



BLANKET CONTRACT

The City of Seattle
PURCHASING SERVICES
700 5th Ave Suite 4112
P.O. Box 94687
Seattle, WA 98124-4687

Blanket Contract # 0000003407		Date 01/11/16	Change Order #1
Payment Terms Net 30	Freight Terms FOB Destination		
Buyer: Laura Park	FAX: 206-233-5155	Phone: 206-684-0445	

Vendor # 00000411309
Alstom Grid, Inc
International Plaza 2, Suite 325
Philadelphia, PA 19113

Contact: Bryan Shannon, Area Manager
Phone: 314-691-3501
E-mail: bryan.shannon@alstom.com

Ship To:

Please Contact:
City of Seattle
Attn: Mike Dozier
206 – 615-1509

Bill To:

City of Seattle, City Light
c/a Lisa Shelton
PO Box 34023
Seattle, WA 98124-4023

Alstom Grid, Inc is awarded a contract as a result of RFP-SCL-3407 issued on 1/07/15. This contract is to provide the City of Seattle with Transmission Substation Management Consoles per Statement of Work (Attachment 1)

Original Contract Term: 9/14/15 through 9/14/25 with one 5-year automatic extension
Change Order #1 – to add a newer current version of the Transmission Substation Management Console model controller which will increase the cost of unit cost from \$18,305 to \$20,143 each.

Orders will be placed by Seattle City Light from authorized City employees. Invoices shall be mailed in duplicate to the address above. Each invoice shall indicate Vendor Contract #0000003407

The City does not guarantee utilization of this Contract. Actual utilization will be based on availability, proximity of vendor facilities, frequency of deliveries, or any other factor deemed important to the City.

For all contractual matters, please contact Laura Park, Purchasing Services at 206-684-0445 or laura.park@seattle.gov.

This is your notice to proceed.

<p>Authorized Signature/Date</p> 



BLANKET CONTRACT

The City of Seattle
PURCHASING SERVICES
700 5th Ave Suite 4112
P.O. Box 94687
Seattle, WA 98124-4687

Blanket Contract # 0000003407		Date 09/14/2015	Change Order #
Payment Terms Net 30	Freight Terms FOB Destination		
Buyer: Laura Park	FAX: 206-233-5155	Phone: 206-684-0445	

Vendor # 00000411309
Alstom Grid, Inc
International Plaza 2, Suite 325
Philadelphia, PA 19113

Contact: Bryan Shannon, Area Manager
Phone: 314-691-3501
E-mail: bryan.shannon@alstom.com

Ship To:

Please Contact:
City of Seattle
Attn: Mike Dozier
206 – 615-1509

Bill To:

City of Seattle, City Light
c/a Lisa Shelton
PO Box 34023
Seattle, WA 98124-4023

Alstom Grid, Inc is awarded a contract as a result of RFP-SCL-3407 issued on 1/07/15. This contract is to provide the City of Seattle with Transmission Substation Management Consoles per Statement of Work (Attachment 1)

Original Contract Term: 9/14/15 through 9/14/25 with one 5-year automatic extension

Orders will be placed by Seattle City Light from authorized City employees. Invoices shall be mailed in duplicate to the address above. Each invoice shall indicate Vendor Contract #0000003407

The City does not guarantee utilization of this Contract. Actual utilization will be based on availability, proximity of vendor facilities, frequency of deliveries, or any other factor deemed important to the City.

For all contractual matters, please contact Laura Park, Purchasing Services at 206-684-0445 or laura.park@seattle.gov.

This is your notice to proceed.

Authorized Signature/Date

Laura Park 9/14/15

TECHNOLOGY CONTRACT

City of Seattle

CONTRACT FOR: SCL-3407 Transmission Substation Management Console

TECHNOLOGY CONTRACT
City of Seattle
CONTRACT FOR: SCL-3407 Transmission Substation Management Console

This Contract is made and entered into by and between City of Seattle ("City"), a Washington municipal corporation; and Alstom Grid, Inc (International Plaza 2, Suite 325 Philadelphia, PA 19113)("Vendor"), a corporation of the State of Ohio, and authorized to do business in the State of Washington.

Vendor Business: Alstom Grid Inc
Name of Representative: Bryan Shannon, Area Manager
Vendor Address: International Plaza 2, Suite 325 Philadelphia, PA 19113
Vendor Phone: 314-691-3501
Vendor e-mail: bryan.shannon@alstom.com

WHEREAS, the purpose of this contract is for Seattle City Light to procure standard transmission substation management consoles which consist of hardware and software as an integrated package; and

WHEREAS, Vendor was selected as a result of a Request for Proposal process initiated November 21, 2014 as required by Seattle Municipal Code since costs are anticipated to exceed \$47,000 in value; and

WHEREAS, funds for this purpose are authorized through the City of Seattle annual budget;

NOW, THEREFORE, in consideration of the terms, conditions, covenants, and performance of the Statement of Work contained herein, as attached and made a part hereof, the City and Vendor mutually agree as follows:

1. Term of Contract

Entire Agreement: this Contract, including Vendor's Technical & Functional Specification Proposal, Mandatory Specification Proposal, and subsequently issued change notices, comprises the entire agreement between Seattle and the Contractor. Where there are conflicts between these documents, the controlling order of documents will be as follows: This contract as amended, RFP Document, Scope of Work, and Vendor Proposal.

Contract Term: This contract shall allow orders to be placed for ten years, with a five year automatic extension for additional order placements. Continuous one-year extensions shall continue thereafter for licensing, maintenance and support. Such extensions shall be automatic, and shall go into effect without written confirmation, unless the City provides advance notice of the intention to not renew. The Vendor may also provide a notice to not extend, but must provide such notice at least 45 days prior to the otherwise automatic renewal date.

This Contract's initial Software maintenance and support term shall be for ten years, commencing the day following expiration of Vendor's warranty for the Software.

2. Survivorship

All purchase transactions and deliverables executed pursuant to the authority of this Contract shall be bound by all of the terms, conditions, prices and price discounts set forth herein, notwithstanding the expiration of the initial term of this Contract or any extensions thereof. Further, the terms, conditions and warranties contained in this Contract that by their sense and context are intended to survive the completion of the performance, cancellation or termination of this Contract. In addition, the terms of the sections titled Overpayments to Vendor, Warranties, Publicity, Section Headings, Incorporated Documents and Order of Precedence, Publicity, Review of Vendor Records, Patent and Copyright Indemnification, Disputes and Limitations of Liability, shall survive the termination of this Contract.

3. Expansion Clause

This contract may be expanded as mutually agreed, if such expansion is approved in writing by the Buyer from the City Purchasing Office of the Department of Finance and Administrative Services, City of Seattle. No other City employee is authorized to make such written notices. The Buyer will ensure the expansion meets the following criteria collectively: (a) it could not be separately bid, (b) the change is for a reasonable purpose, (c) the change was not reasonably known to either the City or vendors at time of bid or else was mentioned as a possibility in the bid (such as a change in environmental regulation or other law); (d) the change is

not significant enough to be reasonably regarded as an independent body of work; (e) the change could not have attracted a different field of competition, and (f) the change does not vary the essential identity or main purpose of the contract. The Buyer shall make this determination, and may make exceptions for immaterial changes, emergency or sole source conditions, or for other situations as required in the opinion of the Buyer. Certain Work Orders or changes are not considered an expansion of scope, including an increase in quantities ordered, the exercise of options and alternates in the bid, change in design and specifications that does not expand the work beyond the limits provided for above, or ordering of work originally identified within the originating solicitation. If such changes are approved, changes are conducted as a written order issued by the City Purchasing Buyer in writing to the Vendor.

4. Work Order Process

The Vendor shall furnish all systems pursuant to work orders issued under this Contract. Each work order shall be subject to all of the terms and conditions of this Contract, and incorporated into this Contract by this reference. The Vendor shall furnish all the goods and services ("deliverables") specified in the Work Order in an aggregate, single, complete transaction and not as separate items. For each work order under this Contract, Vendor shall commence work upon issuance of a notice to proceed by the City. Work orders under this Contract may be generated by the City under the following conditions:

- (1) The Work Order is within the scope of the original solicitation and contract or is within the allowed conditions for expansions under Section 5 (Expansion Clause) above;
- (2) A post-warranty annual maintenance agreement is accepted by the City;
- (3) The City issues a request to upgrade equipment, software, or to change quantities of any deliverable;
- (4) The City orders additional custom features or interfaces for the Systems prior to or after the acceptance period.

