



PROFESSIONAL SERVICES AGREEMENT

Investment Advisory Services



The City of Kirkland, Washington, a municipal corporation ("City") and **Government Portfolio Advisors**, whose address is 6650 SW Redwood Lane, Suite 365 Portland, OR 97224 ("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 for the City's Investment Advisory Services, as such services were described and detailed in the City's Request for Proposal (RFP) Job # 15-24-FA and all documents submitted by Consultant in response, which are hereby fully incorporated herein as part of this Agreement as if set forth herein, and as such services are further described in Attachment A to this Agreement.
- 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 \$325,000, 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 Director of Finance and Administration 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. COMPLETION DATE

The term of services begins September 1, 2024. The estimated completion date for the Consultant's performance of the services specified in Section I is August 31, 2027; For purposes of paying final invoices and finalizing services, this contract expires on October 31, 2027. However, the City may request two additional one-year extensions as authorized in the City's 2024 request for proposal (Job # 15-24-FA).

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.

VI. 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 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

To the greatest extent allowed by law the Contractor shall defend, indemnify and hold the City, its officers, officials, employees and volunteers harmless from any and all claims, injuries, damages, losses or suits including attorney fees, arising out of or in connection with performance of this Agreement, except for injuries and damages caused by the sole negligence of the City.

Should a court of competent jurisdiction determine that this Agreement is subject to RCW 4.24.115, then, in the event of liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of the Contractor and the City, its officers, officials, employees, and volunteers, the Contractor's liability hereunder shall be only to the extent of the

Contractor's negligence. It is further specifically and expressly understood that the indemnification provided herein constitutes the Contractor's waiver of immunity under Industrial Insurance, Title 51 RCW, solely for the purpose of this indemnification. This waiver has been mutually negotiated by the parties. The provisions of this section shall survive the expiration or termination of this Agreement.

X. LIABILITY INSURANCE COVERAGE

The Consultant shall procure and maintain for the duration of the Agreement, insurance against claims for injuries to persons or damage to property which may arise from or in connection with the performance of the work hereunder by the Consultant, its agents, representatives, or employees. A failure to obtain and maintain such insurance or to file required certificates and endorsements shall be a material breach of this Agreement.

Consultant's maintenance of insurance as required by the agreement shall not be construed to limit the liability of the Consultant to the coverage provided by such insurance, or otherwise limit the City's recourse to any remedy available at law or in equity.

A. Minimum Scope of Insurance

Consultant shall obtain insurance of the types described below:

- ~~1. Automobile Liability insurance covering all owned, non-owned, hired and leased vehicles. Coverage shall be as least as broad as Insurance Services Office (ISO) form CA 00 01 or a substitute form providing equivalent liability coverage. If necessary, the policy shall be endorsed to provide contractual liability coverage.~~
2. Commercial General Liability insurance shall be as least as broad as ISO occurrence form CG 00 01 and shall cover liability arising from premises, operations, stop-gap independent contractors and personal injury and advertising injury. The City shall be named as an additional insured under the Consultant's Commercial General Liability insurance policy with respect to the work performed for the City using an additional insured endorsement at least as broad as ISO CG 20 26.
3. Workers' Compensation coverage as required by the Industrial Insurance laws of the State of Washington.
4. Professional Liability insurance appropriate to the Consultant's profession.

B. Minimum Amounts of Insurance

Consultant shall maintain the following insurance limits:

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

C. Other Insurance Provisions

The insurance policies are to contain, or be endorsed to contain, the following provisions for Automobile Liability and Commercial General Liability insurance:

1. The Consultant's insurance coverage shall be primary insurance as respects the City. Any insurance, self-insurance, or self-insured pool coverage maintained by the City shall be excess of the Consultant's insurance and shall not contribute with it.
2. The Consultant shall provide the City and all Additional Insureds for this services with written notice of any policy cancellation, within two business days of their receipt of such notice.

D. Acceptability of Insurers

Insurance is to be placed with insurers with a current A.M. Best rating of not less than A:VII.

E. Verification of Coverage

Consultant shall furnish the City with original certificates and a copy of the amendatory endorsements, including but not necessarily limited to the additional insured endorsement, evidencing the insurance requirements of the Consultant before commencement of the services.

