

City of Seattle

Seattle Department of Human Resources

CONSULTANT AGREEMENT

Title: Investment and Plan Consulting Services for the Deferred Compensation Plan and Trust

AGREEMENT NUMBER: _____

This Agreement is made and entered into by and between the City of Seattle Voluntary Deferred Compensation Plan and Trust ("Plan" or "Client"), an eligible deferred compensation plan under Internal Revenue Code Section 457 established by the City of Seattle (the "City") and administered by the Plan Committee (the "Committee"), and _____ ("Consultant"), a _____ [type of entity; state where established] and authorized to do business in the State of Washington.

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

1. SCOPE AND TERM OF AGREEMENT

Term of Agreement

The term of this Agreement begins when fully executed by all parties, and ends on 09/30/2022, unless amended by written agreement or terminated earlier under the termination provisions. The Agreement may be extended for up to two (2) one-year terms as agreed by the parties through an amendment to this Agreement.

Scope of Services

The Scope of Work of this Agreement and the time scheduled for completion of such Work are described in Exhibit 1, Scope of Services, which is attached to and made a part of this Agreement.

The Request for Proposal provided to Consultant and Consultant's response or responses thereto, including all promises, warranties, commitments, and representations made in the successful proposal accepted by the Plan shall be considered binding and deemed incorporated by reference into this Agreement.

Any work performed as a Special Projects shall be performed only as mutually agreed upon and as approved in writing by the Plan. This will be considered extra work, supplemental to this Agreement, and shall not proceed unless authorized by an amendment. Any costs incurred due to the performance of extra work prior to execution of an amendment will not be reimbursed under this Agreement.

2. CHANGES

Either party may request changes to this Agreement. If the parties agree, such changes mutually agreed upon by and between the Plan and Consultant, shall be incorporated into the Amendment when signed by both parties.

3. PAYMENT

Total compensation to the Consultant under this Agreement shall not exceed \$_____, unless modified by a written amendment to this Agreement. Payments shall be made according to the following schedule, which shall compensate Consultant for all direct, indirect, and overhead costs incurred by Consultant in the performance of this Agreement:

Payment Schedule City of Seattle Voluntary Deferred Compensation Plan and Trust		
Consultant Activity	Approximate Timing	Payment Amount

4. PAYMENT PROCEDURES

Payment shall be made by the Plan to the Consultant upon receipt of an invoice itemizing the Work elements performed for the period covered by the invoice.

Deliver all invoices and invoice/billing notices under this Agreement to:

If to the Plan:	If to the Consultant:
Michelle Eil Michelle.Eil@seattle.gov Seattle Department of Human Resources PO Box 34028 Seattle WA 98124-4028	Firm Contact Firm Name Email Firm Address

5. ADDRESSES FOR NOTICES AND DELIVERABLE MATERIALS

Deliver all official notices under this Agreement to:

If to the Plan:	If to the Consultant:
Michell Eil Seattle Department of Human Resources PO Box 34028 Seattle WA 98124-4028	Firm Contact FirmName Firm Address

6. INSURANCE

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

7. AUDIT

Upon request, during regular business hours and upon reasonable notice, the Consultant shall permit the Plan and any other governmental agency involved in the funding of the Work to have access and to copy, inspect and audit all pertinent books and records related to the Work, including connected or related Work performed by subconsultants, up to six years after final payment.

8. TAXES, FEES AND LICENSES

Consultant shall obtain and pay all federal, state and local licenses required for the services rendered under this Agreement. Consultant shall pay all taxes arising out of or connected with the service described herein, and otherwise fulfill all statutory fiscal obligations required by law.

9. INDEPENDENT CONTRACTOR

The Consultant is an independent contractor and is not intended to act in any way as an employee of the City or Plan. The parties agree the Plan and City have neither direct nor immediate control over the Consultant or the right to control the manner or means by which the Consultant performs the work. Neither the Consultant nor any Consultant employee is deemed an employee of the City or Plan for any purpose. The Consultant is not authorized to act as an agent or legal representative of the City or Plan for any purpose. The Consultant is not granted express or implied right or authority to assume or create obligation or responsibility on behalf of or in the name of the Plan or to bind the City or Plan .

Use of City Office Space and Equipment: If the Plan determines it is in its best interests for the Consultant to Work on City premises and/or with City equipment, the Plan and City may provide such premises and equipment. Such premises and equipment are provided exclusively for the project and shall not be used for any other Consultant purpose. In such event, the Consultant remains independent and is not acting in the capacity of a Plan or City employee. The Consultant will not work on-site at City offices for more than 36 consecutive months without written authorization from the Plan Project Manager. The Consultant shall notify the Plan 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 Plan 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. Except to the extent otherwise provided in this Agreement, the Plan reserves the right to negotiate a reduction in Consultant fees or charge a rental fee, based on the actual costs incurred, for the use of City premises or equipment.

