

RESOLUTION NO. 4044

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF KIRKLAND AUTHORIZING THE CITY MANAGER TO SIGN THE ATTACHED AGREEMENT BETWEEN THE FIRST CONGREGATIONAL CHURCH OF KIRKLAND AND THE CITY OF KIRKLAND REGARDING THE USE AND OCCUPANCY OF FIRST CONGREGATIONAL CHURCH OF KIRKLAND FOR KIRKLAND SENIOR CENTER ACTIVITIES AND CITY HALL OFF-STREET PARKING.

WHEREAS, the City is interested in temporarily relocating the programs and activities of the Kirkland Senior Center during construction of the new performing arts center; and

WHEREAS, the City is interested in securing a long term commitment for additional off-street parking for business activities related to City Hall; and

WHEREAS, the Church is interested in making available portions of its facility and its parking lot for said purposes; and

WHEREAS, the parties hereto desire to document the terms and conditions they have agreed upon with respect to the use and occupancy of the Church facilities;

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Kirkland that the City Manager is hereby authorized on behalf of the City of Kirkland to sign and execute the attached agreement between the parties, entitled "AGREEMENT BETWEEN THE AGREEMENT BETWEEN THE FIRST CONGREGATIONAL CHURCH OF KIRKLAND AND THE CITY OF KIRKLAND REGARDING THE USE AND OCCUPANCY OF FIRST CONGREGATIONAL CHURCH OF KIRKLAND FOR KIRKLAND SENIOR CENTER ACTIVITIES AND CITY HALL OFF-STREET PARKING."

PASSED by majority vote of the Kirkland City Council on the 19 day of November, 1996.

SIGNED in authentication thereof on the 19 day of November, 1996.

  
\_\_\_\_\_  
Mayor

ATTEST:

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

**AGREEMENT  
 BETWEEN  
 FIRST CONGREGATIONAL CHURCH OF KIRKLAND  
 AND  
 THE CITY OF KIRKLAND  
 REGARDING  
 THE USE AND OCCUPANCY  
 OF FIRST CONGREGATIONAL CHURCH OF KIRKLAND  
 FOR KIRKLAND SENIOR CENTER ACTIVITIES  
 AND CITY HALL OFF-STREET PARKING**

THIS USE AND OCCUPANCY AGREEMENT is dated \_\_\_\_\_, 1996, and entered into by and between the FIRST CONGREGATIONAL CHURCH OF KIRKLAND (hereinafter referred to as "Church"), a Washington non-profit corporation, and THE CITY OF KIRKLAND (hereinafter referred to as "City"), a Washington municipal corporation.

WHEREAS, the City is interested in temporarily relocating the programs and activities of the Kirkland Senior Center during construction of the new performing arts center; and

WHEREAS, the City is interested in securing additional off-street parking for business activities related to City Hall; and

WHEREAS, the Church is interested in making available portions of its facility and its parking lot for said purposes; and

WHEREAS, the parties hereto desire to document the terms and conditions they have agreed upon with respect to the use and occupancy of the Church facilities;

NOW, THEREFORE, in consideration of the mutual undertakings and promises contained herein, and as a direct benefit to the City, the parties agree as follows:

**I. AREA LEASED.**

1. Parking Lot - Church hereby leases to City the following real property: That portion of Lots 8, 9, 10 and 11, block 196, town of Kirkland, according to plat thereof, records of King County, Washington, together with vacated alleys within said block attaching to said lots, and which portion is designated and developed as a parking lot.

2. Church Building - Church hereby leases to City portions of the building located at 106 Fifth Avenue, Kirkland, Washington.

**II. TERM AND TIME OF AGREEMENT.**

A. Parking Lot. Said parking lot facility shall be leased to City and available for parking by members of the general public, between the hours of 7:00 a.m. and 11:00 p.m.,

Monday through Saturday inclusive, of each week during the life of this Agreement (see paragraph XII); subject, nevertheless, to the right hereby reserved to Church to make said parking facility exclusively available to persons attending services or other activities authorized by Church and carried on within the church buildings. In exercising such reserved right, Church shall place signs on and about the parking facility, indicating that parking is temporarily reserved for "church parking".

B. Church Building (Senior Center Activities). Church building shall be leased to City and available for Kirkland Senior Center programs and activities between the hours of 7:30 a.m. and 5:30 p.m., Monday through Friday inclusive, of each week beginning January 2, 1997 and ending when the Kirkland Senior Center can be relocated to City property, anticipated to be before December 31, 1997; subject, nevertheless, to the right hereby reserved to Church to make said portions of the Church building available for those Church activities or other activities authorized by Church which have been previously scheduled and listed for City prior to execution of this agreement. City agrees that City use of building outside of the times and days listed above shall require prior permission of Church.

C. Church Building (Other City Activities). In addition to usage described above, the shared use areas of the building are hereby leased to City for official City activities between the hours of 7:30 a.m. and 5:30 p.m., Monday through Friday inclusive, for up to a total of five (5) days per year for a period of five (5) years, beginning in 1997 and continuing through 2001. Said use shall be free of any additional rental charge; however, any City use beyond five days per year shall be subject to additional rental fees as mutually agreed upon. Use of building for said City activities is subject to availability, and shall be scheduled at least two days in advance.

