



City of Kirkland

Request for Proposal

Tax Increment Financing Consultant

Job #40-21-FA

Issue Date: December 2, 2021

Due Date: December 22, 2021–5:00 p.m. (Pacific Time)

REQUEST FOR PROPOSALS

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

Tax Increment Financing Consultant Job # 40-21-FA

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

Proposals received later than **5:00 p.m. December 22, 2021 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 the Request for Proposals link found under "Doing Business with the City".

The City of Kirkland 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 respondents in the preparation and submission of a proposal. Furthermore, the RFP does not obligate the City to accept or contract for any expressed or implied services.

A Service Provider response that indicates that any of the requested information in this RFP will only be provided if and when the Service Provider is selected as the apparently successful Service Provider is not acceptable, and, at 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 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.

In addition to nondiscrimination compliance requirements, the Service Provider(s) 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; environmental protection; waste reduction and recycling; the protection of natural resources; permits; fees; taxes; and similar subjects.

Dated this December 2, 2021

Jay Gewin
Purchasing Agent
425-587-3123
City of Kirkland

Published in the Daily Journal of Commerce – December 2 and December 9, 2021

Background Information

The City of 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. The City is near several major transportation routes including Interstate 405, State Route 520, and Interstate 5. These routes connect the City economically and socially to the eastside and greater Seattle area.

At the time of incorporation in 1905, the City of Kirkland's population was approximately 530. The current estimated population is 92,110. Kirkland is the twelfth largest city in the State of Washington and the sixth largest in King County.

Since its incorporation, Kirkland has grown in geographic size to eighteen square miles - approximately twenty times its original size. 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 areas in 2011.

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

Purpose and Background

The City of Kirkland is seeking qualified firms with proven expertise to submit a written proposal to support the City in the creation of a Tax Increment Area ("TIA" or "increment area"). The Consultant selected for award of contract shall also guide the City through the compilation of required documents and processes that support future debt issuance for the development of infrastructure, and other community development goals for the City of Kirkland. The ability of the City to create a TIA (that utilizes tax increment financing, or "TIF") is the result of the State of Washington approving ESHB 1189 (the "Act"), effective July 24, 2021. This allows cities, counties, and port districts each with the ability to create up to two TIAs for which assessed value ("AV") at the time of creation must not exceed the lower of \$200 million or 20% of the entity's "AV", with the "increment value" (as defined in the Act) resulting from each TIA being leveraged to finance improvements in the increment area.

The City is concurrently developing a Station Area Plan (SAP) in the area surrounding the future WSDOT/Sound Transit I 405/NE 85th Street Interchange and Inline Stride Bus Rapid Transit (BRT) Station. The BRT station, developed by Sound Transit, has been designed to connect Kirkland to the Link Light Rail at Bellevue and the Lynnwood Transit Center. The SAP, which began in 2019 and is currently ongoing, is looking at land use, urban design, open space, transportation, stormwater and utilities, and sustainability in the area approximately one-half mile from the BRT station, and will result in adoption of a Final Station Area Plan including a form-based code, a FEIS that supplements the Comprehensive Plan in this area, and a Planned Action Ordinance. As part of the planning process and alternative consideration, land-use and fiscal impacts models were developed and representative infrastructure needs have been

identified to serve the potential growth in the Station Area. Some projects are necessary for redevelopment to occur, making them candidates for Tax Increment Financing. The successful proposer for this work will be conducted as a sub-consultant to the City's prime consultant on the SAP, Mithun, to ensure the coordination and integration with the overall effort. The City team contacts for this project include leads from the Planning and Building Department together with the Finance Department, and include ongoing coordination with an inter-departmental team.

Additional information regarding the 85th Station Area Plan, please visit the City's website at: <https://www.kirklandwa.gov/Government/Departments/Planning-and-Building/Code-and-Plan-Amendment-Projects/NE-85th-Street-Station-Area-Plan>

The execution of this agreement is not a guarantee of work or that the City will hire the Consultant to perform work.