10. ASSIGNMENT

Rights granted by this Agreement are personal in nature and may not be assigned or subcontracted without the written consent of the Plan, which may be granted or withheld in the Plan'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 Plan's consent to any assignment of 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.

11. TERMINATION

The Plan may terminate the whole or part of this Agreement by written notice. This includes but is not limited to such reasons as Consultant failure to meet schedules specified herein, if timely completion is improbable, impossible, not feasible or illegal, or for the Plan's convenience.

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.

Notice: Notice of termination under this Section shall be given by the party terminating this Agreement to the other, not fewer than ten (10) business days prior to the effective date of termination.

12. DEBARMENT

The Plan may debar the Consultant pursuant to the provisions of SMC Ch. 20.70. Consultant confirms it is not debarred or excluded from participating in any Federal contract nor has any subconsultant used to perform this work. Debarment shall be verified at <https://www.sam.gov>. Consultant shall keep proof of such verification within the subconsultant records.

13. COMPLIANCE WITH LAWS

Consultant shall comply with all applicable laws, ordinances, rules and regulations and orders of the Federal government, State of Washington, King County and The City of Seattle. Consultant shall also abide by all rules, regulations and directives of the same or of any administrative agency with jurisdiction over the subject matter of this Agreement.

14. SOCIAL EQUITY REQUIREMENTS

Non-discrimination & Equal Employment Opportunity: 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 identity, 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.

Upon request, Consultant shall furnish a report to the City Purchasing and Contracting Services Director of affirmative efforts to implement this section, and will permit access to employment records, employment advertisements, application forms, other pertinent data and records as requested for investigation of compliance with this section.

The Consultant shall insert this Equal Employment Opportunity provision in all subcontracts executed under this Agreement.

Equal Benefits: Consultant shall comply with the requirements of Seattle Municipal Code Chapter 20.25 and Equal Benefits Program Rules implementing such requirements, under which the Consultant is obligated to provide the same or equivalent benefits ("equal benefits") to its employees with domestic partners as the Consultant provides to its employees with spouses. At the Plan's request, the Consultant shall provide complete information and verification of the Consultant's compliance with SMC Chapter 20.45. Failure to cooperate with such a request shall constitute a material breach of this Agreement.

Remedies for Violations of SMC Chapter 20.45: Any violation of this Section 9 shall be a material breach of Contract for which the City may: (1) require the Consultant to pay actual damages for each day that the Consultant is in violation of SMC Ch. 20.45 during the term of the Agreement; or (2) terminate the Agreement; or (3) disqualify the Consultant from bidding on or being awarded a Plan or City contract for a period of up to five (5) years; or (4) impose such other remedies as specifically provided for in SMC

Chapter 20.45 and the Equal Benefits Program Rules promulgated thereunder, or as provided in this Agreement.

Women and Minority Business: Consultant shall use all good faith efforts to promote and seek utilization of woman and minority businesses for any subcontracting within the contract scope of work. A woman or minority business 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.

Efforts may include use of solicitation lists, advertisements in minority community publications, breaking requirements into tasks or quantities that promote WMBE utilization, making schedule or requirement modifications likely to assist WMBE firms, targeted recruitment, using minority community and public organizations to perform outreach.

Any violation of this section, or a violation of SMC Ch. 14.04, SMC Ch. 14.10, SMC Ch. 20.42, SMC Ch. 20.45, or other local, state or federal non-discrimination laws is a material breach for which the Consultant may be subject to damages and sanctions provided by the Agreement and applicable law. Consultants in violation of the requirements may be subject to debarment from City and/or Plan contracting in accordance with SMC Ch. 20.70.

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.

15. OWNERSHIP AND USE OF WORK; INTELLECTUAL PROPERTY; CONFIDENTIALITY

All materials prepared by Consultant specifically and exclusively for Client pursuant to this Agreement (the "Work") shall be owned exclusively by Plan. Notwithstanding anything to the contrary set forth in this Agreement, Consultant will retain all copyright, patent and other intellectual property rights in the methodologies, methods of analysis, ideas, concepts, know-how, models, tools, techniques, skills, knowledge and experience owned or possessed by Consultant before the commencement of, or developed or acquired by Consultant during or after, the performance of the Services hereunder, including without limitation, all systems, software, specifications, documentation and other materials created, owned or licensed and used by Consultant or its affiliates in the course of providing the services (the "Intellectual Property"), and Consultant shall not be restricted in any way with respect thereto. To the extent any Work incorporates any Intellectual Property, Consultant hereby grants Plan and City a non-exclusive, non-transferable right to use such Intellectual Property solely for purposes of utilizing the Work internally in accordance with the terms of this Agreement.

