

**The City of Seattle**

**Department of Information Technology**

**And**

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

CONSULTANT AGREEMENT

FOR

Public Regional Information Security Event Management (PRISEM) System

Information Technology – System Enhancements and

Provisioning One Maritime Port

AGREEMENT NO. DCD 140078

This Agreement is made and entered into by and between The City of Seattle (“the City”), a Washington municipal corporation, through its Department of Information Technology, as represented by the Chief Technology Officer, and \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (“Consultant”)*,* a corporation of the State of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ and authorized to do business in the State of Washington.

**Recitals:**

WHEREAS, The City of Seattle received a grant from the U.S. Department of Homeland Security. The purpose of the grant is to fund cyber-terrorism prevention activities associated with the Public Regional Information Security Event Management (PRISEM) System. The City of Seattle is leading the PRISEM project on behalf of regional agencies.

WHEREAS, the purpose of this Agreement is to obtain the expert services of a consultant to develop system enhancements and provision one maritime port.

WHEREAS, the Consultant was selected through a competitive process, RFP DIT 140078.

1. **TERM OF AGREEMENT.**

The term of this Agreement shall begin when fully executed by all parties and shall end on July 31, 2015 unless amended by written agreement or terminated earlier pursuant to termination provisions.

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

The Consultant shall begin the work outlined in the ‘Statement of Services and Deliverables’ section (the ‘Services’) upon receipt of written notice to proceed from the City. The City will acknowledge in writing when the Services are complete.

1. **STATEMENT OF SERVICES AND DELIVERABLES.**

The Consultant shall perform the following services and provide the associated deliverables at a firm fixed price.

3.1 Phase I – PRISEM System Enhancements: The Consultant shall develop and implement PRISEM System Enhancements. The Enhancements include but are not limited to new coding and system/operational support procedures. These Enhancements will be integrated into the existing PRISEM’s specialized views of log collection services (“Nitro Portal”). The new coding and procedures shall be part of the schedule change control outage. The consultant will document and configure all System Enhancements. The consultant will work with the project technical team to ensure that System Enhancements are complete and reliable.

3.1.1 Development Code and Procedures for Automatic Electronic Messaging

The Consultant shall develop code and procedures so that automatic electronic messaging is delivered to all participating jurisdictions. During development, the consultant will conduct regular change management planning meetings and a post-execution meeting. The electronic messages will be sent when there are:

 New participants being provisioned

 Changes to participant configurations

 Changes to AMQP RPC services

 Changes to Log Matrix configurations

 Patches to Log Matrix or operating system

 Changes to portal source code that affect functionality

3.1.2 Development Code and Procedures for Service Monitoring and Outage Notification
The Consultant shall develop service monitoring and outage notification code and procedures that will alert the effected participating jurisdictions and to University of Washington and the State of Washington Fusion Center.

Alerts will be communicated in an automated fashion, and at outage times of 15 minutes intervals thereafter. Consultant will communicate to the project team an estimated time to recover from an outage.

The PRISEM system portal will monitor the status of key services, and notify an outage condition. Outage is defined as a failure to successfully contact the service for a period of 15 minutes using a simple tcp connection tool such as nmap.

The Services that will be monitored on PRISEM log collectors and core systems include:

 Sendmail

 AMQP RPC services

 Log Matrix services

 SSH server and tunnels

 Logins via SSH

 VPN connections

 Use of "sudo"

 Disk space utilization

 CPU utilization

3.1.3 Acceptance Testing: The Consultant shall perform acceptance testing of the code and procurements. The testing will be in conjunction with the project technical team and University of Washington Researchers. The code will be tested and approved by the project technical team and the University of Washington Researchers prior to promotion to production using the following procedures:

* Produce status logging of lmsearch AMQP RPC service per specification
* Replicate fine-grained selection of columns from portal in AMQP RPC search per specification
* Ensure lmsearch AMQP RPC service runs multiple threads 24x7x365 per specification

3.1.4 Testing and implementation of the code and procedures: Outages required due to code modifications, patching, or other updates will be scheduled at least 3 days in advance. The PRISEM project will be notified via electronic messaging to project participant contacts, and those representing the City of Seattle, University of Washington, and State of Washington Office of the Chief Information Officer. Notifications will occur at 3, 2, and 1 day prior to change.

