**City of Seattle**

Department of Finance and Administrative Services

**CONSULTANT AGREEMENT**

Title: Real Estate Strategy for Pacific Place Garage

**AGREEMENT NUMBER: FAS-2015-001**

This Agreement is made and entered into by and between the City of Seattle (“the City”), a Washington municipal corporation, through its Department of Finance and Administrative Services, as represented by the Director; and (insert legal name and address of Consultant) (“Consultant”), a (insert appropriate type of business: e.g. partnership, sole proprietorship, limited liability company, corporation) of the State of \_\_\_ (insert state in which the corporation is chartered) and authorized to do business in the State of Washington.

**Recitals:**

*WHEREAS, the City owns a fee simple interest in one of two commercial condominium units in the Pacific Place condominium situated at Fifth Avenue and Pine Street in the heart of Seattle’s downtown retail core;*

*WHEREAS, the purpose of this contract is to provide the City with brokerage and advisory services associated with the possible sale of the Pacific Place Garage (“Garage”); and*

*WHEREAS, the Consultant was selected from a Request for Proposal issued by the City dated January 5, 2015;

NOW, THEREFORE, in consideration of the terms, conditions, covenants and performance of the Scope of Work contained herein, the City and Consultant mutually agree as follows:*

**TERM OF AGREEMENT.** The term of this Agreement begins when fully executed by all parties, and ends when work is completed and accepted by the City, unless amended by written agreement or terminated earlier under termination provisions.

1. **TIME OF BEGINNING AND COMPLETION.**

The Consultant shall begin the work outlined in the “Scope of Work” (“Work”) upon receipt of written notice to proceed from the City. The City will acknowledge in writing when the Work is complete. Time limits established under this Agreement shall not be extended because of delays for which the Consultant is responsible, but may be extended by the City, in writing, for the City’s convenience or conditions beyond the Consultant’s control.

1. **INTENTIONALLY OMITTED.**
2. **SCOPE OF WORK.** The Scope of Work of this Agreement and the time scheduled for completion of such Work are:

The general scope of work of this contract is to provide real estate brokerage services as defined in the Revised Code of Washington, section RCW 18.85.011, for selling City owned real property, and to provide advisory services, including but not limited to providing research and analysis of market conditions and providing broker’s price opinions.

The scope of work and brokerage services specific to the Garage include the following:

* Provide general real estate advice to FAS as to the current climate for the sale of a unique asset such as the Garage. Implicit in providing such advice is the development of a thorough understanding of the relevant provisions of both the umbrella agreement and the parking agreement.
* Ascertain likely value of the Garage. Taking into account a variety of factors, including the constraints imposed by the umbrella agreement and the parking agreement, the Garage’s historical operating results, projected future operating results, valuations of comparable assets and the financing climate, prepare a broker’s opinion of value as to the likely value of the Garage.
* Prepare a written marketing plan for the sale of the Garage.
* Implement the written marketing plan. Such implementation should include the preparation of suitable marketing materials, and the exposure of the Garage to as wide a market as possible by listing the Garage on customary multiple listing services and real estate industry sites.

• Provide timely and informative responses to requests for information from interested parties.

• Show the Garage to interested parties.

• Secure, evaluate, and present to FAS suitable offers for the Garage, and when required, negotiate on the City’s behalf the terms of conditions of counter-offers.

* Assist FAS in preparing materials for City Council authorization to sell Garage

• Otherwise act as the owner’s representative through the close of the sale of the Garage.

The Work is subject to City review and approval. The Consultant shall confer with the City periodically, and prepare and present information and materials (e.g. detailed outline of completed Work) requested by the City to determine the adequacy of the Work or Consultant’s progress.

