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Jeff Slayton
SEEC and Kirkland Agreement
October 4, 2011
Version #1

ORDINANCE _____

AN ORDINANCE relating to the Seattle Ethics and Elections Commission; authorizing the Executive Director to execute an agreement with the City of Kirkland for implementing an ongoing independent ethics program for the City of Kirkland and ratifying and confirming certain prior acts.

WHEREAS, in 1991, the City of Seattle established the independent Seattle Ethics and Elections Commission (SEEC) to administer and enforce the City's ethics, elections, lobbying and whistleblower codes; and

WHEREAS, the City of Kirkland has expressed a desire to strengthen compliance by its officers with ethical requirements; and

WHEREAS, the City of Kirkland and the City of Seattle agree that the most effective ethics investigations should be conducted by an entity that has independence from an organization's standard management structure; and

WHEREAS, SEEC is well respected and has the organizational infrastructure and proven expertise in developing and implementing comprehensive ethics programming; and

WHEREAS, the City of Kirland and the SEEC have agreed to a funding level by the City of Kirkland and the terms and conditions of an agreement under which the SEEC would provide independent and comprehensive ethics programming to the City of Kirkland; and

WHEREAS, the City of Kirkland and the City of Seattle are committed to working together and devoted to effectively serving the interests of their residents; NOW, THEREFORE,

BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:

Section 1. The Executive Director of the Seattle Ethics and Elections Commission (SEEC), or his designee, is authorized to execute an agreement substantially in the form of Attachment A titled "Independent Ethics Protection Program Agreement Between the City of Seattle and the City of Seattle."

Section 2. This ordinance shall take effect and be in force 30 days after its approval by the Mayor, but if not approved and returned by the Mayor within ten days after presentation, it shall take effect as provided by Seattle Municipal Code Section 1.04.020.

Section 3. Ratify and Confirm. Any act consistent with the authority of this ordinance taken after its passage and prior to its effective date is hereby ratified and confirmed.

Passed by a majority vote of all the members of the City Council the ____ day of _____, 2011, and signed by me in open session in authentication of its passage this_____ day of _____, 2011.

_____

President _____of the City Council

Approved by me this ____ day of _____, 2011.

_____

Michael McGinn, Mayor

Filed by me this ____ day of _____, 2011.

_____

City Clerk

(Seal)

Attachment A: Independent Ethics Protection Program Agreement Between the City of Kirkland and the City of Seattle.

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INDEPENDENT ETHICS PROGRAM AGREEMENT BETWEEN THE CITY OF KIRKLAND AND THE CITY OF SEATTLE

THIS INDEPENDENT ETHICS PROGRAM AGREEMENT ("Agreement") is hereby made by and between the City of Kirkland ("Kirkland") and the City of Seattle ("Seattle"), referred to collectively herein as the "Parties".

WHEREAS, the City of Kirkland is poised to adopt 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 administering a comprehensive ethics program; and

WHEREAS, the Parties have negotiated the terms and conditions of this Agreement under which Seattle will administer an independent and comprehensive ethics program for 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.

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 1st of the following year by giving notice no later than December 2nd 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

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(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 Ethics and Elections Commission Office ("SEEC"), shall administer 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 Kirkland Code of Ethics, and authorizes the SEEC Executive Director to perform all responsibilities of that office.

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

2.2 Code of Ethics Revisions

The SEEC shall review the Kirkland Code of Ethics and recommend revisions of the Code of Ethics to the Kirkland City Council. The SEEC shall seek to provide this recommendation within 30 days after the execution of this Agreement. 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. The SEEC shall also make such recommendations over time as it deems necessary to ensure the Code of Ethics is complete, effective and enforceable.

2.3 Ethics Investigations and Written Findings

2.3.1. Investigations. The SEEC shall in its sole discretion determine, in accordance with the Kirkland Code of Ethics and the standard practices of the SEEC, which complaints to investigate and the scope of any 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. The SEEC shall refer to Kirkland those complaints it receives that the SEEC has determined do not warrant further investigation as a Code of Ethics violation but that may need other action by Kirkland.

