

**City of Seattle
Office of the Mayor
CONSULTANT AGREEMENT
AGREEMENT 2018-05**

**FOR
City Designated Representative to Sound Transit 3 Project**

This Agreement is made and entered into by and between the City of Seattle ("the City"), a Washington municipal corporation, through the Office of the Mayor, as represented by the Deputy Mayor for External Relations, and Cocker Fennessy Inc, 411 University Street, Suite 1200 Seattle WA 98101 ("Consultant"), a corporation of the State of Washington and authorized to do business in the State of Washington.

Recitals:

The purpose of this contract is to provide a representative for the City of Seattle who will be responsible for communication with Sound Transit to ensure effective intergovernmental cooperation and efficient review of Sound Transit's West Seattle and Ballard Extension Project;

The intergovernmental significance of this effort is reflected in the fact that Sound Transit will pay for this City function;

The Consultant was selected through a Sole Source justification.

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

Section 1: TERM OF AGREEMENT

The term of this Agreement begins when fully executed by all parties and ends on December 1, 2022, unless amended by written agreement or terminated earlier under the termination provisions.

Section 2: TIME OF BEGINNING AND COMPLETION

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

Section 3: SCOPE OF WORK

The Scope of Work of this Agreement and the time schedule for completion of such Work are:

To proactively work through planning and design issues, and facilitate expedited project delivery, key City staff will need to coordinate on a regular basis with Sound Transit. Bi-weekly coordination meetings between Sound Transit and the City Designated Representative as well as periodic coordination meetings with key technical staff at various City departments (SDOT, SPU, SCL, SDCI, OPCD, DON, SFD, etc.) are anticipated from the outset of project development. The Designated Representative, in conjunction with Sound Transit, will identify appropriate check-in

points with both the Mayor and City Council offices. Participation by key technical staff in monthly interagency meetings as well as occasional stakeholder workshops focused on alternatives development, station area planning, system access, TOD or other technical areas would also be anticipated.

Key responsibilities of the Designated Representative would include:

Serve as City's point of contact and coordinate involvement of City staff

- Serve as City's single point of contact facilitating Sound Transit coordination efforts with the various City departments, the City Council, and the Mayor.
- Facilitate internal coordination efforts between various City departments.
- Attend bi-weekly management coordination meetings with Sound Transit.
- Coordinate City staff involvement in periodic technical coordination meetings with Sound Transit staff and consultants.
- Participate in monthly interagency meetings and coordinate involvement of other City staff as necessary.
- Coordinate City involvement in stakeholder workshops focused on alternatives development, station area planning, system access, TOD, or other issues.

Respond to requests for technical input and facilitate resolution of issues

- Respond to Sound Transit staff and consultant requests for technical input related to land use/zoning, traffic/parking, sensitive areas, hazmat, historic/archeological, parks/open space, or similar environmental concerns.
- Respond to Sound Transit staff and consultant requests for technical input related to utility, roadway/traffic, drainage, structural/building, fire/life safety, construction staging, property acquisition/right-of-way vacation, maintenance, or similar design and permitting issues.
- Identify City projects or proposals (e.g. utility projects, transportation projects, private development projects) that have the potential to interfere with the expeditious design and construction of the Project, facilitate resolution of conflicts, and identify opportunities for coordinated delivery or joint development.

Coordinate City review of technical work and resolve potential inconsistencies

- Coordinate City staff review of alternatives development and EIS related documents and resolve inconsistencies among review comments between departments.
- Coordinate City staff review of design submittals for stations, guideway and associated facilities and resolve inconsistencies among review comments between departments.

Facilitate development and administration of agreements

- Facilitate development of staff level agreements documenting City concurrence on analysis/design approaches and proposed solutions.
- Facilitate development of partnering, preferred alternative, and permitting agreements with Sound Transit at key milestones in project development.
- Facilitate administration of interagency agreements, including City budget process, legislation, and ongoing reporting and financial management.

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

Section 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 to and issued by the City through written Addenda. New Work performed before an authorizing Amendment may not be eligible for payment.

