

The City of Seattle
Seattle City Light Department
CONSULTANT AGREEMENT

Title: *(Insert brief descriptive title for the consultant service)*

This Agreement is made and entered into by and between the City of Seattle (“the City”), a Washington municipal corporation, through its Seattle City Light Department, as represented by the General Manager and Chief Executive Officer; and *(insert legal name and address of Consultant)* (“Consultant”), a *(insert appropriate type of business: e.g. partnership, sole proprietorship, limited liability company, corporation)* of the State of ___ *(insert state in which the corporation is chartered)* and authorized to do business in the State of Washington.

Recitals:

A best practice is to provide RECITALS to give a brief background and to detail the process used. This is not a required section, but advisable from the Law department due to recent court cases (the Berg Case). It allows anyone to pick up the contract and understand the intent. You may use a “WHEREAS” format, or plain English. These need to be written carefully, however, so they are clear and accurate. You may add any WHEREAS statements you think provide a strong background and explanation of the contract, although two below are recommended in particular.

WHEREAS, the purpose of this contract is to INSERT; and

WHEREAS, the Consultant was selected from INSERT (examples: a selection from the Consultant Roster for Category XX, orthrough an SOQ issued by the City dated XX/XX/XXX, ora Request for Proposal,or an Emergency, ora Sole Source).

NOW, THEREFORE, the parties hereto agree as follows:

1. TERM OF AGREEMENT.

The term of this Agreement shall begin when fully executed by all parties, and shall end on **INSERT DATE**, unless amended by written agreement or terminated earlier pursuant to the provisions hereof.

2. TIME OF BEGINNING AND COMPLETION.

The Consultant shall begin the work outlined in the “Scope of Work” section (the “Work”) 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 Agreement shall not be extended because of delays for which the Consultant is responsible, but may be extended by the City in writing, for the City convenience or for conditions beyond the Consultant’s control.

3. SCOPE OF WORK.

The provisions of the Scope may be located either within this Section, or as an attachment to the Agreement. Select one of the two options below and delete the other. The standard Scope of Work provision below must also be included in this Section.

In developing a Scope of Work, a relationship should be established between the Scope of Work in this Section, including work tasks and deliverables, and the PAYMENT section, including dollar amounts, associated fees, charges and reimbursement costs.

The description in the Scope of Work should clearly support the elements of an independent contractor, which means the department won't be directing or supervising work like they might of a City employee (i.e. doesn't do performance evaluations, hire, terminate, discipline, not in the City Directory, etc.

Also verify compliance with any Union requirements before finalizing a contract agreement, if that has not yet been done. If this work has a Union position within your department that performs this work, then notify the Union of your intention to contract this work.

Option 1 The Scope of Work of this Agreement and the time scheduled for completion of such work are as follows: **INSERT**

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. detailed outline of completed Work) as requested by the City to determine the adequacy of the Work or the Consultant's progress.

4. PAYMENT.

This section should be delivered and inserted by the SCL Procurement & Contracting Analyst. It must include the maximum amount to be paid to the Consultant for the Work defined in Section 3 (Scope of Work) above, as well as a schedule establishing benchmarks for when certain portions of the money will be paid for progress or deliverables received.

DELETE Section A below, if the consultant agreement is for a lump sum or paid per deliverable.

- A. Salary. The City will reimburse the Consultant for the time personnel are directly utilized on work necessary to fulfill the terms of this Agreement. Payment will be based on the "ALL-INCLUSIVE HOURLY WAGE RATE(S)" as shown in EXHIBIT "___" for each hour or portion thereof the Consultant's personnel are utilized. This hourly rate includes all base salary, fringe benefits, overhead and fee for profit costs.
- B. This contract is a payment negotiated on the basis of cost, and shall include only those costs allowed under Part 31 of the Federal Acquisition Regulations (FAR), the provisions of which are incorporated herein by reference.

