

City of Seattle

Department of Education and Early Learning

CONSULTANT AGREEMENT

Title: (Insert brief descriptive title for the consultant service)

AGREEMENT NUMBER: (Enter Agreement Number)

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

Recitals:

The purpose of this contract is to (INSERT); and

The Consultant was selected through a Request for Proposal.

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

1. TERM OF AGREEMENT.

The term of this agreement begins on DATE and ends on DATE, unless amended by written agreement or terminated earlier under the termination provisions.

2. 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.

3. SCOPE OF WORK.

The Scope of Work for this Agreement and the time schedule for completion of such Work are described in Exhibits A and B, which are attached to and made a part of this Agreement. 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.

4. 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.

5. INTERLOCAL COOPERATION ACT. Reserved.

1. PAYMENT.

Total compensation under this Agreement shall not exceed Written Dollars, \$xxx,xxx.xx 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.

6.1 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 a properly prepared invoice containing the information listed below.

Deliver all invoices and invoice/billing notices under this Agreement to:

If to the City:	If to the Consultant:
DEEL Contracts Lead of Education and Early Learning With a copy to: DEEL Contract Manager	Firm Contact Firm Name Email / Phone Firm Address

6.2 REIMBURSABLES. Reserved.

6.3 PROMPT PAY.

Definitions

- A. An invoice is considered received when it is date-stamped as received by the office of the recipient who is designated within this contract. If the invoice is not date-stamped or otherwise marked as received by a department, the date of the invoice will be considered the date the invoice is received.
- B. A payment is considered made on the day it is mailed or is available.
- C. Disputed items include, but are not restricted to, improperly prepared invoices, lack of appropriate supporting documentation, unapproved staff or staff rates on the invoice, and unsatisfactory work product or services.

Prompt Payment to Consultant

- A. Timely Payment: Except as provided otherwise herein, payment for an invoice will be issued and mailed to the Consultant within thirty (30) calendar days of receipt of the invoice.
- B. Disputed Items: The City may withhold payment for disputed items. The City will promptly notify the Consultant in writing, outlining the disputed items, the amount withheld and actions the Consultant must take to resolve the disputed items. The City default is to delay payment until a revised invoice is submitted and approved. However, the Consultant may request partial payment for the approved amounts, if the unapproved amount represents a small share of the total invoice. The City shall pay the revised invoice within thirty (30) calendar days of receipt.
- C. Legal Fees: In any action brought to collect interest due under this Section, the prevailing party is entitled to an award of reasonable attorney fees.

Prompt Payment to Subconsultants

- A. Cut-Off Date: Except as provided otherwise herein, payment for an invoice will be made to a subconsultant within thirty (30) calendar days of receipt by the Consultant. The Consultant may establish a monthly cut-off date of (*to be established by Prime*) that subconsultants must submit an invoice in order to assure 30-day payment.

- B. Disputed Items: The Consultant may withhold payment for disputed items. The Consultant will promptly notify the subconsultant in writing, outlining disputed items, the amount withheld and actions the subconsultant must take to resolve the disputed item(s). Such withheld amounts are limited only to items in dispute. The subconsultant can request partial payment for the approved amounts, or that the Consultant delay their entire payment until a revised invoice is submitted to and accepted by the Consultant. The Consultant shall pay the revised invoice within thirty (30) calendar days of receipt.
- C. Flow-Down Clauses: The Consultant shall require this provision in each subcontract of any tier.

6.4 SUBCONSULTANT PAYMENTS REPORTING REQUIREMENTS.

The Consultant shall report payments made to each Subconsultant through B2GNow at:

<https://seattleconsulting.diversitycompliance.com/>

- 1) The Consultant shall report the first Subconsultant payment report no later than the 15th of the first month following issuance of the first payment made by the City to the Consultant, unless otherwise specified by the department.
- 2) Subsequent monthly Subconsultant payment reports shall be submitted by the 15th day of every month thereafter.
- 3) The last Subconsultant payment report shall be marked as "Final" in B2GNow and shall be submitted no later than 30 Days after the expiration of the Agreement.
- 4) The Consultant shall require each Subconsultant to verify each payment through B2GNow.
- 5) The Consultant is responsible for ensuring that all Subconsultants working on the contract (WMBE and Non-WMBE) entered in the B2GNow System for payment reporting purposes.
- 6) The Consultant shall require each Subconsultant to register on the City's Online Business Directory prior to completing the first online report. <https://web6.seattle.gov/FAS/OBD/Logon/Logon.aspx>.
- 7) The Consultant shall also require its Subconsultants to report payments made to any lower tier Subconsultants, if any, in the same manner as specified herein.
- 8) The City reserves the right to withhold payments from the Consultant for non-compliance with this section.

