

RESOLUTION R- 4495

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF KIRKLAND
ESTABLISHING A PARK SAFETY NET FUND THROUGH THE NON-PROFIT
NORTHWEST PARKS FOUNDATION.

WHEREAS, the City Council finds that it is desirable to augment City
funding with grants and private donations in order to achieve certain City goals
and objectives; and

WHEREAS, the Northwest Parks Foundation, a non-profit 501(c) (3)
foundation, formed to support public agencies and enhance park and
recreational resources, provides a public benefit by allowing and encouraging
private gifts that can match City funding; and

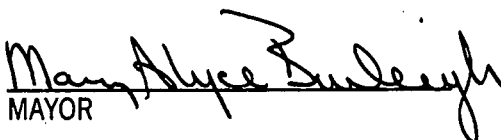
WHEREAS, the Northwest Parks Foundation has created a Park Safety
Net Fund for purposes of encouraging and soliciting private donations that can
be made available to cities through the mechanism of a private non-profit
organization; and

WHEREAS, on February 16, 2005, the Kirkland Park Board
recommended that the Council enter into an agreement with the Northwest
Parks Foundation for the establishment and dispersal of Parks Safety Net
Funds .

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

Section 1. The City Manager is hereby authorized to execute an
agreement entitled, "Agreement for the Establishment and Dispersal of Parks
Safety Net Funds," substantially similar to that attached as Exhibit A.

Passed by majority vote of the Kirkland City Council in open meeting
this 5th day of April, 2005.


MAYOR

Attest:


City Clerk

AGREEMENT FOR THE ESTABLISHMENT AND DISPERSAL OF PARKS SAFETY NET FUNDS

THIS AGREEMENT is made and entered into as of the date indicated below by and between Northwest Parks Foundation ("NPF"), a Washington non-profit corporation, and the City of Kirkland ("Kirkland"). NPF and Kirkland are collectively referred to as the "Parties" in this Agreement.

RECITALS

- 1) Kirkland is committed to pursuing new ways of doing business to ensure that parks and recreational facilities will be open, accessible, enhanced, and maintained for all users. This desire can be facilitated by establishing agreements with non-profit organizations to assist in developing and maintaining park and recreational facilities and programs.
- 2) Kirkland owns and maintains several park and recreation facilities which provide a wide variety of sport, athletic and recreational activities as an integral part of its programming.
- 3) NPF is a private, non-profit organization established to facilitate healthy lives through active recreation and parks. NPF promotes healthy citizens and communities by protecting and encouraging the enhancement and development of park and recreation facilities and resources for this and future generations. Established in November of 2002, NPF designed the Parks Safety Net Program to provide direct and indirect support to park and recreation agencies, school districts, and parks facility user groups. NPF has a boundless service area with primary focus on agencies, school districts, and user groups geographically residing within King County and Snohomish County. NPF operates on a nondiscriminatory basis.
- 4) Kirkland and NPF desire to enter into an Agreement whereby the public can make tax-deductible contributions to a "Parks Safety Net Fund" which are directed to Kirkland for designated park and recreational uses

NOW THEREFORE, in the Parties agree as follows:

- 1) **Establish Relationship.** Kirkland and NPF agree to establish a relationship whereby NPF, as a 501(c)3 organization, will accept tax deductible donations from the public on behalf of Kirkland and will transfer such funds to Kirkland. Kirkland agrees that NPF may deduct transaction costs for all donations and a 5% service fee for each donation equal to or greater than \$25. Remaining donated funds will be held by NPF in a non-interest bearing account prior to transfer to Kirkland.

Individual donations may be designated for specific Kirkland park facilities, park enhancement projects or recreation programs. PROVIDED, that where Kirkland in its sole discretion is unable to apply any such donated funds to the specific park facility, park enhancement project or recreation program so designated, Kirkland shall request written direction from NPF regarding the use of said funds. Within 60 days of receiving any such request from Kirkland, NPF shall provide written direction to Kirkland designating the expenditure of the funds in question upon an alternative park facility, park enhancement project, or recreation program.

NPF will confirm and assume sole and exclusive responsibility for ensuring that (1) any designation of funds accompanying a donation provided to Kirkland under this Agreement, and (2) any deduction made by NPF from such donations, comports with applicable regulations, including but not limited to Internal Revenue Service guidelines governing charitable donations. Kirkland agrees, subject to applicable records retention schedules, to document and maintain records verifying the dispersal of such funds for the uses designated therefore and that said funds did not replace funding already allocated to Kirkland from other sources.

Both Parties acknowledge the Donor Bill of Rights attached hereto as Exhibit A and incorporated herein by this reference as if set forth in full, and agree to honor the provisions contained therein as reasonable practicable. PROVIDED, that nothing herein shall be construed as creating any third-party beneficiary to this Agreement, or as creating any cognizable claim of any type against Kirkland arising out of the provisions of Exhibit A.

Nothing herein shall affect Kirkland's legal responsibility for park and recreation facility development, maintenance and operations.