Reimbursables, Section C Below: This section is the City travel policy. You can delete, edit or keep as appropriate to your department and your contract. This section should be used when you have travel costs associated with the Agreement, or other reimbursables, and you don't have the travel costs outlined elsewhere using your own internal department rules. Project Managers should ensure any federal contract requirements are expressed, if applicable and additional to item B above. Check for duplication of any specifications you might have about these items. You may eliminate the section or eliminate those within your own documents as you prefer.

- C. If the Agreement specified reimbursables to be compensated by the City, the following limitations on such compensation shall apply. If no travel or direct charges are specifically identified and allowed for in the Agreement, then the City shall provide no reimbursement.
- a. City will reimburse the Consultant at the actual cost for expenditures that are pre-approved by the City in writing and are necessary and directly applicable to the work required by the Agreement, provided that similar direct project costs related to the contracts of other clients are consistently accounted for in a like manner and such costs do not exceed the guidelines below. Direct charges may include, but are not limited to, the following items: travel, printing, long distance telephone, supplies, computer charges, and fees of subconsultants.
 - b. The billing for direct expenses that have been approved and specifically identifiable with this project shall be on an itemized listing of the charges supported by copies of the original bills, invoices, expenses accounts, subconsultant paid invoices, and other supporting documents used by the Consultant to generate invoices to the City. The original supporting documents shall be available to the City for inspection upon request. All charges must be necessary for the services provided under this Agreement.
 - c. Airfare that has been pre-approved for reimbursement will be reimbursed at the actual cost of the airline ticket. The City will reimburse for Economy or Coach Fare only. Receipts detailed each airfare are required.
 - d. Meals that have been pre-approved for reimbursement will be reimbursed at the Federal Per Diem daily rate for the city in which the work is performed, and do not require receipts or additional documentation. The City will not reimburse for alcohol.
 - e. Lodging that has been pre-approved for reimbursement will be reimbursed at actual cost incurred up to a maximum of the published Runzheimer Cost Index for the city in which the work was performed. Receipts detailing each day/night lodging are required. The City will reimburse at the single occupancy rate. As an alternative, lodging billed at the published Federal Per Diem daily rate for the city in which the work is performed does not require receipts or additional documentation. In this case, the invoice needs to state that the lodging is being billed at the Federal Per Diem daily rate.
 - f. Vehicle mileage that has been pre-approved for reimbursement will be reimbursed at the Federal Internal Revenue Standard Business Mileage Rate in effect at the time the mileage expenses is incurred.
 - g. Rental car expenses that are pre-approved for reimbursement will be reimbursed at the actual cost of the rental. Rental car receipts are required for all rental car expenses. The City will only pay for the rental of compact size vehicles unless three or more persons are sharing one vehicle in which case a mid-sized vehicle rental is acceptable.
 - h. Miscellaneous travel cost for pre-approved travel, such as parking, gas, taxi, shuttle, tolls, ferry fees, etc., will be reimbursed at the actual cost incurred. Receipts are required for each expense of \$10 or more.
 - i. Other miscellaneous business expenses that have been pre-approved, such as printing, photo development, bidding, will be reimbursed at the actual cost incurred. Receipts are required for all miscellaneous expenses that are billed.

5. PAYMENT PROCEDURES.

The Consultant shall submit invoices to the Department not more often than once a month during the progress of the work for payment for work completed to the date of the invoice. These invoices shall be for work performed subsequent to that work covered by all previous invoices and shall be computed pursuant to the rates and limitations set forth above.

To the Project Manager: This section should be developed and inserted by the department contracting for services. Projects requiring an Inclusion Plan should consider using the language under Option 2.

OPTION 1: Payment shall be made by the City to the Consultant upon City's receipt of an invoice itemizing the number of hours worked and the Work elements performed for the period covered by the invoice.

OPTION 2: Payment shall be made by the City to the Consultant upon City's receipt of an invoice itemizing the number of hours worked and the Work elements performed, and a completed Sub-Consultant Payment Report for the period covered by the invoice.

