



# **City of Kirkland**

## **Request for Proposal**

### **Eastside Waste Prevention Campaign Consultant**

**Job #05-22-PW**

**Issue Date: January 11, 2022**

**Due Date: February 9, 2022–5:00 p.m. (Pacific Time)**

## REQUEST FOR PROPOSALS

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

### **Eastside Waste Prevention Campaign Consultant Job # 05-22-PW**

File with Purchasing Agent, Finance Department, 123 - 5<sup>th</sup> Ave, Kirkland WA, 98033

Proposals received later than **5:00 p.m. on February 9, 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 the Request for Proposals link found under "Doing Business with the City". Call 425-587-3123 if you are unable to access RFP documents online.

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 of Kirkland assures 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 11<sup>th</sup> day of January, 2022**

Jay Gewin  
Purchasing Agent  
City of Kirkland

**Published in Seattle Times – January 11<sup>th</sup> and January 18<sup>th</sup>, 2022**

## **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 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**

On a global level, the problem of plastic waste has been well-documented. These negative impacts are also seen locally through pollution from plastics in Puget Sound, as well as the fact that plastic bags are a major contaminant in recycling. Unfortunately, progress towards reusables and away from single-use items has been slowed or even reversed by the COVID-19 pandemic. Perceived hygiene risks from reusable items, such as durable grocery bags and personal mugs, persist. Although some establishments are allowing these items again, the social norm of customers bringing their own reusables may have weakened. Meanwhile, an explosion in restaurant take-out options has driven an increase in the use of disposable food service items. These trends are starting to show up in the data: the 2020 Washington Statewide Waste Characterization study showed an increase of 800,000 tons of residential garbage, while plastic packaging made up the fourth-largest waste category overall (at 700,000 tons).<sup>1</sup>

Despite these setbacks, there are still ways in which to support the reduction of single-use items and the switch to reusables. As of October 1, 2021, Washington law outlawed the distribution of single-use plastic bags at grocery stores, and statewide requirements that go into effect January 1, 2022 require that some single-use food service items be available only upon request. To support these new requirements in a way that further encourages durable items and to help shift social norms away from disposables and toward reusables, the cities of Kirkland, Redmond, Bellevue and Bothell are seeking to collaborate with a Consultant on the

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<sup>1</sup> State of Washington Department of Ecology, "2020-2021 Washington Statewide Waste Characterization Study." August 2021. <https://apps.ecology.wa.gov/publications/documents/2107026.pdf>

development and implementation of an Eastside Waste Prevention Campaign. The project will begin in early 2022 and last through June 15, 2023 and is funded by the Department of Ecology Local Solid Waste Financial Assistance (LSWFA) grant, for which partner cities have pooled their allocated funding for a total project budget of \$210,208.24. As fiscal agent, Kirkland will manage the contract and grant reporting for this project in consultation with the other cities.

## **Goals**

The purpose of this project is to reduce pounds of solid waste from single-use items – particularly those made of plastic – within the cities of Kirkland, Redmond, Bellevue and Bothell. Below is a list of target items based mostly upon Chapter 70A.530 and 70A.245 Revised Code of Washington (RCW), which prohibits the distribution of plastic bags and makes some food service ware items available by request only, respectively.<sup>2</sup> Items may include:

- Plastic bags
- Paper bags
- Disposable utensils
- Disposable straws
- To-go cups and lids
- Plastic water bottles

This project has two audiences of focus: 1) food service businesses within partner jurisdictions (including restaurants and grocery stores), and 2) customers who support these businesses. These audiences have been identified because they each have the power to reduce waste at the point of sale (i.e. customers can refuse disposable service ware, while staff can refrain from offering it automatically or offer it in a way that reminds customers to bring their own durable alternative next time), which is where waste from the items of focus is generated. Food service businesses also have many items with easily substituted durable options.

Overall, by helping to decrease the distribution of disposables and increase the proliferation and use of durables, the goal of this project is to prevent 19,500 pounds of waste from being generated.

## **Performance Schedule**

The contract is anticipated to begin in March 2022, and all work must be completed by June 15, 2023.

## **Scope of Work**

### **Strategies**

This project is divided into three main tasks, with Task 1 occurring prior to Tasks 2 & 3 (which may be implemented concurrently).

