

The City of Seattle

*

[*Enter Name of Department]

**CONSULTANT AGREEMENT
FOR**

*

[*Insert brief, descriptive title for the consultant service]

AGREEMENT NO. _____

This Agreement is made and entered into by and between The City of Seattle ("the City"), a Washington municipal corporation, through its **[*insert name of City department or agency]**, as represented by the **[*insert job title of head of department or agency]**; and **[*insert name and address of Consultant]** ("Consultant"), a **[*insert appropriate type of business: e.g., partnership, sole proprietorship, limited liability company, corporation of the State of (*insert state in which the corporation is chartered) and authorized to do business in the State of Washington]**.

Section 1: TERM OF AGREEMENT

The term of this Agreement shall begin when fully executed by all parties, and shall end on _____, 200__, unless terminated earlier pursuant to the provisions hereof.

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 pursuant to this Agreement shall not be extended because of delays for which the Consultant is responsible, but may be extended by the City, in writing, for its convenience or for conditions beyond the Consultant's control.

Section 3: SCOPE OF WORK

*** In developing a scope of work, a relationship should be established between the SCOPE OF WORK in this section, including work tasks and deliverables, and the PAYMENT section, including dollar amounts, associated fees, charges, and reimbursable costs.**

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

[* Option No. 1] The Scope of Work of this Agreement and the time schedule for completion of such work are as follows: **[*Insert Scope of Work within this Section]**

[* Option No. 2] The Scope of Work of this Agreement and the time schedule for completion of such work are as described in Exhibit *_____, which is attached to and made a part of this Agreement.

The Work shall, at all times, be subject to the City's general review and approval. The Consultant shall confer with the City periodically during the progress of the Work, and shall prepare and present such information and materials (e.g., a detailed outline of completed Work) as may be pertinent, necessary, or requested by the City to determine the adequacy of the Work or the Consultant's progress.

Section 4: PAYMENT

***This section should be developed and inserted by the department contracting for services. It must include the maximum amount to be paid to the Consultant for the Work defined in Section 3, SCOPE OF WORK, as well as a schedule establishing benchmarks for when certain portions of the money will be paid. DELETE section A, if consultant agreements are lump sum or paid per deliverable.**

- A. The Consultant will be reimbursed at a rate of _____. Total compensation under this Agreement shall not exceed _____. The parties agree that the hourly rate includes all direct, indirect, and overhead costs incurred by the Consultant in performance of the Work.
- B. Payments under contracts negotiated on the basis of cost shall include only those costs allowed under Part 31 of the Federal Acquisition Regulations (FAR), the provisions of which are incorporated herein by reference.

Section 5: PAYMENT PROCEDURES

***This section should be developed and inserted by the department contracting for services.**

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

Section 6: ADDRESSES FOR NOTICES AND DELIVERABLE MATERIALS

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

If to City: *** [Insert Project Manager's name, title, address, phone number]**

If to the
Consultant: *** [Insert Project Manager's name, title, address, phone number]**

Section 7: (Optional) FINAL CONSULTANT CONTRACT PAYMENTS REPORTING REQUIREMENTS

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

Within 30 calendar days after final payment has been made to the Consultant for the Work, the Consultant shall submit to the City a completed "Final Consultant Contract Payments Reporting Form," in the form attached to this Agreement or as revised hereafter by the City.

Section 8: EQUAL EMPLOYMENT OPPORTUNITY AND OUTREACH

All contracts require provisions A, D, E, and F. For provisions B and C, use Option 1 and delete Option 2 if the consultant was not required to submit an Outreach Plan as part of the proposal process. If an Outreach Plan was required, use Option 2 and delete Option 1. In general, an Outreach Plan should have been required if the contract is estimated at \$232K or more and may be required at each department's discretion, for those contracts the department believes present significant subcontracting opportunities. If you have any questions regarding Section 10, you may contact Contracting Services at 684-0430.

