

City of Seattle

Finance & Administrative Services

CONSULTANT AGREEMENT

Title:

AGREEMENT NUMBER: TBD

This Agreement is made and entered into by and between the City of Seattle ("the City"), a Washington municipal corporation, through its Department of Finance and Administrative Services (FAS), as represented by the Director of FAS; and TBD ("Consultant"), Address TBD an (ENTITY) of the State of TBD and authorized to do business in the State of Washington.

Recitals:
TBD

In consideration of the terms, conditions, covenants and performance of the Scope of Work contained herein, the City and Consultant mutually agree as follows:

1. TERM OF AGREEMENT.

The term of this Agreement begins when fully executed by all parties, and ends on TBD, unless amended by written agreement or terminated earlier under the termination provisions.

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 Letter of Authorization to proceed from the City. The City will acknowledge in writing when the Work is complete. Time limits established pursuant to this Agreement or by Letter of Authorization 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's convenience or for conditions beyond the Consultant's control.

3. SCOPE OF WORK.

The General Scope of Work is as follows:

TBD

All Services under this Agreement shall only be authorized by an Amendment signed by the Director of **ENTER DEPARTMENT NAME** or by a Letter of Authorization to this Agreement signed by the Director of the **ENTER DIVISION** of **ENTER DEPARTMENT NAME**. Any such Letter of Authorization shall clearly outline the negotiated scope of work and fee for service, and provide the timeline for completion.

This Agreement does not guarantee work to the Consultant. If the Scope of Work, schedule, and/or not-to-exceed amount of compensation contemplated by the City are not acceptable to the Consultant, the Consultant shall notify the City in writing within five business days of receipt of the City's Letter of Authorization.

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

The City shall have sole authority to make changes in scope, budget, and/or schedule for services performed under this Agreement. The Consultant shall have no authority to assign additional services or reduce the services to be performed by the Consultant under this Agreement.

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.

3.1. Assignment of Work by the City's Project Manager

The City's Project Manager named in Section 7 of this Agreement is authorized to act on the City's behalf in administration of this Agreement. Unless otherwise noted or until directed by the City to the contrary, the Consultant shall rely upon the authority of the Project Manager as the City's Representative. The Consultant shall further rely upon the authority of any Project Manager named as the City's Representative for specific scopes of work as provided in Letters of Authorization. The City reserves the right to change the Project Manager and will notify the Consultant of any such change.

The Consultant shall cooperate and coordinate its services with the City's Project Manager as necessary to assure timely preparation and/or accomplishment of Consultant services.

4. 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 solicit separately; (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 identified or main purposes of the Agreement. The City may make exceptions for immaterial changes, emergency or sole source conditions, or other situations required in City opinion. Certain changes are not New Work subject to these limitations, such as additional phases of Work anticipated at the time of solicitation, time extensions, Work Orders issued on an On-Call contract, and similar. New Work must be mutually agreed and issued by the City through written Addenda. New Work performed before an authorizing Amendment may not be eligible for payment.

5. INTERLOCAL COOPERATION ACT.

RCW 39.34 allows cooperative agreements between public agencies and other political subdivisions, to share the work or results of work that each agency also has authority to independently perform. SMC 20.60.100 allows certain non-profits to also use these agreements. If a public agency files or has filed an Intergovernmental Cooperative Purchasing Agreement with the City Purchasing and Contracting Services Division, those agencies may utilize City contracts in lieu of their own selection process, as long as the contract meets the requirements requires of their local and state law. The Consultant may accept or decline such Work. If the Consultant accepts work from another public agency using the City of Seattle Agreement as the authority, the Consultant shall offer the same prices, terms and conditions. The City of Seattle accepts no responsibility for the choice of an agency to utilize the City contract, or for payment or performance.

6. PAYMENT.

Consultant services under this Agreement shall be billed based upon negotiated hourly rates or lump sum payments, consistent with industry practice, set forth in Letters of Authorization and/or Amendments to this Agreement.

Payment is subject to the continuing appropriation authority of the Seattle City Council. Consultant agrees that there is no guarantee of a minimum amount of work or minimum payment under this contract.

6.1 PAYMENT PROCEDURES.

The Consultant may submit invoices to the City as frequently as once per month during progress of work, for partial payment for work completed to date. Payment shall be made by the City to the Consultant upon the City's receipt of a properly prepared invoice containing the information listed below.

By email to FAS_CDCM_Invoices@seattle.gov

OR mail as below. **Pick one method and DO NOT DUPLICATE.**

City of Seattle ATTN: INVOICES, Capital Development & Construction Management (CDCM) Division Dept. of Finance and Administrative Services (FAS) PO Box 94689 Seattle WA 98124-98124-4689

Provide Exhibit C: Invoice Preparation Checklist to the individual in your company who prepares invoices. (exhibits will be provided with final contract.)

