Attachment #3

City of Seattle
CONTRACT

Terms and Conditions

1. **Entire Agreement:** This Contract (hereafter referred to as Contract), including all attachments, amendments and subsequently issued change notices, comprises the entire agreement between the City of Seattle (Seattle) and the Contractor. The City's Purchase Order, the Vendor Offer including all attachments, the Addendum to the Bid, the ITB specifications, the ITB instructions and ITB Attachments, are explicitly included in this Contract. Where there are conflicts between these documents, the controlling document will be in that same sequence, with the first taking priority over the last listed.

2. **Term**: Except as specified otherwise in the specifications, the term of this Contract shall commence on the date the City's Buyer signs the same and shall expire sixty (60) days after delivery and acceptance of last item.

3. **Schedule**: Unless the City's Buyer requests a change in schedule, the Contractor shall deliver the items or render the services by the "Last Item Due Date" stated on the Contract signature page At the City's option, Contractor's failure to timely deliver or perform may require expedited shipping at Contractor's expense, or may be cause for termination of the Contract and the return of all or part of the items at Contractor's expense. If Contractor anticipates difficulty in meeting the schedule, the Contractor shall promptly notify the City's Buyer of such difficulty and the length of the anticipated delay.

4. **Scope of Work**: Contractor shall provide the products and/or services specified within this Contract.

5. **Payment**: Seattle agrees to compensate as specified herein or attached, in consideration of acceptable Contractor performance. Payment shall only be made for services performed and/or product delivered, after receipt, review and authorization by the City. Such payment shall be paid according to early payment discount terms, or if no early payment discount is offered, thirty (30) days after the City's receipt and acceptance of the goods or completion and acceptance of the services. Payment periods will be computed from either the date of delivery an acceptance of all goods ordered, the acceptance by the City of completion of all services, or the date of receipt of a correct invoice, whichever date is later. This section is not intended to restrict partial payments that are specified in the contract. All dollars referenced in this Contract and attachments are US Dollars.

6. **Invoices**: Invoices must show a breakdown of services or products provided and price for each. **Invoices must specify the Name and Phone Number of the City employee that placed the order.**

7. **Taxes, Fees and Licenses.**

   Taxes: Where required by state statute, ordinance or regulation, Contractor shall pay for and maintain in current status all taxes that are necessary for contract performance. Unless otherwise indicated, Seattle agrees to pay State of Washington sales or use taxes on all applicable consumer services and materials purchased. No charge by the Contractor shall be made for federal excise taxes and Seattle agrees to furnish Contractor with an exemption certificate where appropriate.

   Fees and Licenses: Contractor shall pay for and maintain in a current status, any license fees, assessments, permit charges, etc., which are necessary for contract performance. It is the Contractor's sole responsibility to monitor and determine any changes or the enactment of any subsequent requirements for said fees, assessments, or charges and to immediately comply with said changes during the entire term of this Contract. Contractor must pay all custom duties, brokerage or import fees where applicable as part of the contract price. Contractor shall take all necessary actions to ensure that materials or equipment purchased are expedited through customs.

   Supplier is to calculate and enter the appropriate Washington State and local sales tax on the invoice. Tax is to be computed on new items after deduction of any trade-in, in accordance with WAC 458-20-247.

8. **Pricing.** Any adjustments in pricing shall be consistent to the solicitation specifications. If none, the following section shall apply: Pricing shall be fixed and firm throughout the original contract term or for two years, whichever date is earliest. At that time, the Contractor may submit a written request for a price increase. The written request is to be at least 45-days in advance. Thereafter, written request for price increases shall only be considered upon the contract anniversary date (at least 45-days prior to the contract

anniversary date). Such requests shall consider the following:

- Price request shall be no greater than the total of changes to the CPI Index for King County or other pricing index appropriate to the particular product herein;
- Not produce a higher profit margin than that on the original contract;
- Clearly identify the items impacted by the increase;
- Be accompanied by documentation acceptable to the Buyer sufficient to warrant the increase;
- And remain firm for a minimum of 365 days.

The request shall be considered by the Buyer and may be accepted or rejected. Failure to submit a price request at least 45-days prior to the contract anniversary date, shall result in a continuation of all existing pricing on the contract until the next contract anniversary date. The decision to accept any price increase will be at the sole discretion of the Buyer.

The Buyer may exempt these requirements for extraordinary conditions that could not have been known by either party at the time of bid or for other circumstances beyond the control of both parties, in the opinion of the Buyer.

For solicitations that include and provide instructions for annual Prevailing Wage adjustments, pricing adjustments shall additionally be consistent with such instructions.

Cost Reductions: During the term of this Contract, any price decrease the Contractor receives from its suppliers shall be reflected in a reduction of the prices in this Contract and effective as of the date of the supplier's decrease. In the event during the term of this Contract, the Contractor enters into lower pricing agreements with a customer with similar usage quantities, the Contractor shall promptly notify the City and offer such lower pricing to the City. Seattle will not be bound by prices contained in an invoice that are higher than those in the contract. Unless the higher price has been accepted by the City and the contract amended, the invoice may be rejected and returned to the Contractor for corrections.

9. **Travel and Direct Charges:** If this work encompasses travel that has been approved by the City within the Contract specifications, the following shall apply. All such expenses must be pre-approved in writing by the Project Manager.

