



The City of Seattle

Request for Proposals

**Unemployment Compensation Administrator
for the City of Seattle**

RFP Release Date: August 24, 2009
Proposal Due Date: September 18, 2009

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1.0 INTRODUCTION

The City of Seattle is requesting proposals from a qualified third party administrator to administer the City's Unemployment Compensation and Cost Control Program for the period January 1, 2010 through December 31, 2014. The City employs approximately 11,000 regular and approximately 1,200 temporary employees.

Recognizing that the level of unemployment claims activity may vary greatly over time, the City of Seattle experienced the following level of activity during Fiscal Years 2006, 2007, 2008 and part of 2009. It is anticipated the City's unemployment claims activity will increase considerably in 2010 and 2011.

	2006	2007	2008	1/1/09 – 08/01/09
Separations Received	7,194	3,491	8,018	2,317
Claims Processed	1,394	1,249	1,520	1,445
Claims Protested	122	85	121	122
Appeals Filed	9	3	3	5
Hearings Attended	23	15	14	14
Total Benefit Charges	\$903,504.08	\$721,990.20	\$765,043.62	\$1,393,194.82

1.1 PURPOSE OF REQUEST FOR PROPOSAL

Through this Request for Proposal (RFP) the Personnel Department of the City of Seattle (City) is seeking to identify interested and qualified service providers for Unemployment Compensation Administration and Cost Control Program for the City. The chosen contractor will be thoroughly knowledgeable in Washington State Unemployment Compensation laws and in responding to the RFP must fulfill the defined expectations in this RFP.

1.2 SCHEDULE

The beginning date for the contract will be January 1, 2010. The duration of the contract will be through December 31, 2014 and is subject to adjustment from the information contained in the RFP. In the event the City elects to have additional work elements performed by the selected Proposer, the contract may be amended.

Task	Date
Publish Notice of RFP	August 24 & 25, 2009
Letters of Intent Due	September 4, 2009
Deadline for Questions from Proposers	September 14, 2009
Deadline for City Response to Questions	September 16, 2009
Proposals Due	September 18, 2009 by 5:00 pm
Proposer Interviews	October 1, 2009

Task	Date
Select Proposer	October 7, 2009
Finalize Contract with Proposer	November 18, 2009
Signed Contract	No later than December 12, 2009

1.3 PROJECT OVERSIGHT AND MANAGEMENT

The Director of the Personnel Department or his designee will provide both project oversight and management. In addition, the Proposer selected to serve as the Vendor will report to the Personnel Director or her designee.

1.4 OVERVIEW OF PERSONNEL DEPARTMENT

For general information about the City of Seattle visit <http://www.seattle.gov>. For information about the Personnel Department, visit our website at: <http://www.seattle.gov/Personnel/>.

2.0 PROJECT SCOPE OF WORK AND DELIVERABLES

2.1 SCOPE OF WORK

The City of Seattle will utilize the services of the contractor to provide administration and management of the Unemployment Compensation claims filed by employees and counseling to and representation of the City of Seattle at all levels of administrative hearings involving such claims.

The project scope consists of the following tasks:

- A. Processing of all unemployment claim forms; responding promptly and accurately to all claim inquiries. Receive and respond to notices of unemployment claims against the City of Seattle from the State; coordinate information with employing departments to determine claimant eligibility, monetary award and duration of each claim.
- B. Provide information on a timely basis to City Departments on claims. Provide claimant's statements to affected City Departments before decisions are made of whether to appeal a claim or not. This will need to be done via fax or e-mail and via phone in order to expedite dissemination of information.
- C. Protest of all questionable claims and improper determinations. Prepare and process all documents and written arguments to challenge invalid unemployment claims and improper charges.

- D. Counsel and represent the City at all levels of unemployment compensation administrative appeal hearings, unless otherwise notified by the City. Arrange for and advise witnesses as to hearing procedures. In addition, the Proposer chosen will need to provide representatives with experience in Washington State Law and Unemployment Insurance Claims practices and procedures.
- E. Provide claims cost and recovery reports for City Departments on a weekly, monthly, quarterly and yearly basis.
- F. Forward all appropriate correspondences and billing information for Washington State Employment Security Department in a timely manner.
- G. Maintain records of unemployment claim charges and statistics to the City by department. The proposer must be able to accept secure and encrypted data on a biweekly basis.
- H. Audit and verify all claims and benefit charges, reports filed, and billings to the City. Protest all improper charges.
- I. Ensure that all disqualifications are fully enforced.
- J. Prepare and provide to the City weekly, monthly, quarterly and yearly unemployment claim reports by department and citywide in a mutually agreed upon format.
- K. Conduct quarterly unemployment training seminars to City staff.
- L. Provide technical assistance and guidance to City staff on an as needed basis regarding specific claims issues or department efforts to manage and reduce claims experience.
- M. Work with designated representatives from the Personnel Department to insure the accurate and timely flow of statistical information between the City, the State and the contractor.
- N. Provide unemployment compensation claims procedural manuals.
- O. Implement unemployment cost control programs for reducing unemployment compensation costs. Make written and verbal recommendations to reduce unemployment compensation costs.