The City desires to establish a TIA to support specific eligible public improvements which will not only attract private development within its increment area but also the surrounding private developments. Candidate eligible projects will be identified by subject matter experts on the Mithun team, and the strategy and implementation developed by the Tax Increment Financing Consultant will be done in coordination this effort.

Performance Schedule and Budget

The budgeted amount for this professional services contract is between \$50,000 and \$60,000. The initial length of the contract will be January 1, 2022 through December 31, 2022. At the sole discretion of the City, this contract may be amended to provide services based on the scope of work and based on budget availability and consultant performance. The period of performance of an agreement resulting from this RFP is expected to be through completion of the project. Amendments extending the period of performance, if any, shall be by mutual agreement. A contract extension may be issued to provide the time necessary to complete task orders in process for projects not completed by the original contract completion date.

Scope of Work

The City seeks services related to the potential creation of an increment area within the Station Area. A qualified firm will need to be capable of working with City staff, the prime consultant, Mithun, and other consultants. Any relevant, existing Station Area Plan deliverables and reports will be made available to the selected consultant as needed to advance this scope of work.

Expected Outcomes and Deliverables

The ultimate work product of the consultant will be to meet the requirements of the legislation, summarized as follows and described further in the Tasks 2-4 that follow.

In considering whether to designate an increment area, the legislative body of the local government (in this instance, the City Council) must prepare a project analysis and final deliverables that shall include, but need not be limited to the following:

- A statement of objectives of the City for the designated increment area;
- A statement as to the property within the increment area, if any, that the City may intend to acquire;
- The duration of the increment area;
- Identification of all parcels to be included in the area;
- A description of the expected private development within the increment area, including a comparison of scenarios with the proposed public improvements and without the proposed public improvements;
- A description of the public improvements, estimated public improvement costs, and the estimated amount of bonds or other obligations expected to be issued to finance the public improvement costs and repaid with tax allocation revenues;
- The assessed value of real property listed on the tax roll as certified by the county assessor under RCW 84.52.080 from within the increment area and an estimate of the increment value and tax allocation revenues expected to be generated;
- An estimate of the job creation reasonably expected to result from the public improvements and the private development expected to occur in the increment area; and
- An assessment of any impacts and any necessary mitigation to address the impacts identified on the following:
 - Affordable and low-income housing;
 - The local business community;
 - The local school districts; and
 - The local fire service.

The project analysis would also note that City is not part of a fire protection district or regional fire protection service authority, so those provisions of the legislation do not apply.

The qualified firm will need to be able to create the "Project Analysis Report" and assist with the submission of the Project Analysis Report to the Office of the State Treasurer and respond to questions by the Office of the State Treasurer, as well as City of Kirkland staff and Council. These responses may require amending the Project Analysis Report that the Treasurer (or the City) deems appropriate based on the requirements of the legislation.

Initial Project Approach

The project approach is envisioned as a two-step process in collaboration with the broader Station Area plan development and other related Community Benefits studies. Because the City has not yet established which eligible candidate TIF projects should be advanced as

targeted public improvements, this scope will need to inform a TIF strategy as well as analysis and a report required for implementation. Both steps will require collaboration and coordination with the prime consultant, Mithun, and other consultant team members.

A qualified firm will be expected to manage or assist with efforts in each of the following Tasks:

1) Project Startup

Project Startup tasks will include:

- Review of background information
- Prepare an information request for the team and City in order to produce the deliverable
- Prepare a recommended workplan and attend a Kick-Off meeting to coordinate and confirm workplan, schedule, review and deliverable milestones, and meetings

2) TIF Strategy

The purpose of this Step is to identify targeted public improvements as well as the TIF area boundary and potential revenue. The City's priority for targeted public improvements are multi-benefit projects that are unlikely to be funded through the CIP, especially related to Open Space, Parks, Green Infrastructure, and Active Transportation.

