

City of Seattle
CONTRACT FOR CA CLARITY
PORTFOLIO AND PROJECTMANAGEMENT SYSTEM IMPLEMENTATION

This Contract is made and entered into by and between City of Seattle ("City"), a Washington municipal corporation; and 3MD, Inc. d/b/a Denali Advanced Integration ("Vendor"), a corporation of the State of Washington, and authorized to do business in the State of Washington.

Vendor Business:	3MD, Inc, d/b/a Denali Advanced Integration
Name of Representative:	Leon Marshall
Vendor Address:	17735 NE 65 th St Redmond, WA 98052
Vendor Phone:	425-885-4000/253-709-3307
Vendor Fax:	425-467-1127
Vendor e-mail:	lmarshall@denaliai.com

WHEREAS, the purpose of this contract is to procure from Denali Advanced Integration a fully operational CA Clarity portfolio & project management system (PPM) in accordance with the Statement of Work and any subsequent Work Orders, and

WHEREAS, Vendor was selected as a result of a Request for Proposal process initiated October 22, 2008 as required by SMC since costs are anticipated to exceed \$44,000 in value; and

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

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

1. Term of Contract

Contract Term: This contract shall extend throughout the development, installation, testing and delivery, until City has completed acceptance in accordance with the Statement of Work and any subsequent Work Orders not to exceed the period starting from the date the contract is executed through 6/16/2012 or at the completion of a Work Order in process whichever is later. At the City's option, the contract may be extended for a term as required by the City.

2. Survivorship

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

3. Statement of Work

The Vendor will be responsible for providing both the software system and the technical support described below:

Software System and Technical Support:

The Vendor will be responsible for the design, testing, implementation, training, and provision of a completed operational, integrated CA Clarity PPM system according to the functional descriptions prescribed within this Specification. Any and all incidental components or parts not specifically called out in this document, but required for the function of the technology system, will be provided by the Vendor without additional cost to the City.¹ Delivery of the work described in this Specification will include, but not be limited to, the following Basic Services:

Configuration and Customization of PPM system: The Vendor will provide both software and hardware designs to develop the complete systems described herein. Design will include all necessary databases, User Interface, Servers, Workstations, and System diagrams. The Vendor will be responsible for all required CA Clarity PPM software development, setup, configuration, programming, testing to meet the requirements. The

Interfaces Between the PPM System and Other Systems: The design, implementation, testing and support to implement interfaces to other systems (i.e., PeopleSoft Financial System) will be the primary responsibility of the City project team staff with expert assistance from the Vendor as it pertains to the integration of CA Clarity PPM software only.

Data Conversion: The Vendor will work with the City stakeholders to document and design a data conversion strategy. The actual data conversion of data from the current source systems or other data sources to the new system will be the primary responsibility of the City project team staff. Vendor will work with the City project team to identify what data can or cannot be converted in the Data Conversion Plan. Any data that cannot be converted must be documented and approved by the City project team. The Vendor will not be held liable for the quality or integrity of the data to be converted.

Environments and Testing: The Vendor will support the City's software development methodology, which requires migrating through a series of preproduction environments and increasingly rigorous testing prior to the final installation in the production environment.

Development environment: Allows full access to the software, hardware and data to the development team. The Vendor and the City project team members will demonstrate successful completion of integrated unit testing in this environment. Any custom data objects, scripts and ETLs must be documented, reviewed and approved by City technical staff prior to moving to the next stage. A detailed implementation plan, prepared by the Vendor and the City project team members, must be documented and approved prior to each migration step.

Test environment: All system components and data will be migrated through a controlled and fully documented process to the final preproduction environment for rigorous system testing (environment mirrors the production environment as closely as possible).

Onsite Fit Test: The Vendor will work with the City project team to identify test cases and a system testing plan for On-site Fit Test. The On-site Fit Test will use the required hardware and converted City data. The On-Site Fit Test will comprise successful completion of all test cases, documentation and review of the result with the City project team and resolution of all outstanding issues before User Acceptance Testing.

User Acceptance Testing: The Vendor will work with the City project team to create the User Acceptance Testing plan, submit to the City for approval, work with the City project team to

¹ This section is based on the assumption that the products will be installed on City hardware

setup the User Acceptance Testing environment, and assist with testing and resolution of issues. The Vendor will also work with City support staff to transfer knowledge and answer questions. Successful completion of User Acceptance Testing results will be signed off by the City project team. Vendor shall participate during the acceptance testing.