- City will reimburse the Contractor at actual cost for expenditures that are pre-approved by the City in writing and are necessary and directly applicable to the work required by this Contract provided that similar direct project costs related to the contracts of other clients are consistently accounted for in a like manner. Such direct project costs may not be charged as part of overhead expenses. Direct charges may include, but are not limited to the following items: travel, printing, long distance telephone, supplies, computer charges, and fees of subconsultants or subcontractors.

- The billing for direct expenses specifically identifiable with this project shall be an itemized listing of the charges supported by copies of the original bills, invoices, expense accounts, subconsultant/subcontractor paid invoices, and other supporting documents used by the Contractor to generate invoice(s) to the City. The original supporting documents shall be available to the City for inspection upon request. All charges must be necessary for the services provided under this Contract.

- The City will reimburse the actual cost for travel expenses incurred as evidenced by copies of receipts supporting such travel expenses, and in accordance with the City of Seattle Travel Policy, details of which can be provided upon request.

- **Airfare**: Airfare will be reimbursed at the actual cost of the airline ticket. The City will reimburse for Economy or Coach fare only. Receipts detailing each airfare are required.

- **Meals:** Meals will be reimbursed at the Federal Per Diem daily rate for the city in which the work is performed and do not require receipts or additional documentation. The City will not reimburse for alcohol at any time.

- **Lodging:** Lodging will be reimbursed at actual cost incurred up to a maximum of the published Runzheimer Cost Index for the city in which the work was performed. Receipts detailing each day / night lodging are required. The City will reimburse at the single occupancy rate. As an alternative, lodging billed at the published Federal Per Diem daily rate for the city in which the work is performed does not require receipts or additional documentation. In this case, the invoice needs to state that "the lodging is being billed at the Federal Per Diem daily rate."

- **Vehicle mileage**: Vehicle mileage will be reimbursed at the Federal Internal Revenue Service Standard Business Mileage Rate in affect at the time the mileage expense is incurred (currently that rate is 48.5 cents per mile.)

- **Rental Car:** Rental car expenses will be reimbursed at the actual cost of the rental. Rental car receipts are required for all rental car expenses (the City will only pay for the rental of "Compact" vehicles unless three or more persons are sharing one vehicle in which case a "Mid-sized" vehicle rental is acceptable).

- **Miscellaneous Travel** (e.g. parking, gas, taxi, shuttle, tolls, ferry fees, etc.): Miscellaneous travel expenses will be reimbursed at the actual cost incurred. Receipts are required for each expense of $10.00 or more.

- **Miscellaneous other business expenses** (e.g. printing, photo development, binding): Other miscellaneous business expenses will be reimbursed at the actual cost incurred. Receipts are required for all miscellaneous expenses that are billed.

- **Subcontractor**: Subcontractor expenses will be reimbursed at the actual cost incurred. Copies of all subcontractor invoices that are rebilled to the City are required.

10. **Delivery.** Except when instructed otherwise, Delivery must be made during normal work hours and within timeframes proposed by Contractor herein and as accepted by Seattle. Failure to comply may subject Contractor to non-delivery assessment charges and/or damages as appropriate. Seattle reserves the right to refuse shipment when delivered before or after normal working hours. Contractor shall verify specific working hours of offices and so instruct carrier(s) to deliver accordingly. The acceptance by Seattle of late performance without objection or reservation shall not waive the right of Seattle to claim damages for such breach, nor preclude Seattle from pursuing any other remedy provided herein, including termination, nor constitute a waiver of the requirements for the timely performance of any obligation remaining to be performed by Contractor. All deliveries are to be made to the applicable delivery location in accordance with Interstate Commerce Commission rules or as indicated in Purchase Order. When applicable, Contractor shall take necessary actions to safeguard items during inclement weather.

11. **Identification.** All invoices, packing slips, packages, instruction manuals, correspondence, shipping notices, shipping containers, and other written documents affecting this contract shall be identified by the applicable purchase order number. Packing lists shall be enclosed with each shipment, indicating the contents therein.

12. **Charges for handling.** No charges will be allowed for handling that includes but is not limited to packing, wrapping, bags, containers, or reels, unless otherwise stated herein.

13. **Contract Notices, Deliverable Materials and Invoices Delivery.** Official Contract notices shall be delivered to the following addresses (or such other address (es) as either party may designate in writing):

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

"buyers name"
City of Seattle Purchasing and Contracting Services
PO Box 94687
Seattle, WA 98124-4687

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

"buyers name"
City of Seattle Purchasing and Contracting Services
Seattle Municipal Tower
700 5th Ave., #4112
Seattle, WA 98104-5042

Phone:
Fax:
E-Mail:

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

City of Seattle

Attention:

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

15. **Warranties:**
Product: Contractor warrants that all materials, equipment, and/or services provided under this Contract shall be fit for the purpose(s) for which intended, for merchantability, and shall conform to the requirements and specifications herein. Acceptance of any service and inspection incidental thereto by Seattle shall not alter or affect the obligations of the Contractor or the rights of Seattle.

Price: Contractor warrants that prices of materials, equipment, and services set forth herein do not exceed those charged by the Contractor to any other customer purchasing the same goods or services under similar conditions and in like or similar quantities.

