MEMORANDUM

To: Kurt Triplett, City Manager

From: Tracey Dunlap, Deputy City Manager
Kevin Raymond, City Attorney
Chris Dodd, Facilities Services Manager

Date: March 19, 2020

Subject: Settlement of Dental Office Relocation from Future Fire Station 27 Site

RECOMMENDATION:

Council authorizes the City Manager to enter into settlement agreements with the three dentist tenants at the property located at 13118 121st Way NE. These agreements settle relocation costs associated with the acquisition under threat of condemnation of this property for the future site of Fire Station 27. By approving the consent agenda, Council authorizes the City Manager to enter into the agreements and approves the attached fiscal notes.

BACKGROUND DISCUSSION:

The City of Kirkland ("City") purchased the property located at 13118 121st Way NE as the site for a new Fire Station 27 and potentially related public facilities. On April 16, 2019, the Council approved acquisition of this site under threat of condemnation and the purchase was completed on June 28, 2019. By acquiring the property under threat of condemnation, the City has the right to terminate the existing leases early, subject to paying relocation costs as defined in Chapter 8.26 RCW.

Construction of a relocated Fire Station 27 is dependent on a successful fire ballot measure, which is anticipated in November of 2020. Acquiring a site was a key first step in this process. Knowing the specific location of the station and potential related facilities enhances the City’s ability to estimate facility costs and features. An interfund loan of $5.56 million was used for this purchase, which needs to be repaid with interest to the utility fund of origin within three years.

If a ballot measure is successful in 2020, the loan can be repaid with the proceeds from the ballot measure. If the ballot measure is unsuccessful, the City’s options would include selling the property or retaining the property in anticipation of a second measure in the future and continuing to lease the space, although City funds would be needed to repay the interfund loan as rents would not be sufficient. Under a successful bond measure later this year, design of the new Fire Station 27 would begin immediately, with demolition of the current building and construction of the station to begin after December 31, 2021.

There are six tenants on the site. Two of the leases (neither of which is at issue here) expire before the end of 2021 and, as a result, do not qualify for relocation costs reimbursements. Staff has been working with the three dentist tenants to arrive at a fair settlement of their estimated relocation costs and have reached agreements on fixed payments to provide certainty to all parties. One of the agreements is included as Attachment A. The terms of the final agreements will be substantially similar, but the dollar amounts vary. The table on the following page summarizes the proposed payment amounts.
Under the settlement agreements, the dentists agree to stay and pay rent through at least December 31, 2020 with the option to extend through 2021. The final (sixth) tenant, a chiropractic office, has been difficult to engage in the discussion, despite repeated contacts by staff and our attorneys. Staff continues to work to resolve relocation with this remaining tenant, although the costs are expected to be well below the dentist payments given the much simpler tenant improvements in that business.

The attached fiscal note (Attachment B) summarizes the funding sources for the proposed settlements:

Expected rents from dentist tenants through 12/31/2020: $160,000
Reserved Ground Emergency Medical Transport (GEMT) funds: $1,460,000

The GEMT funds have been set aside toward Fire capital needs and represent costs recouped from the State of Washington for past emergency medical transports. This use would leave a balance of $1,190,013 of GEMT funds.

As a separate matter, the roof on the existing Fire Station 27 needs to be replaced this summer. Once a new Fire Station 27 is built, the City intends to keep this building, given its central location and the fueling station on the site. The estimated cost for replacing the roof is $250,000 and the City has $97,000 set aside to do roof work at Stations 27 and 22. The proposed ballot measure is expected to include extensive roof work at Station 22, so staff recommends using the balance toward the FS 27 roof and supplement the funding with another $153,000 in the GEMT balance, leaving $1,037,013 in reserve. A separate fiscal note is included for this use (Attachment C).