Training: The Vendor will provide up to 40 hours of technical classroom training for City IT staff and up to 80 hours of classroom training for up to 300 City business users at initial rollout (broken into four-hour sessions with 25 participants per session), instructing them on system functionality, general operation, system operation, maintenance, troubleshooting and other basic system support functions. Rollout training will be conducted onsite; supplemental training may be provided via self-taught web modules. The Vendor will provide a training plan that identifies the level of training associated with each affected City user group and customized training materials including a User Guide that describes City's implementation of the product.

Rollout to production/implementation: The Vendor will support the final software setup, configuration, data conversion and interface with other devices in accordance with the applicable standards and requirements. The Vendor will supply a detailed implementation plan and full system documentation. The actual deployment will be performed by the City technical staff. Any variation of the above requires a written request for the modification submitted through the City project team, project steering committee and City Purchasing, and the changes will not occur without receiving written approval. Vendor will be on-site throughout the implementation and will assist in resolving issues in a post-implementation period until customer satisfaction is reached.

Project Management:

The Vendor will provide all necessary project management and supervisory personnel required to ensure the Project's accurate, professional and timely completion of Vendor responsibilities as described in this document. Vendor will provide a secondary contact. A City project manager will be responsible for overall coordination of Vendor and project team tasks.

The Vendor will maintain a detailed System implementation schedule based on the City's stated delivery requirements. The Schedule will identify all primary tasks associated with the Project and will indicate planned beginning and ending dates for each task. This Schedule will be in alignment with the overall Schedule maintained by the City Project Manager. Changes in schedule must be approved by the City Project Manager.

The Schedule will be subject to review and approval by the City. The Vendor shall be obligated to comply with the agreed upon installation and completion dates and will be liable for all overrun costs incurred by the Vendor in meeting the schedule.

The delivery dates for all required documentation will be included in the Schedule.

The Vendor shall make Project progress/status reports to the City on a regular scheduled basis with the frequency as deemed appropriate by the City. The formal Schedule will be updated and issued as appropriate.

The Vendor's Project Manager will participate in regularly scheduled coordination meetings at the City to identify and resolve issues during the course of the Project.

The Vendor will provide a project schedule that includes but is not limited to these major milestones:

- a. Contract award
- b. Design, develop and customize application
- c. Hardware acquisition, if applicable
- d. Data conversion

- e. On-site fit test
- f. Training
- g. User acceptance testing
- h. Roll out to production
- i. Stabilization
- j. City sign-off and start warranty

Project Documentation and Deliverables:

- Project schedule.
- Training plan, training materials tailored for user groups and technical staff.
- Testing plan, test cases and summary of the results of the testing.
- Data conversion plan (developed jointly with City project team).
- Complete User Guide, which will be updated whenever changes/additions/modifications are made to the system including ones requested by City.
- Physical and logical system diagram to port-level detail showing topology, configuration and capacity information including capacity (e.g. customizable table, fields, screen etc.) for future upgrades.
- Database models, documentation and other related information required for City IT to perform data extraction from the system.
- Implementation plan (detailed installation guide with dependencies between tasks identified).
- Detailed system documentation, including ongoing maintenance support guidelines and instructions.
- An electronic copy of the final working software/hardware, including license, configurations, documentation for all devices, utilities and tools used in the operation and maintenance of the System, saved to an appropriate backup media, labeled, accompanied by a total and complete reload procedure that has been tested by the Vendor and the City.
- A disaster recovery plan and/or procedures that detail all software files and configuration files on all related devices that can be exported, imported or saved to external storage devices to recover programming or configuration codes in the event of a disaster.
- Hardware documentation: The Vendor will provide device specifications for all related hardware.