For any subsequent work order(s) requested by either party, the Vendor shall submit a detailed proposal for the change. The Vendor shall analyze, record, estimate and submit to the City, for its approval, the proposed scope for the changed or new work, a work schedule, and a rate or price adjustment for completion of the work to be changed or added. Once this proposal is received and approved by the City, a new work order will be issued for the changed or additional work. Upon the City's written approval and notice to proceed, the Vendor shall implement the change or additional work and invoice for the changed or additional work consistent with the City's approval notice and the terms and conditions of this Contract.

The City may, at its option, add, delete or modify any part of any work order by giving Vendor notice of such change within the time period specified in the applicable work order. Within seven (7) days after the date of such notice, the Vendor shall deliver to the City an amended work order reflecting the change in description, schedule and/or dollar amount due using the unit prices as proposed for the specific work order in Vendor's Proposal.

The Vendor shall not proceed unless authorized by a mutually agreed upon amendment. Such extra work shall be in compliance with Section 4 (Expansion Clause) and shall be authorized in writing only by the City Purchasing Buyer, Department of Finance and Administrative Services. Any costs incurred due to the performance of extra work will not be reimbursed until or unless an amendment is agreed upon.

The City does not guarantee utilization of goods and services provided for in this Contract for which the City has not issued a work order(s). The City may itself provide these goods or services or may award contracts to other Vendors for similar goods and services. In such instances, the Vendor shall not be responsible for the operation, performance or maintenance for equipment so obtained.

5. Documentation

Unless specified otherwise in Contract attachments, Vendor will provide two (2) complete sets of documentation for each Software/Hardware order or System delivered, including technical and maintenance information, and, where applicable, installation information. Vendor shall also provide two (2) complete sets of documentation for each updated version of Software that vendor provides. Vendor shall provide the documentation on or before the date Vendor delivers its respective Software. There shall be no additional charge for this documentation or the updates, in whatever form provided. Vendor's Software documentation shall be comprehensive, well structured, and indexed for each reference. If Vendor maintains its technical, maintenance and installation documentation on a web site, Vendor may fulfill the obligations set forth in this section by providing Purchaser access to its web-based documentation information.

The City reserves the right to withhold payment for a deliverable, modification or enhancement until it receives all documentation

associated with the same.

6. Payment Procedures

Vendor shall only invoice upon the City's approval of the deliverable and in a manner consistent with the payment schedule attached, if any. Once the City has received and approved the invoice, the City will provide payment within thirty (30) days. The aggregate amount represents the full and final amount to be paid by the City for all expenses incurred and incidentals necessary to complete the work.

The City shall not be obligated to pay any other compensation, fees, charges, prices or costs, nor shall Vendor charge any additional compensation for completing the work order of the Statement of Work. All costs invoiced to the City, shall be associated with an active and open work order.

Invoices for hardware and software installed in City facilities and other work performed under this Contract shall be submitted, in writing to the City's Project Manager. Invoices shall include such information as prescribed in the Specifications or Statement of Work, and is necessary for the City to determine the exact nature of all expenditures and shall reference this Contract. Additional payment terms or invoice instructions may be mutually agreed upon by the City and the Vendor.

Payment does not constitute whole or partial acceptance; City acceptance of the System shall only occur by formal written notice to that effect. The deliverables shall be deemed accepted unless rejected within thirty (30) days of the delivery thereof.

6.1. Advance Payment Prohibited

The City does not accept requests for early payment, down payment or partial payment, unless the Bid or Proposal Submittal specifically allows such pre-payment proposals or alternates within the bid process. Maintenance subscriptions may be paid up to one year in advance provided that should the City terminate early, the amount paid shall be reimbursed to the City on a prorated basis; all other expenses are payable net 30 days after receipt and acceptance of satisfactory compliance.

6.2. Travel and Other Direct Charges

If the specifications and scope of work for this purchase have specifically identified travel and/or other direct costs that the City intends to reimburse, then the following requirements shall apply. All such expenses must be pre-approved in writing by the Project Manager. If the specifications and scope of work do not clearly identify such costs for compensation, than no compensation will be given.

- City will reimburse the Contractor at actual cost for expenditures that are pre-approved by the City in writing and are necessary and directly applicable to the work required by this Contract provided that similar direct project costs related to the contracts of other clients are consistently accounted for in a like manner. Such direct project costs may not be charged as part of overhead expenses or include a markup. Other direct charges may include, but are not limited to the following types of items: travel, printing, cell phone, supplies, materials, computer charges, and fees of subconsultants or subcontractors.
- The billing for third party direct expenses specifically identifiable with this project shall be an itemized listing of the charges supported by copies of the original bills, invoices, expense accounts, subconsultant/subcontractor paid invoices, and other supporting documents used by the Contractor 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.
- 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.
- **Airfare:** Airfare will be reimbursed at the actual cost of the airline ticket. The City will reimburse for Economy or Coach class fare only. Receipts detailing each airfare are required. Unusual itineraries or multi-leg trips shall be prorated to the business requirements of this contact at the sole discretion of the City.
- **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 (the current Federal Per Diem daily meal rate used by the City for reimbursement will be provided upon request). *Receipts are not 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.

- **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.).
- **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 (the current 2014 rate is 56.0 cents per mile = \$.56). Documentation of mileage incurred is required. Please note: payment for mileage incurred for long distances traveled shall not be more than an equivalent trip round-trip airfare on a commercial airline for a coach or economy class ticket.
- **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).
- **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.
- **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 mark up. Receipts are required for all miscellaneous expenses that are billed.

Subcontractor: Subcontractor expenses will be reimbursed at the actual cost incurred and may not include a markup. Copies of all subcontractor invoices that are rebilled to the City are required.

6.3. Disputed Work

Notwithstanding all above, if the City believes in good faith that some portion of Work has not been completed satisfactorily, the City may require Vendor to correct such work prior to The City payment. In such event, the City will provide to Vendor an explanation of the concern and the remedy that the City expects. The City may withhold from any payment that is otherwise due, an amount that the City in good faith finds to be under dispute, or if the Vendor does not provide a sufficient remedy, The City may retain the amount equal to the cost to The City for otherwise correcting or remediating the work not properly completed.

7. Taxes, Fees and Licenses

- Taxes:** Where required by state statute, ordinance or regulation, Vendor shall pay for and maintain in current status all taxes that are necessary for contract performance. Unless otherwise indicated, The City agrees to pay State of Washington sales or use taxes on all applicable consumer services and materials purchased. No charge by the Vendor shall be made for federal excise taxes and The City agrees to furnish Vendor with an exemption certificate where appropriate.
- Fees and Licenses:** Vendor shall pay for and maintain in a current status, any license fees, assessments, permit charges, etc., which are necessary for contract performance. It is the Vendor's sole responsibility to monitor and determine any changes or the enactment of any subsequent requirements for said fees, assessments, or charges and to immediately comply with said changes during the entire term of this Contract. Vendor must pay all custom duties, brokerage or import fees where applicable as part of the contract price. Vendor shall take all necessary actions to ensure that materials or equipment purchased are expedited through customs.
- Vendor is to calculate and enter the appropriate Washington State and local sales tax on the invoice. Tax is to be computed on new items after deduction of any trade-in, in accordance with WAC 458-20-247.

8. Timely Completion: Time is of the Essence

The City has an immediate need to implement the System and/or Software and equipment for the management and operation of the City. Therefore, time is of the essence in all matters relating to this Contract.

9. License for Use

As part of the price of the System, the Vendor hereby grants to the City, and the City accepts from the Vendor, for so long as the City continues to use the System, a non-exclusive, fully paid, royalty free, perpetual license to unlimited use of the Software and related documentation for use on the System acquired by the City under this Contract.

