



**PROFESSIONAL SERVICES AGREEMENT  
D2 CREATIVE  
Tourism Digital Marketing Promotion & Consulting (Job 51-23-CMO)**

The City of Kirkland, Washington, a municipal corporation ("City") and D2 CREATIVE LLC, whose address is PO BOX 99, KIRKLAND WA 98083 ("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 **\$70,000**, as detailed in Attachment A. Additional funding may be added over the term of the contract as budget allows.
- 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 City Manager's Office 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 initial term of the Agreement for the Consultant's performance of services specified in Section I is **December 31, 2027**.

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 these 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. The term of this agreement may be extended for 2 years, up to a 5-year maximum, upon mutual agreement and 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: Donald DeVange  
Donald DeVange (Mar 6, 2024 12:36 PST)

Signature: Julie Underwood  
Julie Underwood (Mar 29, 2024 12:50 PDT)

Printed Name: Donald DeVange

Printed Name: Julie Underwood

Title: Principal, Co-Founder

Title: Deputy City Manager

Date: Mar 6, 2024

Date: Mar 29, 2024

# Attachment A

## Tourism Digital Marketing & Promotion Consulting

### STATEMENT OF WORK



CLIENT: City of Kirkland  
D2 Contact: Donald DeVange  
Today's Date: 1/29/2024  
SOW Effective Date: Effective date of signature

This Statement of Work ("SoW") is entered into by the D2 Creative, LLC ("Agency"), and City of Kirkland ("Client") and effective as of the SoW Effective Date above and be in place for up to one year.

#### Description:

The City of Kirkland is executing a tourism and events campaign to promote attendance at events using city grant funds, and to promote people to stay within Kirkland during short or extended visits to the region.

#### Campaign Messaging Development

Agency will develop three (3) campaign messaging concepts for the Client to consider and choose one (1) message for the campaign. Upon choosing a final campaign message Client will receive two (2) rounds of iteration prior to the final delivery of campaigns' messaging.

Campaign Development includes:

- Discovery meeting to share and convey detailed information
- Develop necessary assets to adhere to approved media plan. Exact deliverables to be determined upon media plan approval.
- Develop a second set of assets of same size as initial set for a second phase in calendar year 2024 based on performance of first phase.

Expected deliverables include PDF files showcasing the options, and final assets of chosen messaging.

#### Marketing Consulting, Reporting, Campaign Optimization, & Management

Agency will optimize the campaign throughout the campaign period and occasionally report back to Client about performance and optimization plans on a schedule to be determined at a later date based on scheduling convenience and availability of all stakeholders.

Deliverables include ongoing reporting performance, ongoing communication with city staff, reports and/or presentations for the appropriate city committees.

#### Tourism Event Marketing Program Support and Administration

D2 will work with the City to construct messaging, build campaigns, invoice the City for funds and distribute media as determined appropriate during the program planning process. D2 will also provide reporting to city personnel to show efficacy and results of funds spent. Support costs include \$250/event to provide an event dashboard showing how the funds are utilized.

Deliverables will include access to stakeholders to the performance dashboard located at <https://dashboard.variametrix.com> (login required), copies of assets used to execute the grant, along with invoices or receipts showing the amount invoiced for grants are equal to the amount expensed. A spreadsheet file or PDF will be provided to show activities and expenses in cases where data cannot be provided within the dashboard.

**Milestone Schedule:**

Deliverable	Completion (week of)
Scope of work agreed upon and signed	2/5/24
Campaign Kickoff & Planning Begins	2/12/2024
Messaging creative options reviewed	3/11/2024
Messaging finalized and asset templates created	3/25/2024
Grant enrollment begins	4/1/2024

**Media Plan Deliverables**

- Agency will develop a media plan designed to meet Client’s goals and deliver the following:
- A “Media Mix” document that details an anticipated budget allocation based on media channel breakdown in terms of percent and dollars. Once client approves media mix Agency will negotiate with potential vendors the best value to determine best partners for the campaign.
- A final media plan document with channel allocation and a list of assets needed to execute the media plan.
- D2 will make final assets to vendor spec once full media plan is approved by Client.

**Fee:** NTE \$70,000 (with \$20,000 designated for Tourism Event Marketing Program Support and Admin.)

**Term:** Per the RFP, the initial term of this agreement is 3 years from date of fully executed agreement. Option for a 2-year extension upon mutual agreement and signed amendment.

**Invoice Schedule:**

D2 will invoice Client monthly based on media activities, services rendered, and other expenses approved for the month.

Payments are due on NET 15 terms to provide D2 time to pay media vendors within NET 30 terms.

