



CITY OF KIRKLAND, WASHINGTON  
DEPARTMENT OF PLANNING & COMMUNITY DEVELOPMENT  
DEPARTMENT OF FINANCE AND ADMINISTRATION  
ECONOMIC DEVELOPMENT OFFICE  
AND  
KING COUNTY DEPARTMENT OF NATURAL RESOURCES AND  
PARKS

## **REQUEST FOR PROPOSALS**

# **TOTEM LAKE TRANSFER OF DEVELOPMENT RIGHTS (TDR) STUDY & EVALUATION OF INFRASTRUCTURE FINANCING TOOLS**

**Job Number 03-13-PCD**

CITY OF KIRKLAND

Request for Proposals

PROJECT NAME: Totem Lake Transfer of Development Rights Study

JOB NUMBER: 03-13-PCD

PROPOSALS DUE: January 9, 2013 no later than 4:00 p.m. PST

PROPOSALS SUBMITTED TO: Purchasing Agent, 123 5th Ave, Kirkland, WA 98033 (See RFP for details.)

**Public notice is hereby given** that the City of Kirkland has issued the above mentioned Request for Proposals (RFP). The complete RFP, including all submittal requirements, can be found on the City of Kirkland's website at [www.kirklandwa.gov](http://www.kirklandwa.gov). Locate by clicking on "City Purchasing" under "Most Requested". Call 425-587-3123 if unable to access RFP documents online.

**PROJECT DESCRIPTION:**

The City of Kirkland (City) is seeking qualified professional services to assist the City in several tasks related to the establishment of a Transfer of Development Rights (TDR) program within the city. The tasks include a land use market analysis, a TDR economic analysis, the evaluation of infrastructure financing programs and financial tools, and the development of a Transfer of Development Rights (TDR) program, including draft TDR policies and regulations.

Federal EEO, ADA and Civil Rights requirements will be enforced. Minority and women-owned businesses are encouraged to respond to this RFP. Applicants must have experience with federal funding requirements.

Proposals will be evaluated based on content of the submitted proposal and a live interview to be conducted after submission of the proposals. Proposal criteria are more fully set forth in the RFP document.

Barry L. Scott, C.P.M.  
Purchasing Agent

## **I. Introduction**

The Totem Lake area in Kirkland is a designated Urban Center under the City's Comprehensive Plan and the King County Countywide Planning Policies. The area is planned to accommodate additional population, housing, employment, and increased densities and to promote transit oriented development within Totem Center, the area's intensive urban core. Adding urban amenities and the necessary infrastructure to support new growth and development is a critical component to achieving the vision for Totem Lake as a thriving mixed use urban center (see map, Attachment A).

This project will evaluate the market demand and potential for increased development capacity, conduct economic and financial analyses of various incentive options and develop a City-County Transfer of Development Rights (TDR) program which includes the necessary financial tools to fund needed infrastructure and amenities to support increased growth in Totem Lake. The project will also include the drafting of TDR policies and regulations to provide for implementation of the program.

## **II. Intent**

The City of Kirkland (City) is seeking qualified professional services (Consultant) to assist the City in several tasks related to the establishment of a Transfer of Development Rights (TDR) program within the city. The tasks include a land use market analysis, a TDR economic analysis, the evaluation of infrastructure financing programs and financial tools (including a financial model), and the development of a Transfer of Development Rights (TDR) program, including draft TDR policies and regulations.

## **III. Background**

The City of Kirkland is interested in establishing a Transfer of Development Rights (TDR) program within the Totem Lake Urban Center. The City's Totem Lake Neighborhood Plan, adopted in 2002, presents a vision for the Totem Lake Urban Center area that includes policies that support urban densities and mixed use development. Amendments to the Zoning Code since that time have implemented the Plan policies, and include generous height limits and unlimited residential densities throughout much of the Urban Center.

Recently passed TIF/TDR legislation (ESSB 5253 – the Landscape Conservation and Local Infrastructure Program or LCLIP) combines urban infrastructure financing tools with transfer of development rights to achieve the GMA's goals of encouraging urban growth and conserving resource areas. This new legislation permits a city to receive a portion of the regular property tax levy of the county in which the City is located, and requires that this reallocated increment be applied to public infrastructure costs within the defined project area.

