



City of Seattle

Drug & Alcohol Testing and
Fit for Duty Medical Examinations

Request
For
Proposal

September 9, 2009

I. INTRODUCTION

The City of Seattle is soliciting proposals from qualified contractors to provide:

- alcohol and drug testing services for The City of Seattle in compliance with the Department of Transportation (DOT) Federal Motor Carrier Safety Administration (FMCSA) Regulations (49 CFR, Part 40; 49 CFR, Parts 382,391,392 and 395) and United States Coast Guard Regulations (46 CFR Parts 4 and 16)
- non-NIDA/DOT pre-employment drug testing,
- Crane Operator drug testing in accordance with Washington State law, and
- Fit For Duty Medical Examinations (Attachment B).

The City has been conducting DOT drug and alcohol testing since 1995, varying levels of preemployment drug testing since 1997, and Fit for Duty Medical Examinations since 1983. Crane Operator drug testing is a new requirement under Washington State law, currently scheduled to take effect January 2010. The current contract is with *HealthForce Partners of Bothell, Washington*.

Non-DOT Drug Testing The City of Seattle's preemployment drug test program is now limited to only those public safety positions that involve carrying firearms. This results in only a few applicants subject to testing each year.

Crane Operator Drug Testing Washington State has adopted regulations requiring certification & training of crane operators.. This certification includes a requirement for drug testing. At this time, the requirements are somewhat vague and may be subject to revision throughout the duration of this contract.

DOT Drug and Alcohol Testing Additionally, the City currently employs approximately 900 drivers in various operating departments who are covered by FMCSA regulations. Workers are located predominantly in King County, but some are located in more remote worksites such as Landsburg, Cedar Falls, Skagit/Ross Dam, and Metaline Falls/Boundary Dam. A listing of exact locations is included as Attachment A. The City also employs approximately 15 workers who are covered under Coast Guard regulations at the Skagit/Ross Dam project.

Fit for Duty (FFD) Medical Examinations The City conducts FFD Medical Examinations infrequently, performing approximately five exams per year. These exams are conducted most frequently by or under the direction of occupational physicians for employees in the greater Puget Sound area, and mainly during the day. However, infrequent exams are conducted in the more remote sites listed above, and also during evenings, night and weekends.

The City is soliciting proposals to perform the major functions required to administer the DOT drug testing, non-DOT pre-employment drug testing, and the Fit for Duty Medical Examinations. The City prefers to contract with one proposer who will either perform or subcontract for all the program components. The contractor will report primarily to the Personnel Department, Citywide Safety Unit who centrally manages this program and may also infrequently communicate with other City departments such as City Light, SPU, Transportation, and Parks (hereinafter referred to as "operating departments") about specific testing situations.

The City intends to award a contract for a five-year period. The effective date of the contract will be January 1, 2010 through December 31, 2014.

II. SCOPE OF SERVICES

The contractor will develop and administer drug and alcohol and medical examination services as described in the attached policies for City of Seattle employees who are covered by the Federal Motor Carrier Safety Administration (FMCSA) and US Coast Guard (USCG) hereinafter referred to as "DOT regulations". The program must meet the collection, testing, chain of custody, laboratory, confidentiality, storage, medical review, and all other requirements of the law that relate to employees covered by DOT Regulations, including all current and future staffed City locations, and any changes to those regulations.

Specific objectives and requirements for each of the services are described below:

A. DOT REQUIRED TESTING

1. Conduct Alcohol and Drug Testing

The contractor must provide a drug and alcohol testing program that includes, but is not limited to, the following tests and procedures, which are covered under the FMCSA and U.S. Coast Guard regulations:

- pre-employment
- reasonable suspicion
- post-accident
- random
- return-to-duty
- follow-up
- other tests that may be requested.

The method and criteria for drug testing must conform to the drug testing requirements described in the DOT regulations.

The contractor shall provide approved breath alcohol testing in accordance with DOT regulations. Saliva screening tests are not part of the City's policy.

All drug test analysis must be conducted at the contractor's SAMHSA-certified laboratory; however, it is important that there be collection and alcohol breath testing sites located in close proximity to work locations of City employees identified in Attachment A. Since on-site collection and alcohol breath testing may be preferable in certain infrequent but critical situations, it is essential that the proposer have mobile testing services.

2. Administer or Have a Valid Random Testing Process and Generate the Random Testing Lists

The contractor must employ a scientifically-valid random selection method per the DOT, to annually select the required number of safety-sensitive employees for drug and alcohol testing.

The contractor must also ensure that:

- The test dates are spread reasonably throughout the year, without a predictable pattern.
- The number of tests conducted weekly, monthly, or quarterly will remain relatively constant to the extent possible.
- All safety-sensitive employees in the random pool have an equal chance of being selected for testing, and their names shall remain in the pool, even after being tested.

The contractor must give written/electronic notice to the City's Drug Testing Coordinator, identifying by name, social security number, and employee ID number, the City employees who have been selected for random testing.

3. Provide Laboratory and Collection Site Services

The contractor will provide laboratory and collection site oversight/management to:

- Ensure that specimens are collected in accordance with DOT procedures, including collector/BAT certification, observed collections, shy bladder procedures, and post-positive alcohol testing procedures.
- Maintain a chain-of-custody procedure that preserves the integrity of the evidence in all categories of testing.
- Provide individually prepackaged specimen bottles, tamper-evident tape and tamper-evident bags to ensure that legally defensible records of specimens are transferred from the initial collection site to the laboratory. The laboratory must follow the DOT guidelines for drug testing and all Substance Abuse and Mental Health Services Administration (SAMSHA) standards.
- Provide and utilize DOT-approved split sample urine collection kits, all supplies associated with the collection of urine specimens, and DOT chain-of-custody forms.
- Provide a trained courier to pick up all specimens at the designated medical clinic or other designated locations at contractor's expense.
- Provide sufficient facilities accessible to all City worksites, and provide mobile testing services with the ability to respond (infrequently) to any location within the state to conduct on-site collection and Evidential Breath Testing (EBT), when requested.
- In Post Accident and Reasonable Suspicion test situations, collection site personnel must contact the City's Drug Test Coordinator prior to specimen collection.
- Maintain strict confidentiality of all test results in accordance with DOT regulations.
- Store all specimens that test positive for drugs in a secure, locked freezer for one (1) year after the specimen was produced, or as otherwise required by law, whichever is longer. Evidence shall be stored in the original specimen container in which it arrived.

4. Provide Data Management/Recordkeeping and Reporting Services

The contractor must manage data and maintain confidential records in compliance with applicable federal regulations, and submit reports to the City's Drug Testing Coordinator, as required. Specific requirements include, but are not limited to, the following:

- Forward all drug/alcohol test results in a manner that assures confidentiality.
- The Breath Alcohol Technician (BAT) will contact the City Drug Test Coordinator immediately in the event of a confirmed positive test.
- Maintain records, documents and other files directly related to the performance of the contracted-for work in accordance with DOT regulations and accepted professional practices. Specifically, the contractor shall comply with the following records retention schedule:
 - a) Maintain records of test results less than 0.02 for alcohol and verified negative drug test results for one year after the date of collection.
 - b) Maintain records related to the collection process and documents relating to the random selection process for two years after the date of collection.
 - c) Maintain records of verified positive drug tests, refusals, referrals, Management Information System (MIS) reports, alcohol test results of 0.02 or greater, and EBT calibration documentation for five years after the test was conducted.

5. Provide Medical Review Officer (MRO) Services

The contractor must provide the services of a certified Medical Review Officer (hereinafter referred to as MRO).

The MRO must review all drug testing laboratory results for verification and validation as required by DOT regulations.

The MRO will:

- Receive all drug test results from the laboratory.
- Conduct review of the Custody and Control Form to determine whether or not it was completed accurately.
- If accuracy of results is questionable, request the laboratory to reanalyze the original specimen or conduct additional tests as appropriate.
- Contact those applicants or employees with confirmed positive or adulterated test results to verify results.
- Notify each employee who has a verified positive/adulterated test by telephone or in person that he/she has 72 to hours request a test of the split specimen (Meet with employee, if the employee requests or circumstances otherwise warrant)

- If employee so requests, immediately (the same business day) order the laboratory to send the split sample to another SAMHSA-Certified laboratory.
- Report each verified test result to the Personnel Department Program Administrator and Washington State Department of Licensing (DOL) (as applicable).
- Maintain all records and send test results to the Personnel Department Program Administrator.