[Note: This language can be used if the SCL PM elects to retain a portion of consultant's payment until project completion] *The Consultant will be paid ninety five percent (95%) of the amount of the invoice, upon the City's approval of the amount. Five percent (5%) of the approved amount of each invoice will be withheld by the City to insure completion of all work required under this Agreement. The partial payment will be made to the Consultant within thirty (30) days after receipt by the City of the invoice and required documentation. At no time shall the total cumulative payments plus the cumulative amounts allowed but withheld from payments exceed the Contract Amount multiplied by the percentage of the work actually accomplished. No payment shall be made for work performed prior to the date authorized for work to begin (see TIME OF BEGINNING AND COMPLETION Article). Invoices shall detail the work, hours, employees' names, numbers, and job classifications for which payment is being requested and shall detail, with receipts attached, the actual expenses for which reimbursement is being requested.*

[If no retainage, please use this language:]

Payment will be made to the Consultant within thirty (30) days after receipt by the City of the invoice and required documentation. At no time shall the total cumulative payments plus the cumulative amounts allowed but withheld from payments exceed the Contract Amount multiplied by the percentage of the work actually accomplished. No payment shall be made for work performed prior to the date authorized for work to begin. Invoices shall detail the work, hours, employees' names, numbers, and job classifications for which payment is being requested and shall detail, with receipts attached, the actual expenses for which reimbursement is being requested.

Invoices shall be submitted to the following address:

The City of Seattle, Seattle City Light Department

Attention: _____

700 5th Avenue, Suite 3200

PO Box 34023

Seattle, WA 98124-4023

A. Payment of Withheld Amounts. After the Consultant has completed all work required under this Agreement, the City's Project Manager will send the Consultant a Letter of Completion. Upon receipt of this Letter, the Consultant shall submit a statement/invoice to the Department for the total amount of all remaining moneys due to the Consultant.

B. Consultant's Records. The Consultant 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.

C. Performance Evaluation. After the Consultant has completed all work required under this Agreement, a performance evaluation meeting may be held at the request of the City or the Consultant prior to the City sending a "Letter of Completion" and a "Performance Review and Evaluations Report" to the Consultant. The City will finalize the Consultant's Performance Review and Evaluation Report, provide a copy to the Consultant, and file it with the City Clerk and the Seattle City Light Procurement and Contracting Office within thirty (30) days after the City sends a Termination Letter or a Letter of Completion to the Consultant.

(For those design contracts for projects that are constructed, additional performance evaluation meetings may be held at the request of the City or the Consultant at the completion of construction and another Performance Review and Evaluation Report may be filed as above.)

D. Payment of Audit Findings. Payment of any balance due the Consultant, as determined by final audit, will be made promptly upon its ascertainment and verification by the City after completion of the work under this Agreement and the receipt and written acceptance by the Department of all work to be performed under this Agreement. If it is determined that the Consultant has been overpaid under this Agreement, the Consultant shall immediately refund to the City any excess paid the Consultant.

Payments under contracts negotiated on the basis of cost shall include only those costs allowed under Part 31 of the Federal Acquisition Regulations (FAR).

6. TAXES, FEES AND LICENSES.

- A. Fees and Licenses: Consultant shall pay for and maintain in a current status, any license fees, assessments, permit charges, etc., which are necessary. It is the Consultant's sole responsibility to monitor and determine any changes or the enactment of any subsequent requirements for said fees, assessments, or changes and to immediately comply with said changes during the entire term of this Agreement.
- B. Taxes: Where required by state statute, ordinance or regulation, Consultant shall pay for and maintain in current status all taxes necessary for performance. No charge by the Consultant shall be made for federal excise taxes. The City agrees to furnish Consultant with an exemption certificate where appropriate. 82.04.500 RCW exempts consultant services from sales tax.
- C. Withholding payment for taxes/business license fees due the City of Seattle. As authorized by SMC, the Director of the Department of Finance and Administrative Services may withhold payment due a City consultant pending satisfactory resolution of unpaid taxes and fees due the City.

