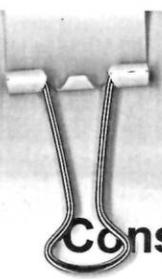




City of Seattle



Consultant Contract Cover Page

FILED
CITY OF SEATTLE
2015 MAY 28 PM 2:03
CITY CLERK

Place this cover page on top of the contract package, and post package into Summit.
Transmit an original Contract with this Cover page to City Clerk.
Seattle City Clerk MS: CH-03-10 3rd Floor City Hall

Agreement #	15-001	/Amendment #	S-00	/P.O. #
Consultant Legal Business Name	Alta Planning & Design			
Consultant Doing Business As Name				
Contract Title	Trails Upgrade Plan			
Execution Date (last signature)	5/21/2015			
Contract Expiration	<input type="checkbox"/> When work is done <input checked="" type="checkbox"/> Specified Date Saturday, January 16, 2016			
Department/ Division	SDOT / CPRS			
Department Contact/Phone	Hawkes, Ryan / 2066847798			
Contract Type (check one)	<input checked="" type="checkbox"/> Standard (Non Roster) <input type="checkbox"/> Roster Agreement			
Solicitation Type (check one)	<input checked="" type="checkbox"/> Advertisement <input type="checkbox"/> Roster (Informal Solicitation or Direct Selection from Roster) <input type="checkbox"/> Sole Source <input type="checkbox"/> Emergency <input type="checkbox"/> Adverse Effect <input type="checkbox"/> Direct Appointment (under \$47,000)			
Amendment Reason (check all that apply)	<input type="checkbox"/> Time Extension <input type="checkbox"/> Revised Scope of Work <input type="checkbox"/> Revised Payment <input type="checkbox"/> Other:			

Original Contract Amount	\$249,858.00
Total for this Amendment	\$0.00
Amended Amounts to date	\$0.00
TOTAL CONTRACT AMOUNT	\$249,858.00

**The City of Seattle
Department of Transportation**

**CONSULTANT AGREEMENT
AGREEMENT 15-001
FOR
TRAILS UPGRADE PLAN**

This Agreement is made and entered into by and between the City of Seattle ("the City"), a Washington municipal corporation, through the Seattle Department of Transportation, as represented by the Director of the Seattle Department of Transportation ("SDOT"), and Alta Planning + Design, Inc., 1402 Third Avenue, Suite 206, Seattle, WA 98101 ("Consultant"), a corporation of the State of California authorized to do business in the State of Washington.

Section 1: TERM OF AGREEMENT

The term of this Agreement begins when fully executed by all parties and ends on January 16, 2016, unless amended by written agreement or terminated earlier under the provisions.

Section 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 under 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's convenience or conditions beyond the Consultant's control.

Section 3: SCOPE OF WORK

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

The Work is subject to the City's review and approval. The Consultant shall confer with the City periodically during the Work progress, and prepare and present information and materials (e.g., a detailed outline of completed Work) requested by the City to determine the adequacy of the Work or Consultant's progress.

Section 4: PAYMENT

- A. The Consultant agrees to perform all the work set forth in the "SCOPE OF WORK" Section of this Contract for an amount not to exceed **Two Hundred Forty Nine Thousand Eight Hundred and Fifty Eight Dollars (\$249,858)**, hereinafter referred to as the "Contract Amount," unless modified by a written amendment to this Agreement. Such payment shall be full compensation for work performed and/or services rendered and for all supervision, labor, supplies, materials, equipment or use thereof, and for all other expenses and incidentals necessary to complete all the work. It is understood that this is a fixed amount and will not increase because of any difference between the estimated and actual costs of performing the work required by this Contract. Payment will be based on the Consultant's (and any SubConsultant(s), if applicable) actual certified payroll rates.