The Consultant may contact **(insert department name contact and phone number)** or the City Purchasing and Contracting Services (CPCS), City of Seattle, Department of Finance and Administrative Services at (206) 684-0444 for technical assistance in submitting the required reports.

6. TAXES, FEES AND LICENSES.

- A. The Consultant shall pay and maintain in current status, all necessary licenses, fees, assessments, permit charges, etc. It is the Consultant's sole responsibility to monitor and determine any changes or the enactment of any subsequent requirements for said fees, assessments, or changes and to immediately comply.
- B. Where required by state statute, ordinance or regulation, the Consultant shall pay and maintain in current status all taxes necessary for performance. The Consultant shall not charge the City for federal excise taxes. The City will furnish Consultant an exemption certificate where appropriate.
- C. 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.

7. ADDRESSES FOR NOTICES AND DELIVERABLE MATERIALS.

See section 6.1 PAYMENT PROCEDURES.

8. EQUAL BENEFITS.

This provision applies to all contracts valued at \$69,000 or above, including amendments. 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 partners of employees as the Consultant provides to spouses of employees. At the 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.

9. SOCIAL EQUITY REQUIREMENTS.

- A. Non-discrimination: 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, honorably discharged veteran or military status or the presence of 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 equally during employment, without regard to race, color, age, sex, marital status, sexual orientation, gender identify, political ideology, creed, religion, ancestry, national origin, honorably discharged veteran or military status or the presence of 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.
- B. WMBE Inclusion: The Consultant shall seek inclusion of woman and minority businesses (WMBEs) for subcontracting. A WMBE 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.

Inclusion 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 schedule or requirement modifications that assist WMBE businesses to compete, targeted recruitment, mentorships, using consultants or minority community organizations for outreach, and selection strategies that result in greater subconsultant diversity.

- C. Paid Sick Time and Safe Time Ordinance: The Consultant shall be aware that the City has a Paid Sick Time and Safe Time ordinance that requires companies to provide employees who work more than 240 hours within a year inside Seattle, with accrued paid sick and paid safe time for use when an employee or a family member needs time off from work due to illness or a critical safety issue. The ordinance applies to employers, regardless of where they are located, with more than four full-time equivalent employees. This is in addition and additive to benefits a worker receives under prevailing wages per WAC 296-127-014(4). City contract specialists may audit payroll records or interview workers as needed to ensure compliance to the ordinance. Please see <http://www.seattle.gov/laborstandards>, or you may call the Office of Labor Standards at 206-256-5297.
- D. Other Labor Standards Requirements: The Consultant shall comply to the extent applicable, with the City's Minimum Wage labor standards as required by SMC 14.19, setting wage standards for employees working within city limits as well as the Wage Theft labor standards as required by SMC 14.20, setting basic requirements for payment of wages and tips for employees working within city limits and providing various payment documentation to employees.
- E. Personnel Conduct: Consultant will ensure that its respective employees, agents, and subcontractors conduct themselves in a courteous and expeditious manner. The use of abusive, indecent, offensive, coarse, or insulting language, or any form of harassment is prohibited and will not be tolerated. Consultant's employees, agents, and subcontractors will be competent and hold appropriate licenses and endorsements. The City may require the removal of any employee or subcontractor of Consultant for misconduct or incompetent or negligent performance. Such persons will not be allowed to perform services under this Agreement without the written consent of the City.
- F. Compliance with Americans with Disabilities Act (ADA) and other disability laws: If the Consultant is providing services, programs or activities to City employees or members of the public, the Consultant shall not deny participation or the benefits of such services, programs or activities to persons with disabilities on the basis of such disability. Consultant shall provide the services specified in this Contract in a manner that complies with Title II of the ADA and any and all other applicable federal, state and local disability laws and regulations at all times and at no additional cost to City, including but not limited to the Americans with Disabilities Act of 1990;