7. ADDRESSES FOR NOTICES AND DELIVERABLE MATERIALS.

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

If to the City: **INSERT**

If to the Consultant: **INSERT**

8. FINAL CONSULTANT CONTRACT PAYMENTS REPORTING REQUIREMENTS.

This section may be used by the department, or the department may wish to use its own periodic subconsultant reporting forms, modify the following language to reflect the reporting frequency and form, and attach it to the agreement.

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 Agreement or as revised hereafter by the City.

9. EQUAL BENEFITS.

This Section applies to all consultant contracts estimated to cost \$44k or more. This section should be deleted for any contract estimated to cost less than \$44k and the word RESERVED typed in place of the Section title above.

- A. Compliance with SMC Ch. 20.45: The Consultant shall comply with the requirements of SMC Ch 20.45 and Equal Benefit Program Rules implementing such requirements under which the Consultant is obligated to provide the same or equivalent benefits ("equal benefits") to the domestic partner of employees as the Consultant provides to spouses of employees. At the City's request, the Consultant shall provide complete information and verification of the Consultant's compliance.
- B. Any violation of this Section shall be a material breach, for which the City may (1) require the consultant to pay liquidated damages for each day that the Consultant is in violation of SMC Chapter 20.45 during the term of the Agreement; or (2) terminate the Agreement; or (3) proceed with Debarment as stated in the Debarment Section of this Agreement; or (4) impose other remedies as provided for in SMC Chapter 20.45.

10. SOCIAL EQUITY REQUIREMENTS.

- 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 make 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 identify, 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, layoff or termination, rates of pay, or other forms of compensation and selection for training.
- B. Consultant shall promote and seek inclusion of woman and minority businesses on subcontracting opportunities within the contract scope of Work. Consultant agrees to make such efforts as a condition of the Agreement. A woman or minority business is one that self-identifies to be at least 51% owned. Such firms may be, but do not have to be, certified by the State of Washington.

Select Option 1 or Option 2 as appropriate to your project. In general, an Inclusion Plan and option 2 is required for contracts estimated at \$260,000 or more. Call Steven Larson (PCSD) at 684-4529 if you have questions.

- C. **(Option #1 for contracts < \$260k)** Inclusion efforts may include the use of solicitation lists, advertisements in publications directed to minority communities, breaking down total requirements into smaller tasks or quantities where economically feasible, making useful schedule or requirement modifications that may assist WMBE businesses to complete, targeted recruitment, using consultant services or minority community organizations to strategize outreach, and selection strategies and criteria that result in greater subconsultant diversity.
- C. **(Option #2 - for contracts ≥ \$260k that have the mandatory Inclusion Plan)** Inclusion responsibilities shall include those commitments agreed upon between the City and the Consultant as a result of the Contract WMBE Inclusion Plan submitted with the Consultant Proposal and agreed upon by the City. The Inclusion Plan is incorporated herein by this reference as Exhibit **INSERT**.

11. INDEMNIFICATION.

Changes to this provision must have approval from the Law Department (per SMC 20.50.060). Note that in no event will the City attorney approve any form of mutual indemnification; that requires a City Council ordinance to authorize any form of mutual indemnification for each specific contract.

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 Agreement to the extent attributable to the negligent acts or omissions, willful misconduct or breach of this Agreement 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, workers compensation, disability, employee 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 Agreement.

12. INSURANCE.

The insurance provisions included below are general purpose. For a particular consultant agreement, it may be necessary to increase or decrease the coverage's and requirements. Departments should evaluate, with the advice of FAS Risk Management, whether the types and amounts of insurance coverage indicated below are appropriate for each contract. Departments are required to confer with the Risk Management office to determine the insurance requirements for consultant services that pose a medium or higher risk to the City. For more detailed descriptions of the Risk Management process for consultant contracts, including insurance documentation requirements, please refer to the Consultant Contracting Guidelines and/or Risk Management Inweb.