In September of 2012, the City of Kirkland entered into an agreement with King County to develop a County-to-City Transfer of Development Rights program to protect and restore Puget Sound watersheds and encourage growth and development in urban areas. The portion of this project that is the subject of the RFP is funded by a combination of grant funding from the US

Environmental Protection Agency through King County in the amount of \$50,000 and funds from the City of Kirkland in the amount of \$34,500.

The project consists of three major tasks with overlapping timelines for completion. It is anticipated that the consultant team may be comprised of firms or individuals with expertise in land use planning, market analysis, infrastructure financing tools, financial analysis, municipal bonding, and TDR programs. The preparation of the TDR study will be guided through a Project Team consisting of representatives from the City of Kirkland Departments of Planning and Community Development, Finance and Administration and Economic Development, and the King County Department of Natural Resources and Parks.

#### **IV. Project Scope of Work**

To assist in completing the tasks within the Totem Lake TDR study, the Consultant shall work with the Project Team to refine the Scope of Work and project timelines, specifying the tasks, responsibilities, schedule, deadlines and deliverables as follows:

##### **Task 1 – Evaluation of the integration of regional TDR into the Totem Lake Urban Center and preparation of draft TDR policies and regulations**

Funding: \$40,000  
Timeline: 1/2013-6/2013

- a. Identify and update the characteristics of the Totem Lake Urban Center, including land use and zoning requirements, property inventory and current development patterns, assessed valuation, Totem Lake Mall Master Plan assumptions, etc.
- b. Conduct a market analysis to determine likely future demand for certain development types (e.g., types of residential, commercial, auto dealers, office, high tech, manufacturing, institutional, etc.) and scale of the demand for these development types in the Totem Lake Urban Center.
- c. Identify opportunities for TDR application in the Totem Lake Urban Center to increase development capacity; this will include the evaluation of potential TDR commodities (e.g., FAR, square feet, units, height, parking, provision of public amenities, etc.).

Since the City has made recent changes to allow greater height, and existing regulations allow unlimited residential density in the business district, approaches other than height and density incentives must be evaluated; as well as evaluating the potential to reconfigure the Totem Lake zoning to allow TDR to be part of an incentive zoning structure in Totem Lake within current density and height standards.

This work will dovetail with the market analysis in Task 1.b above and the economic analysis in Task 1.d below, and address the applicability of potential conversion commodities and the scale of development required to feasibly apply TDR in Totem Lake.

- d. Conduct an economic analysis to determine the TDR exchange rate; this shall include: (a) residual land value (RLV) analyses to determine how much developers are willing to pay for increments of density or other TDR conversion commodities, (b) comparison of results from the RLV analyses with TDR values from county sending sites to determine

how much increased development capacity each TDR translates into at appropriate receiving sites (e.g. TDR Exchange Rate). Results of the economic analysis will be combined with work from previous tasks to identify the potential market for TDR's, evaluation of options and approaches and provide recommendations.

Consultant should draw upon existing and available data with regard to TDR selling prices to determine exchange rates for this task.

- e. Develop draft TDR policies and regulations applicable to the Totem Lake Urban Center to be implemented as described in Task III below.

***Task 1 Deliverables:***

- *Market Analysis of likely trends and general demand for development within the Totem Lake Urban Center by:*
  - *Alternative timeframes (5 and 10-year horizons)*
  - *Land use type*
  - *Geographic area*
- *TDR Evaluation Report for the Totem Lake Urban Center, to include:*
  - *Comparison of market demand for additional development with cost of development rights*
  - *Comparison of benefits to developers derived from existing bonuses with those available through purchase of transferrable development rights*
  - *Identification and evaluation of appropriate TDR conversion commodities*
  - *Recommended TDR Exchange Rates*
  - *Recommended approach to include TDR conversion commodities and exchange rates into the city's zoning code*
  - *Comparison of revenue received from the County for implementation of TIF/TDR with revenue received from implementation of other potential economic development/infrastructure funding*
- *Draft TDR policies and code/regulations*

**Task 2 –Assistance with the assessment of the feasibility of local infrastructure financing programs and financial tools to fund needed urban infrastructure and amenities to support the increased urban growth in potential TDR receiving areas.**

Funding: \$39,500

Timeline: 1/2013-6/2013

- a. Evaluate the applicability and financial feasibility of state infrastructure financing mechanisms to fund needed urban infrastructure and amenities associated with increased density within the Totem Lake Urban Center including LCLIP (Landscape Conservation and Local Infrastructure Program) the Local Revitalization Financing program (LRF), the Community Revitalization Financing program (CRF), the Local Infrastructure Financing Tool program (LIFT), the Hospital Benefit Zone program (HBZ) and other funding sources and programs.
- b. Create a spreadsheet model to analyze the financial benefits to the City of applying these financing mechanisms relative to the costs under a variety of programs and

scenarios. The analysis should project the annual cash flow of the options as well as express the net fiscal benefits in present value (PV) terms. The model is a deliverable of the study.