Section 504 of the Rehabilitation Act of 1973, 29 U.S.C § 701 et seq.; and the Washington Law Against Discrimination, Wash. Rev. Code Ann. § 49.60. The final project design shall comply with all applicable laws, building codes and regulatory requirements, including but not limited to the requirements of the Americans with Disabilities Act (ADA) as amended (42 U.S.C. 12101 et seq.), its regulations, standards and guidelines. In cases where Title II and III of the ADA differ, the design shall comply with the provision that provides the highest degree of access to individuals with disabilities. Additionally, in cases where the 2010 ADA Standards for Accessible Design and building codes and other regulations differ, the design shall comply with the standard that provides the highest degree of access to individuals with disabilities. It is the responsibility of the Consultant to determine the applicable code provisions. Any violation of the requirements in Section 10.F shall be a material breach of contract and grounds for immediate termination of this Agreement, and Consultant may be subject to damages, sanctions, or other remedies as provided for under this Agreement or under applicable law.

10. PROTECTION OF PROPERTY

Consultant is responsible for protecting its person and property at all times, including but not limited to supplies and equipment to perform services hereunder; Consultant releases and agrees to hold the City harmless from liability for losses or damages or any kind sustained by Consultant in performing the services required hereunder.

11. INDEMNIFICATION.

Consultant shall defend, indemnify, and hold the City harmless from and against all claims, demands, losses, damages or costs, including but not limited to damages arising out of bodily injury or death to persons and damage to property, caused by or resulting from:

- the sole negligence or willful misconduct of Consultant, its officers, employees, agents or subconsultants;
- the concurrent negligence of Consultant, its officers, employees, agents or subconsultants but only to the extent of the negligence of Consultant, its officers, employees, agents or subconsultants;
- the negligent performance or non-performance of the contract by the Consultant; or
- the use of any design, process, or equipment that constitutes an infringement of any patent in effect, or violates any other intellectual proprietary interest, including copyright, trademark, and trade secret.

Consultant waives its immunity under Title 51 RCW to the extent it is required to indemnify, defend and hold harmless the City and its officials, agents or employees.

12. INSURANCE.

Insurance certification and additional insured endorsement policy must be submitted to the City. See attached "INSURANCE REQUIREMENTS AND TRANSMITTAL FORM." In **Exhibit F**

13. AUDIT.

Upon request, the Consultant shall permit the City and any other governmental agency ("Agency") involved in 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 permit the Agency to copy 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 person or entity may perform work under this Agreement.

14. INDEPENDENT CONSULTANT.

A. 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.

- B. 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.
- C. If the Consultant works on the City premises using City equipment, the Consultant remains an independent Consultant. 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.

15. 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.

16. 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. The Consultant shall ensure that all subconsultants comply with all obligations and requirements applicable to the subcontracted work. 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.

17. CITY ETHICS CODE (SMC 4.16.010 TO .105).

- A. The 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.
- B. The 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.
- C. The 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.
- D. The 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.
- E. Campaign Contributions (Initiative Measure No. 122): Elected officials and candidates are prohibited from accepting or soliciting campaign contributions from anyone having at least \$250,000 in contracts with the City in the last two years or who has paid at least \$5,000 in the last 12 months to lobby the City. For more information about the measure, please contact the Seattle Ethics and Elections Commission with questions at ethicsandelections@seattle.gov.

18. NO CONFLICT OF INTEREST.

The 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.

19. ERRORS AND OMISSIONS, 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 the 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.

20. INTELLECTUAL PROPERTY RIGHTS.

- A. 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.
- B. 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.
- C. 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.

21. NON-DISCLOSURE AGREEMENT

No Signed Non-Disclosure Agreement is required

1. PROPRIETARY AND CONFIDENTIAL INFORMATION.

The State of Washington’s Public Records Act (Release/Disclosure of Public Records) Under Washington State Law (reference RCW Chapter 42.56, the Public Records Act) all materials received or created by the City of Seattle are considered public records. These records include but are not limited to bid or proposal submittals, agreement documents, contract work product, or other bid material.

The State of Washington’s Public Records Act requires that public records must be promptly disclosed by the City upon request unless that RCW or another Washington State statute specifically exempts records from disclosure. Exemptions are narrow and explicit and are listed in Washington State Law (Reference RCW 42.56 and RCW 19.108).