4. Expansion Clause

This contract may be expanded as mutually agreed, if such expansion is approved in writing by the Buyer from the City Purchasing Office of the Department of Executive Administration, City of Seattle. No other City employee is authorized to make such written notices. The Buyer will ensure the expansion meets the following criteria collectively: (a) it could not be separately bid, (b) the change is for a reasonable purpose, (c) the change was not reasonably known to either the City or vendors at time of bid or else was mentioned as a possibility in the bid (such as a change in environmental regulation or other law); (d) the change is not significant enough to be reasonably regarded as an independent body of work; (e) the change could not have attracted a different field of competition, and (f) the change does not vary the essential identity or main purpose of the contract. The Buyer shall make this determination, and may make exceptions for immaterial changes, emergency or sole source conditions, or for other situations as required in the opinion of the Buyer. Certain Work Orders or changes are not considered an expansion of scope, including an increase in quantities ordered, the exercise of options and alternates in the bid, change in design and specifications that does not expand the work beyond the limits provided for above, or ordering of work originally identified within the originating solicitation. If such changes are approved, changes are conducted as a written order issued by the City Purchasing Buyer in writing to the Vendor.

5. Work Order Process

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

- (1) The Work Order is within the scope of the original solicitation and contract or is within the allowed conditions for expansions under Section 5 (Expansion Clause) above;
- (2) A post-warranty annual maintenance agreement is subject to the provisions outlined in the Master Software License and Services Agreement signed between the City and CA on June 15, 2007;
- (3) The City issues a request to upgrade equipment, software, or to change quantities of any deliverable;
- (4) The City orders additional custom features or interfaces for the Systems prior to or after the acceptance period; or

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

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

The City does not guarantee utilization of services provided for in this Contract for which the City has not issued a work order(s). The City may itself provide these services as identified under CA's maintenance agreement or may award contracts to other vendors for these services.

6. Documentation

Unless specified otherwise in Contract attachments, Vendor will provide two (2) complete sets of documentation for each Software System delivered, including technical and maintenance information, and, where applicable, installation information. Vendor shall also provide two (2) complete sets of documentation for each updated version of Software that vendor provides. Vendor shall provide the documentation on or before the date Vendor delivers its respective Software. There shall be no additional charge for this documentation or the updates, in whatever form provided. Documentation is subject to the provisions outlined in the Master Software License and Services Agreement signed between the City and CA on June 15, 2007. If Vendor maintains its technical, maintenance and installation documentation on a web site, Vendor may fulfill the obligations set forth in this section by providing Purchaser access to its web-based documentation information.

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

7. Payment Procedures

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

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

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

Payment does not constitute whole or partial acceptance; City acceptance of the System shall only occur by formal written notice to that effect.

7.1 Advance Payment Prohibited

No advance payment shall be made for services furnished by Vendor pursuant to this Contract. Notwithstanding the above, maintenance and subscription payments, if any, may be made on a quarterly or annual basis at the beginning of each payment period, providing that the City may terminate the maintenance services with agreed-upon advance notice but in no case longer than 30 days advance notice, and receive pro-rated reimbursement back for any amounts pre-paid after the terminate becomes effective.

7.2 Travel

If certain travel is pre-approved by the City, the City will compensate travel expenses not to exceed actual travel costs given the following limitations. Vendor and the City shall determine the need for on-site presence and the City shall pre-approve travel. Vendor shall be entitled to reasonable expenses as defined below, not to exceed the actual amount of travel costs.

- **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 effect at the time the mileage expense is incurred (currently at 48.5 cents a 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.

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

7.3 Rent

The City requires the Vendor to perform some of the tasks and services on-site, at City offices. This benefits the City to assure access, communications, efficiency, and coordination. Any Vendor worker who is on-site remains, however, a vendor worker and not a City employee. The Vendor shall ensure no Vendor worker is on-site at a City office beyond the time specified within the Work Order, without specific written authorization from the City Project Manager. The price paid to the Vendor shall therefore be regarded as inclusive of the provided space. The City intends the Vendor to place worker(s) on-site, and will therefore provide standard office cubicle work space(s) at the Seattle Municipal Tower for the estimated months required to perform the on-site work as defined within a given Work Order. These workspaces are provided by the City exclusively for the project, and shall not be used for any other Vendor purpose. The workspace may include a City computer, appropriate software and/or telephone as determined appropriate by the City Project Manager, and shall allow the worker use of office equipment, such as copy machines. If the Vendor does not use all workstations for the entire period, there shall not be an adjustment back to the Vendor, because the City reserves those spaces in the event the project requires them."

