



CITY OF KIRKLAND

City Attorney's Office

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www.kirklandwa.gov

MEMORANDUM

To: Kurt Triplett, City Manager

From: Marilynne Beard, Assistant City Manager
Robin Jenkinson, City Attorney

Date: October 5, 2011

Subject: Independent Ethics Program Agreement/Funding Request

RECOMMENDATION:

That the City Council authorize the City Manager to allocate \$5,000 from the Council's special projects reserve fund for the Seattle Ethics and Elections Commission staff to review the draft Code of Ethics and develop a comprehensive training program.

BACKGROUND DISCUSSION:

At its June 21, 2011, meeting the City Council agreed to contract with an outside agency to serve as the Ethics Officer under the draft Code of Ethics. The Council further directed staff to execute a contract with an appropriate agency.

Under the attached Agreement with the City of Seattle, the staff of the Seattle Ethics and Elections Commission ("SEEC") would fulfill all of the Ethics Officer functions. As one of its first tasks, the SEEC staff will develop and deliver a comprehensive ethics training program for Kirkland. This program shall be designed and implemented to instill a culture of compliance with ethical requirements. This training and awareness program shall include, but not be limited to direct trainings, informational web pages, and written training materials.

In addition to the training required by the attached Agreement, SEEC staff shall review the draft Code of Ethics to assure that the Code is enforceable and contains all of the provisions necessary for its proper administration. Staff recommends that \$5,000 be allocated to allow SEEC staff to develop the training program and review the draft Code of Ethics.

Attachment:

Independent Ethics Program Agreement Between the City of Kirkland and the City of Seattle

INDEPENDENT ETHICS PROGRAM AGREEMENT BETWEEN THE CITY OF KIRKLAND AND THE CITY OF SEATTLE

THIS INDEPENDENT ETHICS PROGRAM AGREEMENT ("Agreement") is hereby made by and between the City of Kirkland ("Kirkland") and the City of Seattle ("Seattle"), referred to collectively herein as the "Parties".

WHEREAS, the City of Kirkland has adopted a Code of Ethics for City Officials to ensure public confidence in the integrity of local government; and

WHEREAS, in order to best strengthen ethical compliance, Kirkland desires to establish an independent ethics investigation program; and

WHEREAS, Seattle has established an independent and well-respected ethics program through the Seattle Ethics and Elections Commission; and

WHEREAS, the Seattle Ethics and Elections Commission staff have proven expertise in providing a comprehensive ethics program; and

WHEREAS, the Parties have negotiated the terms and conditions of this Agreement under which Seattle will provide an independent and comprehensive ethics program to Kirkland;

NOW THEREFORE, in consideration of the mutual covenants contained herein, the sufficiency of which is hereby acknowledged, the Parties agree as follows:

1.0 Term and Termination

1.1 This Agreement shall be effective upon mutual execution by the Parties for an initial term of three years. This Agreement may be extended for such additional terms as are agreed to by the Parties in writing.

1.2 This Agreement may be terminated by either party for its convenience and without cause at any time, upon 60 days written notice delivered by certified mail, return receipt requested, to the other party. In addition, if either party's governing body does not provide the necessary appropriation authority for the following year, this Agreement may be terminated effective January 1st of the following year by giving notice no later than December 2nd of the current year.

1.3 Either party may terminate this Agreement in the event that the other party substantially fails to perform its obligations as described in this Agreement following written notice by certified mail, return receipt requested, of such non-performance and a reasonable opportunity

(of not less than 14 calendar days) for the non-performing party to cure the issues of non-performance.

2.0 Comprehensive Ethics Program

2.1 Program Elements

2.1.1. Seattle, through the executive director and staff of its Ethics and Elections Commission Office ("SEEC"), shall provide an independent and comprehensive Ethics Program ("Program") for Kirkland. The Program shall include, but not be limited to, the elements identified in Section 2.2 through 2.5.