16. **Independent Contractor.** It is the intention and understanding of the Parties that Contractor shall be an independent contractor and that Seattle shall be neither liable for nor obligated to pay sick leave, vacation pay or any other benefit of employment, nor to pay any social security or other tax that may arise as an incident of employment. The Contractor shall pay all income and other taxes as due. Industrial or other insurance that is purchased for the benefit of the Contractor shall not be deemed to convert this Contract to an employment contract. It is recognized that Contractor may or will be performing work during the term for other parties and that Seattle is not the exclusive user of the services that Contractor provides.

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

18. **Title, Risk of Loss, Freight, Overages or Underages.** Title of goods received under this contract shall remain with the Contractor until they are delivered to the address specified, at which time title passes to Seattle. Regardless of FOB point, Contractor agrees to bear all risks of loss, injury, or destruction of goods and materials ordered herein which occur prior to delivery and acceptance. Such loss, injury, or destruction shall not release Contractor from any obligations under. Prices include freight prepaid and allowed. Contractor assumes the risk of every increase, and receives the benefit of every decrease, in delivery rates and charges. Shipments shall correspond with the Contract; any unauthorized advance or excess shipment is returnable at Contractor's expense.

19. **Performance**. Acceptance by Seattle of unsatisfactory performance with or without objection or reservation shall not waive the right to claim damage for breach, or terminate the contract, nor constitute a waiver of requirements for satisfactory performance of any obligation remaining to be performed by Contractor.

20. **Affirmative Efforts for Utilization of Women and Minority Subcontracting and Employment, Non discrimination in providing services**

Employment Actions: Contractor shall not discriminate against any employee or applicant for employment because of race, religion, creed, age, color, sex, marital status, sexual orientation, gender identity, political ideology, ancestry, national origin, or the presence of any sensory, mental or physical handicap, unless based upon a bona fide occupational qualification. Contractor shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their creed, religion, race, age, color, sex, national origin, marital status, political ideology, ancestry, sexual orientation, gender identity, or the presence of any sensory, mental or physical handicap. Such action shall include, but not be limited to the following: employment, upgrading, promotion, demotion, or transfer; recruitment or recruitment advertising, layoff or termination, rates of pay, or other forms of compensation and selection for training, including apprenticeship. The Contractor shall post in conspicuous places, available to employees and applicants for employment, notices as provided by the City setting forth the provisions of this nondiscrimination clause.

Recordkeeping for Employment Actions: The Contractor shall furnish to the Director of Executive Administration (or his/her designee), upon request and on such form as may be provided therefore, a report of the affirmative action taken by the Contractor in implementing the requirements of affirmative efforts in employment actions, and will permit access to the Contractor's records of employment, employment advertisements, application forms, other pertinent data and records requested by the Director of Executive Administration for the purposes of investigation to determine compliance with the requirements of affirmative efforts in employment

actions.

Affirmative Efforts in Subcontracting: The Contractor shall utilize affirmative efforts to promote and encourage participation by women-owned and minority-owned businesses on subcontracting opportunities within the Vendor Contract scope of work. Contractor agrees to such efforts as a condition of this Vendor Contract. Affirmative efforts shall include those included in the Contractor's bid.

Record-Keeping for Subcontracts: The Contractor shall maintain, for at least 12 months after expiration or earlier termination of the term of this Vendor Contract, relevant records and information necessary to document the Contractor's affirmative efforts to achieve women and minority business participation, including solutions to subcontractors and suppliers, all subcontractor and supplier proposals received, and all subcontractors or suppliers utilized under this Vendor Contract. The City shall have the right to inspect and copy such records. Additionally, the Contractor shall furnish to the Director of Executive Administration (or his/her designee), upon request and on such form as may be provided therefore, a report of the affirmative action taken by the Contractor in implementing the requirements of affirmative efforts in subcontracting for the purposes of investigation to determine compliance with the requirements affirmative efforts in subcontracting.

Non-Discrimination in Providing Services: The Contractor shall not create barriers to open and fair opportunities for women-owned and minority-owned businesses to participate in any City contract and to obtain or compete for contracts and subcontracts as sources of supplies, materials, equipment, and services. The Contractor shall ensure that all of its employees, particularly supervisors, are aware of and adhere to their obligations to maintain a working environment free from discriminatory conduct, including but not limited to harassment and intimidate of minorities, women, and women-owned and minority-owned businesses.

Investigation: If upon investigation, the Director of Executive Administration finds probable cause to believe that the Contractor has failed to comply with any of the requirements of this Section, the Contractor shall be so notified in writing. The Director of Executive Administration shall give the Contractor an opportunity to be heard, after ten calendar days' notice. If, after the Contractor's opportunity to be heard, the Director of Executive Administration still finds probable cause, he/she may suspend the Contract and/or withhold any funds due or to become due to the Contractor, pending compliance by the Contractor with the requirements of this Section.

Sanctions for Violation: Any violation of the mandatory requirements of this Section, or a violation of Seattle Municipal Code Chapter 14.04 (Fair Employment Practices), Chapter 14.10 (Fair Contracting Practices), Chapter 20.45 (City Contracts – Non-Discrimination in Benefits), or other local, state, or federal non-discrimination laws, shall be a material of contract for which the Contractor may be subject to damages and sanctions provided for by the Vendor Contract and by applicable law. In the event the Contractor is in violation of this Section shall be subject to debarment from City contracting activities in accordance with Seattle Municipal Code Section 20.70 (Debarment).