1. **PAYMENT.[[1]](#footnote-1)**
2. Consultant services under this Agreement shall be billed based upon commission or by hourly billing rates and/or services fees as established in Exhibit A to this contract. For Work under Section 3 hereof, the City shall pay the Consultant an amount equal to \_\_\_\_percent (\_\_%) of the gross sales price paid to the City by the Purchaser of the Garage. Commencing with the execution of this Agreement and continuing through XXXXXX, or until such time as the City determines not to proceed with a sale of the Garage, the City shall pay to the Consultant a portion of the compensation specified above for Real Estate Transaction Services in the form of a monthly fee of \_\_\_\_\_\_\_ Thousand Dollars ($\_\_\_\_\_). The remainder of the compensation payable under Section 3 hereof shall be paid at closing, less the total amount paid as monthly fees hereunder.
3. The City does not guarantee that the City Council will authorize the sale of the property.
4. Total compensation under this Agreement shall not exceed \_\_\_\_\_\_\_\_\_\_\_\_ unless modified by a written amendment to this Agreement. The parties agree that the hourly rate includes all direct, indirect, and fixed fees for the project.
5. This contract is a payment negotiated on the basis of cost, and shall include only those costs allowed under Part 31 of the Federal Acquisition Regulations (FAR), the provisions of which are incorporated herein by reference.
6. Reasonable annual adjustments to salary rates may be allowed provided such adjustments do not increase costs above the Contract Amount. Salary adjustments shall be subject to approval by the City, and an amended salary exhibit shall be submitted by the Consultant for attachment and incorporation into the Contract.
7. Direct Expenses. In addition to the salary-related payments set forth above, the City will reimburse the Consultant at cost, without any additional mark-up, for expenses that are necessary and directly applicable to the work required by this Contract. Such direct project costs may not be included in the overhead expenses or direct labor multiplier of the Consultant. The direct expenses allowed under this Contract are set forth in Exhibit X , “Estimated Project Costs and Labor Hours.” Sub-consultants are considered direct expenses. There is no mark-up allowed on any direct expenses.
8. **GUARANTEED PAY TO SMALL SUBCONSULTANTS.**

Regardless of City Payment, every Consultant of any tier shall pay their Small Subconsultants (defined below) no less than every 30 days, as partial payment for work completed to-date. Small Consultants (as defined below) acting as a prime are exempt from this requirement. The Consultant may withhold only the portion of amounts due for work in dispute. The Consultant shall ensure the Small Subconsultant has sufficient support for proper invoice preparation and submittal. A Small Subconsultant is defined as registered or certified with any one of the following:

* those registered with the City of Seattle as a WMBE (<http://www.seattle.gov/contracting/registration.htm>
* certified by the King County Small Contractors and Suppliers (SCS) Program <https://info.kingcounty.gov/EXEC/contractreporting/Public/SCS/default.aspx>
* certified by the State of Washington as a Disadvantaged Business Enterprise (DBE) or as a Women or Minority Owned Business Enterprise (WMBE).

<http://www.omwbe.wa.gov/directory-of-certified-firms/>

1. **CONTRACT PAYMENTS REPORTING REQUIREMENTS.**

When submitting each invoice to the City for payment, the Consultant must complete an on-line Subconsultant Payment Report to record all payments to subconsultants at <http://web6.seattle.gov/FAS/CIDCC>. A unique Purchase Order number is required which may be obtained from [http://web6.seattle.gov/fas/summitpan/R297/R297.aspx](http://web6.seattle.gov/fas/summitpan/R297/R297.aspx%20). Contact Steven Larson (206) 684-4529 or Miguel Beltran (206) 684-4525 for assistance.

The Consultant shall ensure that all subconsultants are registered to the City’s Online Business Directory prior to completing the online report, at <http://www.seattle.gov/contracting/registration.htm>

1. **REIMBURSABLES**

If the Agreement specified reimbursables to be compensated by the City, the following limitations apply. If no travel or direct charges are identified and allowed in the Agreement, the City shall provide no reimbursement.

1. City will reimburse the Consultant 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 or include a markup. Other direct charges may include, but are not limited to the following types of items: travel, printing, cell phone, supplies, materials, computer charges, and fees of subconsultants.
2. The billing for third party 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 paid invoices, and other supporting documents used by the Consultant 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.
3. The City will reimburse the actual cost for travel expenses incurred as evidenced by copies of receipts (excluding meals) supporting such travel expenses, and in accordance with the City of Seattle Travel Policy, details of which can be provided upon request.
4. **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.
5. **Meals:** Meals will be reimbursed at the Federal Per Diem daily meal rate *(excluding the “Incidental” portion of the published CONUS Federal M&I Rate)* for the city in which the work is performed. *Receipts are not required as documentation.* The invoice shall state “the meals are being billed at the Federal Per Diem daily meal rate”, and shall detail how many of each meal is being billed (e.g. the number of breakfasts, lunches, and dinners). The City will not reimburse for alcohol at any time.
6. **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 is performed (*the current maximum allowed reimbursement amount can be provided upon request*). Receipts detailing each day / night lodging are required. The City will not reimburse for ancillary expenses charged to the room (e.g. movies, laundry, mini bar, refreshment center, fitness center, sundry items, etc.)
7. **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 56.5 cents per mile.) Please note: payment for mileage for long distances traveled will not be more than an equivalent trip round-trip airfare of a common carrier for a coach or economy class ticket.
8. **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 reimburse for a standard car of a mid-size class or less. The City will not reimburse for ancillary expenses charged to the car rental (e.g. GPS unit).
9. **Miscellaneous Travel** (e.g. parking, rental car gas, taxi, shuttle, toll fees, 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.
10. **Miscellaneous other business expenses** (e.g. printing, photo development, binding): Other miscellaneous business expenses will be reimbursed at the actual cost incurred and may not include a mark up. Receipts are required for all miscellaneous expenses that are billed.