- No insurance certification is required. However, Consultant agrees that it will maintain premises and vehicle liability insurance in force with coverage's and limits of liability that would generally be maintained by similarly situated consultants and workers compensation insurance as may be required by Washington State statutes.

- Insurance certification required. See attached “INSURANCE REQUIREMENTS AND TRANSMITTAL FORM”

13. NON-DISCLOSURE AGREEMENT

- No Signed Non-Disclosure Agreement is required**

- A signed Non-Disclosure Agreement is required.** See attached ‘NON-DISCLOSURE AGREEMENT.’”

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 Agreement. 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 and/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 rights of the City and Agency is a condition of any subcontract, agreement or other arrangement under which any other persons or entity is permitted to perform Work under this Agreement.

15. INDEPENDENT CONSULTANT.

- A. The Consultant is an independent Consultant. This Agreement is not intended for the Consultant to act in any way, 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 Agreement 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 whatsoever. The City shall be neither liable for nor obligated to pay sick leave, vacation pay, or any other benefit neither of employment, nor to pay any social security or other tax that may arise as an incident of employment. The Consultant shall pay all income and other taxes as due. It is recognized that the Consultant may perform work for other parties and that the City is not the exclusive user of the services that the Consultant provides.
- B. Working on City Premises: If the City determines it is in the best interests for the Consultant to perform Work on City premises and/or with City equipment, the City may provides 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.
- C. In the event the Consultant works on the City premises using City equipment, the Consultant remains an independent Consultant 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, 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.

16. KEY PERSONS.

The Consultant shall not transfer or reassign any individual designated in this Agreement 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 Agreement, 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 Agreement.

17. ASSIGNMENT AND SUBCONTRACTING.

The Consultant shall not assign or subcontract any of its obligations under this Agreement 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 Agreement, 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 Agreement or from any obligation to be performed under this Agreement, whether occurring before or after such consent, assignment or subcontract.

18. FEDERAL DEBARMENT.

The Consultant shall immediately notify the City of any suspension or debarment or other action that excludes the Consultant or any subconsultant from participation in Federal contracts. Consultant shall verify all subconsultants that are intended and/or used by the Consultant for performance of City Work are in good standing and are not debarred, suspended or otherwise ineligible by the Federal Government. Debarment shall be verified at <https://www.epls.gov>. The Consultant shall keep proof of such verification within the Consultant records.

19. CITY ETHICS CODE (SMC 4.16.010 TO .105).

- A. Former City workers: The Consultant shall promptly notify the City Project Manager in writing of any person who is expected to be a Consultant Worker (including any Consultant employee, subconsultant, principal, or owner) and was a former City officer or employee within the past twelve (12) months.
- B. The Consultant shall ensure compliance with the City Ethics Code by any Consultant Worker when the Work or matter related to the Work is performed by a Consultant Worker who has been a City officer or employee within the past two years.
- C. Consultant Workers with 1,000 Hours: The Consultant shall provide written notice to the City Project Manager of any Consultant worker who shall perform, or is expected to perform, more than 1,000 hours of contract work for the City within a rolling 12-month period. Such hours include those that the worker performs for the Consultant, and any other hours that the worker performs for the City under any other contract. Such workers are subject to the requirements of the City Ethics Code, SMC 4.16. The Consultant shall advise their Consultant Workers as applicable.
- D. No Gifts or Gratuities: Consultant shall not directly or indirectly offer anything of value (such as retainers, loans, entertainment, favors, gifts tickets, trips, favors, bonuses, donations, special

discounts, work or meals) to any City employee, volunteer or official, that is intended or may appear to a reasonable person to be intended, to obtain or give special consideration to the Consultant. Promotional items worth less than \$25 may be distributed by the Consultant to City employees if the Consultant uses the items as routine and standard promotional materials. Any violation of this provision may result in termination of this Agreement. Nothing in this Agreement prohibits donations to campaigns for election to City office, so long as the donation is disclosed as required by the election campaign disclosure laws of the City and of the State.