5. PAYMENT

- A. The Consultant agrees to perform all the work set forth in the "SCOPE OF WORK" Section of this Agreement for an amount not to exceed **SEVEN HUNDRED, TWENTY THOUSAND DOLLARS (\$720,000.00)**, hereinafter referred to as the "Agreement Amount," unless modified by a written amendment to this Agreement. Such payment shall be full compensation for work performed and/or services rendered and for all supervision, labor, supplies, materials, equipment or use thereof, and for all other expenses and incidentals necessary to complete all the work. It is understood that this is a fixed amount and will not increase because of any difference between the estimated and actual costs of performing the work required by this Agreement. Payment will be based on the Consultant's (and any SubConsultant(s), if applicable) actual payroll rates.

- B. The Consultant will be paid by the City for completed work and/or services rendered under this Agreement up to the Agreement Amount. Payment of any amounts due under the Agreement shall not relieve the Consultant of the obligation to perform all the work set forth in the **SCOPE OF WORK** section in a satisfactory manner.

- C. No reimbursables will be compensated by the City.

- D. Unallowable Costs. The City will not pay for any costs or direct charges associated with or relating to the following activities:
 - Any resubmission, changes to or adjustments in the invoices or fixing improper invoices.
 - Preparation for and negotiation of changes to a scope of work (unless the change(s) is (are) requested by the City), including but not limited to a request for change, proposal preparation, drafting a scope of work, level of effort or cost summary or any negotiation of a scope of work or related level of effort/cost summary, etc.
 - Changing or reassigning personnel or SubConsultants, including but not limited to time for newly assigned personnel to become acquainted with the project.
 - Compliance with Section 13, AUDIT.
 - Compliance with Section 22, CONFIDENTIALITY.
 - Preparation of any documentation related to, discussion of, or negotiation of equitable adjustment, disputes, or claims under Section 23, DISPUTES.

- E. This contract is a payment negotiated based on cost, and shall include only those costs allowed under Part 31 of the Federal Acquisition Regulations (FAR), which are incorporated by reference.

Section 6: PAYMENT PROCEDURES

- A. Invoices. The Consultant shall submit invoices to the City no more than once per month during the progress of the Work for partial payment for work completed to date. Original invoices shall be sent to the project manager, Shefali Ranganathan, Deputy Mayor for External Relations. 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:
Shefali Ranganathan Shefali.Ranganathan@Seattle.gov 206-256-6195 Office of the Mayor PO Box 94749 Seattle WA 98124-4749	Anne Fennessy Cocker Fennessy, Inc. fen@cofen.com 206-953-8932 411 University St, STE 1200 Seattle, WA 98101-2519

See attached checklist for further instructions.

Invoices must clearly display the following:

- Invoice Date and Invoice Number
- City Project Manager Name: Shefali Ranganathan
- Department Contract No. MO-2018-05
- Contract Title: City Designated Representative to Sound Transit 3 Project
- Period covered by the invoice
- Employee's name and classification
- Employee's all-inclusive hourly rate and # of hours worked
- Total labor costs per task
- The following Sub-Consultant payment information will be provided (attach Sub- Consultant invoices as backup):
 - Amount Paid to all Sub-Consultants for the invoice period (list separate totals for each Sub-Consultant).
 - Cumulative To-Date amount paid to all Sub-Consultants (list separate totals for each Sub-Consultant).
 - Cumulative costs per task and for the total project

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

- C. No payment shall be made for work begun prior to receipt of written notice from the City to begin work on each phase of the Consultant's assignment. Throughout the project, the percentage of the Agreement Amount paid to the Consultant shall never exceed the percentage of the scope of work actually accomplished by the Consultant.