Invoices must clearly display the following
<ul style="list-style-type: none">• Invoice Date and Invoice Number• City Project Manager Name: (Please do not put PM's name in the address)• Department Contract No.• Contract Title:• Period covered by the invoice• Task # and title• 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)• The following Sub-Consultant payment information will be provided (attach Sub- Consultant invoices as backup):<ul style="list-style-type: none">○ Amount Paid to all Sub-Consultants for the invoice period (list separate totals for each Sub-Consultant).○ Cumulative To-Date amount paid to all Sub-Consultants (list separate totals for each Sub-Consultant).• Cumulative costs per task and for the total project

6.2 REIMBURSABLES

If the Agreement specified reimbursables to be compensated by the City, the following limitations apply. If no travel or direct charges are identified and allowed in the Agreement, the City shall provide no reimbursement.

- A. Reimbursable expenses, if any, are subject to the provisions of the Letter of Authorization or Amendment to this Agreement authorizing the Consultant services. All reimbursable expenses are subject to prior approval by the Project Manager, in accordance with applicable City policy. The City shall reimburse actual costs only, and no markup shall be applied to such actual costs. Reimbursement for travel costs are specifically excluded, unless authorized in writing by the City's Project Manager.
- B. The billing for approved direct expenses shall include an itemized listing of charges supported by copies of original bills, invoices, expense accounts, subconsultant invoices, and other supporting documents used by the Consultant to generate invoice(s) 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 Contract.

- C. The City will reimburse the actual cost for travel expenses incurred as evidenced by copies of receipts (excluding meals) supporting such travel expenses, and in accordance with the City of Seattle Travel Policy, details of which can be provided upon request.
- D. **Airfare:** Pre-approved Airfare will be reimbursed at the actual cost of the airline ticket. The City will reimburse for Economy or Coach Fare only. Receipts detailing each airfare are required.
- E. **Meals:** Meals will be reimbursed at the Federal Per Diem daily meal rate (*excluding the "Incidental" portion of the published CONUS Federal M&I Rate*) for the city in which the work is performed. *Receipts may be required as documentation.* The invoice shall state, "The meals are being billed at the Federal Per Diem daily meal rate", and shall detail how many of each meal is being billed (e.g. the number of breakfasts, lunches, and dinners). The City will not reimburse for alcohol at any time.
- F. **Lodging:** Lodging will be reimbursed at actual cost incurred up to a maximum of the published Runzheimer Cost Index for the city in which the work is performed (*the current maximum allowed reimbursement amount can be provided upon request*). Receipts detailing each day / night lodging are required. The City will not reimburse for ancillary expenses charged to the room (e.g. movies, laundry, mini bar, refreshment center, fitness center, sundry items, etc.)
- G. **Vehicle mileage:** Vehicle mileage will be reimbursed at the [Federal Internal Revenue Service Standard Business Mileage Rate](#) in effect at the time the mileage expense is incurred. Please note: payment for mileage for long distances traveled will not be more than an equivalent trip round-trip airfare of a common carrier for a coach or economy class ticket.
- H. **Rental Car:** Rental car expenses will be reimbursed at the actual cost of the rental. Rental car receipts are required for all rental car expenses. The City will reimburse for a standard car of a mid-size class or less. The City will not reimburse for ancillary expenses charged to the car rental (e.g. GPS unit).
- I. **Miscellaneous Travel** (e.g. parking, rental car gas, taxi, shuttle, toll fees, ferry fees, etc.): Miscellaneous travel expenses will be reimbursed at the actual cost incurred. Receipts are required for each expense of \$10.00 or more.
- J. **Miscellaneous other business expenses** (e.g. printing, photo development, binding): Other miscellaneous business expenses will be reimbursed at the actual cost incurred and may not include a markup. Receipts are required for all miscellaneous expenses that are billed.
- K. For in-house expenses, the Consultant will provide backup documentation. Examples of these types of costs include copies and fees for rentals of specialized equipment such as surveying equipment, noise monitoring equipment and diving equipment. Any rental fees for equipment owned by the Consultant must have a standard backup rental rate sheet that applies to the Consultant's use of the equipment for clients.

Subconsultant: Subconsultant expenses will be reimbursed at the actual cost incurred. Copies of all Subconsultant invoices that are rebilled to the City are required.

6.3 PROMPT PAY.

Definitions

- A. An invoice is considered received when it is date-stamped as received by the office of the recipient who is designated within this contract. If the invoice is not date-stamped or otherwise marked as received by a department, the date of the invoice will be considered the date the invoice is received.
- B. A payment is considered made on the day it is mailed or is available.
- C. Disputed items include, but are not restricted to, improperly prepared invoices, lack of appropriate supporting documentation, unapproved staff or staff rates on the invoice, and unsatisfactory work product or services.