6. Consultation Services

The contractor must provide the following consultation services as requested by the City:

- Expert advice on DOT, SAMHSA, and other federal, state, and local drug & alcohol regulations that may apply to City employees.
- An account representative for the City, available on a daily basis, if necessary, to answer questions and resolve problems.
- Expert testimony on all collection and laboratory testing procedures in cases of litigation or arbitration.
- Upon request, preparation of a litigation package that includes copies of all chain-of-custody documents; batch specimen review sheets; gas chromatography/mass spectrometry (GCMS) data review files (graphic charts), résumés and credentials of all technicians involved in testing of specimens; and a laboratory testing report that includes the initial immunoassay screen and the confirmatory GCMS test.

B. Non-DOT Drug Testing

The City of Seattle conducts approximately ten pre-employment drug tests per year for job applicants in certain positions after a conditional job offer has been made. Non-DOT tests are also required for DOT-covered employees who voluntarily self-refer for controlled substance use or alcohol misuse as outlined in 49 CFR part 382.121. Non-DOT drug tests are to be reviewed using the same practices as DOT tests to the greatest extent practicable, including physician review and offer of sample retest. The program follows DOT procedures with the exception of the following:

- The custody and control form is non-SAMHSA;
- Specimen collection follows non-SAMHSA 30 ml single specimen collection protocol;
- “Failed integrity for dilute specimens require the applicant to be tested a second time and the collection is “observed”;
- Close monitoring by collection site staff is required to ensure applicants are submitting to testing without delay after presenting themselves to the collection site.

C. Crane Operator Drug Testing

Beginning January 1, 2010, drug tests will be required of crane operators in the State of Washington. At this time, it appears that all crane operators employed by the City of Seattle are also CDL holders. Inclusion in a DOT testing program meets the current requirements of the crane operator rule. Future modifications to this rule, and/or to the City's hiring processes or job classifications could result in the need for additional non-DOT testing.

D. Fit For Duty (FFD) Medical Examinations

The City of Seattle conducts FFD Medical Examinations for employees when *“an accident, injury, incident, or employee’s behavior, speech or appearance causes a supervisor to suspect a physical or psychological condition may be impairing an employee’s ability to satisfactorily perform work with reasonable skill or safety.”* See attached *Fit for Duty Medical Examination Policy*, Attachment B. The City has historically conducted approximately five exams per year. The examination evaluates the employee’s physical and/or psychological condition to determine whether the employee is able to perform his or her job with reasonable skill and safety. The exam must be performed by an **occupational physician** who determines the employee’s fitness for duty and may order drug (Professional Panel) and alcohol or other tests, or make referrals when appropriate. Proposers should address how they intend to meet the specific requirements of the FFD Medical Examination procedure at each City facility as outlined in Attachment B.

D. Other Drug and Alcohol Testing

The City may decide to expand current programs or to implement other testing programs during the life of the contract and would expect the cooperation and expertise of the contractor to assist in the planning and implementation of these programs.

III. OTHER REQUIREMENTS

In order to be responsive, the contractor must:

- Maintain an MRO office and laboratory services with expert customer service available during the City’s business hours.
- Preference will be give to proposers with demonstrated commitment to a local presence.
- Possess all applicable Washington State licenses
- Comply with EEO requirements. (See Section VI)
- Maintain required insurance for the duration of the agreement. (See Section VII.)

IV. SELECTION PROCEDURE

A. Schedule

The schedule for contracting for these services is as follows:

Publish Notice of RFP

September 10, 11

Pre-Conference Questions to City	September 21
Proposers' Conference	September 23
Proposals due to City	October 9
Evaluation and Interview Finalists	October 12-23
Selection Notification	October 30

B. Proposers' Conference

Proposers are invited to meet with City representatives to obtain answers to questions at a conference to be held from 1:30 p.m. until 3:30 p.m., Wednesday, September 23, 2009 in Room 4080, Floor 40, Seattle Municipal Tower, 700 Fifth Avenue, Seattle, WA 98104.

C. Evaluation of Proposals

Proposals will be evaluated and ranked by the Proposal Evaluation Committee on the basis of the criteria established below for DOT Drug Testing, Pre-employment Drug Testing, and Fit for Duty Medical Examinations. Proposal responses, references, community resources and other relevant sources of information will be used in making the final recommendation.

<u>Evaluation Criteria</u>	<u>Maximum Score</u>
Proposed Method of Performance (Testing and reporting)	400
Experience	100
Expertise and Qualifications	100
Cost	300
Customer Service	<u>100</u>
	TOTAL 1000

D. Interview

The Committee may choose to interview the highest rated proposers. Interviews will be closed meetings and may include the account representative and MRO, at a minimum. Before or during an interview, Personnel Department staff may ask questions or seek clarification of a proposal.

E. Public Documents; Disclosure

All submissions become the property of the City and public records subject to disclosure under RCW 42.17.250-330 once the Evaluation Committee has identified its preferred proposer/contractor.

A proposer may show and discuss proprietary information and exhibits with the Evaluation Committee during oral presentations, but must indicate that the material is confidential during the meeting.

The City will attempt to protect legitimate trade secrets of any proposer. Examples of such information would be unpublished descriptions of proprietary aspects of the proposed system. Any proprietary information contained in the proposal must be clearly designated as such and should be

separately bound and labeled with the words “proprietary information”. Appropriate references to this separately bound information must be made in the body of the proposal.

Marking all or nearly all of the proposal as proprietary may result in the rejection of the proposal. In this regard, the City may reject any proposal it cannot fairly evaluate without the information marked proprietary.

Proposers should be aware that the City is required by law to make its records available for public inspection, with certain exceptions (see RCW Chapter 42.17). The proposer, by submission of materials marked proprietary, acknowledges and agrees that the City will have no obligation or liability to the proposer in the event that the City must disclose these materials.

F. Investigation; On-Site Visit

The City reserves the right to:

- 1) Make inquiries from licensing authorities and consider information received;
- 2) Visit a proposer’s and/or subcontractor’s office(s) or facilities to meet with personnel;
- 3) Request clarifications or additional information in order to assist in its evaluation of a proposer.

G. Director’s Selection

As a result of this request and the evaluation process, the Personnel Director intends to make a selection. The Personnel Director reserves the right to reject all proposals; or after beginning negotiations with a finalist, if progress is unsatisfactory, to discontinue negotiations and begin discussions with the next ranked finalist, among other alternatives.

H. Costs

The City will not reimburse any cost incurred by a proposer in connection with preparation or submission of a proposal, making an oral presentation, or in contract negotiations.

V. QUESTIONNAIRE

Directions for Completing the Questionnaire

The following questions are grouped according to the Evaluation Criteria, which are defined in Section IV-C. Please restate each question before providing your response. In answering a question, you may refer to other documents and cite the page where the information may be found, rather than repeat it. If the answer to one question appears in your answer to another, you may refer to your other answer.

A. Proposed Method of Performance (Testing and Reporting)

Through the evaluation, the City is seeking a proposal that will provide all the necessary components of drug and alcohol testing and Fit for Duty Medical Examinations required by either law or City policy, including collection, testing, medical review services, reporting and consultation services. The proposer with the most comprehensive, responsive and favorable package will receive the highest evaluation.

- 1) Name the primary contractor/service provider and any proposed subcontractors that will be involved in the delivery of services described in your proposal (Form 1).
- 2) Describe in general your proposed method of performing the required collection, testing, MRO and reporting services to the affected populations.
- 3) Describe the scientifically-valid random selection method(s) and procedures you will use to select employees to be randomly tested.
- 4) Explain the procedures you will use to notify the City Drug Test Coordinator of the list of random names to be tested.
- 5) List your collection sites, their locations, and their proximity to City of Seattle work locations. (See Attachment A, City of Seattle Work Locations)
- 6) Describe how the listed collection sites will comply with observed collections as required by DOT regulations.
- 7) Provide the name and address of testing laboratory(ies) and how the samples will be transported to them from the collection sites.
- 8) Provide hours of operation of the collection and testing facilities. If collection and testing facilities are not open 24 hours a day, how do you propose to conduct required testing?
- 9) Provide copies of all forms used, and describe your chain of custody procedures.
- 10) Describe your specimen bottle, tamper-evident tape and bag, and how samples will be transported.
- 11) Describe your turnaround time for:
a) drug test results; and b) alcohol test results.
- 12) Do you have mobile collection services? How do you propose /intend that they be used?
- 13) Describe your method of reporting negative and positive results in a confidential manner from the laboratory to the MRO, and from the MRO to the City of Seattle's representative.
- 14) Describe the procedure to be used by the MRO to verify positive test results with the affected employee and communicate results to the authorized City representative and The Washington State Department of Licensing (DOL).