21. Equal Benefits.

A. Compliance with SMC Ch. 20.45: The Contractor shall comply with the requirements of SMC Ch. 20.45 and Equal Benefits Program Rules implementing such requirements, under which the Contractor is obligated to provide the same or equivalent benefits ("equal benefits") to its employees with domestic partners as the Contractor provides to its employees with spouses. At Seattle's request, the Contractor shall provide complete information and verification of the Contractor'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/.)

B. Remedies for Violations of SMC Ch. 20.45: Any violation of this section shall be a material breach of Contract for which the City may:
   a. Require the Contractor to pay actual damages for each day that the Contractor is in violation of SMC Ch. 20.45 during the term of the Contract; or
   b. Terminate the Contract; or
   c. Disqualify the Contractor from bidding on or being awarded a City contract for a period of up to five (5) years; or
   d. Impose such other remedies as specifically provided for in SMC Ch. 20.45 and the Equal Benefits Program Rules promulgated there under.

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

23. **Proprietary and Confidential Information:**

Contractor's Understanding and Obligations:

1. Contractor understands that any records (including but not limited to bid or proposal submittals, the Agreement, and any other contract materials) it submits to the City, or that are used by the City even if the Contractor possesses the records, are public records under Washington State law, RCW Chapter 42.17. Public records must be promptly disclosed upon request unless a statute exempts them from disclosure. The Contractor also understands that even if part of a record is exempt from disclosure, the rest of that record generally must be disclosed.

2. Contractor must separate and clearly mark as "proprietary" all records related to this Agreement or the performance of this Agreement that the Contractor believes are exempt from disclosure. The Contractor is familiar with potentially-applicable public-disclosure exemptions and the limits of those exemptions, and will mark as "proprietary" only information that the Contractor believes legitimately fits within an exemption and will state the statutory exception upon which it is relying.

3. If Seattle notifies the Contractor under Paragraph B 2 of a public disclosure request, and the Contractor believes records are exempt from disclosure, it is the Contractor's responsibility to make determination and pursue a lawsuit under RCW 42.17.330 to enjoin disclosure. The Contractor must obtain the injunction and serve it on the City before the close of business on the tenth business day after the City sent notification to the Contractor. It is the Contractor's discretionary decision whether to file the lawsuit.

4. If the Contractor does not timely obtain and serve an injunction, the Contractor is deemed to have authorized releasing the record.

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

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

The City's Obligations

1. The City will disclose those parts of records the Contractor has marked as "proprietary" information to authorized persons unless: (a) the City discloses the records in response to a public disclosure request or (b) the Contractor has given the City express advance written permission to disclose the records. "Authorized persons" means those City officers, employees, contractors and consultants for whom the proprietary information is necessary to perform their duties or obligations to the City. The term "proprietary information" does not include ideas, concepts, know-how or techniques related to any 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 a breach of this Agreement.

2. If the City receives a public disclosure request for records that the Contractor has marked as "proprietary" information, the City may promptly notify the Contractor of the request. The City may postpone disclosing these records for ten business days after it has sent notification to the Contractor, in order to allow the Contractor to file a lawsuit under RCW 42.17.330 to enjoin disclosure. It is the Contractor's discretionary decision whether to file the lawsuit.

3. If the City has notified the Contractor of a public disclosure request, and the Contractor has not obtained an injunction and served the City with that injunction by the close of business on the tenth business day after the City sent notice, the City will then disclose the record.

4. The City has no other obligations concerning records the Contractor has marked as "proprietary information" under this Agreement. The City has no obligation to claim any exemption from disclosure. The City is not obligated or liable to the Contractor for any records that the City releases in compliance with this Section or in compliance with the order of a court of

competent jurisdiction.

24. **Indemnification**: To the extent permitted by law, the Contractor shall protect, defend, indemnify and hold the City harmless from and against all claims, demands, damages, costs, actions and causes of actions, liabilities, judgments, expenses and attorney fees, resulting from the injury or death of any person or the damage to or destruction of property, or the infringement of any patent, copyright, trademark or trade secret, arising out of the work performed or goods provided under this Contract, or the Contractor's violation of any law, ordinance or regulation, except for damages resulting from the sole negligence of the City. As to the City of Seattle, the Contractor waives any immunity it may have under RCW Title 51 or any other Worker's Compensation statute. The parties acknowledge that this waiver has been negotiated by them, and that the contract price reflects this negotiation.

25. **Insurance**: Should the City not provide any insurance requirements to the contrary within the solicitation and/or attached, the following requirements shall be in effect. Contractor shall maintain at its own expense at all times during the term of this Contract the following insurance with limits of liability consistent with those generally carried by similarly situated enterprise:

    (1) **Commercial General Liability** insurance, including premises/operations, products/completed operations, personal/advertising injury, contractual liability, fire legal/tenant liability, stop gap/employer's liability and independent contractors liability; (2) if any vehicle, watercraft or aircraft is used in the performance of this Purchase Order/Vendor Contract, of a minimum of $1,000,000 per occurrence;

    (2) **Automobile Liability, Watercraft Liability** and/or **Aircraft Liability** insurance, including coverage for owned, non-owned, leased or hired vehicles, watercraft and aircraft, as appropriate of a minimum of $500,000 per occurrence; and

    (3) **Worker's Compensation** ("Industrial Insurance") as required by Title 51 of the Revised Code of Washington.

