



September 18, 2024

Wayne Barnett, Executive Director  
Seattle Ethics and Elections Commission  
P.O. Box 94729  
Seattle, WA 98124-4729

Re: Amended and Restated Independent Ethics Program Agreement Between the City of Kirkland and the City of Seattle

Dear Mr. Barnett:

It has come to my attention that the initial term of the above-referenced agreement has lapsed. Please accept our apologies for that oversight. I am writing on behalf of the City of Kirkland to respectfully request that, with the approval of the Commission, the parties agree in writing to renew and extend our agreement by amendment for an additional term of three (3) years and with an updated hourly compensation rate, effective upon the execution of the amendment and subject to the other terms and conditions of the lapsed agreement.

The City has greatly appreciated its contract relationship with the Seattle Ethics and Elections Commission and in particular your availability to serve, as needed, as the City's Ethics Officer to issue advisory opinions and investigate complaints pursuant to the City's Code of Ethics, Chapter 3.14 of the Kirkland Municipal Code ("KMC"), a copy of which is attached.

Pursuant to KMC 3.14.060, our code anticipates the City will contract with an agency like yours to provide these important services and we sincerely hope that the Commission can, at its October 2, 2024, meeting authorize the execution of a renewed and extended agreement.

Thank you very much for your consideration. Please let me know if you need any additional information to consider this request.

Sincerely,

A handwritten signature in blue ink that reads "Kevin Raymond".

Kevin Raymond  
City Attorney – of Council

Attachment

cc: Darcey Eilers, City Attorney

## Chapter 3.14 CODE OF ETHICS

### Sections:

- [3.14.010](#) Policy.
- [3.14.020](#) Definitions.
- [3.14.030](#) Prohibited conduct.
- [3.14.040](#) Financial disclosure statements.
- [3.14.050](#) Ethical standards.
- [3.14.060](#) Ethics officer.
- [3.14.070](#) Advisory opinions.
- [3.14.080](#) Complaints, investigations, hearings and enforcement.

### **3.14.010 Policy.**

(a) Purpose. The Kirkland city council has adopted a code of ethics for members of the city council and the city's boards and commissions to promote public confidence in the integrity of local government and its fair operation. This code of ethics will provide the basis for education and training for city officials, both elected and appointed, to ensure that the highest standards and best practices with regard to ethics will be followed.

(b) Intent. The citizens and businesses of Kirkland are entitled to have fair, ethical and accountable local government that has earned the public's full confidence. In keeping with the city of Kirkland's commitment to excellence, the effective functioning of democratic government therefore requires that:

- (1) Public officials, both elected and appointed, comply with the laws and policies affecting the operations of government;
- (2) Public officials be independent, impartial and fair in their judgment and actions;
- (3) Public office be used for the public good, not for personal gain; and
- (4) Public deliberations and processes be conducted openly, unless legally confidential, in an atmosphere of respect and civility. (Ord. 4348 § 1 (Exh. A) (part), 2012)

### **3.14.020 Definitions.**

(a) "Official" means a member of the city council or a member of council-appointed city boards and commissions and other council-appointed task groups or committees, including youth members.

(b) "Relative" means spouse or domestic partner, child, step-child, parent, step-parent, parent-in-law, grandparent, grandchild, sibling, aunt, uncle, niece, nephew, son- or daughter-in-law, brother- or sister-in-law. (Ord. 4348 § 1 (Exh. A) (part), 2012)

### **3.14.030 Prohibited conduct.**

(a) Conflicts of Interest. In order to ensure their independence and impartiality on behalf of the common good, officials shall not participate in government decisions in which any of the following has a financial interest: (1) the official, (2) a relative, (3) an individual with whom the official resides, or (4) an entity that the official serves as an officer, director, trustee, partner or employee. Officials shall abstain from participating in deliberations and decision-making where conflicts exist. This section shall not apply (1) to decisions regarding taxes or fees, (2) if the financial interest is shared with more than ten percent of the city's population, or (3) if the financial interest exists solely because of the official's ownership of less than one percent of the outstanding shares of a publicly traded corporation.

(b) Appearance of Conflict. If it could appear to a reasonable person, having knowledge of the relevant circumstances, that the official's judgment is impaired because of either (1) a personal or business relationship not covered under the foregoing subsection, or (2) a transaction or activity engaged in by the official, the official shall make a public, written disclosure of the facts giving rise to the appearance of a conflict before participating in the matter.

(c) Misuse of Public Position or Resources. Except for infrequent use at little or no cost to the city, officials shall not use public resources that are not available to the public in general, such as city staff time, equipment, supplies or facilities, for other than a city purpose.