7.4 Disputed Work

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

8. Taxes, Fees and Licenses

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

9. Timely Completion

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

10. Title to Equipment, if applicable.

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

Transfer of title to the Equipment shall include an irrevocable, fully paid-up, perpetual license to use the internal code (embedded software) in the Equipment. If City subsequently transfers title to the Equipment to another entity, City shall have the right to transfer the license to use the internal code with the transfer of Equipment title. A subsequent transfer of this software license shall be at no additional cost or charge to either City or City's transfer.

11. Ownership of Deliverables

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

12. Risk of Loss, Freight, Overages or Underages

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

13. Protection of Persons and Property

13.1 Person

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

13.2 Property

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

13.3 No Smoking

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

13.4 OSHA/WISHA

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

14 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:

Michael Mears
City of Seattle Purchasing Services
PO Box 94687
Seattle, WA 98124-4687

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

Michael Mears
City of Seattle Purchasing Services
700 5th Ave., #4112
Seattle, WA 98104-5042

Phone: 206-684-4570
Fax: 206-233-5155
E-Mail: michael.mears@seattle.gov

Project work, invoices and communications shall be delivered to the City Project Manager:
City of Seattle
Attention: Department Project Manager

21 Representations

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

22 Inspection

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

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

- a. During the performance of this contract, Vendor shall comply with all federal and applicable state nondiscrimination laws, including but not limited to: Title VII of the Civil Rights Act, 42 U.S.C. 1201 et seq; the Americans with Disabilities Act (ADA); and Title 49.60 RCW, Washington Law Against Discrimination.
- b. Fair Contracting Practices Ordinance: Vendor shall comply with the Fair Contracting Practices Ordinance of The City of Seattle (Ordinance 119601), as amended. Conduct made unlawful by that ordinance constitutes a breach of contract. Engaging in an unfair contracting practice may also result in the imposition of a civil fine or forfeiture under the Seattle Criminal Code as well as various civil remedies.
- c. In accordance with Seattle Municipal Code Chapter 20.42, Vendor shall actively solicit the employment and subcontracting of women and minority group members when necessary and commercially useful for purposes of fulfilling the Statement of Work required for this Contract. Vendors shall actively solicit subcontracting bids from sub as needed to perform the work of this contract, from qualified, available and capable women and minority businesses. Vendors shall consider the grant of subcontracts to women and minority bidders on the basis of substantially equal proposes in the light most favorable to women and minority businesses. At the request of The City, Vendor shall promptly furnish evidence of the Vendor's compliance with these requirements.
- d. If upon investigation, the Director of Executive Administration finds probable cause to believe that the Vendor has failed to comply with the requirements of this Section, the Vendor shall notified in writing. The Director of Executive Administration shall give Vendor an opportunity to be heard, after ten calendar days' notice. If, after the Vendor's opportunity to be heard, the Director of Executive Administration still finds probable cause, s/he may suspend the Contract and/or withhold any funds due or to become due to the Vendor, pending compliance by the Vendor with the requirements of this Section.
- e. 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 Vendor may be subject to damages and sanctions provided for by the Vendor Contract and by applicable law. In the event the Vendor 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).

24 Equal Benefits

- a. Compliance with SMC Ch. 20.45: The Vendor shall comply with the requirements of SMC Ch. 20.45 and Equal Benefits Program Rules implementing such requirements, under which the Vendor is obligated to provide the same or equivalent benefits (“equal benefits”) to its employees with domestic partners as the Vendor provides to its employees with spouses. At The City’s request, the Vendor shall provide complete information and verification of the Vendor’s compliance with SMC Ch. 20.45. Failure to cooperate with such a request shall constitute a material breach of this Contract. (For further information about SMC Ch. 20.45 and the Equal Benefits Program Rules 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:
 - o Require the Vendor to pay actual damages for each day that the Vendor is in violation of SMC Ch. 20.45 during the term of the Contract; or
 - o Terminate the Contract; or
 - o Disqualify the Vendor from bidding on or being awarded a City contract for a period of up to five (5) years; or
 - o Impose such other remedies as specifically provided for in SMC Ch. 20.45 and the Equal Benefits Program Rules promulgated hereunder.