- D. Final Payment and Payment of Withheld Amounts. Final payment will be contingent on verification by the City of satisfactory completion by the Consultant of the work under this Contract and receipt and acceptance by the City of designs, reports and/or any other deliverables required to fulfill the terms of this Contract. Such acceptance and acknowledgement shall be included in the "Letter of Completion", and the Consultant will be instructed to submit its request for final payment, including any amounts withheld.
- E. Final payment to the Consultant shall not waive or preempt the City's right to audit the Consultant's and any sub-consultants' records at a later date in accordance with the terms of Section 13: AUDIT, hereunder.
- F. Consultant's Records. The Consultant and SubConsultant(s) shall keep complete and accurate records in accordance with generally accepted accounting practices of all other reimbursable costs and expenses for purposes of audit and proper allocation of overhead expenses to this project. The cost records of the Consultant and SubConsultant(s) must relate all project expenses to specific tasks of the Scope of Work.
- G. PROMPT PAY
- a. Definitions
 - i. 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.
 - ii. A payment is considered made on the day it is mailed or is available.
 - iii. 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.
 - b. Prompt Payment to Consultant
 - i. 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.
 - ii. 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.
 - iii. 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.
 - c. Prompt Payment to Subconsultants
 - i. 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.

ii. 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.

d. Flow-Down Clauses: The Consultant shall require this provision in each subcontract of any tier.

H. SUBCONSULTANT PAYMENTS REPORTING REQUIREMENTS.

- a. The Consultant shall report payments made to each Subconsultant through B2GNow at: <https://seattleconsulting.diversitycompliance.com/>
- b. 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.
- c. Subsequent monthly Subconsultant payment reports shall be submitted by the 15th day of every month thereafter.
- d. 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.
- e. The Consultant shall require each Subconsultant to verify each payment through B2GNow.
- f. 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.
- g. 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>.
- h. 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.
- i. The City reserves the right to withhold payments from the Consultant for non-compliance with this section.
- j. The Consultant may contact 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.

Section 7: TAXES, FEES, AND LICENSES

- A. Consultant shall pay and maintain in current status, all necessary licenses, license fees, 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, 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.

Section 8: ADDRESSES FOR NOTICES AND DELIVERABLE MATERIALS

See Section 6 **PAYMENT PROCEDURES**

Section 9: EQUAL BENEFITS

- A. 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.
- B. Any violation of this Section is material breach, for which the City may exercise enforcement actions or remedies defined in SMC Chapter 20.45.

Section 10: SOCIAL EQUITY REQUIREMENTS

- A. The Consultant shall not discriminate against any employee or applicant for employment because of race, color, age, sex, marital status, sexual orientation, gender identity, political ideology, creed, religion, ancestry, national origin, 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 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. Consultant shall seek inclusion of woman and minority business for subcontracting opportunities for the Work. 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.
- C. Inclusion responsibilities include using solicitation lists, advertisements in publications directed to minority communities, breaking work down to smaller tasks or quantities, making schedule or requirement modifications that assist DBE businesses to compete, targeted recruitment, using consultants or minority community organizations to strategize outreach, and selection strategies that result in greater SubConsultant diversity.
- D. Record-Keeping: The Consultant shall maintain, for at least 24 months after the expiration or earlier termination of this Agreement and permit access to the Consultant's records of employment, employment advertisements, application forms and other pertinent data and records requested by the Seattle Department of Transportation for the purposes of investigation to determine compliance with the requirements of this section.
- E. The foregoing provisions of this section shall be inserted in all subcontracts for the Work covered by this Agreement.

- F. **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 206-684-4500.
- G. **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.

Section 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.

Section 12: INSURANCE

Insurance certification must be submitted to the City. See **Consultant Contract Insurance Requirements Transmittal Form**. The requested proof of coverage does not constitute a limitation of liability.

Section 13: 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 permit the Agency to copy books and records. The Consultant shall ensure that inspection, audit and copying right 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.

Section 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.

Section 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.

Section 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. Any subcontract made by the Consultant shall incorporate by reference this Agreement, except as otherwise provided. The Consultant shall ensure that all SubConsultants comply with the obligations and requirements of the subcontract. The City's consent to any assignment or subcontract does not release the Consultant from liability or any obligation within this Agreement, whether before or after City consent, assignment, or subcontract.