20. NO CONFLICT OF INTEREST.

The Consultant confirms that the Consultant does not have a business interest or a close family relationship with any City officer or employee who was or will be involved in the consultant selection, negotiation, drafting, signing, administration or evaluation of the Consultant's work. As used in this Section, the term Consultant shall include any employee of the Consultant who was, or is, or will be, involved in the negotiation, drafting, signing, administration or performance of the Agreement. As used in this Section, the term "close family relationship" refers to: spouse or domestic partner, any dependent parent, parent-in-law, child, son-in-law, 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.

21. ERRORS AND OMISSIONS, CORRECTIONS.

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 Agreement. The Consultant, without additional compensation, shall correct or revise any errors or mistakes 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 Agreement shall survive any termination or expiration of this Agreement.

22. INTELLECTUAL PROPERTY RIGHTS.

- A. Copyrights. 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 copy and distribute every document and all the materials prepared by the Consultant for the City under this Agreement. 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 program 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.
- B. Patents: 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 Agreement 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 the Consultant that was created or produced separate from the Agreement or was pre-existing material (not already owned by the City), provided that the Consultant has clearly identified in

writing such material as pre-existing prior to commencement of the Work. To the extent that pre-existing materials are incorporated in the work, the Consultant grants the City an irrevocable, non-exclusive right and/or license to use, execute, reproduce, display and transfer the pre-existing material, but only as an inseparable part of the work.

- C. 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, on extensions of the project or on any other project.

23. CONFIDENTIALITY.

- A. The Consultant understands that any records (including but not limited to bid r proposal submittals, the Agreement, and any other contract materials) it submits to the City, or that are used by the City even if the Consultant possesses the records, are public records under Washington State law, RCW Chapter 42.56. The City must promptly disclose public records upon a request to the City, unless a statute exempts them from disclosure. The Consultant also understands that even if part of a record is exempt from disclosure, the rest of that record generally must be disclosed.
- B. If the City receives a public disclosure request made pursuant to RCW Chapter 42.56, the City will not assert an exemption from disclosure on behalf of the Consultant. For materials that the Consultant has properly and clearly marked to be confidential, the City may notify the Consultant of the request and postpone the release of documents for ten business days to allow the Consultant to file a lawsuit seeking an injunction preventing the release of the documents pursuant to RCW 42.546.540. Any notification by the City to the Consultant is provided as a courtesy and not a City obligation. Unless the Consultant obtains and serves an injunction upon the City before the close of business on the tenth business day after the date of the notification, the City may release the documents. It is the Consultant’s discretionary decision whether to file the lawsuit.
- C. In order to request that material not be disclosed until receipt of notification of a public disclosure request, the Consultant must identify the specific materials and citations very clearly, following the instructions given by the City. The City will not withhold material for notification if the Consultant simply marked “confidential” on the document header, footer, stamped on all pages, or offered a generic statement that the entire document is protected. Only material specifically listed and properly cited to the City will be temporarily withheld until the City provides notification of a public disclosure request.
- D. If the Consultant does not submit a request following the instructions and forms that the City requires for such purpose, the Consultant is deemed to have authorized releasing any and all information submitted to the City.
- E. Notwithstanding the above, the Consultant must not take any action that would affect the City’s ability to use services provided under this Agreement, or the Consultant’s obligations under this agreement.
- F. The Consultant will fully cooperate with the City in identifying and assembling records that may be in the possession of the Consultant in case of any public disclosure request.
- G. The Consultant will possess, or have access to, information (both materials and information provided by the City or prepared for the City, as a result of the Work). This information is likewise to be treated by the Consultant as confidential. The Consultant will not permit the duplication or disclosure of such information to any persons (other than its own employee, agent or representative who requires such information for the direct performance of the Consultant obligations hereunder), unless such duplication, use or disclosure is specifically

authorized in writing by the City. Such 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 Agreement. Likewise, information does not include that which has been independently developed, already possessed without obligation of confidentiality, or rightfully obtained from a third party without an obligation of confidentiality.