(d) Representation of Third Parties. Except in the course of official duties, officials shall not appear on behalf of the financial interests of third parties before the bodies on which the officials serve or in interaction with assigned staff. However, the members of the city council shall not appear on behalf of the financial interest of third parties before the council or any board, commission or proceeding of the city, or in interaction with staff.

(e) Solicitations of Charitable Contributions. No official may make direct personal solicitations for charitable contributions from city employees.

(f) Gifts and Favors. Officials shall not take any special advantage of services or opportunities for personal gain, by virtue of their public office, which are not available to the public in general. They may not solicit or receive any thing of monetary value from any person or entity where the thing of monetary value has been solicited, or received or given or, to a reasonable person, would appear to have been solicited, received or given with intent to give or obtain special consideration or influence as to any action by the official in his or her official capacity; provided, that nothing shall prohibit campaign contributions which are solicited or received and reported in accordance with applicable law. They shall not accept or solicit any gifts, favors or promises of future benefits except as allowed by Section [3.80.140](#).

(g) Confidential Information. Officials shall not disclose or use any confidential information gained by reason of their official position for other than a city purpose. "Confidential information" means (1) specific information, rather than generalized knowledge, that is not available to a person who files a public records request, and (2) information made confidential by law. (Ord. 4348 § 1 (Exh. A) (part), 2012)

### **3.14.040 Financial disclosure statements.**

All officials, except members of the city council, shall file a city of Kirkland disclosure statement annually. In accordance with Chapter [42.17](#) RCW, members of the Kirkland city council shall disclose investments, interests in real property, sources of income, and creditors through the filing of a Public Disclosure Commission Form F-1, "Personal Financial Affairs Statement." Members of boards and commissions shall be advised, as part of the application process, that they will be required to file the applicable city of Kirkland disclosure statement within ten days of appointment. (Ord. 4348 § 1 (Exh. A) (part), 2012)

### **3.14.050 Ethical standards.**

In addition to Section [3.14.030](#) of the code of ethics, which shall be administered by the ethics officer, officials are also encouraged to comply with the following standards:

- (1) Compliance with Other Laws. Officials shall comply with federal, state and city laws in the performance of their public duties. These laws include, but are not limited to: the United States and Washington Constitutions; laws pertaining to conflicts of interest, election campaigns, financial disclosures and open processes of government; and city ordinances and policies. See Appendix A. As required by RCW [42.17.750](#), no official shall knowingly solicit or encourage, directly or indirectly, any political contribution from any city employee. Except under limited circumstances described in RCW [42.17.130](#), no official may use or authorize the use of the facilities of the city for the purpose of assisting a campaign for the election of any person to any office, or for the promotion of or opposition to any ballot proposition in a manner not available to the general public on the same terms.
- (2) Personal Integrity. The professional and personal conduct of officials must be above reproach and avoid even the appearance of impropriety. Officials shall refrain from abusive conduct, threats of official action, personal accusations or verbal attacks upon the character or motives of other members of council, boards and commissions, the staff or public. Officials shall maintain truthfulness and honesty and not compromise themselves for advancement, honor, or personal gain. Additionally, officials shall not directly or indirectly induce, encourage or aid anyone to violate the code of ethics and it is incumbent upon officials to make a good faith effort to address apparent violations of this code of ethics.
- (3) Working for the Common Good. Recognizing that stewardship of the public interest must be their primary concern, officials will work for the common good of the people of Kirkland and not for any private or personal interest, and they will ensure fair and equal treatment of all persons, claims and transactions coming before the city council, boards and commissions. Officials need to be mindful that making special requests of staff—even when the response does not benefit the official personally—puts staff in an awkward position.
- (4) Respect for Process. Officials shall perform their duties in accordance with the processes and rules of order established by the city council and board and commissions governing the deliberation of public policy issues, meaningful involvement of the public, and implementation of policy decisions of the city council by city staff.
- (5) Commitment to Transparency. Transparency, openness, and accountability are fundamental values of the city—and are also required by the laws of the state of Washington. The public has a right to inspect and copy public records unless exempt by law from disclosure. All materials relating to the conduct of city government that are prepared, possessed, used or retained by any official, including email and other electronic records, are subject to requirements for retention, protection, and disclosure. Officials may assume that all copies of materials received from city staff have already been archived and do not need to be retained. Officials shall not discard, damage, or destroy the original copy of any public record unless directed by the city public records officer (the city clerk), who has responsibility to ensure that the city complies with the record retention schedules established under Chapter [40.14](#) RCW. Officials shall promptly provide any records requested by the public records officer in response to a disclosure request under the Public Records Act, Chapter [42.56](#) RCW. It is the responsibility of the public records officer, together with the city attorney, to decide which records meet the definition of "public record" and whether or not they are exempt from disclosure; officials must not take it upon themselves to decide whether a record meets the definition of a public record, that a record is exempt from disclosure, or to otherwise conceal a record.
- (6) Conduct of Public Meetings. Officials shall prepare themselves for public issues; listen courteously and attentively to all public discussions before the body; and focus on the business at hand. They shall refrain from interrupting other speakers; making personal comments not germane to the business of the body; or otherwise interfering with the orderly conduct of meetings.