Log collector and firewall administration and break-fix will be the responsibility of the Consultant. The PRISEM project's servers will be administered by the PRISEM project staff.

Backups will be conducted daily, such that all PRISEM data are preserved up until the scheduled time of the backup.

3.2 Phase Two: Provision One Maritime Port

3.2.1 Provisioning: The Consultant shall provision one maritime port located on the west side of Washington State and provide log collection services for the port. “Provision” means a) identifying up to ten devices to monitor, and b) engineering methods to collect security event data from those devices and to transport the data to the PRISEM infrastructure. The PRISEM infrastructure is deployed with the Seattle city limits. Provision will be complete when the jurisdictions are reporting security event data into the PRRISEM system. Log collection Services must meet Nitro Collector specifications.

3.2.2 System stabilization, tuning, and performance optimization: The Consultant shall assist the maritime port in identifying and clearing false positives, prioritizing internal systems by risk, and delineating security event by configuring them as alerts.

* False positives have been reduced to 10% of initial frequency
* At least ten internal systems have been rated for risk value
* At least two verifiable security events have been configured to alert the jurisdiction’s point of contact

3.2.3 Standard Reports: The Consultant shall develop and automate Standard Reports for the maritime port. The reports shall include statistics by week of event received and alerts generated. This Deliverable will be complete with the City has received and accepted the final Standard Reports or by 20 business days whichever is sooner.

3.2.4 Configuration Documentation: The Consultant shall document and deliver the following configuration specifics:

* Devices being monitored (manufacturer; type of device; model/version)
* IP addresses for devices being monitored
* IP network address blocks used internally by the jurisdiction
* Firewall or other changes made to jurisdiction’s network
* Configuration specifics on log collection and transport methods

1. **PAYMENT.**

The Consultant shall be compensated a firm fixed rate of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_. The compensation per deliverable shall not exceed:

 Deliverable 3.1.1: 20%

 Deliverable 3.1.2 20%

 Deliverable 3.1.3 20%

 Deliverable 3.1.4 20%

 Deliverable 3.2: 10%

 Final Acceptance: 10%

The parties agree that the rate includes all direct, indirect, and overhead costs, including travel and living expenses, incurred by the Consultant in performance of the Work.

1. **PAYMENT PROCEDURES.**Payment will be made within 30 days of acceptance of the deliverable by the City’s Project Manager and receipt of a correct invoice.

A correct invoice will include the invoice number, date, Agreement number and a description of the deliverable completed. The Consultant shall submit invoices to:

 Department of Information Technology

Accounts Payable Unit

PO Box 94709

Seattle, WA 98124-4709

Attn: Jason Goetz

206-684-4687

jason.goetz@seattle.gov

1. **GUARANTEED PAY TO SMALL SUBCONSULTANTS**

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

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

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

1. **TAXES, FEES AND LICENSES.**
2. Fees and Licenses: Consultant shall pay for and maintain in a current status, any license 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.
3. Taxes: Where required by state statute, ordinance or regulation, Consultant shall pay for and maintain in current status all taxes necessary for performance. The Consultant shall not charge for federal excise taxes. The City agrees to furnish Consultant with an exemption certificate where appropriate. 82.04.500 RCW exempts consultant services from sales tax.
4. Withholding payment for taxes/business license fees due the City of Seattle. As authorized by SMC, the Director of the Department of Finance and Administrative Services may withhold payment pending satisfactory resolution of unpaid taxes and fees due the City.