- B. Details of the Consultant's cost estimates are set forth in **EXHIBIT B through B-6, CONSULTANT COSTS AND ESTIMATED HOURS** attached to and made a part of this Contract. It is understood by the Consultant there is no guarantee of a minimum amount of work or compensation under this Contract and payment under this Contract is subject to continuing appropriations by the Seattle City Council.
- C. The Consultant will be paid by the City for completed work and/or services rendered under this Contract up to the Contract Amount. Payment of any amounts due under the Contract shall not relieve the Consultant of the obligation to perform all the work set forth in the **Exhibit A, SCOPE OF WORK** section in a satisfactory manner.
- D. **Salary.** The City will reimburse the Consultant's personnel costs on the basis of base salary Raw Rates (employee base salary), plus Raw Rates times the Overhead (combined overhead and employee fringe benefits rate) of 156.90% plus a Fee (fee for profit) of 10%. The Fee is calculated by adding the Raw Rates plus Overhead and multiplying the sum by 10%.
- i. **Salary Adjustments:** On an annual basis beginning twelve months from the Execution Date of this Agreement, reasonable adjustments to salary rates may be allowed at the discretion of the City. Requests, including amended salary exhibits with justification, may be submitted no sooner than 30 days prior to the anniversary of the original Execution Date. If approved, the request will be effective the month of the anniversary date, and may not increase costs above the Contract Amount. If a request is submitted by the Consultant beyond 30 days after the anniversary date, the request will be effective the month the request is received by SDOT contracting, and may not increase costs above the Contract Amount. Salary adjustments must be approved by the City in writing before such adjustments are invoiced by the Consultant.
 - ii. **Additions to the Consultant's Personnel List:** The Consultant must have preapproval in writing by the City to add Personnel to the Contract prior to work being performed.
- E. **Direct Expenses.** In addition to the payments set forth above, the City will reimburse the Consultant at cost, without any additional mark-up, for expenses that are necessary and directly applicable to the work required by this Contract, provided similar direct project costs related to the contracts of other clients are consistently accounted for in like manner. Such direct project costs may not be included in the overhead expenses or direct labor multiplier of the Consultant. The direct expenses allowed under this Contract are set forth in **EXHIBIT B, CONSULTANT COSTS AND ESTIMATED HOURS**. SubConsultants are considered direct expenses.
- F. 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. City will reimburse the Consultant the actual cost for expenditures pre-approved by the City in writing and necessary and applicable to the Agreement work, provided that similar project costs in contracts with other clients are accounted for in the same way and costs do not exceed the guidelines below. Direct charges may include, but are not limited to: travel, printing, long distance telephone, supplies, computer charges, and fees of SubConsultants.
 - b. The billing for approved direct expenses shall be an itemized listing of charges supported by copies of original bills, invoices, expenses accounts, SubConsultant paid invoices, and other supporting documents. The original supporting documents must be available to the City for inspection upon request. All charges must be necessary for the services provided under this Agreement.
 - c. Airfare pre-approved for reimbursement will be reimbursed at actual cost of the airline ticket. The City will reimburse for Economy or Coach Fare only. Receipts are required.

- d. Meals pre-approved for reimbursement will be reimbursed at Federal Per Diem daily rate for the city in which work was performed, and do not require receipts or documentation. The City will not reimburse for alcohol.
 - e. Lodging pre-approved for reimbursement will be reimbursed at actual cost up to a maximum of the published Runzheimer Cost Index for the city in which work was performed. Receipts detailing each day/night lodging are required. The City will reimburse at the single occupancy rate.
 - f. Vehicle mileage pre-approved for reimbursement will be reimbursed at the Federal Internal Revenue Standard Business Mileage Rate in effect when the mileage was incurred.
 - g. Rental car expenses pre-approved for reimbursement will be reimbursed at the actual rental cost. Rental car receipts are required for all rental car expenses. The City will only pay for rental of compact vehicles unless three or more persons share 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 actual cost. Receipts are required for each expense.
 - i. Other pre-approved miscellaneous business expenses, such as printing or photo development will be reimbursed at actual cost. Receipts are required.
- G. Unallowable Costs. The City will not pay for any costs or direct charges associated with or relating to the following activities:
- Any resubmission, changes to or adjustments in the invoices or fixing improper invoices.
 - Preparation for and negotiation of changes to a scope of work (unless the change(s) is (are) requested by the City), including but not limited to a request for change, proposal preparation, drafting a scope of work, level of effort or cost summary or any negotiation of a scope of work or related level of effort/cost summary, etc.
 - Changing or reassigning personnel or SubConsultants, including but not limited to time for newly assigned personnel to become acquainted with the project.
 - Meals, except in approved travel status.
 - Compliance with Section 13, AUDIT.
 - Compliance with Section 22, CONFIDENTIALITY.
 - Providing the City or its designee(s) with access to project documentation and project files.
 - Supplies or other items with the potential to be reused for other projects, including but not limited to books, tools, cameras, safety vests, clothing for inclement weather, etc.
 - Preparation of any documentation related to, discussion of, or negotiation of equitable adjustment, disputes, or claims under Section 23, DISPUTES.
- H. This contract is a payment negotiated based on cost, and shall include only those costs allowed under Part 31 of the Federal Acquisition Regulations (FAR), which are incorporated by reference.