3.0 PROPOSAL ADMINISTRATIVE REQUIREMENTS

3.1 INTRODUCTION

This section of the RFP details the procedures that the City has established for managing and directing the RFP process. The purpose of these procedures are to ensure the City receives proposals that are the result of an open, competitive process, and to ensure that Proposers receive fair and equitable treatment in the solicitation, receipt, and review of their proposals.

The City may reject the proposal of any Proposer who fails to comply with any of the requirements of Section 3.0.

3.2 COMMUNICATIONS WITH THE CITY

All Proposer communications concerning this RFP should be directed in writing via mail, fax, or e-mail to:

Raquel Gonzalez
City of Seattle, Personnel Department
PO Box 34028
Seattle, WA 98104-4028
Telephone: (206) 684-0945
Fax: (206) 684-4157
raquel.gonzalez@seattle.gov

No other City official or employee is empowered to speak for the City with respect to this RFP Process. Proposers who seek to obtain information, clarification, or interpretation from another City official or employee is advised that such information is used at the Proposers' own risk, and the City will not be bound by any such representations. Any attempt to bypass this process may be grounds for rejection of the Proposers' proposal.

3.3 LETTER OF INTENT

Proposers who wish to receive addenda to this RFP (if any), answers to questions posed by other Proposers, and related information, must submit a Letter of Intent by Friday, September 4, 2009.

3.4 QUESTIONS

Proposers who have questions about this RFP may ask them in writing via e-mail.

All City statements, Proposer questions, and City responses will be provided in writing and sent via e:mail to all Proposers who have submitted Letters of Intent.

Questions must be received by the City by 5:00 pm (PDT) on Monday, September 14, 2009 to enable the City to respond.

3.5 ADDENDA

Changes to this RFP will be made only by formal written addendum issued by the Personnel Department. Any such addendum will be issued no later than 5:00 p.m. (PDT) on Wednesday, September 16, 2009 and will be emailed to all Proposers who have submitted a Letter of Intent.

3.6 PROPOSAL INSTRUCTIONS

A. Organization and Copies

To be considered responsive, proposals must include the information requested in Section 5, Proposal Content. To facilitate evaluation, proposals should be organized in the order outlined in Section 4.

Proposers must provide the City with one original and four (4) copies of their proposals. (Double-sided copying and recycled paper is encouraged).

B. Format

To the extent possible, proposals should be prepared on 8 1/2" x 11" paper and bound or stapled. Proposals should not exceed 20 pages. Supplemental information and examples of report formats may be attached to formal proposals as appendices.

C. Readability

Proposers are advised that the City's ability to conduct a thorough evaluation of proposals is dependent on the Proposers' ability and willingness to submit proposals, which are well ordered, detailed, comprehensive and readable. Clarity of language and adequate, accessible documentation is the Proposers' responsibility

3.7 DELIVERY OF PROPOSALS

One original and four copies of your proposal must be submitted to and received by the City of Seattle no later than **5:00 p.m., Friday, September 18, 2009**. No fax or e-mail transmissions will be accepted. All proposals become the property of the City and will be subject to the Public Disclosure Act. Proprietary information, which you wish to remain confidential, should not be included in response materials.

Required written documents as delineated herein must be received before the stated deadline. Failure to submit one or more items will be grounds to reject the proposal from the review and selection process.

Delays caused by any delivery service, including the U.S. Postal Service, will not be grounds for an extension of the proposal due date and time. Proposals received after the due date and time will be returned unopened.

Proposals shall be delivered to the following address:

Raquel Gonzalez
City of Seattle, Personnel Department
PO Box 34028
Seattle, WA 98104-4028
Telephone: (206) 684-0945
Fax: (206) 684-4157
raquel.gonzalez@seattle.gov

3.8 COST OF PROPOSAL

The City will not be liable for any costs incurred by Proposers in the preparation and presentation of proposals submitted in response to the RFP or in the participation in demonstrations.