- (7) Decisions Based on Merit. Officials shall base their decisions on the merits and substance of the matter at hand, rather than on unrelated considerations.
- (8) Ex Parte Communications. In quasi-judicial matters, officials shall publicly disclose substantive information that is relevant to a matter under consideration by the council or boards and commissions, which they may have received from sources outside of the public decision-making process.
- (9) Attendance. As provided in RCW [35A.12.060](#), a council member shall forfeit his or her office by failing to attend three consecutive regular meetings of the council without being excused by the council. Unless excused, members of boards and commissions are expected to attend all meetings.
- (10) Nepotism. The city council will not appoint relatives of city council members to boards or commissions or other appointed positions.
- (11) Advocacy. When acting in an official capacity as a city official representing the city, officials shall represent the official policies or positions of the city council, board or commission to the best of their ability when the city council, board or commission has taken a position or given an instruction. When presenting their individual opinions and positions, members shall explicitly state they do not represent their body or the city of Kirkland, nor will they allow the inference that they do. Officials have the right to endorse candidates for all council seats or other elected offices. It is inappropriate to make or display endorsements during council meetings, board/commission meetings, or other official city meetings. However, this does not preclude officials from participating in ceremonial occasions, community events, or other events sponsored by civic groups.
- (12) Policy Role of Officials. Officials shall respect and adhere to the council-manager structure of Kirkland city government as outlined by Chapter [35A.13](#) RCW. In this structure, the city council determines the policies of the city with the advice, information and analysis provided by the public, boards and commissions, and city staff. Except as provided by state law, officials shall not interfere with the administrative functions of the city or the professional duties of city staff; nor shall they impair the ability of staff to implement council policy decisions.

#### APPENDIX A

Ch. <a href="#">9A.72</a> RCW	Perjury and interference with official proceedings
RCW <a href="#">35A.12.060</a>	Vacancy for nonattendance
Ch. <a href="#">35A.13</a> RCW	Council-manager plan of government
RCW <a href="#">35A.13.020</a>	Incompatible offices
Ch. <a href="#">40.14</a> RCW	Preservation and destruction of public records
RCW <a href="#">42.17.130</a>	Use of public office or agency facilities in campaigns— Prohibition—Exceptions
RCW <a href="#">42.17.750</a>	Solicitation of contributions by public officials or employees
Ch. <a href="#">42.23</a> RCW	Code of ethics for municipal officers—Contract interests
Ch. <a href="#">42.36</a> RCW	Appearance of fairness doctrine—Limitations
Ch. <a href="#">42.56</a> RCW	Public Records Act
KMC <a href="#">3.80.140</a>	Kirkland code on acceptance of gifts
Ch. 3.12 KMC	Limitations on campaign contribution

(Ord. 4348 § 1 (Exh. A) (part), 2012)

#### **3.14.060 Ethics officer.**

- (a) The city council creates the position of ethics officer. The city manager will contract with one or more agencies to fill this position. The ethics officer will provide for annual review of the code of ethics, review of training materials provided for education regarding the code of ethics, and advisory opinions concerning the code of ethics. The ethics officer shall also be responsible for the prompt and fair enforcement of its provisions when necessary.

(b) The ethics officer, in addition to other duties, may recommend changes or additions to this code of ethics to the city council. The ethics officer shall provide input into and review the training materials and program developed for this code of ethics. (Ord. 4348 § 1 (Exh. A) (part), 2012)

### **3.14.070 Advisory opinions.**

(a) Upon request of any official, the ethics officer shall render written advisory opinions concerning the applicability of Sections [3.14.030](#) and [3.14.040](#) of this code to hypothetical circumstances and/or situations solely related to the persons making the request. The ethics officer will not render opinions on matters that are the purview of other government agencies or officials, e.g., the public disclosure commission, the city public records officer, etc.

(b) Upon request of any official, the ethics officer may also render written advisory opinions concerning the applicability of the code of ethics to hypothetical circumstances and/or situations related to a matter of city-wide interest or policy.

(c) The ethics officer will endeavor to respond to requests for advisory opinions within forty-five days of submission of the request, or more rapidly if the requester expresses urgency in the request.