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<sup>2</sup> However, consultant and partners Cities may justify adding or deleting items based upon factors like relative waste stream impacts or the proliferation of alternatives to a given disposable item.

## **Task 1 – Research and Project Development**

As discussed in the “Goals” section, this project proposes targeting a wide variety of disposable items. There may also be wide variations across the proposed audiences of focus – food service businesses and their customers – such as size and business type, as well as different customer age groups, primary languages, economic backgrounds, etc. In light of these numerous variations, the Consultant is requested to help further narrow audiences of focus and the campaign strategies most appropriate for them. Specifically, the Consultant is requested to utilize market research in combination with research methods from the field of Community-Based Social Marketing (CBSM) to answer questions such as:

- Which businesses would benefit from customized support to address barriers in switching to durable serveware?
- Which businesses would benefit from assistance around customer messaging – e.g. how can staff provide certain items only upon request in a way that encourages customers to successfully refuse disposables? Are small businesses or those that serve a particular group of customers more likely candidates for assistance?
- Which customer groups would benefit most from campaign activities? For example, are there residents of certain ages, primary languages,<sup>3</sup> or economic backgrounds who are least likely to own or to remember to carry durable alternatives with them?

Once the audiences of focus have been narrowed, the Consultant is requested to conduct research on the benefits and barriers they experience related to the desired behaviors. Based in CBSM, methods could include:

- Literature review
- Findings from case studies/similar initiatives
- Intercept surveys
- Focus groups – both with residents and food service staff/management

Once barriers and benefits are identified, the Consultant is requested to develop a program plan that directly addresses these findings from different audiences of focus. The plan should outline appropriate messages, tactics and strategies - general examples of which are provided below in Tasks 2 & 3.

Deliverable: Brief project plan which includes results of Task 1 research and proposed campaign messages, tactics and strategies to address those results. The plan should identify how the general strategies suggested in Tasks 2 & 3 will be tailored specifically to different audiences of focus. A minimum of two research methods utilized, including both publication and current audience sources, should be implemented.

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<sup>3</sup> Besides English, the most commonly spoken languages across partner jurisdictions are: Spanish, Chinese, Hindi, Russian, Korean, Japanese, Vietnamese, Portuguese and Arabic.

## Task 2 – Media Campaign

Although specific strategies will depend upon the program plan developed by the Consultant under Task 1, we request the inclusion of a media campaign in some form. Proposed tactics could include:

- TV (ads and/or pitching stories)
- Print news (ads and/or pitching stories to local news and magazines)
- Web (including social media)
- Printed mailers sent to businesses and/or residents
- Radio (ads and/or earned spots)

For each media type, we request that the Consultant propose methods to reach the specific language groups identified in Task 1. For example, which TV stations, radio stations and print publications will be approached for each language group?

Deliverables: Deliverables will include a media plan based on findings in Task 1 and full implementation and evaluation of the media plan. A minimum of three media platforms should be utilized. Media plan may include components such as a list of multilingual news outlets to be included and the reach of each; draft ad scripts, social media posts, news pitches, and/or mailers for approval of cities.

## Task 3 – Targeted Outreach for Behavior Change

To complement a broadscale media campaign, the project plan should incorporate targeted strategies to reach individual businesses and customers. The purpose of this direct outreach is to help reduce the barriers and amplify the benefits associated with reducing single-use items and increasing the use of specific durable items identified in Task 1. While exact strategies will depend upon the findings in Task 1, suggested components are drawn from CBSM and may include:

- **Waste Reduction Challenge** – If, as anecdotal evidence suggests, a key barrier to using durable items is forgetting to bring them to the point of sale, the Consultant could design a challenge to encourage residents to remember to bring their reusable items – such as bags, bottles, cups and utensils – when leaving the house. The challenge could incorporate one or more of the following CBSM-based tactics:
  - **Incentives:** Participants could be given a durable item (preferably one that they do not already have many of, as is the purported case with reusable bags), which they could be encouraged to “test out” as part of the challenge;
  - **Pledges:** Signing a pledge to complete the challenge could be a condition of receiving the incentive;
  - **Prompts:** Another giveaway could include physical reminders for participants – for example, windshield stickers prompting them to bring their reusable bags into the store or durable utensils when eating out or ordering takeout;
  - **Pre- and post-surveys:** Participants should be asked to complete a survey prior to the challenge, as well as at the end of the challenge, in order to evaluate success and to estimate waste reduced through the substitution of durable items (this is a grant requirement – please see the “Deliverables” section below).