25 General Legal Requirements

- a. General Requirement: Vendor, at no expense to The City, shall comply with all applicable laws of the United States and the State of Washington; the Charter and ordinances of The City; and rules, regulations, orders, and directives of their administrative agencies and the officers thereof. Without limiting the generality of this paragraph, the Vendor shall specifically comply with the following requirements of this section.
- b. Licenses and Similar Authorizations: Vendor, at no expense to The City, shall secure and maintain in full force and effect during the term of this Contract all required licenses, permits, and similar legal authorizations, and comply with all requirements thereof.
- c. Performance Standard. All duties by Vendor or designees shall be performed in a manner consistent with accepted practices for other similar Work.

26 Indemnification

Vendor shall defend, indemnify, and save City harmless from and against all claims, including reasonable attorneys’ fees resulting from such claims, by third parties for any or all injuries to persons or damage to property of such third parties arising from intentional, willful, or negligent acts or omissions of Vendor, its officers, employees, or agents, or Subcontractors, their officers, employees or agents. Vendor’s obligation to defend, indemnify, and save City harmless shall not be eliminated or reduced by any alleged concurrent City negligence.

27 Insurance

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

1. MINIMUM COVERAGES AND LIMITS OF LIABILITY. Vendor shall at all times during the term of this Agreement maintain continuously, at its own expense, minimum insurance coverages and limits of liability as specified below:

- A. Commercial General Liability (CGL) insurance, including:
 - Premises/Operations
 - Products/Completed Operations
 - Personal/Advertising Injury
 - Contractual
 - Independent Contractors
 - Stop Gap/Employers Liability
 - with minimum limits of liability of \$1,000,000 each occurrence combined single limit bodily injury and property damage ("CSL"), except:
 - \$1,000,000 Personal/Advertising Injury
 - \$1,000,000 each accident/disease/employee Stop Gap/Employer's Liability
- B. Automobile Liability insurance, including coverage for owned, non-owned, leased or hired vehicles with a minimum limit of liability of \$1,000,000 CSL.
- C. Worker's Compensation for industrial injury to Vendor's employees in accordance with the provisions of Title 51 of the Revised Code of Washington.
2. CITY AS ADDITIONAL INSURED. The City of Seattle shall be included as an additional insured under CGL and Automobile Liability insurance for primary and non-contributory limits of liability.
3. NO LIMITATION OF LIABILITY. The limits of liability specified herein in subparagraph 1.A. are minimum limits of liability only and shall not be deemed to limit the liability of Vendor or any Vendor insurer except as respects the stated limit of liability of each policy. Where required to be an additional insured, the City of Seattle shall be so for the full limits of liability maintained by Vendor, whether such limits are primary, excess, contingent or otherwise.
4. MINIMUM SECURITY REQUIREMENT. All insurers must be rated A- VII or higher in the current A.M. Best's Key Rating Guide and licensed to do business in the State of Washington unless coverage is issued as surplus lines by a Washington Surplus lines broker.
5. SELF-INSURANCE. Any self-insured retention not fronted by an insurer must be disclosed. Any defense costs or claim payments falling within a self-insured retention shall be the responsibility of Vendor.
6. EVIDENCE OF COVERAGE. Prior to performance of any scope of work under paragraph 5., Vendor shall provide certification of insurance acceptable to the City evidencing the minimum coverages and limits of liability and other requirements specified herein. Such certification must include a copy of the policy provision documenting that the City of Seattle is an additional insured for commercial general liability insurance on a primary and non-contributory basis. Certification should be issued to The City of Seattle, Risk Management Division, Seattle, WA and shall be delivered in electronic form either as an email attachment to riskmanagement@seattle.gov or faxed to (206) 470-1270.

28 Review of Vendor Records

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

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

It is agreed that books, records, documents and other evidence of accounting procedures and practices related to Vendor's cost structure, including overhead, general and administrative expenses, and profit factors shall be excluded from City's review unless the cost or any material issue under this Contract is calculated or derived from these factors.

29 Independent Contractor

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

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

30 Assignment and Subcontracting

Vendor 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 Vendor shall incorporate by reference all the terms of this Contract except for Equal Benefit provisions. Vendor 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 Vendor 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.

31 Subcontracting

Any subcontract made by Vendor shall incorporate by reference all the terms of this Contract. Vendor shall ensure that all subcontractors comply with the obligations and requirements of the subcontract. City's consent to any assignment or subcontract shall not release the Vendor from liability under this Contract, or from any obligation to be performed under this Contract, whether occurring before or after such consent, assignment or subcontract.

