

CITY OF SEATTLE

ORDINANCE _____

COUNCIL BILL 117703

1
2
3
4 AN ORDINANCE declaring approximately 7.4 acres of City-owned real property located north of
5 South 231st Way in the City of Kent, Washington as no longer required for municipal utility
6 purposes and surplus to the City's needs; authorizing the Director of Seattle Public
7 Utilities to enter into a Memorandum of Agreement with the City of Kent to jointly
8 market these parcels with adjacent parcels owned by the City of Kent through an open
9 competitive process, and ratifying and confirming certain prior acts.

10 WHEREAS, the City of Seattle owns approximately 7.4 acres of vacant land (King County Tax
11 Parcel #1522049065 and King County Tax Parcel # 1522049172) north of South 231st
12 Way in Kent, Washington, under the jurisdiction of Seattle Public Utilities (Surplus
13 Property), which was purchased as part of a larger parcel for the former Kent Highlands
14 Landfill, used during closure operations of Kent Highlands landfill but no longer needed,
15 and is free of refuse and restrictive covenants associated with the former Kent Highlands
16 landfill; and

17 WHEREAS, pursuant to Resolution 30862 and the procedures for disposing of City-owned real
18 property, no other City department or other government agency requested jurisdiction
19 over, or proposed a public use for the Surplus Property, and the public comments
20 received in response to the public notification and comment solicitation process generally
21 support the sale of the Surplus Property; and

22 WHEREAS, Seattle Public Utilities has completed an extensive review of all of the Kent
23 Highlands Landfill properties, including the Surplus Property, including a detailed
24 evaluation of market conditions, site conditions, and conceptual marketing approaches;
25 and

26 WHEREAS, the Surplus Property contains a wetland and buffer area, in which no development
27 can occur, that may impact the sale of the Surplus Property; and

28 WHEREAS, Seattle Public Utilities had discussions with the City of Kent, which owns 4.3 acres
of adjacent property to the east that is surplus to the City of Kent's needs; and

WHEREAS, with the potential constraints on the Surplus Property and the potential benefit of
combining the surplus properties of these two cities and marketing them together, Seattle
Public Utilities has determined it is in the ratepayers' interest to pursue a joint marketing
approach with the City of Kent with the goal of maximizing value for SPU ratepayers and
furthering Kent's economic development goals; NOW, THEREFORE,

1 **BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:**

2 Section 1. Pursuant to the provisions of RCW 35.94.040, and after a public hearing, the
3 interests in real property legally described in Attachment 1 within the City of Kent, Washington,
4 are hereby found and declared to be no longer required for providing public utility service and to
5 be surplus to the City's needs.

6 Section 2. The Director of Seattle Public Utilities or his designee is authorized to offer
7 the real property identified in Section 1 for sale by a competitive process.
8

9 Section 3. The Director of Seattle Public Utilities or his designee is authorized to enter
10 into a Memorandum of Agreement substantially in the form of Attachment 2 with the City of
11 Kent to establish the terms and conditions of jointly marketing and selling the real property
12 identified in Section 1 along with adjacent parcels owned by the City of Kent through a
13 competitive process.

14 Section 4. The Director of Seattle Public Utilities or his designee is authorized to accept
15 the best offer for the real property identified in Section 1 and negotiate a purchase and sale
16 agreement or agreements and any ancillary documents to transfer the real property to the selected
17 purchaser or purchasers.
18

19 Section 5. Proceeds from the sale authorized herein shall be used first to reimburse costs
20 incurred and paid by Seattle Public Utilities in connection with the sale. The remaining proceeds
21 shall be deposited in the Solid Waste Fund.
22

23 Section 6. Any act consistent with the authority of this ordinance taken after its passage
24 and prior to its effective date is hereby ratified and confirmed.
25
26
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Section 7. 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.

Passed by the City Council the ____ day of _____, 2013, and signed by me in open session in authentication of its passage this ____ day of _____, 2013.

President _____ of the City Council

Approved by me this ____ day of _____, 2013.

Michael McGinn, Mayor

Filed by me this ____ day of _____, 2013.

Monica Martinez Simmons, City Clerk

(Seal)

Attachment 1 – Property Description
Attachment 2 – Memorandum of Agreement with the City of Kent

Attachment 1

LEGAL DESCRIPTION: Real property in the County of King, State of Washington, described as follows:

PARCEL A: (King County Tax Parcel #152204-9065)

THAT PORTION OF THE SOUTHEAST QUARTER OF THE NORTHWEST QUARTER OF SECTION 15, TOWNSHIP 22 NORTH, RANGE 4 EAST, W.M., IN KING COUNTY, WASHINGTON, DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHWEST CORNER OF THE SOUTHEAST QUARTER OF THE NORTHWEST QUARTER OF SECTION 15, TOWNSHIP 22 NORTH, RANGE 4 EAST, W.M., IN KING COUNTY, WASHINGTON;

THENCE RUNNING NORTH 0°56'45" WEST ALONG THE WEST LINE OF SAID SOUTHEAST QUARTER OF THE NORTHWEST QUARTER 385 FEET TO THE POINT OF BEGINNING AND THE CENTERLINE OF OLD LOGGING ROAD;

THENCE RUNNING NORTH 0°56'45" WEST ALONG THE WEST LINE OF SAID SOUTHEAST QUARTER OF THE NORTHWEST QUARTER 385 FEET;
THENCE RUNNING NORTH 88°18'20" EAST 120.00 FEET;
THENCE RUNNING SOUTH 0°56'45" EAST 356.01 FEET TO THE CENTERLINE OF OLD LOGGING ROAD;
THENCE RUNNING SOUTH 52°00'40" WEST ALONG THE CENTERLINE OF OLD LOGGING ROAD 150.33 FEET TO THE POINT OF BEGINNING;

EXCEPT THAT PORTION THEREOF CONVEYED TO THE CITY OF KENT BY DEED RECORDED UNDER RECORDING NUMBER 20060622000323, BEING A RERECORDING OF 20040615002758.

(Containing approximately 1.1 Acres +/-)

PARCEL B: (King County Tax Parcel #152204-9172)

THE SOUTHEAST QUARTER OF THE NORTHWEST QUARTER OF SECTION 15, TOWNSHIP 22 NORTH, RANGE 4 EAST, W.M., IN KING COUNTY, WASHINGTON;

EXCEPT THAT PORTION DESCRIBED AS FOLLOWS:

Martha Neuman
SPU Kent Highlands ORD ATT 1
December 13, 2012
Version #2

BEGINNING AT THE NORTHWEST CORNER OF SAID SOUTHEAST QUARTER OF THE NORTHWEST QUARTER;
THENCE EAST ALONG THE NORTH LINE OF SAID SOUTHEAST QUARTER OF THE NORTHWEST QUARTER 879.74 FEET;
THENCE SOUTH 40°21'00" **WEST** 203.85 FEET;
THENCE SOUTH 00°57'00" EAST TO A POINT 248 FEET SOUTH OF THE NORTH LINE OF SAID SOUTHEAST QUARTER OF THE NORTHWEST QUARTER;
THENCE SOUTH 75°00'00" WEST 167.4 FEET;
THENCE SOUTH 20°00'00" EAST 32.72 FEET;
THENCE WEST 600 FEET MORE OR LESS TO THE WEST LINE OF SAID SOUTHEAST QUARTER OF THE NORTHWEST QUARTER;
THENCE NORTH ALONG SAID WEST LINE TO THE POINT OF BEGINNING;

AND EXCEPT THAT PORTION DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHWEST CORNER OF SAID SOUTHEAST QUARTER OF THE NORTHWEST QUARTER;
THENCE NORTH 00°56'45" WEST ALONG THE WEST LINE OF SAID SOUTHEAST QUARTER OF THE NORTHWEST QUARTER 385 FEET TO THE CENTERLINE OF THE OLD LOGGING ROAD AND THE TRUE POINT OF BEGINNING;
THENCE CONTINUING NORTH 00°56'45" WEST 445 FEET;
THENCE NORTH 88°18'20" EAST 120 FEET;
THENCE SOUTH 00°56'45" EAST 356.01 FEET TO THE CENTERLINE OF SAID OLD LOGGING ROAD
THENCE SOUTH 52°00'40" WEST ALONG SAID CENTERLINE 150.33 FEET TO THE TRUE POINT OF BEGINNING;

AND EXCEPT THAT PORTION DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHEAST CORNER OF SAID SOUTHEAST QUARTER OF THE NORTHWEST QUARTER;
THENCE SOUTH 89°00'00" WEST ALONG THE NORTH LINE OF SAID SUBDIVISION 430 FEET;
THENCE SOUTH 40°21'00" WEST 203.85 FEET;
THENCE SOUTH 00°57'00" EAST 93 FEET;
THENCE NORTH 75°00'00" EAST 110.56 FEET;
THENCE SOUTH 51°00'00" EAST 158.37 FEET;
THENCE SOUTH 03°00'00" WEST 197.46 FEET;
THENCE NORTH 88°18'20" **EAST** 347.02 FEET TO THE EAST LINE OF SAID SOUTHEAST QUARTER OF THE NORTHWEST QUARTER;
THENCE NORTH ALONG SAID EAST LINE TO THE POINT OF BEGINNING.

AND EXCEPT ANY PORTION OF THE SOUTHEAST QUARTER OF THE NORTHWEST QUARTER OF SAID SECTION 15 LYING WITHIN THE FOLLOWING DESCRIBED TRACT:

BEGINNING AT THE WEST QUARTER CORNER OF SAID SECTION 15, FROM WHICH POINT THE NORTHWEST CORNER OF SAID SECTION BEARS NORTH 01°11'45" EAST 2628.00 FEET DISTANT,

AND FROM WHICH POINT THE SOUTHWEST CORNER OF SAID SECTION BEARS SOUTH 01°19'23" WEST 2630.04 FEET DISTANT;
THENCE SOUTH 89°51'38" EAST, ALONG THE EAST WEST CENTER OF SECTION LINE OF SAID SECTION 15, A DISTANCE OF 897.77 FEET TO THE TRUE POINT OF BEGINNING OF THE HEREIN DESCRIBED TRACT OF LAND;
THENCE NORTH 24°44'21" WEST 53.34 FEET;
THENCE NORTH 20°12'27" EAST 43.53 FEET TO A POINT ON A 1340.00 FOOT RADIUS, CIRCULAR CURVE TO THE LEFT, FROM WHICH POINT THE CENTER OF SAID CURVE BEARS NORTH 24°42'56" WEST;
THENCE NORTHEASTERLY, ALONG SAID CURVE, THROUGH A CENTRAL ANGLE OF 2°23'08", AN ARC DISTANCE OF 55.79 FEET TO A POINT OF TANGENCY;
THENCE NORTH 62°53'56" EAST 355.76 FEET TO A POINT OF TANGENCY 1960.00 FOOT RADIUS CIRCULAR CURVE TO THE RIGHT;
THENCE NORTHEASTERLY, ALONG SAID CURVE, THROUGH A CENTRAL ANGLE OF 10°00'58", AN ARC DISTANCE OF 342.64 FEET,
THENCE SOUTH 65°09'08" EAST 615.63 FEET;
THENCE SOUTH 23°56'42" EAST 162.95 FEET TO THE EAST WEST CENTER OF SECTION LINE OF SAID SECTION 15;
THENCE SOUTH 89°51'38" WEST ALONG SAID SECTION LINE TO THE POINT OF BEGINNING.

AND ALSO EXCEPT ANY PORTION OF THE SOUTHEAST QUARTER OF THE NORTHWEST QUARTER OF SAID SECTION 15 LYING WITHIN THE FOLLOWING DESCRIBED TRACT:

BEGINNING AT THE WEST QUARTER CORNER OF SAID SECTION 15, FROM WHICH POINT THE NORTHWEST CORNER OF SAID SECTION BEARS NORTH 01°11'45" EAST 2,628.00 FEET DISTANT, AND FROM WHICH POINT THE SOUTHWEST CORNER OF SAID SECTION BEARS SOUTH 01°19'23" WEST 2,630.04 FEET DISTANT;
THENCE SOUTH 89°51'38" EAST, ALONG THE EAST WEST CENTER OF SECTION LINE OF SAID SECTION 15, A DISTANCE OF 897.77 FEET TO THE TRUE POINT OF BEGINNING OF THE HEREIN DESCRIBED TRACT OF LAND;
THENCE NORTH 24°44'21" WEST 53.34 FEET;
THENCE NORTH 20°12'27" EAST 43.53 FEET TO A POINT ON A 1,340.00 FOOT RADIUS, CIRCULAR CURVE TO THE LEFT, FROM WHICH POINT THE CENTER OF SAID CURVE BEARS NORTH 24°42'56" WEST;
THENCE NORTHEASTERLY, ALONG SAID CURVE, THROUGH A CENTRAL ANGLE OF 2°23'08", AN ARC DISTANCE OF 55.79 FEET TO A POINT OF TANGENCY;
THENCE NORTH 62°53'56" EAST 355.76 FEET TO A POINT OF TANGENCY WITH A 1,960 FOOT RADIUS CIRCULAR CURVE TO THE RIGHT;
THENCE NORTHEASTERLY ALONG SAID CURVE, THROUGH A CENTRAL ANGLE OF 10°00'58", AN ARC DISTANCE OF 342.64 FEET;
THENCE SOUTH 65°09'08" EAST 615.63 FEET;
THENCE SOUTH 23°56'42" EAST 162.95 FEET TO THE EAST WEST CENTER OF SECTION LINE OF SAID SECTION 15;
THENCE SOUTH 89°51'38" EAST, ALONG SAID CENTER OF SECTION LINE, 449.78 FEET TO THE CENTER OF SAID SECTION 15;

THENCE NORTH 00°45'27" EAST, ALONG THE NORTH SOUTH CENTER OF SECTION LINE OF SAID SECTION 15, A DISTANCE OF 340.02 FEET TO THE NORTH LINE OF THE SOUTH 340.00 FEET OF THE NORTHEAST QUARTER OF SAID SECTION 15;
THENCE SOUTH 89°51'38" EAST, ALONG SAID NORTH LINE, 325.02 FEET TO THE EAST LINE OF THE WEST 325.00 FEET OF SAID NORTHEAST QUARTER;
THENCE NORTH 00°45'27" EAST, ALONG SAID EAST LINE, 185.01 FEET TO THE NORTH LINE OF THE SOUTH 525.00 FEET OF SAID NORTHEAST QUARTER;
THENCE SOUTH 89°51'38" EAST, ALONG SAID NORTH LINE, 855.38 FEET TO THE SOUTHWESTERLY LINE OF A TRACT OF LAND CONVEYED TO THE CITY OF KENT BY QUIT CLAIM DEED RECORDED UNDER KING COUNTY RECORDING NUMBER 20020829000359;
THENCE NORTH 35°03'17" WEST, ALONG SAID SOUTHWESTERLY LINE, 142.1 81 FEET TO AN ANGLE POINT IN SAID LINE;
THENCE CONTINUING ALONG SAID SOUTHWESTERLY LINE, NORTH 55°45'57" WEST 257.43 FEET TO AN ANGLE POINT IN THE SOUTH LINE OF SAID TRACT;
THENCE NORTH 89°51'00" WEST, ALONG THE SOUTH LINE OF SAID TRACT, 882.09 FEET TO THE NORTH SOUTH CENTER OF SECTION LINE OF SAID SECTION 15 AND AN ANGLE POINT IN THE SOUTH LINE OF SAID TRACT;
THENCE CONTINUING ALONG THE BOUNDARY OF SAID TRACT AND SAID NORTH SOUTH CENTER OF SECTION LINE, NORTH 00°45'27" EAST 26.30 FEET TO AN ANGLE POINT IN THE BOUNDARY OF SAID TRACT;
THENCE SOUTH 89°10'13" WEST, ALONG THE BOUNDARY OF SAID TRACT, 341.94 FEET TO THE SOUTHWEST CORNER THEREOF;
THENCE NORTH 03°51'53" EAST, ALONG THE WEST BOUNDARY OF SAID TRACT AND ITS NORTHERLY PROLONGATION, 197.49 FEET TO AN ANGLE POINT IN THE SOUTHERLY BOUNDARY OF TRACT "R" AS SHOWN IN THAT CERTAIN RECORD OF SURVEY ON FILE UNDER KING COUNTY RECORDING NUMBER 19991123900001;
THENCE NORTH 50°08'07" WEST, ALONG SAID SOUTHERLY BOUNDARY, 158.37 FEET TO AN ANGLE POINT IN SAID SOUTHERLY BOUNDARY;
THENCE CONTINUING ALONG SAID SOUTHERLY BOUNDARY AND ITS SOUTHWESTERLY PROLONGATION, SOUTH 75°51'53" WEST 213.39 FEET TO THE WEST LINE OF THE EAST HALF OF THE SOUTHEAST QUARTER OF THE NORTHWEST QUARTER OF SAID SECTION 15;
THENCE SOUTH 00°51'59" WEST, ALONG SAID WEST LINE, 474.22 FEET;
THENCE SOUTH 84°31'32" WEST 40.98 FEET TO A POINT OF TANGENCY WITH A 2,050.00 FOOT RADIUS CIRCULAR CURVE TO THE LEFT;
THENCE SOUTHWESTERLY, ALONG SAID CURVE, THROUGH A CENTRAL ANGLE OF 18°03'57", AN ARC DISTANCE OF 646.38 FEET TO THE EAST LINE OF THE SOUTHWEST QUARTER OF THE NORTHWEST QUARTER OF SAID SECTION 15;
THENCE NORTH 00°58'32" EAST, ALONG SAID EAST LINE, 3.60 FEET TO THE NORTH LINE OF THE SOUTH 415.00 FEET OF SAID SOUTHWEST QUARTER OF THE NORTHWEST QUARTER;
THENCE NORTH 89°51'38" WEST, ALONG SAID NORTH LINE, TO THE CENTERLINE OF A LOGGING ROAD AS DESCRIBED IN STATUTORY WARRANTY DEED RECORDED UNDER KING COUNTY RECORDING NUMBER 8304010596;
THENCE SOUTHWESTERLY, ALONG SAID LOGGING ROAD CENTERLINE, TO THE NORTHEASTERLY RIGHT OF WAY LINE MILITARY ROAD SOUTH;
THENCE SOUTH 24°44'21" EAST, ALONG SAID NORTHEASTERLY RIGHT OF WAY LINE, TO THE

Martha Neuman
SPU Kent Highlands ORD ATT 1
December 13, 2012
Version #2

NORTHWEST CORNER OF TRACT 20, IN THE UNRECORDED PLAT OF RICHARDS HY-LINE ACRES,
FROM WHICH POINT THE WEST QUARTER CORNER OF SAID SECTION 15 BEARS NORTH
89°44'01" WEST 876.63 FEET DISTANT;
THENCE CONTINUING ALONG SAID NORTHEASTERLY RIGHT OF WAY LINE, SOUTH 24°44'21"
EAST 446.89 FEET TO THE SOUTH LINE OF THE NORTH 405.00 FEET OF SAID UNRECORDED
PLAT;
THENCE SOUTH 89°44'01" EAST, ALONG SAID SOUTH LINE, 22.07 FEET TO A POINT WHICH
BEARS SOUTH 24°44'21" EAST FROM THE TRUE POINT OF BEGINNING;
THENCE NORTH 24°44'21" WEST 449.09 FEET TO THE TRUE POINT OF BEGINNING.

(Containing approximately 6.3 Acres +/-)

MEMORANDUM OF AGREEMENT NO. DA 2012-24
BETWEEN
THE CITY OF SEATTLE
AND
CITY OF KENT
FOR
SALE OF KENT HIGHLANDS LANDFILL SURPLUS PROPERTY

THIS MEMORANDUM OF AGREEMENT ("Agreement") is made by and between the City of Seattle ("City"), a municipal corporation of the State of Washington, acting through its Seattle Public Utilities Department ("SPU"), and the City of Kent ("Kent"), a municipal corporation of the State of Washington, and establishes the terms and conditions for a joint sale of adjacent surplus properties owned by the parties in the area of Kent Highlands Landfill and located in Kent ("Project").

RECITALS

Whereas, the City, under the jurisdiction of SPU, owns approximately 7.4 acres of vacant land (King County Tax Parcel #'s 1522049065 and 1522049172) north of South 231st Way in Kent, Washington, that was originally purchased as part of a much larger parcel for the former Kent Highlands Landfill, is free of refuse and restrictive covenants associated with the former Kent Highlands Landfill; and has been declared surplus to the City's needs under Ordinance _____, and

Whereas, Kent owns an adjacent vacant parcel north of South 231st Way totaling approximately 3.9 acres (King County Tax Parcel # will be determined upon Kent's final dedication of Right of Way for South 231st Way); and

Whereas, the SPU and Kent owned parcels are collectively known as the "North Assemblage", as shown on the attached and incorporated "Exhibit A", and SPU and Kent have determined that a joint listing and marketing approach for the North Assemblage is desirable and may better optimize value for SPU solid waste ratepayers and meet economic development goals for Kent; and

Whereas, SPU has agreed to take the lead for the Project by retaining Heartland, LCC ("Consultant") to provide real estate marketing services related to the North Assemblage as more particularly described in the Amendment No. 2 to Contract No. R000-59-03-01, attached and incorporated as "Exhibit B", and Kent has agreed to contribute \$9,500 for up front marketing preparation costs as described in Exhibit B and the parties desire to further coordinate their joint marketing efforts and responsibilities.