Prompt Payment to Consultant

- A. Timely Payment: Except as provided otherwise herein, payment for an invoice will be issued and mailed to the Consultant within thirty (30) calendar days of receipt of the invoice.
- B. Disputed Items: The City may withhold payment for disputed items. The City will promptly notify the Consultant in writing, outlining the disputed items, the amount withheld and actions the Consultant must take to resolve the disputed items. The City default is to delay payment until a revised invoice is submitted and approved. However, the Consultant may request partial payment for the approved amounts, if the unapproved amount represents a small share of the total invoice. The City shall pay the revised invoice within thirty (30) calendar days of receipt.
- C. Legal Fees: In any action brought to collect interest due under this Section, the prevailing party is entitled to an award of reasonable attorney fees.

Prompt Payment to Subconsultants

- A. Cut-Off Date: Except as provided otherwise herein, payment for an invoice will be made to a subconsultant within thirty (30) calendar days of receipt by the Consultant. The Consultant may establish a monthly cut-off date of (*to be established by Prime*) that subconsultants must submit an invoice in order to assure 30-day payment.
- B. Disputed Items: The Consultant may withhold payment for disputed items. The Consultant will promptly notify the subconsultant in writing, outlining disputed items, the amount withheld and actions the subconsultant must take to resolve the disputed item(s). Such withheld amounts are limited only to items in dispute. The subconsultant can request partial payment for the approved amounts, or that the Consultant delay their entire payment until a revised invoice is submitted to and accepted by the Consultant. The Consultant shall pay the revised invoice within thirty (30) calendar days of receipt.
- C. Flow-Down Clauses: The Consultant shall require this provision in each subcontract of any tier.

6.4 SUBCONSULTANT PAYMENTS REPORTING REQUIREMENTS.

The Consultant shall report payments made to each Subconsultant through B2GNow at: <https://seattleconsulting.diversitycompliance.com/>

- 1) The Consultant shall report the first Subconsultant payment report no later than the 15th of the first month following issuance of the first payment made by the City to the Consultant, unless otherwise specified by the department.
- 2) Subsequent monthly Subconsultant payment reports shall be submitted by the 15th day of every month thereafter.
- 3) The last Subconsultant payment report shall be marked as "Final" in B2GNow and shall be submitted no later than 30 Days after the expiration of the Agreement.
- 4) The Consultant shall require each Subconsultant to verify each payment through B2GNow.
- 5) The Consultant is responsible for ensuring that all Subconsultants working on the contract (WMBE and Non-WMBE) entered in the B2GNow System for payment reporting purposes.

6) The Consultant shall require each Subconsultant to register on the City's Online Business Directory prior to completing the first online report.
<https://web6.seattle.gov/FAS/OBD/Logon/Logon.aspx>.

7) The Consultant shall also require its Subconsultants to report payments made to any lower tier Subconsultants, if any, in the same manner as specified herein.

8) The City reserves the right to withhold payments from the Consultant for non-compliance with this section.

The Consultant may contact (insert department name contact and phone number) or the City Purchasing and Contracting Services (CPCS), City of Seattle, Department of Finance and Administrative Services at (206) 684-0444 for technical assistance in submitting the required reports.

7. TAXES, FEES AND LICENSES.

- A. The Consultant shall pay and maintain in current status, all necessary licenses, fees, assessments, permit charges, etc. 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.
- B. Where required by state statute, ordinance or regulation, the Consultant shall pay and maintain in current status all taxes necessary for performance. The Consultant shall not charge the City for federal excise taxes. The City will furnish Consultant an exemption certificate where appropriate.
- C. As authorized by SMC, the Director of Finance and Administrative Services may withhold payment pending satisfactory resolution of unpaid taxes and fees due the City.

8. ADDRESSES FOR NOTICES AND DELIVERABLE MATERIALS.

Deliver all official notices (Except Invoices) and deliverable materials under this Agreement to:

If to the City: Kate Spitzer, Project Manager Capital Development & Construction Mgt. Division (CDCM) Department of Finance and Administrative Services (FAS) 700 Fifth Avenue, Suite 5200 (if in person) OR PO Box 94689 (if by mail) Seattle WA 98104 Kate.spitzer@seattle.gov PH:206.733.9065
--

9. EQUAL BENEFITS.

This provision applies to all contracts valued at \$52,000 or above, including amendments. The Consultant shall comply with SMC Ch. 20.45 and Equal Benefit Program Rules, which require the Consultant to provide the same or equivalent benefits ("equal benefits") to domestic partners of employees as the Consultant provides to spouses of employees. At the City's request, the Consultant shall provide information and verification of the Consultant's compliance. Any violation of this Section is material breach, for which the City may exercise enforcement actions or remedies defined in SMC Chapter 20.45.