**Subconsultant**: Subconsultant expenses will be reimbursed at the actual cost incurred and may not include a mark up. Copies of all Subconsultant invoices that are rebilled to the City are required.

1. **PAYMENT PROCEDURES.**

The Consultant may submit invoices to the City as frequently as once per month during progress of work, for partial payment for work completed to date. Payment shall be made by the City to the Consultant upon the City’s receipt of an invoice containing the information listed below.

|  |
| --- |
| **Invoices shall be submitted to:** |
| Department of Finance and Administrative ServicesPO Box 94689 Seattle WA 98124-4689 |
| **Invoices under this Contract shall clearly display the following information** (sub-consultants' invoices shall also include this information): |
| * Invoice Date and Invoice Number
* City Project Manager Name: Robert C. Farrell

(Please do not put PM’s name in the address portion of the invoice)* Department Contract No. FAS-2015-001
* Contract Title: Real Estate Strategy for Pacific Place Garage
* Period covered by the invoice
* Task # and title
* Employee's name and classification
* Employee's all-inclusive hourly rate and # of hours worked
* Total labor costs per task
* Itemization of direct, non-salary costs (per task, if so allocated)
* The following Sub-Consultant payment information will be provided (attach Sub- Consultant invoices as backup):
	+ Amount Paid to all Sub-Consultants for the invoice period (list separate totals for each Sub-Consultant).
	+ Cumulative To-Date amount paid to all Sub-Consultants (list separate totals for each Sub-Consultant).
* Cumulative costs per task and for the total project
 |

1. If there are any grant or loan monies involved in this Contract, the Consultant shall retain all required records for three years after the funding agency has audited the grant or loan. The funding agency shall be allowed access to such records for the same time duration.

|  |  |
| --- | --- |
| **Funding Agency** | **Project Grant or Loan Number.** |
| N/A | N/A |

Third Party Beneficiary. If there are ever any Department of Ecology grant monies involved in this Contract, the State Department of Ecology shall be designated as an express third party beneficiary with full rights as such.

1. Payment from the Management Reserve Fund. For a Management Reserve Fund to be utilized on this Contract or any subsequent amendments it must already be identified on the associated exhibit for the estimated cost. The Management Reserve Fund is to provide the Department with flexibility to authorize additional funds for allowable unforeseen costs beyond those estimated for in the tasks of the Scope of Work, or for reimbursing the Consultant for additional work requested by the City toward completing the Scope of Work.

 Payment from the Management Reserve Fund is at the sole discretion of the Department and must be authorized in writing before the Consultant performs the additional work. Such written authorization will include a description of the work that is to be performed and shall specify the amount of the payment, including, if applicable, any profit factor. Any fixed fee for work reimbursed from the Management Reserve Fund shall be negotiated at the time such work is assigned to the Consultant and shall be authorized in writing by the City.

The Consultant shall show separately and identify on its invoices all charges against the Management Reserve Fund.