10. Software Upgrades and Enhancements and Optional Modules

Vendor shall:

- a. Supply at no additional cost updated versions of the Software to operate on upgraded versions of operating systems, upgraded versions of firmware, or upgraded versions of hardware;
- b. Supply at no additional cost updated versions of the Software that encompass improvements, extensions, maintenance updates, error corrections, or other changes that are logical improvements or extensions of the original Software supplied to City; and
- c. Supply at no additional cost interface modules that are developed by Vendor for interfacing the Software to other Software products.
- d. Supply additional optional modules that may be compatible with the system software per attached list.

11. Warranties

11.1. Warranty of the System

The items covered by this offer will be supplied with a warranty period of 60 months from the date of Acceptance. Equipment warranty is based on a "return to factory" principal: the material carriage costs from the site to the Alstom factory are the responsibility of the Customer; the costs to send them back are the responsibility of Alstom. Vendor warrants that the Software furnished hereunder shall be free from programming errors and that the Software and hardware shall be free from defects in workmanship and materials and shall operate in conformity with the performance capabilities, Statement of Work, functions and other descriptions and standards applicable thereto and as set forth in this Contract including but not limited to the City's Request for Proposals; that the services shall be performed in a timely and professional manner by qualified professional personnel; and that the services, Software and Hardware shall conform to the standards generally observed in the industry for similar services, Software and hardware. If Vendor is not the original Software or hardware manufacturer, Vendor shall obtain in writing the manufacturer's consent to pass through all Software and hardware warranties for the City's benefit. During this warranty period, Vendor shall replace or repair any defect appearing in the Software or hardware, or deficiency in service provided at no additional cost to the City.

11.2. Warranty Against Planned Obsolescence

The Vendor warrants that the products proposed to and acquired by the City under this Contract are new and of current manufacture, and that it has no current plans for announcing a replacement line that would be marketed by Vendor as a replacement for any of the products provided to the City under this Contract and would result in reduced support for the product line within which the System furnished to the City is contained. The Vendor further warrants that, in the event that a major change in hardware, software, or operating system occurs that radically alters the design architecture of the System and makes the current design architecture obsolete within three (3) years after full execution of this Contract, and if the City continues its annual maintenance Contract with the Vendor, the Vendor shall provide the City with a replacement hardware, software, or operating system(s) that continues the full functionality of the systems, at no extra cost to the City.

11.3. No Surreptitious Code Warranty

The Vendor warrants to the City that no copy of the licensed Software provided to the City contains or will contain any Self-help Code or any Unauthorized Code as defined below. This warranty is referred to in this Contract as the "No Surreptitious Code Warranty."

As used in this Contract, "Self-help Code" means any back door, time bomb, drop dead device, or other Software routine designed to disable a computer program automatically with the passage of time or under the positive control of a person other than the licensee of the Software. The term "Self-help Code" does not include Software routines in a computer program, if any, designed to permit an owner of the computer program (or other person acting by authority of the owner) to obtain access to a licensee's computer system(s) (e.g. remote access via modem) for purposes of maintenance or technical support.

As used in this Contract, "Unauthorized Code" means any "virus," "Trojan horse," "worm" or other Software routines or Equipment components designed to permit unauthorized access to disable, erase, or otherwise harm Software, Equipment, or data or to perform any other actions. The term Unauthorized Code does not include Self-help Code.

The Vendor shall defend City against any claim, and indemnify the City against any loss or expense arising out of any breach of the No Surreptitious Code Warranty.

11.4. Title Warranty and Warranty against Infringement

The Vendor warrants and represents that the hardware and Software provided under this Contract is the sole and exclusive property of the Vendor or that the Vendor is authorized to provide full use of the hardware and Software to the City as provided

herein. The Vendor warrants that it has full power and authority to grant the rights granted by this Contract to the City without the consent of any other person or entity.

In the event of any claim by a third party against the City for software used in the United States asserting a patent, copyright, trade secret, or proprietary right violation involving the System acquired by the City hereunder or any portion thereof, Vendor shall defend, at its expense, and shall indemnify the City against any loss, cost, expense, or liability arising out of such claim, whether or not such claim is successful; provided, however, that Vendor is notified by the City in writing within a reasonable time after the City first receives written notice of any such claim, action, or allegation of infringement. In the event a final injunction or order is obtained against the City's full use of either the System or any portion thereof as a result of any such claim, suit or proceeding, and if no further appeal of such ruling is practicable, Vendor shall, as mutually agreed upon and at Vendor's expense:

- a. procure for the City the right to continue full use of the System; or
- b. replace or modify the same so that it becomes non-infringing (which modification or replacement shall not affect the obligation to ensure the System conforms with applicable Statement of Work); or
- c. if the product was purchased and the actions described in item (a) or (b) of Section 12.4, are not practicable, re-purchase the product from the City at a price mutually agreed upon, which shall relate to the value and utility of the product to the City; or
- d. In the event such Equipment is held to constitute infringement, and the use of the Equipment is enjoined, Vendor, at its option, procure for the City the right to continue using the Equipment (i.e. a license); replace it with non-infringing product; modify it so it becomes non-infringing; or remove the Equipment and refund the Contract Price applicable thereto.

Vendor's liability for patent infringement shall not apply to:

- (i) Patented processes performed by the Product or another product produced thereby;
- (ii) Products supplied according to a design other than that of Vendor and which is required by the City; or
- (iii) Modifications of the Product or combinations of the Product with another product not furnished by Vendor.

In no event shall the City be liable to Vendor for any lease, rental, or maintenance payments after the date, if any, that the City is no longer legally permitted to use the System because of such actual or claimed infringement. In the event removal or replacement of the System is required pursuant to this paragraph and if the system was installed by Vendor, then Vendor shall use reasonable care in the removal or modification thereof and shall, at its own expense, restore the City's premises as nearly to their condition immediately prior to the installation of the System as is reasonably possible.

No settlement that prevents the City from continuing to use the Software, other products or Software documentation as provided in this Contract shall be made without the City's prior written consent. In all events, the City shall have the right to participate at its own expense in the defense of any such suit or proceeding through counsel of its own choosing.

The indemnification obligation set forth in this section shall survive the expiration or earlier termination of this Contract.

11.5. No Liens

The Vendor warrants that the Software and Equipment is the sole and exclusive property of the Vendor and that the Vendor is authorized to provide full use of the Software to the City as provided herein and that such Software is not subject to any lien, claim or encumbrance inconsistent with any of the City's rights under this Contract and that the City is entitled to and shall be able to enjoy quiet possession and use of the Software and Equipment without interruption by Vendor or any other person making a claim under or through the Vendor or by right of paramount title.

11.6. Maintenance Services Warranty

The Vendor warrants that, in performing the services under the Maintenance Agreement appended as Appendix [], a future Appendix. The Vendor shall strictly comply with the descriptions and representations as to the services, including performance capabilities, accuracy, completeness, characteristics, Statement of Work, configurations, standards, function and requirements, which appear in this Contract and in the Vendor's response to the City's Request for Proposal. Its products shall be uniform in appearance and clean and presentable in accordance with generally applicable standards in the industry. Errors or omissions committed by the Vendor in the course of providing Services shall be remedied by the Vendor at its own expense.

11.7. Equipment Warranty

The Vendor warrants and represents that the Equipment provided to meet the requirements of the Statement of Work shall be free from all defects, shall be in good operating order, and shall operate in conformity with the descriptions and standards as set forth in the Vendor's Proposal and the City's RFP for a period of five (5) years. During the warranty period, Vendor shall promptly, without additional charge, repair or replace the equipment or any part thereof that fails to function according to the Vendor's

Statement of Work or the Statement of Work of the manufacturer thereof.

11.8. Merchantability and Fitness Warranty

Vendor represents and warrants that the Software, other products and Software Documentation will be merchantable and will be fit for the particular purposes established in the City's RFP and the Vendor's response to the City's RFP.

11.9. Warrant of Compliance with Applicable Law

The Vendor warrants that the System, and the manufacture and production thereof, are in compliance with any and all applicable laws, rules, and regulations.