    (4) The insurance as provided under items (1) and (2) above shall include by endorsement the City of Seattle as an additional insured (as respects item (1), per ISO form CG 20 10 or CG 20 26 or equivalent additional insured endorsement wording, or equivalent blanket additional insured policy wording) and such additional insured status for the City shall apply as respects the full limits of all valid and collectible Automobile Liability, Watercraft Liability and/or Aircraft Liability insurance, whether primary, excess, contingent, or otherwise; shall be primary insurance as respects the City, and any other insurance or self-insurance maintained by the City shall be excess and non-contributory with the Contractor's insurance; and, shall be placed with insurers with not less than an A- VII A.M. Best's rating unless insurance has been procured under the provisions of chapter 48.15 RCW (Unauthorized "Surplus Lines" Insurers). It is specifically agreed that the insurance requirements in this section 2.18 shall override any limitation of liability or similar provision in any agreement or statement of work between the City and the Contractor and that no Contractor's insurer shall assert the right to invoke any such limitation.

    (5) Contractor shall not be required to provide evidence of insurance, unless required to do so under the solicitation or as otherwise required by the City Buyer, and should additional insurance requirements (including but not limited to higher limits of liability) be specified in the solicitation or otherwise are attached, those requirements shall apply.

26. **Audit.** Upon request, Contractor shall permit Seattle, and any other governmental agency involved in the funding of the Work ("Agency"), to inspect and audit all pertinent books and records of Contractor, any subcontractor, 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 Seattle or Agency, including up to six years after the final payment or release of withheld amounts has been made under this Contract. Such inspection and audit shall occur in King County, Washington or other such reasonable location as Seattle or Agency selects. The Contractor shall supply Seattle with, or shall permit Seattle to make, a copy of any books and records and any portion thereof. The Contractor shall ensure that such inspection, audit and copying right of Seattle 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 Contract.

27. **Contractual Relationship.** The relationship of Contractor to Seattle by reason of this Contract shall be that of an independent contractor. This Contract does not authorize Contractor to act as the agent or legal representative of Seattle for any purpose whatsoever. Contractor 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 Seattle or to bind Seattle in any manner or thing whatsoever.

28. **Supervision and Coordination**. Contractor shall:
    - Competently and efficiently, supervise and direct the implementation and completion of all contract requirements specified

herein.

- Designate in its bid or proposal to Seattle, a representative(s) with the authority to legally commit Contractor's firm. All communications given or received from the Contractor's representative shall be binding on the Contractor.
- Promote and offer to Purchasers only those materials, equipment and/or services as stated herein and allowed for by contractual requirements. Violation of this condition will be grounds for contract termination.

29. **Compliance with Law**:

    General Requirement: The Contractor, at its sole cost and expense, shall perform and comply with all applicable laws of the United States and the State of Washington; the Charter, Municipal Code, and ordinances of The City of Seattle; and rules, regulations, orders, and directives of their respective administrative agencies and officers.

    Licenses and Similar Authorizations: The Contractor, at no expense to the City, shall secure and maintain in full force and effect during the term of this Contract all required licenses, permits, and similar legal authorizations, and comply with all related requirements.

    Taxes: The Contractor shall pay, before delinquency, all taxes, import duties, levies, and assessments arising from its activities and undertakings under this Contract; taxes levied on its property, equipment and improvements; and taxes on the Contractor's interest in this Contract.

30. **Americans with Disabilities Act:** The Contractor shall comply with all applicable provisions of the Americans with Disabilities Act of 1990 (ADA) in performing its obligations under this Contract. In particular, if the Contractor is providing services, programs, or activities to City employees or members of the public as part of this Contract, the Contractor shall not deny participation or the benefits of such services, programs, or activities to people with disabilities on the basis of such disability. Failure to comply with the provisions of the ADA shall be a material breach of, and grounds for the immediate termination of, this Contract.

31. **OSHA/WISHA.** Contractor agrees to comply with conditions of the Federal Occupational Safety and Health Acts of 1970 (OSHA), as may be amended, and, if it has a workplace within the State of Washington, the Washington Industrial Safety and Health Act of 1973 (WISHA), as may be amended, and the standards and regulations issued thereunder and certifies that all items furnished and purchased under this order will conform to and comply with said standards and regulations. Contractor further agrees to indemnify and hold harmless purchaser from all damages assessed against purchaser as a result of Contractor's failure to comply with the acts and standards thereunder and for the failure of the items furnished under this order to so comply.

32. **Adjustments**: The City's Buyer at any time may make reasonable changes in the place of delivery, installation or inspection; the method of shipment or packing; labeling and identification; and ancillary matters that Contractor may accommodate without substantial additional expense to the City.

33. **Amendments**: Except for adjustments authorized above, modifications or amendments to the Contract may only be made by a change order or by written document issued by the City Buyer. The City Buyer may issue an Amendment to expand this contract to include related items normally offered by the vendor, or for other contract changes required by the City.

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

35. **Involvement of Former City Employees:** Contractor shall promptly notify Seattle 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. Contractor shall ensure that no Work or matter related to the Work is performed by any person (employee, subcontractor, or otherwise) who was a City officer or employee within the past twelve (12) months; and 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.