3.9 REJECTION OF PROPOSALS

The City reserves the right to reject any or all proposals at any time with no penalty and/or waive immaterial defects and minor irregularities in proposals.

3.10 PROPOSAL DISPOSITION

All material submitted in response to this RFP, except for proprietary material, shall become the property of the City upon delivery.

4.0 PROPOSAL CONTENT

4.1 FORMAT

The proposal will be the basis for negotiating the final contract documents and therefore should be signed by an individual authorized to commit your organization to the procedures and fee schedule contained in the proposal. Total proposal should not exceed twenty pages. Supplemental information and examples of report formats may be attached to formal proposal.

4.2 PROPOSAL CONTENT

- A. Proposals should include a historical summary of the firm's experience in unemployment claims administration and cost control program and key business data about the organization. It should identify the key individuals in the firm who will work with the City to manage this account and include brief resumes. The location of the Proposer within King County and experience with Washington State Law and Unemployment Insurance Claims practice/procedures is highly valued.
- B. Proposal should outline proven practices and procedures that will be used to administer and manage unemployment compensation claims.
- C. A third party administrator has served the City since 1997 and the proposal should contain the Proposers plan to seamlessly transition claims data and other pertinent information if a different administrator is selected.
- D. The proposal should include a fee schedule enabling the negotiation of a fixed fee contract for professional services and the fee schedule for January 1, 2010 through December 31, 2014.
- E. The proposal should identify a minimum of five current, major clients, particularly other governmental entities, with contact names and telephone numbers. Indicate how long your firm has provided service to these clients and the approximate number of eligible employees in each organization.

4.3 COVER LETTER

A cover letter should be included with the proposal submittal identifying one contact person by name, address, telephone number and FAX number that will be designated as the City's customer service representative, and briefly outline how the firm will meet the needs for UCP claims administration for a large, complex, employer such as the City of Seattle.

4.4 PROJECT STAFF

The Proposer will identify and propose a project staff (including any and all subcontractors) to provide the services defined in this RFP. For each proposed staff member, please provide the following information:

- A. Identify the Account Manager who will be the primary contact with the City for the duration of the contract. Also identify the location of the Proposers office that will serve this contract.

- B. For each member of the team, describe the role that s/he will serve. Indicate those members of the team who will work closely with City staff.
- C. Please indicate the members of your project team who are sub-contractors (if any) to your organization. What is the ratio of staff to subcontractors in your proposed project team?
- D. Provide a resume for each of the key project staff members as appendices. Resumes should be no longer than three (3) pages and should contain the following information about each project member:
 - Position with the Company and work location
 - Years with the Company
 - Education
 - Work experience related to purpose of contract

5.0 PROPOSAL EVALUATION PROCESS AND CRITERIA

5.1 EVALUATION PROCESS

Written proposals will be evaluated and rated by an Evaluation Committee comprised of appropriate City staff. Proposals receiving the highest ratings will be scheduled for an interview with the Evaluation Committee. Ratings will be based on the Proposers experience providing similar services for a public employer of the size and complexity of the City of Seattle; reasonableness of proposed fee schedule and basis for periodic adjustment; ability to provide appropriate levels of staffing support and service to and coordination with City staff; ability to provide useful and user friendly management reports to City staff regarding claims, claimants, and appeals; ability to provide effective training to City human resource managers and staff supervisors; and overall presentation and general approach to providing customer service.

- A. The Evaluation Committee will also contact references to help verify the Proposers ability to perform the scope of services outlined herein.
- B. Based on the results of the evaluation of written proposals, interviews and references, the Committee will make its recommendation to the Personnel Director.
- C. Contract negotiations will commence with the selected Proposer. Proposers not selected will be notified in writing of the selection outcome.
- D. The City of Seattle reserves the right to:
 - 1. Request a consultant submitting an application to clarify its contents or to supply any additional material deemed necessary to assist in the selection process.
 - 2. Negotiate the program scope, materials and costs with the selected consultant. If a contract cannot be negotiated with the selected consultant, the City of Seattle may cease negotiations.
 - 3. Modify or alter any of the requirements herein and identify additional tasks to be accomplished prior to executing a formal contractual agreement.

4. Select the Proposer with the best project approach and ability to meet the City’s program needs regardless of cost.
5. Reject any or all applications at any time without penalty.
6. Retain all original data and working papers generated during this RFP process.

5.2 ATTACHMENTS

City of Seattle Consultant Contract Boilerplate copy (see Appendix A).