11.10. Date Warranty

The Vendor warrants that all Software provided under this contract: (a) does not have a life expectancy limited by date or time format; (b) will correctly record, store, process, present calendar dates; (c) will lose no functionality, data integrity, or performance with respect to any date; and (d) will be interoperable with other software used by City that may deliver date records from the Software, or interact with date records of the Software ("Date Warranty"). In the event a Date Warranty problem is reported to Vendor by City and remains unresolved after three calendar days, at City's discretion, the Vendor shall send, at Vendor's sole expense, at least one qualified and knowledgeable representative to City's premises. This representative will continue to address and work to remedy the failure, malfunction, defect, or nonconformity on City's premises. This Date Warranty shall last perpetually. In the event of a breach of any of these representations and warranties, Vendor shall indemnify and hold harmless the City from and against any and all harm, injury, damages, costs, and expenses incurred by Purchaser arising out of said Breach.

11.11. Physical Media Warranty

Vendor warrants to City that each licensed copy of Software provided by Vendor is and will be free from physical defects in the media that tangibly embodies the copy (the "Physical Media Warranty."). The Physical Media Warranty does not apply to defects discovered more than thirty (30) calendar day after the date of Acceptance of the Software copy by the City. Vendor shall replace, at Vendor's expense, including shipping and handling costs, any Software copy provided by Vendor that does not comply with this Warranty.

11.12. Survival of Warranties and Representations

The representations and warranties of the Vendor made pursuant to this Contract shall survive the delivery of the System, the payment of the purchase price, and the expiration or earlier termination of this Contract.

12. Title to Equipment

Upon successful completion of Acceptance Testing and receipt of City's letter of Acceptance (or upon delivery, if there is no Acceptance Testing), Vendor shall convey to City good title to the Equipment free and clear of all liens, pledges, mortgages, encumbrances, or other security interests.

Transfer of title to the Equipment shall include an irrevocable, fully paid-up, perpetual license to use the internal code (embedded software) in the Equipment. The City shall not transfer the license granted hereby or possession of the Embedded Software except as part of the Vendor's Equipment, such transfer being subject to all of the restrictions contained herein. The City shall not and shall not allow any third party to: (i) decompile, disassemble, reverse engineer or attempt to reconstruct, identify or discover any source code, underlying ideas, or algorithms of the Software by any means whatever, or disclose any of the foregoing; (ii) modify, adapt, translate, incorporate into or with other software, or create a derivative work of any part of the Embedded Software; (iii) attempt to circumvent any limits or other license, timing or use restrictions that are built into the Embedded Software; (iv) remove any proprietary notices, labels, or marks on or in any copy of the Equipment in which Licensor's Embedded Software is embedded; (v) use any 'locked' or 'key-restricted' feature, function, service, application, operation, or capability without first purchasing the applicable license(s) and obtaining a valid key from Licensor, even if such feature, function, service, application, operation, or capability is enabled without a key; (vi) use the Embedded Software on non-Vendor's equipment; (vii) use the Embedded Software in any manner other than as expressly provided herein; (viii) transfer, distribute, resell any rights under this license, (except if the Licensor specifically consents and grants such rights under a separate License.) Vendor may terminate this license upon written notice to Customer for violation of any of the terms of the foregoing license.

13. Ownership of Deliverables

Except for the licensed System Software and its related documentation, all data and work products produced under this Contract shall be considered work made for hire under the U.S. Copyright Act, 17 U.S.C. 101 et seq, and shall be owned by the City.

14. Risk of Loss, Freight, Overages or Underages

Regardless of FOB point, Vendor agrees to bear all risks of loss, injury, or destruction of goods and materials ordered herein which occur prior to delivery and acceptance. Such loss, injury, or destruction shall not release Vendor from any obligations under. Prices include freight prepaid and allowed. Vendor assumes the risk of every increase, and receives the benefit of every decrease, in delivery rates and charges. Shipments shall match the Work Order; any unauthorized advance or excess shipment is returnable at Vendor's expense.

15. Protection of Persons and Property

15.1. Person

The Vendor and the City shall each take reasonable precautions for the safety of employees of the other, and shall each comply with all applicable provisions of federal, state, and local laws, codes and regulations to prevent or avoid any accident or injury to a person on, about or adjacent to any premises where work under this Contract is being performed.

15.2. Property

The Vendor shall take reasonable steps to protect the City's property from injury or loss arising in connection with the Vendor's performance or failure of performance under this Contract.

15.3. No Smoking

The Vendor shall not allow any employee of the Vendor or any sub or agent thereof to smoke inside any City facility.

15.4. OSHA/WISHA

If applicable, the Vendor certifies that products are designed and man

ufactured to meet the current federal and state safety and health regulations, including Federal Occupational Safety and Health Act of 1970 (OSHA), the Washington Industrial Safety and Health act of 1973 (WISHA). Vendor shall indemnify, defend, and hold the City harmless from all damages assessed against the City as a result of the failure of the products furnished under this Contract to so comply.

15.5. Workers Right to Know

"Right to Know" legislation required the Department of Labor and Industries to establish a program to make employers and employees more aware of the hazardous substances in their work environment. WAC 296-62-054 requires among other things that all manufacturers/distributors of hazardous substances, including any of the items listed on this ITB, RFP or contract bid and subsequent award, must include with each delivery completed Material Safety Data Sheets (MSDS) for each hazardous material. Additionally, each container of hazardous material must be appropriately labeled with: the identity of the hazardous material, appropriate hazardous warnings, and the Name and Address of the chemical manufacturer, improper, or other responsible party.

Labor and Industries may levy appropriate fines against employers for noncompliance and agencies may withhold payment pending receipt of a legible copy of the MSDS. OSHA Form 20 is not acceptable in lieu of this requirement unless it is modified to include appropriate information relative to "carcinogenic ingredients: and "routes of entry" of the product(s) in question.

17. Contract Notices, Deliverable Materials and Invoices Delivery

Official Contract notices shall be delivered to the following addresses (or such other address (es) as either party may designate in writing):

To Vendor:

Bryan Shannon
Alstom Grid – Substation Automation Solutions
10632 W Knollshire Dr
St. Louis, MO 63123

If delivered by the U.S. Postal Service, it must be addressed to:

Laura Park
City of Seattle Purchasing and Contracting Services
PO Box 94687
Seattle, WA 98124-4687

If delivered by any other company, it must be addressed to:

Laura Park
City of Seattle Purchasing and Contracting Services
Seattle Municipal Tower
700 5th Ave., #4112
Seattle, WA 98104-5042
Phone: 206-684-0445
Fax: 206-233-5155
E-Mail: laura.park@seattle.gov

Project work, invoices and communications shall be delivered to the City Project Manager:

City of Seattle
Attention: Mike Dozier

18. Representations

Vendor represents and warrants that it has the requisite training, skill and experience necessary to provide Work and is appropriately accredited and licensed by all applicable agencies and governmental entities.

19. Inspection

Work shall be subject, at all times, to inspection by and with approval of the City, but the making (or failure or delay in making) such inspection or approval shall not relieve Vendor of responsibility for performance of the Work in accordance with this Contract, notwithstanding the City's knowledge of defective or noncomplying performance, its substantiality or the ease of its discovery. Vendor shall provide sufficient, safe, and proper facilities and equipment for such inspection and free access to such facilities.