As mentioned above, all City of Seattle offices (“the City”) are required to promptly make public records available upon request. However, under Washington State Law some records or portions of records may be considered legally exempt from disclosure. A list and description of records identified as exempt by the Public Records Act can be found in RCW 42.56 and RCW 19.108.

If the City receives a public disclosure request for any records or parts of records that Contractor has properly and specifically listed on the City Non-Disclosure Request Form (Form) submitted with Contractor’s bid/proposal, or records that have been specifically identified in this contract, the City will notify Contractor in writing of the request and will postpone disclosure. While it is not a legal obligation, the City, as a courtesy, will allow Contractor up to ten business days to obtain and serve the City with a court injunction to prevent the City from releasing the records (reference RCW 42.56.540). If you fail to obtain a Court order and serve the City within the ten days, the City may release the documents.

The City will not assert an exemption from disclosure on Contractor’s behalf. If Contractor believes that its records are exempt from disclosure, Contractor is obligated to seek an injunction under RCW 42.56.540. Contractor acknowledges that the City will have no obligation or liability to Contractor if the records are disclosed.

22. 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.

23. TERMINATION.

- A. For Cause: The City may terminate this 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.
- B. For Reasons Beyond Control of the 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 without cause and including the City’s convenience, upon written notice to the Consultant.
- D. 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.
- E. Actions upon Termination: if termination occurs and is 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.
- F. 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.

24. 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 <https://www.seattle.gov/Documents/Departments/FAS/PurchasingAndContracting/Consulting/ccPerfEval.docx>.

25. DEBARMENT.

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 of subconsultant debarment status within the Consultant records.

City of Seattle Debarment: Under SMC Chapter 20.70, the Director of City Purchasing and Contracting Services (CPCS), as hereby delegated by the Director of Finance and Administrative Services, may debar and prevent a Consultant from contracting or subcontracting with the City for up to five years after determining the Consultant:

- A. Received overall performance evaluations of deficient, inadequate, or substandard performance on three or more City contracts;
- B. 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;
- C. Abandoned, surrendered, or failed to complete or to perform work on or for a City contract;
- D. Failed to comply with contract provisions, including but not limited to quality of workmanship, timeliness of performance, and safety standards;
- E. Submitted false or intentionally misleading documents, reports, invoices, or other statements to the City in connection with a contract;
- F. Colluded with another firm to restrain competition;
- G. Committed fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a contract for the City or any other government entity;
- H. Failed to cooperate in a City debarment investigation.

The PC 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.

26. 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. Background Checks and Immigrant Status: The City may require background checks for some or all of the employees that may perform work under this Agreement. The City reserves the right to require such background checks at any time. The City has strict policies regarding the use of background checks, criminal checks, immigrant status, and/or religious affiliation for contract workers. The policies are incorporated into the contract and available for viewing on-line at <http://www.seattle.gov/purchasing-and-contracting/social-equity/background-checks>.
- C. Notification Requirements for Federal Immigration Enforcement Activities: Prior to responding to any requests from an employee or agent of any federal immigration agency including the Immigration and Customs Enforcement (ICE), the U.S. Department of Homeland Security (DHS), Homeland Security Investigations (HSI), Enforcement Removal Operations (ERO), Customs and Border Protection (CBP), and U.S. Citizenship and Immigration Services (USCIS) regarding your City contract, Consultants shall notify the Project Manager immediately.

Such requests include, but are not limited to:

- a. requests for access to non-public areas in City buildings and venues (i.e., areas not open to the public such as staff work areas that require card key access and other areas designated as “private” or “employee only”); or
- b. requests for data or information (written or oral) about workers engaged in the work of this contract or City employees.

No access or information shall be provided without prior review and consent of the City. The Consultant shall request the ICE authority to wait until the Project Manager is able to verify the credentials and authority of the ICE agent and will direct the Consultant on how to proceed.

- D. **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.
- E. **Federal, State, and Local Compliance:** 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, including, but not limited to, Seattle Municipal Code Chapter 14.04 (Fair Employment Practices), Chapter 14.06 (Unfair Public Accommodations Practices), Chapter 14.10 (Fair Contracting Practices), and Chapter 20.45 (City Contracts – Non-Discrimination in Benefits). Without limiting the generality of this paragraph, the Consultant shall comply with the requirements of this Section.
- F. **Venue:** 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.
- G. **Remedies Cumulative:** Rights under this Agreement are cumulative and nonexclusive of any other remedy of law or in equity.
- H. **Captions:** The titles of sections or subsections are for convenience only and do not define or limit the contents.
- I. **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.
- J. **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.
- K. **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.

