

ORDINANCE No. 118008

*we*

COUNCIL BILL No. \_\_\_\_\_

# The City of Seattle--Legislative

## REPORT OF COMMITTEE

INDEXED

Honorable President:

Your Committee on \_\_\_\_\_

to which was referred the within Council Bill No. \_\_\_\_\_  
report that we have considered the same and respectfully recommend

COMPTROLLER FILE No. \_\_\_\_\_

Introduced:	By: <i>FAGELER</i>
Referred:	To: <i>FINANCE &amp; COMMUNITY DEVELOPMENT</i>
Referred:	To: <i>FINANCE &amp; COMMUNITY DEVELOPMENT</i>
Referred:	To: _____
Reported: <i>FEB - 5 1996</i>	Second Reading: <i>FEB - 5 1996</i>
Third Reading: <i>FEB - 5 1996</i>	Signed: <i>FEB - 5 1996</i>
Presented to Mayor: <i>FEB - 5 1996</i>	Approved: <i>FEB 12 1996</i>
Returned to City Clerk: <i>FEB 14 1996</i>	Published: <i>ditto</i>
Vetoed by Mayor:	Veto Published:
Passed over Veto:	Veto Sustained:

*NO DISC*

*1-29-96 motion by Fogeler to hold in Full Council vote 9-0*

Committee Chair

MC

# The City of Seattle--Legislative Department

INDEXED

Date Reported  
and Adopted

## REPORT OF COMMITTEE

Honorable President:

Your Committee on \_\_\_\_\_

to which was referred the within Council Bill No. \_\_\_\_\_  
report that we have considered the same and respectfully recommend that the same:

\_\_\_\_\_

\_\_\_\_\_

1-20-94 motion by Fogler to hold twice in Full Council

Full Council vote 9-0

\_\_\_\_\_

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\_\_\_\_\_  
Committee Chair

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ORDINANCE 118008

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AN ORDINANCE relating to the Water Department; authorizing the Department to enter into a consultant services contract in support of a design/build/operate solicitation process for the new Tolt River Water Treatment Facilities.

WHEREAS, the adopted Water Department Capital Improvement Program projects a 2001 on-line date for new Tolt River Water Treatment Facilities to assure increased, reliable drinking water supplies, and ongoing water quality regulatory compliance; and

WHEREAS, the City has expressed its interest in further exploring implementation options such as design/build/operate for the new Tolt Facilities, in Resolution #29251 and Ordinance #117930 adopted in December 1995; and authorized the solicitation of these support services consultants;

WHEREAS, the Department solicited proposals, identified the highest ranked team and conducted negotiations to finalize the scope of work, project schedule and consultant team staffing requirements; and

WHEREAS, the selected consultant team of RW Beck/Malcolm Pirnie has expressed a willingness to furnish the required professional services; and

WHEREAS, certain critical work elements need to progress in order to meet the adopted workplan outlined in Resolution #29251;

NOW THEREFORE, BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:

Section 1. The Water Department is authorized to enter into a contract with the consultant team of RW Beck/Malcolm Pirnie for consultant services related to the conducting of a design/build/operate ("DBO") process for the Tolt River Water Treatment Facilities. The issued contract shall conform substantially to the draft attached hereto.

Section 2. The Water Department is authorized to use previously appropriated funds in the Water Quality Program (F3) of its 1996 CIP to pay for the contract costs authorized by this ordinance.

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Section 3. Any act pursuant to the authority and prior to the effective date of this ordinance is hereby ratified and confirmed.

Section 4. This ordinance shall take effect and be in force thirty (30) days from and after approval by the Mayor, but if not approved and returned by the Mayor within ten (10) days after presentation, it shall take effect as provided by Municipal Code Section 1.04.020.

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2  
3 5 PASSED by the City Council of the City of Seattle the  
4 5 day of February, 1996, and signed by me in open  
5 session in authentication of its passage this 5 day of  
6 February, 1996

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9 Jan Deago  
10 President of the City Council

11 Approved by me this 12 day of February, 1996

12  
13 Jan Deago  
14 Mayor Pro Tem

15 Filed by me this 14 day of February, 1996

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17 Judith E. Pippin  
18 City Clerk

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(Seal)

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DRAFT

ATTACHMENTS

SEATTLE WATER DEPARTMENT CONTRACT NO. DC.....

