

RESOLUTION R- 4199

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF KIRKLAND
AUTHORIZING THE CITY MANAGER TO EXECUTE A LEASE AGREEMENT FOR
THE USE OF THE WOODINVILLE WATER DISTRICT PROPERTY LEGALLY
DESCRIBED AS:

The NW ¼ of the NE ¼ of the NE ¼ of the NE ¼ of Sec. 21, Twp,
2GN. R. 5E., W.M. , King County, Washington; except the South 30
feet thereof.

WHEREAS, the Kirkland City Council authorized negotiation of a lease
agreement between the City of Kirkland and the Woodinville Water District for
the use of the above described property as public park and open space by the
City; and

WHEREAS, the City and District have agreed upon terms for the
proposed lease,

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

Section 1. The City Manager is hereby authorized and directed to
execute on behalf of the City a lease agreement substantially similar to the
agreement attached hereto as Exhibit A.

Passed by majority vote of the Kirkland City Council in regular, open
meeting this 20th day of July, 1999.

Signed in authentication thereof this 20th day of July, 1999.


MAYOR

Attest:


City Clerk

Reso\Wtrdistlease

LEASE

THIS LEASE is dated this _____ of _____, 1999, between the CITY OF KIRKLAND, a municipal corporation ("City"), having its principal place of business at 123 Fifth Avenue, Kirkland, Washington 98033, and WOODINVILLE WATER DISTRICT, a Washington municipal corporation, having its principal place of business at 17238 N.E. Woodinville-Duvall Road, Woodinville, Washington 98073, ("Woodinville").

1. The Property. Woodinville is the record owner of that certain real property (the "Property") located in the State of Washington, County of King, commonly known as the Kingsgate Reservoir Site, legally described as

The NW 1/4 of the NE 1/4 of the NE 1/4 of the NE 1/4 of Sec. 21, Twp, 2GN. R.5E., W.M., King County, Washington; except the south 30 feet thereof.

2. Lease of the Premises.

- a. Leased Premises. Woodinville hereby leases to City and City leases from Woodinville the Property, subject to the terms and conditions herein (the "Leased Premises").

- b. Use of the Premises. City shall use the Leased Premises as one of the City's parks and operate it as a City Park under the management of the City's Park Department, subject to District's right to

1. exclusive use of the reservoir site (real property located on the Leased Premises which is enclosed within an existing fence) for the purposes of operating, repairing, maintaining, and replacing the reservoir sited thereon;

2. ingress to and egress from the reservoir site through the existing access road for the foregoing purposes; and

3. operate, repair, maintain, and replace water mains serving the reservoir, even though such mains may no be located on the reservoir site or the access road; provided that, the District shall restore any property disturbed by such work to the condition in which the City maintained it prior to any work.

City shall not use the Leased Premises for any other purposes without the prior written consent of Woodinville.

- c. City Improvements. Following the Commencement Date, City, at its sole expense, shall have the right to maintain, and operate the Leased Premises as a City Park and to improve that site with the installation of park and playground equipment, including, but not limited to, restrooms, water supply, and athletic fields.
 - d. Overflow Improvement. City, at its discretion, agrees to install on the Leased Premises a reservoir overflow system designed by Woodinville. Installation of the overflow system shall be at City's sole expense, and it shall be constructed according to Woodinville specifications.
3. Rent.
 - a. Base Rent Payment. City shall pay to Woodinville Base Rent in the amount of \$10.00 per year. Base Rent shall be due and payable annually, commencing on the Commencement Date and thereafter on the anniversary of the Commencement Date during the Initial Term and any Extended Term of this Lease.
 - b. Utility Charge. City shall be responsible for payment for all utility services necessary to operate the Leased Premises and it shall install separate utility meters at the Property. City shall be responsible directly to the serving utilities for all utilities required by City.
 - c. Taxes. City shall pay shall pay all taxes, assessments, fees, and all other governmental charges of every character, which are payable during any portion of the Lease Term and are levied upon or assessed as a result of the lease, the lease rent, against City's improvements located on the Leased Premises. City shall be liable for payment of only those installments which are attributable to the leasehold or the Lease Term or any sublease. City's liability for taxes pursuant to this paragraph shall survive the termination of the Lease.
4. Term of Lease. This Lease shall be for an initial term of twenty-five (25) years (the "Initial Term"), which shall commence on the first day of August immediately following the date of this Lease. City may extend its tenancy beyond the Initial Term for an additional terms of twenty-five (25) years (the "Extended Term") by providing written notice to Woodinville not less than thirty (30) days before the Initial Term expires.
5. Termination by City.
 - a. City may terminate this Lease for cause by giving thirty (30) days' written notice to Woodinville if (a) City fails to obtain or loses any necessary permits, approvals or orders and is thereby unable to use the Leased Premises as a Park; or (b) Woodinville fails to comply with any material term, condition, or covenant of this

Lease and does not cure such failure within thirty (30) days after written notice thereof.

- b. City may terminate this Lease without cause by giving ninety (90) days written notice to Woodinville.

6. Termination by Woodinville.

- a. Woodinville may terminate this Lease upon (a) failure by City to pay any Base Rent, Utility Charge, or other amount required hereunder when due if such failure shall continue for more than ten (10) calendar days after delivery to City of notice of such failure to make timely payment; or (b) failure by City to comply with any material term, condition, or covenant of this Lease, other than the payment of rent, if such failure is not cured within thirty (30) days after written notice thereof to City.
- b. Woodinville may terminate this Lease without cause by giving ninety (90) days written notice to City.

