

INTERLOCAL AGREEMENT
BETWEEN

THE CITY OF SEATTLE,

AND

THE CITY OF KIRKLAND

FOR OPERATION AND MAINTENANCE OF
ORION O. DENNY PARK

#AG14-2551-007

INTERLOCAL AGREEMENT
Between
THE SEATTLE DEPARTMENT OF PARKS AND RECREATION
And
THE CITY OF KIRKLAND
For
FOR OPERATION AND MAINTENANCE OF ORION O. DENNY PARK

This Interlocal Agreement ("Agreement") is for the operation and maintenance of Orion O. Denny Park ("Park"), and is made and entered into this 20 day of May, 2014 by and between The City of Seattle, a Washington municipal corporation ("Seattle"), through its Department of Parks and Recreation ("DPR") and the City of Kirkland, a Washington municipal corporation ("Kirkland") pursuant to Chapter 39.34 RCW and other authority. Seattle and Kirkland are referred to herein individually as a "Party" and together as the "Parties".

RECITALS

- A. Seattle, by and through the DPR, owns and operates the Park; and
- B. On June 1, 2011, the neighborhood where the Park is located was annexed into the city of Kirkland; and
- C. On November 6, 2012, the voters of the City of Kirkland approved Proposition No. 2, which authorized funding to provide Park operation and maintenance; and
- D. The Finn Hill Park and Recreation District, a metropolitan parks district ("FHPRD") formed in order to provide operation and maintenance of the Park, dissolved, effective December 31, 2013; and
- E. Seattle, FHPRD and Kirkland desire to facilitate an orderly transition of services associated with the operation and maintenance of the Park; and
- F. DPR seeks continued operation of the Park through the operation and maintenance by Kirkland; and

G. The Parties intend to provide an example of environmentally-friendly practices in public parks and to develop a programmatic approach that promotes sound environmental stewardship and volunteerism in public parks; and

H. The Parties intend to provide an example of public recreational opportunities that foster greater awareness, appreciation and knowledge of park environments; and

I. The Parties share a commitment to serving diverse public audiences in public parks; and

J. The Parties agree that the Park has been and should continue to be operated as a multi-use park, with the high-use, open portions west of Holmes Point Drive NE operated and maintained more actively as a semi-urban park, and the wooded sections south of the parking lot and east of Holmes Point Drive NE managed with minimal impact to remain a more natural, native preserve within the surrounding urban environment; and

K. The Parties acknowledge that current Seattle resource constraints and funding priorities would make it difficult, if not impossible, for DPR to satisfactorily manage and maintain the Park without contracting for the services of Kirkland in connection with such operation and maintenance; and

L. The Parties agree that the benefits to the public associated with the provision of operation and maintenance services by Kirkland will be substantial; and

M. The public will further benefit from the direct financial contributions to the maintenance of the Park that Kirkland will make as provided for herein; and

N. DPR and Kirkland seek this Agreement for the purpose of granting Kirkland immediate access to the Park for operation and maintenance.

NOW, THEREFORE, in consideration of the mutual promises, terms, conditions and covenants described herein, Seattle and Kirkland agree as follows:

ARTICLE 1 – AUTHORIZATION AND RESPONSIBILITIES

1.1 **Authorization.** Consistent with the terms of this Agreement, Kirkland is authorized to operate, access, manage, maintain, use, and occupy the Park ("operate and

maintain”) during the Term, as defined below, for the purposes of facilitating continued use of the Park by the public.