- L. 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.
- M. 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 _____
Signature Date

By _____
Signature Date

Type or Print

Name _____
Type or Print Name

Title

Title

City of Seattle Business License Number: _____
Washington State Unified Business Identifier Number (UBI): _____

Attachments:

- Exhibit A – Scope of Work
- Exhibit B – Investment Plan and Reporting
- Exhibit C – Sample Invoice Form
- Exhibit D – Data Sharing Agreement - optional
- Exhibit E – Equal Benefits Commitment
- Exhibit F – Insurance Transmittal
- Exhibit G – Consultant Questionnaire

EXHIBIT A
SCOPE OF WORK

GENERAL

Timeline, Schedule, and Location

Administration and Communication

Monitoring and Reporting

Consultant will monitor progress by xxxxxxxx and provide the following reports to DEEL consisting of deliverables See Exhibit B for deliverable details.

The Consultant's program shall be monitored by the DEEL Program Manager semesterly during the contract period. The Consultant agrees to give access to its site, program records, case files, accounting records, and any other information or documentation that the DEEL Program Manager deems necessary. The DEEL program manager will monitor training and assessment. Consultant will be contacted to schedule the monitoring visit at least two weeks prior to the estimated visit date.

EXHIBIT B
INVESTMENT PLAN AND REPORTING

INVESTMENT PLAN

This is a deliverables-based contract. Overall compensation to the Agency is as follows:

Tasks and Deliverables

Costs outlined in this contract are inclusive of all trainer fees, related training materials, travel, and any other miscellaneous fees related to carrying out the deliverables. No additional work may be compensated without prior written approval.

EXHIBIT C
INVOICE PAYMENT FORM

City of Seattle Department of Education and Early Learning						
 INVOICE PAYMENT FORM						
Agency Name:	Sample Agency			Today's Date:		
Agency Contact:	A. Brown					
Agency Remit Address:	123 N. Pike Street Seattle, WA 98144			Agency Invoice # (Optional):		
Agency Phone No.:	206-123-4567					
Contract Number:	DOE22CA12			Invoice Period:		
Program Name:	Supporting Education for All					
Contract Period:	When fully executed - 12/31/2022			Invoice Amount:		
Maximum Amount:	\$162,400.00			\$0.00		
Deliverables	Maximum Contract Amount	% Completed	Less Previous	Earned This Period	Earned to Date	Balance
Deliverable #1: sample data report	\$25,000.00	0.00%			\$0.00	\$25,000.00
Deliverable #2: Conduct & deliver sample programming	\$20,000.00	0.00%			\$0.00	\$45,000.00
Deliverable #3: Conduct & deliver sample inservice training	\$30,000.00	0.00%			\$0.00	\$30,000.00
Deliverable #4: Curriculum materials	\$30,000.00	0.00%			\$0.00	\$30,000.00
Deliverable #5: Seminar credits	\$15,000.00	0.00%			\$0.00	\$15,000.00
Deliverable #6: Assessment completed	\$0.00	0.00%			\$0.00	\$0.00
Subtotal:	\$145,000.00	0.00%	\$0.00	\$0.00	\$0.00	\$145,000.00
Administrative Fee	Maximum Contract Amount	% Completed	Less Previous	Earned This Period	Earned to Date	Balance
Administrative Fee - 12% of billed services	\$17,400.00	0.00%			\$0.00	\$17,400.00
Subtotal:	\$17,400.00	0.00%	\$0.00	\$0.00	\$0.00	\$17,400.00
Maximum Contract Amount:	\$162,400.00	0.00%	\$0.00	\$0.00	\$0.00	\$162,400.00
INVOICE CERTIFICATION: I, the undersigned, do hereby certify under penalty of perjury under the laws of the State of Washington, to the best of my knowledge and belief after diligent inquiry, that the materials have been furnished, the services rendered or the labor performed as described herein, and that the claim is a just, due and unpaid obligation against the City of Seattle, and that I am authorized to authenticate and certify to said claim.						
Name (please print or type)		Signature of Authorized Representative			Date	

EXHIBIT D
DATA SHARING AGREEMENT *[Optional]*

EXHIBIT E
INVOICE PAYMENT FORM

Equal Benefits Compliance Declaration

Agency:

Please declare one (1) option from the list below that describes the Contractor's intent to comply with Seattle Municipal Code Chapter 20.45 should you win the contract.