2.3.2. Written Findings. The SEEC shall provide Kirkland with a detailed written investigative report of the SEEC's findings ("Written Findings") for each ethics investigation conducted by the SEEC. 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.

2.3.3. 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.

2.4 Training and Awareness

The SEEC shall develop and deliver a comprehensive ethics training program for Kirkland. This program shall be designed and implemented to instill a culture of compliance with ethical requirements. This training and awareness shall include, but not be limited to direct trainings, informational web pages, and written training materials.

2.5 Advisory Opinions

In addition to the training required by this Agreement, at the request of any "Official" as that term is used in the Kirkland Code of Ethics , the SEEC shall provide written advisory opinions regarding interpretation, application, and compliance with the Code of Ethics.

2.6 Election Related Matters Not Covered

The Program will not include matters that would violate laws enforced by the Washington State Public Disclosure Commission.

3.0 Data Collection and Reporting

3.1 The SEEC shall provide Kirkland with a written report every six months during the term of this Agreement that will detail the Program activities to date, an assessment of the Program's success and recommended Program improvements. The report shall also contain relevant data regarding the Program including, but not limited to: a) the number and type of complaints filed and their disposition; b) investigations conducted; c) trainings conducted; and d) number and type of requests for advisory opinions.

3.2 The SEEC shall make such presentations to the Kirkland City Council regarding the Program as are reasonably requested by Kirkland from time to time. If requested by Kirkland, the SEEC shall provide an annual presentation to the Kirkland City Council. Such presentations

shall include an overview of the Program, review of data collected, assessment of the Program's effectiveness, and recommendations for improvements.

3.3 Should any records held by the SEEC related to work for Kirkland under this Agreement become the subject of a request for public records under Chapter 42.56 RCW, the SEEC shall use its best efforts to notify Kirkland of such request and consult with Kirkland regarding a proposed response and the date by which the SEEC anticipates responding. If the SEEC 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 the SEEC, give notice in writing to the SEEC 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 the SEEC may respond to the records requester. The SEEC 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 the SEEC for any and all penalties assessed and costs that the SEEC incurs, if any. The provisions of this paragraph shall survive the termination of this Agreement.

4.0 Independence of the SEEC

The Parties are committed to the independent investigation of ethics complaints by the SEEC 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 the SEEC, 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 the SEEC, 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 on a monthly basis. 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 these acts give rise to a lawsuit against Kirkland, Seattle shall appear in and defend the lawsuit, 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 and obligation to defend shall not apply to any 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 these acts give rise to a lawsuit against Seattle, Kirkland shall appear in and defend the lawsuit, 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 and obligation to defend shall not apply to any 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.

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 its terms and provisions 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 5th Avenue Kirkland, WA 98033-6189	Copy to:	City Attorney's Office City of Kirkland 123 5th Avenue Kirkland, WA 98033-6189

To Seattle: Attn: Executive Director
Seattle Ethics and Elections Commission
P.O. Box 94729
Seattle, WA 98124-4729

CLERK

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.

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

CITY OF KIRKLAND	**CITY OF SEATTLE**
By: _____	By: _____
Its: _____	Its: _____
Date: _____	Date: _____

Form revised September 30, 2009

FISCAL NOTE FOR NON-CAPITAL PROJECTS

Department:	Contact Person/Phone:	DOF Analyst/Phone:
Ethics & Elections	Wayne Barnett 684-8577	

Legislation Title:
AN ORDINANCE relating to the Seattle Ethics and Elections Commission; authorizing the Executive Director to execute an agreement with the City of Kirkland for implementing an ongoing independent ethics program for the City of Kirkland and ratifying and confirming certain prior acts.

- **Summary of the Legislation:**
  This legislation authorizes the Executive Director of the Seattle Ethics & Elections Commission to execute an agreement with the City of Kirkland for implementing an ongoing independent ethics program for the City of Kirkland.

- **Background:**
  The City of Kirkland has no independent Ethics office. The City of Kirkland would like to enter into an on-call services contract with the City of Seattle to provide ethical review services.

- *Please check one of the following:*

X This legislation does not have any financial implications.
The City of Kirkland will reimburse the City of Seattle as services are rendered, making this legislation budget neutral.