



PROFESSIONAL SERVICES AGREEMENT
SDC151: 83rd Ave NE And NE 110th PI Storm Improvements

The City of Kirkland, Washington, a municipal corporation ("City") and KPG Psomas, INC., whose address is 2502 Jefferson Ave Tacoma, WA, 98402 ("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 A 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 **\$54,045.00**, 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 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 Project Engineer 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 August 31, 2025.

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

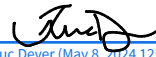
Recipient certifies that it is not suspended, debarred, proposed for debarment, declared ineligible or otherwise excluded from contracting with the federal government, or from receiving contracts paid for with federal funds.

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

CONSULTANT:

CITY OF KIRKLAND:

Signature: 

Signature: 
Truc Dever (May 8, 2024 12:59 PDT)

Printed Name: Terry Wright

Printed Name: Truc Dever
(Type City Staff Name)

Title: Vice President

Title: Interim Public Works Director

Date: 5/1/2024

Date: May 8, 2024

EXHIBIT A-1

CITY OF KIRKLAND

**83rd Ave SE Storm Replacement
Onsite Construction Observation**

**JOB. NO. 26-23-PW
CIP NO. SDC-1510000**

SCOPE OF WORK

This scope provides onsite construction observation and contract management throughout the construction phase of the North Rose Hill Stormwater Infiltration Wells Project.

A. PROJECT DESCRIPTION/SUPPORT ASSUMPTIONS BY TASK/BACKGROUND

Project Description

The project includes the removal and replacement of existing storm with the installation of new 24 inch storm line and catch basins, as well as provides for the relocation of an 8" DIP water line (NUD), roadway grind and overlay, permanent channelization, and driveway and landscape restoration.

Support Assumptions by Task:

Duration and Hours (May 2024 to June 2024: 2 Months and up to 30 working days), 8 hrs/day, Monday through Friday during daytime work hours.

Task 1: Management/Coordination/Administration (2 months)

Starts on or about May 2024 and lasts the duration of the project, approximately 2 months, through closeout, concluding on or about June 2024.

Task 100	Assumed Hours per Month	Months	Total Hours
Construction Manager	3	2	6
Sr. Admin	4	2	8

- The Consultant shall prepare monthly progress reports identifying work completed in the previous month, work in progress, upcoming work elements, and reporting of any delays, problems, or additional information needs. These reports shall be submitted with the Consultant invoices.
- The Consultant shall provide continuous management and administration of all sub-consultants included in this scope of work, including overseeing overall project file set-up.

Task 2: Provide Onsite Construction Observation

Starts on or about May 2024 and concludes in June 2024. NTP has not been established to date.

Assume average of 9 hour days for Construction Observer to account for minor instances of overtime by Contractor – 270 hours for 30 days.

Assume 20 hours of preconstruction support for reading plans and specs, attending preconstruction meeting, and visiting the site to take preconstruction photos ahead of NTP. City shall prepare agenda for, lead meeting, and distribute minutes for preconstruction meeting and progress meetings.

Assume 40 hours of closeout for estimated 1 week of observing punchlist work after contractor attains substantial completion.

Construction Manager	12
Onsite Const. Observer	330

One Construction Observer supports the project for each of the 30 Working Days. The Construction Observer will provide and/or perform the following:

- Provide Inspector Daily Reports
- Produce Ticket Tabulations for items paid for by the Ton.
- Provide input to weekly project meeting agendas.
- Observe Contractor's work and document that the project is built according to the Contract Documents.
- Prepare and submit Field Note Records for payment.
- Monitor the Contractor's traffic control procedures and implementation of the approved traffic control plans, which could include notification to the Contractor on deficiencies that require immediate correction.
- Monitor the Contractor's temporary erosion and sediment control procedures and systems and provide recommendations.
- Prepare punch list items in conjunction with City staff.
- Take project construction photos as work progresses and place in the project file.
- Stay current with the material testing and RAM logs. Coordinate material testing with Subconsultant HWA with input from City.
- City to lead coordination efforts with all Utilities.
- Provide informal coordination with local businesses, traveling public, residences, and adjacent developers. City to lead formal community outreach efforts.
- Assist with monthly progress Pay Estimate generation, including measurement of quantities installed.

All material testing coordination and subconsultant administration is included within existing tasks and not separately accounted for.