10. SOCIAL EQUITY REQUIREMENTS.

- A. Non-discrimination: 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, honorably discharged veteran or military status or the presence of any sensory, mental or physical handicap, unless based upon a bona fide occupational qualification. The Consultant shall affirmatively try to ensure applicants are employed, and employees are treated equally during employment, without regard to race, color, age, sex, marital status, sexual orientation, gender identify, political ideology, creed, religion, ancestry, national origin, honorably discharged veteran or military status or the presence of any sensory, mental or physical

handicap. Such efforts include, but are not limited to employment, upgrading, demotion, transfer, recruitment, layoff, termination, rates of pay or other compensation, and training.

- B. WMBE Inclusion: The Consultant shall seek inclusion of woman and minority businesses (WMBEs) for subcontracting. A WMBE is one that self-identifies to be at least 51% owned by a woman and/or minority. Such firms do not have to be certified by the State of Washington but must be registered in the City Online Business Directory.

Inclusion responsibilities shall include those commitments agreed upon between the City and the Consultant as a result of the WMBE Inclusion Plan submitted with the Consultant Proposal and as agreed upon by the City. The Inclusion Plan is incorporated herein by this reference as an Attachment.

- C. Paid Sick Time and Safe Time Ordinance: The Consultant shall be aware that the City has a Paid Sick Time and Safe Time ordinance that requires companies to provide employees who work more than 240 hours within a year inside Seattle, with accrued paid sick and paid safe time for use when an employee or a family member needs time off from work due to illness or a critical safety issue. The ordinance applies to employers, regardless of where they are located, with more than four full-time equivalent employees. This is in addition and additive to benefits a worker receives under prevailing wages per WAC 296-127-014(4). City contract specialists may audit payroll records or interview workers as needed to ensure compliance to the ordinance. Please see <http://www.seattle.gov/laborstandards>, or you may call the Office of Labor Standards at 206-684-4500.
- D. Other Labor Standards Requirements: The Consultant shall comply to the extent applicable, with the City's Minimum Wage labor standards as required by SMC 14.19, setting wage standards for employees working within city limits as well as the Wage Theft labor standards as required by SMC 14.20, setting basic requirements for payment of wages and tips for employees working within city limits and providing various payment documentation to employees.

11. PROTECTION OF PROPERTY

Consultant is responsible for protecting its person and property at all times, including but not limited to supplies and equipment to perform services hereunder; Consultant releases and agrees to hold the City harmless from liability for losses or damages or any kind sustained by Consultant in performing the services required hereunder.

12. INDEMNIFICATION.

Consultant shall defend, indemnify, and hold the City harmless from and against all claims, demands, losses, damages or costs, including but not limited to damages arising out of bodily injury or death to persons and damage to property, caused by or resulting from:

- the sole negligence or willful misconduct of Consultant, its officers, employees, agents or subconsultants;
- the concurrent negligence of Consultant, its officers, employees, agents or subconsultants but only to the extent of the negligence of Consultant, its officers, employees, agents or subconsultants;
- the negligent performance or non-performance of the contract by the Consultant; or
- the use of any design, process, or equipment that constitutes an infringement of any patent in effect, or violates any other intellectual proprietary interest, including copyright, trademark, and trade secret.

Consultant waives its immunity under Title 51 RCW to the extent it is required to indemnify, defend and hold harmless the City and its officials, agents or employees.

13. INSURANCE.

Insurance certification and additional insured endorsement policy must be submitted to the City. See attached "INSURANCE REQUIREMENTS AND TRANSMITTAL FORM."

14. AUDIT.

Upon request, the Consultant shall permit the City and any other governmental agency ("Agency") involved in funding of the Work, to inspect and audit all pertinent books and records. This includes work of the Consultant, any subconsultant, or any other person or entity that performed connected or related Work. Such books and records shall be made available at any and all times deemed necessary by the Agency, including up to six years after final payment or release of withheld amounts. Such inspection and audit shall occur in King County, Washington or other reasonable locations that the Agency selects. The Consultant shall permit the Agency to copy books and records. The Consultant shall ensure that inspection, audit and copying rights of the Agency is a condition of any subcontract, agreement or other arrangement under which any other person or entity may perform work under this Agreement.

15. INDEPENDENT CONSULTANT.

- A. The Consultant is an independent Consultant. This Agreement does not intend the Consultant to act as a City employee. The City has neither direct nor immediate control over the Consultant nor the right to control the manner or means by which the Consultant works. Neither the Consultant nor any Consultant employee shall be an employee of the City. This Agreement prohibits the Consultant to act as an agent or legal representative of the City. The Consultant is not granted express or implied rights or authority to assume or create any obligation or responsibility for or in the name of the City, or to bind the City. The City is not liable for or obligated to pay sick leave, vacation pay, or any other benefit of employment, nor to pay social security or other tax that may arise from employment. The Consultant shall pay all income and other taxes as due. The Consultant may perform work for other parties; the City is not the exclusive user of the services that the Consultant provides.
- B. If the City needs the Consultant to Work on City premises and/or with City equipment, the City may provide the necessary premises and equipment. Such premises and equipment are exclusively for the Work and not to be used for any other purpose.
- C. If the Consultant works on the City premises using City equipment, the Consultant remains an independent Consultant. The Consultant will notify the City Project Manager if s/he or any other Workers are within 90 days of a consecutive 36-month placement on City property. If the City determines using City premises or equipment is unnecessary to complete the Work, the Consultant will be required to work from its own office space or in the field. The City may negotiate a reduction in Consultant fees or charge a rental fee based on the actual costs to the City, for 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 shall not be unreasonably withheld. If 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 does not release the Consultant from its obligations under this Agreement.