Equal Benefits applies to any contractor location in the United States where substantive contract work is being performed (work directly related in a substantial way to the contract scope and deliverables).

Option A The Contractor makes, or intends to make by the contract award date, **all benefits available on an equal basis** to its employees with spouses and its employees with domestic partners, and to the spouses and the domestic partners of employees, in every location within the United States where substantial work on contract will be performed.

Option B The Contractor **does not make benefits available** to either the spouses or the domestic partners of its employees.

Option C The Contractor **has no employees**.

Option D Collective Bargaining Delay. Benefits are available on an equal basis to non-union workers, but union workers are subject to a collective bargaining agreement that does not provide equal benefits.

Option E Open Enrollment Delay. The first open enrollment period for implementing Equal Benefits is not available until after contract execution and Contractor will provide a cash equivalent payment to eligible employees until Equal Benefits can be implemented.

Option F Cash Equivalent Payment. The Contractor intends to provide a cash equivalent payment to eligible employees in lieu of making benefits available.

No United States Presence. The Contractor does not perform substantial work for the contract in any United State location.

Non-Compliant The Contractor does not comply and does not intend to comply, and refuses all options provided above.

Equal Benefits Instructions

Seattle Municipal Code Chapter 20.45 (SMC 20.45) requires companies executing a City contract to provide health and benefits that are the same or equivalent to domestic partners of employees as to spouses of employees, and of their dependents and family members.

1. Carefully fill out the Equal Benefits Declaration. It is essential to your standing in the evaluation process, so it is important to understand and complete the declaration properly.
2. The Buyer or Coordinator for the solicitation can answer any questions about this requirement or you may call the general office at 206-684-0444. Call before you submit your bid to ensure you've filled out the form correctly.
3. "Domestic Partner" is any person who is party to a same-sex or opposite-sex domestic partnership that is legally recognized in the place of jurisdiction where the union was established, including same-sex marriage, or registered as a Domestic Partner with the employer or government registry established by state or local law. If the employer does not have a registration system and does not intend to implement one, the City of Seattle has a registration system as an option:
<http://www.seattle.gov/leg/clerk/dpr.htm>

The City will review your responses and make a final determination. If the information you supply is conflicting or not clearly supported by the documentation that the City receives, the City may reject your entire submittal (bid or proposal) or may seek clarification to ensure the City properly classifies your compliance. Companies that select "Non-Compliant" will be rejected, unless there is no competitor that is compliant, responsive and responsible. The City may also find a Bidder "Non-Compliant" upon inspection of their program. Be prepared with documentation to support your declaration. All contracts awarded by the City may be audited for equal benefits compliance. Non-compliance may result in the rejection of a bid or proposal, or termination of the contract.

EXHIBIT F
INSURANCE REQUIREMENTS TRANSMITTAL FORM



This Insurance Requirements and Transmittal Form shall serve as an attachment and/or exhibit form to the Contract, and shall be interpreted and applied together as a single contractual instrument between the City of Seattle and the Agency.

Upon award of the Contract, the Agency shall maintain continuously throughout the entire term of the Contract, at no expense to the City, the following insurance coverage and limits of liability as checked below:

A. STANDARD INSURANCE COVERAGES AND LIMITS OF LIABILITY REQUIRED:

Commercial General Liability (CGL) or equivalent insurance including coverage for: Premises/Operations, Products/Completed Operations, Personal/Advertising Injury, Contractual and Stop Gap/Employers Liability (coverage may be provided under a separate policy), and Abuse and Molestation (ensure that it is shown on the ACORD Certificate of Liability Insurance Form or a confirmation email from insurance agent). Minimum limit of liability shall be \$ 1,000,000 each occurrence Combined Single Limit bodily injury and property damage (“CSL”)

\$2,000,000 Products/Completed Operations Aggregate

\$2,000,000 General Aggregate

\$1,000,000 Abuse and Molestation Liability

\$1,000,000 each accident/disease—policy limit/disease—each employee stop gap/Employer’s Liability

Automobile Liability insurance for owned, non-owned, leased or hired vehicles, as applicable, written on a form CA 00 01 or equivalent WITH **MINIMUM LIMITS OF LIABILITY OF \$1,000,000 CSL.**

MSC-90 and CA 99 48 endorsements required unless In-transit Pollution coverage is covered under required Contractor’s Pollution Liability insurance.