- c. Develop financial scenarios to illustrate the mechanics and financial feasibility of each approach under multiple development scenarios. Developing the assumptions for the model and scenarios will be an iterative process among the City, County and the consultants.

***Task 2 Deliverables:***

- *Report on financial feasibility of various local infrastructure financing tools for Totem Lake that include LCLIP and LRF financial models, among others.*
- *Deliver the spreadsheet model for use by the City in analyzing future scenarios.*
- *Presentation(s)/study session(s) with City Council on the results of the infrastructure financing tools and the TDR evaluation report from Task #1.*

**Task 3 – Assistance with the development of an Implementation plan and timetable for TDR and an implementation strategy for financing tools.**

Assist with the development of an implementation plan and timetable to integrate TDR into Totem Lake. This task may include providing assistance to the City in the review of the Interlocal Agreement (ILA) provided by King County. The ILA will address how regional TDR works with zoning for increased development capacity in Totem Lake, TDR exchange rates, and provisions for the use of financial tools (TDR/TIF, LCLIP, etc.).

The implementation plan will include steps to implement TDR and tax increment and/or other financing mechanisms in the Totem Lake Urban Center. This task also includes preparation of an ordinance consisting of proposed TDR policies and development regulations, and assistance with the process to move the products forward to the City Council for consideration and action.

Funding: \$5,000  
Timeline: 1/2013-12/2013

- a. Preparation of an ordinance containing:
  1. Proposed TDR-related policies to be included in the Kirkland Comprehensive Plan
  2. Proposed amendments to development regulations in the Kirkland Zoning Code.
- b. Proposed ILA (prepared by King County, reviewed by Consultant and City) between King County and the City of Kirkland

***Task 3 Deliverables:***

- *Memo outlining the process steps to implement TDR and steps to implement financing tools at Totem Lake, and actions/timeline for city council.*
- *An ordinance consisting of proposed TDR Comprehensive Plan policies and development regulations; and, if desired by City Council, an ordinance consisting of language necessary to implement infrastructure financing tools identified as financially feasible.*

- *Attendance at City Council study sessions and regular meetings where the proposed TDR ordinance, Interlocal Agreement and infrastructure financing tools are considered. Consultant will present the documents and respond to questions as needed.*

## V. Proposal Submission and Evaluation

### Tentative Schedule

The following schedule contains major milestones and may be modified as a result of consultant proposals and contract negotiations:

Deadline for questions:	December 17, 2012 (4:00 pm PST)
Answers to questions released:	December 20, 2012 (4:00 pm PST)
RFP submittal deadline:	January 9, 2013 (4:00 pm PST)
Short-list for interviews:	January 11, 2013
Consultant interviews:	Week of January 14, 2013
Consultant Selection:	January 18, 2013

Task 1:	1/2013-6/2013
Task 2:	1/2013-6/2013
Task 3:	1/2013-12/2013

### Submission Requirements

Proposals will be accepted by the City of Kirkland's Purchasing Agent until **4:00 p.m. PST on January 9, 2013**. Late proposals will not be accepted and will be automatically disqualified from further consideration.

It is encouraged that proposals be submitted as an email attachment in PDF or MS Word format to: [purchasing@kirklandwa.gov](mailto:purchasing@kirklandwa.gov). (Note that faxed proposals will not be accepted.)

If a paper copy is submitted, pages should be printed double-sided, with four copies (total five proposals) mailed or hand-delivered to:

City of Kirkland  
 Attn: Barry Scott, Purchasing Agent  
 Job # 03-13-PCD  
 123 5th Avenue  
 Kirkland, WA 98033

Firms interested in the project should submit a Project Proposal, which includes a one-page cover letter plus a proposal with a maximum length of 25 pages, including qualifications and supplemental materials. The proposal shall include:

1. Summary of the Consultant's qualifications as they relate to the project
2. Description of the Consultant's approach to this project, as described in Section IV under 'Project Scope of Work'. Include general cost estimates for each task.