Section 17: FEDERAL DEBARMENT

This contract is a covered transaction for purposes of 49 CFR Part 29. As such, the Consultant is required to verify that none of the Consultant, its principals, as defined at 49 CFR 29.995, or affiliates, as defined at 49 CFR 29.905, are excluded or disqualified as defined at 49 CFR 29.940 and 29.945. The Consultant is required to comply with 49 CFR 29, Subpart C and must include the requirement to comply with 49 CFR 29, Subpart C in any lower tier covered transaction it enters into.

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 <http://www.sam.gov>. The Consultant shall keep proof of such verification within the Consultant records.

Section 18: 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 Mayor's Office if 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. 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.

Section 19: 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.

Section 20: ERRORS AND OMISSIONS, CORRECTIONS.

The 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.

Section 21: 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.

Section 22: CONFIDENTIALITY

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.

SECTION 23: 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 of the Seattle Department of Transportation or their designee 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.

Section 24: TERMINATION

- A. **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.
- B. **For Reasons Beyond Control of Parties:** Either party may terminate this Agreement without recourse by the other where performance is rendered impossible or impracticable for reasons beyond such party's reasonable control, such as, but not limited to, an act of nature, war or warlike operation, civil commotion, riot, labor dispute including strike, walkout or lockout, except labor disputes involving the Consultant's own employees, sabotage, or superior governmental regulation or control.
- C. **For City's Convenience:** The City may terminate this Agreement 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 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 SubConsultant 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; provided, however, that the City shall indemnify and hold the Consultant harmless from any claims, losses or damages to the extent caused by modifications made by the City to the Consultant's work product.

Section 25: CONSULTANT PERFORMANCE EVALUATION PROGRAM

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

Section 26: 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 CPCS Director or designee may issue an Order of Debarment under the SMC 20.70.050. The rights and remedies of the City under these provisions are besides other rights and remedies provided by law or under the Agreement.

Section 27: RESERVED

Section 29: 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 such 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>.
- C. 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.
- D. RESERVED
- E. The Consultant, at no expense to the City, shall comply with all laws of the United States and Washington, the Charter and ordinances of the City of Seattle; and rules, regulations, orders and directives of their administrative agencies and officers. Without limiting the generality of this paragraph, the Consultant shall comply with the requirements of this Section.
- F. 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, and Consultants Proposal, 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 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.
- N. Use of Recycled Content Paper: Whenever practicable, Consultant shall use reusable products including recycled content paper on all documents submitted to the City. Consultant is to duplex all documents that are prepared for the City under this Contract, whether such materials are printed or copied, except when impracticable to do so due to the nature of the product being produced. Consultants are to use 100% post consumer recycled content, chlorine-free paper in any documents produced for the City, whenever practicable, and to use other paper-saving and recycling measures in performance of the contract with and for the City.
- O. Fair Contracting Practices Ordinance: The Consultant shall comply with the Fair Contracting Practices Ordinance of The City of Seattle (Chapter 14.10 SMC), as amended.
- P. 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. Please contact Polly Grow at polly.grow@seattle.gov for more information about the measure, or call the Ethics Director with questions at 206-615-1248.

Section 30: FLY AMERICA

The Federal Government will not participate in the costs of international air transportation of any persons involved in or property acquired for the Project unless that air transportation is provided by US flag air carriers to the extent service by these carriers is available, as required by the International Air Transportation Fair Competitive Practices Act of 1974, as amended, 49 USC § 40118, in accordance with US GAO regulations, "Uniform Standards and

Procedures for Transportation Transactions." 4 CFR Part 52, and US GAO Guidelines for Implementation of the "Fly America Act," B-138942, 1981 US Comp. Gen. LEXIS 2116, March 31, 1981.

Section 31: SEISMIC SAFETY

The contractor agrees that any new building or addition to an existing building will be designed and constructed in accordance with the standards for Seismic Safety required in Department of Transportation Seismic Safety Regulations 49 CFR Part 41 and will certify to compliance to the extent required by the regulation. The contractor also agrees to ensure that all work performed under this contract including work performed by a subcontractor is in compliance with the standards required by the Seismic Safety Regulations and the certification of compliance issued on the project.

Section 32: ENERGY CONSERVATION

The Consultant shall comply with mandatory standards and policies relating to energy efficiency which are contained in the State energy conservation plan issued in compliance with the Energy Policy and Conservation Act.