A. The Consultant shall not discriminate against any employee or applicant for employment because of race, color, age, sex, marital status, sexual orientation, gender identity, political ideology, creed, religion, ancestry, national origin, or the presence of any sensory, mental or physical handicap, unless based upon a bona fide occupational qualification. The Consultant shall take affirmative efforts to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, age, sex, marital status, sexual orientation, gender identity, political ideology, creed, religion, ancestry, national origin, or the presence of any sensory, mental or physical handicap. Such efforts shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising, layoff or termination, rates of pay, or other forms of compensation and selection for training, including apprenticeship.

[* Option No. 1] B. If the Consultant will hire employees for this project, the Consultant shall make affirmative efforts to recruit minority and women candidates. Affirmative efforts may include the use of advertisements in publications directed to minority communities and other targeted recruitment efforts, and using the services of available minority community and public organizations to perform outreach.

[* Option No. 2] B. If the Consultant will hire employees for this project, the affirmative efforts shall be those that have been agreed upon between the City and the Consultant as a result of the Consultant Outreach Plan response, and are incorporated herein by this reference as Exhibit ___.

[* Option No. 1] C. 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 **[*insert name of City department or agency]** for the purposes of investigation to determine compliance with the requirements of this section.

[* Option No. 2] C. 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 **[*insert name of City department or agency]** for the purposes of investigation to determine compliance with the requirements of this section, relevant records and information necessary to document all Consultant solicitations to subconsultants and suppliers, all subconsultant and supplier proposals received, and all subconsultants and suppliers actually utilized under this Agreement. The City shall have the right to inspect and copy such records. The City shall have the right to monitor the affirmative efforts of the Consultant and to inspect and copy such records of the Consultant as are necessary to ensure compliance with the requirements of this Section.

- D. The Consultant, by executing this Agreement, is affirming that the Consultant complies with all applicable federal, state, and local non-discrimination laws, particularly the requirements of SMC Ch. 20.42 as incorporated in this Agreement. Any violation of the requirements of the provisions of this section noted in paragraph A, B and C above shall be a material breach of Agreement for which the Consultant may be subject to damages and sanctions provided for by the Agreement and by applicable law, including but not limited to debarment from City contracting activities in accordance with SMC Ch. 20.70.
- E. The foregoing provisions of this section shall be inserted in all subcontracts for the Work covered by this Agreement.

Section 9: NONDISCRIMINATION IN EMPLOYEE BENEFITS

These sections apply to all consultant contracts estimated to cost \$39,000 or more. This section should be deleted for any contract estimated to cost less than \$39,000 and the word "Reserved" typed in place of the Section title above ["Section 9: Reserved"] Refer to Section 11.6 of the City's Consultant Contracting Standard Operating Procedures for guidance regarding these provisions.

- A. Compliance with SMC Ch. 20.45: The Consultant shall comply with the requirements of SMC Ch.20.45 and Equal Benefits Program Rules implementing such requirements, under which the Consultant is obligated to provide the same or equivalent benefits ("equal benefits") to its employees with domestic partners as the Consultant provides to its employees with spouses. At the City's request, the Consultant shall provide complete information and verification of the Consultant'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 call (206) 684-0430 or review information at [http://cityofseattle.net/contract/equalbenefits/.](http://cityofseattle.net/contract/equalbenefits/))*
- B. Remedies for Violations of SMC Ch. 20.45: Any violation of this Section 9 shall be a material breach of Contract for which the City may:
 - (1) Require the Consultant to pay liquidated damages for each day that the Consultant is in violation of SMC Ch. 20.45 during the term of the Contract; or
 - (2) Terminate the Contract; or
 - (3) Disqualify the Consultant from bidding on or being awarded a City contract for a period of up to five (5) years; or
 - (4) Impose such other remedies as specifically provided for in SMC Ch. 20.45 and the Equal Benefits Program Rules promulgated thereunder, or as provided in this Agreement.

Section 10: AFFIRMATIVE EFFORTS TO USE WOMEN AND MINORITY BUSINESS ENTERPRISES

All contracts require provisions A, D, E, and F. For provisions B and C, use Option 1 and delete Option 2 if the consultant was not required to submit an Outreach Plan as part of the proposal process. If an Outreach Plan was required, use Option 2 and delete Option 1. In general, an Outreach Plan should have been required if the contract is estimated at \$232K or more and may be required at each department's discretion, for those contracts the department believes present significant subcontracting opportunities. If you have any questions regarding Section 10, you may contact Contracting Services at 684-0430.