32 Involvement of Former City Employees

Vendor 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. Vendor shall ensure that no Work or matter related to the Work is performed by any person (employee, sub, 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.

33 No Conflict of Interest

Vendor confirms that Vendor 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 Vendor selection, negotiation, drafting, signing, administration, or evaluating the Vendor's performance.

34 Gratuities

Vendor 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 Vendor 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.

35 Errors & Omissions: Correction

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

36 Intellectual Property Rights

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

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

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

37 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 Contract. 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.

Vendor's Understanding and Obligations

1. Vendor understands that any records (including but not limited to bid or proposal submittals, the Contract, and any other contract materials) it submits to the City, or that are used by The City even if the Vendor possesses the records, are public records under Washington State law, RCW Chapter 42.56. Public records must be promptly disclosed upon request unless a statute exempts them from disclosure. Vendor also understands that even if part of a record is exempt from disclosure, the rest of that record generally must be disclosed.
2. Vendor must separate and clearly mark as "proprietary information" all records related to this Contract or the performance of this Contract that the Vendor believes are exempt from disclosure. Vendor is to be familiar with potentially-applicable public-disclosure exemptions and the limits of those exemptions, and will mark as "proprietary only information" that the Vendor believes legitimately fits within an exemption, and will state the statutory exemption upon which it is relying.
3. If the City notifies the Vendor of a public disclosure request, and the Vendor believes records are exempt from disclosure, it is the Vendor's responsibility to make its own determination and pursue a lawsuit under RCW 42.56 to enjoin disclosure. The Vendor 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 Vendor. It is the Vendor's discretionary decision whether to file the lawsuit.
4. If Vendor does not timely obtain and serve an injunction, the Vendor is deemed to have authorized releasing the record.
5. Notwithstanding the above, the Vendor must not take any action that would affect (a) the City's ability to use goods and services provided under this Contract or (b) the Vendor's obligations under this Contract.
6. Vendor 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 Vendor has marked as "proprietary information" only to authorized persons unless:
 - (a) The City receives a public disclosure request, in which case steps 2 and 3 below are exercised before release of the information; or
 - (b) The Vendor has given The City express advance written permission to disclose the records.

"Authorized persons" means those City officers, employees, Vendors 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 Contract.

2. If the City receives a public disclosure request for records that Vendor has marked as "proprietary information," the City promptly notifies the Vendor of the request. The City will postpone disclosing these records for ten business days after it has sent notification to the Vendor, in order to allow the Vendor to file a lawsuit under RCW 42.56 to enjoin disclosure. It is the Vendor's discretionary decision whether to file the lawsuit.
3. If the City has notified Vendor of a public disclosure request, and the Vendor 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 may disclose the record.
4. The City has no other obligations concerning records the Vendor has marked as "proprietary information" under this Contract. The City has no obligation to claim any exemption from disclosure. The City is not obligated or liable to the Vendor for any records that the City releases in compliance with this Section or in compliance with the order of a court of competent jurisdiction.

38 Publicity

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

39 Interlocal Agreement Act

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

40 Extra Work

If the City requires the Vendor to perform work, render services in connection with this project other than that expressly provided for in the "Statement of Work" section of this Contract, or to extend the duration of the contract beyond that originally stated, this will be considered extra work, supplemental to this Contract and the Vendor shall not proceed unless authorized by an amendment. Such extra work shall be in compliance with Section 4 (Expansion Clause) and shall may be authorized only by the City Purchasing Buyer, Department of Executive Administration, by written order. Any costs incurred due to the performance of extra work prior to execution of an amendment will not be reimbursed under this Contract or an amendment. Notwithstanding the foregoing, the City may make reasonable changes in this Contract, including place of delivery, installation or inspection, the method of shipment or packing, labeling and identification, and ancillary matters that Vendor may accommodate without substantial additional expense to The City.

41 Key Persons

Vendor shall not transfer or reassign any individual designated in this Contract 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 Contract, any such individual leaves the Vendor's employment,

the Vendor 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 or disapproval shall not be construed to release the Vendor from its obligations under this Contract.