1. **TAXES, FEES AND LICENSES.**
2. Consultant shall pay and maintain in current status, all necessary licenses, fees, assessments, permit charges, etc. It the Consultant’s sole responsibility to monitor and determine changes or the enactment of any subsequent requirements for said fees, assessments, or changes and to immediately comply.
3. Where required by state statute, ordinance or regulation, Consultant shall pay and maintain in current status all taxes necessary for performance. Consultant shall not charge the City for federal excise taxes. The City will furnish Consultant an exemption certificate where appropriate.
4. As authorized by SMC, the Director of Finance and Administrative Services may withhold payment pending satisfactory resolution of unpaid taxes and fees due the City.
5. **ADDRESSES FOR NOTICES AND DELIVERABLE MATERIALS.**

Deliver all official notices under this Agreement to:

|  |  |
| --- | --- |
| **If to the City:**  | **If to the Consultant:**  |
| Robert C. Farrell, Project ManagerDEPARTMENT OF FINANCE & ADMIN. SERVICESPO Box 94689 Seattle WA 98124-4689 | Firm ContactFirmNameFirm Address |

1. **EQUAL BENEFITS.**

The Consultant shall comply with SMC Ch 20.45 and Equal Benefit Program Rules, which require the Consultant to provide the same or equivalent benefits (“equal benefits”) to domestic partner of employees as the Consultant provides to spouses of employees. At City’s request, the Consultant shall provide information and verification of the Consultant’s compliance. Any violation of this Section is material breach, for which the City may exercise enforcement actions or remedies defined in SMC Chapter 20.45.

1. **SOCIAL EQUITY REQUIREMENTS.**
2. Consultant shall not discriminate against any employee or applicant for employment because of race, color, age, sex, marital status, sexual orientation, gender identity, political ideology, creed, religion, ancestry, national origin, or any sensory, mental or physical handicap, unless based upon a bona fide occupational qualification. The Consultant shall affirmatively try to ensure applicants are employed, and employees are treated during employment, without regard to race, color, age, sex, marital status, sexual orientation, gender identify, political ideology, creed, religion, ancestry, national origin, or any sensory, mental or physical handicap. Such efforts include, but are not limited to: employment, upgrading, demotion, transfer, recruitment, layoff, termination, rates of pay or other compensation, and training.
3. Consultant shall seek inclusion of woman and minority business for subcontracting. A woman or minority business is one that self-identifies to be at least 51% owned by a woman and/or minority. Such firms do not have to be certified by the State of Washington but must be registered in the City Online Business Directory.
4. Inclusion responsibilities shall include those commitments agreed upon between the City and the Consultant as a result of the WMBE Inclusion Plan submitted with the Consultant Proposal and as agreed upon by the City. The Inclusion Plan is incorporated herein by this reference as an Attachment.
5. **INDEMNIFICATION.**

The Consultant releases and shall defend, indemnify, and hold the City and its officers, employees and agents harmless from all losses, liabilities, claims (including claims arising under federal, state or local laws or regulations) (and including, but not limited to, claims for infringement of any copyright, patent, trademark, or trade secret), costs (including attorneys’ fees), actions or damages of any sort arising out of the Consultant’s performance or nonperformance of the services to be provided under this Agreement attributable to the acts or omissions, willful misconduct, or breach of this Agreement by the Consultant, subconsultants, its servants, agents, officers or employees. The Consultant’s obligations shall not be eliminated or reduced by any alleged negligence on the part of the City. In furtherance of these obligations, and only regarding the City and its officers, employees, and agents, the Consultant waives any immunity it may have or limitation on the amount or type of damages imposed under Title 51 RCW, or any other industrial insurance, workers compensation, disability, employee benefit or similar laws. The Consultant acknowledges that the foregoing waiver of immunity was mutually negotiated, and that the contract price reflects this negotiation. The indemnification provided for in this section shall survive any termination or expiration of this Agreement.

1. **INSURANCE.**

Insurance certification must be submitted to the City. See attached “INSURANCE REQUIREMENTS AND TRANSMITTAL FORM.”

1. **AUDIT.**

Upon request, the Consultant shall permit the City and any other governmental agency (“Agency”) involved in the funding of the Work to inspect and audit all pertinent books and records. This includes work of the Consultant, any subconsultant, or any other person or entity that performed connected or related Work. Such books and records shall be made available at any and all times deemed necessary by the Agency, including up to six years after final payment or release of withheld amounts. Such inspection and audit shall occur in King County, Washington, or other reasonable locations that the Agency selects. The Consultant shall supply or permit the Agency to copy such books and records. The Consultant shall ensure that inspection, audit and copying rights of the Agency is a condition of any subcontract, agreement or other arrangement under which any other persons or entity may perform Work under this Agreement.