1. **ADDRESSES FOR OFFICIAL NOTICES AND DELIVERABLE MATERIALS.**

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

 If to the City: Chief Technology Officer Department of Information Technology

 PO Box 47904

 Seattle, WA 98124-4709

 206-684-0600

 If to the Consultant:

All deliverable materials shall be delivered to the following addresses:

 If to the City: Vicki Wills, Technology Grant Manager Department of Information Technology

 PO Box 47904

 Seattle, WA 98124-4709

 206-684-3719

 Vicki.wills@seattle.gov

 If to the Consultant:

1. **SOCIAL EQUITY REQUIREMENTS.**
2. 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 any sensory, mental or physical handicap, unless based upon a bona fide occupational qualification. The Consultant shall affirmatively try to ensure applicants are employed, and employees are treated during employment, without regard to race, color, age, sex, marital status, sexual orientation, gender identify, political ideology, creed, religion, ancestry, national origin, or any sensory, mental or physical handicap. Such efforts include, but are not limited to: employment, upgrading, demotion, transfer, recruitment, layoff, termination, rates of pay or other compensation and training.
3. The Consultant shall promote and seek inclusion of woman and minority businesses on subcontracting. A woman or minority business is one that self-identifies to be at least 51% owned by a woman and/or minority. Such firms do not have to be certified by the State of Washington but must be registered in the City Online Business Directory.
4. Inclusion 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 consultant or minority community organizations for outreach, and selection strategies that result in great subconsultant diversity.
5. **EQUAL BENEFITS.**

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

1. **INDEMNIFICATION.**

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

1. **INSURANCE.**The Consultant is required to submit evidence of insurance per the requirements in attached “Insurance Requirements and Transmittal Form,” Exhibit A.
2. **AUDIT.**

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

1. **INDEPENDENT CONSULTANT.**
2. The Consultant is an independent Consultant. This Agreement is not intended for the Consultant to act as a City employee. The City has neither direct nor immediate control over the Consultant or the right to control the manner or means by which the Consultant works. Neither the Consultant nor any Consultant shall be deemed to be an employee of the City. This Agreement prohibits the Consultant to act as the agent or legal representative of the City. The Consultant is not granted any 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 neither of employment, nor to pay any social security or other tax that may arise from employment. The Consultant shall pay all income and other taxes as due. The Consultant may perform work for other parties; the City is not the exclusive user of the services that the Consultant provides.
3. Working on City Premises: 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 provided by the City exclusively for the Services and shall not be used for any other purpose.
4. If the Consultant works on City premises using City equipment, the Consultant remains an independent Consultant and does not act as a City employee. The Consultant will notify the City Project Manager if s/he or any other of its employees or subcontractors are within 90 days of a consecutive 36-month placement on City premises. If the City determines using City premises or equipment is unnecessary to complete the Services, 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 the use of City premises or equipment.
5. **KEY PERSONS.**

The Consultant shall not transfer or reassign any individual designated in this Agreement as essential to the Services, 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 shall not be construed to release the Consultant from its obligations under this Agreement.

1. **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.

1. **FEDERAL DEBARMENT.**

The Consultant shall immediately notify the City of any suspension or debarment or other action that excludes the Consultant or any subconsultant from participation in Federal contracts. Consultant shall verify all subconsultants that are 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.epls.gov> . The Consultant shall keep proof of such verification within the Consultant records.

1. **CITY ETHICS CODE (SMC 4.16.010 TO .105).**
2. Consultant shall promptly notify the City in writing of any person expected to be a Consultant Worker (including any Consultant employee, subconsultant, principal, or owner) and was a former City officer or employee within the past twelve (12) months.
3. Consultant shall ensure compliance with the City Ethics Code by any Consultant Worker when the Work or matter related to the Work is performed by a Consultant Worker who has been a City officer or employee within the past two years.
4. Consultant shall provide written notice to the City of any Consultant worker who shall or is expected to perform over 1,000 hours of contract work for the City within a rolling 12-month period. Such hours include those performed for the Consultant and other hours that the worker performed for the City under any other contract. Such workers are subject to the City Ethics Code, SMC 4.16. The Consultant shall advise their Consultant Workers.
5. Consultant shall not directly or indirectly offer anything of value (such as retainers, loans, entertainment, favors, gifts, tickets, trips, favors, bonuses, donations, special discounts, work or meals) to any City employee, volunteer or official that is intended, or may appear to a reasonable person to be intended, to obtain or give special consideration to the Consultant. Promotional items worth less than $25 may be distributed by the Consultant to City employees if the Consultant uses the items as routine and standard promotional materials. Any violation of this provision may cause termination of this Agreement. Nothing in this Agreement prohibits donations to campaigns for election to City office, so long as the donation is disclosed as required by the election campaign disclosure laws of the City and of the State.