The Mithun team will conduct a gap analysis of the representative infrastructure reports, inventory existing publicly owned parcels in the Station Area, and develop the candidate project list, including an initial Feasibility/Concept Study and planning-level cost estimates of selected candidate projects. This Feasibility/Concept Study is intended to address multi-benefit projects that have not yet been described in the Representative Infrastructure reports, including at least one park/open space project and one active transportation project.

Items included in this scope and coordination expectations include:

- Identify assessed value and estimate expected increment value of properties within the recommended TIF area boundary, including preliminary boundary scenario testing. Initial estimates made as part of the previously completed Fiscal Impacts/Revenue model will be provided, but the consultant is expected to validate those assumptions and update them as needed. Assumed growth estimates and development prototypes will be provided by Mithun based on the City's Preferred Plan Direction.
- Contribute to identifying targeted public improvements to be funded through TIF, including review of a candidate project evaluation matrix and providing an order-of-magnitude cost evaluation and regulatory evaluation for the candidate project list. Mithun will prepare the evaluation matrix and complete the remainder to identify targeted public improvement projects for the TIA.
- The timeframe for this Step is estimated at 3-4 months in order to coordinate and integrate with other Station Area Planning activities including Draft Plan preparation.

3a) TIF Project Implementation Study and Report

The purpose of this Step is to prepare analysis and a report for the City to help implement a TIA and will result in the final deliverables described above. Items included in this scope of work and coordination expectations include:

- Prepare a description of the expected development in the TIA, including a comparison of scenarios with the proposed public improvements and without the proposed public improvements, and recommend potential refinements to TIA boundary as needed;
- Prepare a description of the public improvements, estimated public improvement costs, and the estimated amount of bonds or other obligations expected to be issued to finance the public improvement costs and repaid with tax allocation revenues;
 - Note: Planning-level cost estimates will be available from Step Two and prior work; however, more refined cost estimates based on preliminary engineering/30% design will not be available unless that scope is authorized by the City.
- Prepare the assessed value of real property listed on the tax roll as certified by the county assessor under RCW 84.52.080 from within the increment area and an estimate of the increment value and tax allocation revenues expected to be generated;
- Prepare an estimate of the job creation reasonably expected to result from the public improvements and the private development expected to occur in the increment area;
- Prepare additional deliverables and compile into Report as described above;
- Public briefings including City Council meetings will be required as a part of this Step, described in more detail below;
- The timeframe for this Step is estimated at 6-9 months in order to coordinate and integrate with other Station Area Planning activities. It is likely that the Final Plan and implementing codes may be in place prior to completion of this Step analysis and report production.

3b) Create and Manage Public Briefing

Prior to adopting the resolution authorizing the increment area, the City must hold at least two public briefings for the community solely on the tax increment financing project that include the description of the increment area, the public improvements proposed to be financed with the tax allocation revenues, and a detailed estimate of tax revenues for the participating local governments and taxing districts, including the amounts allocated to the increment public improvements. The briefings must be announced at least two weeks prior to the date being held, including publishing in a legal newspaper of general circulation and posting information on the City's website and all City social media sites. The qualified firm will need to create materials for such public briefings and to assist in the management of the public briefing process.

4) Create the Ordinance to be approved by the City Council

The ordinance authorizing the increment area must contain findings that:

- The public improvements proposed to be paid or financed with tax allocation revenues are expected to encourage private development within the increment area and to increase the assessed value of real property within the increment area;
- Private development that is anticipated to occur within the increment area as a result of the proposed public improvements will be permitted consistent with the permitting jurisdiction's applicable zoning and development standards as defined in the Station Area FSEIS and anticipated in the Final Station Area Plan and implementing codes;
- The private development would not reasonably be expected to occur solely through private investment within the reasonably foreseeable future without the proposed public improvements; and
- The increased assessed value within the increment area that could reasonably be expected to occur without the proposed public improvements would be less than the increase in the assessed value estimated to result from the proposed development with the proposed public improvements.