1.2 Responsibilities.

1.2.1 Kirkland.

1.2.1.1 Maintenance. Kirkland agrees to maintain the Park to the standard of Kirkland’s parks system consistent with maintenance levels of parks classified as waterfront parks and open space/natural areas as identified in Kirkland’s “Park, Recreation and Open Space Plan.” This may be accomplished through use of Kirkland Park maintenance staff and volunteer labor. Kirkland’s responsibilities include recurring maintenance of the Park to the standards as described in Exhibit B (and integrated into this Agreement), as well as Minor Capital Improvements and Minor Repairs, defined below. In conducting their work, Kirkland and its contractors and agents shall protect all Park property and improvements, including but not limited to trees, plantings, grass, asphalt surfaces, irrigation facilities and drainage, from any damage which may occur as a result of their maintenance of the Park. Kirkland and its contractors or agents, must obtain all necessary permits and approvals required by applicable federal, state and local laws, ordinances, rules and regulations to perform any work on Park property. Placement and/or temporary storage of personal property, equipment, vehicles, or materials of any kind on park property shall be at Kirkland’s sole liability and risk.

1.2.1.2 Operation. Kirkland agrees to operate the Park and to provide for daily opening and closing of the Park, consistent with Kirkland’s park opening and closing schedules. Kirkland will work with its police department to ensure Kirkland laws are enforced within the Park.

1.2.1.3 Volunteers. Kirkland may use volunteers to assist in its maintenance and management of the Park and for the provision of seasonal programs.

1.2.1.4 Due Diligence. In carrying out its responsibilities and obligations, Kirkland will exercise appropriate caution and use due diligence in identifying and preserving any site that may have archaeological materials. If such materials are identified, Kirkland will immediately notify Seattle and will cease work in the area until further notice by Seattle.

1.2.2 **Seattle.** As owner of the Park, DPR agrees to remain responsible, and contingent on available funds, for implementation of Major Repairs and Major Capital Improvements to the Park, including all capital facilities, whether damage to facilities and property is due to natural deterioration or vandalism. DPR agrees to provide prompt review of Kirkland requests for changes within the Park.

1.3 **Standards for Maintenance, Operation and Repair.** DPR and Kirkland shall jointly set or otherwise determine all standards for park maintenance and shall jointly review the adequacy of conformance to the requirements set forth herein. For the purposes of this Agreement, such standards will be deemed to have been met if Kirkland satisfactorily meets the maintenance program standards set forth in Exhibit B. Further, DPR and Kirkland agree to work together to identify and implement, as funds are available, mutually agreed upon Major Repairs and Major Capital Improvements necessary for the Park.

1.4 **Nature of Park.** Kirkland agrees to continue managing the Park as a multi-use park, with the high-use, open portions west of Holmes Pt. Dr. NE to be operated and maintained more actively as a semi-urban park, and the wooded sections south of the parking lot and east of Holmes Point Drive NE to be operated with minimal impact.

1.5 **Termination.** This Agreement is subject to termination by either Party for any reason, including their convenience, upon 90 days' advance written notice by that Party mailed to the other Party, at the addresses shown below. This Agreement is also subject to immediate termination by either Party upon 30 days' written notice in the event the other Party breaches any of its material obligations hereunder. For the purposes of delivering notices and for routine business activities, the following are the official addresses and contact individuals of the Parties to this Agreement:

Seattle Department of Parks and Recreation

Christopher Williams, Superintendent

Seattle Department of Parks and Recreation

100 Dexter Avenue North

Seattle, WA 98109

City of Kirkland Department of Parks and
Community Services

Jennifer Schroder, Director

Kirkland Parks and Community Services

123 5th Avenue

Kirkland, WA 98033

ARTICLE 2 - DEFINITIONS

2.1. "Approval" (or "Approved") means the prior written consent of a party or an authorized designee thereof.

2.2. "Gross Receipts" means all program receipts, fees from other users, rents, class fees, and other earned income actually received by Kirkland from programming or retail sales in the Park during the Term of this Agreement.

2.3 "Major Capital Improvement" means all capital improvements with a cost of \$2,000 or more per occurrence and \$5,000 in the aggregate each calendar year.

2.4 "Major Repair" means all regular operating repairs with a cost of \$2,000 or more per occurrence and \$5,000 or more in the aggregate each calendar year.

2.5 "Minor Capital Improvement" means all capital improvements with a cost of less than \$2,000 per occurrence and \$5,000 in the aggregate each calendar year.

