

PROFESSIONAL SERVICES AGREEMENT 2024 Impact Fee Study

The City of Kirkland, Washington, a municipal corporation ("City") and Financial Consulting Solutions Group, whose address is 7525 166th Ave NE, Suite D-215, Redmond, WA 98052 ("Consultant"), in consideration of the mutual benefits and conditions set forth below, agree and contract 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 \$107,454, as detailed in Attachment A.
- 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. GENERAL ADMINISTRATION AND MANAGEMENT

The Financial Planning 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.

IV. DURATION

The estimated completion date for the Consultant's performance of the services specified in Section I is March 31, 2025. For purposes of paying final invoices and finalizing services, this contract expires on <u>May 30, 2025</u>.

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.

V. 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, including <u>Chapter 42.56 RCW.</u>

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 six 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.

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

- A. To the greatest extent allowed by law the Consultant shall defend, indemnify, and hold harmless the City and its officers, officials, employees, and volunteers ("Indemnified Parties") harmless from any and all claims, injuries, damages, losses or suits (including reasonable attorney fees and costs), arising out of or in connection with Consultant's negligent, tortious, or wrongful acts, errors, or omissions or breach of any of its obligations in performance of this Agreement, except for injuries and damages caused by the sole negligence of the City.
- B. 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 Consultant and the Indemnified Parties, the Contractor's liability hereunder shall be only to the extent of the Consultant's negligence.
- C. It is further specifically and expressly understood that the indemnification provided herein constitutes the Consultant's waiver of immunity under <u>Industrial Insurance</u>,

<u>Title 51 RCW</u>, solely for the purpose of this indemnification. This waiver has been mutually negotiated by the parties.

D. 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. <u>Automobile Liability</u> 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.
- <u>Commercial General Liability</u> 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. <u>Workers' Compensation</u> coverage as required by the Industrial Insurance laws of the State of Washington.
- 4. <u>Professional Liability</u> insurance appropriate to the Consultant's profession.

B. Minimum Amounts of Insurance

Consultant shall maintain the following insurance limits:

- 1. <u>Automobile Liability</u> insurance with a minimum combined single limit for bodily injury and property damage of \$1,000,000 per accident.
- 2. <u>Commercial General Liability</u> insurance shall be written with limits no less than \$1,000,000 each occurrence, \$2,000,000 general aggregate.
- 3. <u>Professional Liability</u> 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.

XXI. SEVERABILITY

Any provision or part of the Agreement held to be void or unenforceable under any law or regulation shall be deemed stricken. Unless such stricken provision goes to the essence of the consideration bargained for by a party, all remaining provisions shall continue to be valid and binding upon the parties, and the parties agree that the Agreement shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

XXII. GOVERNING LAW AND VENUE

This Agreement shall be interpreted in accordance with the laws of the State of Washington. The Superior Court of King County, Washington, shall have exclusive jurisdiction and venue over any legal action arising under this Agreement.

XX. DISPUTE RESOLUTION

All claims, counterclaims, disputes, and other matters in question between City and Consultant arising out of or relating to this Agreement shall be referred to the City Manager or a designee for determination, together with all pertinent facts, documents, data, contentions, and other information. The City Manager or designee shall consult with Consultant's representative and make a determination within thirty (30) calendar days of such referral. No civil action on any claim, counterclaim, or dispute may be commenced until thirty (30) days following such determination.

XXII. EFFECTIVE DATE

This Agreement shall be deemed effective on the last date signed below.

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

CONSULTANT:

Signature: Angia Sanchez

CITY OF KIRKLAND:

Signature: James Lopez

Printed Name: Angie Sanchez Virnoche	Printed Name: James Lopez		
Title: Vice President / Principal	Title:	Deputy City Manager	
Date: Apr 8, 2024	Date:	Apr 8, 2024	

ATTACHMENT A - SCOPE OF WORK

1. Project Kickoff and Data Collection

1.1 Set up project and provide monthly invoices with progress reports.

1.2 Provide a data needs list to the City in advance of the kickoff meeting. Review data, to be provided electronically by the City.

1.3 Meet with City staff to discuss initial data questions, identify and agree on any policy issues to be addressed, clarify project schedule, and kickoff the study.

2. Parks Impact Fee Analysis

2.1 Update forecasted growth to determine the quantity of growth to be served by existing and future facilities. This calculation will include growth in both population (as used in the current methodology) and employment (to facilitate possible charging of non-residential developments).