20. Affirmative Efforts for Utilization of Women and Minority Subcontracting, Non-Discrimination

- **Employment Actions:** Contractor shall not discriminate against any employee or applicant for employment because of race, religion, creed, age, color, sex, marital status, sexual orientation, gender identity, political ideology, ancestry, national origin, or the presence of any sensory, mental or physical handicap, unless based upon a bona fide occupational qualification. Contractor shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their creed, religion, race, age, color, sex, national origin, marital status, political ideology, ancestry, sexual orientation, gender identity, or the presence of any sensory, mental or physical handicap. Such action shall include, but not be limited to employment, upgrading, promotion, demotion, or transfer; recruitment or recruitment advertising, layoff or termination, rates of pay, or other forms of compensation and selection for training.
- In accordance with Seattle Municipal Code Chapter 20.42, Contractor shall actively solicit the employment and subcontracting of women and minority group members when there are commercially useful purposes for fulfilling the scope of work.
- If a WMBE Inclusion Plan is requested by and submitted to the City, the WMBE Inclusion Plan is material to the contract. The requirements and conditions stated in the WMBE Inclusion Plan shall be enforced as a contract requirement.
- If upon investigation, the Director of Purchasing and Contracting Services finds probable cause to believe that the Contractor has failed to comply with the requirements of this Section, the Contractor shall be notified in writing. The Director of Finance and Administrative Services shall give Contractor an opportunity to be heard with ten calendar days' notice. If, after the Contractor's opportunity to be heard, the Director of Finance and Administrative Services still finds probable cause, s/he may suspend the Contract and/or withhold any funds due or to become due to the Contractor, pending compliance by the Contractor with the requirements of this Section.
- Any violation of the mandatory requirements of this Section, or a violation of Seattle Municipal Code Chapter 14.04 (Fair Employment Practices), Chapter 14.10 (Fair Contracting Practices), Chapter 20.45 (City Contracts – Non-Discrimination in Benefits), or other local, state, or federal non-discrimination laws, shall be a material of contract for which the Contractor may be subject to damages and sanctions provided for by the Vendor Contract and by applicable law. In the event the Contractor is in violation of this Section shall be subject to debarment from City contracting activities in accordance with Seattle Municipal Code Section 20.70 (Debarment).

21. Assignment and Subcontracting

- **Assignment:** Vendor shall not assign any of its obligations under this Contract without Seattle's written consent, which may be granted or withheld in Seattle's sole discretion.
- **Subcontracting:** Vendor shall not subcontract any of its obligations under this Contract without Seattle's written consent, which may be granted or withheld in Seattle's sole discretion. Vendor shall ensure that all subcontractors comply with the obligations, requirements and terms and conditions of the subcontract, except for Equal Benefit provisions. Seattle's consent to subcontract shall not release the Vendor from liability under this Contract, or from any obligation to be performed under this Contract, whether occurring before or after such consent to subcontract.

22. Key Persons and Subcontractors

Contractor shall not transfer, reassign or replace any individual or subcontractor that is determined to be essential or that has been agreed upon in the Contractor's Subcontracting (Inclusion) Plan, without express written consent of Seattle. If during the term of this Contract, any such individual leaves the Contractor's employment or any named subcontract is terminated for any reason, Contractor shall notify Seattle and seek approval for reassignment or replacement with an alternative individual or subcontractor. Upon Seattle's request, the Contractor shall present to Seattle, one or more subcontractors or individual(s) with greater or equal qualifications as a replacement. Continued achievement of the Subcontracting (Inclusion) Plan that was incorporated into this Contract by reference, if any, and the associated subcontract awards, aspirational goals and efforts, will be one of the considerations in approval of such changes. Seattle's approval or disapproval shall not be construed to release the Contractor from its obligations under this Contract.

23. Equal Benefits

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

24. General Legal Requirements

- a. **General Requirement:** Vendor, at no expense to The City, shall comply with all applicable laws of the United States and the State of Washington; the Charter and ordinances of The City; and rules, regulations, orders, and directives of their administrative agencies and the officers thereof. Without limiting the generality of this paragraph, the Vendor shall specifically comply with the following requirements of this section.
- b. **Licenses and Similar Authorizations:** Vendor, at no expense to The City, shall secure and maintain in full force and effect during the term of this Contract all required licenses, permits, and similar legal authorizations, and comply with all requirements thereof.
- c. **Performance Standard.** All duties by Vendor or designees shall be performed in a manner consistent with accepted practices for other similar Work.
- d. If the Laws in force on the date of issuance of the Vendor's quotation change or if new Laws come into force after such date, (i) the price shall be increased or decreased to reflect additional or reduced costs incurred by Vendor in complying with new Laws, and (ii) time for performance of the Purchase order shall be extended by a period of time sufficient for the Vendor to comply with such changes.

25. Indemnification

To the extent permitted by law, the Vendor shall protect, defend, indemnify and hold the City harmless from and against all claims, demands, damages, costs, actions and causes of actions, liabilities, fines, penalties, judgments, expenses and attorney fees, resulting from the injury or death of any person or the damage to or destruction of third party tangible property, or the infringement of any patent, copyright, trademark or trade secret, arising out of the work performed or goods provided under this Contract, or any other acts or omissions by the Vendor, or the Vendor's violation of any law, ordinance or regulation, contract provision or term, or condition of regulatory authorization or permit, except for damages resulting from the sole negligence of the City. As to the City of Seattle, the Vendor waives any immunity it may have under RCW Title 51 or any other Worker's Compensation statute. The parties acknowledge that this waiver has been negotiated by them, and that the contract price reflects this negotiation. Vendor's obligation to defend, indemnifies, and save City harmless shall not be eliminated or reduced by any alleged concurrent City negligence.

26. Insurance (Alstom Risk Management Review 9-10-15)

Except as specified otherwise, Vendor shall obtain at time of award and maintain in force, coverages and limits of liability of insurance specified below. If the Vendor fails to obtain or maintain these coverages, the City may exercise its options to terminate the contract. All costs are borne by the Vendor.

1. COVERAGES AND LIMITS OF LIABILITY. Vendor shall at all times during the term of this Agreement maintain continuously, at its own expense, insurance coverages and limits of liability as specified below:
 - A. Commercial General Liability (CGL) insurance (including excess or umbrella liability), including
 - Premises/Operations
 - Products/Completed Operations
 - Personal/Advertising Injury
 - Contractual
 - Independent Contractors
 - Stop Gap/Employers Liability
 - with limits of liability of \$10,000,000 each occurrence and in aggregate combined single limit bodily injury and property damage ("CSL"), except:

\$10,000,000	Personal/Advertising Injury
\$10,000,000	Each accident/disease/employee Stop Gap/Employer's Liability
 - B. Automobile Liability insurance, including coverage for owned, non-owned, leased or hired vehicles used by Vendor in performance of the work or services with a limit of liability of \$1,000,000 CSL.
 - C. Worker's Compensation for industrial injury to Vendor's employees in accordance with the provisions of Title 51 of the Revised Code of Washington.
2. CITY AS ADDITIONAL INSURED. The City of Seattle shall be included as an additional insured under CGL and Automobile Liability insurance. The City of Seattle shall be included as an additional insured under CGL insurance in accordance with ISO additional insured endorsements CG 20 10 04 13 and CG 20 37 04 13 or their equivalents on a primary and non-contributory basis.
3. NO LIMITATION OF LIABILITY TO THIRD PARTIES OUTSIDE OF CONTRACT. The limits of liability specified herein in subparagraph 1.A. are minimum limits of liability only and shall not be deemed to limit the liability of Vendor or any Vendor insurer to third parties outside of this Contract except as limited by Section 51. Where the City of Seattle is included as an additional insured, it shall be so for the full limits of liability maintained by Vendor, whether such limits are primary, excess, contingent or otherwise.
4. MINIMUM SECURITY REQUIREMENT. All insurers must be rated A- VII or higher in the current A.M. Best's Key Rating Guide and licensed to do business in the State of Washington unless coverage is issued as surplus lines by a Washington Surplus lines broker.
5. SELF-INSURANCE. Any self-insured retention not fronted by an insurer must be disclosed. Any defense costs or claim payments falling within a self-insured retention shall be the responsibility of Vendor.