24. DISPUTES.

Any dispute or misunderstanding that may arise under this Agreement, concerning the Consultant's performance, shall first be through negotiations, if possible, between the Consultant's Project Manager and the City's Project Manager. If necessary, it shall be referred to the Director and the Consultant's senior executive(s). If such officials do not agree upon a decision within a reasonable period of time, either party may decline or discontinue such discussions and may then pursue the legal means to resolve such disputes, including but not limited to alternative dispute resolution processes. Nothing in this dispute process shall in any way mitigate the rights of the City to terminate the contract. Notwithstanding all of the above, if the City believes in good faith that some portion of the Work has not been completed satisfactorily, the City may require the Consultant to correct such work prior to the City payment. In such event, the City will provide to the Consultant an explanation of the concern and the remedy that the City expects. The City may withhold from any payment that is otherwise due, an amount that the City in good faith finds to be under dispute, or if the Consultant does not provide a sufficient remedy, the City may retain the amount equal to the cost to the City for otherwise correcting or remedying the work not properly completed.

25. TERMINATION.

- A. For Cause: The City may terminate the Agreement if the Consultant is in material breach of any of the terms of this Agreement, 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 Agreement 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 Agreement 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 Agreement 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 Agreement. 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 Agreement.
- F. Upon termination for any reason, the Consultant shall provide the City with the most current design documents, contract documents, writings and other products the Consultant 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.

26. CONSULTANT PERFORMANCE EVALUATION PROGRAM.

The Consultant's performance will be evaluated by the City Project Manager at the conclusion of the contract. For the Consultant's convenience, the Performance Evaluation template can be viewed here <http://www.seattle.gov/contracting/docs/ccPE.doc> .

27. DEBARMENT.

In accordance with SMC Chapter 20.70, the Director of the Department of Finance and Administrative Services or his/her designee may debar a Consultant and prevent the Consultant from entering into a contract 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. The Consultant:

- a. Received overall performance evaluations of deficient, inadequate, or substandard performance on three or more City contracts;
- b. Failed to comply with City ordinances or contract terms, including but not limited to, ordinance or contract terms related to woman and minority business utilization, discrimination, or equal benefits, or other state, local or federal non-discrimination laws;
- c. Abandoned, surrendered, or failed to complete or to perform work on or in connection with a City contract;
- d. Failed to comply with contract provisions, including but not limited to quality of workmanship, timeliness of performance, and safety standards;
- e. Submitted false or intentionally misleading documents, reports, invoices, or other statements to the City in connection with a contract;
- f. colluded with another firm to restrain competition;
- g. 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;
- h. Failed to cooperate in a City debarment investigation.

The Director or designee may issue an Order of Debarment in accordance with the 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 Agreement.

28. RESERVED.

29. EXPANSION FOR NEW WORK.

This Agreement scope may be expanded for new work. Any expansion for New Work (work not specified within the original Scope of Work Section of this Agreement, and/or not specified in the original RFP as intended work for the Agreement) must comply with all the following limitations and requirements: (a) the New Work is not reasonable to separately solicit; (b) the New Work is for reasonable purpose; (c) the New Work was not reasonably known either the City or Consultant at time of contract or else was mentioned as a possibility in the solicitation (such as future phases of work, or a change in law); (d) the New Work is not significant enough to be reasonably regarded as an independent body of work; (e) the New Work would not have attracted a different field of competition; and (f) the change does not vary the essential identify or main purposes of the Agreement. The City may make exceptions for immaterial changes, emergency or sole source conditions, or for other situations as required in the opinion of the City. Note that certain changes are not considered New Work subject to these limitations,

including additional phases of Work that were anticipated at the time of proposal, extensions of time, Work Orders issued on an On-Call contract, and similar.