3. Description of similar projects performed
4. The Consultant shall outline the project and a timeline based on the tentative schedule of tasks noted above, specifying project deadlines. If at any time changes must be made to the approved schedule, the City must be notified immediately.

The Consultant shall include a list of tasks and hours associated with them. This shall include a list of the anticipated number of meetings with staff and City Council, including presentations to Council at regular meetings and study sessions.

5. Identification of the project manager and resumes and references regarding the experience of the personnel who will be assigned to the project. Provide a biography, educational background, number of years with this firm/other firms, and three (3) project references with contact information. Also discuss other responsibilities assigned to key staff and their availability for this project.

Proposed use of sub-consultants – If sub-consultants are proposed, explain how the work process and communication between the Firm and the sub-consultant will be managed. Discuss the sub-consultants experience and availability for the project.

6. Cost summary: the proposed cost of the project may be submitted in hourly wages, estimated number of hours and total dollar amount for the project.
7. A list of references knowledgeable of the firm(s)' work, especially those clients with similar projects. Please include telephone numbers and addresses.
8. The City of Kirkland requires the signing of a Professional Services Agreement (Attachment B). Please review the attached agreement; the project does not commence without a completed and notarized Professional Services Agreement. A Contract consists of the Request for Proposals, the submitted Proposal and the City's Professional Services Agreement.
9. The Consultant shall note that this project has been funded wholly or in part by the United States Environmental Protection Agency under Puget Sound Ecosystem Restoration and Protection Cooperative Agreement Grant PC-00J20101 with Washington Department of Ecology, and review the Federal Award Acknowledgements, included as Attachment 1 to the Professional Services Agreement (Attachment B to this RFP).

### **Questions**

Questions regarding the City's RFP process should be addressed to Barry Scott, Purchasing Agent, by email to [bscott@kirklandwa.gov](mailto:bscott@kirklandwa.gov)

Questions regarding the scope of work, evaluation process or technical aspects of this project should be submitted by email to:

Dorian Collins, AICP  
Senior Planner  
E-mail: [dcollins@kirklandwa.gov](mailto:dcollins@kirklandwa.gov)

Or

Paul Stewart, AICP  
Deputy Director, Planning and Community Development  
Email: [pstewart@kirklandwa.gov](mailto:pstewart@kirklandwa.gov)

All questions must be submitted by email and must be received prior to **4:00 pm PST on December 17, 2012**. Answers will be released to all interested parties prior to 4:00 p.m. on December 20, 2012.

Absolutely no communication shall occur regarding this RFP, including requests for information, or speculation between Offerors or any of their individual members and any City elected official or employee other than those named above. Failure to comply with this provision may result in Offeror's proposal being removed from consideration. Any cost incurred by Offeror in preparation, transmittal, or presentation of any information or material submitted in response to the RFP shall be borne solely by the Offeror.

### **Right to Reject Submittals**

The City reserves the right to reject any and all submittals at any time with no penalty, or to waive immaterial defects and minor irregularities in any submittal.

### **Submittal Disposition**

All material submitted in response to this RFP shall become the property of the City upon delivery to the City's Purchasing Agent and will not be returned.

### **Project Contract**

The Offeror will be required to use the City of Kirkland Professional Services Agreement (Attachment B) and accept all language contained within. Any Offeror that has significant reservations concerning using this agreement should not submit on this request.

### **Consultant Selection Criteria**

Consultants will be evaluated on the following items:

- Expertise of key personnel.
- Specialized experience and technical competence of the firm and key personnel (including a joint venture, associate or professional subcontract). Recent experience and expertise with land use planning, land use issues and real estate is highly desirable.
- Experience with and/or knowledge of similar projects
- Experience with the development of land use policies and regulations
- Experience with TDR program development within a local land use policy/Growth Management Act planning context

- Demonstrated success in or knowledge of developing methodologies for determining market values for potential sending and receiving sites for TDR programs
- Demonstrated success in or knowledge of developing appropriate exchange rates for TDR programs
- Demonstrated experience with financial tools, such as LCLIP, CRF and LRF.
- Demonstrated experience in creating spreadsheet-based financial models.
- Problem identification to accomplish the work required including, where appropriate, demonstrated capability to explore and develop innovative or advanced techniques and design.
- Proposed cost to perform the work.
- Capacity to perform the work (including any specialized services) within the time limitations, considering the firm's current and planned workload.
- Past record of performance on contracts with Kirkland, other government agencies or public bodies, and with private industry, including such factors as control of costs, quality of work, ability to adhere to schedules, cooperation, responsiveness, compliance with DBE utilization requirements, and other management and attitudinal considerations.
- Familiarity with types of problems applicable to the project
- Response of references from past similar projects.