Section 33: CLEAN WATER

- A. The Consultant agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et. The Consultant agrees to report each violation to City of Seattle and understands and agrees that City of Seattle will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.
- B. The Consultant also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by the FTA.

Section 34: LOBBYING

- A. This Agreement is subject to Section 319, Public Law 101-121 (31 U.S.C. §1352) and U.S. DOT regulations "New Restrictions on Lobbying," 49 CFR Part 20, (which is by this reference incorporated herein) which prohibits Federal funds from being expended to influence or to attempt to influence an officer or employee of any agency, members of Congress, an office or employee of Congress or an employee of any Member of Congress in connection with the awarding of any federally funded contract, the making of any Federal grant or loan, or entering into any cooperative agreement and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement. Consultants and Subconsultants at any time who apply or bid for an award of \$100,000 or more shall file the certification required by 49 CFR Part 20, "New Restrictions on Lobbying." Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or any employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-Federal funds with respect to that Federal contract, grant or award covered by 31 U.S.C. 1352. Such disclosures are forwarded from tier to tier up to the recipient. The Consultant shall submit the "Certification Regarding Lobbying" included in the RFQ for this project. The Consultant's signature on this certification shall certify that: a) it has not engaged in the prohibited activity and b) the language of the certification shall be included in all lower tier subcontracts which exceed \$100,000, and that all such subconsultants shall certify and disclose accordingly. The City is responsible for keeping the certification form of the Consultant, who is in turn responsible for keeping the certification forms of subconsultants. Further, by executing the Agreement, the Consultant agrees to comply with these laws and regulations.
- B. If the Consultant has engaged in any lobbying activities to influence or attempt to influence the awarding of this Agreement, the Consultant must disclose these activities. In such a case, the Consultant shall

complete Standard Form SF-LLL, "Disclosure of Lobbying Activities" and must send all disclosure forms to the City to be forwarded to the FTA. This form can be found at:
http://www.whitehouse.gov/omb/grants_forms.

- C. The Consultant and any subconsultants shall file a disclosure form at the end of each calendar quarter in which there occurs any event that requires disclosure or that materially affects the accuracy of a previously filed disclosure form. An event that materially affects the accuracy of the information reported includes:
1. A cumulative increase of \$25,000 or more in the amount paid or expected to be paid for influencing or attempting to influence this federally funded Agreement; or
 2. A change in the person(s) influencing or attempting to influence this federally funded Agreement; or
 3. A change in the officer(s), employee(s) or member contracted to influence or attempt to influence this federally funded Agreement.

Section 35: ACCESS TO RECORDS AND REPORTS

- A. The Consultant shall comply with reporting requirements of the U.S. Department of Transportation grant management rules, and any other reports required by the Federal Government.
- B. Consultant agrees to maintain intact and readily accessible all work, materials, payrolls, books, documents, papers, data, records and accounts pertaining to the Agreement. Consultant agrees to permit the Secretary of Transportation, the Comptroller General of the United States and the City, or their authorized representatives, access to any work, materials, payrolls, books, documents, papers, data, records and accounts involving the Agreement for the purpose of making audit, examination, excerpts, and transcriptions pertaining to the Agreement as it affects the Project. Consultant shall retain all required records for six (6) years after the City has made final payments. The period of access and examination for records that relate to (1) litigation or the settlement of claims arising out of the performance of this Agreement, or (2) costs and expenses of this Agreement as to which exception has been taken by the Comptroller General of the United States or the U.S. Department of Transportation, or any of their duly authorized representatives, shall continue until such litigation, claims, or exceptions have been disposed of. Consultant shall require its subconsultants to also comply with the provisions of this Paragraph B, and shall include the provisions of this Paragraph B in each of its subcontracts.

Section 36: FEDERAL CHANGES

Consultant shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Master Agreement between City of Seattle and FTA, as they may be amended or promulgated from time to time during the term of this contract. Consultant's failure to so comply shall constitute a material breach of this contract.