2.6 "Minor Repair" means all regular operating repairs with a cost of less than \$2,000 per occurrence and \$5,000 in the aggregate each calendar year.

2.7 "Superintendent" means the Superintendent of the DPR or the Superintendent's designee.

2.8 "Term" means a period of five (5) years from the effective date of this Agreement. If the Parties fail to extend this Agreement prior to sixty (60) days before the end of the initial Term, and neither party has terminated the Agreement, the terms of this Agreement, or such other terms as the Parties have agreed upon in writing, shall be renewed automatically for a one-year period thereafter unless terminated by either Party as provided in this Agreement.

ARTICLE 3 –INSURANCE

3.1. Nature of Coverage.

3.1.1 Kirkland shall maintain liability coverage via membership in the Washington Cities Insurance Authority, a Municipal Pool, for the liabilities contractually assumed by Kirkland in this Agreement, and, arising out of the activities pertaining to

this Agreement.

3.1.2 By requiring such liability coverage, Seattle shall not be deemed to, or construed to, have assessed the risks that may be applicable to Kirkland in this Agreement. Kirkland shall assess its own risks and, if it deems appropriate and/or prudent, maintain greater limits or broader coverage than is herein specified.

3.2. Scope and Limits of Liability Coverage. Coverage shall be at least as broad as:

3.2.1 General Liability: Commercial General Liability, with a limit of not less than: \$5,000,000 combined single limit per occurrence, \$5,000,000 aggregate. The policy or coverage agreement shall include but not be limited to:

- (i) coverage for premises and operations;
- (ii) contractual liability (including specifically liability assumed herein);
- (iii) Employers Liability or "Stop-Gap" coverage.

3.2.2 Automobile Liability: Business Automobile Coverage, for a limit of not less than \$1,000,000 combined single limit per occurrence.

3.2.3 Workers' Compensation: Workers' Compensation coverage, as required by the Industrial Insurance Act of the State of Washington, statutory limits.

3.3. Deductibles and Self-Insured Retentions. Any deductible and/or self-insured retention shall be the sole responsibility of Kirkland.

3.4. Other Provisions. The coverages required by this Agreement are to contain or be endorsed to contain the following provisions where applicable.

3.4.1 Liability Coverage. To the extent of Kirkland's negligence as herein assumed, Kirkland's liability coverage shall be primary coverage as respects Seattle, its officers, officials, employees, and agents. Any insurance and/or self-insurance maintained by Seattle, its officers, officials, employees, and agents shall not subsidize Kirkland's Coverage or benefit Kirkland in any way.

3.4.2 All Coverage Agreements. Coverage shall not be suspended, voided, canceled, materially reduced in coverage or in limits except by the reduction of the applicable aggregate limit by claims paid, unless after forty-five (45) days prior written notice, sent by registered mail, to Seattle.

3.4.3 Acceptability of Insurers. Unless otherwise accepted by Seattle, and if Kirkland obtains commercial insurance, insurance coverage is to be placed with a Best's rating of no less than A: VIII, or, if not rated by Best's, with minimum surplus the equivalent of Best's surplus size VIII.

3.4.4 Verification of Coverage. Kirkland shall furnish Seattle with evidence of general liability coverage to be received and accepted by Seattle prior to the commencement of activities associated with this Agreement. Acceptance hereunder shall be presumed unless otherwise notified by Seattle.

ARTICLE 4 – FEES, CHARGES AND TAXES

4.1 Kirkland shall be entitled to all Gross Receipts from service activities, user fees, concessions, and activities which it deems appropriate (with DPR concurrence) to authorize, charge, or permit during the term of this Agreement.

4.2 In the event that tax revenues are reduced or become unavailable to Kirkland for unforeseen reasons, with the Superintendent's concurrence, Kirkland may reduce Park maintenance and other services to stay within its established budget.