2.1.2. By execution of this Agreement, Kirkland designates the SEEC Executive Director as the Kirkland "Ethics Officer," as that term is used in the existing Kirkland Code of Ethics, and authorizes the SEEC Executive to perform all responsibilities of that office.

2.1.3. Seattle shall carry out the Program with the care and diligence that is customary for a program of this nature. Seattle shall stay abreast of best practices regarding ethics for public agencies and institute such practices in the Program. Seattle shall recommend any amendments to this Agreement that may be necessary to carry out such best practices.

2.2 Code of Ethics Revisions

Seattle shall review the existing Kirkland Code of Ethics and recommend revisions of the Code of Ethics to the Kirkland City Council. Seattle shall seek to provide this recommendation within 30 days after the execution of this Agreement. Such recommendations shall be made in consultation with Kirkland and will take into account the unique issues and interests of Kirkland. The Kirkland City Council will retain the final authority regarding the content of any Code of Ethics revisions. Seattle shall also make such recommendations over time as it deems necessary to ensure the Code of Ethics is complete, effective and enforceable.

2.3 Ethics Investigations and Written Findings

2.3.1. Investigations. Seattle shall in its sole discretion determine, in accordance with the standard practices of the SEEC, which complaints to investigate and the scope of any investigation. Investigations shall be conducted in a thorough, documented, and professional manner so as to provide sufficient evidentiary grounds to support such action as may be taken by the Kirkland City Council for violations of the Code of Ethics. Seattle shall refer to Kirkland those complaints it receives that Seattle has determined do not warrant further investigation as a Code of Ethics violation but that may need other action by Kirkland.

2.3.2. Written Findings. Seattle shall provide Kirkland with a detailed written

investigative report of Seattle's findings ("Written Findings") for each ethics investigation conducted by Seattle. The level of detail in such report shall be commensurate with the complexity of the matter at issue, whether a violation of the Code of Ethics is found to have occurred, and the severity of the violation found. Written Findings involving a violation of the Code of Ethics shall provide sufficient detail to provide the Kirkland City Council with the necessary information to make an informed and defensible decision regarding the appropriate action to take.

2.3.3. City Council Action. The Kirkland City Council considers ethics violations a very serious matter and will carefully review and consider all Written Findings to determine the appropriate action to take. The Kirkland City Council shall be solely responsible for determining if penalties should be imposed and at what level.

2.4 Training and Awareness

Seattle shall develop and deliver a comprehensive ethics training program for Kirkland. This program shall be designed and implemented to instill a culture of compliance with ethical requirements. This training and awareness shall include, but not be limited to direct trainings, informational web pages, and written training materials.

2.5 Advisory Opinions

In addition to the training required by this Agreement, at the request of Kirkland, Seattle shall provide written advisory opinions regarding interpretation, application, and compliance with the Code of Ethics.

2.6 Election Related Matters Not Covered

The Program will not include Kirkland City Council election and campaign related issues. Those matters will continue to be regulated by the Washington State Public Disclosure Commission.

3.0 Data Collection and Reporting

3.1 Seattle shall provide Kirkland with a written report every six months during the term of this Agreement that will detail the Program activities to date, an assessment of the Program's success and recommended Program improvements. The report shall also contain relevant data regarding the Program including, but not limited to: a) the number and type of complaints filed and their disposition; b) investigations conducted; c) trainings conducted; and d) number and type of requests for advisory opinions.

3.2 Seattle shall make such presentations to the Kirkland City Council regarding the Program as are reasonably requested by Kirkland from time to time. If requested by Kirkland, Seattle shall provide an annual presentation to the Kirkland City Council. Such presentations shall include an overview of the Program, review of data collected, assessment of the Program's effectiveness, and recommendations for improvements.