- **Tabling at Events** – To the extent possible given current public health guidelines, the Consultant team could propose having a presence at community events (especially those hosted by organizations within communities of focus, such as Centro Cultural Mexicano) and/or outside food service businesses, such as grocery stores, to help inform residents about the new requirements for plastic bags and single-use items. This type of outreach could also be ideal for distributing durable item incentives and recruiting participants for a waste reduction challenge.
- **Presentations for Residents** – Whether held virtually, in person, or through a hybrid format, presentations on relevant topics could be an effective way to reinforce waste reduction behaviors.
- **Small Business Outreach/Technical Assistance** – It is likely that local business staff and managers have real barriers to reducing reliance on single-use items, such as a concern that customers may experience lack of satisfaction or perceive hygiene risks from reusables. To address such barriers, the Consultant could conduct site visits at the types of businesses identified in Task 1 and, for example, troubleshoot negative perceptions of reusables, provide customer signage about the waste reduction challenge or offer limited incentives for staff to distribute to customers.
- **Distribution of Reusable Items** – Although mentioned in combination with many of the example program strategies above, the Consultant is requested to build in the distribution of alternatives to single-use items as a key component of the program. Which items are selected depends upon the barriers identified in Task 1 – namely, are there tools, such as reusable utensils or mugs, that could address barriers specific to the audiences of focus? Care should be taken about which types of items NOT to distribute: anecdotal evidence suggests that many customers already have too many reusable bags and durable water bottles and that the barrier lies not in lacking the item but in remembering to bring it to the store/food establishment. For each item distributed, the participant should be asked to sign a pledge to participate in a challenge and/or pre- and post-survey.

Note: Regardless of specific strategies proposed under Task 3, the Consultant is requested to incorporate inclusive outreach approaches, such as appropriately compensated partnerships with community organizations and multilingual outreach as core components of the program.

Deliverables: Specific deliverables will be dependent on the specific strategies proposed by the Consultant and approved by participating cities. However, they may include: a list of challenge participants, pledges signed, events attended, reusable items distributed and businesses assisted. To meet grant agreement requirements with the Department of Ecology, deliverables must include pre- and post-surveys or other ways of measuring/estimating pounds of solid waste reduced from program activities – particularly from the substitution of single-use items for durable ones. A minimum of 20 direct targeted outreach events or assistance at approved locations should be completed.

## **Task 4 – Project Management**

Due to the intensity and grant-driven timeline of the campaign, the Consultant will be required to coordinate monthly meetings with all City partners and to provide monthly progress updates with details of work accomplished and planned work.

## **Project Budget and Proportionate Spending**

The project budget is \$210,108.24, which includes an estimate of \$20,000-\$30,000 for durable incentives to be purchased, stored and distributed by the Consultant. This budget is based upon the combined LSWFA grant funds from the Cities of Kirkland, Redmond, Bellevue and Bothell in the following amounts:

<b>Task</b>	<b>Ecology State Share</b>	<b>25% Match</b>	<b>Total</b>	<b>Percent of Total</b>
<i>City of Bothell</i>	\$12,315	\$4,105	\$16,420	8%
<i>City of Bellevue</i>	\$38,000.00	\$12,666.67	\$50,666.67	24%
<i>City of Redmond</i>	\$68,266.18	\$22,755.39	\$91,021.57	43%
<i>City of Kirkland</i>	\$39,000.00	\$13,000.00	\$52,000.00	25%
<b>Totals</b>	<b>\$157,581.18</b>	<b>\$52,527.06</b>	<b>\$210,108.24</b>	<b>100%</b>

To the extent feasible, project activities and incentives should be distributed proportionately based upon each City's contribution to the budget (see Percent of Total column).

The Cities do not anticipate funding the project at a level above the total project budget. Budget and project scope subject to change if funding from the State Dept. of Ecology is decreased.