ARTICLE 5 – MISCELLANEOUS PROVISIONS

5.1 **Notices.** All notices or documents required by this Agreement shall be in writing and shall be sufficiently given if either personally served upon the other party or sent via the United States Postal Service, postage prepaid, certified mail, return receipt requested, and addressed as shown in this Agreement or by such other means as the Parties agree, or to such other address as either Party hereto may specify for itself in a notice to the other.

5.2 **Long Term Rights.** This Agreement creates no additional or long-term rights of any kind in Kirkland. The rights granted to Kirkland hereunder are not transferable or assignable, either in whole or in part unless approved in writing by the Superintendent of DPR.

5.3 **Amendments.** No modification of this Agreement shall be effective unless in writing and signed by an authorized representative of each of the parties hereto.

5.4 **Binding Agreement.** This Agreement shall not be binding until signed by both Parties. The provisions, covenants and conditions in this Agreement shall bind the Parties, their legal heirs, representatives, successors, and assigns.

5.5 **Applicable Law and Venue.** This Agreement shall be construed and interpreted in accordance with the laws of the State of Washington. The venue of any action brought hereunder shall be in the Superior Court for King County.

5.6 **Remedies Cumulative.** Rights under this Agreement are cumulative and nonexclusive of any other remedy at law or in equity.

5.7 **Captions.** The titles of sections are for convenience only and do not define or limit the contents.

5.8 **Severability.** If any term or provision of this Agreement is determined by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Agreement shall not be affected thereby, and each term and provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

5.9 **Waiver.** No covenant, term or condition or the breach thereof shall be deemed waived, except by written consent of the party against whom the waiver is claimed, and any waiver of the breach of any covenant, term or condition shall not be deemed to be a waiver of any preceding or succeeding breach of the same or any other covenant, term or condition. Neither the acceptance by Seattle of any performance by Kirkland after the time the same shall have become due nor payment to Kirkland for any portion of the Work shall constitute a waiver by Seattle of the breach or default of any covenant, term or condition unless otherwise expressly agreed to by Seattle, in writing.

5.10 **Entire Agreement.** This document, along with any exhibits and attachments, constitutes the entire agreement between the parties with respect to the Work. No verbal

agreement or conversation between any officer, agent, associate or employee of Seattle and any officer, agency, employee or associate of Kirkland prior to the execution of this Agreement shall affect or modify any of the terms or obligations contained in this Agreement.

5.11 **Negotiated Agreement.** The parties acknowledge that this is a negotiated agreement, 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 any party on the basis of such party's draftsmanship thereof.

IN WITNESS WHEREOF, in consideration of the terms, conditions, and covenants contained herein, or attached and incorporated and made a part hereof, the parties have executed this Agreement by having their representatives affix their signatures below.

CITY OF KIRKLAND

Kurt Triplet
Kurt Triplet, City Manager

: 4/29, 2014

IN WITNESS WHEREOF, the parties have executed this contract:

STATE OF WASHINGTON

COUNTY OF KING

I certify that I know of or have satisfactory evidence that Kurt Triplet signed this instrument, on oath stated he/she was authorized to execute the instrument and acknowledged it as the City Manager of the City of Kirkland to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Leta B Santangelo
(Signature of Notary Public)

Dated: April 29, 2014

Leta B Santangelo
(Printed name)

Residing at: Kirkland, WA

My appointment expires: 12-19-17



THE CITY OF SEATTLE DEPARTMENT OF PARKS AND RECREATION



Date: 5/20/2014, 2014


Christopher Williams, Superintendent

City of Seattle Department of Parks and Recreation

STATE OF WASHINGTON

COUNTY OF KING

I certify that I know or have satisfactory evidence that Christopher Williams signed this instrument, on oath stated that ^{he is} ~~she~~ was authorized to execute this instrument and acknowledged it as the Superintendent of the Department of Parks and Recreation of The City of Seattle to be the free and voluntary act of The City of Seattle for the uses and purposes mentioned in this instrument.