1. **INDEPENDENT CONSULTANT.**
2. The Consultant is an independent Consultant. This Agreement does not intend the Consultant to act as a City employee. The City has neither direct nor immediate control over the Consultant nor the right to control the manner or means by which the Consultant works. Neither the Consultant nor any Consultant employee shall be an employee of the City. This Agreement prohibits the Consultant to act as an agent or legal representative of the City. The Consultant is not granted express or implied rights or authority to assume or create any obligation or responsibility for or in the name of the City, or to bind the City. The City is not liable for or obligated to pay sick leave, vacation pay, or any other benefit of employment, nor to pay social security or other tax that may arise from employment. The Consultant shall pay all income and other taxes as due. The Consultant may perform work for other parties; the City is not the exclusive user of the services that the Consultant provides.
3. If the City needs the Consultant to Work on City premises and/or with City equipment, the City may provide the necessary premises and equipment. Such premises and equipment are exclusively for the Work and not to be used for any other purpose.
4. If the Consultant works on the City premises using City equipment, the Consultant remains an independent Consultant and does not as a City employee. The Consultant will notify the City Project Manager if s/he or any other Workers are within 90 days of a consecutive 36-month placement on City property. If the City determines using City premises or equipment is unnecessary to complete the Work, the Consultant will be required to work from its own office space or in the field. The City may negotiate a reduction in Consultant fees or charge a rental fee based on the actual costs to the City, for City premises or equipment.
5. **KEY PERSONS.**

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

1. **ASSIGNMENT AND SUBCONTRACTING.**

The Consultant shall not assign or subcontract its obligations under this Agreement without the City’s written consent, which may be granted or withheld in the City’s sole discretion. Any subcontract made by the Consultant shall incorporate by reference this Agreement, except as otherwise provided. The Consultant shall ensure that all subconsultants comply with the obligations and requirements of the subcontract. The City’s consent to any assignment or subcontract does not release the consultant from liability or any obligation within this Agreement, whether before or after City consent, assignment or subcontract.

1. **FEDERAL DEBARMENT.**

The Consultant shall immediately notify the City of any suspension or debarment or other action that excludes the Consultant or any subconsultant from participation in Federal contracts. Consultant shall verify all subconsultants intended and/or used by the Consultant for performance of City Work are in good standing and are not debarred, suspended or otherwise ineligible by the Federal Government. Debarment shall be verified at <https://www.sam.gov>. Consultant shall keep proof of such verification within the Consultant records.

1. **CITY ETHICS CODE (SMC 4.16.010 TO .105).**
2. Consultant shall promptly notify the City in writing of any person expected to be a Consultant Worker (including any Consultant employee, subconsultant, principal, or owner) and was a former City officer or employee within the past twelve (12) months.
3. Consultant shall ensure compliance with the City Ethics Code by any Consultant Worker when the Work or matter related to the Work is performed by a Consultant Worker who has been a City officer or employee within the past two years.
4. Consultant shall provide written notice to the City of any Consultant worker who shall or is expected to perform over 1,000 hours of contract work for the City within a rolling 12-month period. Such hours include those performed for the Consultant and other hours that the worker performed for the City under any other contract. Such workers are subject to the City Ethics Code, SMC 4.16. The Consultant shall advise their Consultant Workers.
5. Consultant shall not directly or indirectly offer anything of value (such as retainers, loans, entertainment, favors, gifts, tickets, trips, favors, bonuses, donations, special discounts, work or meals) to any City employee, volunteer or official that is intended, or may appear to a reasonable person to be intended, to obtain or give special consideration to the Consultant. Promotional items worth less than $25 may be distributed by the Consultant to City employees if the Consultant uses the items as routine and standard promotional materials. Any violation of this provision may cause termination of this Agreement. Nothing in this Agreement 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.
6. **NO CONFLICT OF INTEREST.**

Consultant confirms that the Consultant or workers have no business interest or a close family relationship with any City officer or employee who was or will be involved in the consultant selection, negotiation, drafting, signing, administration or evaluation of the Consultant’s work. As used in this Section, the term Consultant includes any worker of the Consultant who was, is, or will be, involved in negotiation, drafting, signing, administration or performance of the Agreement. The term “close family relationship” refers to: spouse or domestic partner, any dependent parent, parent-in-law, child, son-in-law, daughter-in-law; or any parent, parent in-law, sibling, uncle, aunt, cousin, niece or nephew residing in the household of a City officer or employee described above.