2.2 Update the impact fee cost basis. As per the City's existing methodology, we will calculate the capital value per residential equivalent and ensure that this cost does not exceed the capacity - related portion of planned capital projects.

2.3 Calculate the impact fee schedule and funding plan. We will use U. S. Census data on housing occupancy to calculate impact fees for residential land uses. Moreover, the fee schedule will reflect new state requirements for the treatment of accessory dwelling units and the scaling of residential impact fees. We will use a demand-based residential equivalency to calculate impact fees for non-residential land uses. The degree to which a non-residential charge can reduce the residential charge will be clearly communicated. The funding plan will clarify what funding in addition to impact fees will be needed to complete the capital improvement plan.

2.4 Revise analysis after review with City staff.

3. Transportation Impact Fee Analysis

3.1 Update forecast growth by using existing and future trip generation to determine the quantity of growth to be served by existing and future facilities. This calculation will be based on the BKR Travel Demand Model. We will interpret this model with the help of DKS Associates.

3.2 Update the impact fee cost basis by estimating the eligible cost of planned projects. To the extent that planned transportation projects will serve new users (rather than cure existing deficiencies), at least a portion of the cost of those projects can be recovered in the impact fee. DKS will provide assistance with determining the capacity-related portion of each project.

3.3 Calculate the impact fee schedule and funding plan. We will use the results of tasks 3.1 and 3.2 to calculate a transportation impact fee per person trip end. We will then use the latest data available from the ITE's Trip Generation to develop a schedule of impact fees by land use. The tripbased methodology will satisfy the new requirement for residential scaling, and we will also ensure that new requirements for accessory dwelling units are met. The funding plan will clarify what funding in addition to impact fees will be needed to complete the capital improvement plan.

3.4 Revise analysis after review with City staff.

4. Fire Impact Fee Analysis

4.1 Estimate existing and future customer base to determine the quantity of growth to be served by existing and future facilities. "Customers" will be measured in number of dwelling units for residential development and in square feet for various categories of non-residential development. The output of this step will be the two denominators in the "buy in plus growth" calculation.

4.2 Update the impact fee cost basis, which will include both existing and future facilities. The output of this step will be the two numerators in the "buy in plus growth" calculation.

4.3 Calculate the impact fee schedule and funding plan. We will use the results of tasks 4.1 and 4.2 to calculate a fire impact fee per dwelling unit or square foot of non-residential development. Moreover, the fee schedule will reflect new state requirements for the treatment of accessory dwelling units and the scaling of residential impact fees. The funding plan will clarify what funding in addition to impact fees will be needed to complete the capital improvement plan.

4.4 Revise analysis after review with City staff.

5. Communication

5.1 Review technical analyses with City staff in up to six meetings to be held via video conference. Feedback received during these meetings will allow us to refine the analyses to best meet the needs of the City.

5.2 Deliver draft report. The draft report will document all findings and recommendations related to the calculation of the three impact fees. The City will have an opportunity to review the document and suggest refinements.

5.3 Present findings and recommendations on site at up to seven public meetings. We will distill the draft report to a set of PowerPoint slides and deliver up to seven presentations to audiences of the City's choice, but almost certainly to include the City Council, the Park Board, and the Transportation Commission.

5.4 Deliver final report. The final version will reflect the feedback that was solicited in Task 5.2.

SCHEDULE

The updated schedule below reflects both the updated scope and a later start time for the transportation impact fee analysis. The goal is to complete the project by the end of the calendar year, but the contract will reflect a deadline of March 31, 2025.



Project Task	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
Task 1: Project Kickoff and Data Collection									
1.1 Set up and manage project									
1.2 Request and review data									
1.3 Facilitate kickoff meeting via video conference									
Task 2: Parks Impact Fee Analysis									
2.1 Update forecasted growth									
2.2 Update cost basis									
2.3 Calculate impact fee schedule and funding plan									
2.4 Revise analysis after review with City staff									
Task 3: Transportation Impact Fee Analysis									
3.1 Update forecasted growth									
3.2 Update cost basis									
3.3 Calculate impact fee schedule and funding plan									
3.4 Revise analysis after review with City staff									
Task 4: Fire Impact Fee Analysis									
4.1 Update forecasted growth									
4.2 Update cost basis									
4.3 Calculate impact fee schedule and funding plan									
4.4 Revise analysis after review with City staff									
Task 5: Communication									
5.1 Review technical analyses with City staff via video conference (6)			**	°2 2			2 2 1	2	
5.2 Deliver draft report									
5.3 Present findings and recommendations up to seven times						e 🔤 📮			₩
5.4 Deliver final report									

