'00''$  W, 30 feet from the meander corner common to Sections 5 and 8 of said Township and Range, and running thence S  $89^{\circ}39'00''$  W, parallel to the South line of said Section 5, a distance of 721.50 feet; Thence N  $00^{\circ}21'00''$  W, 623.14 feet, more or less, to the Southerly line of Central Avenue in Kirkland Terrace, as per plat recorded in Volume 21 of Plats on page 42, records of King County, (formerly Lake Avenue in the plat of the Town of Kirkland, as per plat recorded in Volume 6 of Plats, on page 53, records of King County); Thence N  $70^{\circ}04'15''$  E, along the Southerly line of said Central Avenue, 141.12 feet to an angle point in said Southerly line; Thence N  $63^{\circ}26'15''$  E, along said Southerly line 656.01 feet, more or less, to a point which bears N  $00^{\circ}21'00''$  W, from the point of beginning; Thence S  $00^{\circ}21'00''$  E, 960.20 feet more or less, to the point of beginning; EXCEPT portion taken by King County for road purposes, situate in the City of Kirkland, King County, Washington.

more particularly described as follows:

Commencing at point at the intersection of the Easterly margin of 3rd Street with the Northerly margin of Kirkland Avenue, said Easterly margin being 90.00 feet offset from the monumented centerline of 3rd Street and said Northerly margin being 30.00 feet Northerly of the monumented centerline of Kirkland Avenue, said point also being the True Point of Beginning; Thence N  $45^{\circ}21'00''$  W, along said Easterly margin of 3rd Street, 28.28 feet to a point offset 70.00 feet from the centerline of 3rd Street; Thence, continuing along said Easterly margin, N  $06^{\circ}05'21''$  W, 200.00 feet; Thence N  $00^{\circ}21'00''$  W, 74.18 feet; Thence, leaving said Easterly margin, S  $89^{\circ}40'30''$  E, along a line parallel with and

offset 10.00 feet Southerly of the projection of the Southerly face of an existing retaining wall, 86.10 feet; Thence N 01°30'47" E, along the projection of the Westerly face of an existing retaining wall, 67.72 feet, more or less, to the existing ballfield fence; Thence S 83°25'46" E, along said fence, 178.00 feet; Thence S 00°17'08" E, along the projection of the Westerly swimming pool fence line, 338.40 feet, more or less, to the Northerly margin of Kirkland Avenue; Thence S 89°39'00" W, along said margin, 224.61 feet returning to the point of beginning.

(Said parcel having an area of 84,950 square feet or 1.95 acres, more or less.)