Now, therefore, the parties mutually agree to the following terms and conditions:

AGREEMENT

1. TERM.

- a. This Agreement will be in effect from _____, 2013 through December 31, 2013, unless otherwise terminated in accordance with this Agreement, and unless the parties mutually agree to any of the following by a written amendment signed by the Director of SPU and the Mayor of Kent:
 1. The Parties mutually agree to extend the term.
 2. In the event there is no reasonable or viable proposal within 6 months of the date the North Assemblage is offered to the market ("Listing Date"), any time thereafter, the parties may mutually agree to terminate this Agreement or concurrently consider purchase inquiries on their respective parcels independent of the North Assemblage.

2. SCHEDULE.

- a. **Surplus process.** The parties agree to work towards completing their respective surplus or other relevant administrative processes by January 2013 and have the North Assemblage ready for listing by February 1, 2013.
- b. **Marketing materials and listing agreement.** In accordance with Exhibit B, the parties will coordinate with the Consultant to complete the marketing materials and a listing agreement by February 1, 2013.
- c. **Marketing commences.** The parties desire to have the North Assemblage offered to the market within the first quarter of 2013.
- d. **Close of sale.** Both parties desire to close a sale of the North Assemblage by December 31, 2013.
- e. **Adjustments to the Schedule.** The Project Managers may mutually agree to adjust the schedule as needed.

3. ROLES, RESPONSIBILITIES AND RESOURCES.

- a. **Project Management.** The Project will be managed collaboratively with SPU as the project lead. SPU's Project Manager will be Martha Neuman and Kent's Project Manager will be Erin George. The Project Managers will be responsible for maintaining and coordinating their respective core staff teams for the Project.
- b. **Decision making.**
 - i. **Project managers.** The Project Managers will guide the day-to-day efforts on the Project.
 - ii. **Team.** SPU and Kent teams will use joint collaborative decision making for major project directions.
 - iii. **Property level decisions.** SPU and Kent will maintain decision making authority about their respective parcels.

- iv. **Decisions requiring further authority.** The parties understand and agree that certain decisions may be subject to approval or review by executive or legislative leaders of each party and that Project Managers will diligently pursue such approval as necessary to keep the Project on schedule.

c. Communication.

- i. **Mutual consent.** Neither party will disclose information about the Project or the parcels to third parties without consent of the other party. The parties consent to the other party's disclosure of any approved information or materials in the offering package/marketing materials.
- ii. **Information not subject to public disclosure.** Information related to real estate appraisals including pricing analysis may be exempt from public disclosure per RCW 42.56.260. Information related to any archeological findings may be exempt from public disclosure per RCW 42.56.300. The parties will claim exemptions, as appropriate.
- iii. **Environmental conditions.** Both parties will develop and use agreed upon talking points from the marketing materials related to the environmental conditions of both properties plus the Kent Highlands Landfill. Information requests beyond the talking points will be referred to the respective property owner for response.
- iv. **Kent's regulatory process.** Both parties will use agreed upon talking points from the marketing materials related to Kent's regulatory process for future development. Regulatory information requests to SPU beyond the talking points will be referred to Kent for response.
- v. **Purchase inquiries.** Parties will direct all purchase inquiries to the Consultant. Other inquiries related to general community concerns and interests will be directed to SPU or Kent as appropriate.

d. Budget and resource allocation.

- i. SPU and Kent agree to allocate necessary staff and budget resources needed to complete the Project tasks on schedule.

- e. **Working relationship with Consultant.** SPU and Kent agree that SPU will pay all Consultant charges incurred pre-sale (except for Kent's \$9500 up front contribution) through an amendment to SPU's existing contract with Consultant resulting in SPU, and not Kent, being Consultant's primary client under contract. The parties understand and agree that Tasks 1-5 are being completed for the benefit of both parties and that all the Consultant costs will be shared in accordance with this Agreement. Accordingly, SPU will direct Consultant to equally represent the best interests of both SPU and Kent as Consultant accomplishes Tasks 1-5.

4. MARKETING, OFFERS AND NEGOTIATIONS

a. Marketing effort.

- i. **Marketing materials.** Marketing materials as specified in Exhibit B will include an Offering Memorandum, website or File Transfer Protocol (FTP site), up to two large real estate signs, written marketing strategy with market value analysis and target list of potential buyers, and a geospatial communication tool.
 - ii. **Marketing lead.** Consultant will lead the marketing effort for both parties jointly.
 - iii. **South Assemblage.** Kent and SPU each also own adjacent parcels south of South 231st Way ("South Assemblage"), which is more particularly described in Exhibit B. The parties understand and agree that the South Assemblage will not be actively marketed at this time. General information about the South Assemblage will be included, as appropriate, to create the marketing story for the entire area, which is important for the marketing context for the North Assemblage. Both SPU and Kent may respond to unsolicited offers on the South Assemblage or any portion thereof that is related to or resulting from the North Assemblage marketing effort, subject to each party's respective best interest. In the event offers on the South Assemblage require further coordination of the parties, the parties may mutually agree to amend this agreement to include such coordination.
- b. Listing Agreement.**
- i. A joint exclusive sale agreement, mutually agreed between SPU, Kent and the Consultant and consistent with Exhibit B and this Agreement, will be developed for the North Assemblage. Consultant will represent both parties in the exclusive sale agreement.
- c. North Assemblage Pricing.**
- i. The exclusive sale agreement will include the initial offering price and the listing date for the North Assemblage.

5. ALLOCATION OF COSTS AND PROCEEDS OF SALE.

a. Base Allocation of Costs and Proceeds.

- i. Base Allocation: The parties agree that the costs and proceeds will be generally allocated based on the percentage of usable land area of the North Assemblage as follows:
 - 1. Kent owns 3.9 total acres, with 3.9 usable acres
 - 2. SPU owns 7.4 total acres, with 4.6 usable acres (2.8 acres are unusable wetland and buffer area)
 - 3. Kent's base allocation is 46% and SPU's base allocation is 54%
- ii. The parties agree that each party will be responsible for its share of closing costs in accordance with the base allocation, except that if only one party's parcel(s) sell, that party will be responsible for all closing costs on its parcel(s).

- iii. The parties agree that each party will be responsible for its share of the Consultant costs in accordance with Section 5.b below.
- iv. The parties agree that the sale proceeds remaining after the closing costs will be generally allocated in accordance with the base allocation unless an adjustment to the base allocation is made in accordance with Section 5.c below.
- v. The parties may agree to settle any share or reimbursement of costs or proceeds consistent with this Agreement through the escrow instructions, as appropriate.

b. Allocation of Consultant Costs.

- i. **Exhibit B Tasks 1 and 2:** The total budget for Tasks 1-2 is not to exceed \$53,040, unless agreed to in writing by SPU and Kent. Kent will contribute a total of \$9500 upfront and SPU will contribute the remaining amount of up to \$43,540 upfront for Tasks 1 and 2 in accordance with Exhibit B.
 - 1. If the transaction for the North Assemblage closes, Kent will reimburse SPU Kent's base allocation share (46%) of the total Consultant costs for Tasks 1 and 2, less Kent's upfront contribution of \$9,500, within 60 days of closing.
 - 2. Except for Section 5.b.i.3 below, if Kent does not sell its parcel, Kent will reimburse SPU \$10,000 in addition to Kent's up front contribution of \$9500 for costs SPU paid Consultant upfront for Tasks 1 and 2 by the end of 2013, or as mutually agreed by the parties.
 - 3. If the North Assemblage transaction does not close because the parties cannot mutually agree to accept an offer that includes a Tier 3 proposed use and SPU cannot sell its parcel individually to that proposer, Kent will reimburse SPU 56% of the total Consultant costs for Tasks 1 and 2, less Kent's upfront contribution of \$9,500 by the end of 2013, or as mutually agreed by the parties.
- ii. **Exhibit B Tasks 3, 4 and 5:** The total budget for Tasks 3-5 is not to exceed \$84,850, unless agreed to in writing by SPU and Kent. SPU will pay the Consultant's monthly invoices for 50% of the Consultant costs for Tasks 3-5 upfront in accordance with Exhibit B. The parties will contribute their respective allocated share of the Consultant costs for Tasks 3-5 as follows:
 - 1. If the transaction for the North Assemblage closes, the Consultant will bill SPU the other 50% of the Consultant fees up to the 5% limit in accordance with Exhibit B. Kent will reimburse SPU Kent's base allocation share (46%) of the total Consultant costs for Tasks 3-5 within 60 days of closing.
 - 2. Except for Section 5.b.ii.4 below, if the transaction for the North Assemblage does not close, the Consultant will not bill the other 50% of the Consultant fees. Kent will reimburse SPU Kent's base allocation share (46%) of the Consultant costs SPU paid upfront for Tasks 3-5 by the end of 2013, or as mutually agreed by the parties.

3. If Kent or SPU does not sell its parcel, but the other party does sell its parcel, the Consultant will bill the selling party directly for the other 50% of the Consultant fees up to the 5% limit in accordance with Exhibit B. Kent will reimburse SPU Kent's base allocation share (46%) of the Consultant costs SPU paid upfront for Tasks 3-5 by the end of 2013, or as mutually agreed by the parties. The parties may mutually agree to adjust this reimbursement amount, upward or downward, as appropriate, to the extent the Consultant provided services to the selling party only under Task 5 because negotiations on the unsuccessful parcel were terminated.
4. If the North Assemblage transaction does not close because the parties cannot mutually agree to accept an offer that includes a Tier 3 proposed use and SPU cannot sell its parcel individually to that proposer, Kent will reimburse SPU 56% of the total Consultant costs for Tasks 3-5 by the end of 2013, or as mutually agreed by the parties.

c. Adjustments to Base Allocation of Sale Proceeds

- i. The parties understand and agree that SPU wants to prioritize highest offer price and Kent wants to prioritize highest quality proposed use and those priorities could impact the mutual acceptance of certain offers. Kent's preferred highest quality proposed uses are more particularly described in Exhibit D, attached and incorporated herein. In order to manage these priorities and to facilitate an acceptable sale or outcome to both parties, the parties agree to adjustments to the base allocation of the sale proceeds remaining after closing costs or other actions as follows:
 1. Scenario 1: If a proposer submits an offer that meets or exceeds the initial offering price and meets Kent's Tier 1 or Tier 2 proposed uses, the parties may mutually agree to accept the offer and there will be no adjustment to the base allocation of sale proceeds.
 2. Scenario 2: If more than one proposer submits an offer and Kent wants to accept the offer with the lower price because the proposed use is in the best interest of Kent, the parties may mutually agree to accept the offer with the lower price and the parties will adjust the base allocation so that SPU receives the amount of proceeds it would have received from its base allocation of the proceeds under the higher offer and Kent receives the remaining amount of proceeds.
 3. Scenario 3: If, within 2 months of the Listing Date, a proposer submits an offer that includes a price below the initial offering price and a proposed use that meets Kent's Tier 1 proposed uses, the parties may mutually agree to accept the offer and the parties will adjust the base allocation so that SPU receives the amount of proceeds it would have received from its base allocation of the proceeds from an offer at the initial offering price and Kent receives the remaining amount of proceeds. After 2 months from the Listing Date, the parties may

mutually agree to accept a Tier 1 offer and the parties will adjust the base allocation so that SPU receives the amount of proceeds it would have received from its base allocation of the proceeds from an offer at a fair market value price, as that price may be reasonably recommended by Consultant at the time of the offer based on updated market information, which may be no adjustment, and Kent receives the remaining amount of proceeds.

4. Scenario 4: If a proposer submits an offer that includes a price below the initial offering price and a proposed use that meets Kent's Tier 2 proposed uses, the parties may mutually agree to accept the offer or continue marketing the North Assemblage. In the event the offer is mutually accepted, there will be no adjustment to the base allocation of the sale proceeds.
 5. Scenario 5: If a proposer submits an offer that includes a proposed use that meets Kent's Tier 3 proposed uses, (a) the parties may mutually agree to accept the offer and there will be no adjustment to the base allocation of the sale proceeds or (b) the parties may mutually agree to reject the offer and continue marketing the North Assemblage or (c) SPU may terminate this Agreement. In any case, SPU reserves the right to enter negotiations with the proposer on its parcels only.
- ii. The parties may mutually agree to any other adjustment or action that is in their best interests in facilitating the sale consistent with their priorities for the sale. This may include, but not be limited to, mutually agreeing to change the initial offering price target for the purposes of these adjustment scenarios any time after four months.

6. ADDRESSES FOR NOTICES.

All official notices under this Agreement shall be delivered to the following addresses (or such other addresses as either party may designate in writing):

SPU:	Kent:
Martha Neuman Seattle Public Utilities PO Box 34018 Seattle WA 98124-4018	Erin George City of Kent 220 Fourth Avenue South Kent, WA 98032

7. NO THIRD PARTY BENEFICIARIES.

This Agreement is entered into solely for the mutual benefit of the parties hereto. This Agreement is not entered into with the intent that it shall benefit either party's agents, assigns, consultants or contractors, and no such other person or entity shall be a third party beneficiary of this Agreement.

8. ASSIGNMENT.

This Agreement shall not be assigned in whole or in part by either party without the prior written approval of the other party.

9. COMPLIANCE WITH LAW.

The parties to this Agreement shall comply with all Federal, State, and local laws and ordinances.

10. SEVERABILITY.

If any provision of this Agreement or any provision of any law, rule or document incorporated by reference into this Agreement shall be held invalid, such invalidity shall not affect the other provisions of this Agreement which legally can be given effect without the invalid provision. To this end, the provisions of this Agreement are declared to be severable.

11. APPLICABLE LAW.

This Agreement shall be governed by and construed in accordance with the laws of the State of Washington. The jurisdiction and venue of any action brought hereunder shall be in the Superior Court of King County.

12. AUDIT.

During the progress of the Project and for a period of no less than three years from the Completion Date, each party will keep and make available for each other's inspection and audit all records pertaining to the Project, including accounting records. The parties shall furnish to each other copies of these records upon request and shall maintain the records in accordance with work order accounting procedures prescribed by the Division of Municipal Corporations of the State Auditor's Office.

13. AMENDMENT.

This MOA shall not be amended or modified except in writing and signed by both parties hereto.

14. ENTIRE AGREEMENT.

This Agreement and any written attachments or Amendments thereto, constitutes the complete contractual agreement of the parties and any oral representations or understandings not incorporated herein are excluded.

IN WITNESS WHEREOF, in consideration of the terms, conditions and covenants contained herein, or attached and incorporated and made a part hereof, the parties have executed this Agreement by having their representatives affix their signatures below.

Seattle Public Utilities

City of Kent

Ray Hoffman, Director

Suzette Cooke, Mayor

Martha Neuman
SPU Kent Highlands Ord ATT 2
December 13, 2012
Version #2

Date

Date

EXHIBITS:

- A – Map of project location and identification of North Assemblage and South Assemblage
- B – SPU-Heartland, LLC Contract and Amendment #2
- C – City of Kent-Heartland, LCC Contract
- D – City of Kent Proposed Use Priorities

Exhibit A

Exhibit A Assemblage Areas



J.S. 12/18/12 936_AsemblageAerial_V2.ai Aerial © Google Earth

KEY		Total Acres*	Kent Ownership	SPU Ownership	
	North Assemblage	11.3 Acres	3.9 Acres	7.4 Acres	① PIN= 1522049065, Acres= 1.1
	South Assemblage	32.8 Acres	6.4 Acres	26.4 Acres	② PIN= 1522049172, Acres= 6.3

*Acreege is approximate.

HEARTLAND

Martha Neuman
 Kent Highlands Landfill Attachment 2 Exhibit B
 December 13, 2012
 Version #1

**CONSULTANT CONTRACT AND AMENDMENT
 TRANSMITTAL FORM**

Transmittal Date: June 10, 2011

Original to: Seattle City Clerk MS-CH-03-10 3 rd Floor, City Hall

Complete the following information prior to transmitting document(s):

Document Type (Check one)	Department Agreement No.	Not to Exceed Amount	
<input checked="" type="checkbox"/> New Consultant Roster Agreement	R00-59-03-01	\$60,000	
<input type="checkbox"/> Amendment/Supplement to Existing Agmt.		\$	
Total Contract Award To Date (Including This Action)	\$60,000		<input type="checkbox"/> Time Extension Only
<small>(For Roster Agreements/Amendments Only)</small> Insert Roster Category Number and Name:	59	Real Estate Property Services	

General Agreement Information (Required)	
Consultant Business Name	Heartland, LLC
Contract Title:	Historic SPU Landfills Redevelopment
Execution Date (last signature)	June 8, 2011
Date Contract Ends	May 16, 2013
Department/Division	Seattle Public Utilities (SPU) Branch: Utility Systems Management
Department Contact	Ernest Martin, Grants and Contracts Section (GCS)
Phone Number	684-5021

Purchase Order Encumbrance No.

SPU Information						
Consultant's Vendor # 81019		SPU's Project Manager: Keith Kurko			Phone #: 3-1516	
Funding						
Org	Account	Project/Activity	R/Type	R/Cat	R/Sub/Cat	Amount
WS470	741190					\$60,000
WS	741190					\$
WS	741190					\$
Management Reserve Fund Amount (if applicable)						\$6,000
Sub-consultants:		<input checked="" type="checkbox"/> None <input type="checkbox"/> See Exhibit				
Was an Exemption Claimed? (If Yes Check Type)						
<input checked="" type="checkbox"/> N/A		<input type="checkbox"/> Emergency		<input type="checkbox"/> Adverse Effect		<input type="checkbox"/> Sole Source

ORIGINAL

**CONSULTANT ROSTER CONTRACT NO. R00-59-03-01
BETWEEN
SEATTLE PUBLIC UTILITIES
AND
HEARTLAND LLC
FOR
HISTORIC SPU LANDFILLS REDEVELOPMENT**

TABLE OF CONTENTS

Section 1: TERM OF CONTRACT 1

Section 2: TIME OF BEGINNING AND COMPLETION 1

Section 3: SCOPE OF WORK 1

Section 4: PAYMENT 1

Section 5: PAYMENT PROCEDURES 3

Section 6: ADDRESSES FOR NOTICES AND DELIVERABLE MATERIALS 4

Section 7: FINAL CONSULTANT CONTRACT PAYMENTS REPORTING REQUIREMENTS 4

Section 8: EQUAL EMPLOYMENT OPPORTUNITY AND OUTREACH 1

Section 9: NONDISCRIMINATION IN EMPLOYEE BENEFITS 5

Section 10: AFFIRMATIVE EFFORTS TO USE WOMEN AND MINORITY BUSINESS ENTERPRISES 5

Section 11: OTHER LEGAL REQUIREMENTS 6

Section 12: INDEMNIFICATION 7

Section 13: INSURANCE 7

Section 14: AUDIT 7

Section 15: CONTRACTUAL RELATIONSHIP 7

Section 16: ASSIGNMENT AND SUBCONTRACTING 7

Section 17: INVOLVEMENT OF FORMER CITY EMPLOYEES 8

Section 18: NO CONFLICT OF INTEREST 8

Section 19: ERRORS & OMISSIONS; CORRECTION 8

Section 20: INTELLECTUAL PROPERTY RIGHTS 8

Section 21: CONFIDENTIALITY 9

Section 22: EXTRA WORK 9

Section 23: KEY PERSONS 9

Section 24: DISPUTES 9

Section 25: TERMINATION 9

Section 26: CONSULTANT PERFORMANCE EVALUATION PROGRAM 10

Section 27: DEBARMENT 10

Section 28: MISCELLANEOUS PROVISIONS 11

ADDENDUM

INSURANCE REQUIREMENTS AND TRANSMITTAL FORM

ATTACHMENTS

1. FINAL CONSULTANT CONTRACT PAYMENTS REPORTING FORM
2. ALLOWED AND NOT ALLOWED OVERHEAD COSTS
3. PERFORMANCE EVALUATION – CONSULTANT SERVICES

EXHIBITS

- A. SCOPE OF WORK
- B. ESTIMATED PROJECT COSTS AND LABOR HOURS
- C. CONSULTANT'S BILLING RATES

This Contract is made and entered into by and between The City of Seattle ("the City"), a Washington municipal corporation, through its Seattle Public Utilities (SPU), as represented by the Director of SPU, and Heartland LLC, 524 Second Avenue, Suite 200, Seattle, WA 98104 ("Consultant"), a Limited Liability Company of the State of Washington and authorized to do business in the State of Washington.

Section 1: TERM OF CONTRACT

The term of this Contract shall begin when fully executed by all parties, and shall end on May 16, 2013, unless terminated earlier pursuant to the provisions hereof.