- A. If a Consultant intends to subcontract out any part of a contract instead of performing the work itself, then the following requirement applies: Consultant shall use affirmative efforts to promote and encourage participation by women and minority businesses on subcontracting opportunities within the contract scope of work. Consultant agrees to make such efforts as a condition of the Agreement.

[* Option No. 1] B. Outreach efforts may include the use of solicitation lists, advertisements in publications directed to minority communities, breaking down total requirements into smaller tasks or quantities where economically feasible, making other useful schedule or requirements modifications that are likely to assist small or WMBE businesses to compete, targeted recruitment efforts, and using the services of available minority community and public organizations to perform outreach.

[* Option No. 2] B. Affirmative efforts shall include those that have been agreed upon between the City and the Consultant as a result of the Consultant proposal response, and are incorporated herein by this reference as Exhibit ___.

[* Option No. 1] C. Record-Keeping: The Consultant shall maintain, for at least 24 months after the expiration or earlier termination of this Agreement, relevant records and information necessary to document all Consultant solicitations to subconsultants and suppliers, all subconsultant and supplier proposals received, and all subconsultants and suppliers actually utilized under this Agreement. The City shall have the right to inspect and copy such records.

[* Option No. 2]C. Record-Keeping: Consultant shall maintain, for at least 24 months after the expiration or earlier termination of this Agreement, relevant records and information necessary to document Consultant affirmative efforts to solicit to women and minority business participation, including solicitations to subconsultants and suppliers, all subconsultant and supplier proposals received, and all subconsultants and suppliers actually utilized under this Agreement. The City shall have the right to monitor the affirmative efforts of the Consultant and to inspect and copy such records of the Consultant as are necessary to ensure compliance with the requirements of this Section.

- D. Consultant shall ensure that all employees, particularly supervisors, are aware of, and adhere to their obligation to maintain a working environment free from discriminatory conduct, including but not limited to harassment and intimidation of minorities, women, or WMBE businesses.
- E. Non-Discrimination: Consultant shall not create barriers to open and fair opportunities for WMBEs to participate in any City contract and to obtain or compete for contracts and subcontracts as sources of supplies, equipment, construction and services.
- F. Sanctions for Violation: Any violation of the paragraphs A, B, C, D or E of this section, or a violation of SMC Ch. 14.04 (Fair Employment), SMC Ch. 14.10 (Fair Contracting), SMC Ch. 20.42 (Equality in Contracting), SMC Ch. 20.45 (Nondiscrimination in Benefits), or other local, state or federal non-discrimination laws shall be a material breach of contract for which the Consultant may be subject to damages and sanctions provided for by the Agreement and by applicable law. Consultants found to be in violation of the requirements may be subject to debarment from City contracting activities in accordance with SMC Ch. 20.70.

Section 11: OTHER LEGAL REQUIREMENTS

- A. **General Requirement:** The Consultant, at no expense to the City, shall comply with all applicable laws of the United States and the State of Washington; the Charter and ordinances of The City of Seattle; and rules, regulations, orders, and directives of their administrative agencies and the officers thereof. Without limiting the generality of this paragraph, the Consultant shall specifically comply with the following requirements of this section.
- B. **Licenses and Similar Authorizations:** The Consultant, at no expense to the City, shall secure and maintain in full force and effect during the term of this Agreement all required licenses, permits, and similar legal authorizations, and comply with all requirements thereof.
- C. **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 that are 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. █
- D. **Americans with Disabilities Act:** The Consultant shall comply with all applicable provisions of the Americans with Disabilities Act of 1990 as amended (ADA) in performing its obligations under this Agreement. Failure to comply with the provisions of the ADA shall be a material breach of, and grounds for the immediate termination of, this Agreement.
- E. **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 12: INDEMNIFICATION

The Consultant does hereby release and shall defend, indemnify, and hold the City and its employees and agents harmless from all losses, liabilities, claims (including claims arising under federal, state or local environmental laws), costs (including attorneys' fees), actions or damages of any sort whatsoever arising out of the Consultant's performance of the services contemplated by this Agreement to the extent attributable to the negligent acts or omissions, willful misconduct or breach of this Agreement by the Consultant, its servants, agents, and employees. In furtherance of these obligations, and only with respect to the City, its employees and agents, the Consultant waives any immunity it may have or limitation on the amount or type of damages imposed under any industrial insurance, worker's compensation, disability, employee benefit or similar laws. The Consultant acknowledges that the foregoing waiver of immunity was mutually negotiated and agrees that the indemnification provided for in this section shall survive any termination or expiration of this Agreement.

