



City of Kirkland

Request for Proposal

Prosecution Services

Job # 17-22-CA0

Issue Date: July 1, 2022

Due Date: July 28, 2022– 3:00 p.m. (Pacific Time)

REQUEST FOR PROPOSALS

Notice is hereby given that proposals will be received by the City of Kirkland, Washington (City), for:

Prosecution Services Job # 17-22-CAO

File with Purchasing Agent, Finance Department, 123 - 5th Ave, Kirkland WA, 98033

Proposals received later than **3:00 p.m. PDT July 28, 2022 will not be considered.**

A copy of this Request for Proposal (RFP) may be obtained from City's web site at <http://www.kirklandwa.gov/>. Click on the Business tab at the top of the page and then click on "Doing Business with the City". The RFP can be found under the "opportunities" tab.

The City reserves the right to reject any and all proposals, and to waive irregularities and informalities in the submittal and evaluation process. This RFP does not obligate the City to pay any costs incurred by proposers in the preparation and submission of a proposal. In addition, this RFP does not obligate the City to accept or contract for any expressed or implied services.

A response that indicates that any of the requested information in this RFP will only be provided if the proposer is selected as the apparently successful Service Provider is not acceptable, and in the City's sole discretion may disqualify the proposal from consideration.

The City requires that no person shall, on the grounds of race, religion, color, national origin, sex, age, marital status, political affiliation, sexual orientation, or the presence of any sensory, mental, or physical disability be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity. The City of Kirkland further assures that every effort will be made to ensure non-discrimination in its programs and activities, whether those programs are federally funded or not.

In addition to nondiscrimination compliance requirements, any Service Provider ultimately awarded a contract shall comply with federal, state and local laws, statutes and ordinances relative to the execution of the work. This requirement includes, but is not limited to, protection of public and employee safety and health; disabilities; environmental protection; waste reduction and recycling; the protection of natural resources; permits; fees; taxes; and similar subjects.

Dated this 1st day of July, 2022.

Jay Gewin
Purchasing Agent
425-587-3123

Published in the Daily Journal of Commerce – July 1st and July 8th, 2022.

Scope of Work

The City of Kirkland (City) is requesting proposals from qualified law firms and attorneys interested in serving as City Prosecutor on a contractual basis. The City presently contracts with a law firm for prosecution services. The Prosecutor represents the City in the prosecution of all misdemeanor violations of state law and the Kirkland Municipal Code (KMC) in Kirkland Municipal Court. Proposals are requested for the period beginning October 1, 2022. Upon completion of the RFP process, the City anticipates execution of a three-year contract for prosecution services, together with the possibility of up to two (2) additional one-year term extensions at the option of the City.

City Profile

Kirkland is located on the eastern shore of Lake Washington. It is a suburban city, surrounded by other suburban cities and pockets of unincorporated King County. Kirkland is near several major transportation routes including Interstate 405, State Route 520, and Interstate 5. These routes connect Kirkland economically and socially to the greater Seattle area.

At the time of incorporation in 1905, the Kirkland's population was approximately 530. The current estimated population 92,175. Kirkland is the twelfth largest city in the state of Washington and the sixth largest city in King County.

Since its incorporation, Kirkland has grown in geographic size to eighteen square miles. This growth occurred primarily through the consolidation of the cities of Houghton and Kirkland in 1968; the annexations of Rose Hill and Juanita in 1988; and the annexation of North Juanita, Finn Hill and Kingsgate in 2011.

The City operates under a Council-Manager form of government. The City Council is the policymaking branch of City government and consists of seven members elected at large to staggered, four-year terms. The Mayor and Deputy Mayor are elected from within the Council. The City Council is supported by the City Manager and various advisory boards and commissions. The City Manager is appointed by the City Council and serves as the professional administrator of the organization, coordinating its day-to-day activities.

Kirkland aspires to be a safe, welcoming, and inclusive city where every person feels they belong. The City is committed to the principles of equity, inclusion, and diversity for its employees and its contractors, as well as in its provision of services to the Kirkland community, including through its municipal court, prosecutors, public defenders, and police department.

The Municipal Court

The Kirkland Municipal Court (Court) began operating in 1995. Kirkland at present also provides municipal court prosecution services in its Court to the nearby cities of Medina, Clyde Hill, Yarrow Point, Hunts Point, and Woodinville. However, this request for proposals does not

include prosecution services for those other cities. The following table shows the total number of criminal cases filed in the Court from 2017 through 2021 for just the City of Kirkland:

	<u>Criminal Non-Traffic</u>	<u>Criminal Traffic (including DUI)</u>
2017	574	640
2018	606	718
2019	559	758
2020	437	356
2021	529	487

Detailed historical information about the volume and nature of the City’s prosecutions may be found at <http://www.courts.wa.gov/caseload/?fa=caseload.showArchived>. (Kirkland Municipal Court data is listed under Courts of Limited Jurisdiction, King County.)