1. **ERRORS AND OMMISSIONS, CORRECTIONS.**

Consultant is responsible for professional quality, technical accuracy, and the coordination of all designs, drawings, specifications, and other services furnished by or on the behalf of the Consultant under this Agreement. Consultant, without additional compensation, shall correct or revise errors or mistakes in designs, drawings, specifications, and/or other consultant services immediately upon notification by the City. The obligation provided for in this Section regarding acts or omissions resulting from this Agreement survives Agreement termination or expiration.

1. **INTELLECTUAL PROPERTY RIGHTS.**
2. Copyrights. The Consultant shall retain the copyright (including the right of reuse) to all materials and documents prepared by the Consultant for the Work, whether or not the Work is completed. The Consultant grants to the City a non-exclusive, irrevocable, unlimited, royalty-free license to use copy and distribute every document and all the materials prepared by the Consultant for the City under this Agreement. If requested by the City, a copy of all drawings, prints, plans, field notes, reports, documents, files, input materials, output materials, the media upon which they are located (including cards, tapes, discs, and other storage facilities), software program or packages (including source code or codes, object codes, upgrades, revisions, modifications, and any related materials and/or any other related documents or materials developed solely for and paid for by the City to perform the Work, shall be promptly delivered to the City.
3. Patents: The Consultant assigns to the City all rights in any invention, improvement, or discovery, with all related information, including but not limited to designs, specifications, data, patent rights and findings developed with the performance of the Agreement or any subcontract. Notwithstanding the above, the Consultant does not convey to the City, nor does the City obtain, any right to any document or material utilized by the Consultant created or produced separate from the Agreement or was pre-existing material (not already owned by the City), provided that the Consultant has identified in writing such material as pre-existing prior to commencement of the Work. If pre-existing materials are incorporated in the work, the Consultant grants the City an irrevocable, non-exclusive right and/or license to use, execute, reproduce, display and transfer the pre-existing material, but only as an inseparable part of the work.
4. The City may make and retain copies of such documents for its information and reference with their use on the project. The Consultant does not represent or warrant that such documents are suitable for reuse by the City or others, on extensions of the project or on any other project.
5. **CONFIDENTIALITY.**

Under Washington State Law (reference RCW Chapter 42.56, the *Public Records Act*) all materials received or created by the City of Seattle are ***public records***.  These records include but are not limited to bid or proposal submittals, agreement documents, contract work product, or other bid material.  Some records or portions of records are legally *exempt from disclosure* and can be redacted or withheld. The Public Records Act (RCW 42.56 and RCW 19.10)8 describes those exemptions. Consultant must familiarize themselves with the Washington State Public Records Act (PRA) and the City of Seattle’s process for managing records.

The City will try to redact anything that seems obvious in the City opinion for redaction.   For example, the City will black out (redact) Social Security Numbers, federal tax identifiers, and financial account numbers before records are made viewable by the public. However, this does not replace your own obligations to identify any materials you wish to have redacted or protected, and that you think are so under the Public Records Act (PRA).

**Protecting your Materials from Disclosure (Protected, Confidential, or Proprietary):** You must determine and declare any materials you want exempted (redacted), and that you also believe are eligible for redaction. This includes but is not limited to your bid submissions, contract materials and work products.

**Contract Work Products:** If you wish to assert exemptions for your contract work products you must notify the City Project Manager at the time such records are generated.

Please note the City cannot accept a generic marking of materials, such as marking everything with a document header or footer, page stamp, or a generic statement that a document is non-disclosable, exempt, confidential, proprietary, or protected.  You may not exempt an entire page unless each sentence is entitled to exemption; instead, identify paragraphs or sentences that meet the RCW exemption criteria you are relying upon.

**City’s Response to a Public Records Act Requests:** The City will prepare two versions of your materials:

Full Redaction: A public copy that redacts (blacks out) both the exemptions (such as social security numbers) identified by the City and also materials or text you identified as exempt. The fully redacted version is made public upon contract execution and will be supplied with no notification to you.

Limited Redaction: A copy that redacts (blacks out) only the exemptions (such as social security numbers) identified by the City. This does not redact (black out) exemptions you identified.The Limited Redaction will be released only after you are provided “third party notice” that allows you the legal right under RCW 42.56.540 to bring a legal action to enjoin the release of any records you believe are not subject to disclosure.