Section 13: INSURANCE

- **The insurance provisions included below are general purpose. For a particular consultant agreement, it may be necessary to increase or decrease the coverages and requirements as provided in these provisions. Departments are advised to evaluate, with the advice of Risk Management in the Department of Executive Administration, whether the types and amounts of insurance coverage indicated below are appropriate for each contract. Departments are required to confer with the Risk Management to determine the insurance requirements for consultant services that pose a medium-high to high risk to the City. For more detailed descriptions of the Risk Management process for consultant contracts, including insurance documentation requirements, please refer to Chapter 4 of the Consultant Contracting Standard Operating Procedures and/or check the Risk Management InWeb at <http://inweb/riskmanagement/docs/cklist.doc>**
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No insurance certification is required. However, Consultant agrees that it will maintain premises and vehicle liability insurance in force with coverages and limits of liability that would generally be maintained by similarly situated consultants and workers compensation insurance as may be required by Washington State statutes.

Insurance certification required. See Addendum "INSURANCE REQUIREMENTS AND TRANSMITTAL FORM."

Section 14: AUDIT

Upon request, the Consultant shall permit the City, and any other governmental agency involved in the funding of the Work ("Agency"), to inspect and audit all pertinent books and records of the Consultant, any subconsultant, or any other person or entity that performed work in connection with or related to the Work, at any and all times deemed necessary by the City or Agency, including up to six years after the final payment or release of withheld amounts has been made under this Agreement. Such inspection and audit shall occur in King County, Washington or other such reasonable location as the City or Agency selects. The Consultant shall supply the City with, or shall permit the City and/or Agency to make, a copy of any books and records and any portion thereof. The Consultant shall ensure that such inspection, audit and copying right of the City and Agency is a condition of any subcontract, agreement or other arrangement under which any other person or entity is permitted to perform work under this Agreement.

Section 15: CONTRACTUAL RELATIONSHIP

The relationship of the Consultant to the City by reason of this Agreement shall be that of an independent contractor and the Consultant agrees that neither the Consultant nor any employee of the Consultant shall be deemed to be an employee of the City for any purpose. This Agreement does not authorize the Consultant to act as the agent or legal representative of the City for any purpose whatsoever. The Consultant is not granted any express or implied right or authority to assume or create any obligation or responsibility on behalf of or in the name of the City or to bind the City in any manner or thing whatsoever.

Section 16: ASSIGNMENT AND SUBCONTRACTING

The Consultant shall not assign or subcontract any of its obligations under this Agreement without the City's written consent, which may be granted or withheld in the City's sole discretion. Any subcontract made by the Consultant shall incorporate by reference all the terms of this Agreement, except as otherwise provided. The Consultant shall ensure that all subconsultants comply with the obligations and

requirements of the subcontract. The City's consent to any assignment or subcontract shall not release the Consultant from liability under this Agreement, or from any obligation to be performed under this Agreement, whether occurring before or after such consent, assignment, or subcontract.

Section 17: INVOLVEMENT OF FORMER CITY EMPLOYEES

- A. The Consultant shall promptly notify the City in writing of any person who is expected to perform any of the Work and who, during the twelve (12) months immediately prior to the expected commencement date of such work or subcontract, was a City officer or employee.

- B. The Consultant shall ensure that no Work or matter related to the Work is performed by any person (employee, subcontractor, or otherwise) who:
 - (1) was a City officer or employee within the past twelve (12) months; and
 - (2) as such was officially involved in, participated in, or acted upon any matter related to the Work, or is otherwise prohibited from such performance by SMC 4.16.075.

Section 18: NO CONFLICT OF INTEREST

The Consultant confirms that the Consultant does not have a business interest or a close family relationship with any City officer or employee who was, 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 19: 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 with respect to any acts or omissions during the term of this Agreement shall survive any termination or expiration of this Agreement.

