

RESOLUTION R-4973

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF KIRKLAND APPROVING AN INTERLOCAL AGREEMENT BETWEEN THE CITY OF KIRKLAND AND THE CITY OF BELLEVUE TO ALLOW KIRKLAND TO UTILIZE THE JOB ORDER CONTRACTING CONTRACT OF THE BERSCHAUER PHILLIPS CONTRACT AND THE GORDIAN AGREEMENT.

WHEREAS, the City of Bellevue has entered into various job order contracts with Berschauer Phillips Construction Company as authorized by Chapter 39.10, Revised Code of Washington, including the Job Order Contracting Contract between Bellevue and Berschauer Phillips dated July 8, 2010; and

WHEREAS, Bellevue has also contracted for consulting services with the Gordian Group regarding the development and management of these job order contracts pursuant to a Job Order Contracting Consulting Services Agreement between Bellevue and Gordian dated December 2, 2009; and

WHEREAS, the City of Kirkland wishes to utilize, in part, the terms and conditions of the Berschauer Phillips Contract and the Gordian Agreement to perform various Kirkland work order projects on Kirkland facilities; and

WHEREAS, Bellevue desires to enter into this Agreement with the City of Kirkland to allow Kirkland to utilize the terms and conditions of the Berschauer Phillips Contract and the Gordian Agreement; and

WHEREAS, Chapter 39.34 RCW authorizes Kirkland and Bellevue to enter into an interlocal cooperation agreement to perform any governmental service, activity or undertaking which each contracting party is authorized by law to perform;

NOW, THEREFORE, be it resolved by the City Council of the City of Kirkland as follows:

Section 1. The City Manager is hereby authorized and directed to execute on behalf of the City of Kirkland an Interlocal Agreement substantially similar to that attached as Exhibit "A", which is entitled "Interagency Agreement Between City of Bellevue Washington and City of Kirkland Washington."

Passed by majority vote of the Kirkland City Council in open meeting this 16th day of April, 2013.

Signed in authentication thereof this 16th day of April, 2013.


MAYOR

Attest:


City Clerk

INTERAGENCY AGREEMENT BETWEEN
CITY OF BELLEVUE WASHINGTON

AND

CITY OF KIRKLAND WASHINGTON

INTERAGENCY AGREEMENT NO: _____
_____, 2013

This Agreement is made and entered into by and between the City of Bellevue, Washington, hereinafter referred to as "Bellevue" and the City of Kirkland, Washington, hereinafter referred to as "Kirkland," each party having been duly organized and now existing under the laws of the State of Washington.

WHEREAS, Bellevue has entered into various job order contracts with Berschauer Phillips Construction Company; ("Berschauer Phillips") as authorized by Chapter 39.10, Revised Code of Washington, including that certain Job Order Contracting Contract between Bellevue and Berschauer Phillips dated August 2, 2012 ("Berschauer Phillips Contract"); and

WHEREAS, Bellevue has also contracted for consulting services with The Gordian Group ("Gordian") regarding the development and management of these job order contracts pursuant to that certain Job Order Contracting Consulting Services Agreement between Bellevue and Gordian dated December 2, 2009 ("Gordian Agreement"); and

WHEREAS, Kirkland wishes to utilize, in part, the terms and conditions of the Berschauer Phillips Contract and the Gordian Agreement to perform various Kirkland work order projects on Kirkland facilities; and

WHEREAS, Bellevue desires to enter into this Agreement with Kirkland to allow Kirkland to utilize the terms and conditions of the Berschauer Phillips Contract and the Gordian Agreement; and

WHEREAS, the parties hereto have determined that they have the authority to enter into this Agreement in accordance with Washington law (RCW 39.34) and their respective policies and procedures, as amended.

NOW, THEREFORE, in consideration of the above and foregoing recitals, the mutual promises and covenants herein contained, and for other good and valuable consideration, the sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

1. STATEMENT OF WORK

Bellevue shall pursue a no cost change to the Gordian Agreement requesting that Gordian furnish the consulting services described in such Agreement directly to Kirkland on the same terms and conditions of the Gordian Agreement, except that the obligations owed to the City of Bellevue under such agreement will be owed by Gordian to Kirkland, including but not limited to obligations to provide performance and payment bonds for work performed and insurance endorsements that name the City of Kirkland as additional insured. Thereafter, Gordian shall directly invoice Kirkland for any and all such services provided, and all such invoices shall state "All work described herein provided directly to Kirkland and the Gordian Group are subject to the terms and conditions of that certain Job Order Contracting Consulting Services Agreement between Bellevue and The Gordian Group dated 11/23/09. The City of Bellevue is not a party to nor responsible for performance of or payment for the work described in this invoice."