Section 5: PAYMENT PROCEDURES

- A. 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.
- B. Invoices. The Consultant shall submit invoices to the City no more than once per month during the progress of the Work for partial payment for work completed to date. The costs billed on these invoices shall be computed pursuant to the rates and limitations set forth in the exhibits to this Contract pertaining to allowed rates and expenses. SDOT requires the Consultant to prepare all invoices on the

standard **SDOT Consultant Invoice Forms** or the Consultant has the option to develop their own invoice which complies with the format and information required by SDOT Consultant Invoice Forms. All Consultant developed invoice forms must be approved by the City in advance of the first invoice.

Invoices shall be submitted to:

Consultant Contracts Unit
Seattle Department of Transportation
PO Box 34996
Seattle, WA 98124-4996

- C. The Consultant shall submit backup documentation with each invoice (only one set is required) for any direct cost items totaling \$250.00 or more billed to the City under this contract (with the exception of SubConsultants' invoices and out of town travel, which must always be attached regardless of the amount). However, the Consultant must maintain records and backup documentation in its files for all direct costs and make them available for City review on request. Such documentation would include copies of receipts, telephone bills, employee expense records, SubConsultants' invoices, etc.
- D. Invoices will be checked by the City and payment to the Consultant will be made within 30 days after accurate billing and back-up documentation are received. No payment shall be made for work begun prior to receipt of written notice from the City to begin work on each phase of the Consultant's assignment. Throughout the project, the percentage of the Contract amount paid to the Consultant shall never exceed the percentage of the scope of work actually accomplished by the Consultant.
- E. Final Payment and Payment of Withheld Amounts. Final payment will be contingent on verification by the City of satisfactory completion by the Consultant of the work under this Contract and receipt and acceptance by the City of designs, reports and/or any other deliverables required to fulfill the terms of this Contract. Such acceptance and acknowledgement shall be included in the "Letter of Completion", and the Consultant will be instructed to submit its request for final payment, including any amounts withheld.
- F. Final payment to the Consultant shall not waive or preempt the City's right to audit the Consultant's and any sub-consultants' records at a later date in accordance with the terms of Section 13: AUDIT, hereunder.
- G. Consultant's Records. The Consultant and SubConsultant(s) shall keep complete and accurate records in accordance with generally accepted accounting practices of all other reimbursable costs and expenses for purposes of audit and proper allocation of overhead expenses to this project. The cost records of the Consultant and SubConsultant(s) must relate all project expenses to specific tasks of the Scope of Work.
- H. Overtime Work. No premium will be paid by the City for overtime work without prior authorization by the City.
- I. Time Limit on Old or Lost Invoices. It is understood the City shall not be obligated to pay the Consultant for work performed if the billing for such work is not received within one (1) year of the performance of such work, or ninety (90) days after the date of the Letter of Completion, whichever is sooner. Additionally, the City shall not be obligated to pay for lost or otherwise unpaid invoices if the Consultant has not notified the City in writing of such nonpayment within one (1) year from the date of such lost or unpaid invoices, or ninety (90) days after the date of the Letter of Completion, whichever is sooner.

- J. **Guaranteed Pay To Small Subconsultants.** Regardless of City Payment, every Consultant of any tier shall pay their Small Subconsultants (defined below) no less than every 30 days, as partial payment for work completed to-date. Small Consultants (as defined below) acting as a prime are exempt from this requirement. The Consultant may withhold only the portion of amounts due for work in dispute. The Consultant shall ensure the Small Subconsultant has sufficient support for proper invoice preparation and submittal. A Small Subconsultant is defined as registered or certified with any one of the following:
- those registered with the City of Seattle as a WMBE
<http://www.seattle.gov/contracting/registration.htm>
 - certified by the King County Small Contractors and Suppliers (SCS) Program
<https://info.kingcounty.gov/EXEC/contractreporting/Public/SCS/default.aspx>
 - certified by the State of Washington as a Disadvantaged Business Enterprise (DBE) or as a Women or Minority Owned Business Enterprise (WMBE).
<http://www.omwbe.wa.gov/directory-of-certified-firms/>
- K. **Contract Payments Reporting Requirements.** When submitting each invoice to the City for payment, the Consultant must complete an on-line Subconsultant Payment Report to record all payments to subconsultants at <http://web6.seattle.gov/FAS/CIDCC>. A unique Purchase Order number is required which may be obtained from <http://web6.seattle.gov/fas/submitpan/R297/R297.aspx>. Contact Steven Larson (206) 684-4529 or Miguel Beltran (206) 684-4525 for assistance. The Consultant shall ensure that all subconsultants are registered to the City's Online Business Directory prior to completing the online report, at <http://www.seattle.gov/contracting/registration.htm>.