17. ASSIGNMENT AND SUBCONTRACTING.

The Consultant shall not assign or subcontract 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 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 does not release the consultant from liability or any obligation within this Agreement, whether before or after City consent, assignment, or subcontract.

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

- A. The Consultant shall promptly notify the City in writing of any person 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. The Consultant shall provide written notice to the City of any Consultant worker who shall or is expected to perform over 1,000 hours of contract work for the City within a rolling 12-month period. Such hours include those performed for the Consultant and other hours that the worker performed for the City under any other contract. Such workers are subject to the City Ethics Code, SMC 4.16. The Consultant shall advise their Consultant Workers.
- D. The 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 cause 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.
- E. Campaign Contributions (Initiative Measure No. 122): Elected officials and candidates are prohibited from accepting or soliciting campaign contributions from anyone having at least \$250,000 in contracts with the City in the last two years or who has paid at least \$5,000 in the last 12 months to lobby the City. Please contact Polly Grow at polly.grow@seattle.gov for more information about the measure, or call the Ethics Director with questions at 206-615-1248.

19. NO CONFLICT OF INTEREST.

The Consultant confirms that the Consultant or workers have no 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 includes any worker of the Consultant who was, is, or will be, involved in negotiation, drafting, signing, administration or performance of the Agreement. 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.

20. ERRORS AND OMISSIONS, CORRECTIONS.

Consultant is responsible for 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. Consultant, without additional compensation, shall correct or revise 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 regarding acts or omissions resulting from this Agreement survives Agreement termination or expiration.

21. 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 for 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 developed solely for and paid for by the City to perform the Work, shall be promptly delivered to the City.
- B. Patents: The Consultant assigns to the City all rights in any invention, improvement, or discovery, with all related information, including but not limited to designs, specifications, data, patent rights and findings developed with the performance of the Agreement or any subcontract. 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 created or produced separate from the Agreement or was pre-existing material (not already owned by the City), provided that the Consultant has identified in writing such material as pre-existing prior to commencement of the Work. If 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 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.

22. NON-DISCLOSURE AGREEMENT

No Signed Non-Disclosure Agreement is required

23. PROPRIETARY AND CONFIDENTIAL INFORMATION.

The State of Washington's Public Records Act (Release/Disclosure of Public Records) Under Washington State Law (reference RCW Chapter 42.56, the Public Records Act) all materials received or created by the City of Seattle are considered public records. These records include but are not limited to bid or proposal submittals, agreement documents, contract work product, or other bid material.

The State of Washington's Public Records Act requires that public records must be promptly disclosed by the City upon request unless that RCW or another Washington State statute specifically exempts records from disclosure. Exemptions are narrow and explicit and are listed in Washington State Law (Reference RCW 42.56 and RCW 19.108).

As mentioned above, all City of Seattle offices ("the City") are required to promptly make public records available upon request. However, under Washington State Law some records or portions of records may be considered legally exempt from disclosure. A list and description of records identified as exempt by the Public Records Act can be found in RCW 42.56 and RCW 19.108.

If the City receives a public disclosure request for any records or parts of records that Contractor has properly and specifically listed on the City Non-Disclosure Request Form (Form) submitted with Contractor's bid/proposal, or records that have been specifically identified in this contract, the City will notify Contractor in writing of the request and will postpone disclosure. While it is not a legal obligation, the City, as a courtesy, will allow Contractor up to ten business days to obtain and serve the City with a court injunction to prevent the City from releasing the records (reference RCW 42.56.540). If you fail to obtain a Court order and serve the City within the ten days, the City may release the documents.

The City will not assert an exemption from disclosure on Contractor's behalf. If Contractor believes that its records are exempt from disclosure, Contractor is obligated to seek an injunction under RCW 42.56.540. Contractor acknowledges that the City will have no obligation or liability to Contractor if the records are disclosed.

