

INTERAGENCY AGREEMENT BETWEEN
CITY OF BELLEVUE WASHINGTON

AND

CITY OF KIRKLAND WASHINGTON

INTERAGENCY AGREEMENT NO: 001
MAY, 2013

This Agreement is made and entered into by and between the City of Bellevue, Washington, hereinafter referred to as "Bellevue" and the City of Kirkland, Washington, hereinafter referred to as "Kirkland," each party having been duly organized and now existing under the laws of the State of Washington.

WHEREAS, Bellevue has entered into various job order contracts with Berschauer Phillips Construction Company; ("Berschauer Phillips") as authorized by Chapter 39.10, Revised Code of Washington, including that certain Job Order Contracting Contract between Bellevue and Berschauer Phillips dated August 2, 2012 ("Berschauer Phillips Contract"); and

WHEREAS, Bellevue has also contracted for consulting services with The Gordian Group ("Gordian") regarding the development and management of these job order contracts pursuant to that certain Job Order Contracting Consulting Services Agreement between Bellevue and Gordian dated December 2, 2009 ("Gordian Agreement"); and

WHEREAS, Kirkland wishes to utilize, in part, the terms and conditions of the Berschauer Phillips Contract and the Gordian Agreement to perform various Kirkland work order projects on Kirkland facilities; and

WHEREAS, Bellevue desires to enter into this Agreement with Kirkland to allow Kirkland to utilize the terms and conditions of the Berschauer Phillips Contract and the Gordian Agreement; and

WHEREAS, the parties hereto have determined that they have the authority to enter into this Agreement in accordance with Washington law (RCW 39.34) and their respective policies and procedures, as amended.

NOW, THEREFORE, in consideration of the above and foregoing recitals, the mutual promises and covenants herein contained, and for other good and valuable consideration, the sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

1. STATEMENT OF WORK

Bellevue shall pursue a no cost change to the Gordian Agreement requesting that Gordian furnish the consulting services described in such Agreement directly to Kirkland on the same terms and conditions of the Gordian Agreement, except that the obligations owed to the City of Bellevue under such agreement will be owed by Gordian to Kirkland, including but not limited to obligations to provide performance and payment bonds for work performed and insurance endorsements that name the City of Kirkland as additional insured. Thereafter, Gordian shall directly invoice Kirkland for any and all such services provided, and all such invoices shall state "All work described herein provided directly to Kirkland and the Gordian Group are subject to the terms and conditions of that certain Job Order Contracting Consulting Services Agreement between Bellevue and The Gordian Group dated 11/23/09. The City of Bellevue is not a party to nor responsible for performance of or payment for the work described in this invoice."

In addition, Bellevue shall pursue a no cost change to the Berschauer Phillips Agreement requesting that

Berschauer Phillips provide Kirkland with job order construction services on Kirkland facilities directly to Kirkland on the same terms and conditions of the Berschauer Phillips Agreement, except that the obligations owed to the City of Bellevue under such agreement will be owed by Berschauer Phillips to Kirkland, including but not limited to obligations to provide performance and payment bonds for work performed and insurance endorsements that name Kirkland as additional insured. Berschauer Phillips shall directly invoice Kirkland for any and all such work provided, and all work orders shall state "All work described herein provided directly to Kirkland and Berschauer Phillips are subject to the terms and conditions of that certain Job Order Contracting Contract between Bellevue and Berschauer Phillips dated August 2, 2012. The City of Bellevue is not a party to nor responsible for performance of or payment for the work described in this work order." Kirkland shall issue all work orders and perform all fiscal and program responsibilities for the projects to be identified by Kirkland.

Bellevue shall provide copies of the referenced changes to Kirkland. Kirkland shall not issue any work orders under either the Berschauer Phillips Contract or the Gordian Agreement until such changes have been executed. In the event that the changes are not executed, this Agreement shall terminate, and neither party shall bear any additional obligations or liabilities hereunder, and each party shall bear its own costs associated with the Agreement

2. TERMS AND CONDITIONS

Kirkland and Bellevue agree that any work performed for Kirkland by Gordian, Berschauer Phillips and its respective subconsultants or subcontractors under this Agreement shall be conducted in accordance with the provisions of the Gordian Agreement and/or the Berschauer Phillips Contract. Insurance Indemnification and Performance/Payment bonds as specified in the Gordian Agreement and Berschauer Phillips Contract shall insure to the benefit of Kirkland on work orders issued by Kirkland.

3. PERIOD OF PERFORMANCE

The period of performance of this Agreement shall commence when this Agreement is properly signed by both parties and be completed no later than August 2, 2014, unless mutually changed by Amendment to this Agreement.

4. COMPENSATION; PAYMENT PROCEDURE

The total value of all work orders issued by the Kirkland to Gordian and Berschauer Phillips shall not exceed \$600,000. Gordian and Berschauer Phillips shall directly invoice Kirkland and Kirkland shall directly pay both Gordian and Berschauer Phillips pursuant to the payment and compensation terms identified within the Gordian Agreement or Berschauer Phillips Contract, respectively.