3.3 Should any records held by Seattle related to work for Kirkland under this Agreement become the subject of a request for public records under Chapter 42.56 RCW, Seattle shall use its best efforts to notify Kirkland of such request and consult with Kirkland regarding a proposed response and the date by which Seattle anticipates responding. If Seattle notifies Kirkland in writing that it plans to produce any records and Kirkland disagrees that such records are subject to production, Kirkland may then within a reasonable time of receipt of notification by Seattle, give notice in writing to Seattle that (a) specifically identifies each record, or part thereof that Kirkland asserts is exempt from production, and (b) cites the statutory exemption under Chapter 42.56 RCW, or any other law, and provides a brief explanation of how the exemption applies to the record, so that Seattle may respond to the records requester. Seattle may decide whether or not to withhold or redact those public records that Kirkland reasonably claims are exempt from production based upon Kirkland's explanation. Kirkland at its sole expense may seek a judicial declaration or injunction with respect to the public records request. Kirkland further agrees that it will, at its sole expense, defend the non-disclosure of that information Kirkland claims in the written notice to be exempt from production and indemnify Seattle for any and all penalties assessed and costs that Seattle incurs, if any. The provisions of this paragraph shall survive the termination of this Agreement.

4.0 Independence of Seattle

The Parties are committed to the independent investigation of ethics complaints by Seattle and will take such actions as are necessary to further and maintain such independence during the term of the Agreement.

5.0 Cooperation

5.1 Kirkland shall provide its full cooperation to make the Program a success. This cooperation shall include, but not be limited to, promptly transmitting ethics complaints to Seattle, providing information needed to assist the Program, facilitating investigations where requested, providing assistance in coordinating training, making Kirkland facilities available as needed, and such other assistance as is agreed upon.

5.2 The City Attorney for Kirkland and the SEEC Executive Director, or such other designee identified by a Party in writing, shall serve as the Agreement Coordinators. The designated Agreement Coordinators shall work together as necessary to further the Program and facilitate successful implementation of this Agreement.

6.0 Compensation

6.1 In order to carry out the Program, the Parties agree that it is appropriate for Kirkland to pay Seattle, as sole compensation for the services performed under this Agreement, such sums of money as are arrived at by computing the actual number of hours expended in the performance of this Agreement and multiplying such total hours by \$105.

6.2 Billings should be submitted on a monthly basis. Kirkland will be charged for services rendered on an hourly basis and billings will be reflected in increments of one-tenth of an hour. Each billing statement should set forth for each date services were performed:

- A brief summary of the services provided;
- The number of hours, or fractions of hours, spent;
- Expenses and disbursements in detail.

7.0 Indemnification

7.1 Seattle shall indemnify, defend and hold Kirkland and its officers and employees, free and harmless from any and all claims, demands, suits, judgments, liabilities, costs, expenses, losses and any death, injury or disability of any person or damage to any property or business to the extent arising, directly or indirectly, out of or suffered by any person by reason of or in connection with any action, error, or omission of Seattle, or any of its officers, agents, employees, program agreements or clients. In the event these acts give rise to a lawsuit against Kirkland, Seattle shall appear in and defend the lawsuit, provided Seattle is notified in a timely manner of the suit. In the event that Kirkland and Seattle are held to be jointly liable in any final judgment in any suits arising out of their acts or omissions under this Agreement, the costs and expenses arising therefrom shall be prorated between the parties according to the relative degrees of their liability. Such indemnity and obligation to defend shall not apply to any claims arising as a result of the sole negligence of Kirkland, or any of its officers, employees or agents.

7.2 Kirkland shall indemnify, defend and hold Seattle and its officers and employees, free and harmless from any and all claims, demands, suits, judgments, liabilities, costs, expenses, losses and any death, injury or disability of any person or damage to any property or business to the extent arising, directly or indirectly, out of or suffered by any person by reason of or in connection with any action, error, or omission of Kirkland, or any of its officers, agents, employees, program agreements or clients. In the event these acts give rise to a lawsuit against Seattle, Kirkland shall appear in and defend the lawsuit, provided Kirkland is notified in a timely manner of the suit. In the event that Seattle and Kirkland are held to be jointly liable in any final judgment in any suits arising out of their acts or omissions under this Agreement, the costs and expenses arising therefrom shall be prorated between the parties according to the relative degrees of their liability. Such indemnity and obligation to defend shall not apply to any claims arising as a result of the sole negligence of Seattle.