Worker's Compensation insurance for Washington State as required by Title 51 RCW.

B. ADDITIONAL COVERAGES AND/OR INCREASED LIMITS:

Umbrella or Excess Liability “follow form” insurance over primary CGL and Automobile Liability insurance limits, if necessary, to provide total minimum limits of liability of \$ CSL. These required total minimum limits of liability may be satisfied with primary limits or any combination of primary and umbrella/excess limits.

Contractor’s Pollution Liability insurance with minimum limits of liability of \$1,000,000 or \$ CSL each claim.

Aviation Liability insurance for bodily injury, death, property damage, contractual and passenger liability with minimum limits of \$1,000,000 or \$ CSL each occurrence.

Watercraft/P&I Liability insurance with minimum limits of \$1,000,000 or \$ each occurrence.

Federal Maritime insurance with:

U.S.L.&H. minimum limits \$1,000,000 or \$.

Jones Act minimum limits \$1,000,000 or \$.

Professional Liability (E&O/Technical E&O) insurance appropriate to the agency's profession. The minimum limit shall be \$1,000,000 or \$ each claim.

Crime Fidelity, Theft, Disappearance & Destruction Liability (to include Employee theft, wire transfer, forgery & mail coverage, and client coverage) with minimum limit \$1,000,000 or \$ per occurrence and in the aggregate. Coverage shall include 'Joint Loss Payable' ISO form CR 20 15 10/10 or equivalent; and "Provide Required Notice of Cancellation to Another Entity' SIO form CR 20 17 10/10.

Technology Errors & Omission (E&O) Insurance including but not limited to security and privacy liability with minimum limit of \$1,000,000 or \$ each claim.

Information Technology –Cyber Liability (Network Security Liability and Privacy Liability) with minimum limit \$1,000,000 or \$ per occurrence and in the aggregate. Coverage shall include, but not be limited to, coverage for any actual or alleged breach of duty, neglect, error, act, mistake, omission, or failure arising out of Agency's Internet and Network Activities including coverage for, but not limited to, the following events: an attack that has the intent to affect, alter, copy, corrupt, destroy, disrupt, damage, or provide unauthorized access or unauthorized use of Agency's computer system; Computer Crime or Information Theft; Denial of Service; Extortion; Introduction, implantation, or spread of a Computer Virus; Loss of Service; Identity Theft; Infringement; Electronic data loss and restoration; Unauthorized Access or Use, including the gaining of access to Agency's computer systems by an unauthorized person or persons or an authorized person in an unauthorized manner. Coverage shall include notification and other expenses incurred in remedying a privacy breach and costs to investigate and restore data.

- C. **CITY AS ADDITIONAL INSURED; PRODUCTS-COMPLETED OPERATIONS:** Agency shall include "the City of Seattle" as an additional insured to all of the insurance coverage listed and checked above in Sections A and/or Sections B; which must also be as primary and non-contributory with any insurance or self-insurance coverage or limits of liability maintained by the City, and in the form of a duly issued additional insured endorsement and attached to the policy or by the appropriate blanket additional insured policy wording, and in any other manner

further required by Contractor's insurance coverage to provide the City of Seattle additional insured coverage as set forth herein.