Except as described below with respect to the Public Records Act, the Plan and City will not use the Intellectual Property in any manner other than as mutually contemplated herein, or disclose to any third party, other than Plan or City attorneys, accountants or other advisors with a need to know the information, any Intellectual Property or other material supplied by Consultant under this Agreement and marked confidential. Consultant shall have no liability with respect to modifications made by any person other than Consultant, and its assigns and agents, to the Work, Intellectual Property or other material provided by Consultant to the Plan hereunder.

Notwithstanding anything else in this Agreement, all writings, which include all means of recording any form of communication or representation, provided by the Consultant to the Plan or City, including any

writing containing any confidential information, become public records and may be subject to public disclosure under the Washington Public Records Act ("PRA"), Chapter 42.56 RCW. Writings supplied to the Plan or City containing any confidential information may be subject to public inspection if Consultant forwards the same to the Plan or City or if the Plan or City otherwise use such writing. The Consultant will not make any claims against Plan or City in the event Plan or City makes available to the public any writing that Plan or City receives or uses that one or both of them believe in good faith to be required to be disclosed under the PRA or otherwise pursuant to applicable law or any court order. The Plan and City shall not be liable to the Consultant or any other third party for such disclosure.

Each of the parties are likely to disclose information ("Disclosing Party") to the other ("Receiving Party") in the course of Consultant's provision of the Services (this may include information provided by affiliates or vendors of a party at its direction or request) which is marked or designated as confidential or proprietary or which would appear to a reasonably prudent person to be confidential or proprietary in nature ("Confidential Information"). The Receiving Party will not disclose such Confidential Information to any person other than in connection with the provision of the Services or as otherwise provided for in this Agreement. This restriction does not apply to information that (i) the Receiving Party must disclose by law or legal process, provided that it gives such advance notice to the Disclosing Party as is reasonable under the circumstances; (ii) is already in the public domain or enters the public domain through no fault of the Receiving Party; (iii) is available to the Receiving Party from a third party who, to the Receiving Party's knowledge, is not under any non-disclosure obligation with respect to the Disclosing Party; or (iv) is independently developed by or for the Receiving Party without reference to any Confidential Information of the Disclosing Party.

The parties may also, in connection with Consultant's performance of the Services under this Agreement, transfer to or receive from each other, or affiliates or vendors of the other, information relating to identified or identifiable individuals that is subject to applicable data protection, privacy or similar laws ("Personal Information") and each of the parties agree that they and their respective affiliates will comply with all obligations with respect to Personal Information arising from such laws. Consultant also confirms that it has taken appropriate technical and organizational measures intended to prevent the unauthorized or unlawful access to or processing of Personal Information and the accidental loss or destruction of, or damage to, Personal Information.

16. CONSULTANT PERFORMANCE EVALUATION

Consultant's performance will be evaluated at contract conclusion. The City's Consultant Performance Evaluation form is at <http://www.seattle.gov/contracting/docs/ccPE.doc>

17. MISCELLANEOUS PROVISIONS

- A. **Background Checks and Immigrant Status:** The City or Plan may require background checks for some or all of the employees that may perform work under this Agreement. 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 <https://www.seattle.gov/city-purchasing-and-contracting/social-equity/background-checks#backgroundchecks>.
- B. **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 (CPB), and U.S. Citizenship and Immigration Services (USCIS) regarding this Agreement, Consultant 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 (writing 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 Consultants 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.

- C. 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 _____ at _____@seattle.gov for more information about the measure, or call the Ethics Director with questions at 206-615-1248.
- D. Errors & Omissions: 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 o the Consultant under this Agreement. The Consultant, without additional compensation, shall correct or revise any errors or omissions in the designs, drawings, specifications, and/or other Consultant services immediately upon notification by the Plan. The obligation to provided for in this section with respect to any acts or omissions during the term of the Agreement shall survive any termination or expiration of this Agreement.
- E. 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 Plan, which consent shall not be unreasonable withheld. If, during the term of this Agreement, any such individual leaves the Consultant’s employment, the Consultant shall present to the Plan one or more individual(s) with greater or equal qualifications as a replacement, subject to the Plan’s approval, which shall not be unreasonable withheld. The City’s approval shall not be construed to release the Consultant from its obligations under this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement by having legally binding representatives affix their signature below.