F. Failure to Maintain Insurance

Failure on the part of the Consultant to maintain the insurance as required shall constitute a material breach of agreement, upon which the City may, after giving five business days' notice to the Consultant to correct the breach, immediately terminate the agreement or, at its discretion, procure or renew such insurance and pay any and all premiums in connection therewith, with any sums so expended to be repaid to the City on demand, or at the sole discretion of the City, offset against funds due the Consultant from the City.

G. City Full Availability of Consultant Limits

If the Consultant maintains higher insurance limits than the minimums shown above, the City shall be insured for the full available limits of Commercial General and Excess or Umbrella liability maintained by the Consultant, irrespective of whether such limits maintained by the Consultant are greater than those required by this agreement or whether any certificate of insurance furnished to the City evidences limits of liability lower than those maintained by the Consultant.

XI. COMPLIANCE WITH LAWS/BUSINESS LICENSE

The Consultant shall comply with all applicable State, Federal, and City laws, ordinances, regulations, and codes. Consultant must obtain a City of Kirkland business license or otherwise comply with Kirkland Municipal Code Chapter 7.02.

XII. FUTURE SUPPORT

The City makes no commitment and assumes no obligations for the support of Consultant activities except as set forth in this Agreement.

XIII. INDEPENDENT CONTRACTOR

Consultant is and shall be at all times during the term of this Agreement an independent contractor and not an employee of the City. Consultant agrees that he or she is solely responsible for the payment of taxes applicable to the services performed under this Agreement and agrees to comply with all federal, state, and local laws regarding the reporting of taxes, maintenance of insurance and records, and all other requirements and obligations imposed on him or her as a result of his or her status as an independent contractor. Consultant is responsible for providing the office space and clerical support necessary for the performance of services under this Agreement. The City shall not be responsible for withholding or otherwise deducting federal income tax or social security or for contributing to the state industrial insurance or unemployment compensation programs or otherwise assuming the duties of an employer with respect to the Consultant or any employee of Consultant.

XIV. EXTENT OF AGREEMENT/MODIFICATION

This Agreement, together with all attachments and addenda, represents the final and completely integrated Agreement between the parties regarding its subject matter and supersedes all prior negotiations, representations, or agreements, either written or oral. This Agreement may be amended only by written instrument properly signed by both parties.

XV. ADDITIONAL WORK

The City may desire to have the Consultant perform work or render services in connection with the project other than provided for by the express intent of this Agreement. Any such work or services shall be considered as additional work, supplemental to this Agreement. This Agreement may be amended only by written instrument properly signed by both parties.

XVI. NON-ENDORSEMENT

As a result of the selection of a consultant to supply services to the City, the consultant agrees to make no reference to the City in any literature, promotional material, brochures, sales presentation or the like without the express written consent of the City.

XVII. NON-COLLUSION

By signature below, the Consultant acknowledges that the person, firm, association, co-partnership or corporation herein named, has not either directly or indirectly entered into any agreement, participated in any collusion, or otherwise taken any action in restraint of free competitive bidding in the preparation or submission of a proposal to the City for consideration in the award of a contract on the specifications contained in this Agreement.

XVIII. WAIVER

Waiver by the City of any breach of any term or condition of this Agreement shall not be construed as a waiver of any other breach.

XIX. ASSIGNMENT AND SUBCONTRACT

The Consultant shall not assign or subcontract any portion of the services contemplated by this Agreement without the prior written consent of the City.

XX. DEBARMENT

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

XXI. 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.

XXII. 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. Nothing herein waives any requirements of chapter 4.96 RCW, if applicable.

XXIII. 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.

XXIV. GPA-REQUESTED ADDITION TO THE AGREEMENT

- A. PERFORMANCE RECORDS: The ADVISOR maintains composites of returns which are audited performance records that conform to the Global Investment Performance Standards (GIPS). THE CITY acknowledges that the advisor shall have the right to retain historical performance data from inception date to the termination date of THE CITY, during the term of this agreement and such period thereafter, that the ADVISOR continues to show performance. ADVISOR shall defend and indemnify and hold THE CITY harmless for any claims that arise or relate in any way, from ADVISOR's use of such information.
- B. LIABILITY OF LOSS: The ADVISOR shall have not liability for any losses arising out of the delays in performing or inability to perform the services which it renders under this Agreement which result from events beyond its control, including interruption of business activities of the ADVISOR or other financial institutions due to acts of God, acts of governmental CITY, acts of war, terrorism, civil riots, labor disputes or any action or

inaction due to malfunction. The ADVISOR does not guarantee future performance or any specific level of performance, and THE CITY understands that the market value of investments may fluctuate and at any point in time be worth more or less than the amount originally invested.