(d) A person's conduct based in reasonable reliance on an advisory opinion rendered by the ethics officer shall not be found to violate this code of ethics, as long as all material facts have been fully, completely, accurately presented in a written request for an advisory opinion, the ethics officer issues an advisory opinion that the described conduct would not violate the code of ethics, and the person's conduct is consistent with the advisory opinion. The ethics officer reserves the right to reconsider the questions and issues raised in an advisory opinion and, where the public interest requires, rescind, modify, or terminate the opinion, but a modified or terminated advisory opinion will not form the basis of a retroactive enforcement action against the original requestor. Advisory opinions will contain severability clauses indicating that should portions of the opinion be found to be unenforceable or not within the ethics officer's authority, the remainder of the opinion shall remain intact. (Ord. 4348 § 1 (Exh. A) (part), 2012)

### **3.14.080 Complaints, investigations, hearings and enforcement.**

The ethics officer shall resolve inadvertent and minor violations of the code of ethics informally and may resolve inadvertent or minor violations informally, unless the ethics officer determines that doing so would not serve the public interest. When a violation is neither inadvertent nor minor, the ethics officer may initiate an action in accordance with this section.

#### **(1) Complaint Process.**

(A) **Complaint Requirements—Service.** Any person may submit a written complaint to the ethics officer alleging one or more violations of this code of ethics by an official. The complaint must set forth specific facts with enough precision and detail for the ethics officer to make a determination of sufficiency. It must be signed under penalty of perjury by the person(s) submitting it in a manner consistent with Chapter [9A.72](#) RCW.

(B) **Finding of Sufficiency.** The ethics officer shall make a determination of sufficiency within thirty days of receipt of the written complaint. A complaint shall be sufficient if the allegations, if established, would violate Section [3.14.030](#) or [3.14.040](#) of this code. The ethics officer's determination is not reviewable. If the finding is one of sufficiency of the complaint, then the ethics officer shall investigate the complaint as set forth below.

(C) **Dismissal.** The ethics officer shall dismiss the complaint if the ethics officer determines that the violation was inadvertent and minor; or a violation occurred, but appropriate actions have been taken to fully address the allegedly unethical conduct.

(D) **Notice.** Notice of action by the ethics officer shall be provided as follows:

(i) Notice of a finding of insufficiency or dismissal of a complaint by the ethics officer shall be sent to the person who made the complaint and the person complained against within seven days of the decision by the ethics officer. A finding of insufficiency or dismissal of a complaint by the ethics officer is final and binding, and no administrative or other legal appeal is available through the ethics officer.

(ii) Within seven days of the ethics officer rendering a finding of sufficiency, the city clerk shall send notice to the person who made the complaint and the person complained against, of the ethics officer's determination. If, after investigation, the ethics officer has reason to believe that a material violation of Section [3.14.030](#) or [3.14.040](#) has occurred, the city clerk shall give notice of the public hearing which will be held to determine if a violation has occurred. Notice shall be provided at least thirty days prior to the date set for the hearing. The person complained against shall have the right to file a written answer to the charge and to appear at the hearing with or without legal counsel, submit testimony, be fully heard, and to examine and cross examine witnesses.

(E) **Stipulations.** At any time after a complaint has been filed with the ethics officer, the ethics officer may seek and make recommendations that the city council enter into a stipulation with the person complained against. The recommended stipulation will include the nature of the complaint, relevant facts, the reasons the ethics officer thinks a stipulation is appropriate, an admission of the violation by the person complained against, a promise by the person complained against not to repeat the violation, and if appropriate, a recommended remedy or penalty. The recommended stipulation shall be sent to the person who made the complaint and the person complained against and forwarded to the city council for action.

(2) Conduct of Hearings.

(A) All hearings on complaints found to be sufficient by the ethics officer shall be conducted by the hearing examiner. The hearing shall be informal, meaning that the hearing examiner shall not be bound by the strict rules of evidence prevailing in courts of law or equity. The hearing examiner may call witnesses on his or her own motion and compel the production of books, records, papers, or other evidence as needed. To that end, the hearing examiner shall issue subpoenas and subpoenas duces tecum. All testimony shall be under oath administered by the hearing examiner. The hearing examiner may adjourn the hearing from time to time to allow for the orderly presentation of evidence. The hearing examiner shall prepare an official record of the hearing, including all testimony, which shall be recorded by mechanical device, and exhibits; provided, that the hearing examiner shall not be required to transcribe such records unless presented with a request accompanied by payment of the cost of transcription.

