



PROFESSIONAL SERVICES AGREEMENT
NE 85th St & I405 Water Main Construction Inspection Service – WAC
1690000

The City of Kirkland, Washington, a municipal corporation ("City") and Atwell-Group, whose address is 16000 Bothell Everett Highway, Suite 150, Mill Creek, WA 98012 ("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 A 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 \$95,330.00, as detailed in Attachment B.
- 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 Project Manager 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 December 31, 2026.

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:

Signature: Robert Dahn
Robert Dahn (Mar 25, 2024 15:05 PDT)

Signature: Julie Underwood
Julie Underwood (Mar 29, 2024 14:20 PDT)

Printed Name: Robert Dahn

Printed Name: Julie Underwood

(Type City Staff Name)

Title: Director

Title: Deputy City Manager of Operations

Date: Mar 25, 2024

Date: Mar 29, 2024

CITY OF KIRKLAND
NE 85TH ST WATERMAIN RELOCATION

SCOPE OF WORK

Based upon our understanding of the project requirements and discussions with you we have developed the following scope of services:

PROJECT UNDERSTANDING

Atwell, LLC (“Atwell”) will provide construction services for the NE 85th St Watermain Relocation (“Project”) generally consisting of the inspection of the water main relocation work done by Graham in association with the new roundabout at NE 85th St in the City of Kirkland managed by WSDOT.

TASK 001: PROJECT MANAGEMENT AND COORDINATION:

This task is for general coordination and meetings on the project, including coordination with the City, and management of staff. Atwell plans to attend weekly status meetings with City staff and owner’s meeting with WSDOT as requested by the City. Atwell will prepare monthly invoices for work performed during the previous month. Included with the invoices will be pertinent backup materials and progress reports of the project to date.

Deliverables: *Monthly Invoices, Progress Reports*

TASK 002: CONSTRUCTION INSPECTION

Atwell will provide full-time field inspection. Services under this task are anticipated to include:

- Provide preconstruction photos
- Review plans/specifications and visit the site
- Review materials delivered to the site to review compliance with approved submittals
- Provide inspection for all aspects of the construction activity to review Contractor compliance with the contract plans and specifications
- Coordinate pressure testing with City (via City PM and City CIP Inspector) and Contractor
- Record and report the progress of the construction operations to the City throughout the duration of the contract providing Inspector’s Daily Reports
- Monitor the Contractor’s traffic control operations to review compliance with approved Traffic Control Plan. Inspector to drive the work zone each day and coordinate with City and Contractor on compliance
- Be responsive to requests from citizens and businesses
- Provide field record drawing redlines to supplement the Contractor’s redlines
- Prepare final punchlist in collaboration with City Operation and Maintenance staff and city CIP inspector
- Provide post-construction photographs

Deliverables: *Inspector’s Daily Reports, Records of Force Account Work, Construction Progress Photos, Record Drawing Redlines*

Assumptions: *This task assumes a total construction duration of 40 working days at 9 hours of inspections per day with a 10 day allowance for longer working days (multiple shifts per day). Should inspection needs exceed the Task 002 budget, an Additional Services Authorization will be presented to The City.*

CLARIFICATIONS

PROJECT UNDERSTANDINGS AND ASSUMPTIONS:

In preparing the proposal, we have assumed the following:

1. Scope and fees outlined above are based on the Project Understanding included with this proposal as well as the following information (any changes to these documents may result in changes to the fees):
 - a. Correspondence prior to the effective date of this Agreement.
2. The following items are not anticipated to be necessary and are not included in this proposal:
 - a. Construction management and administration.
 - b. Structural, Environmental, Geotechnical, or Transportation Engineering Services.
 - c. Sanitary sewer main replacement/improvements.
 - d. Gas main relocation coordination.
 - e. Power relocation coordination (Client to coordinate).
 - f. Other dry utility relocation coordination.
 - g. Wall or rockery design above 4ft.
 - h. Traffic control plan design (Contractor to provide).
 - i. Potholing during design.
 - j. Flow control design.
 - k. Capacity analysis of existing stormwater conveyance system.
 - l. Environmental documentation/permits beyond what is included in the scope above.
 - m. Construction Administration, and Staking (a separate fee proposal can be provided upon request).
3. Water meter, roof downspout, and side sewer sizing to be performed by others.
4. Standard Client review times will be 2-weeks, unless shown otherwise in a project schedule submitted to the Client.
5. Atwell will not pay any Agency fees on behalf of the Client. This includes any fees associated with permits and easements.
6. Atwell employees will act as the Client's observer for construction activities. At no time will Atwell be responsible for the Contractor's actions, including but not limited to site safety, access, or cleanliness.
7. The fees stated above do not include reimbursable expenses such as large format copies (larger than legal size), mileage, and plots. These will appear under a separate task called **EXPENSES**.
8. Time and expense items are based on Atwell's current hourly rates.
9. These fees stated above are valid if accepted within 30 days of the date of the proposal.
10. Atwell reserves the right to adjust fees per current market conditions for tasks not started within a year of contract execution.
11. Atwell reserves the right to move funds between approved Tasks 001 – 002 as necessary based on approved scope of work provided the overall budget of Tasks 001 – 002 is not exceeded. Client Project Manager will be notified if funds are shifted.
12. Project stops/starts and significant changes to the Project Schedule may result in changes to the fees provided above and a separate fee proposal will be provided.
13. Client revisions requested after the work is completed will be billed at an hourly rate under a new task called Client Requested Revisions. A fee estimate can be provided to the Client prior to proceeding with the revisions.
14. If the Client requests Atwell's assistance in complying with any public records request, including without limitation providing copies of documents and communications, Client will pay Atwell's hourly fees and costs incurred in providing such assistance at then-current rates. Such fees and costs will be billed as a separate task and will be in addition to the maximum or total fees and costs stated in the agreement to which this scope of work is attached.