(Signature of Notary Public)

Date: 5/20/2014

JOSETTE L. VALENTINO
(Printed name)

Residing at: KING COUNTY

My appointment expires: 10/4/2015

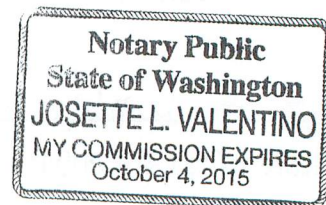


EXHIBIT A – Map of Orion O. Denny Park

EXHIBIT B –Maintenance Standards As Supplied By Kirkland

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EXHIBIT A – Map of Orion O. Denny Park

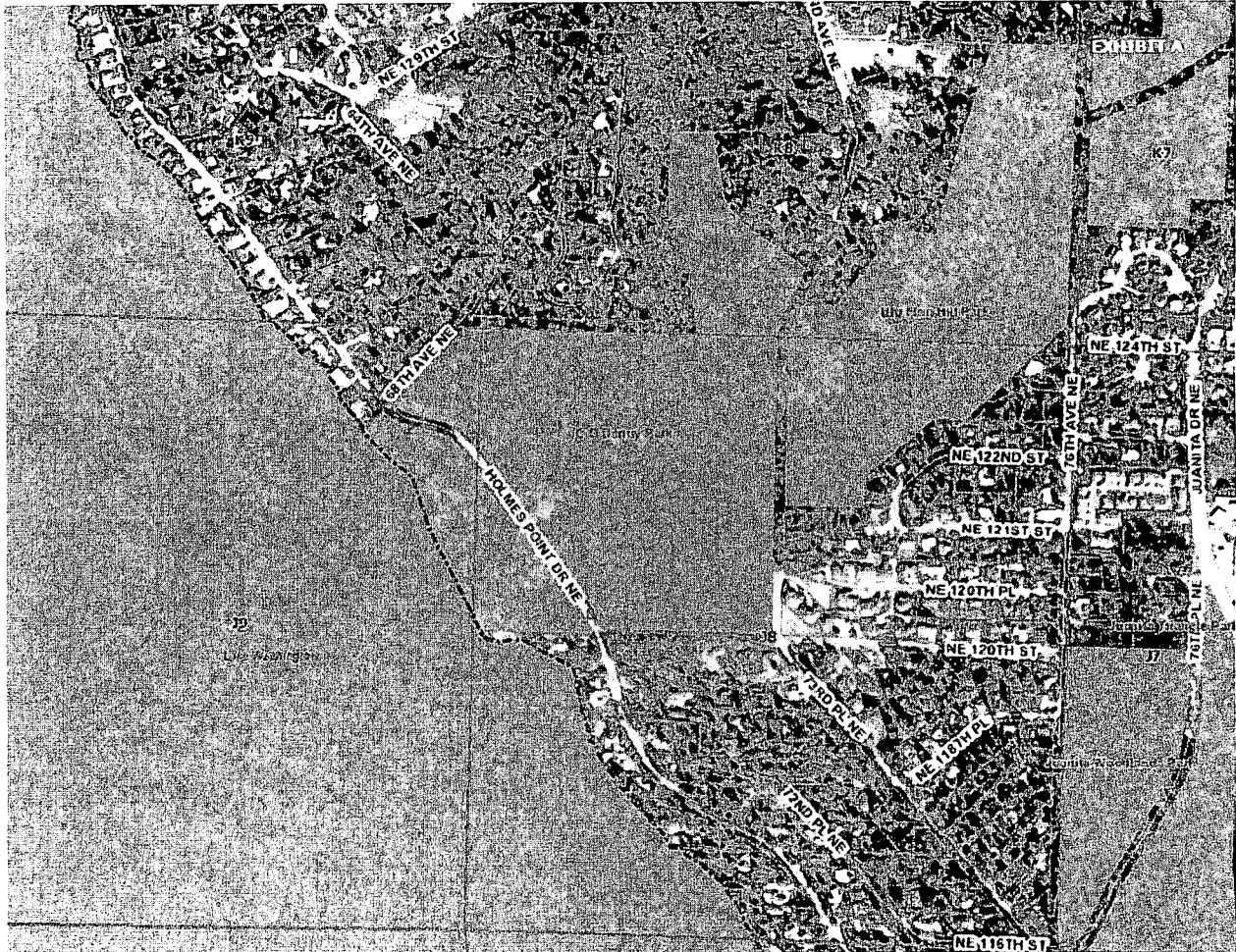


Exhibit A - O.O. Denny Park

12032 Holmes Point Drive NE, Kirkland, Washington, 98034.

O.O. DENNY PARK PROPERTY DESCRIPTION

Block 7, Lake Park, and Government Lot 1 (One) of Section 25, Township 26 North, Range 4 East, W.M., with all shore lands adjoining said tracts, together with the northerly half of vacated Sixth Avenue and a triangular tract described as follows:

Beginning at the N.E. Corner of Lot #1, Block G of Lake Shore View Division of Lake Park; thence west along the south line of Sixth Avenue a distances of 337.10 feet to the true point of beginning, thence N 45°00' E, a distance of 35.35. feet, then west, a distance of 78.70 feet, thence S55°-02'08" East, a distance of 59.23 feet to the true point of beginning, together with all shorelands.

Tax Parcel No. 252604 9005

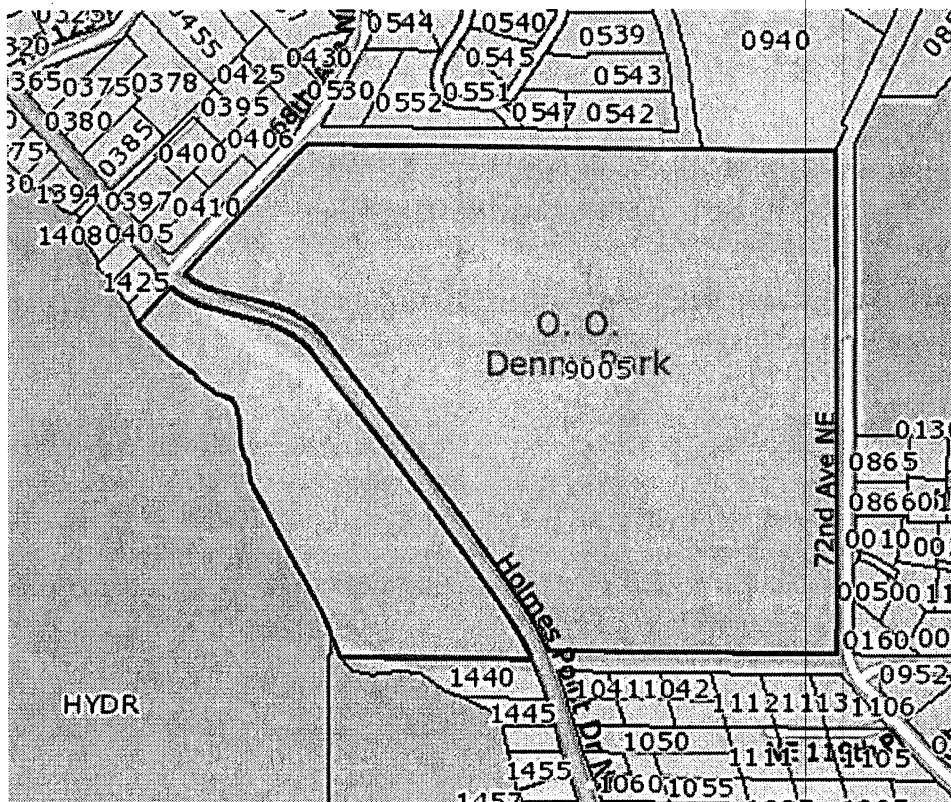


EXHIBIT B – MAINTENANCE STANDARDS
RECURRING MAINTENANCE OF ORION O. DENNY PARK
STATEMENT OF WORK

I. Plant Materials, Natural Bed Areas

Maintain all trees, shrubs, and groundcover of the lawn area in the Park in a healthy, growing condition, by performing the following operations and other work specified.