5. RECORDS MAINTENANCE

Bellevue, Kirkland, and their contractors, subcontractors, sub-consultants, representatives and employees shall each maintain books, records, documents, and other evidence for five (5) years after the expiration of this Agreement (unless another period of time is specified in applicable records retention policies in which case such policies shall prevail) .Unless an applicable exception to public review or a privilege applies, these records shall be subject to inspection, review, or audit by personnel of both parties' other personnel duly authorized by either party, or the Washington State Auditor. .

6. CONTRACT MANAGEMENT

(a) The Kirkland Capital Projects Manager, or their designee, will be the Kirkland Representative for all communications regarding this Agreement. The Kirkland Representative shall be responsible for monitoring the performance of this Agreement and fulfilling Kirkland's responsibilities as addressed herein.

(b) Mayvis Schwab will be the Bellevue Representative for all communications regarding this Agreement. The Bellevue Representative shall be responsible for monitoring the performance of this Agreement and

fulfilling the City's responsibilities as addressed herein.

(c) Rory Woolsey will be the Gordian Representative for all communications regarding the consulting services provided to Kirkland.

(d) James E. Phillips, Eric Lindstrom and Chuck Meyer shall serve as Berschauer Phillips Representatives for all communications regarding the job order construction services as addressed herein.

7. INDEMNIFICATION AND HOLD HARMLESS

Kirkland specifically acknowledges that the City of Bellevue shall have no liability or responsibility for the performance of Gordian or Berschauer Phillips with respect to Kirkland work orders. Kirkland shall defend and hold the City of Bellevue harmless from any and all claims, suits, losses, costs (including attorney's fees), and/or damages of any kind whatsoever arising out of or in any way resulting from Kirkland's issuance of work orders and performance by any party pursuant to same facilitated by this Agreement. The City of Bellevue makes no representations or warranties of any kind, including, without limitation regarding the contractors, performance, or terms and conditions of the Gordian Agreement or the Berschauer Phillips Contract.

8. AMENDMENTS TO AGREEMENT

Bellevue and Kirkland may mutually amend this Agreement. Such amendments shall not be binding unless they are in writing and signed by personnel authorized to bind the parties or their respective delegates.

9. TERMINATION

Either party may terminate this Agreement upon thirty (30) days written notification. If this is so terminated, the terminating party shall be liable only for performance in accordance with the terms of this Agreement for performance rendered prior to the effective date of termination.

10. ALL WRITINGS CONTAINED HEREIN

This Agreement contains all the terms and conditions agreed upon by the parties. No other understanding, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind any parties hereto.

CITY OF BELLEVUE

CITY OF KIRKLAND

By: 

By: 
for Kurt Triplett, City Manager

Approved as to form:
By: 
Dep. City Atty

Approved as to form:
By: 
Kirkland City Attorney

April 19, 2013

Berschauer Phillips Construction Company
Attention: Eric Lindstrom
1736 4th Avenue South
Seattle, WA 98134

RE: JOB ORDER CONTRACTING: CITY OF KIRKLAND USE OF CITY OF BELLEVUE HORIZONTAL CONTRACT

Dear Mr. Lindstrom:

The City of Bellevue and City of Kirkland recently entered into the attached agreement, indicating intent to allow the City of Kirkland to issue work orders in a total amount not to exceed \$600,000 under the terms and conditions of Bellevue's Job Order Contracting Agreements with The Gordian Group and Berschauer Phillips. A copy of the agreement between the City of Bellevue and the City of Kirkland is attached for your reference.

The City is requesting that Berschauer Phillips provide services directly to the City of Kirkland on the same terms and conditions as exist in the certain "Berschauer Phillips JOC –Horizontal" contract, dated August 2, 2012. For work orders issued by the City of Kirkland for City of Kirkland projects, any obligations owed by Berschauer Phillips under the Berschauer Phillips contract shall be performed for or provided directly to City of Kirkland.

Any invoice issued by Berschauer Phillips for work for the City of Kirkland should contain the following:

"All work described herein provided to City of Kirkland and City of Kirkland and Berschauer Phillips are subject to the terms and conditions of the certain "Berschauer Phillips JOC-Horizontal". The City of Bellevue is neither a party to nor responsible for performance of or payment for the work described in this invoice."

Finally, please note that if the City of Kirkland decides to pursue its own JOC Contracts the joint purchasing arrangement may be terminated by the City of Kirkland at any time upon 30 days written notice to Bellevue and Berschauer Phillips. The Berschauer Phillips contract shall govern completion of outstanding work under issued and approved work orders and other issues resulting from such termination.

Please indicate your consent to this joint purchasing arrangement by countersigning this letter where indicated below. This letter may be countersigned in multiple counterparts, which together will constitute a single agreement. Please contact me if you have any questions.