- 15) Describe the procedure to be used by the Breath Alcohol Technician (BAT) to confirm tests and communicate them to the affected employee and authorized City representative(s) and the DOL.
- 16) Describe the software package you will be using to keep/store records and provide the City with required data/reports.
- 17) Provide sample reports you will provide to comply with DOT regulations.
- 18) Describe your storage procedures for maintenance and computer file back up.
- 19) Provide a sample litigation package that could be used in legal proceedings by the City of Seattle for all drug/alcohol collection and testing procedures, including recordkeeping and reporting.
- 20) State the number of instances the proposer has been involved in proceedings involving a legal challenge to drug and alcohol testing. Describe the nature of each challenge, the role of the proposer in such proceedings and the outcome thereof.
- 21) Describe/list any other consultation services you are capable of providing.
- 22) Describe how you will respond to the City's requirement for: Fit For Duty Medical Examinations conducted by or under the direction of an occupational medicine physician on a 24/7 basis for each work location listed in attachment A, and your reporting procedures for each location.

B. Experience

Experience of the proposer is very important. The City will evaluate proposers based on the years of successful experience in providing the services requested by the City in this proposal.

- 1) State the years and types of experience that the proposer and any proposed subcontractors have had in providing the services in your proposal.
- 2) State the number and percentage of invalid urine and drug tests that have been performed by your laboratory or contracted laboratories in calendar years 2007, 2008, and 2009 to date and the reasons the tests were found to be invalid.
- 3) State the number and percentage of invalid urine and drug tests that have been collected by all facilities & subcontractors listed for City employee use in calendar years 2007, 2008, and 2009 to date and the reasons the tests were found to be invalid.
- 4) For tests canceled because of collector/BAT error, state totals for the above-referenced years by collection site. Describe the collector retraining that took place. If the collection sites are subcontractors, describe the contractor's verification process to ensure collector retraining was performed in accordance with DOT regulations
- 5) State the years of experience the MRO has with interpretation of laboratory data related to substance abuse.

- 6) Provide the names, addresses and telephone numbers of the contracting agency for any previous or current contracts for services that are similar or identical to those contemplated for in this proposed contract in the past ten years.
- 7) Provide the names and telephone numbers of any agency that has terminated your contract.
- 8) Describe your experience in conducting Fit for Duty Medical Examinations that are similar to the City's policy.

C. Qualifications

The federal regulations specify in detail the required qualifications of the personnel and testing procedures for this program. The City is seeking a contractor that meets or exceeds those requirements. In addition, the City will evaluate the ability, capability and skills of the proposer to perform/provide the services required; the quality of the proposer's performance on prior contracts; the character, integrity, reputation, judgment and efficiency of the proposer; the management experience and understanding of the required work and services; and finally, the proposer's compliance with laws relating to alcohol and drug testing.

- 1) Provide the resumes of staff who perform drug and alcohol testing and other related professional services, i.e., their qualifications, capabilities, experience (including years of experience in drug and alcohol testing), and appropriate certificates and licenses.
- 2) Submit written evidence of Substance Abuse and Mental Health Services Administration (SAMHSA) laboratory certification.
- 3) Submit evidence that all laboratories are directed by a pathologist and employ a Ph.D./M.D. toxicologist.
- 4) Provide evidence that couriers are trained in required chain-of-custody sequence/specimen receipt.
- 5) Provide the name(s) of the proposed MRO(s) and background information and evidence that the MRO meets the requirements defined in DOT regulations.
- 6) Provide the names and telephone numbers of three client references for the proposer and each subcontractor who can be readily contacted and have utilized the services you are proposing to the City.
- 7) Provide evidence of at least 5 years experience in administering DOT drug and alcohol testing programs
- 8) Describe your facilities and provide resumes of your occupational medical staff who would conduct Fit for Duty Medical Examinations.

D. Cost

Cost is important, but not the single most important criterion. Please complete Form 2 to display your costs for providing the various services requested, and modify, if necessary, to provide an alternative.

E. Customer Service

Customer Service is very important to the City and its employees. Please respond to the following questions:

- 1) Describe the parking facilities at each of your collection site locations.
- 2) What is the average “wait” time for drug and alcohol testing?
- 3) Have you surveyed customers who use your collection sites? If so, what were the results?
- 4) What other means do you use to measure customer satisfaction?
- 5) How accessible is your MRO to the City’s Drug Test Staff?

VI. WOMEN AND MINORITY BUSINESS ENTERPRISE REQUIREMENTS:

Please see Attachment C, Standard City Contract Template, Section 7: Equal Employment Opportunity and Outreach, Section 9: Affirmative Efforts to use Women and Minority Business Enterprises.

VII. NONDISCRIMINATION AND AFFIRMATIVE ACTION

Please see Attachment C, Standard City Contract Template, Section 8: Non-Discrimination in Employee Benefits.

VIII. INDEMNIFICATION AND REQUIRED INSURANCE

Please see Attachment C, Standard City Contract Template, Section 12: Insurance

IX. INSTRUCTIONS AND TERMS FOR SUBMITTING PROPOSALS

A. Communication with City

All communication concerning this Request for Proposals should be directed in writing to:

Pam Beltz, City Drug Testing Coordinator
City of Seattle Personnel Department
54th Floor, Seattle Municipal Tower
700 Fifth Avenue
Seattle, WA 98104
Telephone: (206) 684-7959
Fax: (206) 470-6841

No other City official or employee is authorized to speak for the City with respect to this request for proposals.

Submit any questions or requests you may have for clarification or additional information to Pam Beltz by September 21, 2009. All responses to inquiries will be in writing and available for all proposers at the Proposers' Conference.

B. Proposers' Conference

A Proposers' Conference will be held on Wednesday, September 23, 2009, from 1:30 p.m. until 3:30 p.m., in Room 4080, Floor 40, Seattle Municipal Tower, 700 Fifth Avenue, Seattle, WA 98104. (Attendance is not mandatory.) All proposers who attend the conference will receive a copy of the questions and answers from the conference, responses to other requests for clarification, and/ or additional information as applicable.

C. Proposal Submission

Submit your proposal to the Personnel Director, ATTN: Pam Beltz. Proposals submitted via U.S. Mail must be addressed to P.O. Box 34028, Seattle, WA 98124. Proposals submitted via courier (i.e. United Parcel Service, Federal Express, hand delivered, etc.) may use the physical address provided in section A, above. Proposals must be received, at the City of Seattle Personnel Department no later than 2:00 P.M. on October 9, 2009. Proposals sent via U.S. Mail to the street address will either be delayed or returned by the post office at their discretion. In either case, if they are not received by the Personnel Department by the deadline they will be considered to be non-responsive. Please submit an original and 3 copies. Double-sided copying and recycled paper is encouraged.

The proposal must be accompanied by a transmittal letter on the Proposer's official letterhead, signed by a person authorized to bind the proposal, and identifying a person, with title, address, and telephone number, who the City may contact. Completed Forms 1 and 2 (Attachment D) must also be included along with your questionnaire responses.

D. Submission as Offer

The City's contract with a proposer may incorporate, or be based on information in a proposal. Promises or statements may become representations on which the contract is based. The contract may adopt this Request and the proposal as materials for reference in resolving ambiguities.

E. Firm Offers

All responses become the property of The City of Seattle. The submission of a proposal shall indicate the intention of the proposer to adhere to the provisions described in this RFP. The proposer must agree that all proposals are firm offers and will remain in effect for 90 days after the Proposal Due Date or for such longer period (not to exceed an additional 90 days) as may be requested by the City.

F. City Actions Regarding Proposals

The City reserves the right to reject any and all proposals and to waive any immaterial defects and informalities in proposals.

G. Awarding of Contract

Any award will be made on the basis of what the City believes to be in its best interest and its decision will be final. Notification will be made in writing.

The successful proposer(s) should be prepared to enter into a contract with the City effective January 1, 2010.

H. Publicity

Proposers shall not issue any news release(s) about this Request or its proposal during the selection process without the prior approval of the Personnel Director.

I. Errors In Proposals

Every vendor is responsible for errors and omissions in its proposal (s). No such error or omission will serve to diminish a vendor's obligation to the City.