Section 20: INTELLECTUAL PROPERTY RIGHTS

The Consultant hereby assigns to the City all rights in any invention, improvement, or discovery, together with all related information, including but not limited to, designs, specifications, data, patent rights and findings developed in connection with the performance of the Agreement or any subcontract hereunder. Notwithstanding the above, the Consultant does not convey to the City, nor does the City obtain, any right to any document or material utilized by Consultant that was created or produced separate from this Agreement or was preexisting material (not already owned by the City), provided that the Consultant 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 Consultant grants the City an irrevocable, non-exclusive right and/or license to use, execute, reproduce, display, and transfer the preexisting material, but only as an inseparable part of the Work.

The Consultant shall retain the copyright (including the right of reuse) to all materials and documents prepared by the Consultant in connection with the Work whether or not the Work is completed. The Consultant grants to the City a non-exclusive, irrevocable, unlimited, royalty-free license to use every document and all other 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 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 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 21: CONFIDENTIALITY

The parties agree that they will not permit the duplication or disclosure of any information designated in advance by the other party as "Confidential and Proprietary" to any person (other than its own employee, agent, or representative who must have such information for the performance of that party's obligations hereunder) unless such duplication, use or disclosure is specifically authorized in writing by the other party or is required by law. "Confidential and Proprietary" information does not include ideas, concepts, know-how or techniques related to information that, at the time of disclosure, is in the public domain unless the entry of that information into the public domain is a result of any breach of this Agreement. Likewise, "Confidential and Proprietary" information does not apply to information that is independently developed, already possessed without obligation of confidentiality, or rightfully obtained from a third party without an obligation of confidentiality.

Section 22: EXTRA WORK

The City may desire to have the Consultant perform work or render services in connection with this project other than that expressly provided for in the "Scope of Work" section of this Agreement. This will be considered extra work, supplemental to this Agreement, and shall not proceed unless authorized by an amendment. Any costs incurred due to the performance of extra work prior to execution of an amendment will not be reimbursed under this Agreement or an amendment.

Section 23: KEY PERSONS

The Consultant shall not transfer or reassign any individual designated in this Agreement as essential to the Work, without the express written consent of the City, which consent shall not be unreasonably withheld. If, during the term of this Agreement, any such individual leaves the Consultant's employment, the Consultant shall present to the City one or more individual(s) with greater or equal qualifications as a replacement, subject to the City's approval, which shall not be unreasonably withheld. The City's approval shall not be construed to release the Consultant from its obligations under this Agreement.

Section 24: DISPUTES

Any dispute or misunderstanding that may arise under this Agreement concerning the Consultant's performance shall first be resolved through negotiations, if possible, between the Consultant's Project Manager and the City's Project Manager, or if necessary shall be referred to the [*insert job title of head of City department or agency] and the Consultant's senior executive(s). If such officials do not agree

upon a decision within a reasonable period of time, the parties may pursue other legal means to resolve such disputes, including but not limited to alternate dispute resolution processes.

Section 25: TERMINATION

- A. **For Cause:** The City may terminate this Agreement if the Consultant is in material breach of any of the terms of this Agreement, and such breach has not been corrected to the City's reasonable satisfaction in a timely manner.
- B. **For Reasons Beyond Control of Parties:** Either party may terminate this Agreement without recourse by the other where performance is rendered impossible or impracticable for reasons beyond such party's reasonable control such as but not limited to an act of nature; war or warlike operation; civil commotion; riot; labor dispute including strike, walkout, or lockout, except labor disputes involving the Consultant's own employees; sabotage; or superior governmental regulation or control.
- C. **For City's Convenience:** The City may terminate this Agreement at any time, without cause and for any reason including the City's convenience, upon written notice to the Consultant.
- D. **Notice:** Notice of termination pursuant to this section shall be given by the party terminating this Agreement to the other not less than five (5) business days prior to the effective date of termination.
- E. **Actions Upon Termination:** In the event of termination not the fault of the Consultant, the Consultant shall be paid for the services properly performed prior to termination, together with any reimbursable expenses then due, but in no event shall such compensation exceed the maximum compensation to be paid under the Agreement. The Consultant agrees that this payment shall fully and adequately compensate the Consultant and all subconsultants for all profits, costs, expenses, losses, liabilities, damages, taxes, and charges of any kind whatsoever (whether foreseen or unforeseen) attributable to the termination of this Agreement.