- 2) **Compliance with Applicable Laws.** NPF and Kirkland shall comply with all applicable laws, ordinances, and regulations in using funds provided through this Agreement including, to the extent applicable, those related to "public works," payment of prevailing wages and competitive bidding of contract. Kirkland shall indemnify and defend NPF should it be sued or made the subject of an administrative investigation or hearing for a violation by Kirkland of such laws related to this agreement. NPF shall indemnify and defend Kirkland should it be sued or made subject of an administrative investigation or hearing for a violation by NPF of such laws related to this agreement.

3) **Indemnification**

NPF shall protect, save harmless, indemnify and defend, at its own expense, Kirkland, its officers, employees and agents, from any loss or claim for damages of any nature whatsoever brought by any third party, but only to the extent such loss or claim results from NPF's failure to comply with any duty or obligation undertaken by it under this Agreement, or any negligence or willful misconduct of NPF in carrying out its duties and obligations under this Agreement including claims by NPF employees.

Kirkland shall protect, save harmless, indemnify and defend, at its own expense, NPF, its officers, employees and agents, from any loss or claim for damages of any nature whatsoever brought by any third party, but only to the extent such loss or claim results from Kirkland's failure to comply with any duty or obligation undertaken by it under this Agreement, or any negligence or willful misconduct of Kirkland in carrying out its duties and obligations under this Agreement including claims by Kirkland employees.

The provisions of this section shall survive the expiration or termination of this Agreement

- 4) **Mediation of Disputes.** If a dispute arises between the Parties regarding the terms, conditions, or performance of this Agreement, the Parties shall first attempt to resolve said dispute by submitting the matter to a mutually acceptable mediator.

- 5) **Term of Agreement.** The term of this agreement shall be for five (5) years from the effective date and will automatically renew for successive five (5) periods unless terminated by either Party as provided herein.
- 6) **Termination of Agreement.** This agreement may be terminated with or without cause by either Party upon 6 months written notice as provided herein
- 7) **Entire Agreement.** This Agreement contains the entire agreement among the Parties with respect to the subject matter hereof. There are no other agreements, oral or written, except as expressly set forth herein.
- 8) **Amendments in Writing.** Any amendment or modification of this agreement must be in writing and executed by the Parties agreeing thereto.
- 9) **Notice.** Any notice, demand, or request to a Party required or permitted under this Agreement must be in writing, sent postage prepaid via first-class U. S. mail, or hand-delivered, to the Party at the address set forth below (or at such other address and to such other recipient as may be designated by a Party in a notice to the other Parties). For convenience of the Parties, notices may also be transmitted informally via facsimile or electronic mail (e-mail), but no notice will be deemed given or effective until mailed or hand-delivered as required in this subsection. All such notices, if mailed, become effective three (3) business days after deposit in an officially-designated U. S. mail receptacle, or, if hand-delivered, upon receipt. Notices must be given as follows.

a) If to City of Kirkland Parks & Community Services:

Parks & Community Services Director
505 Market Street, Suite A
Kirkland WA 98033

Kirkland Finance & Administration Director
123 5th Avenue
Kirkland WA 98033

Kirkland City Manager
123 5th Avenue
Kirkland, WA 98033

b) If to Northwest Parks Foundation:

Board President
600 First Avenue, Suite 300
Seattle, WA 98104

Executive Director
600 First Avenue, Suite 300
Seattle, WA 98104

- 10) **No Continuing Waiver of Default.** The waiver of any default under any provision of this Agreement does not constitute a waiver of any other default, whether of the same or of any other provision.
- 11) **Authority of Signatories.** Each person executing this Agreement on behalf of a Party represents and warrants that he or she has the authority of such Party to enter into this Agreement on the terms and conditions herein stated.
- 12) **Applicable Law.** This Agreement shall be construed under the laws of the State of Washington. Venue for any lawsuit arising out of this Agreement shall lie in King County Superior Court.
- 13) **Execution in Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed an original.
- 14) **Headings Not Part of Agreement.** The headings of the various sections and subsections of this Agreement are inserted for convenience only and shall not be deemed to expand, limit, or otherwise affect its terms and conditions.
- 15) **No Recording of Agreement.** This Agreement shall not be filed for recording.
- 16) **Exhibits Incorporated.** The exhibits attached to this Agreement are incorporated herein by this reference as if fully set forth.
- 17) **Effective Date of Agreement.** The effective date of this Agreement shall be the date of its execution by the last Party to execute it.
- 18) **Assignability; Agreement Binding on Successors and Assigns.** None of the rights and obligations of a Party to this Agreement may be assigned and delegated to other persons, firms, or corporations without the written consent of the other Party. This Agreement shall be binding on such assignees and delegates.
- 19) **No Employment Relationship Created.** Nothing herein shall be construed as creating an employment relationship between Kirkland and any employee, agent or representative of NPF, or between NPF and any employee, agent or representative of Kirkland.

IN WITNESS WHEREOF, the Parties hereto executive this agreement as of the last day written below.

For: City of Kirkland

For: Northwest Parks Foundation

By _____
Title Parks & Community Services Director

By _____
Title Executive Director

Date _____

Date _____

By _____
Title City Attorney

Date _____

By _____
Title Board President

Date _____

By _____
Title City Manager

Date _____

By _____
Title Finance & Administration Director

Date _____