The qualified firm will need to be able to assist the City in making the necessary findings.

Contract Requirements and Fees

If your proposal is accepted, the following fees and requirements will be due upon award, prior to issuance of a contract:

- **Compliance with Law/City of Kirkland Business License**
 - Contractor must obtain and provide a copy of a City of Kirkland Business License and otherwise comply with Kirkland Municipal Code Chapter 7.02.
 - The Contractor shall comply with all applicable State, Federal and City laws, ordinances, regulations, and codes.

Submission Criteria

Scoring Criteria 1: Profile and Expertise, of Firm and Assigned Staff.....25 Points

- Submit a summary statement of the firm's capability to provide the services outlined in this proposal.
- Describe your firm's capability, capacity, expertise, and understanding of each specified analysis.
- Describe firm's history of performing similar services and why it stands out among your competitors.
- Submit a project organization and management chart showing the key roles / relationships of the team.

- Provide a list of subconsultants performing any services defined in the scope of this proposal request. Include description of the services to be performed and subcontractor qualifications.

Scoring Criteria 2: Consultant’s Technical Approach.....25 Points

- Describe methods for monitoring, tracking and communicating project progress and budget to costs. Describe any recommended workplan strategies to optimize coordination and increase the quality of the final deliverable.
- Describe firm’s ability to manage and address impacts to the scope that evolve into potential time and cost impacts to the project. Describe your firm’s approach to integration with an active planning process including target public improvements selection and coordination with Draft and Final Area Plans.
- Project Schedule – A detailed project schedule must be submitted by the proposer. The proposer must indicate commitment to meet the City’s proposed schedule (in the Evaluation of Proposals Section).

Scoring Criteria 3: Past Performance.....20 Points

- Provide up to three references of completed or long-term projects utilizing services similar to those defined in this solicitation; the City of Kirkland may not be counted as a reference. Include the name of the owner contact information and all subcontractors involved in the project.

Scoring Criteria 4: Cost..... 25 Points

- Provide fee schedule defined by roles and services

Proposal Submittal Instructions

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 submitted by e-mail or be received no later than 5:00 pm PST on December 22, 2021.
2. Emailed proposals should include “Tax Increment Financing Consultant - Job #40-21-FA” in the subject line and be addressed to purchasing@kirklandwa.gov .
3. Proposals shall not exceed 15 pages. Front and back is considered 2 pages.
4. All proposals sent electronically must be in the form of a PDF or MS Word document and cannot exceed 20MB.
5. If paper proposals are being submitted, they must consist of one original and one copy. Please mail/drop off proposal to:
 City of Kirkland
 ATTN: Purchasing staff – Job #40-21-FA
 123 5th Avenue
 Kirkland, WA 98033
6. All proposals must include the legal name of the organization, firm, individual or partnership submitting the RFP. Include the address of the principle place of business,

mailing address, phone numbers, emails, fax number (if one exists) and primary contact person.

7. To be evaluated, a proposal must address all requirements and instructions contained within.
8. Provide all references and materials required by the RFP instructions within.

Questions: Questions regarding the scope of work or evaluation process must be submitted in writing and should be addressed to Tracey Dunlap, Deputy City Manager, at tdunlap@kirklandwa.gov .

Questions regarding the RFP process should be addressed to Purchasing staff, at purchasing@kirklandwa.gov.

The deadline for submitting questions is 5:00pm on December 13, 2021

Submittal Deadlines

The Department's schedule for review of the RFP submittals and final selection of the Contractor is as follows:

December 2, 2021	RFP posted
December 13, 2021	Deadline for questions: 5:00 p.m.
December 15, 2021	Responses to questions posted on City website
December 22, 2021	Request for Proposal Submittals Deadline: 5:00 p.m.
December 27, 2021-January 7, 2022	Evaluation Period – may include interviews
January 10, 2022	Notify selected consultant
January 11-January 18, 2022	Contract negotiation/preparation/signature
January 24, 2022	Anticipated start work date