6. EVIDENCE OF COVERAGE. Prior to performance of any scope of work, Vendor shall provide certification of insurance acceptable to the City, evidencing the coverages and limits of liability and other requirements specified herein. Such certification must include a copy of the blanket endorsement documenting that the City of Seattle is an additional insured for commercial general liability insurance on a primary and non-contributory basis. Certification should be issued to The City of Seattle, Purchasing Services Division, and Seattle, WA and shall be delivered in electronic form either as an email attachment to Laura at laura.park@seattle.gov or faxed to 206-684-4511.
7. REQUIRED SEPARATION OF INSURED PROVISION; CROSS-LIABILITY EXCLUSION AND OTHER ENDORSEMENTS PROHIBITED: Vendor's insurance policy shall include a "separation of insureds" or "severability" clause that applies coverage separately to each insured and additional insured, except with respect to the limits of the insurer's liability. Vendor's insurance policy shall not contain any provision, exclusion or endorsement that limits, bars, or effectively precludes the City of Seattle from coverage or asserting a claim under the Vendor's insurance policy on the basis that the coverage or claim is brought by an insured or additional insured against an insured or additional insured under the policy. Vendor's CGL policy shall NOT include any of the following Endorsements (or their *equivalent endorsement or exclusions*): (a) Contractual Liability Limitation, (CGL Form 21 39 or equivalent), (b) Amendment Of Insured Contract Definition, (CGL Form 24 26 or equivalent), (c) Limitation of Coverage to Designated Premises or Project, (CGL Form 21 44 or equivalent), (d) any endorsement modifying or deleting the exception to the Employer's Liability exclusion, (e) any "Insured vs. Insured" or "cross-liability" exclusion, and (f) any type of punitive, exemplary or multiplied damages exclusion. Vendor's failure to comply with any of the requisite insurance provisions shall be a material breach of, and grounds for, the immediate termination of the Contract with the City of Seattle; or if applicable, and at the discretion of the City of Seattle, shall serve as grounds for the City to procure or renew insurance coverage with any related costs of premiums to be repaid by Vendor or reduced and/or offset against the Contract.

27. Review of Vendor Records

Vendor and its Subcontractors shall maintain books, records, documents and other evidence relating to this Contract, including but not limited to protection and use of City's Confidential Information, and accounting procedures and practices which sufficiently and properly reflect all direct and indirect costs of any nature invoiced in the performance of this Contract. Vendor shall retain all such records for six (6) years after the expiration or termination of this Contract. Records involving matters in litigation related to this Contract shall be kept for six (6) years from the date the litigation is settled or complete.

All such records shall be subject at reasonable times and upon prior notice to examination, inspection, copying or audit by personnel so authorized by the City's Contract Administration and/or the Office of the Auditor and federal officials so authorized by law, rule, regulation or contract, when applicable, at no additional cost to the City. During this Contract's term, Vendor shall provide access to these items at a mutually agreeable time and place. Vendor shall be responsible for any audit exceptions or disallowed costs incurred by Vendor or any of its Subcontractors. Vendor shall incorporate in its subcontracts this section's records retention and review requirements.

It is agreed that books, records, documents and other evidence of accounting procedures and practices related to Vendor's cost structure, including overhead, general and administrative expenses, profit factors and Intellectual Property shall be excluded from City's review unless the cost or any material issue under this Contract is calculated or derived from these factors. In the event of a dispute between the Parties, such audits will only be permitted for invoices submitted for work on a time and material basis until such dispute has been resolved.

28. Independent Contractor

The relationship of Vendor to The City by reason of this Contract shall be that of an independent Vendor. This Contract does not authorize Vendor to act as the agent or legal representative of the City for any purpose whatsoever. Vendor is not granted any express or implied right or authority to assume or create any obligation or responsibility on behalf of or in the name of The City or to bind The City in any manner or thing whatsoever.

It is the intention and understanding of the Parties that Vendor shall be an independent Vendor and that the City shall be neither liable for nor obligated to pay sick leave, vacation pay or any other benefit of employment, nor to pay any social security or other tax that may arise as an incident of employment. The Vendor shall pay all income and other taxes as due. Industrial or other insurance that is purchased for the benefit of the Vendor shall not be deemed to convert this Contract to any employment contract.

It is recognized that Vendor may or will be performing professional Work during the term for other parties and that The City is not the exclusive user of the Work that Vendor will provide.

29. No Conflict of Interest

Contractor confirms that Contractor does not have a business interest or a close family relationship with any City officer or employee who was, is, or will be involved in the Contractor selection, negotiation, drafting, signing, administration, or evaluating the Contractor's performance.

30. No Gifts or Gratuities

Contractor 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 Vendor. Promotional items worth less than \$25 may be distributed by the vendor to City employees if the Vendor uses the items as routine and standard promotions for business. Any violation of this provision may result in termination of this Contract. Nothing in this Contract 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.

31. Current and Former City Employees, Officers, and Volunteers

Throughout the term of the contract, Contractor shall provide written notice to City Purchasing and the City Project Manager of any current or former City employees, officials or volunteers, that are working or assisting on solicitation of City business or on completion of the awarded contract. The Vendor must be aware of the City Ethics Code, Seattle Municipal Code 4.16 and advise Contractor workers as applicable.

32. Contract Workers with 1,000 Hours

Throughout the term of the Contract, Contractor shall provide written notice to City Purchasing and the City Project Manager of any contract worker that shall perform more than 1,000 hours of contract work for the City within a rolling 12-month period. Such hours include those that the contract worker performs for the Contract, and any other hours that the worker performs for the City under any other contract. Such workers are subject to the requirements of the City Ethics Code, Seattle Municipal Code 4.16. The Contractor shall advise their Contract workers as applicable.

33. Errors & Omissions: Correction

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

34. Intellectual Property Rights

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

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

for by, The City in connection with the performance of the Work, shall be promptly delivered to The City.

The City may make and retain copies of such documents for its information and reference in connection with their use on the project. The Vendor 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. Vendor represents and warrants that it has all necessary legal authority to make the assignments and grant the licenses required by this Section.

35. Confidentiality

Under Washington State Law (reference RCW Chapter 42.56, the *Public Records Act*) all materials received or created by the City of Seattle are *public records*. These records include but are not limited to bid or proposal submittals, agreement documents, contract work product, or other bid material. Some records or portions of records are legally *exempt from disclosure* and can be redacted or withheld. The Public Records Act (RCW 42.56 and RCW 19.10)8 describes those exemptions. Contractor must familiarize itself with the Washington State Public Records Act (PRA) and the City of Seattle's process for managing records.

The City will try to redact anything that seems obvious in the City opinion for redaction. For example, the City will black out (redact) Social Security Numbers, federal tax identifiers, and financial account numbers before records are made viewable by the public. However, this does not replace Contractor's obligations to identify any materials Contractor wishes to have redacted or protected, and that Contractor believes are so under the Public Records Act (PRA).

Protecting your Materials from Disclosure (Protected, Confidential, or Proprietary)

Contractor must determine and declare any materials you want exempted (redacted), and that Contractor also believes are eligible for redaction. This includes but is not limited to Contractor's bid submissions, contract materials and work products

Proposal Submittals: Asserted exemptions for Proposal Submittals shall be those exemptions that, Vendor identified on the City Non-Disclosure Request included in the City of Seattle Vendor Questionnaire for Request for Proposal 3407. If the Vendor did not submit a request within the Vendor Questionnaire, the Vendor is deemed to have authorized releasing any and all information submitted to the City.

Contract Work Products

If Vendor wishes to assert exemptions for its contract work products Vendor must notify the City Project Manager at the time such records are generated.

Please note the City cannot accept a generic marking of materials, such as marking everything with a document header or footer, page stamp, or a generic statement that a document is non-disclosable, exempt, confidential, proprietary, or protected. You may not exempt an entire page unless each sentence is entitled to exemption; instead, identify paragraphs or sentences that meet the RCW exemption criteria you are relying upon.

City's Response to a Public Records Act Requests

The City will prepare two versions of your materials:

Full Redaction: A public copy that redacts (blacks out) both the exemptions (such as social security numbers) identified by the City and also materials or text you identified as exempt. The fully redacted version is made public upon contract execution and will be supplied with no notification to you.

Limited Redaction: A copy that redacts (blacks out) only the exemptions (such as social security numbers) identified by the City. This does not redact (black out) exemptions identified by Vendor. The Limited Redaction will be released only after Vendor is provided "third party notice" that allows Vendor the legal right under RCW 42.56.540 to bring a legal action to enjoin the release of any records you believe are not subject to disclosure.