36. **Anti-Trust:** Seattle maintains that, in actual practice, overcharges resulting from antitrust violations are borne by the purchaser. Therefore the Contractor hereby assigns to Seattle any and all claims for such overcharges except overcharges which result from antitrust violations commencing after the price is established under this contract and which are not passed on to Seattle under an escalation clause.

37. **No Conflict of Interest:** Contractor confirms that Contractor does not have a business interest or a close family relationship with any City officer or employee who was, is, or will be involved in the Contractor selection, negotiation, drafting, signing, administration, or evaluating the Contractor's performance.

38. **Gratuities:** Contractor shall not directly or indirectly give, pay, deliver, or perform, or agree to arrange to give, pay, deliver or perform, any gratuity, gift, bonus, donation or discount of any kind, in the form of goods, services, or any other thing of value for any purpose, at any time, to any person employed by the City that is intended, or that reasonably may be seen to be intended, to benefit the Contractor by way of award, administration, or in any other way to influence the contract or any future contract. Any violation of this provision may result in termination of this Contract. Nothing in this Contract prohibits donations to campaigns for election to City office, so long as the donation is disclosed as required by the election campaign disclosure laws of the City and of the State.

39. **Intellectual Property Rights.**
Patents: Contractor hereby assigns to Seattle 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 Contract or any subcontract hereunder. Notwithstanding the above, the Contractor does not convey to Seattle, nor does Seattle obtain, any right to any document or material utilized by Contractor that was created or produced separate from this Contract or was preexisting material (not already owned by Seattle), provided that the Contractor 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 Contractor grants Seattle an irrevocable, non-exclusive, fully paid, royalty-free right and/or license to use, execute, reproduce, display, and transfer the preexisting material, but only as an inseparable part of the Work.

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

Seattle may make and retain copies of such documents for its information and reference in connection with their use on the project. The Contractor does not represent or warrant that such documents are suitable for reuse by Seattle, or others, on extensions of the project, or on any other project. Contractor represents and warrants that it has all necessary legal authority to make the assignments and grant the licenses required by this Section.

40. **No personal liability**: No officer, agent or authorized employee of the City shall be personally responsible for any liability arising under this Contract, whether expressed or implied, nor for any statement or representation made herein or in any connection with this Contract.

41. **Binding Effect**: The provisions, covenants and conditions in this Contract apply to bind the parties, their legal heirs, representatives, successors, and assigns.

42. **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 Seattle of any performance by the Contractor after the time the same shall have become due nor payment to the Contractor for any portion of the Work shall constitute a waiver by Seattle of the breach or default of any covenant, term or condition unless otherwise this is expressly agreed to by Seattle, in writing. The City's failure to insist on performance of any of the terms or conditions herein or to exercise any right or privilege or the City's waiver of any breach hereunder shall not thereafter waive any other term, condition, or privilege, whether of the same or similar type.

43. **Anti-Trust**: Seattle maintains that, in actual practice, overcharges resulting from antitrust violations are borne by the purchaser. Therefore the Contractor hereby assigns to Seattle any and all claims for such overcharges except overcharges which result from antitrust violations commencing after the price is established under this contract and which are not passed on to Seattle under an escalation clause.

44. **Applicable Law:** This Contract shall be construed under the laws of the State of Washington. The venue for any action relating to this Contract shall be in the Superior Court for King County, State of Washington.

45. **Remedies Cumulative:** Remedies under this Contract are cumulative; the use of one remedy shall not be taken to exclude or waive the right to use another.

46. **Captions:** The titles of sections, or subsections, are for convenience only and do not define or limit the contents.

47. **Severability:** Any invalidity, in whole or in part, of any provision of this Contract shall not affect the validity of any other of its provisions.

48. **Disputes:** Any dispute or misunderstanding that may arise under this Contract concerning Contractor's performance shall first be resolved, if mutually agreed to be appropriate, through negotiations between the Contractor's Project Manager and Seattle's Project Manager, or if mutually agreed, referred to the City's named representative and the Contractor's senior executive(s). Either party may decline or discontinue such discussions and may then pursue other means to resolve such disputes, or may by mutual agreement pursue other dispute alternatives such as alternate dispute resolution processes. Nothing in this dispute process shall in any way mitigate the rights, if any, of either party to terminate the contract in accordance with the termination provisions herein.

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

49. **Termination:**

    For Cause: Seattle may terminate this Contract if the Contractor is in material breach of any terms of this Contract, and such breach has not been corrected to Seattle's reasonable satisfaction in a timely manner.

    For City's Convenience: Seattle may terminate this Contract in whole or in part, without cause and for any reason including Seattle's convenience, upon written notice to the Contractor.

    Nonappropriation of Funds: Seattle may terminate this Contract at any time without notice due to nonappropriation of funds, whether such funds are local, state or federal grants, and no such notice shall be required notwithstanding any notice requirements that may be agreed upon for other causes of termination.

    Acts of Insolvency: Seattle may terminate this Contract by written notice to Contractor if the Contractor becomes insolvent, makes a general assignment for the benefit of creditors, suffers or permits the appointment of a receiver for its business or assets, becomes subject to any proceeding under any bankruptcy or insolvency law whether domestic or foreign, or is wound up or liquidated, voluntarily or otherwise.