MANAGEMENT RESERVE

There is no management reserve included in this budget. City acknowledges that changes in scope may require a supplement in order to have sufficient budget to complete any additional work, including support during suspensions, change orders adding contract time, significant accumulation of non-working days due to weather or other circumstances, change management and claim support, or other factors which may extend the Construction Management effort beyond the scope contained in this estimate.

For estimate purposes, the approximate cost per day for additional support is \$1,300/day. This cost does not include any additional work that may need to be performed by subconsultants.

These services are intended to assist the City to administer the Contract for construction performed by the City Contractor, confirm that the Contractor's work is in general conformance with the Contract Documents, and assist in responding to events that occur during construction. These services are based upon the understanding that the CITY will contract directly with the Contractor and will be actively involved in the construction process to make decisions, provide approvals, manage changes, assist with inspections, and perform other actions necessary for the completion of the construction.

Contract Documents

Contract Documents refer to the construction contract documents between the CITY and the Contractor. These documents include the project plans, specifications, change orders, addendums, bid proposal package, and other documents such as the geotechnical report, CITY, and WSDOT Standard Plans included by reference.

Assumptions

The presence or duties of Consultant personnel at the construction site, whether as onsite representatives or otherwise, does not make KPG Psomas personnel in any way responsible for those duties that belong to franchise utilities, the CITY, and/or the Contractors or other entities. Consultant presence, coordination, and review of work does not relieve the Contractors or any other entity of their obligations, duties, and responsibilities, including, but not limited to, construction methods, means, techniques, sequences, and procedures necessary for coordinating and completing the construction work in accordance with the Construction Contract Documents and any health or safety precautions required by such construction work.

Consultant personnel have no authority to exercise any control over any construction Contractor or other entity or their employees in connection with their work or any health or safety precautions.

The presence of Consultant personnel at the site is for the purpose of providing the CITY a greater degree of confidence that the completed construction work will conform generally to the Contract Documents and that the integrity of the design concept as reflected in the construction documents has been implemented and preserved by the Contractor(s). Consultant neither guarantees the performance of the Contractor(s) nor assumes responsibility for the Contractor's failure to perform work in accordance with Contract Documents.

The authority of the Engineer, as described in Section 1-05 Authority of the Engineer in the Contract Documents, shall rest entirely with the CITY.



EXHIBIT X
PRIME CONSULTANT COST COMPUTATIONS
 Client: City of Kirkland
 Project Name: 83rd Ave SE Storm Replacement
 KPG Psomas Inc. Project Number: 9KIR010800
 30 working days
 Date: 4/15/23

Task No.	Task Description	Labor Hour Estimate													Hours	Total Hours and Labor Cost Computations by Task
		Senior Construction Manager	Construction Manager	Senior Resident Engineer	Resident Engineer	Senior Construction Observer	Construction Observer I	Construction Observer II	Construction Observer III	Document Control Specialist I	Document Control Specialist II	Document Control Specialist III	Senior Admin	Office Admin		
		244	196	188	154	190	106	130	142	115	135	146	139	110		
Task 1 - MANAGEMENT / COORDINATION / ADMINISTRATION																
1.1	Project Management and Administrative Services		4											6	10	\$ 1,618.00
1.2	Prepare, review and submit monthly expenditures		2											2	4	\$ 670.00
	Task Total	0	6	0	0	0	0	0	0	0	0	0	0	8	14	\$ 2,288.00
Task 2 - Provide Onsite Construction Observation																
2.1	Preconstruction Services		4					20							24	\$ 3,624.00
2.2	NTP to Substantial Completion Onsite Observ. (8.5 hr/day)		6					255							261	\$ 37,386.00
2.3	Closeout & Punchlist		2					40							42	\$ 6,072.00
	Task Total	0	12	0	0	0	0	315	0	0	0	0	0	0	327	\$ 47,082.00
	Total Labor Hours and Fee	0	3,528	0	0	0	0	44,730	0	0	0	0	1,112	0	341	\$ 49,370.00
Subconsultants																
																HWA Geosciences (Material Testing) \$ 3,500.00
																Subtotal \$ 3,500.00
																Administrative Charge (5%) \$ 175.00
																Total Subconsultant Expense \$ 3,675.00
Reimbursable Direct Non-Salary Costs																
																Mileage at current IRS rate \$ 1,000.00
																Reproduction Allowance
																Total Reimbursable Expense \$ 1,000.00
																Management Reserve \$ -
																Total Estimated Budget \$ 54,045.00