In addition, Bellevue shall pursue a no cost change to the Berschauer Phillips Agreement requesting that

Berschauer Phillips provide Kirkland with job order construction services on Kirkland facilities directly to Kirkland on the same terms and conditions of the Berschauer Phillips Agreement, except that the obligations owed to the City of Bellevue under such agreement will be owed by Berschauer Phillips to Kirkland, including but not limited to obligations to provide performance and payment bonds for work performed and insurance endorsements that name Kirkland as additional insured. Berschauer Phillips shall directly invoice Kirkland for any and all such work provided, and all work orders shall state "All work described herein provided directly to Kirkland and Berschauer Phillips are subject to the terms and conditions of that certain Job Order Contracting Contract between Bellevue and Berschauer Phillips dated August 2, 2012. The City of Bellevue is not a party to nor responsible for performance of or payment for the work described in this work order." Kirkland shall issue all work orders and perform all fiscal and program responsibilities for the projects to be identified by Kirkland.

Bellevue shall provide copies of the referenced changes to Kirkland. Kirkland shall not issue any work orders under either the Berschauer Phillips Contract or the Gordian Agreement until such changes have been executed. In the event that the changes are not executed, this Agreement shall terminate, and neither party shall bear any additional obligations or liabilities hereunder, and each party shall bear its own costs associated with the Agreement

2. TERMS AND CONDITIONS

Kirkland and Bellevue agree that any work performed for Kirkland by Gordian, Berschauer Phillips and its respective subconsultants or subcontractors under this Agreement shall be conducted in accordance with the provisions of the Gordian Agreement and/or the Berschauer Phillips Contract. Insurance Indemnification and Performance/Payment bonds as specified in the Gordian Agreement and Berschauer Phillips Contract shall insure to the benefit of Kirkland on work orders issued by Kirkland.

3. PERIOD OF PERFORMANCE

The period of performance of this Agreement shall commence when this Agreement is properly signed by both parties and be completed no later than August 2, 2014, unless mutually changed by Amendment to this Agreement.

4. COMPENSATION; PAYMENT PROCEDURE

The total value of all work orders issued by the Kirkland to Gordian and Berschauer Phillips shall not exceed \$600,000. Gordian and Berschauer Phillips shall directly invoice Kirkland and Kirkland shall directly pay both Gordian and Berschauer Phillips pursuant to the payment and compensation terms identified within the Gordian Agreement or Berschauer Phillips Contract, respectively.

5. RECORDS MAINTENANCE

Bellevue, Kirkland, and their contractors, subcontractors, sub-consultants, representatives and employees shall each maintain books, records, documents, and other evidence for five (5) years after the expiration of this Agreement (unless another period of time is specified in applicable records retention policies in which case such policies shall prevail). Unless an applicable exception to public review or a privilege applies, these records shall be subject to inspection, review, or audit by personnel of both parties' other personnel duly authorized by either party, or the Washington State Auditor.

6. CONTRACT MANAGEMENT

(a) The Kirkland Capital Projects Manager, or their designee, will be the Kirkland Representative for all communications regarding this Agreement. The Kirkland Representative shall be responsible for monitoring the performance of this Agreement and fulfilling Kirkland's responsibilities as addressed herein.

(b) Mayvis Schwab will be the Bellevue Representative for all communications regarding this Agreement. The Bellevue Representative shall be responsible for monitoring the performance of this Agreement and

fulfilling the City's responsibilities as addressed herein.

(c) Rory Woolsey will be the Gordian Representative for all communications regarding the consulting services provided to Kirkland.

(d) James E. Phillips, Eric Lindstrom and Chuck Meyer shall serve as Berschauer Phillips Representatives for all communications regarding the job order construction services as addressed herein.

7. INDEMNIFICATION AND HOLD HARMLESS

Kirkland specifically acknowledges that the City of Bellevue shall have no liability or responsibility for the performance of Gordian or Berschauer Phillips with respect to Kirkland work orders. Kirkland shall defend and hold the City of Bellevue harmless from any and all claims, suits, losses, costs (including attorney's fees), and/or damages of any kind whatsoever arising out of or in any way resulting from Kirkland's issuance of work orders and performance by any party pursuant to same facilitated by this Agreement. The City of Bellevue makes no representations or warranties of any kind, including, without limitation regarding the contractors, performance, or terms and conditions of the Gordian Agreement or the Berschauer Phillips Contract.

8. AMENDMENTS TO AGREEMENT

Bellevue and Kirkland may mutually amend this Agreement. Such amendments shall not be binding unless they are in writing and signed by personnel authorized to bind the parties or their respective delegates.

9. TERMINATION

Either party may terminate this Agreement upon thirty (30) days written notification. If this is so terminated, the terminating party shall be liable only for performance in accordance with the terms of this Agreement for performance rendered prior to the effective date of termination.

10. ALL WRITINGS CONTAINED HEREIN

This Agreement contains all the terms and conditions agreed upon by the parties. No other understanding, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind any parties hereto.

CITY OF BELLEVUE

CITY OF KIRKLAND

By: _____

By: _____

Kurt Triplett, City Manager

Approved as to form:

Approved as to form:

By: _____

By: _____
Kirkland City Attorney

ATTEST:

ATTEST:

DATE _____

DATE _____

DRAFT