- C. ANTI-MONEY LAUNDERING: THE CITY understands that the Advisor prohibits the investment of funds by any persons or entities that are acting, directly or indirectly, in any type of money laundering activities or on behalf of terrorist organizations, including those persons or entities that are included on the List of Specially Designated Nationals and Blocked Persons maintained by the U.S. Treasury Department's Office of Foreign Assets Control ("OFAC") which is available at <http://www.treas.gov/ofac>. THE CITY represents, warrants and covenants that it is not, nor is any person or entity controlling, controlled by or under common control with it a "Prohibited Person" as identified by the OFAC.
- D. CONSENT TO ELECTRONIC DELIVERY OF DOCUMENTS; OTHER DISCLOSURES: The ADVISOR is required to provide annual or periodic disclosures to THE CITY and must record and maintain records of its delivery. THE CITY consents to the delivery of documents related to the investment advisory service described within this Agreement in an electronic manner, as described below:

Documents subject to this Consent to Electronic Delivery include the Form ADV Part 1, Part 2A, and Part 2B, account reports and reviews and other information about account activity, and any disclosure or notification that is required under applicable regulations, other regulatory communications, and Privacy Policy information.

THE CITY agrees and acknowledges that delivery of documents may be via electronic means, including, but not limited to, a PDF file to the email addresses provided to the ADVISOR by client, or via secure online access to such documents. ADVISOR may use electronic delivery to effectively deliver any or all documents related to the relationship between THE CITY and ADVISOR. THE CITY acknowledges that it has access to this media and the ability to print and/or download the information provided thereby.

THE CITY will provide appropriate e-mail addresses for sending electronic information consistent with these terms of electronic delivery. THE CITY will notify ADVISOR in writing if delivery should be made to any additional e-mail addresses or if delivery to any of the initially provide e-mail addresses should be discontinued. It is THE CITY's responsibility to provide ADVISOR with updates regarding changes to any authorized email addresses. Should it come to the attention of the ADVISOR that the e-mail addresses provided are not functioning, all documents will be sent in paper form. The consent to electronic delivery is valid until such consent is revoked, in writing, to the ADVISOR by THE CITY. Occasional requests for paper documents does not trigger revocation of this consent.

- E. SAFEKEEPING: THE CITY acknowledges that it will assign a third-party custodial bank, which will be a qualified custodian under Rule 206(4)-2 of the Investment Advisers Act of 1940. The designated custodian shall have the sole responsibility to settle any and all purchases, sales, deliveries, receipts and other transactions made with respect to the Account, the collection of all income, and the acquisition and safekeeping of the assets, securities, funds and other properties comprising the Account. THE CITY will control all fund transfers in and out of the account. The ADVISOR will not hold or have custody or possession of any cash, securities or other properties of the Client or assets of the Account.

THE CITY agrees to promptly furnish, or to instruct the custodial bank to furnish, all data and information the ADVISOR may reasonably request to complete the setup and render services described in this Agreement.

THE CITY acknowledges that it receives custodial statements at least quarterly from the custodial bank, indicating the total funds and each asset in the account at the end of the reporting period (which shall be no less frequently than quarterly) and sets forth all transactions of the Account during such period. Client acknowledges it has been advised to reconcile the report from the ADVISOR with the statement provided by the custodian bank and to notify the ADVISOR immediately if there are any discrepancies.

THE CITY shall instruct the custodian bank to carry out all transactions directed, in writing or electronically, by the ADVISOR.

THE CITY will provide ADVISOR prompt written notice in advance of engaging a new custodian bank in connection with the Account.

F. NON-DISCRETIONARY SERVICES: THE ADVISOR will discuss overall strategy and investment structure with the client. Trade proposals will be sent to the designated authorized person for approval prior to execution of the transaction. Once the approval is provided to the ADVISOR, the trade will be transacted at the prevailing competitive prices at the time of trade.

XXIII. EFFECTIVE DATE

This Agreement shall be deemed effective retroactively starting September 1, 2024.