New Work must be mutually agreed and issued by the City Project Manager through written Addenda. Any costs due to the performance of New Work prior to execution of an Amendment may not be reimbursed under this Agreement or an Amendment.

30. MISCELLANEOUS PROVISIONS.

- A. Amendments: No modification of this Agreement shall be effective unless in writing and signed by an authorized representative of each of the parties hereto.
- B. Binding Agreement: This Agreement shall not be binding until signed by both parties. The provisions, covenants and conditions in this Agreement shall bind the parties, their legal heirs, representatives, successors and assigns.
- C. ~~Delete and type in "RESERVED" if not applicable~~ Americans with Disabilities Act (ADA): Specific attention by the designer is required in association with the Americans with Disabilities Act (ADA) 42 U.S.C. 12101-12213 and 47 U.S.C. 225 and 611, its requirements, regulations, standards and guidelines, which were updated in 2010 and are effective and mandatory for all State and local government facilities and places of public accommodation for construction projects including alteration of existing facilities, as of March 15, 2012. The City advises that the requirements for accessibility under the ADA, may contain provisions that differ substantively from accessibility provisions in applicable State and City codes, and to the extent that the applicable provisions of the ADA impose a greater or equal protection for the rights of individuals with disabilities or individuals associated with them than the adopted local codes, the provisions of the ADA prevail unless approval for an exception is obtained by a formal documented process. In instances where local codes provide exceptions from accessibility requirements that differ from the ADA Standards; such exceptions may not be permitted for publicly owned facilities subject to Title II requirements unless the same exception exists in the Title II regulations. It is the responsibility of the designer to determine the applicable code provisions.
- D. 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 requirements of this Section.
- E. Applicable Law/Venue: This Agreement 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 of King County.
- F. Remedies Cumulative: Rights under this Agreement are cumulative and nonexclusive of any other remedy of law or in equity.
- G. Captions: The titles of sections or subsections are for convenience only and do not define or limit the contents.
- H. Severability: If any term or provision of this Agreement is determined by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Agreement shall not be affected thereby, and each term and provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.
- I. Waiver: No covenant, term or condition or the breach thereof shall be deemed waived, except by written consent of the part 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 of 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.

- J. Entire Agreement: This document along with any exhibits and all attachments, and subsequently issued addenda, comprises the entire agreement between the City and the Consultant. The solicitation (Request for Proposal or Solicitation for Qualifications), Addenda, Consultants Proposal, and Consultants WMBE Inclusion Plan, are each explicitly included as Attachments that are material to the Agreement. Where there are conflicts between these documents, the controlling document will first be this Agreement as amended, the WMBE Inclusion Plan as adopted, the Consultant's Proposal, then the City Solicitation documents. In the event of conflict between contract documents and applicable laws, codes, ordinances or regulations, the most stringent or legally binding requirement shall govern and be considered a part of this contract to afford the City the maximum benefits.
- K. Negotiated Agreement: The parties acknowledge that this is a negotiated agreement, that they have had the opportunity to have this Agreement reviewed by their respective legal counsel, and that the terms and conditions of this Agreement are not to be construed against any party on the basis of such party's draftsmanship thereof.
- L. No personal liability: No officer, agent or authorized employee of the City shall be personally responsible for any liability arising under this Contract, whether expressed or implied, nor for any statement or representation made herein or in any connection with this Agreement.

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.

CONSULTANT

**CITY OF SEATTLE
SEATTLE CITY LIGHT DEPARTMENT**

By _____
Signature Date

By _____
Signature Date

[Type or Print Name and Title]

[Type or Print Name and Title]

City of Seattle Business License Number:
Washington State Unified Business Identifier Number (UBI):