(B) Within thirty days after the conclusion of the hearing, the hearing examiner shall, based upon a preponderance of the evidence, make and fully record in his or her permanent records, findings of fact, conclusions of law, and his or her recommended disposition. A copy of the findings, conclusions, and recommended disposition shall be sent to the person who made the complaint and to the person complained against. Additional copies of the findings, conclusions, and recommendations shall be forwarded to the ethics officer and city council.

(3) City Council Action. Final city council action to decide upon stipulations and recommendations from the ethics officer and findings, conclusions, and recommendations from the hearing examiner shall be by majority vote in a public meeting. If the proceeding involves a member of the city council, deliberations by the council may be in executive session. The member of the council against whom the complaint was made will not participate in any executive session and shall not vote on any matter involving him or herself. However, upon request of the member of the council against whom the complaint was made, a public hearing or public meeting before the council will be held on the issue of penalties.

(4) Disposition. In the event the hearing examiner finds that the person against whom the complaint was made has violated the code of ethics, then the city council may take any of the following actions by a majority vote of the council. The action of the city council shall be final and not subject to further review or appeal except as may be otherwise provided by law or as provided in subsection (5) of this section.

(A) Dismissal. Dismissal of the complaint without penalties.

(B) Referral. A complaint may be referred to another agency with jurisdiction over the violation, such as the public disclosure commission. Final action on the complaint may be stayed pending resolution of the matter by the agency to which it was referred.

(C) Admonition. An admonition shall be an oral non-public statement made by the mayor, or his/her designee, or if the complaint is against the mayor, the deputy mayor or his/her designee, to the official.

(D) Reprimand. A reprimand shall be administered to the official by a resolution of reprimand by the city council. The resolution shall be prepared by the city council and shall be signed by the mayor or, if the complaint is against the mayor, the deputy mayor.

(E) Censure. A resolution of censure shall be a resolution read personally to the person in public. The resolution shall be prepared by the city council and shall be signed by the mayor, or if the complaint is against the mayor, the deputy mayor. The person shall appear at a city council meeting at a time and place directed by the city council to receive the resolution of censure. Notice shall be given at least twenty calendar days before the scheduled appearance at which time a copy of the proposed resolution of censure shall be provided to the person. The resolution of censure shall be read publicly, and the person shall not make any statement in support of, or in opposition thereto, or in mitigation thereof. The resolution of censure shall be read at the time it is scheduled whether or not the official appears as required.

(F) Removal—Member of Board or Commission or Other Appointed Task Group or Committee. In the event the individual against whom the complaint was made is currently a member of a city board or commission or other task group or committee, appointed by the city council, the city council may, in addition to other possible penalties set forth in this section, and notwithstanding any other provision of the Kirkland Municipal Code, by a majority vote remove the individual from such board or commission effective immediately.

(G) Civil Penalties. The city council may assess a civil penalty of up to one thousand dollars or three times the economic value of anything received in violation of this code of ethics or three times the economic value of any loss to the city, whichever is greater. Any monetary penalty assessed civilly shall be placed in the city's general fund.

(H) Contract Void. As provided by RCW [42.23.050](#), any contract made in violation of Chapter [42.23](#) RCW, "Code of ethics for municipal officers — contract interests," is void.

(I) Other Penalties. The city council may impose a restriction, loss of a committee assignment, or loss of appointment as a representative of the city for any regional or multijurisdictional body or membership on any board or commission which requires an appointment or confirmation of an appointment by the city council.

(5) Review of Civil Penalties. If the city council orders an official to pay a civil penalty, the official may seek a writ of review from the superior court pursuant to Chapter [7.16](#) RCW, within thirty days of the city council's order.

(6) Protection Against Retaliation. Neither the city nor any official may take or threaten to take, directly or indirectly, official or personal action, including but not limited to discharge, discipline, personal attack, harassment, intimidation, or change in job, salary, or responsibilities, against any person because that person files a complaint with the ethics officer.

(7) Public Records. Records filed with the ethics officer become public records that may be subject to inspection and copying by members of the public, unless an exemption in law exists. To the extent required to prevent an unreasonable invasion of personal privacy interests protected by RCW ~~42.56.230~~(2), identity information may be redacted when an unsubstantiated complaint is made available in response to a public records request; however, in each case, the justification for the redaction shall be explained fully in writing. A finding by the ethics officer determining that a complaint is sufficient shall contain at the beginning the following specific language:

NOTICE: ANY PORTION OF THIS FINDING DETERMINING SUFFICIENCY OF ANY PORTION OF A COMPLAINT DOES NOT DETERMINE THE TRUTH OR FALSITY OF THE ALLEGATIONS CONTAINED IN THE COMPLAINT FILED WITH THE ETHICS OFFICER. THE ETHICS OFFICER HAS ONLY DETERMINED THAT IF CERTAIN FACTS CONTAINED IN THE COMPLAINT ARE FOUND TO BE TRUE DURING A LATER HEARING TO BE CONDUCTED BY THE HEARING EXAMINER, THEN VIOLATION(S) OF THE CODE OF ETHICS MAY BE FOUND TO HAVE OCCURRED.