Selection Criteria and Process

The City will make a selection based on the evaluation of the written proposals. The City may also conduct an interview process with scoring used to determine the selected proposer. The City may elect to interview some or all proposers. The City reserves the right to make a selection based only on the evaluation of the written proposals. Written proposals and interviews will be evaluated based on the following criteria:

Profile and Expertise, of Firm and Assigned Staff	25
Consultant's Technical Approach	25
Past Performance	25
Cost schedule	25
Total	100

Prior to the commencement of work, the City and the selected consultant will meet to settle contract details. A notice to the consultant of the City's award will constitute notice to proceed. The City is not responsible for any costs incurred by the consultant in the preparation of the proposal. Once submitted to the City, all proposals will become public information.

Contract

The Consultant and the City will execute an Agreement for this scope of work including all of the requirements found in the sample agreement shown as Attachment A.

Terms and Conditions

- A. The City reserves the right to reject any and 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 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 agency, if the successful agency does not execute a contract within 30 days of being notified of selection.
- 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 administration, 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 prime consultant, Mithun. 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 or all of the project 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 vendor. The City reserves the right to award this work to multiple vendors if the scope of work would be best completed by multiple vendors and their associated experience.

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 in "The Public Records Act," chapter 42 section 56 of the RCW. 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 described in the "Proprietary Material Submitted" section above. 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. With the exception of lists of prospective proposers, the City will not disclose RFP proposals until a bid selection is made. At that time, all information about the competitive procurement will be available with the exception of: proprietary/confidential portion(s) of the proposal(s), until the proposer has an adequate opportunity to seek a court order preventing disclosure. The City will consider a proposer's request for exemption from disclosure; however, the City will make a decision predicated upon RCW 42.56.

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
Tax Increment Financing Consultant
6/30/2020**

The City of Kirkland, Washington, a municipal corporation ("City") and _____,
whose address is _____ ("Consultant"), agree and contract as follows.

In consideration of the mutual benefits and conditions set forth below, the parties agree 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 duties shall be conducted and performed diligently, 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 services 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 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 services not completed in a satisfactory manner until such time as Consultant modifies such services 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 or the Consultant may terminate or suspend this Agreement at any time, with or without cause, by giving ten (10) days' notice to the other 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 services completed on the project prior to the date of 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 Agreement or the project to which it relates, without written concurrence by the Consultant will be at the sole risk of the City.
- B. 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 services. 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.
- C. Methodology, materials, software, logic, and systems developed under this Agreement 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.
- D. The Consultant at such times and in such forms as the City may require, shall furnish to the City such statements, records, reports, data, and information as the City may request pertaining to matters covered by this Agreement. All of the reports, information, data, and other related materials, prepared or assembled by the Consultant under this Agreement and any information relating to personal, medical, and financial data will be treated as confidential only as allowed by Washington State laws regarding disclosure of public information, Chapter 42.56 RCW

The Consultant shall at any time during normal business hours and as often as the City may deem necessary, make available for examination all of its records and data with respect to all matters covered, directly or indirectly, by this Agreement and shall permit the City or its designated authorized representative to audit and inspect other data relating to all matters covered by this Agreement. The City shall receive a copy of all audit reports made by the agency or firm as to the Consultant's activities. The City may, at its discretion, conduct an audit, at its expense, using its own or outside auditors, of the Consultant's activities which relate, directly or indirectly, to the Agreement.

Consultant will provide all original operation and maintenance manuals, along with all warranties, from the manufacturer for any equipment or items installed or supplied to the City has part of this contracted project.

The Consultant shall maintain accounts and records, including personnel, property, financial, and programmatic records, which sufficiently and properly reflect all direct and indirect costs of any nature expended and services performed pursuant to this Agreement. The Consultant shall also maintain such other records as may be deemed necessary by the City to ensure proper accounting of all funds contributed by the City to the performance of this Agreement.