**Project Assumptions:**

- The total spend for the campaign(s) during calendar year 2024 will be evaluated based on campaign performance, tourism program initiatives and promotions. The budget availability for media and management may not be the same as indicated in the draft timetable above, and the months in which the media spend occurs may also vary from the draft timetable above.
- Invoices include NET totals for media with media billings to be paid by D2 as a courtesy without markup, but media liability remains with client. D2 reserves the right to withhold payment to vendors until funds are received by Client. Any charges, fees, interest, or penalties incurred by D2 for late payments, including wire fees to expedite vendor payments when necessary, will be invoiced to the city above and beyond any rates described in this scope. An additional 1.5% fee to cover WA State B&O tax may also be applied when required.
- D2 will not be liable beyond what is billed for that individual grant (between \$1500-3000) if any issues, complaints, or conflicts arise. Any media funds already disbursed and later questioned will not be refunded unless D2 can acquire a credit.
- In cases where grant funds are not fully utilized, the city will be notified and asked to provide guidance. Any funds that can be reclaimed will be held in escrow for the city to use on a future project. Grant recipients will not have any claim to unspent grant funds. Examples of why funds may not be fully utilized:
  - Credits received after-the-fact for invalid website traffic that should not have been billed.
  - Prepayments needed for rideshare coupons that were not utilized
  - Ancillary amounts that are not high enough in value to continue a buy
- Invoice totals may vary based on changes in scope or discussions not documented in a formal change order.

- Monthly invoices include a tools surcharge to help share the costs of tools, utilities, software licenses and administrative costs associated managing all tools, systems, services, and licenses used by all of D2's clients.
- Company authorizes D2 and partners to accept terms of service and other non-monetary contracts on behalf of Client as required to perform the actions described in this document. This authorization does not give D2 legal authority to act as legal agent for Client, or any of its subsidiaries, affiliates, partners, or other aforementioned stakeholders.
- D2 is not liable for any budget overages client may incur.
- If any dispute arises as a result of D2's operations, total liability will not exceed service fees incurred during the timeframe of the dispute as outlined in the addendum

This Statement of Work, when signed below, authorizes D2 Creative to perform the services described. If the specifications change during the project, the agency will notify the client of the changes and price adjustments that may be needed. Upon written approval of the changes, the agency will be authorized to continue the project.

**D2 CREATIVE, LLC**

**City of Kirkland**

Please see City agreement for signatures

\_\_\_\_\_  
By (Sign) Authorized Representative

\_\_\_\_\_  
By (Sign) Authorized Representative

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Print Title

\_\_\_\_\_  
Print Title

**Payment Terms:**

Invoices are due and payable within Fifteen (15) days after date of the invoice. All fees which are not paid within 45 days after date of the invoice are subject to a late payment fee of 2% per month.

# Digital Marketing Contract: D2 Creative - 32400030

Final Audit Report

2024-03-29

Created:	2024-03-06
By:	Carmine Anderson (cvanderson@kirklandwa.gov)
Status:	Signed
Transaction ID:	CBJCHBCAABAAIOFwLO9oOWj_bZuW9uubaTyxYs91FRvm

## "Digital Marketing Contract: D2 Creative - 32400030" History

-  Document created by Carmine Anderson (cvanderson@kirklandwa.gov)  
2024-03-06 - 8:16:22 PM GMT- IP address: 76.191.73.2
-  Document emailed to don@d2seattle.com for signature  
2024-03-06 - 8:22:06 PM GMT
-  Email viewed by don@d2seattle.com  
2024-03-06 - 8:33:50 PM GMT- IP address: 71.237.175.161
-  Signer don@d2seattle.com entered name at signing as Donald DeVange  
2024-03-06 - 8:36:23 PM GMT- IP address: 71.237.175.161
-  Document e-signed by Donald DeVange (don@d2seattle.com)  
Signature Date: 2024-03-06 - 8:36:25 PM GMT - Time Source: server- IP address: 71.237.175.161
-  Document emailed to Leta Santangelo (LSantangelo@kirklandwa.gov) for approval  
2024-03-06 - 8:36:26 PM GMT
-  Document approval delegated to Darcey Eilers (deilers@kirklandwa.gov) by Leta Santangelo (LSantangelo@kirklandwa.gov)  
2024-03-06 - 9:19:27 PM GMT- IP address: 76.191.73.2
-  Document emailed to Darcey Eilers (deilers@kirklandwa.gov) for approval  
2024-03-06 - 9:19:27 PM GMT
-  Document approved by Darcey Eilers (deilers@kirklandwa.gov)  
Approval Date: 2024-03-22 - 6:17:44 PM GMT - Time Source: server- IP address: 76.191.73.2
-  Document emailed to Julie Underwood (junderwood@kirklandwa.gov) for signature  
2024-03-22 - 6:17:45 PM GMT

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

2024-03-22 - 6:30:20 PM GMT- IP address: 172.56.201.217

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

2024-03-28 - 8:42:05 PM GMT- IP address: 174.215.116.145

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

2024-03-29 - 7:50:47 PM GMT- IP address: 76.191.73.2

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

Signature Date: 2024-03-29 - 7:50:59 PM GMT - Time Source: server- IP address: 76.191.73.2

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

2024-03-29 - 7:51:01 PM GMT

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

2024-03-29 - 8:17:52 PM GMT- IP address: 76.191.73.2

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

Receipt Acknowledgement Date: 2024-03-29 - 8:17:58 PM GMT - Time Source: server- IP address: 76.191.73.2

 Agreement completed.

2024-03-29 - 8:17:58 PM GMT