Attachments

Attachment A - City Work Locations

Attachment B – Fit for Duty Medical Examination
Policy & Procedure

Attachment C – Standard City Contract Template

Attachment D – Forms

Form 1 - Performance Questionnaire

Form 2 – Proposed Pricing

Attachment A

WORK LOCATIONS FOR CITY OF SEATTLE EMPLOYEES SUBJECT TO DOT DRUG AND ALCOHOL TESTING:

#	Location Name	Address
9	Boundary Hydroelectric Project	10382 Boundary Rd., Metaline Falls, WA 99153
11	Cedar Falls	19901 Cedar Falls Rd. S.E., North Bend, WA 98045
100	Charles Street Complex	714 S. Charles, Seattle, WA 98134
73	Haller Lake Shop	12645 Ashworth Ave. N., Seattle, WA 98133
7	Jefferson Horticulture Community Center	3801 Beacon Ave. S., Seattle, WA 98108
5	Kent Landfill	23706 Military Rd. S., Kent, WA 98131
18	Landsberg Treatment Plant	28700 S.E.252 nd , Maple Valley, WA 98035
31	North Division Facilities	8061 Densmore Ave N, Seattle, WA 98103
160	North Service Center	1300 N. 97 th , Seattle, WA 98103
11	North Transfer Station	1350 N. 34 th , Seattle, WA 98103
1	Seattle Fire Dept Headquarters	301 2 nd Ave. S., Seattle, WA 98104
10	Seattle Justice Center	600 5 th Ave., Seattle, WA 98104
12	Skagit Hydroelectric Project (USCG)	500 Newhalem St, Newhalem, WA 99283
25	Skagit Hydroelectric Project(CDL)	500 Newhalem St, Newhalem, WA 99283
217	South Service Center	3613 4 th Ave. S., Seattle, WA 98134
13	South Transfer Station	8100 2 nd Ave. S., Seattle, WA 98108
7	Tolt Treatment Plant	40809 N.E. N. Fork Rd., Duvall, WA 98019
8	Traffic Shop	4200 Airport Way S., Seattle, WA 98108
115	Airport Way Center	2203 Airport Way S., Seattle, WA 98134
12	West Seattle Street Maintenance Yard	9200 8 th Ave. S.W., Seattle, WA 98106
18	Westbridge Shops	4209 West Marginal Way SW, Seattle, WA 98106
5	Lake Youngs	16205 Se Old Petrovisky Rd, Renton, WA 98058
3	Sandpoint	7400 Sandpoint Way NE, Seattle, WA 98115
871	Approximate Total	

NOTE: All numbers are approximate and subject to change.

Attachment B

Revision Date: 11/15/02

POLICY

Replaces: 11/29/95

Authority: SMC 4.77.040 (Ord.117418)

Norma McKinney, Personnel Director

CONDUCTING URGENT FIT FOR DUTY MEDICAL EXAMINATIONS

This policy updates the revised In-service/Fit for Duty Examination Procedure, originally part of the June 1982 Pre-employment and In-service Examination Procedure.

Applies to all City employees in all positions

1. **The City expects employees to report for work each day as scheduled, and to be alert, rested and physically able to satisfactorily perform their work with reasonable skill and safety.**

Supervisors may consult with the City's employee assistance program (EAP), Human Resources Representative (HR), Safety Staff, or ADA Coordinator as resources addressing work performance issues.

2. **The City will conduct a Fit for Duty (FFD) examination under the following circumstances.**

An accident, injury*, incident, or employee's behavior, speech or appearance causes a supervisor to suspect a physical or psychological condition may be impairing an employee's ability to satisfactorily perform work with reasonable skill or safety. * If injury is involved requiring immediate medical treatment, medical treatment should supersede the FFD procedure.

(A non-urgent medical exam can be scheduled when an employee has a medical condition that is ongoing, long-term and non-urgent in nature.)

3. **A FFD Exam is a specific medical examination conducted by an occupational physician.**

The physician:

- reviews unusual work behavior affecting the employee's job performance as observed and documented by supervisory personnel;
- evaluates the employee's physical and psychological condition;
- may refer the employee to his/her own physician or medical specialist, order laboratory tests, conduct breath alcohol and urine drug tests, or any other medical procedures the physician deems appropriate; and
- determines the employee's ability to satisfactorily perform his or her job with reasonable skill and safety.

4. **The City respects confidentiality during the exam process.**

5. **The City respects employee rights under collective bargaining agreements (Weingarten).**

6. **Citywide Safety Unit (Personnel Department) centrally manages this program in partnership with Department HR and Safety Staff.**

To ensure citywide consistency, the Citywide Safety Unit establishes policies and procedures, contracts with qualified vendors, conducts training, develops forms, processes billing, and guides and assists departments in this process.

7. **The Safety Unit pays for the costs of FFD exams from the Workers' Compensation fund.**

Effective Date: 6/15/98

PROCEDURE

Procedure:

CONDUCTING URGENT FIT FOR DUTY MEDICAL EXAMINATIONS

Action by	Action
Supervisor	<p>1. Receives report of or observes an accident, injury*, incident, or employee's behavior, speech, or appearance that causes the supervisor to suspect an employee's physical or psychological condition may be impairing their ability to satisfactorily perform work with reasonable skill or safety. *If injury is involved requiring immediate medical treatment, medical treatment should supersede the FFD procedure.</p> <p>If receives report of behavior, observes or confirms the reported conduct or investigates the report before taking further action.</p>
Second supervisor or manager	<p>2. Takes necessary action to prevent injury or harm to employee or others.</p> <p>3. Secures and protects any evidence of alcohol, drugs or drug use if found from destruction or contamination.</p> <p>4. When possible, contacts management representative to validate observations.</p>
Supervisor	<p>5. Validates or invalidates observations with first supervisor</p>
Supervisor	<p>6. Consults with Human Resources Representative (HR), Safety Staff, or Citywide Safety Unit for assistance as appropriate.</p>
HR/Safety Staff	<p>7. Provides advice and answers questions about the FFD policy and procedures or responds in person as necessary or requested.</p>
Supervisor	<p>8. Documents observations on "<i>City of Seattle Behavior Observation Form</i>" and includes additional information if relevant or if this incident is part of a pattern of behavior.</p> <p>9. In the presence of a management witness, meets with employee and presents the "Behavior Observation Form" documenting the supervisor's observations.</p> <p>9a) If the employee could receive discipline as a result of the incident arranges for an opportunity for the employee to consult with the most readily available union representative (Weingarten).</p>

Employee

- 10. Responds** to the presentation of the “Behavior Observation Form” by doing one of the following:
- provides** explanation
 - provides** no response
 - refuses** to cooperate
 - admits** to substance abuse.

Supervisor

- 11. Documents** employee response and explanation if given, and may consult HR, and/or Citywide Safety for advice on how to proceed.

- 12. Evaluates** all information and **decides** if urgent Fit for Duty Medical Examination is warranted.

If Fit For Duty Medical Examination is not warranted, consults with Management, HR/Safety Staff to decide what further action is appropriate.

Note: If the employee’s explanation establishes or relates to a long term non-urgent medical condition which prevents the employee from performing his/her job, **consults** with Department ADA Coordinator.

- 13. If decision is to conduct Fit for Duty Medical Examination**, (See Supervisor Task List) **contacts** City Safety Unit 206-684-7959 or 206-605-4324 (24/7 cell).

- 14. Ensures** Safety Staff has contacted the contracted occupational medicine provider to advise of the Fit for Duty Medical Examination and **receives** instructions as to which medical facility to transport the employee to for the Fit for Duty Exam.

- 15. Transports** employee to medical facility as instructed or **arranges** for HR/Safety Staff to assist in transportation.

Physician

- 16. Completes** medical examination and appropriate medical procedures as necessary and

- 17. Determines** whether employee is able to perform his/her job with reasonable skill and safety.

- 18. Completes** the *HealthCare Professionals Findings and Recommendations* form and **returns** all original forms to the supervisor.

Supervisor

- 19. Transports** or **arranges** for transportation back to the worksite and **informs** Department HR/safety staff of examination results.

- 20. Sends** copies of all documents to Department HR/safety staff and **faxes** copies of all documents within 24 hours to the Citywide Safety Unit 206-470-6841.

- 21. Informs** employee that an HR representative will contact him/her with further instructions.

Effective Date: 6/15/98

TASK LIST FOR SUPERVISOR

Task:

CONDUCTING URGENT FIT FOR DUTY MEDICAL EXAMINATIONS

When an accident, injury*, incident, or employees behavior, speech, or appearance causes a supervisor to suspect an employee's physical or psychological condition may be impairing their ability to satisfactorily perform work with reasonable skill or safety; **a supervisor:** * If injury is involved requiring immediate medical treatment, medical treatment should supersede the FFD procedure.