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. 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 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. 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 otherwise due, an amount that the City in good faith finds to be under dispute, or if the Consultant provides no 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 this Agreement if the Consultant is in material breach 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 the 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 without cause and including the City's convenience, upon written notice to the Consultant.
- D. Notice: Notice of termination under this Section shall be given by the party terminating this Agreement to the other, not fewer than five (5) business days prior to the effective date of termination.
- E. Actions upon Termination: if termination occurs and is not the fault of the Consultant, the Consultant shall be paid for the services properly performed prior to termination, with any reimbursable expenses then due, but such compensation shall not exceed the maximum compensation to be paid under the Agreement. The Consultant agrees 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 (whether foreseen or unforeseen) attributable to the termination of this Agreement.
- F. Upon termination, the Consultant shall provide the City with the most current design documents, contract documents, writings and other products the Consultant has produced to 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.

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

27. DEBARMENT.

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 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.sam.gov>. Consultant shall keep proof of such verification of subconsultant debarment status within the Consultant records.

City of Seattle Debarment: Under SMC Chapter 20.70, the Director of City Purchasing and Contracting Services (CPCS), as hereby delegated by the Director of Finance and Administrative Services, may debar and prevent a Consultant from contracting or subcontracting with the City for up to five years after determining 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, equal benefits, or other state, local or federal non-discrimination laws;
- C. Abandoned, surrendered, or failed to complete or to perform work on or for 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 CPCS Director or designee may issue an Order of Debarment under the SMC 20.70.050. Rights and remedies of the City under these provisions are besides other rights and remedies provided by law or under the Agreement.

28. 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. Background Checks and Immigrant Status: The City may require background checks for some or all of the employees that may perform work under this Agreement. The City reserves the right to require such background checks at any time. The City has strict policies regarding the use of background checks, criminal checks, immigrant status, and/or religious affiliation for contract workers. The policies are incorporated into the contract and available for viewing on-line at <http://www.seattle.gov/city-purchasing-and-contracting/social-equity/background-checks>.
- C. Notification Requirements for Federal Immigration Enforcement Activities: Prior to responding to any requests from an employee or agent of any federal immigration agency including the Immigration and Customs Enforcement (ICE), the U.S. Department of Homeland Security (DHS), Homeland Security Investigations (HSI), Enforcement Removal Operations (ERO), Customs and Border Protection (CBP), and U.S. Citizenship and Immigration Services (USCIS) regarding your City contract, Consultants shall notify the Project Manager immediately.

Such requests include, but are not limited to:

- a. requests for access to non-public areas in City buildings and venues (i.e., areas not open to the public such as staff work areas that require card key access and other areas designated as "private" or "employee only"); or
- b. requests for data or information (written or oral) about workers engaged in the work of this contract or City employees.

No access or information shall be provided without prior review and consent of the City. The Consultant shall request the ICE authority to wait until the Project Manager is able to verify the credentials and authority of the ICE agent and will direct the Consultant on how to proceed.

- D. 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.
- E. Americans with Disabilities Act (ADA): ~~Delete the rest of the paragraph below and type in "RESERVED" if not applicable~~ 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 substantially from accessibility provisions in applicable State and City codes, and if the 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 ADA prevail unless approval for an exception is obtained by a formal documented process. 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 code provisions.
- F. Federal and State Compliance: The Consultant, at no expense to the City, shall comply with all laws of the United States and Washington, the Charter and ordinances of the City of Seattle; and rules, regulations, orders and directives of their administrative agencies and officers. Without limiting the generality of this paragraph, the Consultant shall comply with the requirements of this Section.

- G. Venue: This Agreement shall be construed and interpreted under the laws of Washington. The venue of any action brought shall be in the Superior Court of King County.
- H. Remedies Cumulative: Rights under this Agreement are cumulative and nonexclusive of any other remedy of law or in equity.
- I. Captions: The titles of sections or subsections are for convenience only and do not define or limit the contents.
- J. Severability: If any term or provision is determined by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Agreement shall not be affected, and each term and provision shall be valid and enforceable to the fullest extent permitted by law.
- K. Waiver: No covenant, term or condition or the breach 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 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.
- L. 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 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. If conflict occurs 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.
- M. Negotiated Agreement: The parties acknowledge this is a negotiated agreement, that they have had 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.
- N. 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 or in any connection with this Agreement.

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

CONSULTANT

CITY OF SEATTLE

By _____
Signature Date

By _____
Signature Date

Type or Print

Name Type or Print Name

Title

Title

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

Attachments:
(exhibits will be provided with final contract)

DRAFT

EXHIBIT

ENTER EXHIBIT #

Non-Disclosure Agreement

CONTRACT #
CONTRACT TITLE:

ENTER CONTRACT #
ENTER CONTRACT TITLE

THIS IS A SAMPLE FORM ONLY. MODIFY FOR YOUR DEPARTMENT NEEDS OR DELETE FROM THIS AGREEMENT IF NOT APPLICABLE.

Delete this box when done

This AGREEMENT is made and entered into by and between the City of Seattle ("City") and **ENTER CONSULTANT NAME**, ("Consultant") and is effective upon contract execution.