If any requestor seeks the Limited Redacted or original versions, the City will provide Vendor "third party notice", giving ten business days to obtain a temporary restraining order while Vendor pursues a court injunction. A judge will determine the status of your exemptions and the Public Records Act.

If the Vendor does not obtain and serve an injunction upon the City within 10 business days of the date of the City's notification of the request, the Vendor is deemed to have authorized releasing the record.

Notwithstanding the above, the Vendor must not take any action that would affect (a) the City's ability to use goods and services provided under this Agreement or (b) the Vendor's obligations under this Agreement.

The Vendor will fully cooperate with the City in identifying and assembling records in case of any public disclosure request.

36. Publicity

No news release, advertisement, promotional material, tour, or demonstration related to the City's purchase or use of the Vendor's product or any work performed pursuant to this Contract shall be produced, distributed or take place without the prior, specific approval of the City's Project Manager or his/her designee.

37. Interlocal Agreement Act

RCW Chapter 39.34 allows cooperative purchasing between public agencies, non-profits and other political subdivisions. Public agencies that file an Intergovernmental Cooperative Purchasing Agreement with the City of Seattle may purchase from Contracts established by the City. The seller agrees to sell additional items at the bid prices, terms and conditions, to other eligible governmental agencies that have such agreements with the City. The City of Seattle accepts no responsibility for the payment of the purchase price by other governmental agencies. Should the Vendor require additional pricing for such purchases, the Vendor is to name such additional pricing upon Offer to the City.

38. Background Checks and Immigrant Status

The City has strict policies regarding the use of Background checks, criminal checks and immigrant status for contract workers. The policies are incorporated into the contract and available for viewing on-line at <http://www.seattle.gov/business/WithSeattle.htm>

39. Dispute Resolution

The parties shall endeavor to resolve any dispute or misunderstanding that may arise under this Contract concerning Vendor's performance, if mutually agreed to be appropriate, through negotiations between the Vendor's Project Manager and the City's Project Manager, or if mutually agreed, referred to the City's named representative and the Vendor's senior executive(s). Either party may discontinue such discussions and may then pursue other means to resolve such disputes, or may by mutual agreement pursue other dispute alternatives such as alternate dispute resolution processes. Nothing in this dispute process shall in any way mitigate the rights, if any, of either party to terminate the contract for cause or convenience. Both Parties waive their right to a trial by jury.

40. Termination

- a. For Cause: The City may terminate this Contract if the Vendor is in material breach of any of the terms of this Contract, and such breach has not been corrected to the City's reasonable satisfaction in a timely manner.
- b. For City's Convenience: The City may terminate this Contract at any time, without cause and for any reason including the City's convenience, upon written notice to the Vendor.
- c. Nonappropriation of Funds: The City may terminate this Contract at any time without notice due to nonappropriation of funds, whether such funds are local, state or federal grants, and no such notice shall be required notwithstanding any notice requirements that may be agreed upon for other causes of termination.
- d. Acts of Insolvency: The City may terminate this Contract by written notice to Vendor if the Vendor becomes insolvent, makes a general assignment for the benefit of creditors, suffers or permits the appointment of a receiver for its business or assets, becomes subject to any proceeding under any bankruptcy or insolvency law whether domestic or foreign, or is wound up or liquidated, voluntarily or otherwise.
- e. Termination for Gratuities and/or Conflict of Interest: The City may terminate this Contract by written notice to Vendor if The City finds that a conflict of interest exists in violation of the city Ethics Code, or that any gratuity in the form of entertainment, a gift, or otherwise, was offered to or given by the Vendor or any agent therefore to any City official, officer or employee.
- f. Notice: The City is not required to provide advance notice of termination. Notwithstanding, the RFP Coordinator may issue a termination notice with an effective date later than the termination notice itself. In such case, the Vendor shall continue to provide products and services as required by the RFP Coordinator until the effective date provided in the termination notice.
- g. Actions Upon Termination: In the event of termination not the fault of the Vendor, the following shall apply:

1. Vendor shall be paid for all products and services that have been ordered and accepted prior to the effective termination date or ordered before the effective termination date and ultimately accepted by the RFP Coordinator, together with any reimbursable expenses then due.
2. For System development projects, Vendor shall be paid for progress performed that has been accepted by the City on or prior to the effective termination date, but in no event shall such compensation exceed the maximum compensation to be paid under the Contract.
3. Vendor agrees that such payment shall fully and adequately compensate Vendor and all subs for all profits, costs, expenses, losses, liabilities, damages, taxes, and charges of any kind whatsoever (whether foreseen or unforeseen) attributable to the termination of this Contract.
4. Upon termination for any reason, Vendor shall provide The City with the most current design documents, contract documents, writings and other product it has completed to the date of termination, along with copies of all project-related correspondence and similar items. The City shall have the same rights to use these materials as if termination had not occurred.
5. In the event this Contract expires or is terminated for any reason, the City shall retain its rights in all Products, services and system progress that is in transit or delivered prior to the effective termination date.

41. Force Majeure– Suspension and Termination

This section applies in the event that either party is unable to perform the obligations of this contract because of a Force Majeure event as defined herein, to the extent that the Contract obligations must be suspended in full. A Force Majeure event is an event that prohibits performance and is beyond the control of the party. Such events may include natural or man-made disasters, or an action or decree of a superior governmental body, which prevents performance.

Force Majeure under this Section shall only apply in the event that performance is rendered not possible by either party or its agents. Should it be possible to provide partial performance that is acceptable to the City under Section #2 (Emergencies or Disasters), Section #2 below shall instead be in force.

Should either party suffer from a Force Majeure event and is unable to provide performance, such party shall give notice to the remaining party as soon as practical and shall do everything possible to resume performance.

Upon receipt of such notice, the party shall be excused from such performance as is affected by the Force Majeure Event for the period of such Event. If such Event affects the delivery date or warranty provisions of this Agreement, such date or warranty period shall automatically be extended for a period equal to the duration of such Event.

42. Major Emergencies or Disasters

The City may undergo an emergency or disaster that may require the Vendor to either increase or decrease quantities from normal deliveries, or that may disrupt the Vendor's ability to provide normal performance. Such events may include, but are not limited to, a storm, high wind, earthquake, flood, hazardous material release, and transportation mishap, loss of any utility service, fire, terrorist activity or any combination of the above. In such events, the following shall apply.

- a. The City shall notify the Vendor that the City is experiencing an emergency or disaster, and will request emergency and priority services from the Vendor.
- b. Upon such notice by the City, the Vendor shall provide to the City goods and/or services in the quantities and schedule specified by the City, following the conditions named in this Section.
- c. The City of Seattle shall be the customer of first priority for the Vendor. The Vendor shall provide its best and priority efforts to provide the requested goods and/or services to the City of The City in as complete and timely manner as possible. Such efforts by the Vendor are not to be diminished as a result of Vendor providing service to other customers.
- d. If the Vendor is unable to respond in the time and/or quantities requested by the City, the Vendor shall make delivery as soon as practical. The Vendor shall immediately assist the City to the extent reasonable, to gain access to such goods and/or services. This may include:
 - Coordinating with other distributors or subsidiaries beyond those in the local region to fulfill order requests;
 - Offering the City substitutions provided the Vendor obtains prior approval from the City for such substitution.
- e. The Vendor shall charge the City the price determined in this Contract for the goods and services provided, and if no price has been determined, it shall charge the City a price that is normally charged for such goods and/or services (such as listed prices for items in stock). However, in the event that the City's request results in the Vendor incurring unavoidable additional costs and

causes the Vendor to increase prices in order to obtain a fair rate of return, the Vendor shall charge the City a price not to exceed the cost/profit formula found in this Contract.