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<tr>
<th>Tenant</th>
<th>Sq. ft</th>
<th>Settlement</th>
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<tbody>
<tr>
<td>Totem Lake Dentistry (Dr. Nash)</td>
<td>1,593</td>
<td>$469,800</td>
</tr>
<tr>
<td>Dr. Etheridge</td>
<td>1,767</td>
<td>$518,400</td>
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<tr>
<td>Kirkland Kids (Dr. Dkeidek)</td>
<td>2,148</td>
<td>$631,800</td>
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<td><strong>Total - Dentists</strong></td>
<td></td>
<td><strong>$1,620,000</strong></td>
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SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT (this “Agreement”) is made effective as of March __, 2020 (the “Effective Date”), by and between the City of Kirkland, a municipal corporation (hereinafter “Kirkland” or “City”), and Allyson S. Dkeidek, DDS, PLLC, d/b/a Kirkland Kids Dentistry (“Dr. Dkeidek”). The City and Dr. Dkeidek are individually referred to as a “Party” and collectively, as the “Parties.”

RECITALS

A. On April 17, 2019, the City purchased the property described as Evergreen Place Medical Center, in the County of King, located at 13118 121st Way NE, Kirkland, Washington 98034 (the “Property”).

B. The City purchased the Property under threat of condemnation for the public purpose of constructing a fire station (“Fire Station Project”). The City does intend to build said fire station once funding is secured and anticipates construction will not begin before December 31, 2021.

C. Dr. Dkeidek has been a tenant in Suite 103 on the Property (the “Premises”) since entering into a lease agreement with the City’s predecessor in ownership on January 27, 2015, attached hereto as Exhibit A (the “Lease”). Dr. Dkeidek leases approximately 2,148 square feet and operates her dental practice, Kirkland Kids Density, therein.

D. Dr. Dkeidek will be displaced by the Fire Station Project. Because the City has not yet determined when construction would begin, the City and Dr. Dkeidek have agreed on the amount of relocation benefits the City will pay Dr. Dkeidek pursuant to RCW 8.26, avoid litigation, and provide both parties with certainty moving forward.

NOW, THEREFORE, in consideration for the mutual promises set out below and other valuable consideration, the receipt and sufficiency of which is hereby acknowledged by the Parties, the Parties agree as follows:

AGREEMENT

1. Recitals Incorporated. The Recitals set forth above are incorporated by reference and made a part of this Settlement Agreement.

2. Settlement Amount and Relocation Payment. Within thirty (30) days of the Effective Date, the City shall pay to Dr. Dkeidek, via wire transfer, ACH, or other immediately available funds, the sum of $631,800.00 (the “Relocation Amount”), which constitutes full and final payment to Dr. Dkeidek. The payment of the Relocation Amount is not considered income within the meaning of RCW 8.26.115.

3. Possession and Rent. Except as explicitly stated in this Agreement, the Lease will continue to govern the relationship between the Parties, including, without limitation, monthly rent payments.
a. **Term.** The term of the Lease is amended to end on December 31, 2021. Dr. Dkeidek must cease operations and vacate the Premises on or before 11:59 pm on December 31, 2021.

b. **Early Termination Permitted.** Any time after December 30, 2020, upon not less than sixty days’ (60) prior written notice to the City, Dr. Dkeidek may terminate the Lease without penalty or any other liability. To avoid any doubt and by way of example, Dr. Dkeidek may give notice on October 31, 2020 that she intends to terminate the Lease effective December 31, 2020. Under this example, the parties shall comply with all lease terms through December 31, 2020 and shall be relieved of all of their obligations under the Lease as of 12:01 AM on January 1, 2021.

c. **Failure to Finance Fire Station Project.** If the City fails to acquire financing for the Fire Station Project, the City may, at its option, offer limited Lease extensions to Dr. Dkeidek. Dr. Dkeidek would be under no obligation to extend the Lease, but may, if offered, do so. Rent would be re-established at the current market rate.

d. **Trade Fixtures, Personal Property and Tenant Improvements.**

   i. If the City’s anticipated Fall 2020 bond measure to finance the Fire Station Project (the “Bond Measure”) passes, Dr. Dkeidek shall have the right, but not the obligation, to remove any and all trade fixtures, personal property, and other improvements Dr. Dkeidek made, or caused to be made, to the Premises, including, without limitation, all dental, laboratory, x-ray and workstation cabinets and equipment located in, on or about the Premises.