5.3 EVALUATION

For the selection of the Proposers, proposals and the presentation will be scored using the following criteria:

Item	Criteria	Maximum Points
Approach	How the company handles unemployment claims, checks and balances, cost control, assistance to employer, etc.	30 points
Proposer Qualifications	Experience with Washington State unemployment, years in service, dedicated staff qualifications, etc.	30 points
Costs	Cost of service, benefit of service, etc.	20 points
Interview and References	Interview with City of Seattle staff and What do current or past customers have to say	20 points

Appendix A

The City of Seattle Personnel Department

CONSULTANT AGREEMENT FOR

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

AGREEMENT NO. _____

[Consultant contract numbering available @ <http://personnelweb/personnel/finance/contracts.asp>]

This Agreement is made and entered into by and between The City of Seattle (“the City”), a Washington municipal corporation, through its **Personnel Department**, as represented by the **Director of Personnel**; 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 **[date when work and payment will be complete]**, 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 description in the Scope of Work must clearly show that: (1) Department neither directs the work of the Consultant nor exercises the same supervisory control over the Consultant that they do City employees. (i.e. does not conduct City employee performance evaluations, discipline, or have a City employee file for the Consultant). (2) The Consultant is not listed as an employee on a City org chart or directory and does not supervise or evaluate City employees. (3) The Scope of Work should differentiate

the Consultant's work from the scope, expertise and duties of City employees. (4) The Consultant has its own equipment and generally works off-site and its fixed, ongoing costs are not reimbursed by the City.)

If the Contract meets the Independent Contractor criteria above, verify compliance with any Union requirements before finalizing a contract agreement. Check the appropriate Collective Bargaining Agreement (CBA) for a provision that allows contracting under certain conditions (i.e. peak load, cost savings or expertise not available within the City work force). Once the department complies with the CBA provisions, the Department may contract out the work.

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 is 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.**

- A. The Consultant will be reimbursed at a rate of _____. The Total Authorized Compensation for services and expenses under this Agreement shall not exceed **[spell out the dollar amount – ex: Five Thousand Dollars and No Cents] [put the dollar amount ex. \$5,000.00]**. The parties agree that the hourly rate of _____ 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

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 the City: <Insert> Project Manager's Name
Title
Address
Phone Number
E-Mail:

If to the
Consultant: <Insert> Project Manager's Name
Title
Address
Phone Number
E-Mail:

Section 7: 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 \$260,000 (2009 dollars) 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 9, 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 the Personnel Department 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 the Personnel Department 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 8: NONDISCRIMINATION IN EMPLOYEE BENEFITS

These sections apply to all consultant contracts estimated to cost \$44,000 (2009 dollars) or more. This section should be deleted for any contract estimated to cost less than \$44,000 and the word “Reserved” typed in place of the Section title above [“Section 8: 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 actual 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 9: 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 \$260,000 (2009 dollars) 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 9, 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 10: 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 11: 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 12: 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>

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 13: AUDIT

Upon request, the Consultant shall permit the City, and any other governmental agency involved in the funding of the Work (“Agency”), to inspect and audit all pertinent books and records 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 14: CONTRACTUAL RELATIONSHIP

The relationship of the Consultant to the City by reason of this Agreement shall be that of an independent contractor as defined by the City’s Contracting Out Policy. This Agreement is not intended for the Consultant to act in anyway, in the capacity of a City employee. The parties agree that the City has neither direct nor immediate control over the Consultant or the right to control the manner or means by which the Consultant performs the work. 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 15: 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 16: 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 17: 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 18: 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 19: 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 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 20: 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 21: 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 22: 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 23: 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 Personnel Director 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 24: 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 25: CONSULTANT PERFORMANCE EVALUATION PROGRAM

The Consultant's performance will be evaluated by the Personnel Department at the conclusion of the contract.

Section 26: 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 27: 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.
- J. Rent: **[*Refer to section 7.3.4 in the Standard Operating Procedures to calculate the monthly rent]** The City may provide cubicle workspace to the Consultant at the Seattle Municipal Tower or other City offices for the term of this Agreement. The City will charge an appropriate rental fee for use of this space. The rental fee includes Consultant access to the workspaces at times mutually agreed to by the parties. The Consultant shall use these workspaces exclusively for the project and shall not be used for any other business purpose. Each workspace will include a City computer with appropriate software and licenses, a City telephone and use of office equipment, such as copy and/or fax machines. The cost of the workspace shall be reflected as a deduction from the Consultant's fee. There shall be no adjustment or proration of the rental price if the Consultant fails to use any part of the workstations during the project schedule.