1. **Takes** necessary action to prevent injury or harm to the employee or others.
2. **Validates** or **invalidates** observations with a management representative when possible.
 - 2a. If management representative concurs, **continues** with step 3.
 - 2b. If management representative does not concur, **documents** reason for taking no further action regarding Fit for Duty Examination or **may continue** with step 3.
3. **Consults** with Human Resources Representative (HR)/safety staff or City Safety Unit for further assistance, and **updates** them of ongoing status of situation.
(If the employee's condition may relate to an on the job injury claim, consult with the Workers' Compensation Claims Unit).
4. If applicable, **secures** and **protects** from destruction or contamination evidence of alcohol, drugs, drug use, suspected illegal substances or drug paraphernalia found in the workplace.
 - 4a. **Contacts** Police by calling 911 and **notifies** appropriate department managers if illegal substances are found or if suspects illegal activity has occurred.
5. **Documents** on "City of Seattle Behavior Observation Form", specific, contemporaneous, and articulable observations concerning the appearance, behavior, speech or body odors of the employee. **Signs** form and **ensures** witness also signs completed form.
 - 5a. **Includes** detailed summary of incident and copies of documents pertinent to issue when appropriate.
6. **Presents** written observations to employee, with management witness present, and **gives** employee the opportunity to respond.
 - 6a. If this discussion could result in disciplinary action and if the employee is represented by a union, **advises** the employee of his/her right to union representation or **honors** a request by the employee for union representation prior to presenting the "Behavior Observation Form" and **makes a reasonable effort to allow** the employee to briefly consult with the most readily available union representative or shop steward in person or by phone.
7. **Documents** and describes employee's response and explanation if given.

- 7a. If employee provides a reasonable explanation consistent with observations and supervisor determines employee's condition allows employee to continue working safely, **approves** employee's return to work, or;
- 7b. If supervisor concludes employee is unsafe to work, **consults** with HR or Citywide Safety Staff to decide if employee should be excused for the day on sick leave or a referral for Fit for Duty Medical Examination be made, or;
- 7c. If supervisor suspects employee may have an ongoing non-urgent medical condition that prevents the employee from performing his/her job **consults** with department ADA coordinator, or;
- 7d. If employee provides no response or refuses to cooperate, **cautions** the employee that refusal to cooperate constitutes insubordination (which will subject the employee to discipline up to and including termination of employment) and **allows** employee opportunity to reconsider.

If employee:

- (i) **cooperates**, continue with FFD process.
- (ii) **continues to refuse**, dismiss the employee from the workplace as part of the disciplinary process for insubordination.*

*If employee exhibits behavior which would prevent him/her from driving safely, and refuses transportation and/or insists on driving own personal vehicle, **informs** employee that the appropriate law enforcement agency will be notified, and, if necessary, **calls** 911.

- 7e. If employee admits to drug or alcohol abuse, **documents** employee's admission and continue with Fit for Duty Examination process.
- 8. **Informs** employee that he/she is being directed to submit to a Fit for Duty Medical Examination.
- 9. **Contacts** Citywide Safety Unit at **206-684-7959** (business hours) or by cell phone at **206-605-4324** (after-hours) to advise of the need for examination.
- 10. **Requests** employee to read and sign "*Employee Acknowledgement and Medical Release for Fit for Duty Examination*" form.
 - 10a. If employee refuses to sign form or submit to the examination, **cautions** the employee that their refusal constitutes insubordination (which will subject them to discipline up to and including termination of employment) and **allows** employee opportunity to reconsider.
- 11. **Prohibits** employee from continuing to work or from operating motor vehicles or equipment **until Fit for Duty Medical Examination is conducted and results are received.**
 - 11a. If substance abuse is suspected, **ensures** employee does not consume any products containing alcohol or controlled substances until the Fit for Duty Medical Exam has been completed.

12. **Assembles** and **takes** to the medical examination the following documents:
- a) Completed “*Behavior Observation Form*” and other pertinent documents (e.g. copies of prior similar incidents or other evidence of or documentation of problem)
 - b) Signed “*Employee Acknowledgment and Release*” form
 - c) Blank “*Health Care Professional’s Findings and Recommendations*” form, and
 - d) Current job analysis/description of the employee’s job duties.
13. **Ensures** Safety Staff has contacted the contracted occupational medicine provider to advise of the Fit for Duty Medical Examination and **receives** instructions as to which medical facility to transport the employee to for the Fit for Duty Exam.
14. **Transports** employee to one of the medical facilities as instructed or **arranges** for HR/Safety Staff to assist in transportation
15. **Identifies** him/her self as employee’s management representative to the medical staff and **provides** copies of forms outlined in *Step 12*.
16. **Remains** or **directs designee to remain** at medical facility with employee until examination is completed and **receives** copies of the examination results signed by the physician. (*Healthcare Professionals Findings & Observations Form*)

*If physician finds employee is able to perform their work duties with reasonable skill or safety, **arranges** transportation back to the worksite and confers with safety, HR or management to determine employees work status. If employee is sent home, **arranges** transportation home*.*

*If physician finds employee is NOT able to perform their work duties with reasonable skill or safety or drug and alcohol tests are ordered, **arranges** transportation home* and instructs the employee that they are not to report to work until they are notified by a management representative.*

*If employee refuses transportation home or insists on driving his or her own personal vehicle, **informs** employee that the appropriate law enforcement agency will be notified, and if necessary, **calls** 911.

17. **Informs** Department HR/safety staff of examination results and **sends** copies of all documents to Department HR/safety staff, and **faxes** copies of all documents within 24 hours to the Citywide Safety Unit 206-470-6841.

Attachment C

The City of Seattle Personnel Department

CONSULTANT AGREEMENT FOR

*

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

AGREEMENT NO. _____

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

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

Section 1: TERM OF AGREEMENT

The term of this Agreement shall begin when fully executed by all parties, and shall end on **[date when work and payment will be complete]**, unless terminated earlier pursuant to the provisions hereof.

Section 2: TIME OF BEGINNING AND COMPLETION

The Consultant shall begin the work outlined in the "Scope of Work" section (“the Work”) upon receipt of written notice to proceed from the City. The City will acknowledge in writing when the Work is complete.

Time limits established pursuant to this Agreement shall not be extended because of delays for which the Consultant is responsible, but may be extended by the City, in writing, for its convenience or for conditions beyond the Consultant’s control.

Section 3: SCOPE OF WORK

*** In developing a scope of work, a relationship should be established between the SCOPE OF WORK in this section, including work tasks and deliverables, and the PAYMENT section, including dollar amounts, associated fees, charges, and reimbursable costs.**

The description in the Scope of Work must clearly show that: (1) Department neither directs the work of the Consultant nor exercises the same supervisory control over the Consultant that they do City employees. (i.e. does not conduct City employee performance evaluations, discipline, or have a City employee file for the Consultant). (2) The Consultant is not listed as an employee on a City org chart or directory and does not supervise or evaluate City employees. (3) The Scope of Work should differentiate the Consultant’s work from the scope, expertise and duties of City employees. (4) The

Consultant has its own equipment and generally works off-site and its fixed, ongoing costs are not reimbursed by the City.)

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

The provisions of the SCOPE OF WORK may be located either within this section, or as an attachment to the Agreement. Select one of the two options below and delete the other. The standard Scope of Work provision below must also be included in this section.

[* Option No. 1]

The Scope of Work of this Agreement and the time schedule for completion of such work is as follows: **[*Insert Scope of Work within this Section]**

[* Option No. 2]

The Scope of Work of this Agreement and the time schedule for completion of such work are as described in Exhibit *_____, which is attached to and made a part of this Agreement.

The Work shall, at all times, be subject to the City's general review and approval. The Consultant shall confer with the City periodically during the progress of the Work, and shall prepare and present such information and materials (e.g., a detailed outline of completed Work) as may be pertinent, necessary, or requested by the City to determine the adequacy of the Work or the Consultant's progress.

Section 4: PAYMENT

*** This section should be developed and inserted by the department contracting for services. It must include the maximum amount to be paid to the Consultant for the Work defined in Section 3, SCOPE OF WORK, as well as a schedule establishing benchmarks for when certain portions of the money will be paid.**

- A. The Consultant will be reimbursed at a rate of _____. The Total Authorized Compensation for services and expenses under this Agreement shall not exceed **[spell out the dollar amount – ex: Five Thousand Dollars and No Cents] [put the dollar amount ex. \$5,000.00]**. The parties agree that the hourly rate of _____ includes all direct, indirect, and overhead costs incurred by the Consultant in performance of the work.
- B. Payments under contracts negotiated on the basis of cost shall include only those costs allowed under Part 31 of the Federal Acquisition Regulations (FAR), the provisions of which are incorporated herein by reference.