1. **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.

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

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 mistakes 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.

1. **INTELLECTUAL PROPERTY RIGHTS.**
2. Copyrights. The Consultant shall retain the copyright (including the right of reuse) to all materials and documents prepared by the Consultant for the Services, whether or not the Services are 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 in the performance of the Services, shall be promptly delivered to the City.
3. Patents: The Consultant assigns to the City all rights in any invention, improvement, or discovery, with all related information, including but not limited to designs, specifications, data, patent rights and findings developed with the performance of the Agreement or any subcontract. Notwithstanding the above, the Consultant does not convey to the City, nor does the City obtain, any right to any document or material utilized by the Consultant that was 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 Services. If pre-existing materials are incorporated in the work, the Consultant grants the City an irrevocable, non-exclusive right and/or license to use, execute, reproduce, display and transfer the pre-existing material, but only as an inseparable part of the work.
4. The City may make and retain copies of such documents for its information and reference 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.
5. **CONFIDENTIALITY.**
6. The Consultant understands that any records (including but not limited to bid or proposal submittals, the Agreement, and any other contract materials ) it submits to the City, or that are used by the City even if the Consultant possesses the records, are public records under Washington State law, RCW Chapter 42.56. The City must promptly disclose public records upon a request to the City, unless a statute exempts them from disclosure. The Consultant also understands that even if part of a record is exempt from disclosure, the rest of that record generally must be disclosed.
7. If the City receives a public disclosure request made pursuant to RCW Chapter 42.56, the City will not assert an exemption from disclosure on behalf of the Consultant. For materials that the Consultant has properly and clearly marked to be confidential, the City may notify the Consultant of the request and postpone the release of documents for ten business days to allow the Consultant to file a lawsuit seeking an injunction preventing the release of the documents pursuant to RCW 42.546.540. Any notification by the City to the Consultant is provided as a

courtesy and not a City obligation. Unless the Consultant obtains and serves an injunction upon the City before the close of business on the tenth business day after the date of the notification, the City may release the documents. It is the Consultant’s discretionary decision whether to sue.

To request that material not be disclosed until receipt of notification of a public disclosure request, the Consultant must identify the specific materials and citations very clearly, following the instructions given by the City. The City will not withhold material for notification if the Consultant simply marked “confidential” on the document header, footer, stamped on all pages, or offered a

generic statement that the entire document is protected. Only material listed and properly cited to the City will be temporarily withheld until the City provides notification of a public disclosure request.

1. If the Consultant does not submit a request following the instructions and forms that the City requires for such purpose, the Consultant is deemed to have authorized releasing any and all information submitted to the City.
2. Notwithstanding the above, the Consultant must not take any action that would affect the City’s ability to use services provided under this Agreement, or the Consultant’s obligations under this agreement.
3. The Consultant will fully cooperate with the City in identifying and assembling records that may be in the possession of the Consultant in case of any public disclosure request.
4. The Consultant will possess, or have access to, information (both materials and information provided by the City or prepared for the City). This information is likewise to be treated by the Consultant as confidential. The Consultant will not permit the duplication or disclosure of such information to any persons (other than its own employee, agent or representative who requires such information for the direct performance of the Consultant obligations), unless such duplication, use or disclosure is specifically authorized in writing by the City. Such information does not include ideas, concepts, know-how or techniques elated to information that, at the time of disclosure, is in the public domain unless the entry of that information into the public domain results from any breach of this Agreement. Likewise, information does not include that which has been independently developed, already possessed without obligation of confidentiality, or rightfully obtained from a third party without an obligation of confidentiality.