Section 37: CLEAN AIR

The Consultant agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 422 U.S.C. §§ 7401 et seq. The Consultant agrees to report each violation to City of Seattle and understands and agrees that City of Seattle will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

The Consultant also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

Section 38: RECYCLED PRODUCTS

The Consultant agrees to comply with all the requirements of Section 6002 of the Resource Conservation and Recovery Act (RCRA), as amended (42 U.S.C. 6962), including but not limited to the regulatory provisions of 40 CFR Part 247, and Executive Order 12873, as they apply to the procurement of the items designated in Subpart B of 40 CFR Part 247.

Section 39: NO FEDERAL GOVERNMENT OBLIGATION TO THIRD PARTIES

The City of Seattle and Consultant acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this contract and shall not be subject to any obligations or liabilities to the City of Seattle, Consultant, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.

The Consultant agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed the clause shall not be modified, except to identify the subconsultant who will be subject to its provisions.

Section 40: PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS AND RELATED ACTS

The Consultant acknowledges the provisions of the Program Fraud Civil Remedies Act of 1986 as amended, 31 U.S.C § § 3801 et seq. and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 31, apply to its actions pertaining to this Project. Upon execution of the underlying contract, the Consultant certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract or the FTA assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, the Consultant further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Consultant to the extent the Federal Government deems appropriate.

The Consultant also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. § 5307, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307 (n)(1) on the Consultant, to the extent the Federal Government deems appropriate.

The Consultant agrees to include the above two paragraphs in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clauses shall not be modified, except to identify the subconsultant who will be subject to the provisions.

Section 41: PRIVACY

- A. Should the Consultant, or any of its subconsultants, or their employees administer any system of records on behalf of the federal government, the Privacy Act of 1974, 5 USC § 552a, imposes information restrictions on the party administering the system of records.
- B. For purposes of the Privacy Act, when the Agreement involves the operation of a system of records on individuals to accomplish a government function, Sound Transit and any Consultants, third-party contractors, subcontractors, and their employees involved therein are considered to be government employees with respect to the government function. The requirements of the Act, including the civil and criminal penalties for violations of the Act, apply to those individuals involved. Failure to comply with the terms of the Act or this provision of this Agreement will make this Agreement subject to termination.

- C. The Consultant agrees to include this clause in all subcontracts awarded under this Agreement that require the design, development, or operation of a system of records on individuals subject to the Act.

Section 42: CIVIL RIGHTS REQUIREMENTS

The following requirements apply to the underlying contract:

- A. Nondiscrimination - In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, and Federal transit law at 49 U.S.C. § 5332, the Consultant agrees that it will not discriminate against any person on the basis of race, color, creed, national origin, sex, age, or disability under any program or activity receiving Federal financial assistance. In addition, the Consultant agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue. Specific requirements to implement Title VI and the American with Disabilities Act of 1990 are included in Sections 45, respectively, of this agreement. \
- B. Access to Services for Persons with Limited English Proficiency. To the extent applicable and except to the extent that FTA determines otherwise in writing, the Consultant agrees to comply with the policies of Executive Order No. 13166, "Improving Access to Services for Persons with Limited English Proficiency," 42 U.S.C. § 2000d-1 note, and with the provisions of U.S. DOT Notice, "DOT Guidance to Recipients on Special Language Services to Limited English Proficient (LEP) Beneficiaries," 66 *Fed. Reg.* 6733 *et seq.*, January 22, 2001.
- C. Environmental Justice. The Recipient agrees to comply with the policies of Executive Order No. 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income."
- D. Equal Employment Opportunity - The following equal employment opportunity requirements apply to the underlying contract:
- (1) Race, Color, Creed, National Origin, Sex - In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and Federal transit laws at 49 U.S.C. § 5332, the Consultant agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60 *et seq.*, (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project. The Consultant agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Consultant agrees to comply with any implementing requirements FTA may issue.
 - (2) Age - In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § 623 and Federal transit law at 49 U.S.C. § 5332, the Consultant agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Consultant agrees to comply with any implementing requirements FTA may issue.
 - (3) Disabilities - In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, the Consultant agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment

Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, the Consultant agrees to comply with any implementing requirements FTA may issue.

