

City of Seattle

Seattle Department of Human Resources

CONSULTANT AGREEMENT

Title: Audit Services

AGREEMENT NUMBER: _____

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

Recitals:

The purpose of this contract is to procure audit services for the Deferred Compensation Plan; and

By pursuing annual audits of the Deferred Compensation Plan, the Plan also wishes to:

- Confirm that trustees and other fiduciaries are fulfilling their duties to safeguard the Plan's assets and the participants' future retirement benefits through fiduciary monitoring procedures over plan assets and related recordkeeping.
- Ascertain the strength of third party service providers' control procedures and compliance support regarding matters of potential significance to the Plan.
- Ensure the completeness and accuracy of financial statement disclosures, and independently confirm the existence, value, and ownership of Plan's assets as of the balance sheet dates for the years ended December 31, 2017 at a minimum
- Obtain the auditor's perspective and expertise in "best practices" of plan administration and financial reporting.

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

1. SCOPE AND TERM OF AGREEMENT

Term of Agreement

The term of this Agreement begins when fully executed by all parties, and ends on 12/31/2021, unless amended by written agreement or terminated earlier under the termination provisions. The Agreement may be extended for up to two (2) on-year terms as agreed by the parties through an amendment to this Agreement.

Scope of Services

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

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

2. CHANGES

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

3. PAYMENT

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

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

4. PAYMENT PROCEDURES

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

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

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

5. ADDRESSES FOR NOTICES AND DELIVERABLE MATERIALS

Deliver all official notices under this Agreement to:

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

6. INSURANCE

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

7. AUDIT

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

8. TAXES, FEES AND LICENSES

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

9. INDEPENDENT CONTRACTOR

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

Use of City Office Space and Equipment: If the Plan determines it is in its best interests for the Consultant to Work on City premises and/or with City equipment, the Plan and City may provide such premises and equipment. Such premises and equipment are provided exclusively for the project and shall not be used for any other Consultant purpose. In such event, the Consultant remains independent and is not acting in the capacity of a Plan or City employee. The Consultant will not work on-site at City offices for more than 36 consecutive months without written authorization from the Plan Project Manager. The Consultant shall notify the Plan Project Manager if s/he or any other Workers are known to be within 90 days of a consecutive 36-month placement on City property. If the Plan determines the use of City premises or equipment is not necessary to complete the Work, the Consultant will be required to work from its own office space or in the field, as necessary. Except to the extent otherwise provided in this Agreement, the Plan reserves the right to negotiate a reduction in Consultant fees or charge a rental fee, based on the actual costs incurred, for the use of City premises or equipment.

10. ASSIGNMENT

Rights granted by this Agreement are personal in nature and may not be assigned or subcontracted without the written consent of the Plan.

11. TERMINATION

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

For Reasons Beyond Control of Parties: Either party may terminate this Agreement without recourse by the other where performance is rendered impossible or impracticable for reasons beyond such party's reasonable control, such as, but not limited to, an act of nature, war or warlike operation, civil commotion, riot, labor dispute including strike, walkout or lockout, except labor disputes involving the Consultant's own employees, sabotage, or superior governmental regulation or control.

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

12. DEBARMENT

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

13. COMPLIANCE WITH LAWS

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

14. SOCIAL EQUITY REQUIREMENTS

Non-discrimination & Equal Employment Opportunity: Consultant shall not discriminate against any employee or applicant for employment because of race, color, age, sex, marital status, sexual orientation, gender identity, political ideology, creed, religion, ancestry, national origin, honorably discharged veteran or military status or the presence of any sensory, mental or physical handicap, unless based upon a bona fide occupational qualification. The Consultant shall affirmatively try to ensure applicants are employed, and employees are treated equally during employment, without regard to race, color, age, sex, marital status, sexual orientation, gender identity, political ideology, creed, religion, ancestry, national origin, honorably discharged veteran or military status or the presence of any sensory, mental or physical handicap. Such efforts include, but are not limited to employment, upgrading, demotion, transfer, recruitment, layoff, termination, rates of pay or other compensation, and training.

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

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

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

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

Women and Minority Business: Consultant shall use all good faith efforts to promote and seek utilization of woman and minority businesses for any subcontracting within the contract scope of work. A woman or minority business is one that self-identifies to be at least 51% owned by a woman and/or minority. Such firms do not have to be certified by the State of Washington but must be registered in the City Online Business Directory.

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

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

Paid Sick Time and Safe Time Ordinance: The Consultant shall be aware that the City has a Paid Sick Time and Safe Time ordinance that requires companies to provide employees who work more than 240 hours within a year inside Seattle, with accrued paid sick and paid safe time for use when an employee or a family member needs time off from work due to illness or a critical safety issue. The ordinance applies to employers, regardless of where they are located, with more than four full-time equivalent employees. This is in addition and additive to benefits a worker receives under prevailing wages per WAC 296-127-014(4). City contract specialists may audit payroll records or interview workers as needed to ensure compliance to the ordinance. Please see <http://www.seattle.gov/laborstandards>, or you may call the Office of Labor Standards at 206-684-4500.