   ii. If the Bond Measure fails to pass, Dr. Dkeidek shall have the right but not the obligation to remove any and all trade fixtures and personal property on the Premises, including, without limitation, all dental, laboratory, x-ray and other equipment, workstation cabinets located in on or about the Premises. In the course of removing trade fixtures and personal property after the Bond Measure fails to pass, Dr. Dkeidek will take reasonable care not to damage the Premises any more than is necessary to remove such fixtures and personal property and not to jeopardize the structural integrity of the Premises. Dr. Dkeidek will not be responsible for repairing or filling voids in any non-structural flooring, walls or ceiling areas that are damaged as a result of, or exist after, her reasonable efforts to remove trade fixtures and personal property.
e. **Tax Liability.** Dr. Dkeidek shall bear sole and exclusive responsibility for all income tax liabilities and penalties, if any, which any taxing authority, federal or state, may ultimately determine to be owed by it for Relocation Payments made to Dr. Dkeidek pursuant to this Agreement. Dr. Dkeidek has not relied upon any representations concerning income tax liability for the payments made pursuant to this Agreement.

4. **Release of All Claims.** Each Party, on behalf of itself and its successors and assigns, releases any further or remaining claims, actions, or causes of action against the other Party and its employees, agents, officers, contractors, and assigns, that in any manner arise from or relate to the Lease, acquisition of the Property, and payment of relocation benefits under RCW 8.26, and the City’s right to pursue and construct the Fire Station Project.

5. **No Admissions.** This Agreement does not constitute an admission of liability by the Parties. This paragraph does not preclude or otherwise impact the City’s obligation to comply with the Public Records Act, nor does it preclude either party from seeking to enforce the terms of this Agreement. In any dispute resolution proceeding between the Parties in connection with this Agreement, the substantially prevailing party will be entitled to recover its reasonable attorneys’ fees and costs from the other party.

6. **Successors and Assigns.** Neither Party may assign its rights under the Lease or this Agreement without written consent of the other Party, which shall not be unreasonably withheld, conditioned, or delayed. This Settlement Agreement, together with all exhibits now or hereafter made a part, shall be binding on the parties and their respective heirs, executors, administrators, successors, and assigns.

7. **Entire Agreement.** This Settlement Agreement represents the complete agreement between the Parties with respect to the subject matter hereof. Any prior written or oral representations or agreements to the contrary are of no effect.

8. **Execution.** This Settlement Agreement may be executed in counterparts, both of which together shall constitute one and the same Settlement Agreement. An electronic copy of an original signature will be deemed to have the same force and effect as an original signature.

9. **Governing Law.** This Settlement Agreement shall be governed by and construed in accordance with the laws of the State of Washington. Venue for any action arising out of this Settlement Agreement shall be in King County Superior Court.

10. **Authority.** The persons executing this Settlement Agreement on behalf of the respective Parties hereby represent and warrant that they are authorized to enter into this Settlement Agreement on the terms and conditions herein stated. Dr. Dkeidek affirms there are no subleases encumbering the Premises.
11. **City Permitting and Regulatory Authority.** Except as otherwise provided herein, nothing in this Settlement Agreement shall be deemed to be either a waiver of the City’s permitting or regulatory authority or an approval of any specific project or development, nor deemed to be a predetermination of compliance with applicable codes and regulations. Nothing in this Settlement Agreement otherwise limits or affects the City’s police power authority to amend or adopt ordinances and regulations that may be applicable to the Property. Notwithstanding the foregoing, to the extent the City now or hereafter has a right to claim sovereign immunity for itself or any of its assets, the City hereby waives any such immunity to the fullest extent permitted by the laws of any applicable jurisdiction. This waiver includes, without limitation, immunity from any of the following, commenced pursuant to the terms of this Agreement and/or the Lease: (i) any arbitration proceeding, (ii) any judicial, administrative or other proceedings to aid such arbitration, and (iii) any effort to confirm, enforce, or execute any decision, award, judgement, service of process, execution or attachment that results from an any arbitration or any judicial or administrative proceedings.

12. **Knowing and Voluntary Execution.** The Parties hereto enter into this Agreement knowingly, willingly, voluntarily, freely, and without any coercion. The Parties have been advised to consult with an attorney concerning this Agreement and have had adequate opportunity to seek the advice of legal counsel in connection with this Agreement.