THE CITY OF SEATTLE VOLUNTARY DEFERRED COMPENSATION PLAN AND TRUST

By

By

Signature Date

Signature Date

Type or Print Name

Type or Print Name

Title

Title

City of Seattle Business License Number:

Washington State Unified Business Identifier Number (UBI):

Attachments:

DRAFT

EXHIBIT 1
SCOPE OF SERVICES
Agreement No. _____

Attachment 1 - Scope of Work

RETAINER SERVICES

RETAINER SERVICES

The firm will be required to offer investment and plan expertise and assistance to the City of Seattle Voluntary Deferred Compensation Plan Committee, Plan staff, and the City in a number of areas, including those listed below. Not all services may be required during any given calendar year.

1. Prepare quarterly performance measurement reports, for presentation to the Committee in a public forum. The design of the reports shall be guided by the objectives, performance and measurement criteria of the Investment Policy. Such reports would include quantitative and qualitative information including, but not limited to: the current market overview, summary of investment performance compared to benchmark indices and peer group indices, risk and standard deviation characteristics, style and cycle analysis, and recommendations.
2. The key consultant(s) must attend all bi-monthly meetings scheduled during the months of January, March, May, July, September, and November.
3. Serve as Plan fiduciary with regard to the consulting services provided to the Committee, Plan staff, and the City, except to the extent specifically stated otherwise in this Scope of Work.
4. Provide recommendations on minimum criteria, fee structure, risk and volatility tolerances, performance benchmarks, manager performance, and other qualifications required for investment vehicles.
5. Annually review and evaluate recordkeeping and investment fees and share results as appropriate with the Committee and Plan staff.
6. Analyze, evaluate and provide recommendations on asset categories and asset allocation.
7. Monitor and evaluate investment performance through meetings with fund managers. Monitor investment philosophy and process to ensure managers are remaining true to their discipline. Monitor continuity of the team for stability, along with growth and management of the firm itself.
8. Provide periodic comprehensive analysis of the specific fees and costs associated with the City's Plan, including benchmarking record-keeper fees; assist with record-

keeper fee negotiation, as needed.

9. Provide information on and interpretation of regulatory or industry investment standards (e.g., ERISA). Provide interpretation and application of fiduciary information, standards, and requirements as it applies to ERISA and non-ERISA defined contribution plans.
10. Assist with research, interpretation and application of relevant provisions of the Internal Revenue Code, Treasury Regulations, and other pertinent regulatory requirements or provisions.
11. Assist in determining "best practices" and required or recommended actions to ensure compliance with current and/or proposed legal or regulatory changes or to resolve a participant concern.
12. Provide information, interpretation and/or analysis of contemporary industry issues, industry and plan utilization trends, and prospective or adopted legislative/regulatory changes.
13. Assist with developing policies, procedures, manuals, forms, publications and/or other documents for consideration and approval. Assist in updating these documents in response to legal and economic changes.
14. Assist with reviewing and auditing the accuracy of distribution and administrative revenue reports provided by the record-keeper, and act as liaison to resolve discrepancies or concerns.
15. Review the Plan's Investment Policy and make recommendations for revisions, if any, on at least an annual basis.
16. At least every year conduct a compliance review of the Plan.
17. Assist with and participate in fiduciary education training once per year.
18. Assist with the planning, development and/or review of employee communications as requested.
19. Review documents provided to the City by the record-keeper, including but not limited to, employee communications, process changes, fund addition documentation, and any other materials relevant to the operation or administration of the Plan.
20. Review the proxy voting consultant's recommendation to the Plan and advise the Plan in writing with the Consultant's position regarding the recommendation.
21. Review and provide input on draft meeting minutes.
22. Be available as needed and mutually agreed upon to:
 - Attend additional meetings when requested,
 - Assist with evaluating prospective and current services provided by the Plan's record-keeper, and acting as liaison when needed,

- Provide written evaluation and recommendation reports for investment manager searches.
 - Perform other projects as assigned by the Committee.
23. Provide the following services with respect to “Specified Assets” investment options that the Committee wishes to offer under the Plan, or with respect to any other investment option proposed by the Committee as to which the Consultant advises the Committee that the investment option be designated as separate from the investment options offered by the Plan consistent with 29 C.F.R. § 2550.404c-1(b)(3):
- Proposed amendments to the Investment Policy Statement to incorporate such investment options
 - Quarterly investment performance monitoring, including development of appropriate benchmarks for such investment options
 - Investment manager searches, as necessary
 - Recommendations for changes and/or termination of investment managers, as necessary
 - Assistance in drafting of appropriate disclosures to Plan participants with respect to such investment options

Solely with respect to providing the services described in this paragraph 23, the Consultant is deemed and agreed not to be providing these services in a fiduciary capacity. The Consultant will exercise reasonable diligence in providing these services with the degree of competence, care, and skill then prevailing of an entity providing similar services to an employee benefit plan of similar size and characteristics to the Plan.