If any requestor seeks the Limited Redacted or original versions, the City will provide you “third party notice”, giving ten business days to obtain a temporary restraining order while you pursue a court injunction. A judge will determine the status of your exemptions and the Public Records Act.

1. **DISPUTES.**

Any dispute or misunderstanding that may arise under this Agreement, concerning the Consultant’s performance, shall first be through negotiations, if possible, between the Consultant’s Project Manager and the City’s Project Manager. It shall be referred to the Director and the Consultant’s senior executive(s). If such officials do not agree upon a decision within a reasonable period of time, either party may decline or discontinue such discussions and may then pursue the legal means to resolve such disputes, including but not limited to alternative dispute resolution processes. Nothing in this dispute process shall mitigate the rights of the City to terminate the contract. Notwithstanding all of the above, if the City believes in good faith that some portion of the Work has not been completed satisfactorily, the City may require the Consultant to correct such work prior to the City payment. The City will provide to the Consultant an explanation of the concern and the remedy that the City expects. The City may withhold from any payment otherwise due, an amount that the City in good faith finds to be under dispute, or if the Consultant provides no 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.

1. **TERMINATION.**
2. For Cause: The City may terminate the Agreement if the Consultant is in material breach of this Agreement, and such breach has not been corrected to the City’s reasonable satisfaction in a timely manner.
3. For Reasons Beyond Control of Parties: Either party may terminate this Agreement without recourse by the other where performance is rendered impossible or impracticable for reasons beyond such party’s reasonable control, such as, but not limited to, an act of nature, war or warlike operation, civil commotion, riot, labor dispute including strike, walkout or lockout, except labor disputes involving the Consultant’s own employees, sabotage, or superior governmental regulation or control.
4. For City’s Convenience: The City may terminate this Agreement without cause and including the City’s convenience, upon written notice to the Consultant.
5. Notice: Notice of termination under this Section shall be given by the party terminating this Agreement to the other, not fewer than five (5) business days prior to the effective date of termination.
6. Actions upon Termination: if termination occurs not the fault of the Consultant, the Consultant shall be paid for the services properly performed prior to termination, with any reimbursable expenses then due, but such compensation shall not exceed the maximum compensation to be paid under the Agreement. The Consultant agrees this payment shall fully and adequately compensate the Consultant and all subconsultants for all profits, costs, expenses, losses, liabilities, damages, taxes and charges of any kind (whether foreseen or unforeseen) attributable to the termination of this Agreement.
7. Upon termination, the Consultant shall provide the City with the most current design documents, contract documents, writings and other products the Consultant has produced to termination, along with copies of all project-related correspondence and similar items. The City shall have the same rights to use these materials as if termination had not occurred; provided however, that the City shall indemnify and hold the Consultant harmless from any claims, losses, or damages to the extent caused by modifications made by the City to the Consultant’s work product.
8. **CONSULTANT PERFORMANCE EVALUATION.**

The Consultant’s performance will be evaluated by the City at the conclusion of the contract. The Evaluation template can be viewed <http://www.seattle.gov/contracting/docs/ccPE.doc>.

1. **DEBARMENT.**

Under SMC Chapter 20.70, the Director of Finance and Administrative Services or designee may debar a and prevent a Consultant from contracting or subconsultant with the City for up to five years after determining the Consultant:

1. Received overall performance evaluations of deficient, inadequate, or substandard performance on three or more City contracts;
2. Failed to comply with City ordinances or contract terms, including but not limited to, ordinance or contract terms related to woman and minority business utilization, discrimination, equal benefits, or other state, local or federal non-discrimination laws;
3. Abandoned, surrendered, or failed to complete or to perform work on or for a City contract;
4. Failed to comply with contract provisions, including but not limited to quality of workmanship, timeliness of performance, and safety standards;
5. Submitted false or intentionally misleading documents, reports, invoices, or other statements to the City in connection with a contract;
6. Colluded with another firm to restrain competition;
7. 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. Failed to cooperate in a City debarment investigation.

The Director or designee may issue an Order of Debarment under the SMC 20.70.050. Rights and remedies of the City under these provisions are besides other rights and remedies provided by law or under the Agreement.