Sincerely,
CITY OF BELLEVUE
OFFICE OF THE CITY ATTORNEY
Lori M Riordan, City Attorney

Mary Kate Berens
Deputy City Attorney

DATE

Enclosure:

ACKNOWLEDGED AND ACCEPTED BY BERSCHAUER PHILLIPS CONSTRUCTION COMPANY

Signature

Printed Name

Title

Date

ACKNOWLEDGED AND ACCEPTED BY CITY OF KIRKLAND

Signature

Marilynne Beard

Printed Name

Marilynne Beard

Title

Deputy City Manager

Date

4/30/13



April 8, 2013

Barry L. Scott, C.P.M.
Purchasing Agent
City of Kirkland
123 5th Avenue
Kirkland, WA 98033

Re: Services to Utilize the City of Bellevue JOC Program Contracts

Dear Mr. Scott:

The Gordian Group ("Gordian") proposes to assist the City of Kirkland ("City") with procuring construction services through the JOC consulting contract between the City of Bellevue and Gordian and the JOC construction contract between the City of Bellevue and Bershauer Phillips ("Contractor"). A copy of Gordian's contract with the City of Bellevue is attached for your review.

In addition to providing the City with JOC consulting services and access to Gordian's JOC System through our contract with the City of Bellevue, Gordian proposes to assist the City with developing Job Orders by performing the tasks necessary to take a project from project identification to issuing the Job Order to the Contractor.

Developing the Job Order is the most critical step in the JOC process for controlling costs because this is the step where it is determined that the City is paying for the correct tasks at the correct competitively bid price for the desired scope of work. It is very important that qualified project managers develop each and every Job Order. Many of our clients have determined that they need help with developing Job Orders and are utilizing our services for all of their JOC work. Some have chosen it because they lack staff capacity, some because they lack experience, and others because they recognize the significant value of using Gordian's experienced, qualified project managers to develop Job Orders. Whatever the reason, we are confident that our Job Order Development services will ensure the highest level of accountability and transparency, and bring the most economic benefit to the City.

Job Order Development Scope of Services

A detailed list of the tasks Gordian will perform to develop Job Orders is as follows:

- **Project Identification** – When a project is identified, a Gordian project manager will assist City staff with determining whether the project is appropriate for JOC.
- **Joint Scope Meeting** – Then, a Gordian project manager will quickly schedule a Joint Scope Meeting at the project site to help the City and the JOC contractor agree on the details of the work that the JOC contractor will perform. The scoping process allows the JOC contractor to inspect the site and ask questions before submitting a Price Proposal. This upfront open communication eliminates the misunderstandings and mistakes that lead to most change orders and often results in more cost-effective solutions.

- **Develop Detailed Scope of Work** – Next, we will assist in preparing a Detailed Scope of Work that describes the work the JOC contractor will perform. We will also assist with resolving issues when project plans and actual conditions vary.
- **Request for Price Proposal** – After all parties are in agreement that the Detailed Scope of Work properly reflects the work to be performed, the Gordian project manager will send the Detailed Scope of Work and a Request for Proposal to the JOC contractor.
- **Request Price Proposal** – Next, the JOC contractor prepares and submits a Price Proposal by selecting the appropriate tasks from the Construction Task Catalog®. Gordian's JOC software will automatically multiply the unit price of the task times the required quantities times the JOC contractor's competitively bid Adjustment Factor. The JOC contractor will also prepare and submit any additional City required information (e.g., construction schedule, list of proposed local subcontractors, etc.).
- **Price Proposal Review** – Then, a Gordian project manager will review the Price Proposal to make sure the JOC contractor has selected the appropriate tasks and quantities and will ask the JOC contractor to make any required changes. We will also obtain and review any City required information submitted by the JOC contractor. Then, the Gordian project manager will submit the Price Proposal and related documents to the City.
- **Issue Job Order** – Once the City is 100% satisfied with the Price Proposal and related documents, and decides to move forward with the project, the City will issue a purchase order to the JOC contractor.
- **Construction Management** – During construction, the City will follow its standard internal policies and procedures for construction management and site inspections, including coordinating any required code inspections. When unforeseen conditions arise or the City desires to change the Detailed Scope of Work, a supplemental Job Order will be developed in the same manner as the original Job Order.

Staffing

We propose to assign Rory Woolsey to serve as the project manager. Mr. Woolsey has been supporting the City of Bellevue JOC program since its inception and has been extensively involved in every facet of the program. He has a complete understanding of the process and has developed an excellent working relationship with the Contractor.

License Fee

Gordian's License Fee to provide our JOC System to the City, including the Job Order Development services is 5.00% of the value of the work ordered from the Contractor. The License Fee is payable when a Job Order is issued to the Contractor.

Contract Form

To procure Gordian's services described in this letter, please sign this letter in the acceptance area below to indicate your agreement with this letter and the terms and conditions of Gordian's contract with the City of Bellevue, and return this letter to my attention.

As an alternative option, the City can issue a purchase order to Gordian that specifies the procurement of our services in accordance with this letter and the terms and conditions of Gordian's contract with the City of Bellevue.

The Gordian Group appreciates the opportunity to submit this proposal to provide our JOC products and services to the City of Kirkland. Please contact me at d.mahler@TheGordianGroup.com or (800) 874-2291 if you have any questions or if you need any additional information.

Sincerely,

David L. Mahler

David L. Mahler
Vice President, Contracts

Attachment

Agreed to and accepted by the City of Kirkland

By: *Marilynne Beard*
Name: *Marilynne Beard*
Title: *Deputy City Manager*
Date: *4/30/13*