Section 5: PAYMENT PROCEDURES

Payment shall be made by the City to the Consultant upon the City's receipt of an invoice itemizing the number of hours worked and itemizing the Work elements performed for the period covered by the invoice.

Section 6: ADDRESSES FOR NOTICES AND DELIVERABLE MATERIALS

All official notices under this Agreement shall be delivered to the following addresses (or such other address(es) as either party may designate in writing):

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

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

Section 7: EQUAL EMPLOYMENT OPPORTUNITY AND OUTREACH

All contracts require provisions A, D, E, and F. For provisions B and C, use Option 1 and delete Option 2 if the consultant was not required to submit an Outreach Plan as part of the proposal process. If an Outreach Plan was required, use Option 2 and delete Option 1. In general, an Outreach Plan should have been required if the contract is estimated at \$260,000 (2009 dollars) or more and may be required at each department's discretion, for those contracts the department believes present significant subcontracting opportunities. If you have any questions regarding Section 9, you may contact Contracting Services at 684-0430.

A. The Consultant shall not discriminate against any employee or applicant for employment because of race, color, age, sex, marital status, sexual orientation, gender identity, political ideology, creed, religion, ancestry, national origin, or the presence of any sensory, mental or physical handicap, unless based upon a bona fide occupational qualification. The Consultant shall take affirmative efforts to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, age, sex, marital status, sexual orientation, gender identity, political ideology, creed, religion, ancestry, national origin, or the presence of any sensory, mental or physical handicap. Such efforts shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising, layoff or termination, rates of pay, or other forms of compensation and selection for training, including apprenticeship.

[* Option No. 1]

B. If the Consultant will hire employees for this project, the Consultant shall make affirmative efforts to recruit minority and women candidates. Affirmative efforts may include the use of advertisements in publications directed to minority communities and other targeted recruitment efforts, and using the services of available minority community and public organizations to perform outreach.

[* Option No. 2]

- B. If the Consultant will hire employees for this project, the affirmative efforts shall be those that have been agreed upon between the City and the Consultant as a result of the Consultant Outreach Plan response, and are incorporated herein by this reference as Exhibit ___.

[* Option No. 1]

- C. Record-Keeping: The Consultant shall maintain, for at least 24 months after the expiration or earlier termination of this Agreement and permit access to the Consultant's records of employment, employment advertisements, application forms and other pertinent data and records requested by the Personnel Department for the purposes of investigation to determine compliance with the requirements of this section.

[* Option No. 2]

- C. Record-Keeping: The Consultant shall maintain, for at least 24 months after the expiration or earlier termination of this Agreement and permit access to the Consultant's records of employment, employment advertisements, application forms and other pertinent data and records requested by the Personnel Department for the purposes of investigation to determine compliance with the requirements of this section., relevant records and information necessary to document all Consultant solicitations to subconsultants and suppliers, all subconsultant and supplier proposals received, and all subconsultants and suppliers actually utilized under this Agreement. The City shall have the right to inspect and copy such records. The City shall have the right to monitor the affirmative efforts of the Consultant and to inspect and copy such records of the Consultant as are necessary to ensure compliance with the requirements of this Section.
- D. The Consultant, by executing this Agreement, is affirming that the Consultant complies with all applicable federal, state, and local non-discrimination laws, particularly the requirements of SMC Ch. 20.42 as incorporated in this Agreement. Any violation of the requirements of the provisions of this section noted in paragraph A, B and C above shall be a material breach of Agreement for which the Consultant may be subject to damages and sanctions provided for by the Agreement and by applicable law, including but not limited to debarment from City contracting activities in accordance with SMC Ch. 20.70.
- E. The foregoing provisions of this section shall be inserted in all subcontracts for the Work covered by this Agreement.

Section 8: NONDISCRIMINATION IN EMPLOYEE BENEFITS

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

Refer to Section 11.6 of the City's Consultant Contracting Standard Operating Procedures for guidance regarding these provisions.

- A. Compliance with SMC Ch. 20.45: The Consultant shall comply with the requirements of SMC Ch.20.45 and Equal Benefits Program Rules implementing such requirements, under which the Consultant is obligated to provide the same or equivalent benefits ("equal benefits") to its employees with domestic partners as the Consultant provides to its employees with spouses. At the City's request, the Consultant shall provide complete information and verification of the Consultant's compliance with SMC Ch. 20.45. Failure to cooperate with such a request shall constitute a material breach of this Contract. *(For further information about SMC Ch. 20.45*

and the Equal Benefits Program Rules call (206) 684-0430 or review information at <http://cityofseattle.net/contract/equalbenefits/>.)

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

Section 9: AFFIRMATIVE EFFORTS TO USE WOMEN AND MINORITY BUSINESS ENTERPRISES

All contracts require provisions A, D, E, and F. For provisions B and C, use Option 1 and delete Option 2 if the consultant was not required to submit an Outreach Plan as part of the proposal process. If an Outreach Plan was required, use Option 2 and delete Option 1. In general, an Outreach Plan should have been required if the contract is estimated at \$260,000 (2009 dollars) or more and may be required at each department's discretion, for those contracts the department believes present significant subcontracting opportunities.

If you have any questions regarding Section 9, you may contact Contracting Services at 684-0430.

- A. If a Consultant intends to subcontract out any part of a contract instead of performing the work itself, then the following requirement applies: Consultant shall use affirmative efforts to promote and encourage participation by women and minority businesses on subcontracting opportunities within the contract scope of work. Consultant agrees to make such efforts as a condition of the Agreement.

[* Option No. 1]

- B. Outreach efforts may include the use of solicitation lists, advertisements in publications directed to minority communities, breaking down total requirements into smaller tasks or quantities where economically feasible, making other useful schedule or requirements modifications that are likely to assist small or WMBE businesses to compete, targeted recruitment efforts, and using the services of available minority community and public organizations to perform outreach.

[* Option No. 2]

- B. Affirmative efforts shall include those that have been agreed upon between the City and the Consultant as a result of the Consultant proposal response, and are incorporated herein by this reference as Exhibit ___.

[* Option No. 1]

- C. Record-Keeping: The Consultant shall maintain, for at least 24 months after the expiration or earlier termination of this Agreement, relevant records and information necessary to document all Consultant solicitations to subconsultants and suppliers, all subconsultant and supplier

proposals received, and all subconsultants and suppliers actually utilized under this Agreement. The City shall have the right to inspect and copy such records.

[* Option No. 2]

- C. Record-Keeping: Consultant shall maintain, for at least 24 months after the expiration or earlier termination of this Agreement, relevant records and information necessary to document Consultant affirmative efforts to solicit to women and minority business participation, including solicitations to subconsultants and suppliers, all subconsultant and supplier proposals received, and all subconsultants and suppliers actually utilized under this Agreement. The City shall have the right to monitor the affirmative efforts of the Consultant and to inspect and copy such records of the Consultant as are necessary to ensure compliance with the requirements of this Section.

- D. Consultant shall ensure that all employees, particularly supervisors, are aware of, and adhere to their obligation to maintain a working environment free from discriminatory conduct, including but not limited to harassment and intimidation of minorities, women, or WMBE businesses.

- E. Non-Discrimination: Consultant shall not create barriers to open and fair opportunities for WMBEs to participate in any City contract and to obtain or compete for contracts and subcontracts as sources of supplies, equipment, construction and services.

- F. Sanctions for Violation: Any violation of the paragraphs A, B, C, D or E of this section, or a violation of SMC Ch. 14.04 (Fair Employment), SMC Ch. 14.10 (Fair Contracting), SMC Ch. 20.42 (Equality in Contracting), SMC Ch. 20.45 (Nondiscrimination in Benefits), or other local, state or federal non-discrimination laws shall be a material breach of contract for which the Consultant may be subject to damages and sanctions provided for by the Agreement and by applicable law. Consultants found to be in violation of the requirements may be subject to debarment from City contracting activities in accordance with SMC Ch. 20.70.

Section 10: OTHER LEGAL REQUIREMENTS

- A. General Requirement: The Consultant, at no expense to the City, shall comply with all applicable laws of the United States and the State of Washington; the Charter and ordinances of The City of Seattle; and rules, regulations, orders, and directives of their administrative agencies and the officers thereof. Without limiting the generality of this paragraph, the Consultant shall specifically comply with the following requirements of this section.