WITH

[CONSULTANT'S NAME]

FOR

Solicitation Support Services  
Tolt River Water Treatment Facilities

January 1996

Resource Development -  
Capital Improvement Projects  
Seattle Water Department

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- \_\_\_ Time Schedule
- \_\_\_ Estimated Project Costs
- \_\_\_ Salary Rates of Consultant's Project Staff
- \_\_\_ Estimated Labor-Hours by Task
- \_\_\_ Allowed and Not Allowed Expense *[provided by SWD]*
- \_\_\_ Subconsultants (overhead and profit percentages)
- \_\_\_ Lead Staff Commitments

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SEATTLE WATER DEPARTMENT CONTRACT NO. DC.....

WITH

[CONSULTANT'S NAME]

FOR

Solicitation Support Services  
Tolt River Water Treatment Facilities

THIS CONTRACT is made and entered into by and between the City of Seattle, a municipal corporation, as represented by the Water Department, hereinafter called the "City" or "SWD" or "the Department, and,

\_\_\_\_\_  
(name and address)

hereinafter referred to as the "Consultant."

WITNESSETH THAT:

WHEREAS, the Tolt River Water Treatment Facilities will be the largest single capital project in the department's history, introducing significant new technology, complex systems, the use of a specialized construction methodology and requiring the services of highly trained operational staff; and

WHEREAS, water quality pilot studies initiated in 1990 to evaluate Tolt River drinking water treatment options have been completed, and Environmental Impact Statements (EIS) for a major new water filtration facility were approved in 1993 and final facility predesign reports have now been delivered; and

WHEREAS, the adopted Water Department Capital Improvement Program (CIP) projects a 2001 on-line date for a new Tolt River Treatment Facility to assure increased, reliable supply and water quality regulatory compliance; and

WHEREAS, options exist for the City both in how these facilities are designed, constructed and in how they are operated; and

WHEREAS, the department has been authorized to further explore these options, evaluate associated costs, benefits and risks prior to selecting an implementation option in order to best achieve the City's long-term goals; and

WHEREAS, the City does not have qualified staff to perform the required work; and

WHEREAS, the Consultant has indicated a willingness to furnish the required professional services to the City for the work:

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NOW THEREFORE, in consideration of the terms, conditions, covenants and performance contained herein, or attached and incorporated and made a part hereof, the parties hereto agree as follows:

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## I. GENERAL BACKGROUND

The City of Seattle Water Department (SWD) is a municipal water utility. SWD serves about 600,000 customers directly and another 600,000 indirectly through wholesale suppliers in the greater Seattle area. SWD operates two surface water supply sources: the Cedar River, which provides about 70 percent of the annual average consumption, and the South Fork Tolt River, which provides about 30 percent. Currently, both the Cedar River and the South Fork Tolt River supplies are unfiltered. Water from these two surface water sources receives chlorine disinfection, corrosion control treatment, and fluoridation. SWD also operates a well supply known as the Highline Well Field to help meet peak summer demand. The firm yield of the supply sources is 153 million gallons per day (mgd), with system peaks on summer days reaching as high as 370 mgd.

### Background on the Need for New Tolt River Water Treatment Facilities

The primary operating goal of SWD is to provide a reliable supply of high-quality water to its customers. To ensure that this goal continues to be met, SWD has been authorized to construct a 120 mgd filtration plant for its South Fork Tolt River water supply. In the future, the addition of ozone and/or sedimentation basins may also be required in order to achieve increased water supply flexibility and/or the *Giardia/Cryptosporidium* treatment requirements of pending regulations.

Implementing Tolt River treatment improvements is a top SWD priority because they:

- provide a significant improvement in water quality to consumers;
- assure compliance with upcoming regulations;
- address public health concerns regarding *Giardia* and *Cryptosporidium*;
- increase the use and reliability of existing system supply; and
- increase the yield of the system by allowing for greater use of the water stored behind the dam.