43. Debarment

In accordance with SMC Ch. 20.70, the Director of Finance and Administrative Services or designee may debar a Vendor from entering into a Contract with the City or from acting as a sub on any Contract with the City for up to five years after determining that any of the following reasons exist:

- a. Vendor has received overall performance evaluations of deficient, inadequate, or substandard performance on three or more City Contracts.
- b. Vendor failed to comply with City ordinances or Contract terms, including but not limited to, ordinance or Contract terms relating to small business utilization, discrimination, prevailing wage requirements, equal benefits, or apprentice utilization.
- c. Vendor abandoned, surrendered, or failed to complete or to perform work on or in connection with a City Contract.
- d. Vendor failed to comply with Contract provisions, including but not limited to quality of workmanship, timeliness of performance, and safety standards.
- e. Vendor submitted false or intentionally misleading documents, reports, invoices, or other statements to the City in connection with a Contract.
- f. Vendor colluded with another Vendor to restrain competition.
- g. Vendor 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. Vendor failed to cooperate in a City debarment investigation.
- i. Vendor 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 may issue an Order of Debarment following the procedures specified in SMC 20.70.050. The rights and remedies of the City under these provisions are in addition to any other rights and remedies provided by law or under the Contract.

44. Recycle Products Requirements

As required by Seattle Municipal Code 20.60, whenever practicable, Vendor shall use reusable products, recyclable products and recycled-content products including recycled content paper on all documents submitted to the City.

Vendors are to duplex all materials 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. Vendors are to use 100% post-consumer recycled content, chlorine-free paper in such products that are produced for the City, whenever practicable, and to use other paper-saving and recycling measures in business they conduct with and for the City. This directive is executed under the Mayor's Executive Order, issued February 13, 2005.

45. Section Headings, Incorporated Documents and Order of Precedence

- o The headings used herein are inserted for convenience only and do not define or limit the contents.
- o No verbal agreement or conversation between any officer, agent, associate or employee of The City and any officer, agency, employee or associate of the Vendor prior to the execution of this Contract shall affect or modify any of the terms or obligations contained in this Contract.
- o The following documents are incorporated. Where there is conflict or gap between or among these documents, the controlling document will be resolved in the following order of precedence (first listed being the precedent):
 - a. Applicable federal, state and local statutes, laws and regulations;
 - b. This Contract
 - c. All Attachments to this Contract, including Pricing, Management, and Technical Specification Agreements
 - d. Licensing and Maintenance Agreements
 - e. RFP issued by the City

- f. Vendor Proposal Response
- g. City Purchase Order documents issued, if any; and
- h. Vendor or manufacturer publications or written materials Vendor made available to City and used to affect the sale.

46. Entire Agreement

This Contract sets forth the entire agreement between the parties with respect to the subject matter hereof. No changes to provisions, price, quality, or Statement of Work of this Contract will be effective without the written consent of both parties.

47. Authority for Modifications and Amendments

The Parties hereto reserve the right to make amendments or modifications to this Contract by written agreement, signed by an authorized representative of each party. No modification, amendment, alteration, or waiver of any section or condition of this Contract shall be effective or binding unless it is in writing and signed by the City RFP Coordinator and Vendor Contracting Officer. Only the City RFP Coordinator shall have the express, implied, or apparent authority to alter, amend, modify, add, or waive any section or condition of this Contract on behalf of the City.

48. Severability

If any term or provision of this Contract is determined by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Contract shall not be affected thereby, and each term and provision of this Contract shall be valid and enforceable to the fullest extent permitted by law.

49. Vendor Authorizations

Vendor represents and warrants that:

- Vendor is a [corporation duly incorporated], validly existing and in good standing under the laws of its state of incorporation and has all requisite corporate power and authority to execute, deliver and perform its obligations under this Contract;
- The execution, delivery and performance of this Contract has been duly authorized by Vendor and no approval, authorization or consent of any governmental or regulatory agency is required to be obtained in order for Vendor to enter into this Contract and perform its obligations under this Contract;
- Vendor is duly authorized to conduct business in and is in good standing in each jurisdiction in which Vendor will conduct business in connection with this Contract;
- Vendor has obtained all licenses, certifications, permits, and authorizations necessary to perform the Services under this Contract and currently is in good standing with all regulatory agencies that regulate any or all aspects of Vendor's performance of the Services. Vendor will maintain all required certifications, licenses, permits, and authorizations during the term of this Contract at its own expense. Vendor must maintain any certifications that were specified as a minimum requirement in the selection process. If during the period of the contract, a new certification is established as a minimum requirement for similar applications, the vendor shall, within a reasonable time, obtain that certification.
- Vendor has the full power and authority to grant to the City, the rights described in this Contract without violating any rights of any third party and that there is currently no actual or threatened suit by any such third party based on an alleged violation of such rights by Vendor. Vendor further represents and warrants that the person executing this Contract for Vendor has actual authority to bind Vendor to each and every term, condition and obligation to this Contract, and that all requirements of Vendor have been fulfilled to provide such actual authority.

50. Ability to Perform

Vendor represents and warrants that:

- Vendor has and shall continue to have the financial ability, by itself or through a line of credit or other financial support, to provide perform the duties required under this contract and provide City with any required on-going services and support , during any period of this Contract;
- Vendor has and shall continue to have the financial resources to fund the capital expenditures required under this Contract without advances by the City or assignment of any payments by the City to a financing source;

- Each subcontractor providing a substantial amount of the work under this Contract has and shall continue to have the financial resources to carry out its duties under this Contract; and
- Vendor's methods of accounting are consistent with generally accepted accounting principles and are capable of segregating costs by release, stage, segment, or cost objective in order to support Change Order accounting.
- Vendor represents and warrants that it has the requisite training, skill and experience necessary to provide Work and is appropriately accredited and licensed by all applicable agencies and governmental entities.

51. Liabilities

Vendor's liability shall be strictly limited to the obligations specified in the Agreement and to loss or damages caused by Vendor's negligence. Notwithstanding anything to the contrary, (a) the Vendor shall not be liable for any indirect, incidental, special, punitive or consequential damages, or damages for loss of profits, revenue, data, or use any other financial or economic loss, incurred by either party or any third party, in any circumstances under any legal theory, whether based on contract, warranty, tort (including negligence), strict liability, indemnity, professional liability or otherwise, be liable, even if the other party or any other party or any other person has been advised of the possibility of such damages and (b) Vendor's entire liability to the City under this Agreement, whether in contract, tort or otherwise shall in no event exceed three million dollars (\$3,000,000).

52. Miscellaneous Provisions

- a. **Binding Contract:** This Contract shall not be binding until signed by both parties. The provisions, covenants and conditions in this Contract shall bind the parties, their legal heirs, representatives, successors, and assigns.
- b. **Applicable Law/Venue:** This Contract shall be construed and interpreted in accordance with the laws of the State of Washington. The venue of any action brought hereunder shall be in the Superior Court for King County.
- c. **Remedies Cumulative:** Rights under this Contract are cumulative and nonexclusive of any other remedy at law or in equity except as limited by this contract.
- d. **Waiver:** No term or condition or breach thereof shall be deemed waived, except by written consent of the party against whom the waiver is claimed. Any waiver of the breach of any term or condition shall not be deemed to be a waiver of any preceding or succeeding breach of the same or any other covenant, term or condition. Neither acceptance by The City of Vendor performance nor payment to Vendor for any portion of Work shall constitute a waiver by The City of the breach or default of any term or condition unless expressly agreed to by The City in writing.
- e. **Negotiated Contract:** The parties acknowledge that this is a negotiated Contract, that they have had the opportunity to have this Contract reviewed by their respective legal counsel, and that the terms and conditions of this Contract are not to be construed against any party on the basis of such party's draftsmanship thereof.
- f. **Attorneys' Fees:** Subject to the indemnification provisions set forth in this Contract, if any action or suit is brought with respect to a matter or matters covered by this Contract, each party shall be responsible for all its own costs and expenses incident to such proceedings, including reasonable attorneys' fees.
- g. **Authority:** Each party represents that it has full power and authority to enter into and perform this Contract, and the person signing this Contract on behalf of each party has been properly authorized and empowered to enter into this Contract. Each party further acknowledges that it has read this Contract, understands it, and shall be bound by it.

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

(Vendor)

City of Seattle

By  9/14/2015
Signature Date

By  9/15/15
Signature Date

Derek Brown
(Printed Name)

for
NANCY LOCKE, City Purchasing Director

Regional Managing Director
Title