Section 2: TIME OF BEGINNING AND COMPLETION

The Consultant shall begin the work outlined in the "Scope of Work" section upon receipt of written notice to proceed from the City. The City will acknowledge in writing when the Work is complete.

Time limits established pursuant to this Contract shall not be extended because of delays for which the Consultant is responsible, but may be extended by the City, in writing, for its convenience or for conditions beyond the Consultant's control.

Section 3: SCOPE OF WORK

- A. General Category Scope of Work. The General Scope of Work for City of Seattle Roster Program Category No. 59 – Real Estate Property Services of the Consultant Roster Program is as follows: Real estate consulting, acquisition, relocation, valuation, estimates, property management, due diligence transaction screening, and expert witness.

Notwithstanding any other provisions of this Contract, amendments to the Work shall be authorized only within the General Scope of Work for the Roster Category, and for additional work not foreseen at the beginning of the term of this Roster Contract.

- B. Specific Scope of Work.

The Specific Scope of Work of this Contract and the time schedule for completion of such work are as described in Exhibit A, which is attached to and made a part of this Contract.

- C. General Review and Examination. The Work shall, at all times, be subject to the City's general review and approval. The Consultant shall confer with the City periodically during the progress of the Work, and shall prepare and present such information and materials (e.g., a detailed outline of completed Work) as may be pertinent, necessary, or requested by the City to determine the adequacy of the Work or the Consultant's progress.
- D. Digital Materials. The Consultant shall provide digital materials, including reports, data, maps, graphs and photos that are compatible with current Seattle Public Utilities file and data formats. All digital materials become the property of the City of Seattle.
- E. Standards. The Consultant shall be responsible for obtaining the most current City Standards for work included in this Contract. Standards may be obtained at the following City website:
http://www.seattle.gov/util/finance/comp/standard_Plan_2_Specs.html#wp

Section 4: PAYMENT

The Consultant agrees to perform all the work set forth in the "Scope of Work" section of this Contract for an amount not to exceed **Sixty Thousand Dollars (\$60,000)** hereinafter referred to as the "Contract Amount," without further authorization by amendment. Such payment shall be full compensation for work performed and/or services rendered, including supervision, labor, supplies, materials, equipment or use thereof, and for all other expenses and

incidentals necessary to complete all the work. It is understood that this is a fixed amount and will not increase because of any difference between the estimated and actual costs of performing the work covered by this Contract. The Contract Amount includes a Management Reserve Fund (MRF) of Six Thousand Dollars (\$6,000) which is strictly governed by the terms of Section 5F below entitled "Payment from the Management Reserve Fund (if any)."

Notwithstanding any other provisions of this Contract, the negotiated amount to be paid to the Consultant for specific work performed on a roster contract shall not exceed \$260,000 except where additional related work, not foreseen when the Contract was originally executed, is identified. The dollar amount referenced in this paragraph may be adjusted by the City's Department of Executive Administration based on changes in the Consumer Price Index without the need to amend this Contract.

The Consultant shall keep complete and accurate records in accordance with generally accepted accounting practices of all reimbursable costs and expenses for purposes of audit and proper allocation of overhead expenses to this Contract.

Details of the Consultant's cost estimates are set forth in Exhibit B, "Estimated Project Costs and Labor Hours," which is hereby attached to and made a part of this Contract. The Consultant understands that there is no promise or guarantee of a minimum amount of work or compensation under this Contract and that payment under this Contract is subject to continuing appropriations by the Seattle City Council.

The Consultant will be paid monthly by the City for completed work and/or services rendered under this Contract up to the Contract Amount. Payment of any amounts due under the Contract shall not relieve the Consultant of the obligation to perform all the work set forth in the Scope of Work in a satisfactory manner. The amount of the monthly payment to the Consultant shall be calculated as hereinafter set forth.

- A. Salary. The City will reimburse the Consultant on the basis of an all-inclusive, hourly billing rate, as set forth in Exhibit C, "Consultant's Billing Rates," which is attached to and made a part of this Contract.

Computation of Rates: Current, justifiable salary, overhead and fringe benefits rates, and a fee for profit not to exceed twelve percent (12%) of the Consultant's total labor related costs for the work required in the contract shall be used in the computations of the costs. Exceptions to the profit limitation may be allowed at the sole discretion of the City, but any such exception shall not be construed as a precedent or used by the Consultant as justification for requesting an exception on other contracts.

The all-inclusive hourly billing rates shall include only those costs allowed under Part M of the Federal Acquisition Regulations (FAR), the provisions of which are incorporated herein by reference. Rates may be audited and adjusted to the actual rate of allowable (as defined in the current FAR) overhead and employee fringe benefit costs incurred by the Consultant. This rate may be reviewed and adjusted if the Contract is amended, or if a review is called for by either party at not less than yearly intervals.

Salary Adjustments: Reasonable annual adjustments to salary rates may be allowed, provided such adjustments do not increase costs above the Contract Amount. Salary adjustments shall be subject to approval by the City, and an amended billing rates exhibit shall be submitted by the Consultant for attachment and incorporation into the Contract.

- B. Direct Expenses. In addition to the salary related payments set forth above, the City will reimburse the Consultant at cost, without any additional mark-up, for expenses that are necessary and directly applicable to the work required by this Contract. Such direct project costs may not be included in the overhead expenses or direct labor multiplier of the Consultant. The direct expenses allowed under this Contract are set forth in Exhibit C, "Estimated Project Costs and Labor Hours." There is no mark-up allowed on any direct expenses. Sub-consultants are considered direct expenses.

Section 5: PAYMENT PROCEDURES

- A. Invoices. The Consultant shall submit invoices to the City no more than once per month during the progress of the work for partial payment for work completed to date. The costs billed on these invoices shall be computed

pursuant to the rates and limitations set forth in the exhibits to this Contract that pertain to allowed rates and expenses.

Invoices shall be submitted to:

Enemy Parameter, Accounts Payable
Seattle Public Utilities
PO Box 34018
Seattle, WA 98124-4018

Invoices under this Contract shall clearly display the following information (sub-consultants' invoices shall also include this information):

Contract No. R00-59-03-01

Contract Title: Historic SPU Landfills Redevelopment

- **INVOICE DATE and NUMBER**
- The SPU Project Manager: Keith Kuthan or DeWayne Treason
(Please do not put PM's name in the address portion of the invoice)
- Period covered by the invoice
- Task # and title (from the Scope of Work)
- Employee's name and classification
- Employee's all-inclusive hourly rate and # of hours worked
- Total labor costs per task
- Itemization of direct, non-salary costs (per task, if so allocated)
- Sub-consultants' payments - (Total amount paid to each time period - attach their invoices for detail)
- Cumulative costs per task and for the total project

The Consultant shall submit backup documentation (only one set is required) with each invoice for any direct cost items that total \$250,000 or more billed to the City under this Contract (with the exception of sub-consultants' invoices which must always be attached regardless of the amount). However, the Consultant must maintain records and backup documentation in its files for all direct costs, and make them available for City review on request. Such documentation would include copies of receipts, telephone bills, employee response records, sub-consultants' invoices, etc.

Invoices will be checked by the City and payment to the Consultant will be made within 30 days after accurate billing and back-up documentation are received. No payment shall be made for work performed prior to authorization to begin work as described in the Time of Beginning and Completion Section of this Contract.

NOTE: Time Limit on Old or Lost Invoices: It is understood that the City shall not be obligated to pay the Consultant for work performed if the billing for such work is not received within one (1) year of the performance of such work, or ninety (90) days after the date of the Letter of Completion, whichever is sooner. Additionally, the City shall not be obligated to pay for lost or otherwise unpaid invoices if the Consultant has not notified the City in writing of such nonpayment within one (1) year from the date of such lost or unpaid invoices, or ninety (90) days after the date of the Letter of Completion, whichever is sooner.

B. Progress Payments and Withheld Amounts. Payment of invoices shall be in full for work satisfactorily performed by the Consultant until 90% of the Contract Amount has been paid, or until 90% of any later adjusted estimate of the final Contract Amount is paid, whichever is less. Invoices for the final 10% will be held until the terms for Final Payment, see below, are fulfilled. However, at the sole discretion of SPU, portions of the final 10% withheld may be released prior to the final payment of the Contract.

Throughout the project, the percentage of the Contract Amount paid to the Consultant shall never exceed the percentage of the scope of work actually accomplished by the Consultant.

C. Final Payment and Payment of Withheld Amounts. Final payment will be contingent on verification by the City of satisfactory completion by the Consultant of the work under this Contract and receipt and acceptance by the

City or reports and/or any other deliverables that are required to fulfill the terms of this Contract. Such acceptance and acknowledgement shall be included in the "Letter of Completion" (see Subsections above), and the Consultant will be instructed to submit its request for final payment, including any amounts withheld, if any.

Final payment to the Consultant shall not waive or preempt the City's right to audit the Consultant's and any sub-consultants' records at a later date in accordance with the terms of Section 14, "Audit," hereunder.

- D. Consultant's Records. The Consultant and sub-consultants shall keep complete and accurate records in accordance with generally accepted accounting practices of all other reimbursable costs and expenses for purposes of audit and proper allocation of overhead expenses to this project. The cost records of the Consultant and sub-consultants must relate all project expenses to specific tasks of the Scope of Work.
- E. Overtime Work. No premium will be paid by the City for overtime work without prior authorization by the City.
- F. Payment from the Management Reserve Fund (if any). For a Management Reserve Fund to be utilized on this Contract or any subsequent amendments it must already be identified on the associated exhibit for the estimated cost. The Management Reserve Fund is to provide the Department with flexibility to authorize additional funds for allowable unforeseen costs beyond those estimated for in the tasks of the Scope of Work, or for reimbursing the Consultant for additional work requested by the City toward completing the Scope of Work. If this Contract has any Federal monies in it, the maximum amount allowable for the Management Reserve Fund shall not exceed the lesser of \$50,000 or 10% of the total Contract Amount.

Payment from the Management Reserve Fund is at the sole discretion of the Department and must be authorized in writing **before** the Consultant performs the additional work. Such written authorization will include a description of the work that is to be performed and shall specify the amount of the payment, including, if applicable, any profit factor. Any fixed fee for work reimbursed from the Management Reserve Fund shall be negotiated at the time such work is assigned to the Consultant and shall be authorized in writing by the City.

The Consultant shall show separately and identify on its invoices all charges against the Management Reserve Fund.

Section 6: ADDRESSES FOR NOTICES AND DELIVERABLE MATERIALS

All official notices under this Contract shall be delivered to the following addresses (or such other addresses as either party may designate in writing):

If to the City:	If to the Consultant:
Keith Kariko or DeWayne Tice-on, SPU Project Managers Seattle Public Utilities PO Box 34018 Seattle WA 98124-4018	Mat Hoffman Heartland LLC Suite 200 524 Second Avenue Seattle, WA 98104

Section 7: FINAL CONSULTANT CONTRACT PAYMENTS REPORTING REQUIREMENTS

Within 30 calendar days after final payment has been made to the Consultant for the Work, the Consultant shall submit to the City a completed "Final Consultant Contract Payments Reporting Form," in the form attached to this Contract or as revised hereafter by the City.

Section 8: EQUAL EMPLOYMENT OPPORTUNITY AND OUTREACH

- A. The Consultant shall not discriminate against any employee or applicant for employment because of race, color, age, sex, marital status, sexual orientation, gender identity, political ideology, creed, religion, ancestry, national origin, or the presence of any sensory, mental or physical handicap, unless based upon a bona fide occupational qualification. The Consultant shall take affirmative efforts to ensure that applicants are employed, and that

employees are treated during employment, without regard to their race, color, age, sex, marital status, sexual orientation, gender identity, political ideology, creed, religion, ancestry, national origin, or the presence of any sensory, mental or physical handicap. Such efforts shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; lay off or termination; rates of pay, or other forms of compensation and selection for training, including apprenticeship. The Consultant shall post in conspicuous places, available to employees and applicants for employment, notices as provided by the City setting forth the provisions of this nondiscrimination clause.

- B. If the Consultant will hire employees for this project, the Consultant shall make affirmative efforts to recruit minority and women candidates. Affirmative efforts may include the use of advertisements in publications directed to minority communities and other targeted recruitment efforts, and using the services of available minority community and public organizations to perform outreach.
- C. Record Keeping. The Consultant shall maintain, for at least 24 months after the expiration or earlier termination of this Contract and permit access to the Consultant's records of employment, employment advertisements, application forms and other pertinent data and records requested by Seattle Public Utilities for the purposes of investigation to determine compliance with the requirements of this section.
- D. The Consultant, by executing this Contract, is affirming that the Consultant complies with all applicable federal, state, and local non-discrimination laws, particularly the requirements of SMC Ch. 20.42 as incorporated in this Contract. Any violation of the requirements of this section noted in paragraph A, B and C above shall be a material breach of Contract for which the Consultant may be subject to damages and sanctions provided for by the Contract and by applicable law, including but not limited to debarment from City contracting activities in accordance with SMC Ch. 20.70.
- E. The foregoing provisions of this section shall be inserted in all subcontracts for the Work covered by this Contract.

Section 9: NONDISCRIMINATION IN EMPLOYEE BENEFITS

- A. Compliance with SMC Ch. 20.45: The Consultant shall comply with the requirements of SMC Ch. 20.45 and Equal Benefits Program Rules implementing such requirements, under which the Consultant is obligated to provide the same or equivalent benefits ("equal benefits") to its employees with domestic partners as the Consultant provides to its employees with spouses. At the City's request, the Consultant shall provide complete information and verification of the Consultant's compliance with SMC Ch. 20.45. Failure to cooperate with such a request shall constitute a material breach of this Contract. *(For further information about SMC Ch. 20.45 and the Equal Benefits Program Rules call 206.684.0450 or visit the information at <http://its.seattleu.wa.gov/equalbenefits/>.)*
- B. Remedies for Violations of SMC Ch. 20.45: Any violation of this Section 9 shall be a material breach of Contract for which the City may:
 - (1) Require the Consultant to pay actual damages for each day that the Consultant is in violation of SMC Ch. 20.45 during the term of the Contract; or
 - (2) Terminate the Contract; or
 - (3) Disqualify the Consultant from bidding on or being awarded a City contract for a period of up to five (5) years; or
 - (4) Impose such other remedies as specifically provided for in SMC Ch. 20.45 and the Equal Benefits Program Rules promulgated there under, or as provided in this Contract.

Section 10: AFFIRMATIVE EFFORTS TO USE WOMEN AND MINORITY BUSINESS ENTERPRISES

- A. If a Consultant intends to subcontract out any part of a contract instead of performing the work itself, then the following requirement applies: Consultant shall use affirmative efforts to promote and encourage participation by women and minority businesses on subcontracting opportunities within the contract scope of work. Consultant agrees to make such efforts as a condition of the Contract.

- B. Outreach efforts may include the use of solicitation lists, advertisements in publications directed to minority communities, breaking down bid requirements into smaller tasks or quantities where economically feasible, making other useful schedule or requirements modifications that are likely to assist small or WMBE businesses to compete, targeted recruitment efforts, and using the services of available minority community and public organizations to perform outreach.
- C. Record-Keeping: The Consultant shall maintain, for at least 24 months after the expiration or earlier termination of this Contract, relevant records and information necessary to document all Consultant solicitations to subconsultants and suppliers, all subconsultant and supplier proposals received, and all subconsultants and suppliers actually utilized under this Contract. The City shall have the right to inspect and copy such records.
- D. Consultant shall ensure that all employees, particularly supervisors, are aware of, and adhere to their obligation to maintain a working environment free from discriminatory conduct, including but not limited to harassment and intimidation of minorities, women, or WMBE businesses.
- E. Non-Discrimination: Consultant shall not create barriers to open and fair opportunities for WMBEs to participate in any City contract and to obtain or compete for contracts and subcontracts as sources of supplies, equipment, construction and services.
- F. Sanctions for Violation: Any violation of paragraph A, B, C, D or E of this section, or a violation of SMC Ch. 14.04 (Fair Employment), SMC Ch. 14.10 (Fair Contracting), SMC Ch. 14.17 (Equality in Contracting), SMC Ch. 20.45 (Nondiscrimination in Benefits), or other local, state or federal non-discrimination laws shall be a material breach of contract for which the Consultant may be subject to damages and sanctions provided for by the Contract and by applicable law. Consultants found to be in violation of the requirements may be subject to debarment from City contracting activities in accordance with SMC Ch. 20.30.

Note: Women and minority owned firms are asked to self-certify by registering in the City Vendor Registration System at <http://seattle.gov/manufacturing/3/vendorRegistration.htm>. If you do not have computer access, please call 206-684-3444 for assistance.

Section 11: OTHER LEGAL REQUIREMENTS

- A. General Requirement: The Consultant, at no expense to the City, shall comply with all applicable laws of the United States and the State of Washington, the Charter and ordinances of The City of Seattle and rules, regulations, orders, and directives of their administrative agencies and the officers thereof. Without limiting the generality of this paragraph, the Consultant shall specifically comply with the following requirements of this section.
- B. Licenses and Similar Authorizations: The Consultant, at no expense to the City, shall secure and maintain in full force and effect during the term of this Contract all required licenses, permits, and similar legal authorizations, and comply with all requirements thereof.
- C. Use of Recycled Content Paper: Whenever practicable, Consultant shall use reusable products including recycled content paper on all documents submitted to the City. Consultant is to duplex all documents that are prepared for the City under this Contract, whether such materials are printed or copied, except when impracticable to do so due to the nature of the product being produced. Consultant is to use 100% post consumer recycled content, chlorine-free paper in any documents that are produced for the City, whenever practicable, and to use other paper-saving and recycling measures in performance of the contract with and for the City.
- D. Americans with Disabilities Act: The Consultant shall comply with all applicable provisions of the Americans with Disabilities Act of 1990 as amended (ADA) in performing its obligations under this Contract. Failure to comply with the provisions of the ADA shall be a material breach of, and grounds for the immediate termination of, this Contract.

F. Fair Contracting Practices Ordinance: The Consultant shall comply with the Fair Contracting Practices Ordinance of The City of Seattle (Ordinance 319601), as amended.

Section 12: INDEMNIFICATION

The Consultant does hereby release and shall defend, indemnify, and hold the City and its employees and agents harmless from all losses, liabilities, claims (including claims arising under federal, state or local environmental laws), costs (including attorneys' fees), actions or damages of any sort whatsoever arising out of the Consultant's performance of the services contemplated by this Contract to the extent attributable to the negligent acts or omissions, willful misconduct or breach of this Contract by the Consultant, its servants, agents, and employees. In furtherance of these obligations, and only with respect to the City, its employees and agents, the Consultant waives any immunity it may have or limitation on the amount or type of damages imposed under any industrial insurance, worker's compensation, disability, employer benefit or similar laws. The Consultant acknowledges that the foregoing waiver of immunity was mutually negotiated and agrees that the indemnification provided for in this section shall survive any termination or expiration of this Contract.

Section 13: INSURANCE

Insurance certification required. See Addendum "INSURANCE REQUIREMENTS AND TRANSMITTAL FORM."

Section 14: AUDIT

Upon request, the Consultant shall permit the City, and any other governmental agency involved in the funding of the Work ("Agency"), to inspect and audit all pertinent books and records of the Consultant, any subconsultant, or any other person or entity that performed work in connection with or related to the Work, at any and all times deemed necessary by the City or Agency, including up to six years after the final payment or release of withheld amounts has been made under this Contract. Such inspection and audit shall occur in King County, Washington or other such reasonable location as the City or Agency selects. The Consultant shall supply the City with, or shall permit the City or Agency to make, a copy of any books and records and any portion thereof. The Consultant shall ensure that such inspection, audit and copying right of the City and Agency is a condition of any subcontract, agreement or other arrangement under which any other person or entity is permitted to perform work under this Contract.

Section 15: CONTRACTUAL RELATIONSHIP

The relationship of the Consultant to the City by reason of this Contract shall be that of an independent contractor as defined by the City's Contracting Out Policy. This Contract is not intended for the Consultant to act in anyway, in the capacity of a City employee. The parties agree that the City has neither direct nor immediate control over the Consultant or the right to control the manner or means by which the Consultant performs the work. The Consultant agrees that neither the Consultant nor any employee of the Consultant shall be deemed to be an employee of the City for any purpose. This Contract does not authorize the Consultant to act as the agent or legal representative of the City for any purpose whatsoever. The Consultant is not granted any express or implied right or authority to assume or create any obligation or responsibility on behalf of or in the name of the City or to bind the City in any manner or thing whatsoever.

Section 16: ASSIGNMENT AND SUBCONTRACTING

The Consultant shall not assign or subcontract any of its obligations under this Contract without the City's written consent, which may be granted or withheld in the City's sole discretion. Any subcontract made by the Consultant shall incorporate by reference all the terms of this Contract, except as otherwise provided. The Consultant shall ensure that all subconsultants comply with the obligations and requirements of the subcontract. The City's consent to any assignment or subcontract shall not release the Consultant from liability under this Contract, or from any obligation to be performed under this Contract, whether occurring before or after such consent, assignment, or subcontract.