### Background on Work Completed for the Tolt Filtration Plant

Pre-design of the Tolt Filtration Plant was initiated in March, 1991. Tasks completed can be summarized as follows:

#### Water Quality Studies:

Alternatives to meet the disinfection requirements of the Surface Water Treatment Rule (SWTR) on the Tolt supply and bench and pilot plant studies to determine an effective and efficient treatment process were conducted. In addition, filtration plant design criteria were developed and water quality studies of chlorate formation were conducted.

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**Environmental Studies & Preliminary Permitting Analysis:**

Including completion of the necessary environmental studies and preparation of an environmental impact statement, mineral assessment for selected site, and additional siting and environmental studies as necessary.

**Project & Site Predesign:**

Including development of a project strategy and schedule, refinement of project objectives and key issues, development of design criteria, quality control and value engineering support, capital and O&M cost estimates and staffing plans, system operational issue reports and guidelines, architectural and landscaping concepts, and the final technical memoranda and predesign report. Other work includes final design and engineering services for buried off-line storage at four taps along the Tolt Pipeline, off-site traffic studies, site reconnaissance and preliminary analysis of lands in area of filtration plant for possible land exchange, and predesign for a new supply pipeline from Tolt Regulating Basin to TFP.

**Objectives in Pursuing a Design-Build-Operate Approach**

By utilizing a DBO approach, SWD expects to distribute project implementation and operating responsibilities among several parties and secure substantial benefits for rate payers. In a general sense, these benefits include cost savings, competitive design selection, aggressive project construction scheduling, and long-term facility operations and maintenance efficiencies in an area where the department lacks expertise.

**II. SCOPE OF WORK**

*[Task by description of work to be performed by the Consultant]*

**III. TIME OF PERFORMANCE**

The term of this Contract shall commence on the date of execution by the parties hereto and shall terminate no later than August 1, 1997.

The Consultant shall begin the work as outlined in Section \_\_, "SCOPE OF WORK", hereunder upon receipt of a Notice to Proceed from the Superintendent of Water. The work shall proceed and be completed according to the time schedule contained in or attached to this Contract, which is by this reference incorporated in and made a part of this Contract.

Established completion times shall not be extended because of unwarranted delays attributed to the Consultant, but may be extended by the City in the event of a delay attributed to the City or because of unavoidable delays caused by governmental action or other conditions beyond the control of the Consultant. If the Consultant wishes to

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request an adjustment to the agreed-upon time schedule, such adjustment is subject to the written approval of the City.

#### IV. PAYMENT

##### A. Compensation

The MAXIMUM AMOUNT PAYABLE to the Consultant for all services provided under in this Contract shall not exceed \_\_\_\_\_ Dollars (\$ \_\_\_\_\_), without further authorization by amendment. This amount is the sum of the estimated cost of each task, a fixed fee for profit, plus an additional sum for contingencies. For details, see Exhibit \_\_, "Estimated Project Costs," which is by this reference incorporated in and made part of this Contract. It is understood that these are fixed amounts and will not increase because of any difference between the estimated and actual costs of performing the work required by this Contract.

If during the term of this Contract the Consultant believes a request by the City constitutes additional work not covered in the "SCOPE OF WORK," the Consultant shall say so in writing to the City prior to performing any part of such work. If the City concurs, payment for such additional work may be made from the Contingency Fund, if any, per subsection E below or by a fully executed amendment per Section VII, "EXTRA WORK." Under no circumstances shall the Consultant be reimbursed for any additional work performed prior to written authorization from the City to proceed with such work.

It is understood by the Consultant that there is no guarantee of a minimum amount of work or compensation under this Contract and that payment under this Contract is subject to continuing appropriations by the Seattle City Council.

The actual amount to be paid to the Consultant shall be computed on a cost plus fixed fee basis as hereinafter set forth, subject to the MAXIMUM AMOUNT PAYABLE limitations of each task and of the total Contract. The payment shall be made as follows:

##### 1. Base Salary

The City will reimburse the Consultant for its base salary costs for the time its personnel are directly utilized on work necessary to fulfill the terms of this Contract. See Exhibit \_\_ for salary rates and Exhibit \_\_ for estimated labor-hours. These exhibits are by this reference incorporated in and made a part of this Contract.