The city shall release copies of any written reports resulting from an investigation of a sustained complaint, any hearing examiner orders, and any written censures or reprimands issued by the city council, in response to public records requests consistent with Chapter ~~42.56~~ RCW and any other applicable public disclosure laws.

(8) Liberal Construction—Limitation Period—Effective Date.

(A) This code of ethics shall be liberally construed to effectuate its purpose and policy and to supplement existing laws that relate to the same subject.

(B) Any action taken under this code of ethics must be commenced within three years from the date of violation.

(C) This code of ethics shall take effect February 18, 2012. (Ord. 4348 § 1 (Exh. A) (part), 2012)

**The Kirkland Municipal Code is current through Ordinance 4880, passed August 7, 2024.**

Disclaimer: The City Clerk's Office has the official version of the Kirkland Municipal Code. Users should contact the City Clerk's Office for ordinances passed subsequent to the ordinance cited above.

City Website: <https://www.kirklandwa.gov/> (<https://www.kirklandwa.gov/>)

City Telephone: (425) 587-3000

Code Publishing Company (<https://www.codepublishing.com/>)

**AMENDED AND RESTATED INDEPENDENT ETHICS PROGRAM AGREEMENT  
BETWEEN  
THE CITY OF KIRKLAND AND THE CITY OF SEATTLE**

THIS AMENDED AND RESTATED INDEPENDENT ETHICS PROGRAM AGREEMENT (“Agreement”) is made by and between the City of Kirkland (“Kirkland”) and the City of Seattle (“Seattle”), referred to collectively as the “Parties”.

WHEREAS, the City of Kirkland has adopted a Code of Ethics for City Officials to ensure public confidence in the integrity of local government; and

WHEREAS, in order to best strengthen ethical compliance, Kirkland desires to establish an independent ethics investigation program; and

WHEREAS, Seattle has established an independent and well-respected ethics program through the Seattle Ethics and Elections Commission; and

WHEREAS, the Seattle Ethics and Elections Commission staff have proven expertise in providing a comprehensive ethics program; and

WHEREAS, the Parties have negotiated the terms and conditions of this Agreement under which Seattle will provide an independent and comprehensive ethics program to Kirkland;

NOW THEREFORE, in consideration of the mutual covenants contained herein, the sufficiency of which is hereby acknowledged, the Parties agree as follows:

**1.0 Term and Termination**

1.1 This Agreement shall be effective upon mutual execution by the Parties for an initial term of three years. This Agreement may be extended for such additional terms as are agreed to by the Parties in writing. The Seattle Ethics and Elections Commission (“SEEC”) shall have the discretion to extend the Agreement on behalf of Seattle.

1.2 This Agreement may be terminated by either party for its convenience and without cause at any time, upon 60 days written notice delivered by certified mail, return receipt requested, to the other party. In addition, if either party’s governing body does not provide the necessary appropriation authority for the following year, this Agreement may be terminated effective January 1<sup>st</sup> of the following year by giving notice no later than December 2<sup>nd</sup> of the current year.

1.3 Either party may terminate this Agreement in the event that the other party substantially fails to perform its obligations as described in this Agreement following written notice by certified mail, return receipt requested, of such non-performance and a reasonable opportunity (of not less than 14 calendar days) for the non-performing party to cure the issues of non-performance.



## **2.0 Comprehensive Ethics Program**

### **2.1 Program Elements**

2.1.1. Seattle, through the executive director and staff of its SEEC Office, shall provide an independent and comprehensive Ethics Program ("Program") for Kirkland. The Program shall include, but not be limited to, the elements identified in Section 2.2 through 2.5.

2.1.2. By execution of this Agreement, Kirkland designates the SEEC Executive Director as the Kirkland "Ethics Officer," as that term is used in the existing Kirkland Code of Ethics, and authorizes the SEEC Executive to perform all responsibilities of that office.

2.1.3. Seattle shall carry out the Program with the care and diligence that is customary for a program of this nature. Seattle shall stay abreast of best practices regarding ethics for public agencies and institute such practices in the Program. Seattle shall recommend any amendments to this Agreement that may be necessary to carry out such best practices.