### **Short List/Final Selection Procedures**

After review of the submittals by the Owner's Selection Committee, the highest ranked firms will be notified and invited to participate in a short list/final selection phase. It is intended that the final selection phase will include the following steps:

- Notification: Written notification of the top-ranked firms.
- Presentation/Discussion:

A 1-hour presentation/discussion question and answer period will be scheduled and conducted at Kirkland City Hall. The Offeror will be given 20-minutes for a presentation. The remaining time will be reserved by the City for questions.

- Negotiation/Scope Development:

The top-ranked firm will be notified in writing and be asked to meet and submit their prospective scope of services, schedule and a fee proposal.

If, after negotiation and consideration, the Owner is unable to reach an acceptable agreement with the top-ranked firm, the Owner will terminate negotiations with the top-ranked firm and, at its sole discretion, may enter into negotiations with the second ranked firm and/or withhold the award for any reason and/or elect not to proceed with any of the proponents and/or re-solicit via a new RFP.

- Final Selection:

Once an agreement is reached with a preferred firm, the Owner's Purchasing Agent will provide a Professional Services Agreement for signatures and full execution. A Notice to Proceed will be issued to formally begin work.

#### CONFIDENTIALITY OF PROPOSALS

Confidentiality of proposals is considered by KIRKLAND as an essential element of maintaining fairness during the evaluation process. However, confidentiality cannot be guaranteed under the State Public Disclosure Act, Chapter 42.17 RCW.

If a member of the public demands in writing to review portions of proposals which have been marked or identified as confidential, proprietary or business secrets, KIRKLAND will notify the affected proposer prior to releasing such portions. The proposer shall take such legal actions as it deems necessary to protect its interests. If the proposer has not commenced such actions within five (5) calendar days after receipt of the notice from KIRKLAND of a demand to review such portions of its proposal and provided KIRKLAND written notice of the actions, KIRKLAND may make such portions available for review and copying by the public as KIRKLAND deems necessary to comply with state law.

The proposer asserting that portions of its proposal are legally protectable shall bear all costs of defending such assertion, including indemnifying and reimbursing KIRKLAND for its administrative, expert and legal costs and judgments involved in defending itself in actions arising from such assertions by the proposer including (without limitation) any assessments under RCW 42.17.340(3). By submitting a proposal with portions marked confidential, proprietary, business secrets or the like, the proposer has thereby agreed to the provisions of this section, including the defense and reimbursement obligations.

#### Attachments:

- A. Totem Lake Urban Center Map
- B. Professional Services Agreement



*(Note: Urban Center includes additional land east of 132<sup>nd</sup> Avenue NE not shown on map, per June 2010 annexation)*



# SAMPLE - PROFESSIONAL SERVICES AGREEMENT

Job Name and Number

The City of Kirkland, Washington, a municipal corporation (hereinafter the "City") and \_\_\_\_\_, whose address is \_\_\_\_\_ (hereinafter the "consultant"), agree and contract as follows:

## I. SERVICES BY CONSULTANT

- A. The Consultant agrees to perform the services described in Attachment \_\_\_\_ to this Agreement, which attachment is incorporated herein by reference.
- B. All services, and all duties incidental or necessary thereto, shall be conducted and performed diligently and completely and in accordance with professional standards of conduct and performance.