- a) Pruning (lawn and parking areas only). Pruning of trees, shrubs, and hedges shall be done as follows:
 1. Fertilize Shrubs & Beds. The shrubs and plant beds throughout the Park should be fertilized once a year.
 2. Trees, shrubs, and hedges, should be shaped, trimmed, or sheared to maintain shape and function, and to keep a neat trim appearance.
 - a. The lower branches of trees should be raised above head height wherever they overhang walks or paths. A minimum of eight (8) feet of vertical clearance and a minimum of one (1) foot of horizontal clearance must be maintained. Singular branches, which are hanging below the overall tree canopy and are an impediment to pedestrian traffic or maintenance activities, should be pruned back to the first lateral. Trees which require minor clearance pruning shall be pruned to the closest lateral or, if such pruning will result in stubbing the branch, prune branch to tree collar.
 - b. Kirkland shall monitor and mitigate any significant tree hazards including, but not limited to: dead native and ornamental trees, broken limbs, disease and insect infestation.
 3. Cut back shrubs and ground cover to prevent encroachment into shrubs, trees, buildings, retaining walls, fences, and utility vaults. Shrubs and ground cover shall be trimmed at the edge of hard surfaces (sidewalks and curbs) and bed areas. All ground cover should be trimmed back in beds, walkways shall be kept free of ground cover. All ivy in beds around shelter shall be kept trimmed back.
 4. Remove suckers and other undesirable growth on trees and shrubs, in and adjacent to the lawn and parking areas only.

5. Naturalized bulbs in shrub beds and tree circles shall be dead-headed after blooming and the foliage cut back once die-back is apparent.
6. Major pruning of deciduous trees and shrubs shall be done during the dormant season. Minor pruning may be done at any time.

b) Weed/Disease/Pest Control

1. All bed areas should be kept clear of weeds, leaves, debris and brush. Trees, shrub, and groundcover areas shall be kept free of weeds.
2. Weeding may be done by mechanical and/or chemical means. All spraying shall be done in compliance with all federal, state, and local laws and regulations. No chemicals are to be used within the Orion. O. Denny Creek buffer zone (defined as the area between the rail fences on either side of the creek), and the north Park area wetlands.
3. Any damage to desirable plant material due to negligence or misuse of pesticides or herbicides will be remedied in a timely manner.
4. Minor pest control is allowed up to 12 feet vertical on all trees; and for all shrubs and groundcover. Major infestations requiring large-scale pesticide applications shall be contracted to commercial applicators.
5. Kirkland may remove dead and damaged plants and replace the same with plants of equivalent size, condition, and variety.
6. Plant materials supplied by Kirkland shall be of suitable quality.

c) Irrigation: N/A

II. Lawn Care

Maintain all lawns in a healthy, growing condition by performing the following operations and other work specified for each site:

- a) Aerate Turf. Lawn areas, if specified, shall be aerated each year and overseeded in accordance with the frequency established by Kirkland's best practices for park lawns.
- b) Edging. All lawn edges shall be edge trimmed after each mowing. This edge trimming includes cutting grass along walls, fences, foundations, curbs, sidewalks, paths, shrubs, tree trunks, poles, or any other object or structure within or bordering the lawn areas. Edging shall be done by powered edging equipment.
- c) Fertilizing/Herbicides