- D. **NO LIMITATION OF LIABILITY:** Insurance coverage and limits of liability as specified herein are minimum coverage and limit of liability requirements only. Nothing in the City of Seattle's requirements for minimum insurance coverage shall be interpreted to limit or release liability of the Agency or any of the Agency's insurers. The City shall be an additional insured as required in paragraph C. regarding the total limits of liability maintained, whether such limits are primary, excess, contingent or otherwise.
- E. **REQUIRED SEPARATION OF INSURED PROVISION; CROSS-LIABILITY EXCLUSION AND OTHER ENDORSEMENTS PROHIBITED:** Agency's insurance policy shall include a "separation of insureds" or "severability" clause that applies coverage separately to each insured and additional insured, except with respect to the limits of the insurer's liability. Agency's insurance policy shall not contain any provision, exclusion or endorsement that limits, bars, or effectively precludes the City of Seattle from coverage or asserting a claim under the Agency's insurance policy on the basis that the coverage or claim is brought by an insured or additional insured against an insured or additional insured under the policy. Agency's CGL policy shall NOT include any of the following Endorsements (or their equivalent endorsement or exclusions): (a) Contractual Liability Limitation, (CGL Form 21 39 or equivalent), b) Amendment Of Insured Contract Definition, (CGL Form 24 26 or equivalent), (c) Limitation of Coverage to Designated Premises or Project, (CGL Form 21 44 or equivalent), (d) any endorsement modifying or deleting the exception to the Employer's Liability exclusion, (e) any "Insured vs. Insured" or "cross-liability" exclusion, and (f) any type of punitive, exemplary or multiplied damages exclusion. Agency's failure to comply with any of the requisite insurance provisions shall be a material breach of, and grounds for, the immediate termination of the Contract with the City of Seattle; or if applicable, and at the discretion of the City of Seattle, shall serve as grounds for the City to procure or renew insurance coverage with any related costs of premiums to be repaid by Agency or reduced and/or offset against the Contract.
- F. **SUBSTITUTION OF SUBCONTRACTOR'S INSURANCE:** If portions of the scope of work are subcontracted, the subcontractor may provide the evidence of insurance for the subcontracted body of work provided all the requirements specified in this Insurance Transmittal Form are satisfied.
- G. **NOTICE OF CANCELLATION:** The above checked insurance coverages shall not be canceled by Agency or Insurer without at least forty-five (45) days written notice to the City, except ten (10) days' notice for non-payment of premium.
- H. **CLAIMS MADE FORM:** If any insurance policy is issued on a "claims made" basis, the retroactive date shall be prior to or coincident with the effective date of the Contract. The Agency shall either maintain "claims made" forms coverage for a minimum of three years following the expiration or earlier termination of the

Contract, providing the City with a Renewal Certificate of Insurance annually; purchase an extended reporting period ("tail") for the same period; or execute another form of guarantee acceptable to the City to assure the Agency's financial responsibility for liability for services performed.

- I. **INSURER'S A.M. BEST'S RATING:** Each insurance policy shall be issued by an insurer rated A-: VII or higher in the A.M. Best's Key Rating Guide, unless a surplus lines placement by an licensed Washington State surplus lines broker, or as may otherwise be approved by the City.
- J. **SELF-INSURANCE:** The City acknowledges that the Agency may employ self-insured and/or alternative risk financing and/or capital market risk financing programs for some or all of its coverages. The term "insurance" wherever used herein shall include any such selfinsured and/or alternative risk financing and/or capital market risk financing programs. The Agency shall be liable for any self-insured retention or deductible portion of any claim for which insurance is required.
- K. **EVIDENCE OF INSURANCE (NOT APPLICABLE TO WASHINGTON STATE WORKERS COMPENSATION):** Agency must provide the following list of evidence of insurance:
 - a. A certificate of liability insurance evidencing coverages, limits of liability and other terms and conditions as specified herein;
 - b. An attached City of Seattle designated additional insured endorsement or blanket additional insured wording to the CGL/MGL or other additional insurances required (and if required Agency's Pollution Liability insurance policy).
 - c. A copy of all other amendatory policy endorsements or exclusions of Agency's insurance CGL/MGL policy that evidences the coverage required.

At any time upon the City's request, Agency shall also cause to be timely furnished a copy of declarations pages and schedules of forms and endorsements. In the event that the City tenders a claim or lawsuit for defense and indemnity invoking additional insured status, and the insurer either denies the tender or issues a reservation of rights letter, Agency shall also cause a complete and certified copy of the requested policy to be timely furnished to the City of Seattle.

NOTE: CERTIFICATES WITHOUT ATTACHED ADDITIONAL INSURED ENDORSEMENT OR BLANKET ADDITIONAL INSURED WORDING COVERAGE FOR THE CITY OF SEATTLE WILL NOT BE APPROVED!

EXHIBIT G
Consultant Questionnaire