## II. COMPENSATION

- A. The total compensation to be paid to Consultant for these services shall not exceed \$\_\_\_\_\_, as detailed in Attachment \_\_\_\_\_.
- B. Payment to Consultant by the City in accordance with the payment ceiling specified above shall be the total compensation for all work performed under this Agreement and supporting documents hereto as well as all subcontractors' fees and expenses, supervision, labor, supplies, materials, equipment or the use thereof, reimbursable expenses, and other necessary incidentals.
- C. The Consultant shall be paid monthly on the basis of invoices submitted. Invoicing will be on the basis of percentage complete or on the basis of time, whichever is applicable in accordance with the terms of this Agreement.
- D. The City shall have the right to withhold payment to Consultant for any work not completed in a satisfactory manner until such time as consultant modifies such work to the satisfaction of the City.
- E. Unless otherwise specified in this Agreement, any payment shall be considered timely if a warrant is mailed or is available within 45 days of the date of actual receipt by the City of an invoice conforming in all respects to the terms of this Agreement.

## III. TERMINATION OF AGREEMENT

The City reserves the right to terminate or suspend this Agreement at any time, with or without cause, by giving ten (10) days notice to Consultant in writing. In the event of termination, all finished or unfinished reports, or other material prepared by the Consultant pursuant to this Agreement, shall be provided to the City. In the event the City terminates prior to completion without cause, consultant may complete such analyses and records as may be necessary to place its files in order. Consultant shall be entitled to receive just and equitable compensation for any satisfactory work completed on the project prior to the date of suspension or termination, not to exceed the payment ceiling set forth above.

**IV. OWNERSHIP OF WORK PRODUCT**

- A. Ownership of the originals of any reports, data, studies, surveys, charts, maps, drawings, specifications, figures, photographs, memoranda, and any other documents which are developed, compiled or produced as a result of this Agreement, whether or not completed, shall be vested in the City. Any reuse of these materials by the City for projects or purposes other than those which fall within the scope of this contract or the project to which it relates, without written concurrence by the Consultant will be at the sole risk of the City.

The City acknowledges the Consultant's plans and specifications as instruments of professional service. Nevertheless, the plans and specifications prepared under this Agreement shall become the property of the City upon completion of the work. The City agrees to hold harmless and indemnify consultant against all claims made against Consultant for damage or injury, including defense costs, arising out of any reuse of such plans and specifications by any third party without the written authorization of the Consultant.

- B. Methodology, materials, software, logic, and systems developed under this contract are the property of the consultant and the City, and may be used as either the consultant or the City sees fit, including the right to revise or publish the same without limitation.

**V. GENERAL ADMINISTRATION AND MANAGEMENT**

The \_\_\_\_\_ for the City of Kirkland shall review and approve the Consultant's invoices to the City under this Agreement, shall have primary responsibility for overseeing and approving services to be performed by the Consultant, and shall coordinate all communications with the Consultant from the City.

**VI. COMPLETION DATE**

The estimated completion date for the consultant's performance of the services specified in Section I is \_\_\_\_\_.

Consultant will diligently proceed with the work contracted for, but consultant shall not be held responsible for delays occasioned by factors beyond its control which could not reasonably have been foreseen at the time of the execution of this Agreement. If such a delay arises, Consultant shall forthwith notify the City.

**VII. SUCCESSORS AND ASSIGNS**

The Consultant shall not assign, transfer, convey, pledge, or otherwise dispose of this Agreement or any part of this Agreement without prior written consent of the City.

**VIII. NONDISCRIMINATION**

Contractor shall, in employment made possible or resulting from this Agreement, ensure that there shall be no unlawful discrimination against any employee or applicant for employment in violation of RCW 49.60.180, as currently written or hereafter amended, or other applicable law prohibiting discrimination, unless based upon a bona fide occupational qualification as provided in RCW 49.60.180 or as otherwise permitted by other applicable law. Further, no person shall be denied or subjected to discrimination in receipt of the benefit of any services or activities made possible by or resulting from this Agreement in violation of RCW 49.60.215 or other applicable law prohibiting discrimination.

**IX. HOLD HARMLESS/INDEMNIFICATION**

Consultant shall defend, indemnify and hold the City, its officers, officials, employees and volunteers harmless from any and all claims, injuries, damages, losses or suits including attorney fees, arising out of or resulting from its negligence or breach of any of its obligations in performance of this Agreement, except for injuries and damages caused by the sole negligence of the City.

**X. LIABILITY INSURANCE COVERAGE**

The Consultant shall procure and maintain for the duration of the Agreement, insurance against claims for injuries to persons or damage to property which may arise from or in connection with the performance of the work hereunder by the Consultant, its agents, representatives, or employees. A failure to obtain and maintain such insurance or to file required certificates and endorsements shall be a material breach of this Agreement.