42 Dispute Resolution

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

43 Termination

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

shall such compensation exceed the maximum compensation to be paid under the Contract.

3. Vendor agrees that such payment shall fully and adequately compensate Vendor and all subs for all profits, costs, expenses, losses, liabilities, damages, taxes, and charges of any kind whatsoever (whether foreseen or unforeseen) attributable to the termination of this Contract.
4. Upon termination for any reason, Vendor shall provide The City with the most current design documents, contract documents, writings and other product it has completed to the date of termination, along with copies of all project-related correspondence and similar items. The City shall have the same rights to use these materials as if termination had not occurred.
5. In the event this Contract expires or is terminated for any reason, the City shall retain its rights in all Products, services and system progress that is in transit or delivered prior to the effective termination date.

44 Force Majeure– Suspension and Termination

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

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

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

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

45 Major Emergencies or Disasters:

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

- a. The City shall notify the Vendor that the City is experiencing an emergency or disaster, and will request emergency and priority services from the Vendor.
- b. Upon such notice by the City, the Vendor shall provide to the City goods and/or services in the quantities and schedule specified by the City, following the conditions named in this Section.
- c. The City of Seattle shall be the customer of first priority for the Vendor. The Vendor shall provide its best and priority efforts to provide the requested goods and/or services to the City of The City in as complete and timely manner as possible. Such efforts by the Vendor are not to be diminished as a result of Vendor providing service to other customers.
- d. If the Vendor is unable to respond in the time and/or quantities requested by the City, the Vendor shall make delivery as soon as practical. The Vendor shall immediately assist the City to the extent reasonable, to gain access to such goods and/or services. This may include:

- o Coordinating with other distributors or subsidiaries beyond those in the local region to fulfill order requests;
 - o Offering the City substitutions provided the Vendor obtains prior approval from the City for such substitution.
- e. The Vendor shall charge the City the price determined in this Contract for the goods and services provided, and if no price has been determined, it shall charge the City a price that is normally charged for such goods and/or services (such as listed prices for items in stock). However, in the event that the City's request results in the Vendor incurring unavoidable additional costs and causes the Vendor to increase prices in order to obtain a fair rate of return, the Vendor shall charge the City a price not to exceed the cost/profit formula found in this Contract.

46 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 sub on any Contract with the City for up to five years after determining that any of the following reasons exist:

- a. Vendor has received overall performance evaluations of deficient, inadequate, or substandard performance on three or more City Contracts.
- b. Vendor failed to comply with City ordinances or Contract terms, including but not limited to, ordinance or Contract terms relating to small business utilization, discrimination, prevailing wage requirements, equal benefits, or apprentice utilization.
- c. Vendor abandoned, surrendered, or failed to complete or to perform work on or in connection with a City Contract.
- d. Vendor failed to comply with Contract provisions, including but not limited to quality of workmanship, timeliness of performance, and safety standards.
- e. Vendor submitted false or intentionally misleading documents, reports, invoices, or other statements to the City in connection with a Contract.
- f. Vendor colluded with another Vendor to restrain competition.
- g. Vendor committed fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a Contract for the City or any other government entity.
- h. Vendor failed to cooperate in a City debarment investigation.
- i. Vendor failed to comply with SMC 14.04, SMC Ch. 14.10, SMC Ch. 20.42, or SMC Ch. 20.45, or other local, State, or federal non-discrimination laws.

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

47 Recycle Products Requirements

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

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

48 Section Headings, Incorporated Documents and Order of Precedence

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

49 Entire Agreement

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

50 Authority for Modifications and Amendments

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

51 Severability

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

52 Miscellaneous Provisions

- a. **Binding Contract:** This Contract shall not be binding until signed by both parties. The provisions, covenants and conditions in this Contract shall bind the parties, their legal heirs, representatives, successors, and assigns.
- b. **Applicable Law/Venue:** This Contract shall be construed and interpreted in accordance with the laws of the State of Washington. The venue of any action brought hereunder shall be in

the Superior Court for King County.

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

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

3MD, Inc.
d/b/a Denali Advanced Integration

By


Signature

5-26-09
Date

Leon Marshall

(Printed Name)

EVP – IT Governance

Title

City of Seattle

By

Signature

Date

NANCY LOCKE
City Purchasing Director