### III. CONSIDERATION OF LEASE AND PAYMENT SCHEDULE

A. As consideration for lease of the parking lot, City will pay to Church Thirty Six Thousand Dollars (\$36,000) within 10 days following execution of this agreement, and an additional Sixteen Thousand Dollars (\$16,000) on January 2, 1997. These amounts total Fifty Two Thousand Dollars (\$52,000) and shall be the total amount of payments in consideration for lease of the parking lot for the years 1997 to 2016, inclusive.

B. As consideration for lease of Church Building for Senior Center Activities and Other City Activities, City will pay to Church the total sum of Thirty Thousand Dollars (\$30,000) within 10 days following the date of Church's completion of construction activity necessary to make the Fellowship Hall wheelchair accessible, or by January 11, 1997, whichever is later. City will pay Church an additional Three Thousand Dollars (\$3,000) for each calendar month (or pro rata for a portion of a calendar month) after December 31, 1997 for use of the building for Senior Center Activities, paid by the last day of each calendar month.

#### **IV. SEPARATE OPERATING AGREEMENT FOR ROOM SCHEDULING, FACILITY RULES AND PROCEDURES, AND MAINTENANCE.**

Prior to occupancy of the Church Building for Senior Center Activities, Church staff and City staff shall develop and complete a separate Operating Agreement. The Operating Agreement will contain provisions for facility and room scheduling; facility rules, regulations, and procedures (including those relating to prohibition of smoking and alcohol); and custodial and maintenance responsibilities.

#### **V. IMPROVEMENTS, ALTERATIONS, AND ADDITIONS TO THE PREMISES.**

A. Parking Lot. City shall, at its expense, maintain the off-street parking lot facility, including its surface and landscaping, in good repair.

B. Church Building. City shall not alter any physical, structural, or decorative feature of the premises without written Church approval.

#### **VI. ACCEPTANCE OF PREMISES.**

By entering into and occupying the premises, or any portion thereof, City accepts the same in their condition as of the execution of this agreement. City covenants that no representation, statement or warranty, express or implied, has been made by or on behalf of the Church with respect to the condition of the premises or the use that may be made of the premises, except as may be contained in this Agreement. The premises have been inspected and are accepted by City in their present condition. City shall keep premises neat, clean, and in a sanitary condition. City shall be responsible for the prompt repairs to Church building, Church equipment, and Church furnishings, arising out of damages caused by City activities.

#### **VII. UTILITIES.**

Church will be responsible for payment of all light, heat, water, sewer, and garbage services. All other utility services shall be the responsibility of City.

#### **VIII. HOLD HARMLESS AGREEMENT.**

City shall defend, indemnify and hold harmless Church from any and all claims, action suits, losses, costs and expenses including reasonable attorney's fees arising of use of said premises by City invitees in connection with City activities carried on within said premises, including the parking lot, except for the sole negligence of the Church, its officers, agents or employees.

Church shall defend, indemnify and hold harmless City from any and all claims, action suits, losses, costs and expenses including reasonable attorney's fees arising of use of said premises by Church invitees in connection with Church services or activities carried on within

said premises, including the parking lot, except for the sole negligence of the City, its officers, agents or employees.

#### **IX. INSURANCE**

City shall, during the terms of occupancy of said Church facility for Senior Center programs and activities only, at its sole cost and expense, keep in full force and effect the following insurance: Comprehensive General Liability Insurance or liability coverage from the Washington Cities Insurance Authority insuring City against any liability arising out of lease, use, occupancy or maintenance of premises and all areas appurtenant thereto. Such insurance shall be in the amount of not less than one million dollars (\$1,000,000) Combined Single Limit for injury to, or death of one or more persons in an occurrence, and for damage to tangible property (including loss of use) in an occurrence. The policy shall insure the hazards of premises and operations, independent contractors, and contractual liability. City shall keep on file with Church certificate that such required insurance is in force and effect.

#### **X. DISPUTE RESOLUTION**

In the event of a disagreement between Church and City staff regarding scheduling, use or maintenance of the building, the dispute will be submitted for arbitration to a panel which shall be composed of one member chosen by Church, and one member chosen by City, and a third member chosen by the first two members. The decision of the majority of the panel shall be final and binding.

#### **XI. AMENDMENTS**

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

#### **XII. TERMINATION**

This agreement shall have a term of twenty years from January 1, 1997 through December 31, 2016, and may thereafter be extended, or renewed, upon mutual written agreement. Notwithstanding the foregoing, this agreement may be terminated at any time by mutual consent of both parties.

#### **XIII. ENTIRE AGREEMENT**

The parties hereto acknowledge that they have had the opportunity to have this Agreement reviewed by their respective legal counsel, and that the terms and conditions of this Agreement are not to be construed against either party on the basis of that party's having drafted the same. This Agreement, together with all of the exhibits attached hereto, embodies the entire Agreement of the parties hereto, with the exception of a separate Operating Agreement to be developed by Church and City staff prior to occupancy of the Building for Senior Center