    Termination for Gratuities: Seattle may terminate this Contract by written notice to Contractor if Seattle finds that any gratuity in the form of entertainment, a gift, or otherwise, was offered to or given by the Contractor or any agent therefor to any City official, officer or employee.

    Notice: Seattle is not required to provide advance notice of termination. Notwithstanding, the Buyer may issue a termination notice with an effective date later than the termination notice itself. In such case, the Contractor shall continue to provide products and services as required by the Buyer until the effective date provided in the termination notice.

    Actions upon Termination: In the event of termination not the fault of the Contractor, the Contractor 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 Contract. The Contractor agrees that this payment shall fully and adequately compensate the Contractor and all subcontractors for all profits, costs, expenses, losses, liabilities, damages, taxes, and charges of any kind whatsoever (whether foreseen or unforeseen) attributable to the termination of this Contract. Upon termination for any reason, the Contractor shall provide Seattle with the most current design documents, contract documents, writings and other product it has completed to the date of termination, along with copies of all project-related correspondence and similar items. Seattle shall have the same rights to use these materials as if termination had not occurred.

50. **Force Majeure – Suspension and Termination.**
In the event that either party is unable to perform any of its material obligations under this Agreement because of a natural disaster or action or decree of a superior governmental body (hereinafter referred to as a "Force Majeure Event" or "Event"), the party that has been so affected immediately shall give notice to the other party and shall do everything possible to resume performance.

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

51. **Major Emergencies or Disasters:** The following provision shall be in effect only during major emergencies or disasters when the City has activated its Emergency Operations Center and the Contractor has been given notice by the City that such activation has occurred. The City is committed to preparing thoroughly for any major emergency or disaster situation. As part of its commitment, the City is contracting with the Contractor under the following terms and conditions: Contractor shall provide to the City, upon the City's request, such goods and/or services at such time as the City determines. In the event the Contractor is unable to meet the delivery date commitment due to circumstances beyond the reasonable control of the Contractor, the Contractor shall make such delivery as soon as practicable. If the Contractor is prevented from making such delivery to the requested delivery location due to circumstances beyond its reasonable control, the Contractor shall immediately assist the City in whatever manner is reasonable to gain access to such goods and/or services. In the event that the Contractor is unable to provide such goods and/or services as requested by the City, the Contractor may offer to the City limited substitutions for its consideration and shall provide such substitutions to the City as required above, provided the Contractor has obtained prior approval from the City for such substitution. The Contractor shall charge the City the price determined in this Contract for the goods and services provided, and if no price has been determined, it shall charge the City a price that is normally charged for such goods and/or services (such as listed prices for items in stock). In the event that the City's request results in the Contractor incurring unavoidable additional costs and causes the Contractor to increase prices in order to obtain a fair rate of return, the Contractor shall charge the City a price not to exceed the cost/profit formula found in this Contract. The Contractor acknowledges that the City is procuring such goods and/or services for the benefit of the public. The Contractor, in support of public good purposes, shall consider the City as a customer of first priority and shall make its best effort to provide to the City the requested goods and/or services in a timely manner. For purposes of this Contract, a "major emergency" or "disaster" shall include, but is not limited to a storm, high wind, earthquake, flood, hazardous material release, transportation mishap, loss of any utility service, fire, terrorist activity or any combination of the above.

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

53. **Debarment:** In accordance with SMC Ch. 20.70, the Director of Executive Administration or designee may debar a Vendor from entering into a Contract with the City or from acting as a subcontractor on any Contract with the City for up to five years after determining that any of the following reasons exist:

    1) Contractor has received overall performance evaluations of deficient, inadequate, or substandard performance on three or more City Contracts.

    2) Contractor failed to comply with City ordinances or Contract terms, including but not limited to, ordinance or Contract terms relating to small business utilization, discrimination, prevailing wage requirements, equal benefits, or apprentice utilization.

3) Contractor abandoned, surrendered, or failed to complete or to perform work on or in connection with a City Contract.

4) Contractor failed to comply with Contract provisions, including but not limited to quality of workmanship, timeliness of performance, and safety standards.

5) Contractor submitted false or intentionally misleading documents, reports, invoices, or other statements to the City in connection with a Contract.

6) Contractor colluded with another contractor to restrain competition.

7) Contractor 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) Contractor failed to cooperate in a City debarment investigation.

9) Contractor failed to comply with SMC 14.04, SMC Ch. 14.10, SMC Ch. 20.42, or SMC Ch. 20.45, or other local, State, or federal non-discrimination laws.

The Director may issue an Order of Debarment after adhering to the procedures specified in SMC 20.70.050. The rights and remedies of the City under these provisions are in addition to any other rights and remedies provided by law or under the Contract.

54. **Recycled Product Requirements:** Whenever practicable, Contractor shall use reusable products, recyclable products and recycled-content products including recycled content paper on all documents submitted to the City. Contractors are to duplex all materials that are prepared for the City under this Contract, whether such materials are printed or copied, except when impracticable to do so due to the nature of the product being produced. Contractors are to use 100% post consumer recycled content, chlorine-free paper in such products that are produced for the City, whenever practicable, and to use other paper-saving and recycling measures in business they conduct with and for the City. This directive is executed under the Mayor's Executive Order, issued February 13, 2005.