The foregoing records shall be maintained for a period of seven years after termination of this Agreement unless permission to destroy them is granted by

the Office of the Archivist in accordance with RCW Chapter 40.14 and by the City.

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 services 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

Consultant 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

To the greatest extent allowed by law the Contractor 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 in connection with performance of this Agreement, except for injuries and damages caused by the sole negligence of the City.

Should a court of competent jurisdiction determine that this Agreement is subject to RCW 4.24.115, then, 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 Contractor and the City, its officers, officials, employees, and volunteers, the Contractor's liability hereunder shall be only to the extent of the Contractor's negligence. It is further specifically and expressly understood that the indemnification provided herein constitutes the Contractor's waiver of immunity under Industrial Insurance, Title 51 RCW, solely for the purpose 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.

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.

Consultant's maintenance of insurance as required by the agreement shall not be construed to limit the liability of the Consultant 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

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 as least as broad as 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 as least as broad as ISO occurrence form CG 00 01 and shall cover liability arising from premises, operations, stop-gap 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 using an additional insured endorsement at least as broad as ISO CG 20 26.
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 and Commercial General Liability insurance:

1. The Consultant's insurance coverage shall be primary insurance as respects the City. Any insurance, self-insurance, or self-insured pool coverage maintained by the City shall be excess of the Consultant's insurance and shall not contribute with it.
2. The Consultant shall provide the City and all Additional Insureds for this services with written notice of any policy cancellation, within two business days of their receipt of such notice.

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 services.

F. Failure to Maintain Insurance

Failure on the part of the Consultant to maintain the insurance as required shall constitute a material breach of agreement, upon which the City may, after giving five business days' notice to the Consultant to correct the breach, immediately terminate the agreement or, 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 Consultant from the City.

G. City Full Availability of Consultant Limits

If the Consultant maintains higher insurance limits than the minimums shown above, the City shall be insured for the full available limits of Commercial General and Excess or Umbrella liability maintained by the Consultant, irrespective of whether such limits maintained by the Consultant are greater than those required by this agreement or whether any certificate of insurance furnished to the City evidences limits of liability lower than those maintained by the Consultant.

XI. COMPLIANCE WITH LAWS/BUSINESS LICENSE

The Consultant shall comply with all applicable State, Federal, and City laws, ordinances, regulations, and codes. Consultant 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 or she 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 or her as a result of his or her status as an independent contractor. 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 final and completely integrated Agreement between the parties regarding its subject matter and supersedes all prior negotiations, representations, or agreements, either written or oral. This Agreement may be amended only by written instrument properly signed by both parties.

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 Agreement. Any such work or services shall be considered as additional work, supplemental to this Agreement. This Agreement may be amended only by written instrument properly signed by both parties.

XVI. NON-ENDORSEMENT

As a result of the selection of a consultant to supply services to the City, the consultant agrees to make no reference to the City in any literature, promotional material, brochures, sales presentation or the like without the express written consent of the City.

XVII. NON-COLLUSION

By signature below, the Consultant acknowledges that the person, firm, association, co-partnership or corporation herein named, has not either directly or indirectly entered into any agreement, participated in any collusion, or otherwise taken any action in restraint of free competitive bidding in the preparation or submission of a proposal to the City for consideration in the award of a contract on the specifications contained in this Agreement.

XVIII. WAIVER

Waiver by the City of any breach of any term or condition of this Agreement shall not be construed as a waiver of any other breach.

XIX. ASSIGNMENT AND SUBCONTRACT

The Consultant shall not assign or subcontract any portion of the services contemplated by this Agreement without the prior written consent of the City.

XX. DEBARMENT

Recipient certifies that it is not suspended, debarred, proposed for debarment, declared ineligible or otherwise excluded from contracting with the federal government, or from receiving contracts paid for with federal funds.

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

CONSULTANT:

CITY OF KIRKLAND:

By: _____

By: _____
Beth Goldberg, Deputy City Manager

Date: _____

Date: _____