1. **RESERVED.**
2. **EXPANSION FOR NEW WORK.**

This Agreement scope may be expanded for new work. Any expansion for New Work (work not specified within the original Scope of Work Section of this Agreement, and/or not specified in the original RFP as intended work for the Agreement) must comply with all the following limitations and requirements: (a) the New Work is not reasonable to solicit separately; (b) the New Work is for reasonable purpose; (c) the New Work was not reasonably known either the City or Consultant at time of contract or else was mentioned as a possibility in the solicitation (such as future phases of work, or a change in law); (d) the New Work is not significant enough to be reasonably regarded as an independent body of work; (e) the New Work would not have attracted a different field of competition; and (f) the change does not vary the essential identified or main purposes of the Agreement. The City may make exceptions for immaterial changes, emergency or sole source conditions, or other situations required in City opinion. Certain changes are not New Work subject to these limitations, such as additional phases of Work anticipated at the time of solicitation, time extensions, Work Orders issued on an On-Call contract, and similar. New Work must be mutually agreed and issued by the City through written Addenda. New Work performed before an authorizing Amendment may not be eligible for payment.

1. **MISCELLANEOUS PROVISIONS.**
2. Amendments: No modification of this Agreement shall be effective unless in writing and signed by an authorized representative of each of the parties hereto.
3. Background Checks and Immigrant Status: The City has strict policies regarding the use of Background checks, criminal checks and immigrant status for contract workers. The policies are incorporated into the contract and available for viewing on-line at <http://www.seattle.gov/business/WithSeattle.htm>
4. Binding Agreement: This Agreement shall not be binding until signed by both parties. The provisions, covenants and conditions in this Agreement shall bind the parties, their legal heirs, representatives, successors and assigns.
5. RESERVED.
6. The Consultant, at no expense to the City, shall comply with all laws of the United States and Washington, the Charter and ordinances of the City of Seattle; and rules, regulations, orders and directives of their administrative agencies and officers. Without limiting the generality of this paragraph, the Consultant shall comply with the requirements of this Section.
7. This Agreement shall be construed and interpreted under the laws of Washington. The venue of any action brought shall be in the Superior Court of King County.
8. Remedies Cumulative: Rights under this Agreement are cumulative and nonexclusive of any other remedy of law or in equity.
9. Captions: The titles of sections or subsections are for convenience only and do not define or limit the contents.
10. Severability: If any term or provision is determined by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Agreement shall not be affected, and each term and provision shall be valid and enforceable to the fullest extent permitted by law.
11. Waiver: No covenant, term or condition or the breach 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 a waiver of any preceding or succeeding breach of the same or any other covenant, term of condition. Neither the acceptance by the City of any performance by the Consultant after the time the same shall have become due nor payment to the Consultant for any portion of the Work shall constitute a waiver by the City of the breach or default of any covenant, term or condition unless otherwise expressly agreed to by the City in writing.
12. Entire Agreement: This document along with any exhibits and all attachments, and subsequently issued addenda, comprises the entire agreement between the City and the Consultant. The solicitation (Request for Proposal or Solicitation for Qualifications), Addenda, Consultants Proposal, and Consultants WMBE Inclusion Plan, are each explicitly included as Attachments material to the Agreement. Where there are conflicts between these documents, the controlling document will first be this Agreement as amended, the WMBE Inclusion Plan as adopted, the Consultant’s Proposal, then the City Solicitation documents. If conflict occurs between contract documents and applicable laws, codes, ordinances or regulations, the most stringent or legally binding requirement shall govern and be considered a part of this contract to afford the City the maximum benefits.
13. Negotiated Agreement: The parties acknowledge this is a negotiated agreement, that they have had this Agreement reviewed by their respective legal counsel, and that the terms and conditions of this Agreement are not to be construed against any party on the basis of such party’s draftsmanship.
14. 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 or in any connection with this Agreement.

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

**CONSULTANT CITY OF SEATTLE**

By\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ By\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Signature Date Signature Date

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Title Title

**City of Seattle Business License Number:**

**Washington State Unified Business Identifier Number (UBI):**

**Attachments**: Consultant Questionnaire (required above $47K)

 Exhibit A – Schedule of hourly billing rates and/or services fees

 Insurance Requirements and Transmittal Form

1. Note that the provisions governing payment of compensation are subject to any revisions necessary to reflect the final agreement between the parties as to the structure of such compensation. [↑](#footnote-ref-1)