Section 17: INVOLVEMENT OF FORMER CITY EMPLOYEES

- A. The Consultant shall promptly notify the City in writing of any person who is expected to perform any of the Work and who, during the twelve (12) months immediately prior to the expected commencement date of such work or subcontract, was a City officer or employee.
- B. The Consultant shall ensure that no Work or matter related to the Work is performed by any person (employee, subcontractor, or otherwise) who:
- (1) was a City officer or employee within the past twelve (12) months, and
 - (2) as such was officially involved in, participated in, or acted upon any matter related to the Work, or is otherwise prohibited from such performance by SMC 4.16.075.

Section 18: NO CONFLICT OF INTEREST

The Consultant certifies that the Consultant does not have a business interest, or a close family relationship with any City officer or employee who was, is, or will be involved in the consultant selection, negotiation, drafting, signing, administration, or evaluating the Consultant's performance. As used in this section, the term "Consultant" shall include any employee of the Consultant who was, is, or will be involved in the negotiation, drafting, signing, administration, or performance of the Contract. As used in this section, the term "close family relationship" refers to the following: spouse or domestic partner; any dependent parent, parent-in-law, child, son-in-law, or daughter-in-law; or any parent, parent-in-law, sibling, uncle, aunt, cousin, niece or nephew residing in the household of a City officer or employee described above.

Section 19: ERRORS & OMISSIONS: CORRECTION

The Consultant shall be responsible for the professional quality, technical accuracy, and the coordination of all designs, drawings, specifications, and other services furnished by or on the behalf of the Consultant under this Contract. The Consultant, without additional compensation, shall correct or revise any errors or omissions in the designs, drawings, specifications, and/or other Consultant services immediately upon notification by the City. The obligation provided for in this section with respect to any acts or omissions during the term of this Contract shall survive any termination or expiration of this Contract.

Section 20: INTELLECTUAL PROPERTY RIGHTS

The Consultant hereby assigns to the City all rights in any invention, improvement, or discovery, together with all related information, including but not limited to, designs, specifications, data, patent rights and findings developed in connection with the performance of the Contract or any subcontract hereunder. Notwithstanding the above, the Consultant does not convey to the City, nor does the City obtain, any right to any document or material utilized by Consultant that was created or produced separate from this Contract or was preexisting material (not already owned by the City), provided that the Consultant has clearly identified in writing such material as preexisting prior to commencement of the Work. To the extent that preexisting materials are incorporated into the Work, the Consultant grants the City an irrevocable, non-exclusive right and/or license to use, execute, reproduce, display, and transfer the preexisting material, but only as an inseparable part of the Work.

The Consultant shall retain the copyright (including the right of reuse) to all materials and documents prepared by the Consultant in connection with the Work, whether or not the Work is completed. The Consultant grants to the City a non-exclusive, irrevocable, unlimited, royalty-free license to use every document and all other materials prepared by the Consultant for the City under this Contract. If requested by the City, a copy of all drawings, prints, plans, field notes, reports, documents, files, input materials, output materials, the media upon which they are located (including cards, tapes, discs and other storage facilities), software programs or packages (including source code or codes, object codes, upgrades, revisions, modifications, and any related materials) and/or any other related documents or materials which are developed solely for, and paid for by, the City in connection with the performance of the Work, shall be promptly delivered to the City.

The City may make and retain copies of such documents for its information and reference in connection with their use on the project. The Consultant does not represent or warrant that such documents are suitable for reuse by the City, or others, or on any other project.

Section 21: CONFIDENTIALITY

The parties agree that they will not permit the duplication or disclosure of any information designated in advance by the other party as "Confidential and Proprietary" to any person (other than its own employee, agent, or representative who must have such information for the performance of that party's obligations hereunder) unless such duplication, use or disclosure is specifically authorized in writing by the other party or is required by law. "Confidential and Proprietary" information does not include ideas, concepts, know-how or techniques related to information that, at the time of disclosure, is in the public domain unless the entry of that information into the public domain is a result of any breach of this Contract. Likewise, "Confidential and Proprietary" information does not apply to information that is independently developed, already possessed without an obligation of confidentiality, or rightfully obtained from a third party without an obligation of confidentiality.

Section 22: EXTRA WORK

The City may desire to have the Consultant perform work or render services in connection with this project other than that expressly provided for in the "Scope of Work" section of this Contract. This will be considered extra work, supplemental to this Contract, and shall not proceed unless authorized by an amendment. Any costs incurred due to the performance of extra work, prior to execution of an amendment will not be reimbursed under this Contract or an amendment.

Section 23: KEY PERSONS

The Consultant shall not transfer or reassign any individual designated in this Contract as essential to the Work, without the express written consent of the City, which consent shall not be unreasonably withheld. If during the term of this Contract, any such individual leaves the Consultant's employment, the Consultant shall present to the City one or more individuals with greater or equal qualifications as a replacement, subject to the City's approval, which shall not be unreasonably withheld. The City's approval shall not be construed to release the Consultant from its obligations under this Contract.

Section 24: DISPUTES

Any dispute or misunderstanding that may arise under this Contract concerning the Consultant's performance shall first be resolved through negotiations, if possible, between the Consultant's Project Manager and the City's Project Manager, or if necessary shall be referred to the Director of Seattle Public Utilities and the Consultant's senior executives). If such officials do not agree upon a decision within a reasonable period of time, the parties may pursue other legal means to resolve such disputes, including but not limited to alternate dispute resolution processes.

Section 25: TERMINATION

- A. **For Cause:** The City may terminate this Contract if the Consultant is in material breach of any of the terms of this Contract, and such breach has not been corrected to the City's reasonable satisfaction in a timely manner.
- B. **For Reasons Beyond Control of Parties:** Either party may terminate this Contract without recourse by the other where performance is rendered impossible or impracticable for reasons beyond such party's reasonable control such as but not limited to an act of nature, war or warlike operation, civil commotion, riot, labor dispute including strike, walkout, or lockout, except labor disputes involving the Consultant's own employees; sabotage; or superior governmental regulation or control.
- C. **For City's Convenience:** The City may terminate this Contract at any time, without cause and for any reason including the City's convenience, upon written notice to the Consultant.

- D. Notice: Notice of termination pursuant to this section shall be given by the party terminating this Contract to the other not less than five (5) business days prior to the effective date of termination.
- E. Actions Upon Termination: In the event of termination not the fault of the Consultant, the Consultant shall be paid for the services properly performed prior to termination, together with any reimbursable expenses then due, but in no event shall such compensation exceed the maximum compensation to be paid under the Contract. The Consultant agrees that this payment shall fully and adequately compensate the Consultant and all subconsultants for all profits, costs, expenses, losses, liabilities, damages, taxes, and charges of any kind whatsoever (whether foreseen or unforeseen) attributable to the termination of this Contract.

Upon termination for any reason, the Consultant shall provide the City with the most current design documents, contract documents, writings and other products it has produced to the date of termination, along with copies of all project-related correspondence and similar items. The City shall have the same rights to use these materials as if termination had not occurred; provided, however, that the City shall indemnify and hold the Consultant harmless from any claims, losses or damages to the extent caused by modifications made by the City to the Consultant's work product.

Section 26: CONSULTANT PERFORMANCE EVALUATION PROGRAM

The Consultant's performance will be evaluated by Seattle Public Utilities at the conclusion of the contract. The City's Consultant Performance Evaluation forms are available at the following Web Site: www.seattle.gov/finance/appraiser.html and as Attachment 3 to this Contract.

Section 27: DEBARMENT

In accordance with SMC Ch. 20.70, the Director of the Department of Executive Administration or his/her designee may issue an Order of Debarment and prevent a Consultant from entering into contracts with the City or from acting as a subconsultant on any contract with the City for up to five years after determining that any of the following reasons exist:

- 1) The Consultant has received overall performance evaluations of deficient, inadequate, or substandard performance on three or more City Contracts.
- 2) The Consultant has failed to comply with City ordinances or Contract terms, including but not limited to, ordinance or Contract terms relating to small business utilization, discrimination, or equal benefits.
- 3) The Consultant has abandoned, surrendered, or failed to complete or to perform work on or in connection with a City Contract.
- 4) The Consultant has failed to comply with Contract provisions, including but not limited to quality of workmanship, timeliness of performance, and safety standards.
- 5) The Consultant has submitted false or intentionally misleading documents, reports, notices, or other statements to the City in connection with a Contract.
- 6) The Consultant has colluded with another firm to restrain competition.
- 7) The Consultant has committed fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a Contract for the City or any other government entity.
- 8) The Consultant has failed to cooperate in a City debarment investigation.
- 9) The Consultant has failed to comply with SMC 14.01, SMC Ch. 14.10, SMC Ch. 20.42, or SMC Ch. 20.45, or other local, State, or federal non-discrimination laws.

The Director or his/her designee may issue an Order of Debarment in accordance with the procedures specified in SMC 20.70.050. The rights and remedies of the City under these debarment provisions are in addition to any other rights and remedies provided by law or under the Contract.

Section 28: MISCELLANEOUS PROVISIONS

- A. Amendments: No modification of this Contract shall be effective unless in writing and signed by an authorized representative of each of the parties hereto.
- B. Binding Contract: This Contract shall not be binding until signed by both parties. The provisions, covenants and conditions in this Contract shall bind the parties, their legal heirs, representatives, successors, and assigns.
- C. Applicable Law/Venue: This Contract shall be construed and interpreted in accordance with the laws of the State of Washington. The venue of any action brought hereunder shall be in the Superior Court for King County.
- D. Remedies Cumulative: Rights under this Contract are cumulative and nonexclusive of any other remedy at law or in equity.
- E. Captions: The titles of sections or subsections are for convenience only and do not define or limit the contents.
- F. Severability: If any term or provision of this Contract is determined by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Contract shall not be affected thereby, and each term and provision of this Contract shall be valid and enforceable to the fullest extent permitted by law.
- G. Waiver: No covenant, term or condition or the breach thereof shall be deemed waived, except by written consent of the party against whom the waiver is claimed, and any waiver of the breach of any covenant, term or condition shall not be deemed to be a waiver of any preceding or succeeding breach of the same or any other covenant, term or condition. Neither the acceptance by the City of any performance by the Consultant after the time the same shall have become due nor payment to the Consultant for any portion of the Work shall constitute a waiver by the City of the breach or default of any covenant, term or condition unless otherwise expressly agreed to by the City, in writing.
- H. Entire Contract: This document, along with any exhibits and attachments, constitutes the entire agreement between the parties with respect to the Work. No verbal agreement or conversation between any officer, agent, associate or employee of the City and any officer, agent, employee or associate of the Consultant prior to the execution of this Contract shall affect or modify any of the terms or obligations contained in this Contract.
- I. Negotiated Contract: The parties acknowledge that this is a negotiated contract, that they have had the opportunity to have this Contract reviewed by their respective legal counsel, and that the terms and conditions of this Contract are not to be construed against any party on the basis of such party's draftsmanship thereof.
- J. Working On City Premises: Refer to section 7.3 in the Standard Operating Procedures to identify the applicable rules of applicability.

If the City determines it is in its best interests for the Consultant to perform work on City premises and/or with City equipment, the City may provide the premises and equipment it deems necessary. Such premises and equipment are provided by the City exclusively for the project and shall not be used for any other consultant purpose.

In the event the consultant works on the City premises using City equipment, the Consultant remains an independent contractor and does not act in the capacity of a City employee. The Consultant will not work on-site at City offices for more than 36 consecutive months without written authorization from the City Project Manager. The Consultant shall notify the City Project Manager if s/he or any other workers are known to be within 90 days of a consecutive 36-month placement on City property.

If the City determines the use of City premises or equipment is not necessary to complete the work under this Agreement, the Consultant will be required to work from its own office space or in the field, as necessary.

The City reserves the right to negotiate a reduction in Consultant fees or charge a rental fee, based on the actual costs to the City, for the use of City premises or equipment.

IN WITNESS WHEREOF, in consideration of the terms, conditions, and covenants contained herein or attached and incorporated and made a part hereof, the parties have executed this Contract by having their representatives affix their signatures below:

**CONSULTANT
HEARTLAND LLC**

By  6/3/11
Signature Date

MATT ANDERSON
Type or Print Name

Partner
Title

THE CITY OF SEATTLE

By  6/3/11
Signature Date

NANCY AHERN DEPUTY DIRECTOR
UTILITY SYSTEMS MANAGEMENT
BRANCH
SEATTLE PUBLIC UTILITIES

If \$40,000 or greater, SPU Director Signature
Required

By  6/3/11
Signature Date
for

RAY HOFFMAN, DIRECTOR
SEATTLE PUBLIC UTILITIES

City of Seattle Business License Number: 515350

Washington State Unified Business Identifier Number (UBI): 601842347

Federal Tax ID Number: 911876752

Consultants are encouraged to self-identify any of the below that apply. Please check the appropriate box(es).

- | | |
|--|---|
| <input type="checkbox"/> DBE = Disadvantaged | <input type="checkbox"/> MBE = Minority Owned |
| <input type="checkbox"/> WBE = Women Owned | <input type="checkbox"/> Not Applicable |

2011 CONSOLIDATED CONTRACT INSURANCE REQUIREMENTS TRANSMITTAL FORM

FOR REVIEW AND COMMENT BY ALL COUNTRIES

Contract: HISTORIC SPU LANDFILLS REDEVELOPMENT

Contract Number: R01-59-413-01

Contract Manager: Keith Kurko/SPU Director's Office Branch & Dwayne Tieson/SPU Finance &

INSURANCE REPRESENTATIVE

• COMPLETE THESE FIELDS SO THAT WE MAY CONTACT YOU IF NECESSARY.

NAME: _____ POSITION: _____
 NAME OF COMPANY: _____
 EMAIL: _____ TELEPHONE: _____ FAX: _____

• SEND ORIGINAL CERTIFICATION WITH COPY OF CGL ADDITIONAL INSURED ENDORSEMENT OR BLANKET ADDITIONAL INSURED POLICY WORDING TO: THE CITY OF SEATTLE

ATTN: (IF BLANK, "RISK MANAGER")
 P.O. BOX (IF BLANK, "P.O. BOX 94669")
 SEATTLE, WA 98124- (IF BLANK, "-4669")

• SEND COPY OF CERTIFICATION INCLUDING COPY OF ADDITIONAL INSURED PROVISION BY FAX TO (206) 470-1279 OR AS AN EMAIL ATTACHMENT IN ADOBE PDF FORMAT TO RISKMANAGEMENT@SEATTLE.GOV.

The Consultant shall maintain continuously throughout the term of this Agreement, at no expense to the City, the following insurance coverage and limits of liability as checked below:

A. STANDARD INSURANCE REQUIRED:

- Commercial General Liability (CGL)** or equivalent insurance including coverage for: Premises/Operations, Products/Completed Operations, Personal/Advertising Injury, Contractual and Stop Gap/Employers Liability (coverage may be provided under a separate policy). Minimum limit of liability shall be \$ 1,000,000 each occurrence Combined Single Limit bodily injury and property damage ("CSL") except:
 - \$ 1,000,000 each offense Personal/Advertising Injury
 - \$ 1,000,000 each accident/disease Stop Gap/Employers Liability.
- Automobile Liability** insurance for owned, non-owned, leased or hired vehicles, as applicable. The minimum limit shall be \$1,000,000 CSL. MSC-90 and U/A 99-48 endorsements.
- Worker's Compensation** insurance for Washington State as required by Title 51 RCW Industrial Insurance.

B. ADDITIONAL COVERAGES AND/OR INCREASED LIMITS:

- Federal Maritime** insurance U.S.L.&H. minimum limit \$1,000,000 Jones Act minimum limit \$1,000,000
- Professional Liability (E&O/Technical E&O)** insurance appropriate to the consultant's profession. The minimum limit shall be \$1,000,000 or \$ _____ each claim.
- Umbrella or Excess Liability** "follow form" insurance over primary CGL and Automobile Liability insurance limits, if necessary, to provide total minimum limits of liability of \$2,000,000 \$ _____ each occurrence combined single limit bodily injury and property damage. These required total minimum limits of liability may be satisfied with primary limits or any combination of primary and umbrella/excess limits.

- Contractor's Pollution Liability insurance with minimum limits of liability of \$1,000,000 \$
 S each claim.
- insurance with minimum limits of \$1,000,000 \$

ONLY PARAGRAPH L OF THE FOLLOWING CONDITIONS APPLIES TO WASHINGTON STATE TITLE 51 INDUSTRIAL INSURANCE (WORKERS COMPENSATION):

- C. CITY AS ADDITIONAL INSURED; PRODUCTS-COMPLETED OPERATIONS:** As respects CGL and Automobile Liability insurance, and Contractor's Pollution Liability insurance if required, the City of Seattle shall be included as an additional insured subject to a standard "Separation of Insureds" clause. As respects CGL and if required Contractor's Pollution Liability insurance, additional insured status for the City:
1. Must be established either by an appropriate additional insured endorsement issued and attached to the policy or by appropriate blanket additional insured policy wording, and
 2. Shall be primary and non-contributory with any insurance or self-insurance coverage maintained by the City.
- D. NO LIMITATION OF LIABILITY:** The limits of liability specified herein are minimum limits of liability only and, except for the policy limits, shall not be construed to limit the liability of the Consultant or any of the Consultant's insurers. The City shall be an additional insured as required in paragraph C above as respects the total limits of liability maintained, whether such limits are primary, excess, contingent or otherwise.
- E. SUBSTITUTION OF SUBCONSULTANT'S INSURANCE:** If portions of the scope of work are subcontracted, the subconsultant or subcontractor may provide the evidence of insurance for the subcontracted body of work provided all the requirements specified herein are satisfied.
- F. NOTICE OF CANCELLATION:** Coverages shall not be canceled without at least thirty (30) days written notice to the City, except ten (10) days notice for non-payment of premium.
- G. CLAIMS MADE FORM:** If any insurance policy is issued on a "claims made" basis, the retroactive date shall be prior to or coincident with the effective date of this Agreement. The Consultant shall either maintain "claims made" forms coverage for a minimum of three years following the expiration or earlier termination of this Agreement, providing the City with a Renewal Certificate of Insurance annually, purchase an extended reporting period ("tail") for the same period, or execute another form of guarantee acceptable to the City to assure the Consultant's financial responsibility for liability for services performed.
- H. INSURER'S A.M. BEST'S RATING:** Each insurance policy shall be issued by an insurer rated A: VII or higher in the A.M. Best's Key Rating Guide, unless a surplus lines placement by an licensed Washington State surplus lines broker, or as may otherwise be approved by the City.
- I. SELF-INSURANCE:** The City acknowledges that the Consultant may employ self-insured and/or alternative risk financing and/or capital market risk financing programs for some or all of its coverages. The term "insurance" wherever used herein shall include any such self-insured and/or alternative risk financing and/or capital market risk financing programs. The Consultant shall be liable for any self-insured retention or deductible portion of any claim for which insurance is required.
- J. EVIDENCE OF INSURANCE (NOT APPLICABLE TO WASHINGTON STATE WORKERS COMPENSATION):** The Consultant or its authorized representative shall deliver in the manner described an **Avoid Certificate and Additional Insured Endorsement or Blanket Policy Wording** that complies with coverages, limits and conditions as required herein. (NOTE: A Copy of the actual additional insured endorsement or blanket additional insured policy wording to the CGL policy **MUST BE ATTACHED TO THE CERTIFICATE** to certify additional insured status.)

CGL INSURANCE WILL NOT BE APPROVED WITHOUT
ADDITIONAL INSURED ENDORSEMENT
 OR
BLANKET ADDITIONAL INSURED WORDING
 ATTACHED TO THE CERTIFICATE!

ATTACHMENT 1

FINAL CONSULTANT CONTRACT PAYMENTS REPORTING FORM
 to be completed within 30 days after final payment has been made to the Consultant.

City of Seattle Department of Executive Administration – Contracting Services Division

(Please **SAVE** this form to submit at the **FINAL** close-out of this contract including amendments.)

Contract Title Historic SPU Landfills Redevelopment	Contract Number R001-59-03-01
Consultant's Business Name Hearthland LLC	Phone Number (206) 682-2510
List the Business Name of <u>all</u> Sub-Consultants Providing Work of \$5,000 or more under this Contract.	Total Dollar Amount Paid
	\$
	\$
	\$
	\$
	\$
	\$
Net Amount Paid to the Consultant (Total amount paid to the consultant minus the amount paid to sub-consultants)	\$

Signature	Name	Title	Date
------------------	-------------	--------------	-------------

Instructions: Within 30 days after final payment to the Consultant, the consultant should fill in the information requested above, indicating the dollar amount of work that was paid to each sub-consultant on this contract, and the net amount paid to the Consultant (total amount paid to the Consultant minus the amount paid to sub-consultants). If additional space is needed, please photocopy this form.