Upon termination for any reason, the Consultant shall provide the City with the most current design documents, contract documents, writings and other products it has produced to the date of termination, along with copies of all project-related correspondence and similar items. The City shall have the same rights to use these materials as if termination had not occurred; provided, however, that the City shall indemnify and hold the Consultant harmless from any claims, losses or damages to the extent caused by modifications made by the City to the Consultant's work product.

SECTION 26: Consultant Performance Evaluation Program

The Consultant's performance will be evaluated by the [***insert name of City department or agency**] at the conclusion of the contract. The City's Consultant Performance Evaluation forms are available at the following Web Site: www.seattle.gov/contract/pancc.htm

SECTION 27: DEBARMENT

In accordance with SMC Ch. 20.70, the Director of the Department of Executive Administration or his/her designee may debar a Consultant and prevent the Consultant from entering into a contract with the City or from acting as a subconsultant on any contract with the City for up to five years after determining that any of the following reasons exist:

- 1) The Consultant has received overall performance evaluations of deficient, inadequate, or substandard performance on three or more City Contracts.
- 2) The Consultant has failed to comply with City ordinances or Contract terms, including but not limited to, ordinance or Contract terms relating to small business utilization, discrimination, or equal benefits.
- 3) The Consultant has abandoned, surrendered, or failed to complete or to perform work on or in connection with a City Contract.
- 4) The Consultant has failed to comply with Contract provisions, including but not limited to quality of workmanship, timeliness of performance, and safety standards.
- 5) The Consultant has submitted false or intentionally misleading documents, reports, invoices, or other statements to the City in connection with a Contract.
- 6) The Consultant has colluded with another firm to restrain competition.
- 7) 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.
- 8) The Consultant has failed to cooperate in a City debarment investigation.
- 9) 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 his/her designee may issue an Order of Debarment in accordance with the procedures specified in SMC 20.70.050. The rights and remedies of the City under these debarment provisions are in addition to any other rights and remedies provided by law or under the Agreement.

Section 28: MISCELLANEOUS PROVISIONS

- A. **Amendments:** No modification of this Agreement shall be effective unless in writing and signed by an authorized representative of each of the parties hereto.
- B. **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. **Applicable Law/Venue:** This Agreement shall be construed and interpreted in accordance with the laws of the State of Washington. The venue of any action brought hereunder shall be in the Superior Court for King County.
- D. **Remedies Cumulative:** Rights under this Agreement are cumulative and nonexclusive of any other remedy at law or in equity.
- E. **Captions:** The titles of sections or subsections are for convenience only and do not define or limit the contents.
- F. **Severability:** If any term or provision of this Agreement is determined by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Agreement shall not be affected thereby, and each term and provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

- G. Waiver: No covenant, term or condition or the breach thereof 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 to be a waiver of any preceding or succeeding breach of the same or any other covenant, term or 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.
- H. Entire Agreement: This document, along with any exhibits and attachments, constitutes the entire agreement between the parties with respect to the Work. No verbal agreement or conversation between any officer, agent, associate or employee of the City and any officer, agency, employee or associate of the Consultant prior to the execution of this Agreement shall affect or modify any of the terms or obligations contained in this Agreement.
- I. Negotiated Agreement: The parties acknowledge that this is a negotiated agreement, that they have had the opportunity to have this Agreement reviewed by their respective legal counsel, and that the terms and conditions of this Agreement are not to be construed against any party on the basis of such party's draftsmanship thereof.

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

CONSULTANT

THE CITY OF SEATTLE

By _____
Signature Date

By _____
Signature Date

Type or Print Name

Type or Print Name

Title

Title

City of Seattle Business License Number: _____

Washington State Unified Business Identifier Number (UBI): _____

Federal Tax ID Number: _____

Attachment: Final Consultant Contract Payments Reporting form (Optional – see Section 7 above.)
Outreach Plans (if applicable)