**CITY OF KIRKLAND**

By _____________________________ Date: __________________

Tracey Dunlap,
Deputy City Manager

**ALLYSON S. DKEIDEK, DDS, PLLC**
**D/B/A KIRKLAND KIDS DENTISTRY**

By _____________________________ Date: __________________

Its: ____________________________
# FISCAL NOTE

## Source of Request

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<tbody>
<tr>
<td>GEMT Reserved Revenues</td>
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<td>0</td>
<td>0</td>
<td>(551,212)</td>
<td>1,190,013</td>
<td>N/A</td>
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## Description of Request

Authorize a one-time transfer of $1,620,000 to fund a settlement agreement with the dentist tenants at 13118 121st Way NE. The request will be funded with $160,000 from a portion of the 2020 monthly rents from the property and the remaining $1,460,000 will be funded with reserved Ground Emergency Medical Transport funds (GEMT) revenues. Additionally, a GEMT revenue for FY2018 of $908,788 was receipted on November 27th, 2019 and this fiscal note recognizes that receipt as a new General fund revenue and addition to the GEMT reserved funds here. The overall net request of GEMT reserved revenues is $551,212.

## Legality/City Policy Basis

GEMT revenues are provided through the State of Washington's Health Care Authority and are supplemental payments to cover the funding gap between our Fire Departments' actual costs per GEMT transport and the allowable amount received from Washington Apple Health (Medicaid) and any other form of reimbursement. Kirkland has been reserving these revenues for Fire Station related expenses.

## Fiscal Impact

Will utilize $1,460,000 in previously reserved GEMT revenues ($1,741,225 of which were recognized in the 12/10/2019 Budget Adjustments) from the general fund. This fiscal note recognizes the 11/27/2019 receipt of $908,788 in GEMT revenues for FY2018 resulting in a net use of $551,212. Finally, the fiscal note also recognizes projected 2020 rental revenues of $160,000 from the tenants of the property at 13118 121st Way NE.

## Recommended Funding Source(s)

### Reserve

The Fiscal note requests a use of $1,460,000 in reserved GEMT funds and also recognizes $908,788 in new GEMT revenues from November 27th, 2019. This results in a net use of GEMT funds of $551,212.

### Revenue/Exp Savings

Recognize new facility rental revenues of $160,000 dentist tenants of 13118 121st Way NE through 12/31/2020.

Recognize $908,788 in FY2018 GEMT revenues receipted on 11/27/2019

## Other Source

### Other Information

Rental revenue account code: 527*362601 / GEMT Revenue Code: 010*332934 - NOTE: A second fiscal note is attached with this same memo and also requests a use of GEMT funds. That fiscal note will calculate reserved amounts based on the reserve info above.
# FISCAL NOTE

## Source of Request

Tracey Dunlap, Deputy City Manager

## Description of Request

Authorize a one-time transfer of $153,000 to fund roof replacement costs for the existing Fire Station 27. The request will be funded with $153,000 from reserved Ground Emergency Medical Transport funds (GEMT) revenues.

## Legality/City Policy Basis

GEMT revenues are provided through the State of Washington's Health Care Authority and are supplemental payments to cover the funding gap between our Fire Departments' actual costs per GEMT transport and the allowable amount received from Washington Apple Health (Medicaid) and any other form of reimbursement. Kirkland has been reserving these revenues for Fire Station related expenses.

## Fiscal Impact

One-time transfer of $153,000 from the General Fund's reserved GEMT revenues to the General Capital fund for the Facilities Roofing, Gutter, Siding and Deck Replacements project (GGC1100000). The reserved balance is currently $1,190,013 and will be $1,037,013 after this fiscal note.

## Recommended Funding Source(s)

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<td>Reserve</td>
<td>1,741,225</td>
<td>(1,460,000)</td>
<td>908,788</td>
<td>(153,000)</td>
<td>1,037,013</td>
<td>N/A</td>
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## Revenue/Exp Savings

## Other Source

## Other Information

NOTE: this fiscal note calculates the reserved balance for GEMT in series with Attachment A of the same memorandum. This is an interfund transfer from the General Fund (010) to the General Capital Projects fund (310).