The Court operates Monday through Friday from 8:30 a.m. to 4:30 p.m., with two courtrooms sometimes operating simultaneously. The Court is located at the Kirkland Justice Center (KJC), 11740 NE 118th Street, Kirkland, WA 98034.

Beginning with the onset of the COVID-19 pandemic in early 2020, Court operating hours varied and many Court matters were handled virtually. While it is expected that the Court will have generally returned to normal hours and operations during the period of this new contract, the Kirkland Prosecutor must be able to perform flexibly in accordance with the needs of the Court, including through hearings and other proceedings that may be conducted virtually.

Services Requested/Qualifications

Required prosecution services include regular and consistently on-time appearances at the Court for all criminal and community court case calendars and selected traffic infraction cases unless excused by the Court.

Required services for the City of Kirkland also include the following:

- review cases for decision as to filing of criminal charges, with input from the Kirkland Police Department (KPD);
- review cases for recommendations related to possible referral to Community Court;
- weekly Community Court calendars and all associated activities (including minimum of two prosecutors in Community Court case review, communications with defense counsel regarding Community Court eligibility, and in-court calendar case dispositions);
- electronically file KPD issued e-tickets (“Sector”), contested school speed zone tickets, and complaints with the Court;
- appear for court hearings and trials either in person or virtually as designated by the Court;
- provide all discovery for infraction and misdemeanor court hearings;
- manage all Court cases, including but not limited to offering recommendations on conditions of release, warrants, bail, sentence violations, and modifications to orders;

- be accessible to defense counsel at least 15 minutes before start of each trial, hearing, or calendar;
- represent the City at arraignments, pretrial hearings, readiness hearings, motions, bench and jury trials, sentencing and review hearings, and certain contested hearings;
- timely prepare and upload designated forms using the "OCourt" scheduling and document management application;
- represent the City in appeals under the Rules for Appeal of Decisions of Courts of Limited Jurisdiction (RALJ);
- represent the City in forfeiture actions, tow hearings, and animal control appeals;
- prepare and presenting legal memoranda, subpoenas, jury instructions, and other related materials;
- assist with subpoenas and public disclosure requests as appropriate;
- make appropriate sentencing recommendations to the Court;
- advise KPD on the conduct of investigations, trial preparation, seizures, and related matters as appropriate;
- conduct and provide legal research, regular training, and assistance to KPD in criminal matters, including statutory interpretation, enforcement issues, and caselaw decisions;
- interview witnesses and victims of crimes;
- advise victims regarding their rights and responsibilities;
- assist the City Attorney with legal and policy issues from time to time;
- create and maintain complete files and participate in any City-required trainings; and
- perform other related duties as required.

The current Service Provider has estimated annualized levels of service, based on the current levels of service and caseloads, as requiring approximately 6,460 attorney hours and 3,120 paralegal hours. The Court currently holds the following calendars at which the attendance of the Prosecutor is required:

	Mon	Tue	Wed	Thu	Fri
WEEK 1	8:30,9:45,10:30 PTR 1:00 Jail 1:30 BW walk-in	8:30,9:45,10:30 ARR 1:00 MOT/BT ----- 1:00 Jail 2:00 Non-Probation Reviews	8:30,9:45,10:30 PTR 1:00 Jail 2:00 MOT/BT ----- 1:00 Com. Court	8:30 Probation Reviews 9:45 Non Prob Rev's 1:00 Jail ----- 8:30,9:30,10:30 Interp.	8:30 Contested (PA) 9:30 Accident (PA) 10:30 Jail
WEEK 2	8:30,9:45,10:30 PTR 1:00 Jail 1:30 BW walk-in 1:45 Bond Co 2:00 EXP BW	8:30,9:45,10:30 ARR 1:00 MOT/BT ----- 1:00 Jail 2:00 Non-Probation Reviews	8:30, 9:45,10:30 Readiness 1:00 Jail 2:00 MOT/BT ----- 1:00 Com. Court	8:30 Probation Reviews 9:45 Non Prob Rev's 1:00 Jail ----- 8:30,9:30,10:30 Interp.	8:30 Contested (PA) 9:30 Accident (PA) 10:30 Jail
WEEK 3	9:00 Jury Trial ----- 1:00 Jail 2:00 PTR	8:30,9:45,10:30 ARR 1:00 Jail 2:00 SEN ----- 9:00 Jury Trial	9:00 Jury Trial 1:00 Jail ----- 1:00 Com. Court	9:00 Jury Trial ----- 1:00 Jail	9:00 Jury Trial 10:30 Jail
WEEK 4	8:30,9:45,10:30 PTR 1:00 Jail 1:30 BW walk-in	8:30,9:45,10:30 ARR 1:00 MOT/BT ----- 1:00 Jail 2:00 Non-Probation Reviews	8:30,9:45,10:30 PTR 1:00 Jail 2:00 MOT/BT ----- 1:00 Com. Court	8:30 Probation Reviews 9:45 Non Prob Rev's 1:00 Jail ----- 8:30,9:30,10:30 Interp.	8:30 Contested (PA) 9:30 Accident (PA) 10:30 Jail