**A. Minimum Scope of Insurance**

Consultant shall obtain insurance of the types described below:

1. Automobile Liability insurance covering all owned, non-owned, hired and leased vehicles. Coverage shall be written on Insurance Services Office (ISO) form CA 00 01 or a substitute form providing equivalent liability coverage. If necessary, the policy shall be endorsed to provide contractual liability coverage.
2. Commercial General Liability insurance shall be written on ISO occurrence form CG 00 01 and shall cover liability arising from premises, operations, independent contractors and personal injury and advertising injury. The City shall be named as an additional insured under the Consultant's Commercial General Liability insurance policy with respect to the work performed for the City.
3. Workers' Compensation coverage as required by the Industrial Insurance laws of the State of Washington.
4. Professional Liability insurance appropriate to the Consultant's profession.

**B. Minimum Amounts of Insurance**

Consultant shall maintain the following insurance limits:

1. Automobile Liability insurance with a minimum combined single limit for bodily injury and property damage of \$1,000,000 per accident.
2. Commercial General Liability insurance shall be written with limits no less than \$1,000,000 each occurrence, \$2,000,000 general aggregate.
3. Professional Liability insurance shall be written with limits no less than \$1,000,000 per claim and \$1,000,000 policy aggregate limit

**C. Other Insurance Provisions**

The insurance policies are to contain, or be endorsed to contain, the following provisions for Automobile Liability, Professional Liability and Commercial General Liability insurance:

1. The Consultant's insurance coverage shall be primary insurance as respects the City. Any insurance, self-insurance, or insurance pool coverage maintained by the City shall be excess of the Consultant's insurance and shall not contribute with it.
2. The Consultant's insurance shall be endorsed to state that coverage shall not be cancelled by either party, except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the City.

**D. Acceptability of Insurers**

Insurance is to be placed with insurers with a current A.M. Best rating of not less than A:VII.

**E. Verification of Coverage**

Consultant shall furnish the City with original certificates and a copy of the amendatory endorsements, including but not necessarily limited to the additional insured endorsement, evidencing the insurance requirements of the Consultant before commencement of the work.

**F. Claims-made Coverage**

Any policy of required insurance written on a claims-made basis shall provide coverage as to all claims arising out of the services performed under the contract and filed within three (3) years following completion of the services so to be performed.

**XI. COMPLIANCE WITH LAWS/BUSINESS LICENSE**

The Consultant shall comply with all applicable State, Federal, and City laws, ordinances, regulations, and codes. Contractor must obtain a City of Kirkland business license or otherwise comply with Kirkland Municipal Code Chapter 7.02.

**XII. FUTURE SUPPORT**

The City makes no commitment and assumes no obligations for the support of Consultant activities except as set forth in this Agreement.

**XIII. INDEPENDENT CONTRACTOR**

Consultant is and shall be at all times during the term of this Agreement an independent contractor and not an employee of the City. Consultant agrees that he is solely responsible for the payment of taxes applicable to the services performed under this Agreement and agrees to comply with all federal, state, and local laws regarding the reporting of taxes, maintenance of insurance and records, and all other requirements and obligations imposed on him as a result of his status as an independent contractor. The Consultant is responsible for providing the office space and clerical support necessary for the performance of services under this Agreement. The City shall not be responsible for withholding or otherwise deducting federal income tax or social security or for contributing to the state industrial

insurance of unemployment compensation programs or otherwise assuming the duties of an employer with respect to the Consultant, or any employee of consultant.

**XIV. EXTENT OF AGREEMENT/MODIFICATION**

This Agreement, together with all attachments and addenda, represents the entire and integrated Agreement between the parties hereto and supersedes all prior negotiations, representations, or agreements, either written or oral. This Agreement may be amended, modified, or added to only by written instrument properly signed by both parties hereto.

**XV. ADDITIONAL WORK**

The City may desire to have the Consultant perform work or render services in connection with the project other than provided for by the express intent of this contract. Any such work or services shall be considered as additional work, supplemental to this contract. Such work may include, but shall not be limited to,

\_\_\_\_\_.  
Additional work shall not proceed unless so authorized in writing by the City.