Section 6: Taxes, Fees and Licenses

- A. Consultant shall pay and maintain in current status, all necessary license 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, 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. 82.04.500 RCW exempts consultant services from sales tax.
- 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.

Section 7: ADDRESSES FOR NOTICES AND DELIVERABLE MATERIALS

Deliver all official notices under this Agreement to:

If to City:	Monica Dewald Seattle Department of Transportation 700 Fifth Avenue, Suite 3800 PO Box 34996 Seattle, WA 98124-4996
If to the Consultant:	Steve Durrant Alta Planning + Design 1402 Third Avenue, Suite 206

Section 8: RESERVED

Section 9: EQUAL BENEFITS

- A. 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 City request, the Consultant shall provide information and verification of the Consultant’s compliance.
- B. Any violation of this Section is material breach, for which the City may exercise enforcement actions or remedies defined in SMC Chapter 20.45.

Section 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 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 during employment, without regard to race, color, age, sex, marital status, sexual orientation, gender identify, political ideology, creed, religion, ancestry, national origin, or 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. Consultant shall promote and seek inclusion of woman and minority businesses on subcontracting opportunities for the 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.
- C. Inclusion responsibilities include commitments within the Consultant WMBE Inclusion Plan submitted with the Consultant Proposal and agreed upon by the City. The Inclusion Plan is incorporated by this reference as Exhibit C, Inclusion Plan.
- D. Record-Keeping: The Consultant shall maintain, for at least 24 months after the expiration or earlier termination of this Agreement and permit access to the Consultant’s records of employment, employment advertisements, application forms and other pertinent data and records requested by the Seattle Department of Transportation for the purposes of investigation to determine compliance with the requirements of this section.
- E. The foregoing provisions of this section shall be inserted in all subcontracts for the Work covered by this Agreement.

Section 11: INDEMNIFICATION

The Consultant releases and shall defend, indemnify, and hold the City and its officers, employees and agents harmless from all losses, liabilities, claims (including claims arising under federal, state or local laws or regulations) (and including, but not limited to, claims for infringement of any copyright, patent, trademark, or trade secret), costs (including attorneys’ fees), actions or damages of any sort arising out of the Consultant’s performance or nonperformance of the services to be provided under this Agreement attributable to the acts or omissions, willful misconduct, or breach of this Agreement by the Consultant, subconsultants, its servants, agents, officers or employees. If the claim, suit or action for injuries, death or damage is caused by or results from the concurrent negligence of (a) the Consultant or its officers, agents or employees and (b) the City or its officials, officers, agents or employees, these indemnity provisions shall be valid and enforceable only to the extent of the Consultant’s negligence. In furtherance of these obligations, and only regarding the City and its officers, employees, and agents, the Consultant waives any immunity it may have or limitation on the amount or type of damages imposed under Title 51 RCW, or any other industrial insurance, workers compensation, disability, employee benefit or

similar laws. The Consultant acknowledges that the foregoing waiver of immunity was mutually negotiated, and that the contract price reflects this negotiation. The indemnification provided for in this section shall survive any termination or expiration of this Agreement.

Section 12: INSURANCE

Insurance certification must be submitted to the City. See **Consultant Contract Insurance Requirements Transmittal Form**. Certification of proof of insurance must be submitted to the City prior to the Work starting. The requested proofs of coverage do not constitute a limitation of liability.

Section 13: 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. 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 right 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.

Section 14: 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 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 and does not act as a City employee. The Consultant will notify the SDOT Consultant Contracts 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.

Section 15: 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.

Section 16: 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 City consent, assignment, or subcontract.

Section 17: 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 <http://www.sam.gov>. The Consultant shall keep proof of such verification within the Consultant records.

Section 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 SDOT Consultant Contracts Manager 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. 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.