1. Lawn area shall be fertilized as required, as determined by Kirkland and the maintenance subcontractor. The use of herbicides shall be done in accordance with all local, state and federal statutes. Kirkland has the discretion to increase or decrease the number of fertilizer applications per year.
 2. Fertilization should be scheduled prior to projected precipitation. Burning of grass due to improper fertilization work on lawn areas shall be considered property damage and shall be corrected.
- d) Mowing: Mowing shall occur on all grassy areas west of Holmes Point Drive, and as needed on the small grassy area east of Holmes Point Drive. Lawn areas shall be mowed to a uniform height of 2-3 inches, so as to maintain a neat, trim appearance. All paper, rubbish, or debris shall be removed from each lawn area prior to mowing. Mowing shall be done during the growing season, from April through November. Mowing from December through March shall be at the discretion of Kirkland. If mowing or equipment use results in clumping of grass clippings, these clippings shall be picked up and removed to the composting areas at the east end of the gravel parking lot, or removed from the site.
- e) Watering: N/A
- f) Weed/Pest Control
1. Kirkland shall be responsible for the selection and use of insecticides, fungicides, herbicides, and rodenticides, and for the specific applications for which the same may be used. Any property damage resulting from the use of such pesticides shall be the responsibility of Kirkland.
 2. Lawn areas shall be kept free of weeds. Weeding may be done by the use of selective weed killers or pre-emergent sprays.
 3. If poison baits are used for the control of moles, ground squirrels, rodents and gophers, such baits shall be placed so as not to create a hazard to persons or pets. Any property damage, health hazards and environmental impacts resulting from the use of such pesticides shall be the responsibility of Kirkland.

III. Hard Surfaces: The entrance drive, parking areas, sidewalks, curbs, and other hard surfaces shall be kept free of leaves, litter, and debris. The use of power blowers is acceptable, however, accumulations of debris must be removed from the site and not blown unto adjacent property, street surfaces, fence lines, or planting areas (rough or bedded).

Undesired vegetation in sidewalks, curbs and other hard surfaces may be removed by use of herbicides. In no case shall any pre or post emergent herbicides with residual characteristics (e.g. Casoron) be used in these areas.

IV. Other Services:

- a) The Park shall be opened daily no later than 8:00 am. Opening the Park shall include unlocking and opening the gates to the west (paved) and east (gravel) parking lots and unlocking the bathrooms and shower areas.
- b) Litter shall be collected, trash cans shall be emptied, new liners installed in trashcans, and trash removed from the site on a schedule to be determined by Kirkland. All litter and animal feces shall be removed from turf, bed, and hard surface areas.
- c) Restrooms shall be cleaned on a schedule to be determined by Kirkland. This cleaning shall include supply and replacement of toilet paper, towels, and soap, disinfection and hosing out of the restroom building, and minor unplugging of plumbing as required. Cleaning shall be performed in accordance with all applicable local, state, and federal statutes and standards.
- d) The restrooms shall be winterized by December 1st and de-winterized by March 1st.
- e) Graffiti from restrooms (internal and external), from all structures and parking lots shall be removed within 48 hours of discovery.
- f) Kirkland shall operate a picnic shelter reservation line from 7 am to 3 pm Monday through Friday (except holidays) during the months from April through October. During this time, Kirkland shall post reservations at the shelter once a week.
- g) The picnic and shelter area shall be cleaned at regular intervals. All leaves and litter shall be collected and removed from the shelter area.
- h) Kirkland shall add gravel as needed to the parking lot east of Holmes Point Drive and grade to produce smooth surface. The need for and frequency of this activity shall be determined by Kirkland and the maintenance subcontractor.
- i) Parking Lot Drains should be cleaned and checked monthly and any garbage or debris should be removed from them to allow for proper drainage. Additional drainage work may be included in the annual work program.
- j) Leaves covering turf areas shall be removed from the site or composted. Leaves may be mulched and returned to the turf areas. Leaves within the beds, and on hard surfaces such as paths and parking lots shall be removed from the site or composted. The use of power blowers is acceptable; however, debris accumulations must not be

blown onto adjacent street surfaces. Leaves may be blown into adjacent natural areas where applicable; otherwise accumulations should be removed from the site or composted.

- k) Windfall branches and debris shall be removed from all developed areas.
- l) An overall, park safety check should be done weekly at each park checking all structures, equipment, fences, benches, etc. at the park for any unsafe conditions.