The State Dept. of Ecology copyrights with rights to any data or documents created or developed because of or under the contract. Ecology retains a royalty-free, nonexclusive and irrevocable license to reproduce, publish, or otherwise use the data or documents. Washington State Department of Ecology is designated as an express third-party beneficiary.

## **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:

### **1. 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.

### **2. Insurance**

- Contractor's insurance should be consistent with the requirements found in the sample agreement shown as Attachment A.



## **Submission Criteria**

Proposals should be prepared simply, providing straightforward, concise descriptions of the applicant's capabilities to satisfy the requirements of the request. Maximum page count for proposals is 15 pages. Front and back is considered two pages.

Proposals must include the following:

1. A description of qualifications, including:
  - Business experience
  - Project-specific experience
  - Company information including time the company has been in business
  - Number of employees
  - Project manager and their experience managing comparable projects
  - Staff that will be working on the project, anticipated role in the project, hourly rate, and their experience.
2. Implementation plan including:
  - Approach to complete the scope of work, including expectations of the City team (representatives of all four cities)
  - Proposed timeline of work
  - Breakdown of the Contractor's proposed budget by task, including expenses and estimated staff hours by hourly rate
3. Examples of relevant projects:
  - Provide information about similar projects. Include examples of materials prepared for campaigns.
4. References:
  - Please provide three Client references, including the year, approximate budget, and brief summary of the project(s) on which the consultant worked with the Client(s).

## **Minimum Qualifications**

- The Contractor must have experience designing and leading projects using community-based social marketing (CBSM) methodology, preferably in the environmental field.
- The Contractor must have experience designing and implementing campaigns using a variety of media.
- The Contractor must have experience developing campaigns of comparable size and cost, preferably for government clients.
- The Contractor must have experience developing and leading multilingual campaigns.
- The Contractor must have experience conducting surveys or other forms of assessment and providing reporting for grant purposes.
- The Contractor must have experience providing direct outreach to the public and to businesses.

## **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. All proposals must be sent by e-mail and be received no later than 5:00 PM on February 9, 2022.
2. E-mailed proposals must be in the form of a PDF or Microsoft Word document and cannot exceed 20MB.
3. E-mailed proposals should include "Eastside Waste Prevention campaign Consultant – Job #05-22-PW" in the subject line and be addressed to [purchasing@kirklandwa.gov](mailto:purchasing@kirklandwa.gov)
4. 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.
5. To be evaluated, a proposal must address all requirements and instructions contained within.
6. Provide all references and materials required by the RFP instructions within.
7. Maximum page count for proposals is 15 pages. Front and back is considered two pages.

**Questions:** Questions regarding the scope of work or evaluation process must be submitted in writing and should be addressed to Tracy Durnell, Education and Outreach Specialist, at [tdurnell@kirklandwa.gov](mailto:tdurnell@kirklandwa.gov) . Questions regarding the RFP process should be addressed to Purchasing staff, at [purchasing@kirklandwa.gov](mailto:purchasing@kirklandwa.gov). The deadline for questions is 5:00 PM on January 25, 2022.

## **Submittal Deadlines**

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

January 11, 2022	RFP posted
January 25, 2022	Deadline for questions: 5:00 p.m.
January 27, 2022	Responses to questions posted
February 9, 2022	Request for Proposal Submittals Deadline: 5:00 p.m.
February 10-March 9, 2022	Evaluation Period – may include interviews
March 22, 2022	Contract Awarded

## **Selection Criteria**

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:

Company background and prior experience	20
Experience and qualifications of project manager & assigned staff	20
Scope of work approach	40
<u>Budget allocation</u>	<u>20</u>
Total	100

### **Selection Process**

A selection committee will review all proposals, select finalists and may conduct interviews prior to making the final selection of the consultant.

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 a Professional Services Agreement for the Eastside Waste Reduction Campaign (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 City and shall reflect the specifications in this RFP. A copy of the City's standard Professional Services Agreement 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 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](http://www.sam.gov)).



**PROFESSIONAL SERVICES AGREEMENT  
Eastside Waste Prevention Campaign Consultant  
PSA 6/30/2020**

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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 as 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 or 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: \_\_\_\_\_