This schedule is subject to change.

All Proposers must designate an attorney who will be accountable for contract performance. Proposers also must identify one attorney as the primary City Prosecutor. This lawyer must appear at the Court on a timely, regular, and ongoing basis. The City Prosecutor must have prior work experience in criminal law. Prior experience as a prosecutor is strongly preferred. The contractor must provide continuity of representation while at the same time ensuring effective back-up coverage.

Any lawyer who may be asked to serve as a back-up attorney must have current awareness of Kirkland prosecution practices and caseloads so that they are fully prepared to provide

satisfactory prosecution services in the event of an unanticipated absence. The contractor must ensure that availability of attorneys and support staff is consistent with the efficient, skilled, and ethical delivery of prosecution services, including coverage for regular vacations. The contractor needs to be able to provide attorney coverage to provide prosecution services as required for efficient case management, including prosecutor coverage for up to two courtroom calendars operating simultaneously pursuant to the Court schedule.

The Prosecutor must be responsive to the KPD, City Attorney, defense attorneys, and witnesses. For example, the City expects phone calls, e-mails, and electronic communications to the Prosecutor to be returned in a timely manner. More specifically, the City expects that individuals will get a response from someone who is familiar with prosecution issues by the end of the next business day following a communication.

The Prosecutor must enter a user agreement with the Washington State Patrol (WSP) to access to the WSP SECTOR data-collection system and develop the capability to use SECTOR data to file cases electronically.

Prosecution Philosophy

Consistent with the important exercise of prosecutorial discretion, a key factor in the selection of the City Prosecutor will be how well the proposer fits with fundamental City policy objectives.

The City is committed to public safety and justice as well as being a safe, inclusive, and welcoming community where everyone feels they belong. The [2021-2022 City Council Goals](#) includes "Inclusive and Equitable Community", which is an overarching City equity goal. The City expects the Prosecutor to understand how implicit bias, structural racism, and inequity issues have influenced the practice of law and our court systems over time, and how such issues can be proactively addressed and overcome through intentional efforts.

The City Council has adopted an initial five-year roadmap for diversity, equity, inclusion, and belonging. It is organized around six goal areas:

- | | |
|---|-------------------------------------|
| 1) Leadership, Operations, and Services | 4) Community Partnerships |
| 2) Plans, Policies, and Budgets | 5) Communications and Education |
| 3) Workplace and Workforce | 6) Facility and System Improvements |

The five-year roadmap can be found here:

<https://www.kirklandwa.gov/files/sharedassets/public/city-managers-office/pdfs/draft-diversity-equity-inclusion-and-belonging-roadmap.pdf>

The City also remains committed to its Community Oriented Policing philosophy, with a continued focus on family issues and domestic violence. In addition, the City emphasizes youth issues and traffic safety. Respondents must be prepared to work cooperatively with other members of the City team in support of these City objectives.

For example, the City expects the Prosecutor to be a strong advocate in responding to domestic violence. The Prosecutor's filing decisions and agreed dispositions of cases should be consistent

with community concerns about patterns of domestic violence. The Prosecutor is to have regular contact with the Family/Youth Advocate, particularly for discussion of upcoming cases. The Prosecutor should also have regular and on-going contact with KPD to include communicating charging and filing standards and updating officers on new caselaw decision and other important changes in criminal law and policing. The Prosecutor must be reasonably available for night and weekend (24/7) contact by KPD personnel.