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

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

56. **Prevailing Wage Requirements:**

a. If applicable, this contract is subject to prevailing wages, as required by RCW 39.12 (Prevailing Wages on Public Works) and RCW 49.28 (Hours of Labor) as amended or supplemented.

b. Contractor and any subcontractors shall be responsible for compliance with all provisions herein.

c. The awarded Contractor and all subcontractors shall file an Intent to Pay Prevailing Wage Form concurrent with the execution of the contract. The Buyer will give the awarded Contractor(s) a Contract Number, and the Contractor and their subcontractor(s) shall then promptly submit the Intent to Pay Prevailing Wages to the Department of Labor & Industries for approval. The City requests this be done on-line to allow for rapid verification of submittal. However, the City will accept forms submitted through paper procedures. If the Contractor utilizes paper submittal, a copy of the approved form shall be promptly provided to the Buyer. Contractor is responsible for all fees assessed by Washington L&I for all forms filed.

d. Contractor and any subcontractor shall not pay any laborer, worker or mechanic less than the current prevailing hourly wage rates for the worker classifications that are provided for under Prevailing Wages as issued by the State of Washington for the County in which the work shall be performed.

e. Vocationally handicapped workers, i.e. those individuals whose earning capacity is impaired by physical or mental deficiency or injury, may be employed at wages lower than the established prevailing wage. The Fair Labor Standards Act requires that wages based on individual productivity be paid to handicapped workers employed under certificates issued by the Secretary of Labor. These certificates are acceptable to the Department of Labor and Industries. Sheltered workshops for the handicapped may submit a request to the Department of Labor and Industries for a special certificate, which would, if approved, entitle them to pay their employees at wages, lower than the established prevailing wage.

f. In certain situations, an Intent to Pay Prevailing wages shall be filed with the Department of Labor & Industries and with the Buyer, but the Vendor may indicate an exception on the Intent Form which exempts the requirement to pay at least prevailing wages rates for the following:

- Sole owners and their spouse.
- Any partner who owns at least 30% of a partnership.
- The president, vice-president, and treasurer of a corporation if each one owns at least 30% of the corporation.
- Workers regularly employed on monthly or per diem salary by state or any political subdivision created by its laws.

g. Prevailing Wage rates in effect at the time of bid opening are attached. These wages remain in effect for the duration of this contract, except for annual adjustments provided in this agreement when contracts are multi-year (where contract is longer than one year) or for building service maintenance (janitorial, waxers, shampooers, and window cleaners).

h. It is the sole responsibility of the Contractor to assign the appropriate classification and associate wage rates to all laborers, workers or mechanics that perform any work under this contract, in conformance with the scope of work descriptions of the Industrial Statistician of the Washington State Department of Labor and Industries.

i. With each invoice, Contractor will attach or write a statement that wages paid were compliant to applicable Prevailing Wage rates.

j. Upon contract completion, Contractor and each subcontractor shall then file the Affidavit of Wages Paid (form L700-007-000) approved by the Industrial Statistician of Washington State L&I. This may be performed on-line if the Contractor has initiated the original Intent to Pay Prevailing Wage process on line. The receipt of the approved affidavit is required before Seattle can pay the final invoice.

k. For jobs above $10,000, Contractor is required to post for employees' inspection, the Intent form including the list of the labor classifications and wages used on the project. This may be postured in the nearest local office, for road construction, sewer line, pipeline, transmission line, street or alley improvement projects as long as the employer provides a copy of the Intent form to the employee upon request.

l. In the event any dispute arises as to what the prevailing wages are for this Contract, and the dispute cannot be solved by the parties involved, the matter shall be referred to the Director of the Department of Labor and Industries of the State of Washington. In such case, the Director's decision shall be final, conclusive and binding on all parties. If the dispute involves a federal prevailing wage rate, the matter shall be referred to the U.S. Secretary of Labor for a decision. In such case, the Secretary's decision shall be final, conclusive and binding on all parties.

Prevailing Wage rate changes for Service Contracts greater than one year in duration:

a. This provision only applies to service contracts that continue beyond a single year in duration, including building service maintenance contracts (janitorial service contractors and work performed by janitors, waxers, shampooers, and window cleaners) and to multi-year service contracts.

b. Contractor and any subcontractor must pay <u>at least</u> the prevailing wage rates that were in effect at time of bid throughout the duration of the contract.

c. Each contract anniversary thereafter, Contractor and any subcontractors shall review the then current Prevailing Wage Rates. The Contractor shall increase wages paid if required to meet no less then the current wage rates in effect at the time of the contract anniversary.

d. Contractor and all subcontractors shall file a new Intent to Pay Prevailing Wages for the upcoming contract year. Contractor and all subcontractors shall file an Affidavits of Wages Paid to conclude the previous year. If Contractor fails to provide by the anniversary date, the City shall put the Contract on "Hold" and will not release any invoices until it has been received. All invoices received for the extension year will be held by the City and paid only upon receipt of the new Intent to Pay Prevailing Wages form and the Affidavit for the previous year.

e. Any price or rate increases made as a result of a change in the prevailing wages will be compensated by the City on a pass through basis. The Contractor will follow the contract instructions for pricing increases, notifying the Buyer at least 45 days prior to the contract anniversary date of any resulting price increase and documenting the increase.