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

CONSULTANT:
Signature: Deanne Woodring

CITY OF KIRKLAND:
Signature: Julie Underwood
Julie Underwood (Sep 30, 2024 17:14 PDT)

Printed Name: Deanne Woodring

Printed Name: Julie Underwood
(Type City Staff Name)

Title: President

Title: Deputy City Manager o

Date: 09/30/2024

Date: 09/30/2024

Attachment A

Scope of Services:

- 1) Provide full-time, non-discretionary advisory services for the City's investment portfolio. Presently, it is estimated that the advisory services cover managing a balance of \$225 million or more.
- 2) Be available in a timely manner, in person, by telephone or e-mail, for consultation or advice. Meet with and provide information to city staff, Council and Investment Committee members as needed. Meet periodically with staff to review and refine portfolio strategy and performance. (Both on and off-site, daytime and evening meetings are possible).
- 3) Comply with all federal laws and state of Washington laws and the ordinances, resolutions and policies of the City of Kirkland.
- 4) Provide assistance in developing and implementing investment strategies that will maintain or enhance portfolio quality and performance within the parameters of the City's established investment policies and cash flow needs, taking into consideration the objectives listed in the City's Investment Policy.
- 5) Work with the City's cash management staff to assure completion of investment trades, delivery of the securities and availability of funds, assist with trade settlements when needed, obtain and document competitive prices for securities transactions. Provide technical and fundamental market research including yield curve analysis and future interest rate movements.
- 6) Providing investment advice including breakeven analysis on recommendations made to sell low yield securities and replace them with higher yielding securities.
- 7) Assist in the annual review and update of the City's Investment Policy. Assist in the review of investment management procedures and portfolio documentation, as well as, safekeeping and custodial procedures.
- 8) Perform due diligence reviews of current and proposed broker/dealers and financial institutions as described in the City of Kirkland Investment Policy. Monitor the creditworthiness of the financial institutions with which the City does business. Assist in keeping the authorized financial institution list updated. Monitor the creditworthiness of the City's depository and custodian bank and investments in the portfolio.
- 9) Provide detailed reports of investment portfolio activity and performance at least monthly, including a report that demonstrates the benefit on the portfolio's return of using an investment advisor. Reports should include relevant benchmarks, earnings and accounting methodology. Reports shall follow Generally Accepted Accounting Principles (GAAP) and Governmental Accounting Standards Board (GASB) fair value reporting. Provide separate semi-annual and annual portfolio performance reports based on the City's fiscal year.
- 10) Provide weekly, to City staff, statement of upcoming cash flows that includes maturities, coupons, called securities and potential callables for a period of 45 days. Upon request, have the ability to provide a statement of upcoming cash flows for a six-month period.
- 11) Provide City staff with ongoing training and technical advice as needed.
- 12) Provide itemized monthly invoices of charges and provide periodic status reports on the services provided by the firm.

Fee Schedule:

This agreement uses a tiered Assets Under Management (AUM) pricing model for GPA’s services, which allows GPA’s clients to balance the application of fees based on true balances and is transparent when assets increase or decrease over the duration of the contract. GPA is providing the following tiered fee schedule based on total AUM including Local Government Investment Pool LGIP (LGIP) and bank balances, which are considered liquid investments.

<u>Assets Under Management</u>	<u>Fee in basis points</u>
First \$100,000,000	3.5
Next \$100,000,000	3.0
Next \$100,000,000	2.5
Excess of \$300,000,000	2.0

The fee amount will vary depending on the actual balances of the City’s total funds (investments and liquidity). The fee will be calculated utilizing the GPA reporting system and will be based on the month end market value (including accrued) of investments, LGIP, and liquid investment bank balances.

Utilizing an expected average portfolio balance of \$250 million, the estimated fee would be calculated as follows:

$$(\$100 \text{ million} \times 0.035\%) + (\$100 \text{ million} \times 0.03\%) + (\$50 \text{ million} \times 0.025\%) = \$77,500 \text{ annually}$$

Optional Service Add-On for Direct Relationship with Clearwater:

GPA has negotiated with Clearwater Analytics to provide an add-on service for GPA clients, which will allow for a direct relationship with Clearwater accounting. GPA indicates that this service enhances GPA’s client’s workflow as reporting data such as interest and amortization links directly to the GL and can become the book of record.

The additional cost is billed through GPA but flows through to Clearwater. Many of GPA’s clients are finding that the ability to use the same numbers and eliminate certain reporting entries is an added value. The fee for the direct relationship service through Clearwater is .375 basis points. This would be charged monthly.

The City is not currently utilizing this add-on service with Clearwater. In the event the City desires to add this service in the future, the parties will enter into an amendment to this Agreement to add the service with the terms stated above, unless more favorable terms are offered to the City at the time of the amendment.