Compensation

The City presently pays a flat rate of \$31,175 per month for its prosecution services. Over the past year or so, the City has also paid its current Service Provider an additional fee of \$2,000 each month to cover weekly calendars of the new Community Court. The only additional cost paid by the City at present is for postal charges. The Community Court is now considered ongoing and proposers therefore should assume weekly Community Court calendars in their proposals. Respondents may propose a flat rate for prosecution services, an hourly rate for those services, or a combination of the two. For example, it may be desirable to have a flat rate for basic services (including a weekly Community Court) plus an hourly rate for special projects. All other things being equal, the City prefers a flat rate per month that includes items such as postage.

Requirements of the Proposal

Please include the following in presenting your proposal:

- **Experience** - summarize experience relevant to prosecution services. Identify the attorney who would be the City Prosecutor, and the attorney or other staff person designated for contact on administrative matters, if different. Include resumes of all attorneys who will provide prosecution services.
- **Method of Service Provision** - Describe method of service delivery, philosophical approach, and what distinguishes you with respect to providing prosecution services. Please specifically address the City's safe, welcoming, inclusive, and belonging aspirations and its commitments to diversity, equity, and inclusion in the provision of all services under the contract.
- **Proposed Fee Structure** - Identify your proposal regarding compensation, describing any expenses that would be charged to the City. For example, identify whether you would charge for travel time or mileage to the KMC or to Kirkland City Hall, and whether you would propose treating postage as an additional expense.
- **Statement of Contract Compliance** - Discuss how your insurance meets the City's requirement to provide comprehensive commercial general liability insurance with limits no less than \$1,000,000 each occurrence, \$2,000,000 general aggregate; professional liability insurance with limits no less than \$1,000,000 per claim and \$1,000,000 policy aggregate limit; and automobile liability insurance with a minimum combined single limit for bodily injury and property damage of \$1,000,000 per accident.

- **References** - Identify three professional references who can attest to your experience and capabilities as they relate to services requested. The references must include contact name, address, email address, and telephone number.

Proposal Modifications and Clarifications

The City will not reimburse proposers for any costs involved in the preparation and submission of proposals or for attendance at subsequent interviews. Furthermore, this request for proposals does not obligate the City to accept or contract for any express or implied services. The City reserves the right to negotiate regarding the terms and compensation for any proposal. The City reserves the right to request any proposer clarify their response or to supply any additional material deemed necessary to assist in the evaluation, and to modify or alter any of the requirements in this request for proposals.

Proposal Submittal Instructions and Questions

Please note: The following general requirements are mandatory for all proposals. Proposals submitted after the deadline date and time or lacking one or more of the following requirements will not be accepted.

1. **Proposals must be received by no later than 3:00 p.m. on July 28, 2022.**
2. Emailed proposals should include, "City of Kirkland Prosecution Services – Job # 17-22-CAO " in the subject line and be addressed to purchasing@kirklandwa.gov
3. All proposals sent electronically must be in the form of a PDF or MS Word document and cannot exceed 20MB. **This is the preferred submission format.**
4. If paper proposals are being submitted, they must consist of one original and three copies. The City must receive any paper submittal before 3:00 PM on July 28, 2022, and any delivery received after the deadline will be rejected. These can be mailed or delivered to:
 - City of Kirkland
 - ATTN: Purchasing staff – Job #17-22-CAO
 - 123 5th Avenue
 - Kirkland, WA 98033
5. All proposals must include the legal name of the organization, firm, individual or partnership submitting the RFP. Include the address of the principal place of business, mailing address, phone numbers, emails, fax number (if one exists) and primary contact person.
6. To be evaluated, a proposal must address all requirements and instructions contained herein.
7. Provide all references and materials required by the RFP instructions within.

Questions: Written questions regarding this request for proposals should be submitted by **4:00 p.m. on July 14, 2022** and directed to the Purchasing Agent by email to purchasing@kirklandwa.gov, 123 Fifth Avenue, Kirkland, WA 98033.

Process Schedule

The City will attempt to follow this timetable, which should result in the full implementation of a contract effective October 1, 2022.

Issue RFP	July 1, 2022
Deadline for questions	July 14, 2022
Responses to questions	July 21, 2022
Deadline for submittal of proposals	July 28, 2022
Interviews (if needed) Week of	August 15, 2022
Selection of successful proposal	August 22, 2022
Agreement for services signed	September 5, 2022
Implementation of services	October 1, 2022

These dates are estimates and subject to change by the City.