7.3 The indemnification provided for in this section shall survive any termination or expiration of this Agreement.

8.0 Legal Relations

8.1 It is understood and agreed that this Agreement is solely for the benefit of the parties hereto and gives no right to any other party.

8.2 This Agreement is entered into under the authority of RCW 39.34.080 and does not form a separate organization or administrative entity under RCW 39.34.030. No joint venture or partnership is formed as a result of this Agreement. No employees or agents of one party or its

contractors or subcontractors shall be deemed, or represent themselves to be, employees, agents, contractors or subcontractors of the other party.

8.3 The parties' rights and remedies in this Agreement are in addition to any other rights and remedies provided by law.

8.4 This Agreement shall be interpreted in accordance with the laws of the State of Washington in effect on the date of execution of this Agreement. The Superior Court of King County, Washington, shall have exclusive jurisdiction and venue over any legal action arising under this Agreement.

8.5 Waiver of breach of any provision of this Agreement shall not be deemed to be a waiver of any other or subsequent breach and shall not be construed to be a modification of the terms of this Agreement unless expressly agreed to in writing.

8.6 Neither party may assign this Agreement, in whole or part, without the express written consent of the other party.

8.7 This Agreement and each of its terms and provisions are deemed to have been explicitly negotiated between and mutually drafted by the Parties, and the language in all parts of this Agreement shall, in all cases, be construed according to its fair meaning and construed without regard to who drafted such language.

9.0 Notice

Any notice due under this Agreement shall be provided to Parties at the addresses below:

To Kirkland:	City Manager City of Kirkland 123 5 th Avenue Kirkland, WA 98033-6189	Copy to:	City Attorney's Office City of Kirkland 123 5 th Avenue Kirkland, WA 98033-6189
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To Seattle:	Attn: Executive Director Seattle Ethics and Elections Commission P.O. Box 94729 Seattle, WA 98124-4729
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10.0 Entire Agreement

This Agreement contains all of the agreements of the Parties with respect to any matter covered or mentioned in this Agreement. No provision of the Agreement may be amended or modified except by a written agreement signed by the Parties.

IN WITNESS THEREOF the Parties hereto have executed the Agreement on the dates shown below with their respective signatures.

CITY OF KIRKLAND

CITY OF SEATTLE

By: _____

By: _____

Its: _____

Its: _____

Date: _____

Date: _____

FISCAL NOTE

CITY OF KIRKLAND

Source of Request							
Marilynne Beard, Assistant City Manager							
Description of Request							
Request funding of \$5,000 from the Council's Special Projects Reserve to fund a contract with the Seattle Ethics and Elections Commission to review the draft Code of Ethics and develop a comprehensive training program.							
Legality/City Policy Basis							
Fiscal Impact							
One-time use of \$5,000 of the Council Special Projects Reserve. The reserve is able to fully fund this request.							
Recommended Funding Source(s)							
Reserve	Description	2012 Est End Balance	Prior Auth. 2011-12 Uses	Prior Auth. 2011-12 Additions	Amount This Request	Revised 2012 End Balance	2012 Target
	Council Special Projects Reserve	251,534	53,000	0	5,000	193,534	N/A
	2011-12 Prior Authorized Use of this reserve: \$5,000 for the Eastside Severe Weather Shelter, \$10,000 for Green Kirkland, \$3,000 for the King County Development Block Grant (CDBG) consortium program, \$10,000 for the Eastside Severe Weather Shelter and \$25,000 Cultural Council Program work plan.						
Revenue/Exp Savings							
Other Source							
Other Information							

Prepared By	Karen Terrell, Budget Analyst	Date	October 6, 2011
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