Whereas, the Consultant requires access to many forms of confidential materials, including **[EDIT THIS LIST AS NEEDED]** names, addresses, telephone numbers, email addresses, files, records, court documents and other forms of proprietary, private or personal-identifying information, herein referred to as "Information", to propose, develop, implement, maintain or perform the Scope of Work. The Consultant must comply with all city, state and federal regulations in accessing and using this Information.

THEREFORE IT IS AGREED AS FOLLOWS:

The City will allow the Consultant access all Information required to perform Consultant's Scope of Work.

The Consultant agrees to limit the use of this Information to the purposes ("Purposes") of fulfilling the requirements of the Scope of Work.

The Consultant agrees that access to Information will be limited to approved employees and subcontracted employees ("Authorized Personnel"). The Consultant agrees that it will provide the City of Seattle with a list of employees who will have access to Information. Consultant agrees that all Authorized Personnel shall be informed of the provisions of this Agreement and shall first agree to comply with the revisions of this Agreement before Consultant permits any Authorized Personnel to have access to Information.

The Consultant shall obtain written authorization from the City prior to permitting any Consultant or subconsultant employees to have access to Information. The City and Consultant will screen all Consultant or subconsultant employees whom the Consultant requests to have access to Information. Screening may include a criminal record background investigation. At the City's sole discretion, the City may deny authorization to an individual because of criminal record or other pertinent reason. Authorization can be revoked immediately for anyone reasonably believed to be violating access/disclosure regulations.

The Consultant agrees to further limit access to Information to Authorized Personnel. No copies of Information shall be made except as clearly necessary to accomplish Purposes of this Agreement. The Consultant agrees to destroy copies of such Information when copies of such Information are no longer needed for Purposes of this Agreement.

The Consultant will not disclose any Information in any form which can identify an individual in any report or documentation, except for the Purposes of this Agreement when working with City personnel, or Authorized Personnel on the list.

The Consultant agrees to take all necessary reasonable precautions to protect Information from unauthorized access, alteration, or destruction. Information and programs to access it must be stored in secure systems or locked containers. Consultant shall employ all current safeguards to prevent unauthorized access to disk and tape files. Consultant Personnel shall not bypass or override security provisions in the course of their work.

In the event that the Consultant deems it necessary, for the purposes of this agreement, to disclose Information to any subconsultant, the Consultant shall notify the City and secure the written agreement of the subconsultant to comply with all terms of this Non-Disclosure Agreement as if it were the Consultant named herein. The City shall have the right, at any time, to monitor, audit, and review the activities, policies, records, and documents of the Consultant and its subconsultants in implementing this Agreement in order to assure compliance therewith.

The Consultant shall notify the City Project Manager within 24 hours of a suspected or actual security breach that compromises the security, confidentiality or integrity of Information. Immediately following the Consultant's notification to the City Project Manager, the Consultant shall take steps to immediately remedy the security breach and prevent any further security issues. The Consultant agrees that it shall not inform any third party of any security breach without the City's prior written consent. Further, the Consultant agrees that the City has the sole right to determine whether notice of a security breach is to be provided to a third party, and what the contents of such notice would be.

Since this Agreement provides access to Information on an ongoing basis, the City reserves the right to immediately suspend furnishing Information under this Agreement when it is determined by the City that any rule, policy, procedure, or regulation described or referenced herein is violated or appears to be violated. The Consultant shall not be liable for any deficiencies in the performance of its duties caused by the suspension provided it is later determined by investigation of the City that the Consultant did not violate this agreement. Notice of any such suspension shall be provided to Consultant in writing by the City.

It is hereby understood and acknowledged by the parties that any breach of their obligations detailed in this Agreement may cause the other injury and that monetary relief will not be in every case an adequate remedy for any such breach. Accordingly, in the event of any such breach the injured party may seek injunctive relief from such breach or threatened breach of this Agreement.

Invoice Review Checklist

The City intends to pay you promptly. Below is a checklist to ensure your payment will be processed quickly. Provide this to the best person in your company for ensuring invoice quality control.

- Send the invoices to the correct address:

City Department Address/Invoice Recipient:

Instructions: Please amend this according to your department as to who should first receive the invoice. Delete this box after completing.

- Validate that the time for services performed is within the Contract Begin Date and Contract End Date.
- Ensure invoice items have not been previously billed or paid, given the time for which services were performed.
- Ensure enough money remains on the contract including amendments), to pay the invoice.
- Ensure the Labor Rates match the most current approved rate sheet.
- Ensure the Overhead Rate and Fee used in calculating personnel costs match the most current approved rate sheet.
- Ensure the Direct Charges on the invoice are allowable by contract.
- Eliminate unallowable costs (e.g. *Traveling Business or First Class, Alcoholic Beverages, etc.*)
- Verify that personnel named are explicitly allowed for within the contract or most current approved rate sheet.
- Ensure WMBE utilization is provided to the City and/or entered into the City on-line system.
- Check the math.
- Ensure back-up documentation is adequate and complete.