Evaluation Procedures

Staff will evaluate the submitted proposals. The evaluators will consider how well the proposer's proposed methodology and deliverables, philosophy, and pricing meet the needs of the City as described in the proposer's response to each requirement of the proposal. It is important that the responses be clear and complete so that the evaluators can adequately understand all aspects of the proposal. The evaluation process is not designed to simply award the contract to the lowest cost proposer. Rather, it is intended to help the City select the proposer with the best combination of attributes, philosophy, price, and other evaluation factors.

Selection Criteria

The City will evaluate all proposals received under this solicitation using the following points system:

Completeness of proposal	0-10
References	0-10
Philosophy and demonstrable commitment to City policy goals	0-15
Individual attorney's or law firm's experience and of assigned personnel	0-15
Demonstrated ability to provide requested services	0-20
<u>Proposed compensation and contract terms</u>	<u>0-30</u>
TOTAL	100

Selection Process

The City may choose to select a short list of respondents for interview by a committee during early August. The selected Service Provider must be prepared to provide services beginning October 1, 2022. Selection of a Service Provider to serve as Prosecutor will be based on the review committee's judgment as to the best match between the City's needs and the background and proposal of the proposer and based on the selection criteria.

Contract

The contract shall consist of the following documents: A Professional Services Agreement for Prosecution Services (see Attachment A), this RFP, an accepted proposal, and any agreed upon written changes to any of the foregoing documents. The contract documents are complimentary but in the event of a conflict the Professional Services Agreement shall control.

Terms and Conditions

- A. The City reserves the right to reject any or all proposals, and to waive minor irregularities in any proposal.
- B. Proposers responding to this RFP must follow the procedures and requirements stated in the RFP document. Adherence to the procedures and requirements of this RFP will help ensure a fair and objective analysis of your proposal. Failure to comply with or complete any part of this RFP may result in rejection of your proposal.
- C. The City reserves the right to request clarification of information submitted, and to request additional information on any proposal.
- D. The City reserves the right to award any contract to the next most qualified period if agreement on terms cannot be reached within a reasonable time in the judgment of the City.
- E. Any proposal may be withdrawn up until the date and time set above for opening of the proposals. Any proposal not so timely withdrawn shall constitute an irrevocable offer, for a period of one hundred and twenty (120) days to sell to the City the services described in the attached specifications, or until one or more of the proposals have been approved by the City, whichever occurs first.
- F. The contract resulting from acceptance of a proposal by the City shall be in a form supplied or approved by the City and shall reflect the specifications in this RFP. A copy of the City's Professional Services Agreement for Prosecution Services is available for review (see Attachment A). The City reserves the right to reject any proposed agreement or contract that does not conform to the specifications contained in this RFP and which is not approved by the City Attorney's office.
- G. The City shall not be responsible for any costs incurred by the agency in preparing, submitting, or presenting its response to the RFP.
- H. Any material submitted by a proposer shall become the property of the City. Materials submitted after a contract is signed will be subject to the ownership provision of the executed contract.

- I. The City reserves the right not to award any portion of the proposed contract if it finds that none of the proposals submitted meets the specific needs of the project. The City reserves the right to modify the scope of work and award portions of this RFP to the selected proposer.

Cooperative Purchasing

Chapter 39.34 RCW allows cooperative purchasing between public agencies in the State of Washington. Public agencies which have filed an Intergovernmental Cooperative Purchasing Agreement with the City may purchase from City contracts, provided that the consultant agrees to participate. The City does not accept any responsibility for contracts issued by other public agencies, however.

Public Disclosure

Once submitted to the City, proposals shall become the property of the City, and all proposals shall be deemed a public record as defined chapter 42.56 RCW, the Washington Public Records Act (PRA). Any proposal containing language which copyrights the proposal, declares the entire proposal to be confidential, declares that the document is the exclusive property of the proposer, or is any way contrary to state public disclosure laws or this RFP, could be removed from consideration. The City will not accept the liability of determining what the proposer considers proprietary or not. Therefore, any information in the proposal that the proposer claims as proprietary and exempt from disclosure under the provisions of RCW 42.56.270 must be clearly designated as such. It must also include the exemption(s) from disclosure upon which the proposer is making the claim, and the page it is found on must be identified. In the event of a PRA request for information identified by a proposer as confidential or proprietary, the City will exercise best efforts to provide the proposer with an adequate opportunity to seek a court order preventing disclosure. However, the City will consider but not be bound by a proposer's request for exemption from disclosure.

DBE Participation

The City encourages DBE firms to submit qualifications and encourages all firms to team with DBE firms in their pursuit of this project.

Federal Debarment

The Bidder shall not currently be debarred or suspended by the Federal government. The Bidder shall not be listed as having an "active exclusion" on the U.S. government's "System for Award Management" database (www.sam.gov).