7. Warranties and Covenants of Woodinville. Woodinville warrants and covenants that: (a) Woodinville has legal right to possession of the Leased Premises and the power and the right to enter into this Lease and that City, upon the faithful performance of all of the terms, conditions, and obligations of City contained in this Lease, shall peaceably and quietly hold and enjoy the Leased Premises upon the terms, covenants, and conditions set forth in this Lease throughout the Lease Term against any adverse claim of Woodinville or any party claiming under Woodinville; and (b) Woodinville shall deliver the Leased Premises to City on the Commencement Date.

8. Warranties and Covenants of City. City warrants and covenants that: (a) City has the power and the right to enter into this Lease and that City shall peaceably and quietly hold and enjoy the Leased Premises upon the terms, covenants and conditions set forth in this lease throughout the Lease Term; (b) City's operation of the Park shall not interfere in any way with the Woodinville's operation, maintenance, repair or replacement of Woodinville's water tank and related appurtenances and facilities; (c) each person executing this Lease on behalf of City represents and warrants to Woodinville that the execution and delivery of this Lease by City is authorized by appropriate corporate action, that each person so executing this Lease is authorized to execute and deliver the same on behalf of City and that the person(s) executing and delivering this Lease are the only ones whose signature is required to cause this Lease to be binding upon City.

9. Liability and Indemnification. City agrees to defend and indemnifies and holds Woodinville, its elected or appointed officers, officials, employees, agents and volunteers harmless from and against any and all claims, suits, liabilities of any nature and any costs or expenses including, but not limited to, all losses, damages, judgments and attorney's fees arising from injury to or death of any person and property damage of any kind arising from or related to

the City's equipment upon the Leased Premises or the presence of City, its employees, agents, contractors, or their property upon the Leased Premises, except only those losses resulting solely from the negligence of Woodinville, its elected or appointed officers, employees, volunteers and agents. Woodinville shall notify City of any claim as to which City has the obligation to indemnify Woodinville under this lease and City shall, at its sole cost and expense, defend Woodinville against such claim.

Woodinville and City agree that this Section also applies to any claim of injury or damage to the persons or property of City's employees. City acknowledges and agrees that, as to such claims, City, with respect to Woodinville, hereby waives any right of immunity which City may have under industrial insurance (Title 51 RCW). This waiver was specifically negotiated by Woodinville and City, is solely for the benefit of Woodinville and City and their successors and assigns, and is not intended as a waiver of City's right of immunity under said industrial insurance for any other purpose.

10. Insurance. City shall obtain and maintain in force throughout the Lease Term, a commercial general liability insurance policy (or policies) insuring against claims for personal injury or death and property damage arising out of the actions of City, its contractors, employees and agents on or around the Leased Premises to the same extent and with the same level of coverage the City carries with regard to City Parks
11. Hazardous Substances. City agrees that it will not use, generate, store or dispose of any Hazardous Substances on, under, about or within the Property in violation of any law or regulation. As used in this Section, the term "Hazardous Substance" shall mean any substance or material regulated by CERCLA, RCRA, the Washington Model Toxics Control Act and the Washington Hazardous Waste Management Act.
12. Title To and Removal Of City's Equipment. With exception of the reservoir overflow improvement the City will construct, title to City's equipment, and all improvements installed at and affixed to the Leased Premises or the Property by City shall be and shall remain the property of City.
13. Assignment and Subletting. City shall not assign otherwise transfer or encumber all or any part of City's interest in this Lease without Woodinville's prior written consent, which shall not be unreasonably withheld.
14. Notices and Other Communications. All notices hereunder must be in writing and shall be delivered by hand, by nationally recognized overnight express delivery service, or by U.S. registered or certified mail, or First Class Mail, return receipt requested, postage prepaid, to the addressees set forth below:

City:

City of Kirkland
123 Fifth Avenue
Kirkland, WA 98033
Attn: Director, Dept. of Parks and Community Services

Woodinville:

Woodinville Water District
P.O. Box 1390
Woodinville, WA 98072-- 1390
Attn.: General Manager

Any notice or other communication mailed as herein provided shall be deemed effectively given (a) on the date of delivery, if delivered by hand or (b) on the date mailed, if sent by overnight express delivery or U.S. mail.

15. Integration, Governing Law, Venue and Attorney's Fees. This Lease is the final and complete understanding between the parties and it shall be interpreted in accordance with the law of the State of Washington. Any action or proceeding relating to this Lease shall be brought in the King County Superior Court. The prevailing party in any action or proceeding brought to enforce this Lease shall be entitled to recover its reasonable attorneys' fees, costs, and expenses in connection with such action or proceeding from the other party.
16. Severability. Any provision of this Lease which shall prove to be invalid, void, or illegal shall in no way affect, impair, or invalidate any other provision hereof, and such other provision shall remain in full force and effect.

CITY OF KIRKLAND, a Washington
municipal corporation

By _____
Title City Manager
Dated July , 1999

WOODINVILLE WATER DISTRICT, a
Washington municipal corporation

By 
Title: General Manager
Dated: July 13, 1999

Approved to form:


Assistant City Attorney

STATE OF WASHINGTON

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) ss:
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COUNTY OF KING

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

Dated _____

NAME: _____

(Print Name)

Notary Public in and for the State of Washington.

Commission Expires: _____

STATE OF WASHINGTON

)
) ss:
)

COUNTY OF KING

I certify that I know or have satisfactory evidence that Robert Bandarra is the person who appeared before me, and who acknowledged that he signed this instrument, on oath stated that he was authorized to execute the instrument and acknowledged it as the General Manager of the Woodinville Water District, a municipal corporation, to be the free and voluntary act of such corporation for the uses and purposes mentioned in the instrument.

Dated July 13 1999Cecelia M. FordNAME: CECELIA M. FORD

(Print Name)

Notary Public in and for the State of Washington.

Commission Expires: October 29, 2001