Return of Completed Form: Please return the completed form within 30 days of final payment to the Consultant by one of the following methods:

- **FAX** (206) 380-4033, attn: CICS Manager
- **MAIL** the form to: Seattle Public Utilities
 Grants and Contracts Section
 PO Box 34018
 Seattle WA 98124-4018

ATTACHMENT 2

ALLOWED AND NOT ALLOWED OVERHEAD COSTS

The Consultant is hereby informed:

- That the City will only pay indirect rates consistent with the following list of Allowed and Not Allowed costs (which is not exhaustive but for general guidance)
- That the Consultant is responsible for only billing the City for allowable indirect rates
- That charges to the City may be audited by the City Auditor or designee and are subject to adjustment based on an audit.

Categories Of Costs Allowed Indirectly In Overhead Rates

1. Employee Compensation: Wages and Salaries, Incentive bonuses, Funded deferred compensation, Funded retirement, pension and savings plans, Health and most life insurance benefits, Compensated personal absence benefits, Normal severance pay allowances.
2. Lodging, meals and incidental expenses: Not directly reimbursed and incurred by the firm's employees on official business. Costs generally should not exceed the rates provided in the Bunzheimer "Meal and Lodging Cost Index." Related transportation costs should be at the lowest customary standard.
3. Local transportation for company business: Personal vehicles at rates not to exceed federal Internal Revenue Service mileage rates and documented by mileage logs. Costs of company owned or leased vehicles.
4. Utilities.
5. Depreciation acceptable for Federal income tax purposes.
6. Trade, business, technical and professional costs.
7. Direct selling.
8. Most professional and consultant services.
9. Most business insurance.
10. Most legal expenses, if the result is in favor of the firm.
11. Amortization, cost of money, and depreciation amounts: For asset valuations resulting from business combinations up to the total which would have been allowed if the combination had not taken place; as-uses purchase method of accounting.
12. Certain realized post-retirement benefits.
13. Training and education costs for the business.
14. Most employee relocation costs.
15. Rental and lease costs up to the normal cost of ownership.
16. Maintenance and repair except depreciable expenses.
17. Material and supplies adjusted for discounts and credits.
18. Market planning.
19. Bid and proposal costs.
20. Bonding costs.
21. Most business taxes except federal income and excess profits.
22. Facilities capital cost of money.

1. Charity and contributions.
2. Office parties.
3. Entertainment and club memberships.
4. Most advertising except normal recruiting.
5. Research, development and engineering for new products.
6. Federal income or excess profits taxes and accruals.
7. Officer's life insurance.
8. Employee dependent education plans.
9. Use of vehicles and equipment for personal purposes.
10. Bad debts.
11. Costs related to mischarging on contracts.
12. Interest and other financial expenses.
13. Political contributions.
14. Costs related to improper business practices: Conflicts of interest and many contract-related or other legal defense costs where the result was against the company or settlement was in lieu of a result against the company.
15. Portions of allowances for unfunded pension costs.
16. Certain advance payments for pension plans.
17. Goodwill costs, Amortizing, expensing, write off, write down.
18. Some costs related to changes in plans such as pension plans.
19. Expenses directly associated with unallowable costs.
20. Expenses related to costs already recovered.
21. Gifts, memorabilia, models, mementos to customers or public.
22. Alcohol or alcoholic beverages, tobacco, illegal substances.
23. Memberships in civic and community organizations.
24. Public relations costs: For enhancing the image of the firm or generally promoting the sale of services, e.g. trade shows, special events, and promotional material.
25. Most contingencies.
26. Officer/partner salary and bonuses which represent a distribution of profits.
27. Costs related to pirating the employees of others.
28. Employee rebates and purchase discounts.
29. Losses on contracts and net business losses.
30. Most costs of idle facilities and idle capacity.
31. Legislative and executive lobbying costs.
32. Fines and penalties for violations of laws and regulations.
33. Normal costs of pension plans not funded in the year incurred except for certain ERISA waivers.
34. Certain post-retirement benefits other than pensions.
35. Late premium charges on insurance, pension or other plans.
36. Organization, reorganization and financial structure changes.
37. Retroactive or backdated accounting adjustments.

Costs Not Allowed Directly Or Indirectly

ATTACHMENT 3

Performance Evaluation - Consultant Services

Use the first page to evaluate less complicated consultant contracts (generally engagements of less than \$42,000) and the additional pages for more complex and larger consultant contract evaluations. Completed evaluations are retained in the department's contract files.)

Consultant Name:		Evaluation Type <input type="checkbox"/> Interim <input type="checkbox"/> Final
Consultant Project Manager Name:		Project Title
		Agreement Number:
Date Agreement Approved:	Type of Work: <input type="checkbox"/> Study <input type="checkbox"/> Design <input type="checkbox"/> Engineering <input type="checkbox"/> Training <input type="checkbox"/> Other	
Amount of Original Agreement \$:	Amount for Amendments \$:	Total Amount Agreement \$:
End Date Including Extensions:	Actual Completion Date:	Actual Total Paid \$:
Brief Description of work:		

Performance Scoring Criteria:

Select from the score ranges and descriptions listed below for all areas evaluated for each consultant.

Performance Description	Score Range
• Superior	9 to 10
• Above Requirements	7 to 8
• Meets Requirements	5 to 6
• Below Requirements	3 to 4
• Deficient, Inadequate, or Substandard	1 to 2

Criteria	Comment	Score
Negotiations Cooperative and Responsive		
Cost/Budget Complete within agreement budget including supplements		
Schedule Complete within agreement schedule including supplements		
Technical Quality Met Standards		
Communications Clear, Concise Communication (Oral, written, drawings, etc.)		
Management Team player, Management of staff/subs, Accurate, timely invoices, Appropriate, periodic, accurate progress reports.		
Average Score (Total Score / Number of criteria rated)		

Rated by (Project Manager Name and Title)	Project Manager Signature	Date
Department Review (Name and Title)	Department Signature	Date

Performance Scoring Criteria:

Select from the score ranges and descriptions listed to below for all items evaluated for each consultant.

Performance Description	Score Range
• Superior	9 to 10
• Above Requirements	7 to 8
• Meets Requirements	5 to 6
• Below Requirements	3 to 4
• Deficient, Inadequate, or Substandard	1 to 2

Negotiations and Cost / Budget Criteria

1. Negotiations	
<ul style="list-style-type: none"> A. Adhered to Department guidelines on fee. B. Met Negotiation schedule. C. Open and honest communications. D. Willingness to compromise. E. Other 	
Average Score (Total Score / Number of sub-criteria rated)	
Comments	

2. Cost / Budget	
<ul style="list-style-type: none"> A. Finished within budget, including all supplements. B. Appropriate level of effort. C. Reasonable direct, non-salary expenses. D. Other 	
Average Score (Total Score / Number of sub-criteria rated)	
Comments	

3. Schedule	
<ul style="list-style-type: none"> A. Achieved Schedule (including all supplements) B. Prompt response to review comments. C. Adapted to changes initiated by Department. D. Notified Department early regarding schedule "impactors" E. Other 	

3. Schedule

Average Score (Total Score / Number of sub-criteria rated)

Performance Scoring Criteria:

Select from the score ranges and descriptions listed to below for all areas evaluated for each consultant.

Performance Description	Score Range
• Superior	9 to 10
• Above Requirements	7 to 8
• Meets Requirements	5 to 6
• Below Requirements	3 to 4
• Deficient, Inadequate, or Substandard	1 to 2

3. Schedule

Comments

4. Technical Quality

- A. Work products meet standards.
- B. Performed appropriate quality control.
- C. Responds to reviewer comments in subsequent submissions.
- D. Sought opportunities to incorporate innovative designs/approaches.
- E. Delivered "compatible" electronic files.
- F. Other

Average Score (Total Score / Number of sub-criteria rated)

Comments

5. Communications

- A. Produced clear, concise oral and written communication.
- B. Demonstrates an understanding of oral and writing instructions.
- C. Communicated at intervals appropriate for the work.
- D. Respected and used lines of communication.
- E. Interaction with the public.
- F. Other

Average Score (Total Score / Number of sub-criteria rated)

Performance Scoring Criteria:

Select from the score ranges and descriptions listed to below for all areas evaluated for each consultant.

Performance Description	Score Range
• Superior	9 to 10
• Above Requirements	7 to 8
• Meets Requirements	5 to 6
• Below Requirements	3 to 4
• Deficient / Inadequate / Substandard	1 to 2

5. Communications

Comments

6. Management

- A. Provided creative cost control measures / ideas
- B. Submitted appropriate, periodic, accurate progress reports
- C. Accurate and timely invoicing
- D. Conducted meetings efficiently
- E. Limited the number of consultant initiated contract modifications/supplements
- F. Coordinated with Department effectively / was a team player
- G. Responsive
- H. Managed sub-consultants effectively
- I. Other

Average Score (Total Score / Number of sub-criteria rated)

Comments

**EXHIBIT A
SCOPE OF WORK**

PRIME Consultant:	Heartland LLC
Contract No.:	R00-59-03-01
Contract Title:	Historic SPU Landfills Redevelopment

Background: Kent Highlands (110 acres) and Midway (70 acres) are old SPU landfills that are Superfund sites. Annual Operations & Maintenance (O&M) cost for Kent Highlands is about \$750,000 and for Midway is about \$350,000. SPU has been unsuccessfully trying to sell or lease portions of these two sites for years.

Recently a nation-wide commercial land developer (Developer) approached Kent and Seattle about buying or long-term leasing (for 99 years) the least-contaminated 20-25 acres at the Kent Highlands site for a large commercial development. The development would be similar in size and layout to the Tulalip Tribes' *Quil Cede Village Premium Outlet Mall* north of Everett.

SPU was also recently contacted by another company which expressed interest in potentially purchasing our Midway landfill. This company specializes in acquisition, remediation, and redevelopment of "Brownfield" properties.

SPU has sought the professional services of Heartland LLC (Consultant) to provide it with real estate advisory assistance in its effort to facilitate the redevelopment of the Kent Highlands landfill (KHL) and possible the redevelopment of the Midway landfill, via a potential sale or lease transaction.

PHASE I

Task I – Near Term Opportunity Assessment, Former Kent Highlands Landfill

The goal of this task is to assess the near term opportunity that has been presented to SPU by the Developer. The Consultant will assist SPU with understanding the KHL's position in the market relative to the planned use presented by the Developer and underwriting the interest and viability of the Developer. Sub-Task 1a may be conducted prior to fully completing each of the previous tasks depending on the timing needs of SPU and the developer.

Task I Completion Date: August 2011

Sub-Task 1a – Site Review

The Consultant will analyze the KHL to understand its strengths and weaknesses as well as how it is physically positioned within the market. To accomplish this sub-task the Consultant will:

1. Review existing documentation that provides background information on the current condition of the KHL in order to understand the extent of the environmental liability to SPU and a potential developer and to evaluate any constraints on future development that may occur on the KHL; and
2. Conduct a site visit with SPU staff.

Sub-Task 1a Completion Date: June 2011

Sub-Task 1b – Preliminary Market Assessment

The Consultant will conduct a preliminary market assessment related to the potential future use of the KHL, based on our knowledge of the interested developer and its business model. The objective of this analysis is to understand the market context for destination retail with a focus on outlet malls. Key trends and data points will include, but are not limited to, market fundamentals (e.g. rents, vacancy, and absorption) and recent transactions. A secondary objective will be to assess the commercial real estate market in general for other potential uses and values relative to the KHL's position and its strengths and weaknesses.

Sub-Task 1b – Completion Date: July 2011

Sub-Task 1c – Developer Underwriting

The Consultant will research the potential developer to better understand its position in the market and organizational health. Task 1c will involve:

3. Researching existing facilities and their performance;
4. Identifying recent transactions;
5. Reviewing recent news stories involving the developer, and
6. Profiling principal players within this organization.

Sub-Task 1c – Completion Date: June 2011

Sub-Task 1d – Surplus Property Disposition Process

The Consultant will work in collaboration with the City Attorney's office and SPU to understand legal issues involved with the disposition of the KHL, given the current opportunity.

Sub-Task 1d – Completion Date: June 2011

Sub-Task 1e – Preliminary Developer Meeting

Utilizing the information collected in Tasks 1a through 1d, the Consultant will meet with the potential developer and SPU to listen to its plans for the KHL site, understand its motivations and development capacity, and get a sense for its timing expectations.

Sub-Task 1e – Completion Date: June 2011

Sub-Task 1f – Task 1 Review, Summarizing & Strategizing for Phase 2

Upon the completion of Tasks 1a through 1e, the Consultant will work in collaboration with SPU and its legal counsel to summarize the intelligence gained in the preceding subtasks and to develop a strategy, timeline, and budget for Task 2.

Sub-Task 1f – Completion Date: August 2011

PHASE 2 (Proposed Task No. (s) 2 & 3 stated below and possible other not yet determined tasks for this project are directly dependent on the completion & outcomes in the PHASE 1 Scope of Work of this Task No. 1 in SPU Roster Contract No. R00-59-03-01. The detailed scope of work, schedule and itemized budgets for these prospective tasks will be determined near the completion of Task 1 in the form of a proposed Amendment to this SPU Roster Contract No. R00-59-03-01.

**EXHIBIT B
ESTIMATED PROJECT COSTS AND LABOR HOURS**

PRIME Consultant:	Heartland LLC
Contract No.:	R00-59-03-01
Contract Title:	Historic SPU Landfills Redevelopment
The Hourly Rates used on this Contract are based on all-inclusive, fair and competitive "standard industry rates."	

SALARY COSTS

PHASE 1

Inst. 1 Near Term Opportunity Assessment, Former Kent Highlands Landfill				
Staff Name	Job Title	Hours	Hourly Rate	Total
James Reinhardson	Managing Director	24.80	\$340	\$8,430
Chris Fiori	Senior Project Manager	66.70	\$185	\$12,340
Matt Hoffman	Project Manager	76.17	\$175	\$13,330
Karlin Jackson	Associate Project Manager	49.93	\$150	\$7,490
Jenny Scott	Graphics Designer	17.52	\$125	\$2,190
Nathan Staeve	Research Associate	49.16	\$120	\$5,900
TASK TOTAL				\$49,680

SALARY COSTS SUBTOTAL	\$49,680
------------------------------	-----------------

DIRECT EXPENSES

Reproduction: Copies - black & white	\$0.10 each	8,600 copies	\$860
Copies - color 11 x 17	\$2.00 each	213 copies	\$430
Copies - color 8-1/2 x 11	\$1.50 each	5050.433 copies	\$6580
Copies of large format originals - all types		\$350 (budgeted, count N/A)	\$350
Document/Data purchases		\$520 (budgeted, count N/A)	\$520
Mounting on presentation board	\$3.75/ft	\$220 (budgeted, count N/A)	\$220
Postage and delivery		\$110	\$110
Printing - out-of-house		\$220	\$220
Prints - large format	\$8.50/ft	\$220 (budgeted, count N/A)	\$220
Scans - color	\$1.00	\$740 (estimated 740 copies)	\$740

DIRECT EXPENSES SUBTOTAL	\$4,320
---------------------------------	----------------

CONTRACT'S SUB-TOTAL	\$54,000
**MANAGEMENT RESERVE FUND (MRF)	\$6,000
CONTRACT'S TOTAL NOT-TO-EXCEED AMOUNT	\$60,000

There is no mark-up allowed on any direct expenses. Sub-consultants are considered direct expenses.
 Attach a separate "Estimated Project Costs and Labor Hours" sheet for each sub-consultant (if any).
 ** If there is a MRF the use of it is governed by the PAYMENT subsection relating "Payment from the Management Reserve Fund (if any)."

**EXHIBIT C
CONSULTANT'S BILLING RATES**

<i>PRIME Consultant:</i>	<i>Heartland L.L.C.</i>
<i>Contract No.:</i>	<i>R006-59-03-01</i>
<i>Contract Title:</i>	<i>Historic SPU Landfills Redevelopment</i>
<p><i>The following are the Salary Rates the Consultant will charge for work performed under this Contract. Any adjustments to these rates must be requested in writing and, if agreed to, be documented in a "Revised" Consultants' Salary Rates Exhibit, which will be incorporated in and attached to this Contract by the fact of the Exhibit's acceptance by the SPU Project Manager.</i></p>	
<p>The Hourly Rates used on this Contract are based on all-inclusive, fair and competitive "standard industry rates."</p>	

Staff Name	Title	Hourly Base Salary Rates	Hourly All-Inclusive Billing Rates
James Reinhardtson	Managing Director	N/A	\$340
Chris Firth	Senior Project Manager	N/A	\$185
Matt Hoffman	Project Manager	N/A	\$175
Kathrin Jackson	Associate Project Manager	N/A	\$150
Jenny Score	Graphics Designer	N/A	\$125
Nathan Struve	Research Associate	N/A	\$120

ORIGINAL

AMENDMENT NO. 2
TO
CONSULTANT ROSTER CONTRACT NO. R00-59-03-01
BETWEEN
SEATTLE PUBLIC UTILITIES
AND
HEARTLAND, LLC
FOR
HISTORIC SPU LANDFILL REDEVELOPMENT

TABLE OF CONTENTS

Section 1: TERM OF CONTRACT	1
Section 3: SCOPE OF WORK	2
Section 4: PAYMENT	3
Section 6: ADDRESSES FOR NOTICES AND DELIVERABLE MATERIALS	3

ATTACHMENTS

1. FINAL CONSULTANT CONTRACT PAYMENTS REPORTING FORM
2. ALLOWED AND NOT ALLOWED OVERHEAD COSTS

EXHIBITS

- A2. SCOPE OF WORK
- B2. PRIME ESTIMATED PROJECT COSTS AND LABOR HOURS
- C2. PRIME CONSULTANT'S SALARY AND BILLING RATES
- D2. SUBCONSULTANT INFORMATION
- E2-1 SUBCONSULTANT'S ESTIMATED PROJECT COSTS & LABOR HOURS
- F2-1 SUBCONSULTANT'S SALARY RATES

This Amendment No. 2 to SPU Roster Contract No. R00-59-03-01, is made and entered into by and between The City of Seattle ("the City"), a Washington municipal corporation, through its Seattle Public Utilities (SPU), as represented by the Director of SPU; and Heartland LLC., 1301 First Avenue, Suite 200, Seattle, WA 98104 ("Consultant").

The original Contract for consultant services for "Historic SPU Landfills Redevelopment" is amended as follows. All other terms and conditions of the original Contract, as amended, remain in effect.

Section 1: TERM OF CONTRACT

The "Term of Contract" Section of this Contract is amended as follows:

By this Amendment, the completion date for work under this Contract is extended to June 30, 2014.

Section 3: SCOPE OF WORK

The "Scope of Work" Section of this Contract is amended as follows:

The Consultant shall perform the tasks of the Scope of Work for this Amendment No. 2 as described in Exhibit A2.

Section 4: PAYMENT

The "Payment" Section of this Contract is amended as follows:

The Consultant agrees to perform all the work set forth in the Scope of Work of this Amendment No. 2 for an amount not to exceed One Hundred and Fourteen Thousand and Nine Hundred and Eighty One Dollars, (\$114,981) hereinafter referred to as the "Amendment Amount". This Amendment Amount includes Twenty-Nine Thousand Dollars (\$29,000) for the Management reserve Fund (MRF).

SUMMARY OF CONTRACT DOLLAR AMOUNT TO DATE

CONTRACT DOCUMENT	DOCUMENT AMOUNT	CONTRACT AMOUNT
Contract No. R00-59-03-01	\$60,000	\$60,000
Amendment No. 1	\$30,000	\$90,000
Amendment No. 2	\$114,981	\$204,981
TOTALS	\$204,981	

Section 6: ADDRESSES FOR NOTICES AND DELIVERABLE MATERIALS

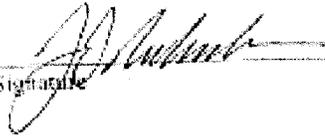
The "Addresses for Notices and Deliverable Materials" Section of this Contract is amended as follows:

If to the City:	If to the Consultant:
Martha Neuman, SPU Contract Manager Seattle Public Utilities PO Box 34018 Seattle WA 98124-4018	Matt Hoffman Heartland LLC Suite 200 1301 First Avenue Seattle, WA 98104

IN WITNESS WHEREOF, the parties have executed this Contract Amendment by having their representatives affix their signatures below.

**CONSULTANT
HEARTLAND LLC**

THE CITY OF SEATTLE

By  3/29/12
Signature Date

James Reinhardson
Type or Print Name

Managing Director
Title

By  9/4/12
Signature Date

NANCY AHERN, DEPUTY DIRECTOR
UTILITY SYSTEMS MANAGEMENT
BRANCH
SEATTLE PUBLIC UTILITIES

By  9/5/12
Signature Date

MARTIN BAKER, DEPUTY DIRECTOR
DIRECTOR'S OFFICE BRANCH
SEATTLE PUBLIC UTILITIES

*If \$200,000 or greater, SPU Director Signature
Required*

ATTACHMENT 1

FINAL CONSULTANT CONTRACT PAYMENTS REPORTING FORM
 (to be completed within 30 days after final payment has been made to the Consultant)

City of Seattle Department of Executive Administration - Contracting Services Division

(Please SAVE this form to submit at the FINAL close-out of this contract including amendments)

Contract Title	Contract #:
Consultant's Business Name	Phone Number
List the Business Name of <u>all</u> Sub-Consultants Providing Work of \$5,000 or more under this Contract.	Total Dollar Amount Paid
	\$
	\$
	\$
	\$
	\$
	\$
Net Amount Paid to the Consultant (Total amount paid to the consultant minus the amount paid to sub-consultants)	\$

Signature	Name	Title	Date
------------------	-------------	--------------	-------------

Instructions: Within 30 days after final payment to the Consultant, the consultant should fill in the information requested above, indicating the dollar amount of work that was paid to each sub-consultant on this contract, and the net amount paid to the Consultant (total amount paid to the Consultant minus the amount paid to sub-consultants). If additional space is needed, please photocopy this form.