BUDGET

FCS GROUP proposes to complete these tasks at a cost not to exceed \$107,454. Below is a detailed budget by individual task and team member:

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	On	Ghilarducci	Gabbard	Nelson	Flisakowski	Keenan	Thompson	Admin	Total	Expense	Budget
Task Detail	Site	Principal	PM	Sr. Analyst	DKS	DKS	DKS	Support	Hours	Budget	Estimate
Task 1: Project Kickoff and Data Collection											
1.1 Set up and manage project			8					6	14		\$2,510
1.2 Request and review data			2	8					10		\$1,910
1.3 Facilitate kickoff meeting via video conference		2	4	4					10		\$2,270
Task 1 Subtotal	0	2	14	12	0	0	0	6	34	\$0	\$6,690
Task 2: Parks Impact Fee Analysis											
2.1 Update forecasted growth			2	4					6		\$1,190
2.2 Update cost basis		1	4	16					21		\$4,125
2.3 Calculate impact fee schedule and funding plan		1	1	2					4		\$900
2.4 Revise analysis after review with City staff		1	1	4					6		\$1,260
Task 2 Subtotal	0	3	8	26	0	0	0	0	37	\$0	\$7,475
Task 3: Transportation Impact Fee Analysis											
3.1 Update forecasted growth			2	4	17	50	111		184		\$42.754
3.2 Update cost basis		1	4	16					21		\$4,125
3.3 Calculate impact fee schedule and funding plan		1	1	2					4		\$900
3.4 Revise analysis after review with City staff		1	1	4					6		\$1,260
Task 3 Subtotal	0	3	8	26	17	50	111	0	215	\$0	\$49,039
Task 4: Fire Impact Fee Analysis											
4.1 Update forecasted growth			2	4					6		\$1.190
4.2 Update cost basis		1	4	16					21		\$4,125
4.3 Calculate impact fee schedule and funding plan		1	1	2					4		\$900
4.4 Revise analysis after review with City staff		1	1	4					6		\$1,260
Task 4 Subtotal	0	3	8	26	0	0	0	0	37	\$0	\$7,475
Task 5: Communication											
5.1 Review technical analyses with City staff via video conference (6)		12	12	12					36		\$8,640
5.2 Deliver draft report		1	4	18					23		\$4,485
5.3 Present findings and recommendations up to seven times	7	28	37	14					79	\$2,400	\$19,755
5.4 Deliver final report		1	2	4					7		\$1,495
Task 5 Subtotal	7	42	55	48	0	0	0	0	145	\$2,400	\$34,375
Labor Total		\$16,165	\$21,855	\$24,840	\$4,769	\$12,375	\$24,420	\$630			\$105,054
Expenses											\$2,400
Budget Estimate											\$107,454
Cost Summary											
Total Hours		53	93	138	17	50	111	6	468		
Billing Rate		305	235	180	281	248	220	105			

2024 FCS and Kirkland Impact Fee Study Update Agreement

Final Audit Report

2024-04-08

Created:	2024-04-05
By:	Melissa Bartoletti (MBartoletti@kirklandwa.gov)
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- Document created by Melissa Bartoletti (MBartoletti@kirklandwa.gov) 2024-04-05 - 5:06:32 PM GMT- IP address: 24.18.67.0
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- Melissa Bartoletti (MBartoletti@kirklandwa.gov) added alternate signer Angie Sanchez (angies@fcsgroup.com). The original signer johng@fcsgroup.com can still sign.
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Ð	Melissa Bartoletti (MBartoletti@kirklandwa.gov) added alternate signer James Lopez (jlopez@kirklandwa.gov). The original signer Julie Underwood (junderwood@kirklandwa.gov) can still sign.
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Óe	Document e-signed by Angie Sanchez (angies@fcsgroup.com) Signature Date: 2024-04-08 - 9:00:27 PM GMT - Time Source: server- IP address: 24.18.92.192
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	2024-04-08 - 9:00:29 PM GMT
	Document emailed to James Lopez (jlopez@kirklandwa.gov) for signature
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