1. **DISPUTES.**

Any dispute or misunderstanding that may arise under this Agreement, concerning the Consultant’s performance, shall first be through negotiations, if possible, between the Consultant’s Project Manager and the City’s Project Manager. If necessary, 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 in any way 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. In such event, 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 that is otherwise due, an amount that the City in good faith finds to be under dispute, or if the Consultant does not provide a sufficient remedy, the City may retain the amount equal to the cost to the City for otherwise correcting or remedying the work not properly completed.

1. **TERMINATION.**
2. For Cause: The City may terminate the Agreement if the Consultant is in material breach of this Agreement, and such breach has not been corrected to the City’s reasonable satisfaction in a timely manner.
3. For Reasons Beyond Control of Parties: Either party may terminate this Agreement without recourse by the other where performance is rendered impossible or impracticable for reasons beyond such party’s reasonable control, such as but not limited to, an act of nature, war or warlike operation, civil commotion, riot, labor dispute including strike, walkout or lockout, except labor disputes involving the Consultant’s own employees, sabotage, or superior governmental regulation or control.
4. For City’s Convenience: The City may terminate this Agreement at any time, without cause and for the City’s convenience, upon written notice to the Consultant.
5. Notice: Notice of termination pursuant to this Section shall be given by the party terminating this Agreement to the other, no fewer than five (5) business days prior to the effective date of termination.
6. 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 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 (whether foreseen or unforeseen) attributable to the termination of this Agreement.
7. Upon termination, the Consultant shall provide the City with the most current design documents, contract documents, writings and other products the Consultant has produced to 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.
8. **CONSULTANT PERFORMANCE EVALUATION PROGRAM.**

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

1. **DEBARMENT.**

Under SMC Chapter 20.70, the Director of the Department of Finance and Administrative Services or designee may debar and prevent a Consultant from contracting or acting as a subconsultant on any contract with the City for up to five years after determining the following. The Consultant:

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

The Director or designee may issue an Order of Debarment in accordance with the 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.

1. **ASSURANCES**Prior to beginning the Work, the Consultant shall provide the following assurances:

Attachment B: Certification Regarding Debarment, Suspension, and Other Responsibility Matters

Attachment C: Certification Regarding Drug-Free Workplace Requirements

Attachment D: Certification Regarding Lobbying

Attachment E: Assurances – Non-Construction Programs
2. **MISCELLANEOUS PROVISIONS**
3. Amendments: No modification of this Agreement shall be effective unless in writing and signed by an authorized representative of each of the parties hereto.
4. Background Checks and Immigrant Status: The City has strict policies regarding the use of Background checks, criminal checks and immigrant status for contract workers. The policies are incorporated into the contract and available for viewing on-line at <http://www.seattle.gov/business/WithSeattle.htm>
5. 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.
6. Reserved.
7. 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 requirements of this Section.
8. 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 of King County.
9. Remedies Cumulative: Rights under this Agreement are cumulative and nonexclusive of any other remedy of law or in equity.
10. Captions: The titles of sections or subsections are for convenience only and do not define or limit the contents.
11. 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 of this Agreement shall be valid and enforceable to the fullest extent permitted by law.
12. Waiver: No covenant, term or condition or the breach thereof shall be deemed waived, except by written consent of the part 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 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 Services 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.
13. 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, Consultant’s Proposal, and Consultant’s 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. In the event of conflict 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.
14. 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.
15. No personal liability: No officer, agent or authorized employee of the City shall be personally responsible for any liability arising under this Contract, whether expressed or implied, nor for any statement or representation made herein or in any connection with this Agreement.

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 CITY OF SEATTLE**

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

Signature Date Signature Date

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Type or Print Name Chief Technology Officer

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Title

City of Seattle Business License Number:

Washington State Unified Business Identifier Number (UBI):

Attachment A: Insurance Requirements and Transmittal Form



Attachment B: Certification Regarding Debarment, Suspension, and Other Responsibility Matters



Attachment C: Certification Regarding Drug-Free Workplace Requirements



Attachment D: Certification Regarding Lobbying



Attachment E: Assurances – Non-Construction Programs