PROFESSIONAL SERVICES AGREEMENT FOR PROSECUTION SERVICES

The City of Kirkland, Washington, a municipal corporation (the "City") and _____ the address for which is _____, WA _____ (the "Law Firm"), agree as follows:

I. LEGAL SERVICES

- A. The Law Firm shall perform the duties of the office of City Prosecutor for the City. The Law Firm shall take all actions to fulfill the obligations of the City for prosecution as established by state law or City ordinances.
- B. All services, and all duties shall be conducted and performed diligently, completely, and in accordance with the highest legal and ethical standards.

II. COMPENSATION

- A. The Law Firm shall be compensated for services provided to the City at the fee of \$_____ which includes all administrative and other costs associated with prosecution services, except for witness and translator fees as set forth below.
- B. The Law Firm's Services under Section IIA. includes: review cases for decision as to filing of criminal charges with input from the Kirkland Police Department (KPD); review cases for recommendations related to possible referral to Community Court; weekly Community Court calendars and all associated activities (including minimum of two prosecutors in Community Court case review, communications with defense counsel regarding Community Court eligibility, and in-court calendar case dispositions); electronically file KPD issued e-tickets (Sector), contested school speed zone tickets, and complaints with the Court; appear for court hearings and trials either in person or virtually as designated by the Court; provide all discovery for infraction and misdemeanor court hearings; manage all Court cases related to the City, including but not limited to offering recommendations on conditions of release, warrants, bail, sentence violations, and modifications to orders; accessible to defense counsel at least 15 minutes before start of each trial, hearing, or calendar; represent the City at arraignments, pretrial hearings, readiness hearings, motions, bench and jury trials, sentencing and review hearings, and certain contested hearings; timely prepare and upload designated forms using the "OCourt" scheduling and document management application; represent the City in appeals under the Rules for Appeal of Decisions of Courts of Limited Jurisdiction (RALJ); represent the City in forfeiture actions, tow hearings, and animal control appeals; prepare

and present legal memoranda, subpoenas, jury instructions, and other related materials; assist with subpoenas and public disclosure requests as appropriate; make appropriate sentencing recommendations to the Court; advise KPD on the conduct of investigations, trial preparation, seizures, and related matters as appropriate; conduct and provide legal research, regular training, and assistance to KPD in criminal matters, including statutory interpretation, enforcement issues, and caselaw decisions; interview witnesses and victims of crimes; advise victims regarding their rights and responsibilities; assist the City Attorney with legal and policy issues from time to time; create and maintain complete files and participate in any City-required trainings; and perform other related duties as required.

- C. For all appeals in King County Superior Court, the State Court of Appeals and the State Supreme Court, Contractor shall bill the City \$_____.
- D. Costs associated with witnesses and interpreters outside of the in-court proceeding shall be invoice to the City.
- E. The Law Firm will issue subpoenas for prosecution witnesses and will use its best efforts to call-off witnesses when their testimony is no longer necessary.
- F. If the Municipal Court Judge appoints "conflict counsel" (that is, attorneys to serve as City Prosecutor in the absence of the Law Firm) to perform services that are within the scope of this Agreement, then the City will be responsible to pay that appointed conflict counsel for such services, including costs; provided, however, that the Law Firm's compensation shall be adjusted downward accordingly.
- G. The Law Firm shall be paid monthly within forty-five (45) days after the City receives the Law Firm's bill unless some portion thereof is in dispute.

III. TERM

- A. The term of this Agreement is for a period of three years, commencing on October 1, 2022, and concluding on September 30, 2025. This Agreement may be renewed for up to two (2) additional one-year terms at the option of the City and provided notice of the exercise of such option is delivered to the Law Firm at least 30 days before the end of the term, as same may be extended.
- B. Either party may terminate this Agreement at any time, with or without cause, by giving ninety (90) days' notice to the other in writing. In the event of termination, the Law Firm shall be entitled to compensation under the terms of this Agreement to the extent of the actual, satisfactory work performed prior to the date of termination.