### **2.2 Code of Ethics Revisions**

Over the duration of this Agreement, Seattle shall make such recommendations as it deems necessary to ensure the Code of Ethics is complete, effective and enforceable. Such recommendations shall be made in consultation with Kirkland and will take into account the unique issues and interests of Kirkland. The Kirkland City Council will retain the final authority regarding the content of any Code of Ethics revisions.

### **2.3 Ethics Complaints, Investigations and Written Findings**

2.3.1. Complaints. Seattle shall receive written complaints submitted by any person to the Kirkland City Clerk alleging violations of the Kirkland Code of Ethics. Seattle shall provide appropriate communications to each person filing a complaint as to the receipt of the complaint, status of the complaint, and final disposition of the matter complained of.

2.3.2. Investigations. Seattle shall in its sole discretion determine in accordance with the standard practices of the SEEC which complaints to investigate and the scope of such investigation. Investigations shall be conducted in a thorough, documented, and professional manner so as to provide sufficient evidentiary grounds to support such action as may be taken by the Kirkland City Council for violations of the Code of Ethics. Seattle shall refer to Kirkland those complaints it receives which Seattle has determined do not warrant further investigation as a Code of Ethics violation but which may need other action by Kirkland.

2.3.3. Written Findings. Seattle shall provide Kirkland with a detailed written investigative report of Seattle's findings ("Written Findings") for each ethics investigation

conducted by Seattle. The level of detail in such report shall be commensurate with the complexity of the matter at issue, whether a violation of the Code of Ethics is found to have occurred, and the severity of the violation found. Written Findings involving a violation of the Code of Ethics shall provide sufficient detail to provide the Kirkland City Council with the necessary information to make an informed and defensible decision regarding the appropriate action to take.

2.3.4. City Council Action. The Kirkland City Council considers ethics violations a very serious matter and will carefully review and consider all Written Findings to determine the appropriate action to take. The Kirkland City Council shall be solely responsible for determining if penalties should be imposed and at what level.

## 2.5 Advisory Opinions

In addition to the training required by this Agreement, at the request of Kirkland, Seattle shall provide written advisory opinions regarding interpretation, application, and compliance with the Code of Ethics.

## 2.6 Election Related Matters Not Covered

Because Seattle lacks legal jurisdiction to regulate Kirkland election matters, the Program will not include Kirkland City Council election and campaign related issues. Those matters will continue to be regulated by the Washington State Public Disclosure Commission.

## 3.0 Data Collection and Reporting

3.1 Seattle shall make such presentations to the Kirkland City Council regarding the Program as are reasonably requested by Kirkland from time to time. Such presentations shall include an overview of the Program, review of data collected, assessment of the Program's effectiveness, and recommendations for improvements.

3.2 Should any records held by the Seattle related to work for Kirkland under this Agreement become the subject of a request for public records under Chapter 42.56 RCW, Seattle shall use its best efforts to notify Kirkland of such request and consult with Kirkland regarding a proposed response and the date by which Seattle anticipates responding. If Seattle notifies Kirkland in writing that it plans to produce any records and Kirkland disagrees that such records are subject to production, Kirkland may then within a reasonable time of receipt of notification by Seattle, give notice in writing to Seattle that (a) specifically identifies each record, or part thereof that Kirkland asserts is exempt from production, and (b) cites the statutory exemption under Chapter 42.56 RCW, or any other law, and provides a brief explanation of how the exemption applies to the record, so that Seattle may respond to the records requester. Seattle may decide whether or not to withhold or redact those public records that Kirkland reasonably claims are exempt from production based upon Kirkland's explanation. Kirkland at its sole expense may seek a judicial declaration or injunction with respect to the public records request. Kirkland further agrees that it will, at its sole expense, defend the non-disclosure of that information Kirkland claims in the

written notice to be exempt from production and indemnify Seattle for any and all penalties assessed and costs that Seattle incurs, if any. The provisions of this paragraph shall survive the termination of this Agreement.

#### **4.0 Independence of Seattle**

The Parties are committed to the independent investigation of ethics complaints by Seattle and will take such actions as are necessary to further and maintain such independence during the term of the Agreement.

#### **5.0 Cooperation**

5.1 Kirkland shall provide its full cooperation to make the Program a success. This cooperation shall include, but not be limited to, promptly transmitting ethics complaints to Seattle, providing information needed to assist the Program, facilitating investigations where requested, providing assistance in coordinating training, making Kirkland facilities available as needed, and such other assistance as is agreed upon.

5.2 The City Attorney for Kirkland and the SEEC Executive Director, or such other designee identified by a Party in writing, shall serve as the Agreement Coordinators. The designated Agreement Coordinators shall work together as necessary to further the Program and facilitate successful implementation of this Agreement.