Section 19: NO CONFLICT OF INTEREST

The Consultant confirms that the Consultant has no business interest or a close family relationship with any City officer or employee who was, is, or will be involved in the consultant selection, negotiation, drafting, signing, administration, or evaluating the Consultant's performance. As used in this section, the term "Consultant" shall include any employee of the Consultant who was, is, or will be involved in the negotiation, drafting, signing, administration, or performance of the Agreement. As used in this section, the term "close family relationship" refers to the following: spouse or domestic partner; any dependent parent, parent-in-law, child, son-in-law, or

daughter-in-law; or any parent, parent-in-law, sibling, uncle, aunt, cousin, niece or nephew residing in the household of a City officer or employee described above.

Section 20: ERRORS & OMISSIONS; CORRECTION

The Consultant shall be responsible for the professional quality, technical accuracy, and the coordination of all designs, drawings, specifications, and other services furnished by or on the behalf of the Consultant under this 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 City. The obligation provided for in this Section regarding any acts or omissions during the term of this Agreement shall survive any termination or expiration of this Agreement.

Section 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 for the performance of 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.

Section 22: CONFIDENTIALITY

- A. The Consultant understands that any records (including but not limited to bid or 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 must be disclosed.
- B. If the City receives a public disclosure request made under RCW Chapter 42.56, the City will not assert an exemption from disclosure for the Consultant. For materials that the Consultant has properly and 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 seek an injunction preventing the release of the documents under 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 notification, the City may release the documents. It is the Consultant's discretionary decision whether to sue.
- C. 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 clearly, following the instructions given by the City. The City will not withhold material for notification if the Consultant marked "confidential" on the document header, footer, stamped on all pages, or offered a generic statement that the entire document is protected. Only material 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 submits no 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 take no action that would affect the City's ability to use services 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). 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), unless such duplication, use or disclosure is authorized in writing by the City. Such information does not include ideas, concepts, expertise 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 results from 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.

Section 23: 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 of the Seattle Department of Transportation or their designee 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.

Section 24: 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 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 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 SubConsultant 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 it has produced termination, along with copies of all project-related correspondence and similar items. The City shall have the same rights to use these materials as if termination had not occurred; provided, however, that the City shall indemnify and hold the Consultant harmless from any claims, losses or damages to the extent caused by modifications made by the City to the Consultant's work product.

Section 25: CONSULTANT PERFORMANCE EVALUATION PROGRAM

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

Section 26: DEBARMENT

Under SMC Ch. 20.70, the Director of Executive Administration or designee may debar and prevent a Consultant from contracting or SubConsultant with the City for up to five years after determining the following:

- a. The Consultant has received overall performance evaluations of deficient, inadequate, or substandard performance on three or more City Contracts.
- b. The Consultant has 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. The Consultant has abandoned, surrendered, or failed to complete or to perform work on or for a City Contract.
- d. The Consultant has failed to comply with Contract provisions, including but not limited to quality of workmanship, timeliness of performance, and safety standards.
- e. The Consultant has submitted false or intentionally misleading documents, reports, invoices, or other statements to the City in connection with a Contract.
- f. The Consultant has colluded with another firm to restrain competition.
- g. The Consultant has committed fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a Contract for the City or any other government entity.
- h. The Consultant has failed to cooperate in a City debarment investigation.

- i. The Consultant has failed to comply with SMC 14.04, SMC Ch. 14.10, SMC Ch. 20.42, or SMC Ch. 20.45, or other local, State, or federal non-discrimination laws.

The Director or designee may issue an Order of Debarment under the SMC 20.70.050. The rights and remedies of the City under these debarment provisions are besides any other rights and remedies provided by law or under the Agreement.

Section 27: RESERVED

Section 28: 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 to 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 upon and issued by the City through written Addenda. New Work performed before an authorizing Amendment may not be eligible for payment.

Section 29: 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. 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 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.
- D. The Consultant, at no expense to the City, shall comply with all laws of the United States and the 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.
- E. 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.

- 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 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.
- I. 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.
- 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 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.
- K. 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.
- 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 or in any connection with this Agreement.
- M. Use of Recycled Content Paper: Whenever practicable, Consultant shall use reusable products including recycled content paper on all documents submitted to the City. Consultant is to duplex all documents that are prepared for the City under this Contract, whether such materials are printed or copied, except when impracticable to do so due to the nature of the product being produced. Consultants are to use 100% post consumer recycled content, chlorine-free paper in any documents produced for the City, whenever practicable, and to use other paper-saving and recycling measures in performance of the contract with and for the City.
- N. Fair Contracting Practices Ordinance: The Consultant shall comply with the Fair Contracting Practices Ordinance of The City of Seattle (Chapter 14.10 SMC), as amended.

Section 30: RESERVED