IV. GENERAL ADMINISTRATION AND MANAGEMENT

- A. The City Attorney, or designee, shall review and approve the monthly compensation for the Law Firm. The Law Firm will report to the City Attorney, or designee, regarding performance of services under this Agreement. _____ will serve as the City's primary contact person for administrative matters. The Law Firm shall coordinate communications between the Kirkland Police Department and the Kirkland Municipal Court regarding prosecution procedures.
- B. On or about the 10th day of each month, the Law Firm will present to the City Attorney an invoice.
- C. The parties agree that _____ will serve as the primary City Prosecutor for the City. _____ will maintain office hours to prepare cases, communicate with victims and witnesses, and be available for Kirkland Police Department consultation 24 hours per day, seven days per week. The City understands that exceptions to this subsection of the Agreement will be necessary from time to time, to provide coverage during illness or vacation. If the substitution of an attorney(s), as City Prosecutor, is anticipated to be needed for more than two consecutive days, then the Law Firm will notify the City Attorney's Office.
- D. The Law Firm shall be available to meet with Kirkland Police Department command staff at least quarterly. When a case involves an offense which the Kirkland Police Department has indicated to the Law Firm is of particular sensitivity, the Law Firm should, if possible, contact the Kirkland Police Department before any unusual disposition of the case is presented in court. In any event, the Law Firm shall advise the Kirkland Police Department of such disposition as soon as possible after its presentation in court.
- E. _____ will take the lead in domestic violence cases. This will include the initial case review, making plea recommendations, and handling the monthly domestic violence review calendars. The Law Firm should have regular contact with the Kirkland Police Department Family Violence Unit, particularly for discussion of upcoming cases. The Law Firm should, if possible, seek the input of the Family Violence Unit before any unusual disposition of a case is proposed in court.

V. PROFESSIONAL REQUIREMENTS

- A. The attorneys of the Law Firm shall be licensed to practice law before the courts of record for the State of Washington. The Law Firm must immediately report to the City any change affecting the maintenance of membership in good standing of the Washington State Bar Association of any of its attorneys.

- B. The Law Firm will keep current on legal issues and legislation relevant to prosecution. The Law Firm will attend City-required trainings and continuing legal education programs emphasizing matters relevant to prosecution, specifically including equity, inclusion, and diversity, family, and domestic violence issues.
- C. The Law Firm will retain criminal case files for three (3) years following final disposition. The Law Firm may elect to turn over such files to the City Clerk for the City in lieu of retention of the files by the Law Firm.
- D. In view of the special relationship between Law Firm and the City under this Agreement, the Law Firm agrees not to participate as a lawyer in any case adverse to the City or the Kirkland Police Department, nor appear as a defense attorney in the Kirkland Municipal Court for two (2) years after the expiration or termination of this Agreement. In addition, each attorney of the Law Firm who represents the City as a prosecutor by performing any act involving the exercise of prosecutorial discretion or by appearing in court on a City criminal case (other than solely for an arraignment), will also agree to the provisions of this subsection. The Law Firm will have any attorney affected by this subsection indicate their agreement to this provision by executing a counterpart copy of Attachment 1 and forwarding the original of said Attachment 1 to the City Attorney's Office, before said attorney performs services for the City, or as soon thereafter as is reasonably possible.

VI. PROSECUTOR INDEPENDENCE

The City Prosecutor represents the City in the prosecution of all misdemeanor violations of state law and the Kirkland Municipal Code. While acknowledging a mutual commitment to diversity, equity, and inclusion in general and within the criminal justice system, the parties also recognize the City Prosecutor is an independent officer in the making of charging decisions and in determining how to present a case for trial. The Prosecutor has a key role in recommending sentencing for defendants. The Prosecutor must maintain a close, but independent, working relationship with the police, court personnel, human service providers, and defense counsel. Nothing herein shall be deemed to limit the discretion vested in the Prosecutor or the immunity for such as may be allowed by law.

VII. OWNERSHIP OF WORK PRODUCT

- A. All information, records, files, and court documents produced under this Agreement shall belong to the City; provided that the Law Firm may retain for future use and utilization, work product of the Law Firm and the results of the Law Firm's legal research, such as copies of legal briefs and results of legal research.

- B. Methodology, materials, software, logic and systems developed under this Agreement are the property of the Law Firm and City and may be used as either the Law Firm or City see fit, including the right to revise or publish the same without limitation; provided, however, that the Law Firm shall be restricted in reuse by City's attorney-client privileges.

VIII. SUCCESSORS AND ASSIGNS

The Law Firm 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.

IX. NONDISCRIMINATION

The Law Firm 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 subsequently 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.

The City requires that no person shall, on the grounds of race, religion, color, national origin, sex, age, marital status, political affiliation, sexual orientation, or the presence of any sensory, mental or physical disability be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity. The City of Kirkland further assures that every effort will be made to ensure non-discrimination in all of its programs and activities, whether those programs are federally funded or not.