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

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

exclusive, non-transferable right to use such Intellectual Property solely for purposes of utilizing the Work internally in accordance with the terms of this Agreement.

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

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

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

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

16. CONSULTANT PERFORMANCE EVALUATION

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

17. MISCELLANEOUS PROVISIONS

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

Such requests include, but are not limited to:

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

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

- C. Campaign Contributions (Initiative Measure No. 122): Elected officials and candidates are prohibited from accepting or soliciting campaign contributions from anyone having at least \$250,000 in contracts with the City in the last two years or who has paid at least \$5,000 in the last 12 months to lobby the City. Please contact _____ at _____@seattle.gov for more information about the measure, or call the Ethics Director with questions at 206-615-1248.

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

By _____

Signature _____ Date _____

Type or Print Name _____

Title _____

THE CITY OF SEATTLE VOLUNTARY DEFERRED COMPENSATION PLAN AND TRUST

By _____

Signature _____ Date _____

Type or Print Name _____

Title _____

City of Seattle Business License Number: 217099

Washington State Unified Business Identifier Number (UBI): 601680467

Attachments:

DRAFT

EXHIBIT 1
SCOPE OF SERVICES
Agreement No. _____

The schedule for completion of the audit of the Plan's financial statements and position as of December 31, 2018 is as follows.

2019 Audit Schedule (regarding Plan financial statements and position as of 12/31/18) City of Seattle Voluntary Deferred Compensation Plan and Trust	
Project planning & preliminary data-gathering meeting pertaining to prior plan year	Week beginning April 15, 2019
Finalization of project timeline & delivery of a well-specified written request for documentation (e.g., spreadsheets, plan documents) with specified due dates	Week beginning April 29
Final field work in Seattle	Week beginning August 12
Interactions with investment consultant, record-keeper, City Payroll and others as needed	July 22 – August 16
Draft audited financial statement and opinion sent to the Plan	No later than November 20 (firm date)
Brief presentation of findings to Plan Committee	December 4 (firm date)
Finalization of audited financial statement and opinion	December 6

An appropriate schedule similar to the foregoing will be agreed upon by the parties for the audits to be performed with respect to the financial statements and assets of the Plan for the years ending December 31, 2019 and December 31, 2020, and any subsequent years covered by this Agreement.

The work shall at all times, be subject to the Plan's general review and approval, and the Consultant is expected to confer with the Plan periodically. If requested, the Consultant 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 Plan to determine the adequacy of the work product or the Consultant's progress.

The Plan will be able to provide a conference room for brief on-site meetings, interviews, etc. When working at the City, the Consultant will be expected to limit questioning of City staff to agreed-upon time frames (e.g., dedicated interviews and/or twice a day at specified times) to prevent unnecessary disruptions of other City workflows. However, most work is expected to take place in the Consultant's usual worksite, and no long distance travel is expected.

Overall, the Plan expects:

- Specificity in the Consultant's requests for needed information/data (e.g., copies of original documents with hire dates, birth dates, etc. as opposed to screen shots showing the data stored in the City's HRIS).
- Specificity about when responses to inquiries or data and documentation requests are needed.

- The Consultant to work directly with City Payroll, the Plan's investment consultant and record-keeper as needed, following initial authorization and introductions by Personnel. The City and Plan will not serve as a regular go-between.
- Use of emails for project communication to the maximum extent possible.

Scope of Audit Services

Consultant will audit the financial statements of the City of Seattle Voluntary Deferred Compensation Plan, which comprise the statement of net assets available for benefits as of December 31, 2018, December 31, 2019, and December 31, 2020, and the related statement of changes in net assets available for benefits for the years then ending, and the related notes to the financial statements. Each audit will generate a Consultant opinion about whether the financial statement is fairly represented, in all material aspects, in accordance with U.S. generally accepted accounting principles. The audit will include tests of the accounting records of the City's Deferred Compensation Plan and other procedures deemed necessary by the Consultant to enable the generation of an opinion.

Reporting

Consultant will issue a written report upon completion of the audit of the Plan's financial statements for each year covered by this Agreement. Each such report will be addressed to the Voluntary Deferred Compensation Plan Committee of the Plan.

Objective of the Audit

The objective of an audit is the expression of an opinion on the financial statements and supplementary information. Consultant will conduct its audits in accordance with auditing standards generally accepted in the United States of America ("U.S. GAAS"). It will include tests of the accounting records of the Plan and other procedures Consultant considers necessary to enable Consultant to express such an opinion. If Consultant's opinion is other than unmodified, Consultant will discuss the reasons with Plan management in advance.

Changes in Professional or Accounting Standards

To the extent that future federal, state, or professional rule-making activities require modification of the audit approach, procedures, scope of work, etc., Consultant will promptly advise Plan management of such changes and any proposed changes to the fee schedule.