- C. The Consultant also agrees to include these requirements in each subcontract financed in whole or in part with Federal assistance provided by FTA, modified only if necessary to identify the affected parties.

Section 43: DISADVANTAGED BUSINESS ENTERPRISE (DBE)

- A. This contract is subject to the requirements of Title 49, Code of Federal Regulations, Part 26, Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs. The national goal for participation of Disadvantaged Business Enterprises (DBE) is 10%. The agency's overall goal for DBE participation is 13.6%. A separate contract goal has not been established for this procurement.
- B. The Consultant shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The Consultant shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of this DOT-assisted contract. Failure by the Consultant to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the City of Seattle deems appropriate. Each subcontract the Consultant signs with a subconsultant must include the assurance in this paragraph (see 49CFR 26.13(b)).
- C. The Consultant is required to document sufficient DBE participation to meet any goal outlined in subsection A above, or, alternatively document adequate good faith efforts to do so, as provided for in 49CFR 26.53. Award of this contract is conditioned on submission of the following as a matter of responsiveness concurrent with and accompanying an initial proposal and at the time of any substitution during contract administration:
 - 1. The names and addresses of DBE firms that will participate in this contract;
 - 2. A description of the work each DBE will perform;
 - 3. The dollar amount of the participation of each DBE firm participating;
 - 4. Written documentation of the Consultant's commitment to use a DBE subconsultant whose participation it submits to meet the contract goal;
 - 5. Written confirmation from the DBE that it is participating in the contract as provided in the prime Consultant's commitment; and
 - 6. If the contract goal is not met, evidence of good faith efforts to do so.

Consultants must present the required forms as a matter of responsiveness with initial proposals (see 49CFR 26.53(3)).

- D. The Consultant must promptly notify City of Seattle whenever a DBE subconsultant performing work related to this contract is terminated or fails to complete its work, and if this contract includes DBE goals, the Consultant must make good faith efforts to engage another DBE subconsultant to perform at least the same amount of work. The Consultant may not terminate any DBE subconsultant and perform that work through its own forces or those of an affiliate without prior written consent of City Seattle.
- E. In the event the Consultant and/or its subconsultants fail(s) to comply with any substantive requirement of the Agreement related to non-discrimination, participation by Disadvantaged Business Enterprises or other Small Businesses, or equal employment opportunity, the City may impose sanctions as it may determine to be appropriate, including but not limited to:
 - 1. Requiring the Consultant to take remedial action to bring the Consultant or its subconsultant into compliance;
 - 2. Withholding payments to the Consultant until the Consultant or its subconsultant is in compliance;

3. Suspend this Agreement;
4. Terminate this Agreement;
5. Debar the Consultant or its subconsultant from future contracts with Sound Transit; and/or
6. File civil and/or criminal action(s) against the Consultant and, if applicable, its subconsultants, suppliers, employees, agents, and representatives.

The City may consider any such failure by the Consultant in determining whether to award any future contracts to the Consultant.

- F. The Consultant will be required to report its DBE participation obtained, including through race-neutral means, throughout the period of performance. On a quarterly basis, the Consultant shall prepare and submit the SDOT Quarterly DBE Report with information that includes payments made to all SubConsultants, including the identification of any certified DBEs completing a Commercially Useful Function on the project.
- G. The Consultant shall complete and certify DBEs under this agreement using the Disadvantaged Business Enterprise (DBE) Utilization Certification for the work outlined under Exhibit A – Scope of Work and any subsequent amendments to this agreement for additional scope of work.

Section 44: NATIONAL INTELLIGENT TRANSPORTATION SYSTEMS ARCHITECTURE AND STANDARDS

The Consultant agrees to conform, to the extent applicable, to the National Intelligent Transportation Systems (ITS) Architecture and Standards as required by section 5206(e) of TEA-21, 23 U.S.C. § 502 note, and with FTA Notice, "Federal Transit Administration National ITS Architecture Policy on Transit Projects" 66 Fed. Reg. 1455 et seq., January 8, 2001, and other subsequent Federal directives that may be issued.