Definitions

- Services- Deliverables or work performed by the consultant including analysis, advice, recommendations, report preparation, design development, and other specialized services.
- Direct Charges- Non-Salary expenses that are necessary and directly applicable to the work required by the contract, for example, Travel & Per Diem, Reproduction Expenses, Office Supplies, and Sub-consultants.
- Contract End Date: Day contract expires.

SAMPLE INVOICE.

Instructions: Please amend the invoice on the next page according to your department and contract needs. You may pull out the sample attached and instead use your own version. **Delete this box after completing.**

Every invoice should be submitted to clearly display all the following information. You may use the City format attached or your own invoice format, assuring that all the information on the sample is also easily found on your own invoice form. For an Excel version:

<http://www.seattle.gov/city-purchasing-and-contracting/consultant-contracting>

DRAFT

Consultant Contract Invoice By Task

For City
use

Invoice Date *Date*

Consultant Name *Consultant Name*

Contract Number *Contract #*

Contract Title: *Contract Title*

Work Authorization # *If Applicable*

Work Authorization Title: *If Applicable*

Period Covered By *Month/Day/Year to Month/Day/Year*

Consultant Invoice No. *#####*

Consultant Project # *If Applicable*

Consultant Contact *First Name Last Name*

Contact Phone # *(Area Code) ###-####*

Contact Email Address Name@Company.com

PM *Name of City PM*

Consultant Mailing Address
Street Address, Suite # City, State Zip
Consultant Remittance Address
Street Address, Suite # City, State Zip

Task # - Task Name

Salary Costs				
Personnel	Classification	Hours	Raw Rate	Current Invoice Total
		0	0.00	0.00
		0	0.00	0.00
		0	0.00	0.00
Subtotal Raw Rates Salary Costs This Task				\$ -
			Overhead 0.0%	\$ -
			Fee 0.0%	\$ -
Total Direct Salary Costs This Task				\$ -

Direct Non-Salary Costs			
Item	Expense Category (List Subconsultants Separately)	Notes	Current Invoice Total
1	Travel & Per Diem		
2	Reproduction		
3	Communication		
4	Sampling & Testing		
5	Sub-Consultants		
6	Other		
Subtotal Direct Non-Salary Cost This Task			\$ -

Task # - Task Name Total Amount Due \$ -

Task # - Task Name

Salary Costs				
Personnel	Classification	Hours	Raw Rate	Current Invoice Total
		0	0.00	0.00
		0	0.00	0.00
		0	0.00	0.00
Subtotal Raw Rates Salary Costs This Task				\$ -
			Overhead	0.0%
				\$ -
			Fee	0.0%
				\$ -
Total Direct Salary Costs This Task				\$ -

Direct Non-Salary Costs			
Item	Expense Category	Notes	Current Invoice Total
1	Travel & Per Diem		
2	Reproduction		
3	Communication		
4	Sampling & Testing		
5	Sub-Consultants		
6	Other		

Subtotal Direct Non-Salary Cost This Task	\$
	-

Task # - Task Name	Total Amount Due	\$
		-

Task # - Task Name

Salary Costs				
Personnel	Classification	Hours	Raw Rate	Current Invoice Total
		0	0.00	0.00
		0	0.00	0.00
		0	0.00	0.00
Subtotal Raw Rates Salary Costs This Task				\$ -
Overhead			0.0%	\$ -
Fee			0.0%	\$ -
Total Direct Salary Costs This Task				\$ -

Direct Non-Salary Costs			
Item	Expense Category	Notes	Current Invoice Total
1	Travel & Per Diem		
2	Reproduction		
3	Communication		
4	Sampling & Testing		
5	Sub-Consultants		
6	Other		
Subtotal Direct Non-Salary Cost This Task			\$ -

Task # - Task Name	Total Amount Due	\$
		-

Total Amount Due This Invoice (Summary of All Tasks)

WMBE UTILIZATION

	A	B	C = F / Total F	D	E	F	G = E + F
Consultant	WMBE Goal	Consultant Type	LTD WMBE %	Contract Budget	Prior LTD Costs	This Invoice	LTD Costs
Prime							
Sub-consultant A	%		#DIV/0!				\$0
Sub-consultant B	%		#DIV/0!				\$0
Sub-consultant C	%		#DIV/0!				\$0
WMBE Sub-Total	0%		#DIV/0!		\$0	\$0	\$0
Non-WMBE Sub- Total							\$0
Total				\$0	\$0	\$0	\$0

*Note: If Prime is WMBE, denote WMBE Goal in Prime row.

#DIV/0!

A - WMBE Goal - aspirational WMBE goals reflected in contract inclusion plan

B -Consultant Type- P+ Prime;

D - total amount of contract, including amendments

S=Subconsultant

Inclusion Plan Progress Description (Please comment on any deviation from Inclusion Plan goals):