Return of Completed Form: Please return the completed form within 30 days of final payment to the Consultant by one of the following methods:

- **FAX** - (206) 386-1033, attn: GCS Manager
- **MAIL** the form to: Seattle Public Utilities
 Grants and Contracts Section
 PO Box 34018
 Seattle WA 98124-4018

EXHIBIT A2 SCOPE OF WORK

Background

In 2011, Seattle Public Utilities (SPU) engaged Heartland LLC (Consultant) to provide real estate advisory assistance supporting the redevelopment of the former Kent Highlands landfill (KHL) and the former Midway landfill via a potential sale or lease transaction.

In the original contract (June 2011-May 2013), Consultant provided SPU with advisory services related to KHL and its potential reuse. These services included evaluating transaction alternatives based on an assessment of the regulatory conditions, political context, and market fundamentals that influence the reuse of the KHL. Consultant was engaged in response to an unsolicited inquiry into the KHL property by a potential major retail user.

Based on the initial work, SPU began the process to evaluate the potential sale of two Seattle owned parcels located north of the former landfill and South 231st Way. These two parcels are free of refuse and restrictive covenants associated with the former landfill and together total approximately 7.4 acres.

The purpose of Amendment No. 1 to SPU Roster Contract No. R00-59-03-01 (March 2012-December 31, 2013) was to provide a framework for supporting SPU in its efforts to maximize monetary return to its ratepayers from the potential disposition of the surplus land. The tasks and associated deliverables in Amendment 1 included: 1) real estate strategic planning and facilitation, including evaluation of development alternatives and potential transaction structures, summarized in a memorandum with graphics and meeting materials; 2) documentation and graphics to inform alternative transaction analyses and to be a source of information for potential purchasers and the City of Kent (Kent), summarized in a reference document; and 3) SPU management recommendations in a memorandum. In addition, the timeline was extended.

During the Amendment 1 timeframe, SPU identified and delineated a wetland located in the center of the SPU property north of South 231st Way. It was determined that the wetland and buffer area in which no development could occur may encompass nearly one-third to one-half the SPU owned area north of SE 231st Way, depending on the size and configuration of the wetland buffer area used.

In addition, SPU had further conversations with Kent, the owner of adjoining parcels to the east of approximately 4.3 acres. Kent desires to sell these adjacent parcels in order to advance its economic development goals in establishing this area as a new gateway into Kent. With the constraints on the SPU property and current market conditions, and the potential benefit of offering more acreage to the market, SPU has chosen to pursue a marketing approach in cooperation with Kent to market all four parcels north of South 231st Way (the "North Assemblage") with the goal of maximizing value for SPU ratepayers, as well as furthering Kent's economic development goals.

Furthermore, SPU and Kent also own various parcels south of South 231st Way ("South Assemblage"). Based on initial work by Consultant, it is possible that, even though portions of the SPU-owned parcels have constraints due to previous landfill activity, some portion of these parcels may be marketable, especially in light of North Assemblage. The initial joint effort will be to place the North Assemblage on the market. This scope of work will also include information about the South Assemblage, as appropriate, to create the marketing story for the entire area.

Amendment No. 2 to SPU Roster Contract No. R00-59-03-01

Scope

The purpose of Amendment 2 to SPU Roster Contract No. R00-59-03-01, is to prepare to bring the North Assemblage properties to market. This includes: King County Tax Parcel #1522049065 and the northerly parcel of King County Tax Parcel #7260200115 owned by Seattle, and portions of King County Tax Parcel #1522049170 and King County Tax Parcel #1522049167 laying north of South 231st Way and west of Riverview Blvd South owned by City of Kent. During the course of the marketing effort for the North Assemblage, both Kent and SPU would also consider any interest the market may have in the parcels comprising the South Assemblage, or portion thereof, for King County Tax Parcels 1522049065, 7260200115, and 1522049008, and King County Tax Parcel 1522049170 south of SE 231st Way and west of the extension of Riverview Blvd. S.

Tasks 1 and 2 are to define the transaction structure and prepare pre-marketing materials. Tasks 3-5 are to solicit potential buyers, identify a preferred buyer, and close the transaction. The proposed timeline is to complete Tasks 1 and 2 within 90 days of the effective date of Amendment 2 and to close a transaction by December 31, 2013. This amendment extends the timeline of the contract to June 30, 2014 to allow for more time to complete the transaction if needed. This scope will amend the existing contract number R00-59-03-01.

This transaction will be a joint marketing effort conducted in cooperation with Kent and coordinated by Consultant. The North Assemblage totals approximately 11.7 acres and the South Assemblage totals approximately 31 acres. An ownership map depicting the approximate area that comprises the North and South Assemblages is found in Appendix A1 to this scope of work. SPU and Kent will develop a Memorandum of Agreement (MOA) or other agreement to document the working partnership.

The budget for Amendment 2 is in Exhibit B2 and is based on Consultant's Rates as more particularly described in Exhibit C2 ("Consultant Rates").

- **Task 1 and Task 2.** Consultant will be compensated on a time and materials basis not to exceed \$20,280 for Task 1 and \$32,760 for Task 2. Kent will contribute \$4,750 to Task 1 and \$4,750 to Task 2 through a separate contract between the City of Kent and Consultant. SPU's budget for Task 1 is \$15,530. SPU's budget for Task 2 is \$28,010 (\$21,710 for salary and \$6,300 for Direct Expenses).
- **Tasks 3 through 5.** These tasks will consist of typical brokerage services. The total budget for Tasks 3-5 is not to exceed \$84,850. Consultant will be compensated for Tasks 3-5 in the following manner:
 - 1) Consultant will invoice SPU monthly on a time and materials basis at 50% of Consultant Rates.
 - 2) If the North Assemblage does not sell, Consultant will receive no further compensation.
 - 3) If the North Assemblage transaction closes, Consultant will be compensated for the other 50% of Consultant Rates for the time and materials already billed, up to the overall not to exceed amount for Tasks 3-5 of 5% of the total sales price for the North Assemblage. This compensation will be paid from the proceeds of the sale. Consultant may invoice SPU for the other 50% of Consultant Rates for the time and materials already billed, up to the not to exceed amount, unless the MOA between SPU and Kent identifies a reimbursement formula or cost sharing approach between SPU and Kent that requires Consultant to bill Kent directly for its share of the compensation to the Consultant for Tasks 3-5.

A \$29,000 Management Reserve Fund is included in the budget. Tasks associated with the Management Reserve Fund (MRF) will be identified by SPU and require a written SPU/MRF letter to proceed that is signed by both parties. Up to \$4,000 of the MRF is set aside for the fabrication and installation of up to two large real estate signs as identified in Task 2. Consultant will obtain bids for the fabrication and installation. The

Amendment No. 2 to SPU Roster Contract No. R00-59-03-01

compensation timing and ratio of the remaining \$25,000 will be determined if and when SPU determines that the Management Reserve Fund is needed. In addition, depending on the how the remaining \$25,000 of the Management Reserve is used, a portion of that cost could also be part of the reimbursement formula between SPU and Kent.

The Consultant Rates shall remain fixed through June 30, 2014. Thereafter, rates shall only be increased with the prior approval of SPU.

Task 1. Define Transaction Structures

Consultant will work with SPU, in collaboration with Kent, to clearly define and document each party's key motivations, sensitivities and timing objectives. SPU and Kent will receive copies of Task 1 deliverables.

Deliverables:

- Consulting services to assist SPU and Kent as they develop, draft and execute the MOA that outlines the timing, expectations, roles and responsibilities, as well as reimbursement arrangements;
- Joint SPU-Kent listing agreement with Consultant that is consistent with this scope of work and any MOA;
- Baseline criteria and requirements for evaluating and ranking proposals, including criteria or evaluation tools to integrate SPU's and Kent's unique marketing goals; and
- Bi-weekly meetings with SPU and Kent.

Timing:

- Preparation of materials to begin on the effective date of Amendment 2, and coupled with Task 2, is estimated to take 90 days.

Budget:

- The cost for Task 1 will not exceed \$20,280, unless agreed to in writing by SPU and Kent, and will be invoiced monthly on a time and materials basis. Consultant will separately invoice Kent for \$4,750 in accordance to their contract for Task 1 and invoice SPU an amount not to exceed \$15,530.

Task 2. Prepare Pre-Marketing Materials

Consultant will work with SPU, in collaboration with Kent, to prepare a cohesive marketing story and related marketing materials for this micro-market/gateway of the City of Kent. All final materials must be in a form acceptable to SPU and Kent. The story will communicate the context of the property within the region and key drivers of demand. It will be oriented towards potential user classes appropriate for the zoning including, but not limited to office, multi-family, retail, medical, senior housing and hospital. SPU and Kent will receive copies of Task 2 deliverables.

Deliverables:

- A draft and final Offering Memorandum (OM) that is supported by the broader story and market information. The OM will include a well-organized and documented graphically-based written offering package for prospective purchasers that frame the offering and summarizes the general terms and conditions under which an offer will be evaluated. The OM will form the basis for the public notice of offering that will be delivered to the market as either a Request for Qualifications or Request for Proposals.

- The marketing material will also include the development of a website or a File Transfer Protocol (FTP) site where due diligence materials can be clearly and conveniently provided to potential buyers and marketing flyers.
- Up to two large real estate signs that are approximately 4-feet by 8-feet and related installation at the site.
- A written marketing strategy document that includes:
 - Market value analysis for pricing of parcels to be marketed
 - A target list of potential buyers by asset class active in the region and those seeking to enter the Puget Sound market.
- A geospatial communication tool developed by Consultant that allows potential buyers to interactively explore the adjacent properties and market area drivers in a controlled Google Earth environment;
- Bi-weekly meetings and calls, or more frequently as needed upon request.

Timing:

- Preparation of materials to begin on the effective date of Amendment 2, and, coupled with Task 1, is estimated to take 90 days.

Budget:

- The cost for Task 2 will not exceed \$32,760 (\$26,460 in salaries and \$6,300 in direct costs for the geospatial tool and its delivery) unless agreed to in writing by SPU and Kent, and will be invoiced monthly on a time and materials basis. Consultant will separately invoice Kent for \$4,750 in accordance to their contract for Task 2 and invoice SPU an amount not to exceed \$28,010.
- In addition, up to \$4,000 of the MRF is set aside for sign fabrication and installation under this task. Consultant will seek competitive bids for the signs

Task 3. Solicit Proposals

Consultant will broadly distribute the notice of offering through traditional brokerage channels and directly to potential buyers identified in the target list. The initial solicitation will be designed to describe an extraordinary market opportunity. The SPU Project Manager will give written notice to proceed with Task 3 once the MOA with Kent is in place and the marketing materials are completed. The MOA will dictate the window in which offers will be accepted.

Deliverables:

- A summary email bi-weekly for the first month and monthly thereafter identifying targeted outreach, calls, and related efforts to identify potential buyers; and
- Periodic calls with SPU and Kent to discuss outreach efforts, inquiries or proposals. Call frequency to be determined based on interest, but at least one per month.

Timing:

- Task 3 will commence upon completion of Task 1 and Task 2 and a written notice to proceed and is estimated to be approximately 3-8 weeks. This timing could be adjusted based on feedback from the market.

Budget:

- The total budget for Task 3 will not exceed \$15,172, unless agreed to in writing by SPU. Task 3 will be invoiced monthly on a time and materials basis at 50% of Consultant's Rates. If the transaction

closes, Consultant will invoice for the other 50% of Consultant Rates for the time and materials already billed, up to the overall not to exceed amount for Tasks 3-5 of 5% of the total sales price for the North Assemblage. The remainder will be paid from the proceeds of the sale.

Task 4. Review and Evaluate Responses

Consultant will prepare a response evaluation matrix, and work with SPU, in collaboration with Kent, to evaluate and rank proposals. The SPU Project Manager will give written notice to the Consultant to proceed with Task 4.

Deliverables:

- Draft and finalize response evaluation matrix; and
- Calls and meetings to select and notify prospective buyers, demonstrated by a call log maintained by Consultant.
- Participate in calls and meetings with SPU and Kent to notify selected buyer.

Timing:

- Commencement and completion of Task 4 is dependent upon receiving acceptable offers to evaluate under Task 3. Assuming acceptable offers are received, this task is estimated to take 4-6 weeks as the marketing window will stay open during the evaluation process.

Budget:

The total budget for Task 4 will not exceed \$15,000, unless agreed to in writing by SPU. This budget allows for more than one round of negotiation. Task 4 will be invoiced monthly on a time and materials basis at 50% of Consultant Rates. If the transaction closes, Consultant will invoice for the other 50% of Consultant rates for the time and materials already billed, up to the overall not to exceed amount for Tasks 3-5 of 5% of the total sales price for the North Assemblage. The remainder will be paid from the proceeds of the sale.

Task 5. Conduct Negotiations and Close Transaction

Consultant will assist SPU, in collaboration with Kent, as requested, to negotiate terms and conditions with selected buyer, and assist in coordination of activities to close a sales transaction. Examples include assisting with contract execution and obtaining council approval, resolution of due diligence and business issues, as well as other assistance needed to satisfy the closing requirements. The SPU Project Manager will give written notice to proceed with Task 5.

Deliverables:

- Assist SPU and Kent, as needed, to negotiate and draft contract documents with selected buyer and other closing requirements; and
- Calls and meetings with SPU and Kent and buyer related to negotiation and closing.

Timing:

- Commencement and completion of Task 5 is dependent upon selection of a preferred buyer in Task 4.
- Negotiation and execution of contracts and closing is estimated to take 8-12 weeks.

Budget:

- The total budget for Task 5 is not to exceed \$54,678, unless agreed to in writing by SPU. Task 5 will be invoiced monthly on a time and materials basis at 50% of the Consultant's Rates. If the

transaction closes, Consultant will invoice for the other 50% of Consultant Rates for the time and materials already billed, up to the overall not to exceed amount for Tasks 3-5 of 5% of the total sales price for The North Assemblage. The remainder will be paid from the proceeds of the sale.

Management Reserve for Task Amendments

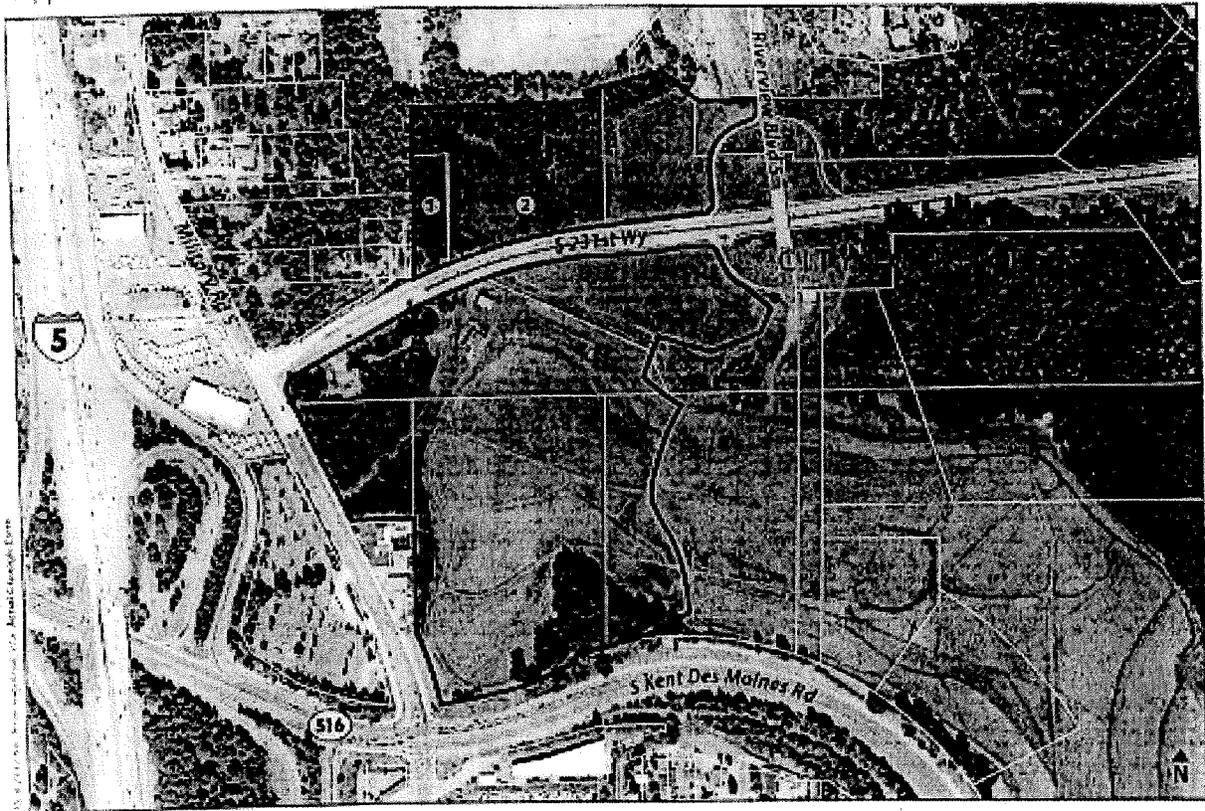
SPU shall have the reserved authority to request additional work from Consultant (time and/or budget) under Tasks 1 through 5 or a new task in order to complete the sale. Tasks associated with the Management Reserve Fund (MRF) will be identified by SPU and require a written SPU/MRF letter to proceed that is signed by both parties.

Budget:

- A \$29,000 Management Reserve Fund is included in the budget. Up to \$4,000 of the MRF is set aside for the fabrication and installation of up to two large real estate signs as identified in Task 2. Consultant will obtain bids for the fabrication and installation. The compensation timing and ratio of the remaining \$25,000 will be determined if and when SPU determines that the Management Reserve Fund is needed. In addition, depending on the how the remaining \$25,000 of the Management Reserve is used, a portion of that cost could also be part of the reimbursement formula between SPU and Kent.

EXHIBIT A1: North Assemblage and South Assemblage Property Map

Appendix 1 Assemblage Areas



KEY		Total Acres*	West Ownership	SPU Ownership	① PIN = 1532049065, Acres = 5.3
	North Assemblage	11.7 Acres	4.3 Acres	7.4 Acres	② PIN = 7264300115, Acres = 8.3
	South Assemblage	31 Acres	4.6 Acres	26.4 Acres	

*Average acreage only

HEARTLAND

EXHIBIT B2
PRIME CONSULTANT'S ESTIMATED PROJECT COSTS AND LABOR HOURS

CONTRACT NO. R00-59-03-01. AMENDMENT NO. 2

PROJECT TITLE: HISTORIC SPU LANDFILL REDEVELOPMENT

The Hourly Rates used on this Contract are based on all-inclusive, fair and competitive "standard industry rates."