15. Notwithstanding Section XVI of the Professional Services Agreement regarding Non-Endorsement, the City consent to Atwell including the Project (as defined in Exhibit "A") in lists of municipal projects or utility projects worked on by Atwell in a Statement of Qualifications or similar document used in bids or responses to Requests for Proposals for similar projects or submitted to other municipal, governmental, or similar project sponsors, so long as the information included is factually accurate.

INFORMATION TO BE PROVIDED BY THE CLIENT:

In preparing the proposal, it is understood the following be provided by the Client:

1. Obtaining any offsite easements or right-of-entry including permanent easements (if required) will be the responsibility of the Client.



City of Kirkland

NE 85th St Watermain Relocation

Job Number: 24001718 Prepared By: Grace Garwin, EIT
 Date: 3/8/2024 Checked By: Rob Dahn, PE

Task #	Base Tasks	Senior Project Manager	Project Manager	Construction Inspector	Total Hours	Total Fee	Fee Type
		\$255/hr Hours	\$240/hr Hours	\$165/hr Hours			
001	Project Management and Coordination	16	28	0	44	\$10,800	Not to Exceed
002	Construction Inspection Services	0	0	482	482	\$79,530	Not to Exceed
	Expenses					\$5,000	Not to Exceed
	Total Hours	16	28	482	526		
	Atwell Personnel	\$4,080	\$6,720	\$79,530		\$95,330	

001 Project Management and Coordination		Senior Project Manager	Project Manager	Construction Inspector	Total Hours	
Item #	Description	\$255/hr	\$240/hr	\$165/hr		
		Hours	Hours	Hours		
1	Monthly Invoices/Progress Reports		4		4	
2	General Project Coordination	8	8		16	
3	Management of Staff and Schedule		8		8	
4	Weekly Meetings	8	8		16	
Total Hours		16	28	0	44	
Total Fee		\$4,080	\$6,720	\$0		\$10,800

002 Construction Inspection Services		Senior Project Manager	Project Manager	Construction Inspector	Total Hours	
Item #	Description	\$255/hr	\$240/hr	\$165/hr		
		Hours	Hours	Hours		
1	Inspection Prep			12	12	
2	Full Time Inspections (40 Days @ 9 Hours/Day)			360	360	
3	Additional Support (10 Days @ 9 Hours/Day)			90	90	
4	Final Inspections/Punchlist			16	16	
5	Onsite Meetings/Coordination w/WSDOT			16	16	
Total Hours		0	0	482	482	
Total Fee		\$0	\$0	\$79,530		\$79,530










Atwell LLC - NE 85th St & I-405 Watermain - 32400097


Final Audit Report

2024-03-29

Created:	2024-03-18
By:	Joey Vander Vaart (JVanderVaart@kirklandwa.gov)
Status:	Signed
Transaction ID:	CBJCHBCAABAAKsEx5FdFwyJ-pHRlvxkAnMdsufEI2kpl

"Atwell LLC - NE 85th St & I-405 Watermain - 32400097" History


-  Document created by Joey Vander Vaart (JVanderVaart@kirklandwa.gov)
2024-03-18 - 9:14:45 PM GMT- IP address: 66.235.10.1
-  Document emailed to Robert Dahn (rdahn@atwell-group.com) for signature
2024-03-18 - 9:16:04 PM GMT
-  Email viewed by Robert Dahn (rdahn@atwell-group.com)
2024-03-18 - 9:16:34 PM GMT- IP address: 50.214.53.233
-  Email viewed by Robert Dahn (rdahn@atwell-group.com)
2024-03-25 - 10:04:01 PM GMT- IP address: 50.214.53.233
-  Document e-signed by Robert Dahn (rdahn@atwell-group.com)
Signature Date: 2024-03-25 - 10:05:13 PM GMT - Time Source: server- IP address: 50.214.53.233
-  Document emailed to Leta Santangelo (LSantangelo@kirklandwa.gov) for delegation
2024-03-25 - 10:05:15 PM GMT
-  Document approval delegated to Stephanie Croll (scroll@kirklandwa.gov) by Leta Santangelo (LSantangelo@kirklandwa.gov)
2024-03-26 - 9:09:02 PM GMT- IP address: 76.191.73.2
-  Document emailed to Stephanie Croll (scroll@kirklandwa.gov) for approval
2024-03-26 - 9:09:03 PM GMT
-  Document approved by Stephanie Croll (scroll@kirklandwa.gov)
Approval Date: 2024-03-27 - 10:59:47 PM GMT - Time Source: server- IP address: 76.191.73.2

 Document emailed to Julie Underwood (junderwood@kirklandwa.gov) for signature


2024-03-27 - 10:59:48 PM GMT

 Email viewed by Julie Underwood (junderwood@kirklandwa.gov)


2024-03-29 - 9:19:35 PM GMT- IP address: 76.191.73.2

 Document e-signed by Julie Underwood (junderwood@kirklandwa.gov)

Signature Date: 2024-03-29 - 9:20:02 PM GMT - Time Source: server- IP address: 76.191.73.2

 Document emailed to JamieLynn Estell (jestell@kirklandwa.gov) for delivery

2024-03-29 - 9:20:03 PM GMT

 Email viewed by JamieLynn Estell (jestell@kirklandwa.gov)

2024-03-29 - 9:30:22 PM GMT- IP address: 76.191.73.2

 Document receipt acknowledged by JamieLynn Estell (jestell@kirklandwa.gov)

Receipt Acknowledgement Date: 2024-03-29 - 9:30:27 PM GMT - Time Source: server- IP address: 76.191.73.2

 Agreement completed.

2024-03-29 - 9:30:27 PM GMT