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

- C. Use of Recycled Content Paper: Whenever practicable, Consultant shall use reusable products including recycled content paper on all documents submitted to the City. Consultant is to duplex all documents that are prepared for the City under this Contract, whether such materials are printed or copied, except when impracticable to do so due to the nature of the product being produced. Consultants are to use 100% post consumer recycled content, chlorine-free paper in any documents that are produced for the City, whenever practicable, and to use other paper-saving and recycling measures in performance of the contract with and for the City.

- D. Americans with Disabilities Act: The Consultant shall comply with all applicable provisions of the Americans with Disabilities Act of 1990 as amended (ADA) in performing its obligations under this Agreement. Failure to comply with the provisions of the ADA shall be a material breach of, and grounds for the immediate termination of, this Agreement.
- E. Fair Contracting Practices Ordinance: The Consultant shall comply with the Fair Contracting Practices Ordinance of The City of Seattle (Chapter 14.10 SMC), as amended.

Section 11: INDEMNIFICATION

The Consultant does hereby release and shall defend, indemnify, and hold the City and its employees and agents harmless from all losses, liabilities, claims (including claims arising under federal, state or local environmental laws), costs (including attorneys' fees), actions or damages of any sort whatsoever arising out of the Consultant's performance of the services contemplated by this Agreement to the extent attributable to the negligent acts or omissions, willful misconduct or breach of this Agreement by the Consultant, its servants, agents, and employees. In furtherance of these obligations, and only with respect to the City, its employees and agents, the Consultant waives any immunity it may have or limitation on the amount or type of damages imposed under any industrial insurance, worker's compensation, disability, employee benefit or similar laws. The Consultant acknowledges that the foregoing waiver of immunity was mutually negotiated and agrees that the indemnification provided for in this section shall survive any termination or expiration of this Agreement.

Section 12: INSURANCE

*** The insurance provisions included below are general purpose. For a particular consultant agreement, it may be necessary to increase or decrease the coverages and requirements as provided in these provisions. Departments are advised to evaluate, with the advice of Risk Management in the Department of Executive Administration, whether the types and amounts of insurance coverage indicated below are appropriate for each contract. Departments are required to confer with the Risk Management to determine the insurance requirements for consultant services that pose a medium-high to high risk to the City. For more detailed descriptions of the Risk Management process for consultant contracts, including insurance documentation requirements, please refer to Chapter 4 of the Consultant Contracting Standard Operating Procedures and/or check the Risk Management InWeb at <http://inweb/riskmanagement/docs/cklist.doc>**

No insurance certification is required. However, Consultant agrees that it will maintain premises and vehicle liability insurance in force with coverages and limits of liability that would generally be maintained by similarly situated consultants and workers compensation insurance as may be required by Washington State statutes.

Insurance certification required. See Addendum "INSURANCE REQUIREMENTS AND TRANSMITTAL FORM."

Section 13: AUDIT

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

Consultant, any subconsultant, or any other person or entity that performed work in connection with or related to the Work, at any and all times deemed necessary by the City or Agency, including up to six years after the final payment or release of withheld amounts has been made under this Agreement. Such inspection and audit shall occur in King County, Washington or other such reasonable location as the City or Agency selects. The Consultant shall supply the City with, or shall permit the City and/or Agency to make a copy of any books and records and any portion thereof. The Consultant shall ensure that such inspection, audit and copying right of the City and Agency is a condition of any subcontract, agreement or other arrangement under which any other person or entity is permitted to perform work under this Agreement.

Section 14: CONTRACTUAL RELATIONSHIP

The relationship of the Consultant to the City by reason of this Agreement shall be that of an independent contractor as defined by the City's Contracting Out Policy. This Agreement is not intended for the Consultant to act in anyway, in the capacity of a City employee. The parties agree that the City has neither direct nor immediate control over the Consultant or the right to control the manner or means by which the Consultant performs the work. The Consultant agrees that neither the Consultant nor any employee of the Consultant shall be deemed to be an employee of the City for any purpose. This Agreement does not authorize the Consultant to act as the agent or legal representative of the City for any purpose whatsoever. The Consultant is not granted any express or implied right or authority to assume or create any obligation or responsibility on behalf of or in the name of the City or to bind the City in any manner or thing whatsoever.

Section 15: ASSIGNMENT AND SUBCONTRACTING

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

Section 16: INVOLVEMENT OF FORMER CITY EMPLOYEES

- A. The Consultant shall promptly notify the City in writing of any person who is expected to perform any of the Work and who, during the twelve (12) months immediately prior to the expected commencement date of such work or subcontract, was a City officer or employee.
- B. The Consultant shall ensure that no Work or matter related to the Work is performed by any person (employee, subcontractor, or otherwise) who:
 - (1) was a City officer or employee within the past twelve (12) months; and
 - (2) as such was officially involved in, participated in, or acted upon any matter related to the Work, or is otherwise prohibited from such performance by SMC 4.16.075.

Section 17: NO CONFLICT OF INTEREST

The Consultant confirms that the Consultant does not have a business interest or a close family relationship with any City officer or employee who was, is, or will be involved in the consultant

selection, negotiation, drafting, signing, administration, or evaluating the Consultant's performance. As used in this section, the term "Consultant" shall include any employee of the Consultant who was, is, or will be involved in the negotiation, drafting, signing, administration, or performance of the Agreement. As used in this section, the term "close family relationship" refers to the following: spouse or domestic partner; any dependent parent, parent-in-law, child, son-in-law, or daughter-in-law; or any parent, parent-in-law, sibling, uncle, aunt, cousin, niece or nephew residing in the household of a City officer or employee described above.

Section 18: ERRORS & OMISSIONS; CORRECTION

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

Section 19: INTELLECTUAL PROPERTY RIGHTS

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

The Consultant grants to the City a non-exclusive, irrevocable, unlimited, royalty-free license to use every document and all other materials prepared by the Consultant for the City under this Agreement. If requested by the City, a copy of all drawings, prints, plans, field notes, reports, documents, files, input materials, output materials, the media upon which they are located (including cards, tapes, discs and other storage facilities), software programs or packages (including source code or codes, object codes, upgrades, revisions, modifications, and any related materials) and/or any other related documents or materials which are developed solely for, and paid for by, the City in connection with the performance of the Work, shall be promptly delivered to the City.

The City may make and retain copies of such documents for its information and reference in connection with their use on the project. The Consultant does not represent or warrant that such documents are suitable for reuse by the City, or others, on extensions of the project, or on any other project.

Section 20: CONFIDENTIALITY

The parties agree that they will not permit the duplication or disclosure of any information designated in advance by the other party as "Confidential and Proprietary" to any person (other than its own employee, agent, or representative who must have such information for the performance of that party's obligations hereunder) unless such duplication, use or disclosure is specifically authorized in writing by the other party or is required by law. "Confidential and Proprietary" information does not

include ideas, concepts, know-how or techniques related to information that, at the time of disclosure, is in the public domain unless the entry of that information into the public domain is a result of any breach of this Agreement. Likewise, "Confidential and Proprietary" information does not apply to information that is independently developed, already possessed without obligation of confidentiality, or rightfully obtained from a third party without an obligation of confidentiality.

Section 21: EXTRA WORK

The City may desire to have the Consultant perform work or render services in connection with this project other than that expressly provided for in the "Scope of Work" section of this Agreement. This will be considered extra work, supplemental to this Agreement, and shall not proceed unless authorized by an amendment. Any costs incurred due to the performance of extra work prior to execution of an amendment will not be reimbursed under this Agreement or an amendment.

Section 22: KEY PERSONS

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

Section 23: DISPUTES

Any dispute or misunderstanding that may arise under this Agreement concerning the Consultant's performance shall first be resolved through negotiations, if possible, between the Consultant's Project Manager and the City's Project Manager, or if necessary shall be referred to the Personnel Director and the Consultant's senior executive(s). If such officials do not agree upon a decision within a reasonable period of time, the parties may pursue other legal means to resolve such disputes, including but not limited to alternate dispute resolution processes.

Section 24: TERMINATION

- A. For Cause: The City may terminate this Agreement if the Consultant is in material breach of any of the terms of this Agreement, and such breach has not been corrected to the City's reasonable satisfaction in a timely manner.
- B. For Reasons Beyond Control of Parties: Either party may terminate this Agreement without recourse by the other where performance is rendered impossible or impracticable for reasons beyond such party's reasonable control such as but not limited to an act of nature; war or warlike operation; civil commotion; riot; labor dispute including strike, walkout, or lockout, except labor disputes involving the Consultant's own employees; sabotage; or superior governmental regulation or control.
- C. For City's Convenience: The City may terminate this Agreement at any time, without cause and for any reason including the City's convenience, upon written notice to the Consultant.