Please round off all decimals to the nearest dollar for all TOTAL figures

SALARY COSTS

<i>Task 1 - Define Transaction Structures</i>					
Staff Name	Job Title	Hours	Hourly Rate	Project Total	R00-59-03-01 Amend.#2 total
Jim Reinhardsen	Managing Director	28.0	\$ 350	\$9,800	\$ 9,800
Matt Anderson	Principal	16.0	\$ 250	\$4,000	\$4,000
Matt Hoffman	Project Manager	36.0	\$ 180	\$6,480	\$6,480
TASK 1 SALARY TOTAL				\$20,280	
<i>SPU Amendment No. 2 Total (Kent will contribute \$4,750 to this task under a separate Contract between them and the Consultant)</i>					\$15,530

<i>Task 2 - Prepare Pre-Marketing Materials</i>					
Staff Name	Job Title	Hours	Hourly Rate	Project Total	R00-59-03-01 Amend.#2 total
Jim Reinhardsen	Managing Director	11.7	\$ 350	\$4,095	\$4,095
Matt Anderson	Principal	9.9	\$ 250	\$2,475	\$2,475
Matt Hoffman	Project Manager	54.0	\$ 180	\$9,720	\$9,720
Stephen Russell	Production	18.0	\$ 100	\$1,800	\$1,800
Jenny Score	Graphics	32.4	\$ 125	\$4,050	\$4,050
Ian Loveless	Research Analyst	36.0	\$ 120	\$4,320	\$4,320
TASK 2 SALARY TOTAL				\$26,460	
<i>SPU Amendment No. 2 Salary Total (Kent will contribute \$4,750 to this task under a separate Contract between them and the Consultant)</i>					\$21,710

<i>Task 3 - Solicit Proposals</i>					
Staff Name	Job Title	Hours	Hourly Rate	Project Total	R00-59-03-01 Amend.#2 total
Jim Reinhardsen	Managing Director	20.0	\$ 350	\$7,000	\$3,500
Matt Anderson	Principal	8.0	\$ 250	\$2,000	\$1,000
Matt Hoffman	Project Manager	30.4	\$ 180	\$5,472	\$2,736
Jenny Score	Graphics	5.6	\$125	\$ 700	\$ 350
TASK 3 SALARY TOTAL				\$15,172	
<i>SPU Amendment No. 2 Salary Total</i>					\$7,586

Task 4 - Review and Evaluate Responses					
Staff Name	Job Title	Hours	Hourly Rate	Project Total	R00-59-03-01 Amend.#2 total
Jim Reinhardtsen	Managing Director	21.0	\$ 350	\$7,350	\$3,675
Matt Anderson	Principal	9.0	\$ 250	\$2,250	\$1,125
Matt Hoffman	Project Manager	30.0	\$ 180	\$5,400	\$2,700
TASK 4 SALARY TOTAL				\$15,000	
SPU Amendment No. 2 Salary Total					\$7,500

Task 5 - Conduct Negotiations and Close Transaction					
Staff Name	Job Title	Hours	Hourly Rate	Project Total	R00-59-03-01 Amend.#2 total
Jim Reinhardtsen	Managing Director	68.9	\$ 350	\$24,115	\$12,058
Matt Anderson	Principal	32.3	\$ 250	\$ 8,075	\$ 4,038
Matt Hoffman	Project Manager	115.5	\$ 180	\$20,790	\$10,395
Ian Loveless	Research Associate	14.4	\$ 120	\$ 1,728	\$ 864
TASK 5 SALARY TOTAL				\$54,708	
SPU Amendment No. 2 Salary Total					\$27,355

SALARY COSTS SUBTOTAL	\$ 131,620	\$79,681
------------------------------	-------------------	-----------------

DIRECT EXPENSES NOT TO EXCEED:

Task and sub-task	Subcontractor	Subcontractor Total	R00-59-03-01 Amend.#2 total
Task 2: Geo-spatial tool per scope of work	DRVE LLC	\$6,300	\$6,300
DIRECT EXPENSES NOT TO EXCEED SUBTOTAL		\$6,300	
SPU Amendment No. 2 Direct Expenses Sub-Total			\$6,300

PRIME CONSULTANT SALARY AND SUB CONTRACT SUB-TOTALS	\$137,920	
SPU Amendment No. 2 Salary and sub-contract sub-totals		\$85,981

* SPU MANAGEMENT RESERVE FUND	\$ 29,000	\$29,000
--------------------------------------	------------------	-----------------

PROJECT TOTAL NOT-TO-EXCEED AMOUNT	\$166,920	
SPU Amendment No. 2 Not-to-Exceed Amount		\$114,981

* There is no mark-up allowed on any direct expenses. Sub-consultants are considered direct expenses.

** If there a MRF, the use of it is governed by the PAYMENT subsection relating "Payment from the Management Reserve Fund", of the original SPU Roster Contract No. R00-59-03-01.

***As described in the scope of work (Exhibit A2)

- For Task 1 and Task 2. Consultant will be compensated on a time and materials basis not to exceed \$20,280 for Task 1 and \$532,760 for Task 2. Kent will contribute \$4,750 to Task 1 and \$4,750 to Task 2 through a

Amendment No. 2 to SPU Roster Contract No. R00-59-03-01

separate contract between the City of Kent and Consultant. SPU's budget for Task 1 is \$15,530. SPU's budget for Task 2 is \$28,010 (\$21,710 for salary and \$6,300 for Direct Expenses).

- **For Tasks 3 through 5.** These tasks will consist of typical brokerage services. The total budget for Tasks 3-5 is not to exceed \$84,850. Consultant will be compensated for Tasks 3-5 in the following manner:
 1. Consultant will invoice SPU monthly on a time and materials basis at 50% of Consultant Rates.
 2. If the North Assemblage does not sell, Consultant will receive no further compensation.
 3. If the North Assemblage transaction closes, Consultant will be compensated for the other 50% of Consultant Rates for the time and materials already billed, up to the overall not to exceed amount for Tasks 3-5 of 5% of the total sales price for the North Assemblage. This compensation will be paid from the proceeds of the sale. Consultant may invoice SPU for the other 50% of Consultant Rates for the time and materials already billed, up to the not to exceed amount, unless the MOA between SPU and Kent identifies a reimbursement formula or cost sharing approach between SPU and Kent that requires Consultant to bill Kent directly for its share of the compensation to the Consultant for Tasks 3-5.

**EXHIBIT D2
SUB-CONSULTANT INFORMATION**

PRIME Consultant:	Heartland, LLC
SUB Consultant	DRVE LLC
Contract No.:	Amendment No. 2 to SPU Roster Contract No. R00-59-03-01
Contract Title:	HISTORIC SPU LANDFILL REDEVELOPMENT

Sub-consultant Billing Rate Options: DEFINITION / CALCULATION	
AI - All-Inclusive Hourly Rate	Base Salary plus Overhead & Fringe Benefits plus Profit
DL - Direct Labor Multiplier Rate	Use the lessor of: The Base Salary (1.0) plus Combined Overhead and Fringe Rates (x.xx) times Profit Multiplier (1.12) equals Calculated Direct Labor Multiplier (x.xx); OR The Direct Labor Multiplier of 3.12 times the Base Salary.
SI - Standard Industry Rate	Rates that are comparable and competitive with the rates of others that are in the same business. (May be used by small firms that do not have an established, audited overhead.)

◆ Sub-consultants authorized for this Contract are listed below along with their Billing Rate Option and other business information.

Legal Bus. Name	DRVE LLC	Total Amount	\$ 6,300	Rate Type
Address	5710 SW Stevens, Seattle WA 98116			SI
Contact	Luis Borrero	E-mail	luisustam@gmail.com	
Phone	(206) 853-4559	Fax No.		

**EXHIBIT E2-1
SUBCONSULTANT'S ESTIMATED PROJECT COSTS AND LABOR HOURS**

CONTRACT NO. R00-59-03-01. AMENDMENT NO. 2
SUBCONSULTANT: DRVE LLC
PROJECT TITLE: HISTORIC SPU LANDFILL REDEVELOPMENT

The Hourly Rates used on this Contract are based on all-inclusive, fair and competitive "standard industry rates."

Please round off all decimals to the nearest dollar for all TOTAL figures

SUB-CONTRACTOR COSTS

Task 2 – Prepare Pre-Marketing Materials Sub-task: Geo-spatial communication tool					R00-59-03-01 Amend.#2 Subcontractor Total
Staff Name	Job Title	Hours	Hourly Rate	Project Total	
Luis Borrero	Principal	36	\$175.00	\$6,300	\$6,300
<i>Sub-contractor TOTAL. Not to Exceed</i>				<i>\$6,300</i>	<i>\$6,300</i>

**EXHIBIT F2-1
SUBCONSULTANT'S SALARY RATES**

SubConsultant:	DRVE LLC		
Contract No.:	Amendment No.2 to SPU Roster Contract No. R00-59-03-01		
Contract Title:	HISTORIC SPU LANDFILL REDEVELOPMENT		
<p>The following are the Salary Rates the Consultant will charge for work performed under this Contract. Any adjustments to these rates must be requested in writing and, if agreed to, be documented in a "Revised" Consultants' Salary Rates Exhibit, which will be incorporated in and attached to this Contract by the fact of the Exhibit's acceptance by the SPU Project Manager.</p> <p>The Hourly Rates used on this Contract are based on all-inclusive, fair and competitive "standard industry rates."</p>			
Staff Name	Title	Hourly Base Salary Rates	Hourly All-Inclusive Billing Rates
Luis Borrero	Principal	N/A	\$175



**CONSULTANT SERVICES AGREEMENT
between the City of Kent and
Heartland, LLC**

THIS AGREEMENT is made between the City of Kent, a Washington municipal corporation (hereinafter the "City"), and Heartland, LLC organized under the laws of the State of Washington, located and doing business at 1301 First Avenue, Suite 200, Seattle, WA 98101 (hereinafter the "Consultant").

I. DESCRIPTION OF WORK.

Consultant shall perform the following services for the City in accordance with the following described plans and/or specifications:

See Exhibit A, Scope of Work

Consultant further represents that the services furnished under this Agreement will be performed in accordance with generally accepted professional practices within the Puget Sound region in effect at the time those services are performed.

II. TIME OF COMPLETION. The parties agree that work will begin on the tasks described in Section I above immediately upon the effective date of this Agreement. Upon the effective date of this Agreement, Consultant shall complete the work described in Section I within ninety (90) days.

III. COMPENSATION.

- A. The City shall pay the Consultant, based on time and materials, an amount not to exceed nine thousand five hundred dollars (\$9,500) for the services described in this Agreement. This is the maximum amount to be paid under this Agreement for the work described in Section I above, and shall not be exceeded without the prior written authorization of the City in the form of a negotiated and executed amendment to this agreement. The Consultant agrees that the hourly or flat rate charged by it for its services contracted for herein shall remain locked at the negotiated rate(s) for a period of one (1) year from the effective date of this Agreement. The Consultant's billing rates shall be as delineated in Exhibit B.
- B. The Consultant shall submit monthly payment invoices to the City for work performed, and a final bill upon completion of all services described in this Agreement. The City shall provide payment within forty-five (45) days of receipt of

an invoice. If the City objects to all or any portion of an invoice, it shall notify the Consultant and reserves the option to only pay that portion of the invoice not in dispute. In that event, the parties will immediately make every effort to settle the disputed portion.

IV. INDEPENDENT CONTRACTOR. The parties intend that an Independent Contractor-Employer Relationship will be created by this Agreement. By their execution of this Agreement, and in accordance with Ch. 51.08 RCW, the parties make the following representations:

- A. The Consultant has the ability to control and direct the performance and details of its work, the City being interested only in the results obtained under this Agreement.
- B. The Consultant maintains and pays for its own place of business from which Consultant's services under this Agreement will be performed.
- C. The Consultant has an established and independent business that is eligible for a business deduction for federal income tax purposes that existed before the City retained Consultant's services, or the Consultant is engaged in an independently established trade, occupation, profession, or business of the same nature as that involved under this Agreement.
- D. The Consultant is responsible for filing as they become due all necessary tax documents with appropriate federal and state agencies, including the Internal Revenue Service and the state Department of Revenue.
- E. The Consultant has registered its business and established an account with the state Department of Revenue and other state agencies as may be required by Consultant's business, and has obtained a Unified Business Identifier (UBI) number from the State of Washington.
- F. The Consultant maintains a set of books dedicated to the expenses and earnings of its business.

V. TERMINATION. Either party may terminate this Agreement, with or without cause, upon providing the other party thirty (30) days written notice at its address set forth on the signature block of this Agreement. After termination, the City may take possession of all records and data within the Consultant's possession pertaining to this project, which may be used by the City without restriction. If the City's use of Consultant's records or data is not related to this project, it shall be without liability or legal exposure to the Consultant.

VI. DISCRIMINATION. In the hiring of employees for the performance of work under this Agreement or any subcontract, the Consultant, its subcontractors, or any person acting on behalf of the Consultant or subcontractor shall not, by reason of race, religion, color, sex, age, sexual orientation, national origin, or the presence of any sensory, mental, or physical disability, discriminate against any person who is qualified and available to perform the work to which the employment relates. Consultant shall execute the attached City of Kent Equal Employment Opportunity Policy Declaration, Comply with City Administrative Policy 1.2, and upon completion of the contract work, file the attached Compliance Statement.

VII. INDEMNIFICATION. Consultant shall defend, indemnify and hold the City, its officers, officials, employees, agents and volunteers harmless from any and all claims, injuries, damages, losses or suits, including all legal costs and attorney fees, arising out of or in connection with the Consultant's performance of this Agreement, except for that portion of the injuries and damages caused by the City's negligence.

The City's inspection or acceptance of any of Consultant's work when completed shall not be grounds to avoid any of these covenants of indemnification.

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 Consultant and the City, its officers, officials, employees, agents and volunteers, the Consultant's liability hereunder shall be only to the extent of the Consultant's negligence.

IT IS FURTHER SPECIFICALLY AND EXPRESSLY UNDERSTOOD THAT THE INDEMNIFICATION PROVIDED HEREIN CONSTITUTES THE CONSULTANT'S WAIVER OF IMMUNITY UNDER INDUSTRIAL INSURANCE, TITLE 51 RCW, SOLELY FOR THE PURPOSES OF THIS INDEMNIFICATION. THE PARTIES FURTHER ACKNOWLEDGE THAT THEY HAVE MUTUALLY NEGOTIATED THIS WAIVER.

The provisions of this section shall survive the expiration or termination of this Agreement.

VIII. INSURANCE. The Consultant shall procure and maintain for the duration of the Agreement, insurance of the types and in the amounts described in Exhibit C attached and incorporated by this reference.

IX. EXCHANGE OF INFORMATION. The City will provide its best efforts to provide reasonable accuracy of any information supplied by it to Consultant for the purpose of completion of the work under this Agreement.

X. OWNERSHIP AND USE OF RECORDS AND DOCUMENTS. Original documents, drawings, designs, reports, or any other records developed or created under this Agreement shall belong to and become the property of the City. All records submitted by the City to the Consultant will be safeguarded by the Consultant. Consultant shall make such data, documents, and files available to the City upon the City's request. The City's use or reuse of any of the documents, data and files created by Consultant for this project by anyone other than Consultant on any other project shall be without liability or legal exposure to Consultant.

XI. CITY'S RIGHT OF INSPECTION. Even though Consultant is an independent contractor with the authority to control and direct the performance and details of the work authorized under this Agreement, the work must meet the approval of the City and shall be subject to the City's general right of inspection to secure satisfactory completion.

XII. WORK PERFORMED AT CONSULTANT'S RISK. Consultant shall take all necessary precautions and shall be responsible for the safety of its employees, agents, and subcontractors in the performance of the contract work and shall utilize all protection necessary for that purpose. All work shall be done at Consultant's own risk, and Consultant shall be responsible for any loss of or damage to materials, tools, or other articles used or held for use in connection with the work.

XIII. MISCELLANEOUS PROVISIONS.

A. Recyclable Materials. Pursuant to Chapter 3.80 of the Kent City Code, the City requires its contractors and consultants to use recycled and recyclable products whenever practicable. A price preference may be available for any designated recycled product.

B. Non-Waiver of Breach. The failure of the City to insist upon strict performance of any of the covenants and agreements contained in this Agreement, or to exercise any option conferred by this Agreement in one or more instances shall not be construed to be a waiver or relinquishment of those covenants, agreements or options, and the same shall be and remain in full force and effect.

C. Resolution of Disputes and Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Washington. If the parties are unable to settle any dispute, difference or claim arising from the parties' performance of this Agreement, the exclusive means of resolving that dispute, difference or claim, shall only be by filing suit exclusively under the venue, rules and jurisdiction of the King County Superior Court, King County, Washington, unless the parties agree in writing to an alternative dispute resolution process. In any claim or lawsuit for damages arising from the parties' performance of this Agreement, each party shall pay all its legal costs and attorney's fees incurred in defending or bringing such claim or lawsuit, including all appeals, in addition to any other recovery or award provided by law; provided, however, nothing in this paragraph shall be construed to limit the City's right to indemnification under Section VII of this Agreement.

D. Written Notice. All communications regarding this Agreement shall be sent to the parties at the addresses listed on the signature page of the Agreement, unless notified to the contrary. Any written notice hereunder shall become effective three (3) business days after the date of mailing by registered or certified mail, and shall be deemed sufficiently given if sent to the addressee at the address stated in this Agreement or such other address as may be hereafter specified in writing.

E. Assignment. Any assignment of this Agreement by either party without the written consent of the non-assigning party shall be void. If the non-assigning party gives its consent to any assignment, the terms of this Agreement shall continue in full force and effect and no further assignment shall be made without additional written consent.

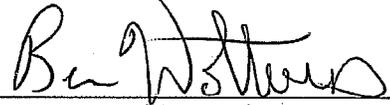
F. Modification. No waiver, alteration, or modification of any of the provisions of this Agreement shall be binding unless in writing and signed by a duly authorized representative of the City and Consultant.

G. Entire Agreement. The written provisions and terms of this Agreement, together with any Exhibits attached hereto, shall supersede all prior verbal statements of any officer or other representative of the City, and such statements shall not be effective or be construed as entering into or forming a part of or altering in any manner this Agreement. All of the above documents are hereby made a part of this Agreement. However, should any language in any of the Exhibits to this Agreement conflict with any language contained in this Agreement, the terms of this Agreement shall prevail.

H. Compliance with Laws. The Consultant agrees to comply with all federal, state, and municipal laws, rules, and regulations that are now effective or in the future become applicable to Consultant's business, equipment, and personnel engaged in operations covered by this Agreement or accruing out of the performance of those operations.

I. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall constitute an original, and all of which will together constitute this one agreement.

IN WITNESS, the parties below execute this Agreement, which shall become effective on the last date entered below.

CONSULTANT: By: <u></u> (signature) Print Name: <u>James Reinhardson</u> Its: <u>Managing Director</u> (title) DATE: <u>09/13/12</u>	CITY OF KENT: By: <u></u> (signature) Print Name: Ben Wolters Its: Economic and Community Development Director DATE: <u>09/13/12</u>
--	---

NOTICES TO BE SENT TO: CONSULTANT: Matt Hoffman Heartland, LLC 301 First Avenue, Suite 200 Seattle, WA 98101 (206) 682-2500 (telephone) (206) 467-1429 (facsimile)	NOTICES TO BE SENT TO: CITY OF KENT: Erin George City of Kent 220 Fourth Avenue South Kent, WA 98032 (253) 856-5436 (telephone) (253) 856-6454 (facsimile)
---	---

[In this field, you may enter the electronic filepath where the contract has been saved]

DECLARATION

CITY OF KENT EQUAL EMPLOYMENT OPPORTUNITY POLICY

The City of Kent is committed to conform to Federal and State laws regarding equal opportunity. As such all contractors, subcontractors and suppliers who perform work with relation to this Agreement shall comply with the regulations of the City's equal employment opportunity policies.

The following questions specifically identify the requirements the City deems necessary for any contractor, subcontractor or supplier on this specific Agreement to adhere to. An affirmative response is required on all of the following questions for this Agreement to be valid and binding. If any contractor, subcontractor or supplier willfully misrepresents themselves with regard to the directives outlines, it will be considered a breach of contract and it will be at the City's sole determination regarding suspension or termination for all or part of the Agreement;

The questions are as follows:

1. I have read the attached City of Kent administrative policy number 1.2.
2. During the time of this Agreement I will not discriminate in employment on the basis of sex, race, color, national origin, age, or the presence of all sensory, mental or physical disability.
3. During the time of this Agreement the prime contractor will provide a written statement to all new employees and subcontractors indicating commitment as an equal opportunity employer.
4. During the time of the Agreement I, the prime contractor, will actively consider hiring and promotion of women and minorities.
5. Before acceptance of this Agreement, an adherence statement will be signed by me, the Prime Contractor, that the Prime Contractor complied with the requirements as set forth above.

By signing below, I agree to fulfill the five requirements referenced above.

Dated this 13th day of September, 2012.

By: 

For: Hearland LLC

Title: Managing Director

Date: 09-13-12

**CITY OF KENT
ADMINISTRATIVE POLICY**

NUMBER: 1.2

EFFECTIVE DATE: January 1, 1998

SUBJECT: MINORITY AND WOMEN
CONTRACTORS

SUPERSEDES: April 1, 1996
APPROVED BY Jim White, Mayor

POLICY:

Equal employment opportunity requirements for the City of Kent will conform to federal and state laws. All contractors, subcontractors, consultants and suppliers of the City must guarantee equal employment opportunity within their organization and, if holding Agreements with the City amounting to \$10,000 or more within any given year, must take the following affirmative steps:

1. Provide a written statement to all new employees and subcontractors indicating commitment as an equal opportunity employer.
2. Actively consider for promotion and advancement available minorities and women.

Any contractor, subcontractor, consultant or supplier who willfully disregards the City's nondiscrimination and equal opportunity requirements shall be considered in breach of contract and subject to suspension or termination for all or part of the Agreement.

Contract Compliance Officers will be appointed by the Directors of Planning, Parks, and Public Works Departments to assume the following duties for their respective departments.

1. Ensuring that contractors, subcontractors, consultants, and suppliers subject to these regulations are familiar with the regulations and the City's equal employment opportunity policy.
2. Monitoring to assure adherence to federal, state and local laws, policies and guidelines.

Kent Highlands Landfill ORD Exhibit C to ATT 2

**CITY OF KENT
EQUAL EMPLOYMENT OPPORTUNITY COMPLIANCE STATEMENT**

This form shall be filled out **AFTER COMPLETION** of this project by the Contractor awarded the Agreement.