Section 45: ADA, SECTION 504 AND OTHER FEDERAL REQUIREMENTS

The Consultant is also required to comply with all applicable requirements of the Americans with Disabilities Act of 1990 (ADA), 42 USC §§ 12101, et seq.; Section 504 of the Rehabilitation Act of 1973, as amended, 29 USC § 794; and 49 USC § 5301(d), and the following regulations and any amendments thereto:

- A. U.S. Department of Transportation regulations, "Transportation Services for Individuals with Disabilities (ADA)," 49 CFR Part 37;
- B. U.S. Department of Transportation regulations, "Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance," 49 CFR Part 27;
- C. U.S. Department of Justice (DOJ) regulations, "Nondiscrimination on the Basis of Disability in State and Local federal government Services," 28 CFR Part 35;
- D. DOJ regulations, "Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities," 28 CFR Part 36;
- E. U.S. General Services Administration regulations, "Accommodations for the Physically Handicapped," 41 CFR Subpart 101-19;
- F. U.S. Equal Employment Opportunity Commission (EEOC) "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 CFR Part 1630;
- G. U.S. Federal Communications Commission regulations, "Telecommunications Relay Services and Related Customer Premises Equipment for the Hearing and Speech Disabled," 47 CFR Part 64, Subpart F; and
- H. FTA regulations, "Transportation for Elderly and Handicapped Persons," 49 CFR Part 609.
- I. Activities Not Involving Construction. Federal laws and regulations providing wage and hour protections for nonconstruction employees, including:

(1). Section 102 of the Contract Work Hours and Safety Standards Act, as amendment, 40 U.S.C. § 3702, and other relevant parts of the Act, 40 U.S.C. § 3701 et seq., and

(2). U.S. Department of Labor (DOL) regulations, "Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction (also Labor Standards Provisions Applicable to Nonconstruction Contracts Subject to the Contract Work Hours and Safety Standards Act)," 29 C.F.R. part 5.

J. Any implementing requirements that the FTA may issue.

Section 46: ANTI-KICKBACK

The City and contractors are required to comply with the Anti-Kickback Act of 1986, 41 USC §§ 51 et seq. Under state and federal law, it is a violation for City employees, bidders, contractors or subcontractors to accept or offer any money or benefit as a reward for favorable treatment in connection with the award of a contract or the purchase of goods or services.

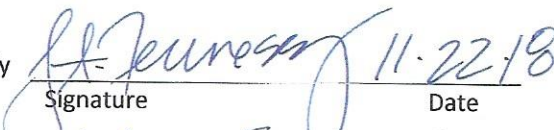
"Kickback" as defined by Federal Acquisition Regulation (FAR) 52.203-7, and 41 USC § 52(2), means any money, fee, commission, credit, gift, gratuity, thing of value, or compensation of any kind that is provided directly or indirectly to any prime Contractor, prime Contractor employee, subcontractor or subcontractor employee for the purpose of improperly obtaining or rewarding favorable treatment in connection with a prime contract or in connection with a subcontract relating to a prime contract.

Section 46: INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION (FTA) TERMS

The preceding provisions include, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1F, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The Consultant shall not perform any act, fail to perform any act, or refuse to comply with any City of Seattle requests which would cause City of Seattle to be in violation of the FTA terms and conditions.

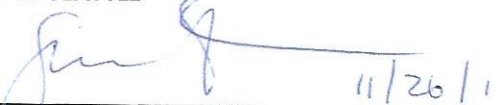
IN WITNESS WHEREOF, in consideration of the terms, conditions, and covenants contained herein, or attached and incorporated and made a part, the parties have executed this Agreement by having their representatives affix their signatures below.

COCKER FENNESSY, INC.

By  11-22-18
Signature Date
J. Anne Fennessy
Anne Fennessy

Partner
Title

THE CITY OF SEATTLE

By  11/26/18
Signature Date

SHEFALI RANGANATHAN
Shefali Ranganathan, Deputy Mayor of External Affairs

DEPUTY MAYOR, EXTERNAL AFFAIRS
Title