- D. Notice: Notice of termination pursuant to this section shall be given by the party terminating this Agreement to the other not less than five (5) business days prior to the effective date of termination.
- E. Actions Upon Termination: In the event of termination not the fault of the Consultant, the Consultant shall be paid for the services properly performed prior to termination, together with any reimbursable expenses then due, but in no event shall such compensation exceed the maximum compensation to be paid under the Agreement. The Consultant agrees that this payment shall fully and adequately compensate the Consultant and all subconsultants for all profits, costs, expenses, losses, liabilities, damages, taxes, and charges of any kind whatsoever (whether foreseen or unforeseen) attributable to the termination of this Agreement.

Upon termination for any reason, the Consultant shall provide the City with the most current design documents, contract documents, writings and other products it has produced to the date of termination, along with copies of all project-related correspondence and similar items. The City shall have the same rights to use these materials as if termination had not occurred; provided, however, that the City shall indemnify and hold the Consultant harmless from any claims, losses or damages to the extent caused by modifications made by the City to the Consultant's work product.

Section 25: CONSULTANT PERFORMANCE EVALUATION PROGRAM

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

Section 26: DEBARMENT

In accordance with SMC Ch. 20.70, the Director of the Department of Executive Administration or his/her designee may debar a Consultant and prevent the Consultant from entering into a contract with the City or from acting as a subconsultant on any contract with the City for up to five years after determining that any of the following reasons exist:

- 1) The Consultant has received overall performance evaluations of deficient, inadequate, or substandard performance on three or more City Contracts.
- 2) The Consultant has failed to comply with City ordinances or Contract terms, including but not limited to, ordinance or Contract terms relating to small business utilization, discrimination, or equal benefits.
- 3) The Consultant has abandoned, surrendered, or failed to complete or to perform work on or in connection with a City Contract.
- 4) The Consultant has failed to comply with Contract provisions, including but not limited to quality of workmanship, timeliness of performance, and safety standards.
- 5) The Consultant has submitted false or intentionally misleading documents, reports, invoices, or other statements to the City in connection with a Contract.
- 6) The Consultant has colluded with another firm to restrain competition.
- 7) The Consultant has committed fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a Contract for the City or any other government entity.
- 8) The Consultant has failed to cooperate in a City debarment investigation.
- 9) The Consultant has failed to comply with SMC 14.04, SMC Ch. 14.10, SMC Ch. 20.42, or SMC Ch. 20.45, or other local, State, or federal non-discrimination laws.

The Director or his/her designee may issue an Order of Debarment in accordance with the procedures specified in SMC 20.70.050. The rights and remedies of the City under these debarment provisions are in addition to any other rights and remedies provided by law or under the Agreement.

Section 27: MISCELLANEOUS PROVISIONS

- A. Amendments: No modification of this Agreement shall be effective unless in writing and signed by an authorized representative of each of the parties hereto.
- B. Binding Agreement: This Agreement shall not be binding until signed by both parties. The provisions, covenants and conditions in this Agreement shall bind the parties, their legal heirs, representatives, successors, and assigns.
- C. Applicable Law/Venue: This Agreement shall be construed and interpreted in accordance with the laws of the State of Washington. The venue of any action brought hereunder shall be in the Superior Court for King County.
- D. Remedies Cumulative: Rights under this Agreement are cumulative and nonexclusive of any other remedy at law or in equity.
- E. Captions: The titles of sections or subsections are for convenience only and do not define or limit the contents.
- F. Severability: If any term or provision of this Agreement is determined by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Agreement shall not be affected thereby, and each term and provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.
- G. Waiver: No covenant, term or condition or the breach thereof shall be deemed waived, except by written consent of the party against whom the waiver is claimed, and any waiver of the breach of any covenant, term or condition shall not be deemed to be a waiver of any preceding or succeeding breach of the same or any other covenant, term or condition. Neither the acceptance by the City of any performance by the Consultant after the time the same shall have become due nor payment to the Consultant for any portion of the Work shall constitute a waiver by the City of the breach or default of any covenant, term or condition unless otherwise expressly agreed to by the City, in writing.
- H. Entire Agreement: This document, along with any exhibits and attachments, constitutes the entire agreement between the parties with respect to the Work. No verbal agreement or conversation between any officer, agent, associate or employee of the City and any officer, agency, employee or associate of the Consultant prior to the execution of this Agreement shall affect or modify any of the terms or obligations contained in this Agreement.
- I. Negotiated Agreement: The parties acknowledge that this is a negotiated agreement, that they have had the opportunity to have this Agreement reviewed by their respective legal counsel, and that the terms and conditions of this Agreement are not to be construed against any party on the basis of such party's draftsmanship thereof.
- J. Rent: **[*Refer to section 7.3.4 in the Standard Operating Procedures to calculate the monthly rent]** The City may provide cubicle workspace to the Consultant at the Seattle Municipal Tower or other City offices for the term of this Agreement. The City will charge an appropriate rental fee for use of this space. The rental fee includes Consultant access to the workspaces at times mutually agreed to by the parties. The Consultant shall use these workspaces exclusively for the project and shall not be used for any other business purpose. Each workspace will include a City computer with appropriate software and licenses, a City

telephone and use of office equipment, such as copy and/or fax machines. The cost of the workspace shall be reflected as a deduction from the Consultant's fee. There shall be no adjustment or proration of the rental price if the Consultant fails to use any part of the workstations during the project schedule.

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 Agreement by having their representatives affix their signatures below.

CONSULTANT

THE CITY OF SEATTLE - Personnel Department

By _____

By _____

Signature **Date**

Signature **Date**

Type or Print Name

Mark M. McDermott

Type or Print Name

Title

Director of the Personnel Department

Title

City of Seattle Business License Number: _____

Washington State Unified Business Identifier Number (UBI):

Federal Tax ID Number: _____

Form 1

BELOW EACH NUMBERED ITEM, PLEASE PROVIDE THE NAME AND ADDRESS OF THE ORGANIZATION WHO WILL PROVIDE THE FOLLOWING SERVICES:

1. The laboratory performing the urine specimen analysis for drug testing

2. The evidential breath testing (EBT) equipment and breath alcohol technician (BAT)

3. Generate list of randomly selected names

4. The routine collection of urine samples

5. The medical review officer (MRO)

6. Mobile or on-site collection of urine samples

7. Same-sex observed collections

8. Mobile or on-site breath alcohol testing

Form 1 (cont.)

9. Specimen storage

10. Recordkeeping

11. Litigation package

12. Consultation services

13. Fit For Duty Medical Examinations

Form 2

ITEM	DESCRIPTION	UNIT PRICE
1	DOT Drug Tests: (SAMHSA test panel) Bundled cost (collection, lab, MRO)	\$
2	DOT Alcohol Tests: (EBT Test) Bundled cost	\$
3	DOT Collection Fees (if unbundled)	
	- Urine	\$
	- Breath	\$
4	DOT Test Analysis (if unbundled)	
	- Urine	\$
	- Breath	\$
5	MRO Function (if unbundled)	
	- MRO Review	\$
6	Specimen Storage (if unbundled)	\$
7	Record Keeping (if unbundled)	\$
8	Litigation Package	\$
9	Random Selection Fee (indicate if fee is monthly, quarterly etc.)	\$
10	Mobile/On-Site Collection Fees	
	- Urine	\$
	- Breath	\$
11	“Out of area” Urine Specimen Collection Fee	\$
12	“Observed “ Collection Fee	\$
1	Non-SAMHSA Drug Tests (SAMHSA look-alike) (Preemployment)	\$
2	Non-SAMHSA Drug Tests (Professional Panel) (Fit for Duty Drug Tests)	\$
3	Fit For Duty Medical Examinations (Seattle area business hours – specify hours)	\$
4	Fit For Duty Medical Examination (Seattle area after hrs & weekends)	\$
5	Fit For Duty Medical Examinations (Remote worksite locations)	\$

CONSULTATION PROFESSIONAL FEES

Certified Medical Review Officer (MRO)	\$ _____/hour
Occupational Physician M.D.	\$ _____/hour
Nurse (Registered)	\$ _____/hour
Nurse’s Aide	\$ _____/hour
Certified Breath Alcohol Technician (BAT)	\$ _____/hour
Certified Drug Collection Specialist	\$ _____/hour
Other (Specify)	\$ _____/hour
Other (Specify)	\$ _____/hour