I, the undersigned, a duly represented agent of _____
Company, hereby acknowledge and declare that the before-mentioned company was the prime contractor for the Agreement known as _____ that was entered into on the____
_____ (date) _____, between the firm I represent and the City of Kent.

I declare that I complied fully with all of the requirements and obligations as outlined in the City of Kent Administrative Policy 1.2 and the Declaration City of Kent Equal Employment Opportunity Policy that was part of the before-mentioned Agreement.

_____ dated this _____ day of _____, 200____.

By: _____

For: _____

Title: _____

Date: _____

EXHIBIT A

SCOPE OF WORK

Kent Highlands Landfill Redevelopment Heartland, LLC

Background

In 2011, Seattle Public Utilities (SPU) engaged Heartland LLC (Consultant) to provide real estate advisory assistance supporting the redevelopment of the former Kent Highlands landfill (KHL) via a potential sale or lease transaction. As the City of Kent (Kent) owns several vacant parcels abutting the SPU-owned parcels, SPU contacted Kent to initiate a partnership. SPU desires to sell its two parcels located north of the KHL and South 231st Way. Kent desires to advance its economic development goals in establishing this area as a new gateway into Kent, which includes the potential sale of city-owned parcels.

Based on the potential benefit of offering more acreage to the market, along with wetland constraints on one SPU parcel and current market conditions, Kent and SPU have chosen to pursue a cooperative marketing approach to market all three parcels north of South 231st Way (the "North Assemblage") with the goal of furthering Kent's economic development goals, while maximizing value for SPU ratepayers.

Furthermore, SPU and Kent also own various parcels south of South 231st Way ("South Assemblage"). Based on initial work by Consultant, it is possible that, even though portions of the SPU-owned parcels have constraints due to previous landfill activity, some portion of these parcels may be marketable now or in the near future, especially in light of the North Assemblage. The initial joint effort will be to place the North Assemblage on the market, but include the South Assemblage, as appropriate, in premarketing and outreach activities.

Scope

The purpose of this work is to prepare to bring the North Assemblage properties (King County Tax Parcel #1522049065, the northerly parcel of King County Tax Parcel #7260200115 owned by Seattle and the northwest portion of King County Tax Parcel #1522049170 owned by City of Kent) to market. During the course of the marketing effort for the North Assemblage, both Kent and SPU are also receptive to any interest the market may have in the parcels comprising the South Assemblage, or portion thereof for King County Tax Parcels 1522049066, 726020115, and 1522049008, and King County Tax Parcel 1522049170 south of SE 231st Way and west of the extension of Riverview Blvd. S.

Tasks 1 and 2 are to define the transaction structure and prepare pre-marketing materials. Tasks 3-5 (not part of this contract; Consultant is separately contracted

with SPU) are to solicit potential buyers, identify a preferred buyer, and close the transaction. The proposed timeline is to bring the property to market (commence Task 3) within 90 days of the effective date of the Consultant Services Agreement and to close a transaction by December 31, 2013.

This transaction will be a joint marketing effort conducted in cooperation with SPU and coordinated by Consultant. The North Assemblage totals approximately 11 acres and the South Assemblage totals approximately 31 acres. An ownership map depicting the approximate area that comprises the North and South Assemblages is found in Appendix 1 to this scope of work. Kent and SPU will develop a Memorandum of Agreement (MOA) or other agreement to document the working partnership.

The budget for Tasks 1 and 2 is estimated at \$53,000. Kent's portion of Tasks 1 and 2 is \$9,500, with the remainder paid by SPU. Consultant will be compensated on a time and materials basis for Task 1 and Task 2, not to exceed \$9,500, unless agreed to in writing by Kent. Costs incurred by Consultant in Task 1 and Task 2 will be invoiced to Kent and SPU concurrently, until Kent reaches its not-to-exceed amount of \$4,750 for Task 1 and \$4,750 for Task 2.

Task 1. Define Transaction Structures

Consultant will work with SPU and Kent to clearly define and document each party's key motivations, sensitivities and timing objectives. SPU and Kent will receive copies of Task 1 deliverables.

Deliverables:

- Consulting services to assist SPU and Kent as they develop, draft and execute the MOA that outlines the timing, expectations, roles and responsibilities, as well as reimbursement arrangements;
- Joint SPU-Kent listing agreement with Consultant that is consistent with this scope of work and any MOA;
- Baseline criteria and requirements for evaluating and ranking proposals, including criteria or evaluation tools to integrate SPU's and Kent's unique marketing goals; and
- Bi-weekly meetings with SPU and Kent.

Timing:

- Preparation of materials to begin on the effective date of the Consultant Services Agreement, and coupled with Task 2, is estimated to take 90 days.

Budget:

- The budget for Kent's portion of Task 1 will not exceed \$4,750, unless agreed to in writing by Kent, and will be invoiced monthly on a time and materials basis. Consultant will invoice SPU for the remainder up to the not to exceed amount of \$20,000.

Task 2. Prepare Pre-Marketing Materials

Consultant will work with SPU and Kent to prepare a cohesive marketing story and related marketing materials for the North Assemblage and South Assemblage, as appropriate, and this micro-market/gateway of the City of Kent. The story will communicate the context of the property within the region and key drivers of demand. It will be oriented towards potential user classes appropriate for the zoning including, but not limited to office, multi-family, retail, medical, senior housing and hospital. SPU and Kent will receive copies of Task 2 deliverables.

Deliverables:

- A draft and final Offering Memorandum (OM) that is supported by the broader story and market information, including the South Assemblage as appropriate. The OM will include a well-organized and documented graphically-based written offering package for prospective purchasers that frames the offering and summarizes the general terms and conditions under which an offer will be evaluated. The OM will form the basis for the public notice of offering that will be delivered to the market as either a Request for Qualifications or Request for Proposals.
- The marketing material will also include the development of a website or a File Transfer Protocol (FTP) site where due diligence materials can be clearly and conveniently provided to potential buyers.
- A written marketing strategy document that includes:
 - Pricing expectations based on a range of potential buyers; and
 - A target list of potential buyers by asset class active in the region and those seeking to enter the Puget Sound market.
- A geospatial communication tool developed by Consultant that allows potential buyers to interactively explore the adjacent properties and market area drivers in a controlled Google Earth environment;
- Bi-weekly meetings and calls, or more frequently as needed upon request.

Timing:

- Preparation of materials to begin on the effective date of the Consultant Services Agreement, and coupled with Task 1, is estimated to take 90 days.

Budget:

- The budget for Kent's portion of Task 2 will not exceed \$4,750, unless previously agreed to in writing by Kent, and will be invoiced monthly on a time and materials basis. Consultant will invoice SPU for the remainder up to the not to exceed amount of \$33,000.

EXHIBIT B

HEARTLAND

CONSULTING FEES AND REIMBURSEMENT SCHEDULE

Effective January 1, 2012

HOURLY BILLING RATES:

James Reinhardsen	\$350
Matt Anderson	\$250
Chris Fiori	\$190
Matt Hoffman	\$180
Jenny Score	\$125
Ian Loveless	\$120
Stephen Russell	\$100

(Note: General office overhead and general clerical work are incorporated in these hourly rates)

REIMBURSABLE COSTS:

Binders and supplies	Cost
Copies - black & white	\$.10 each
Copies - color 11 x 17	\$1.50 each
Copies - color 8-1/2 x 11	\$.75 each
Copies of large format originals - all types	Cost
Developing - film and photo	Cost
Document purchases	Cost
Incidental professional fees	Cost
Marketing expenses and advertisements	Cost
Mileage	\$.555/mile
Mounting on presentation board	\$3.75/sf
Parking and tolls	Cost
Postage and delivery	Cost
Printing - out-of-house	Cost
Prints - full color 11 x 17	\$1.50 each
Prints - full color 8 1/2 x 11	\$.75 each
Prints - large format	\$8.50/sf
Scans - color	\$1.00 each
Subscriptions	Cost
Telephone - long distance and facsimiles	Cost
Travel - airfare, car rental, lodging and meals	Cost plus 2%

RATES ARE SUBJECT TO ANNUAL INCREASES

Kent Highlands Landfill ORD Exhibit C to ATT 2

EXHIBIT C INSURANCE REQUIREMENTS FOR CONSULTANT SERVICES AGREEMENTS

Insurance

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, their agents, representatives, employees or subcontractors.

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 written on 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.

Commercial General Liability insurance shall be written on ISO occurrence form CG 00 01. 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 ISO additional insured endorsement CG 20 10 11 85 or a substitute endorsement providing equivalent coverage.

2. Workers' Compensation coverage as required by the Industrial Insurance laws of the State of Washington.

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.

EXHIBIT C (Continued)

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 respect the City. Any Insurance, self-insurance, or insurance pool coverage maintained by the City shall be excess of the Consultant's insurance and shall not contribute with it.
2. The Consultant's insurance shall be endorsed to state that coverage shall not be cancelled by either party, except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the City.
3. The City of Kent shall be named as an additional insured on all policies (except Professional Liability) as respects work performed by or on behalf of the Consultant and a copy of the endorsement naming the City as additional insured shall be attached to the Certificate of Insurance. The City reserves the right to receive a certified copy of all required insurance policies. The Consultant's Commercial General Liability insurance shall also contain a clause stating that coverage shall apply separately to each insured against whom claim is made or suit is brought, except with respects to the limits of the insurer's liability.

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 work.

F. Subcontractors

Consultant shall include all subcontractors as insureds under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to all of the same insurance requirements as stated herein for the Consultant.



CERTIFICATE OF LIABILITY INSURANCE

OP ID: J10

DATE (MM/DD/YYYY)
09/12/12

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Hub International NW/HCJ PO Box 3018 Bothell, WA 98041-3018 Tom Jackson	425-489-4500	CONTACT NAME:	
	425-489-4501	PHONE (A/C, No, Ext):	FAX (A/C, No):
		E-MAIL ADDRESS:	
		PRODUCER CUSTOMER ID #:	HEALL-1
		INSURER(S) AFFORDING COVERAGE	
INSURED Heartland, LLC Ms. Erica Buckley 1301 1st Ave. #200 Seattle, WA 98101	INSURER A:		Continental Casualty Co
	INSURER B:		Transportation Ins. Co.
	INSURER C:		Houston Casualty Company
	INSURER D:		
	INSURER E:		
	INSURER F:		
			NAIC # 20443

COVERAGES

CERTIFICATE NUMBER:

REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL SUBR INSR	WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	GENERAL LIABILITY			B2075931077	11/29/11	11/29/12	EACH OCCURRENCE \$ 1,000,000
	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY						DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 300,000
	<input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR						MED EXP (Any one person) \$ 10,000
							PERSONAL & ADV INJURY \$ 1,000,000
							GENERAL AGGREGATE \$ 2,000,000
							PRODUCTS - COMP/OP AGG \$ 2,000,000
							Emp Ben. \$ 1,000,000
A	AUTOMOBILE LIABILITY			B2075931077	11/29/11	11/29/12	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000
	<input type="checkbox"/> ANY AUTO						BODILY INJURY (Per person) \$
	<input type="checkbox"/> ALL OWNED AUTOS						BODILY INJURY (Per accident) \$
	<input type="checkbox"/> SCHEDULED AUTOS						PROPERTY DAMAGE (Per accident) \$
	<input checked="" type="checkbox"/> HIRED AUTOS						\$
	<input checked="" type="checkbox"/> NON-OWNED AUTOS						\$
B	UMBRELLA LIAB			B3011020287	11/29/11	11/29/12	EACH OCCURRENCE \$ 5,000,000
	<input type="checkbox"/> EXCESS LIAB						AGGREGATE \$
	<input type="checkbox"/> OCCUR						\$
	<input type="checkbox"/> CLAIMS-MADE						\$
	<input type="checkbox"/> DEDUCTIBLE						\$
	<input checked="" type="checkbox"/> RETENTION \$						\$
A	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY			B2075931077	11/29/11	11/29/12	<input checked="" type="checkbox"/> WC STATUTORY LIMITS <input type="checkbox"/> OTHER
	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH)	Y/N	N/A				E.L. EACH ACCIDENT \$ 1,000,000
	If yes, describe under DESCRIPTION OF OPERATIONS below			WA STOP GAP			E.L. DISEASE - EA EMPLOYEE \$ 2,000,000
							E.L. DISEASE - POLICY LIMIT \$ 1,000,000
C	Professional Liab			H712-16023	02/16/12	02/16/13	per loss \$ 1,000,000
	Claims made						aggregate \$ 2,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)
Certificate Holder is included as Additional Insured for General Liability as respects the following: This insurance is primary & non-contributory to any insurance or self-insurance coverage per Blanket Endorsement policy language.

CERTIFICATE HOLDER

CANCELLATION

CIOFKEN City of Kent ATTN: Erin George 220 Fourth Avenue South Kent, WA 98032	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE <i>Thomas F. Jackson</i>
---	---

© 1988-2009 ACORD CORPORATION. All rights reserved.

ACORD 25 (2009/09)

The ACORD name and logo are registered marks of ACORD

Kent Highlands Landfill ORD Exhibit C to ATT 2

- e. An additional insured under this endorsement will as soon as practicable:
- (1) Give written notice of an occurrence or an offense to us which may result in a claim or suit under this insurance;
 - (2) Tender the defense and indemnity of any claim or suit to any other insurer which also has insurance for a loss we cover under this Coverage Part; and
 - (3) Agree to make available any other insurance which the additional insured has for a loss we cover under this Coverage Part.
- f. We have no duty to defend or indemnify an additional insured under this endorsement

until we receive written notice of a claim or suit from the additional insured.

2. The following is added to Paragraph H. of the **BUSINESSOWNERS COMMON POLICY CONDITIONS:**

H. Other Insurance

4. This insurance is excess over any other insurance naming the additional insured as an insured whether primary, excess, contingent or on any other basis unless a written contract or written agreement specifically requires that this insurance be either primary or primary and noncontributing.

Kent Highlands Landfill ORD Exhibit C to ATT 2

Exhibit D

City of Kent Proposed Use Priorities

Tier 1:

1. Big box or retail development
2. Full or limited-service hotel
3. Privately-owned office

Tier 2:

Any proposed use that is:

1. consistent with MCR zoning; and
2. increases the city's tax base, i.e. increase in real property tax or retail sales tax revenues. Size and long-term reliability of the increase are important factors; and
3. if use includes multifamily or senior housing, must be market rate.

Tier 3:

Any proposed use that includes:

1. Public facilities
2. Transportation/transit/utility facilities
3. Commercial parking lots
4. Stand -alone open space uses (park, golf course, cemetery)
5. Outdoor public assembly (fairgrounds, amusement park, tennis court, athletic field, miniature golf, go-cart track, drive-in theater, etc.)
6. Movie theaters
7. Nonmarket rate multifamily or senior housing

Please note the following uses are not allowed by current zoning:

1. Single family homes
2. Wholesale or distribution uses
3. Manufacturing

FISCAL NOTE FOR NON-CAPITAL PROJECTS

Department:	Contact Person/Phone:	CBO Analyst/Phone:
Seattle Public Utilities	Martha Neuman/3-9036	Karl Stickel/5-8085

Legislation Title:

AN ORDINANCE declaring approximately 7.4 acres of City-owned real property located north of South 231st Way in the City of Kent, Washington as no longer required for municipal utility purposes and surplus to the City's needs; authorizing the Director of Seattle Public Utilities to enter into a Memorandum of Agreement with the City of Kent to jointly market these parcels with adjacent parcels owned by the City of Kent through an open competitive process, and ratifying and confirming certain prior acts.

Summary of the Legislation:

This legislation would declare King County Tax Parcel #1522049065 and King County Tax Parcel #1522049172 no longer required for municipal utility purposes and surplus to the City's needs. It would also authorize the Director of Seattle Public Utilities to sell the property using a competitive process; enter into a Memorandum of Agreement with the City of Kent to jointly market these parcels with adjacent parcels owned by the City of Kent; and negotiate and execute any necessary documents to complete the transaction.

Background:

The 7.4 acre property is comprised of two parcels located north of the former Kent Highlands landfill and South 231st Way. The City acquired this property with the land purchased for the landfill. The property was used during landfill closure operations, but it is no longer needed. The two parcels are free of refuse and restrictive covenants associated with the former landfill.

In 2011, a developer approached SPU to inquire about buying property at the former Kent Highlands landfill. Although that developer did not ultimately make an offer or purchase, the inquiry spurred SPU to examine the potential real estate value of the former landfills at both Kent Highlands and Midway. As an initial step, SPU evaluated regulatory conditions, political context, and market conditions that could influence the reuse of property at Kent Highlands.

Based on this work, SPU began focusing on the two parcels. Utility staff subsequently had conversations with the City of Kent, which owns land adjacent to the subject SPU property. Kent wants to sell portions of their adjacent parcels to advance economic development goals. With a wetland and buffer area on the SPU property, current market conditions and the potential benefit of offering more acreage to the market, SPU recommends pursuing a joint marketing approach with Kent to maximize value for each party.

The Memorandum of Agreement authorized by this legislation would guide the partnership between SPU and Kent, including transaction and reimbursement arrangements related to the marketing effort and sale of the respective parcels.

Please check one of the following:

This legislation does not have any financial implications.

This legislation has financial implications.

Appropriations:

Appropriations Notes:

Sufficient appropriations exist in both 2012 and 2013 (Solid Waste General Expense BCL N000B-SW) to fund \$115,000 in consultant costs to facilitate the sale of the subject property, including developing marketing materials, soliciting and evaluating proposals, and conducting negotiations for closing. Approximately \$47,500 was spent in 2012 and \$67,500 will be spent in 2013.

Anticipated Revenue/Reimbursement Resulting from this Legislation:

Fund Name and Number	Department	Revenue Source	2012 Revenue	2013 Revenue
Solid Waste	SPU			TBD
TOTAL				TBD

Revenue/Reimbursement Notes: The size of potential proceeds from the sale of this property is currently not known. An appraisal will be completed as part of the pre-marketing effort. The legislation authorizes SPU to utilize a competitive sales process. SPU's goal is to complete a sale by late 2013. It is anticipated that Kent will reimburse SPU for some of the upfront costs related to the sale from their proceeds.

Other Implications:

- a) **Does the legislation have indirect financial implications, or long-term implications?**
No.
- b) **What is the financial cost of not implementing the legislation?**
SPU would not receive revenue for the sale of the property and would continue to own unused property in Kent.

c) Does this legislation affect any departments besides the originating department?

No.

d) What are the possible alternatives to the legislation that could achieve the same or similar objectives?

There are no alternatives.

e) Is a public hearing required for this legislation?

Yes. Ordinance process includes the necessary public hearing for sale of surplus utility property pursuant to RCW 35.94.040. Also, the neighbors within 1,000 feet of the property were notified as part of the FAS process for disposition of simple property.

f) Is publication of notice with *The Daily Journal of Commerce* and/or *The Seattle Times* required for this legislation?

No.

g) Does this legislation affect a piece of property?

Yes. See Exhibit A of Attachment 2 of ordinance attached.

h) Other Issues:

SPU and Kent each own additional property south of South 231st Way, which the two parties may choose to market in conjunction with those referenced above. If SPU decides to recommend such an arrangement it would seek from Council additional authorizing legislation. Even though portions of the SPU-owned parcels have constraints due to previous landfill activity, parts of these parcels may be marketable, especially in conjunction with the properties north of South 231st Way.

List attachments to the fiscal note below:



City of Seattle
Office of the Mayor

January 15, 2013

Honorable Sally J. Clark
President
Seattle City Council
City Hall, 2nd Floor

Dear Council President Clark:

I am transmitting the attached proposed Council Bill which would declare City-owned property in the City of Kent as surplus to Seattle's needs and authorize the Director of Seattle Public Utilities (SPU) to enter into a Memorandum of Agreement to jointly market these parcels with adjacent parcels owned by the City of Kent.

In 2011, a developer approached SPU to inquire about buying property at the former Kent Highlands landfill. Although that developer did not ultimately make an offer or purchase, the inquiry spurred SPU to examine the potential real estate value of both the Kent Highlands and Midway landfills. The 7.4 acre property subject to this legislation comprises two parcels north of Kent Highlands. It was used during landfill closure operations and is free of refuse and restrictive covenants. SPU staff had conversations with the City of Kent, which owns land adjacent to the SPU property. The City of Kent wants to sell portions of its adjacent parcels to advance its economic development goals. With a wetland and buffer area on the SPU property, current market conditions and the potential benefit of offering more acreage to the market, SPU recommends pursuing a joint marketing approach with the City of Kent to maximize value for each party.

This legislation would allow SPU to divest itself through an open and competitive process of property it no longer needs while potentially getting a financial benefit for solid waste ratepayers. If you have questions about this issue, please contact Martha Neuman at 733-9036.

Sincerely,

A handwritten signature in black ink, appearing to read "M. McGinn".

Michael McGinn
Mayor of Seattle

cc: Honorable Members of the Seattle City Council