Authorized additional work will be compensated for in accordance with a written supplemental contract between the Consultant and the City.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the dates written below:

CONSULTANT:

CITY OF KIRKLAND:

By: \_\_\_\_\_

By: \_\_\_\_\_  
Marilynne Beard, Assistant City Manager

Date: \_\_\_\_\_

Date: \_\_\_\_\_

### **Federal Award Acknowledgements**

The Subgrantee and all its subcontractors shall comply with any and all applicable federal, state, and local laws, regulations, and/or policies. This obligation includes, but is not limited to, laws, regulations and policies listed in this Agreement.

#### **A. OMB CIRCULARS**

The Subgrantee shall comply with OMB Circular A-87, Cost Principles for State, Local, and Indian Tribal Governments; OMB A-102, Grants and Cooperative Agreements with State and Local Governments; OMB A-122, Cost Principles for Non-Profit Organizations; and A-133, Audits of States, Local Governments, and Non-Profit Organizations.

#### **B. SINGE AUDIT ACT**

Non-federal entities receiving financial assistance of \$500,000 or more in Federal funds from all sources, direct and indirect, are required to have a single or a program-specific audit conducted in accordance with the U.S. Office of Management and Budget (OMB) Circular A- 133, Audits of States, Local Governments, and Non-Profit Organizations (Revised June 27, 2003, effective for fiscal years ending after December 31, 2003). Non-federal entities that spend less than \$500,000 a year in Federal awards are exempt from Federal audit requirements for that year, except as noted in Circular No. A-133.

Entities required to have an audit must ensure the audit is performed in accordance with Generally Accepted Auditing Standards (GAAS), Government Auditing Standards (the Revised Yellow Book) developed by the Comptroller General and the OMB Compliance Supplement.

The Subgrantee has the responsibility of notifying the State Auditor's Office and requesting an audit, if required.

The Subgrantee shall maintain auditable records and accounts so as to facilitate the audit requirement and shall ensure that any subrecipients or subcontractors also maintain auditable records.

The Subgrantee shall include the above audit requirements in any subcontracts.

#### **C. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, OR INELIGIBILITY**

If Federal funds are the basis for this contract, the Subgrantee certifies that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared

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ineligible, or voluntarily excluded from participation in transactions by any Federal department or agency.

By signing and submitting this Agreement, the Subgrantee is providing the signed certification set out below. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the Subgrantee knowingly rendered an erroneous certification, the Federal Government and City may pursue available remedies, including suspension and/or debarment.

The Subgrantee agrees by signing this Agreement that it shall not knowingly enter into any covered transaction with a person or subcontractor who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction.

The SUB-GRANTEE certifies that it will ensure that potential sub-contractors or subrecipients or any of their principals are not debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in "covered transactions" by any federal department or agency. "Covered transactions" include procurement contracts for goods or services awarded under a non-procurement transaction (e.g. grant or cooperative agreement) that are expected to equal or exceed \$25,000, and sub-awards to sub-recipients for any amount. With respect to covered transactions, the SUB-GRANTEE may comply with this provision by obtaining a certification statement from the potential sub-contractor or sub-recipient or by checking the Excluded Parties List System (EPLS) maintained by the federal General Services Administration (GSA).

### D. AMERICANS WITH DISABILITIES ACT

AMERICANS WITH DISABILITIES ACT (ADA) OF 1990, PUBLIC LAW 101-336, 42 U.S.C. 12101 ET SEQ. AND ITS IMPLEMENTING REGULATIONS ALSO REFERRED TO AS THE "ADA" 28 CFR Part 35.

The SUB-GRANTEE must comply with the ADA, which provides comprehensive civil rights protection to individuals with disabilities in the areas of employment, public accommodations, state and local government services, and telecommunication.

### E. DISCLOSURE OF LOBBYING ACTIVITIES

#### CERTIFICATION REGARDING RESTRICTIONS ON LOBBYING

As required by 44 CFR Part 18, the SUB-GRANTEE hereby certifies that to the best of their knowledge and belief: (1) no federally appropriated funds have been paid or will be paid by or on behalf of the SUB-GRANTEE to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension,

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continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement; (2) that if any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Grant Agreement, grant, loan, or cooperative agreement, the SUB-GRANTEE will complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions; (3) and that, as applicable, the SUB-GRANTEE will require that the language of this certification be included in the award documents for all subawards at all tiers (including sub-contracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into, and is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code.