#### **6.0 Compensation**

6.1 In order to carry out the Program, the Parties agree that it is appropriate for Kirkland to pay Seattle, as sole compensation for the services performed under this Agreement, such sums of money as are arrived at by computing the actual number of hours expended in the performance of this Agreement and multiplying such total hours by \$105.

6.2 Billings should be submitted after services are rendered. Kirkland will be charged for services rendered on an hourly basis and billings will be reflected in increments of one-tenth of an hour. Each billing statement should set forth for each date services were performed:

A brief summary of the services provided;  
The number of hours, or fractions of hours, spent;  
Expenses and disbursements in detail.

#### **7.0 Indemnification**

7.1 Seattle shall indemnify, defend and hold Kirkland and its officers and employees, free and harmless from any and all claims, demands, suits, judgments, liabilities, costs, expenses, losses and any death, injury or disability of any person or damage to any property or business to the extent arising, directly or indirectly, out of or suffered by any person by reason of or in connection with any action, error, or omission of Seattle, or any of its officers, agents, employees, program agreements or clients. In the event of suit against Kirkland, Seattle shall appear and defend the same, provided Seattle is notified in a timely manner of the suit. In the

event that Kirkland and Seattle are held to be jointly liable in any final judgment in any suits arising out of their acts or omissions under this Agreement, the costs and expenses arising therefrom shall be prorated between the parties according to the relative degrees of their liability. Such indemnity shall not include claims arising as a result of the sole negligence of Kirkland, or any of its officers, employees or agents.

7.2 Kirkland shall indemnify, defend and hold Seattle and its officers and employees, free and harmless from any and all claims, demands, suits, judgments, liabilities, costs, expenses, losses and any death, injury or disability of any person or damage to any property or business to the extent arising, directly or indirectly, out of or suffered by any person by reason of or in connection with any action, error, or omission of Kirkland, or any of its officers, agents, employees, program agreements or clients. In the event of suit against Seattle, Kirkland shall appear and defend the same, provided Kirkland is notified in a timely manner of the suit. In the event that Seattle and Kirkland are held to be jointly liable in any final judgment in any suits arising out of their acts or omissions under this Agreement, the costs and expenses arising therefrom shall be prorated between the parties according to the relative degrees of their liability. Such indemnity shall not include claims arising as a result of the sole negligence of Seattle.

7.3 The indemnification provided for in this section shall survive any termination or expiration of this Agreement.

## **8.0 Legal Relations**

8.1 It is understood and agreed that this Agreement is solely for the benefit of the parties hereto and gives no right to any other party.

8.2 This Agreement is entered into under the authority of RCW 39.34.080 and does not form a separate organization or administrative entity under RCW 39.34.030. No joint venture or partnership is formed as a result of this Agreement. No employees or agents of one party or its contractors or subcontractors shall be deemed, or represent themselves to be, employees, agents, contractors or subcontractors of the other party.

8.3 The parties' rights and remedies in this Agreement are in addition to any other rights and remedies provided by law.

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

8.5 Waiver of breach of any provision of this Agreement shall not be deemed to be a waiver of any other or subsequent breach and shall not be construed to be a modification of the terms of this Agreement unless expressly agreed to in writing by the party to be charged.

8.6 Neither party may assign this Agreement, in whole or part, without the express written consent of the other party.

8.7 This Agreement and each of the terms and provisions hereof are deemed to have been explicitly negotiated between, and mutually drafted by, the Parties, and the language in all parts of this Agreement shall, in all cases, be construed according to its fair meaning and construed without regard to who drafted such language.

**9.0 Notice**

Any notice due under this Agreement shall be provided to Parties at the addresses below:

To Kirkland:	City Manager City of Kirkland 123 5 <sup>th</sup> Avenue Kirkland, WA 98033-6189	Copy to:	City Attorney's Office City of Kirkland 123 5 <sup>th</sup> Avenue Kirkland, WA 98033-6189
To Seattle:	Attn: Executive Director Seattle Ethics and Elections Commission P.O. Box 94729 Seattle, WA 98124-4729		

**10.0 Entire Agreement**

This Agreement contains all of the agreements of the Parties with respect to any matter covered or mentioned in this Agreement. No provision of the Agreement may be amended or modified except by a written agreement signed by the Parties. The SEEC shall have the authority to execute amendments to the Agreement on behalf of Seattle.

IN WITNESS THEREOF the Parties hereto have executed the Agreement on the dates shown below with their respective signatures.

**CITY OF KIRKLAND**

By: Marilyn Beard  
Its: Deputy City Manager  
Date: 12/21/16

**CITY OF SEATTLE**

By: Donna Berni  
Its: SEEC Executive Director  
Date: 1/31/17