The Law Firm supports the City's aspiration to be a safe, welcoming, and inclusive city where each person feels they belong, and supports the City's commitments to diversity, equity, and inclusion with respect to Law Firm employees and the provision of prosecution services under this Agreement.

X. HOLD HARMLESS/INDEMNIFICATION

The Law Firm 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.

In the event of liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of the Law Firm and the City, its officers, officials, employees, and volunteers, the Law Firm's liability shall be only to the extent of the Law Firm's negligence. It is further specifically and expressly understood that the indemnification provided in this section constitutes the Law Firm's waiver of immunity under Industrial Insurance, Title 51 RCW, solely for the purposes of this indemnification. This waiver has been mutually negotiated by the parties. The provisions of this section shall survive the expiration or termination of this Agreement.

XI. LIABILITY INSURANCE COVERAGE

The Law Firm 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 by the Law Firm or its employees. The Law Firm's maintenance of insurance as required by the Agreement shall not be construed to limit the liability of the Law Firm to the coverage provided by such insurance, or otherwise limit the City's recourse to any remedy available at law or in equity.

A. Minimum Scope of Insurance

The Law Firm 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 Law Firm'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 Law Firm'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.

B. Other Insurance Provisions

The Law Firm's Automobile Liability and Commercial General Liability insurance policies are to contain or be endorsed to contain that they 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 Law Firm's insurance and shall not contribute with it.

C. Acceptability of Insurers

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

D. Verification of Coverage

The Law Firm 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 Law Firm before commencement of the work.

E. Notice of Cancellation

The Law Firm shall provide the City with written notice of any policy cancellation, within two business days of their receipt of such notice.

F. Failure to Maintain Insurance

Failure on the part of the Law Firm to maintain the insurance as required shall constitute a material breach of contract, upon which the City may, after giving five business days' notice to the Law Firm to correct the breach, immediately terminate the contract at its discretion, procure or renew such insurance and pay any and all premiums in connection therewith, with any sums so expended to be repaid to the City on demand, or at the sole discretion of the city, offset against funds due the Law Firm from the City.

XII. COMPLIANCE WITH LAWS

The Law Firm shall comply with all applicable State, Federal and City laws, ordinances, regulations, and codes, including those standards applicable to attorneys and the practice of law.

XIII. FUTURE SUPPORT

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

XIV. INDEPENDENT CONTRACTOR

- A. The Law Firm shall serve as the City Prosecutor for the City and shall at all times perform its duties and responsibilities and carry out all services as an independent contractor and not an employee of the City. The Law Firm agrees that it 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 it as a result of its status as an independent contractor. The Law Firm 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 or unemployment compensation programs or otherwise assuming the duties of an employer with respect to the Law Firm or any employee of the Law Firm.
- B. The Law Firm, at its sole expense shall obtain and keep in force any and all necessary licenses, permits, and tax certificates.
- C. The Law Firm shall obtain a business license under Kirkland Municipal Code Ch. 7.02.

XV. CONFLICT OF INTEREST

The Law Firm agrees not to perform professional services for other clients where a conflict of interest or ethical violation as defined in the Rules of Professional Conduct for attorneys may exist.

XVI. 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.

The parties nonetheless agree to negotiate a fee adjustment in good faith in the event that a material increase in the Law Firm’s level of service is requested by the City, or results from practices or policies outside of the Law Firm’s reasonable control.

XVII. NOTICE

Notice given pursuant to this Agreement shall be given in writing by directing it to: City Attorney, 123 Fifth Avenue, Kirkland, Washington 98033, or to the Law Firm at _____, or at such other address as the Law Firm may request.

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

THE LAW FIRM:

CITY OF KIRKLAND:

By: _____

By: _____
Kurt Triplett, City Manager

Date: _____

Date: _____

APPROVED AS TO FORM:

By: _____

Kirkland City Attorney

Date: _____

Date: _____

ATTACHMENT 1

**ACKNOWLEDGEMENT OF SPECIAL RELATIONSHIP TO
THE CITY OF KIRKLAND**

I, the undersigned attorney, acknowledge my special relationship as a prosecutor with the City of Kirkland and agree not to participate as a lawyer in any case adverse to the City of Kirkland or the Kirkland Police Department nor to appear as a defense attorney in the Kirkland Municipal Court for two years after I last serve as a prosecutor for the City of Kirkland and exercise prosecutorial discretion or appear in court on a City of Kirkland criminal case, other than solely for an arraignment.

Under penalty of perjury under the laws of the State of Washington, I swear that the above is true and correct.

Executed this ____ day of _____, 20__ at _____, Washington.

Print Name: _____