**Salary Increases:** Reasonable adjustments to salary rates may be made annually. The first allowable adjustment under this contract may occur January 1, 1997; any subsequent adjustment would occur on January 1 of subsequent years. Salary adjustments shall be subject to approval by the City, and an amended salary exhibit shall be appended to the Contract.

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**2. Fringe Benefits and Overhead**

In lieu of any fringe benefit and overhead reimbursements and other in-house fees, the City will pay the Consultant an all-inclusive "Direct-labor multiplier" (DL) flat rate equal to 2.80 times the base salary costs, up to the maximum amount payable (including salary costs).

**3. Direct Expenses**

In addition to the payments set forth in items 1 and 2 above, the City shall reimburse the Consultant for actually incurred nonsalary expenditures that are necessary and directly applicable to the work required by this Contract and are not a part of the Consultant's general overhead. Such direct costs are specifically limited to the allowed expenses listed on Exhibit \_\_\_\_, "Allowed and Not Allowed Expenses," referenced above, and reimbursement shall not exceed the estimated costs for such expenses contained in the Consultant's "Estimated Project Costs," Exhibit \_\_\_\_, referenced above.

For this Support Services contract, the city expects direct costs are limited to subconsultant costs and travel expenses. Travel allowances are set by City ordinance as equal to the annually adjusted Runzheimer Index. First Class airfares are expressly prohibited. There will be no mark-up allowed on such direct costs.

The Consultant shall treat its subconsultant expenses as direct expenses.

**B. Manner of Payment**

The Consultant shall submit invoices in duplicate to the City once per month during the progress of the work for partial payment for work completed to date. Invoices shall be submitted to:

Accounts Payable  
Seattle Water Department  
710 Second Avenue, 10th Floor  
Seattle, WA 98104

Invoices under this Contract shall clearly display the following information (subconsultants' invoices shall also include this information, except for the first two items):

- The SWD Project Manager's name
- Department Contract No. DC.....
- Project title
- Task
- Employee's name and classification
- Employee's base hourly rate and # of hours worked
- Total base salary amounts per task, x the all inclusive "DL" rate
- Total labor costs per task
- Itemization of direct, nonsalary costs (per task, so allocated)
- WMBE payments

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- Cumulative costs per task and for the total project
- WMBE utilization summary (including unpaid set-aside balance)

All direct cost categories totaling \$50.00 or more on the Consultant's invoices must have back-up documentation. Such documentation may include copies of receipts, telephone bills, employee expense records, subconsultants' invoices, etc.

Invoices will be checked by the City and payment to the Consultant will be made within 30 days after accurate billing and back-up documentation are received. 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.

**C. Monthly Payments**

Monthly payments shall be made for work satisfactorily performed by the Consultant until 90% of the Contract amount has been paid, or until 90% percent of any later adjusted estimate of the final Contract amount is paid, whichever is less. Invoices for the final 10% will be held until the terms for Final Payment, Section D below, are fulfilled.

In order to assure performance incentives, profit will be paid every third invoice, after a performance review meeting to verify that products have been delivered, the budget is on track and the schedule is being met. The total fixed fee has been set at \_\_\_\_\_, which ties major profit payments to satisfactory completion of major contract deliverables. Criteria for profit payment criteria and a quarterly payment schedule tied to significant project deliverables have been expressly negotiated, and are attached as Exhibit \_\_\_\_\_.

Notwithstanding the foregoing, throughout the project, the percentage of the Contract amount paid to the Consultant shall never exceed the percentage of the scope of work actually accomplished by the Consultant.

**D. Final Payment**

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 reports and/or any other deliverables that are required to fulfill the terms of this Contract. After such verification and upon receipt of the City's written acknowledgment that the Consultant has fulfilled the terms of this Contract, the Consultant shall submit a request to the City for final payment.

Final payment to the Consultant shall not waive the City's right to audit the Consultant's and any subconsultants' records at a later date in accordance with the terms of Section VII. "AUDIT" hereunder.

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**E. Payment from the Contingency Fund (if any)**

Payment from the Contingency Fund shall be made only for contingencies relating to tasks in the SCOPE OF WORK under this Contract. Contingencies are defined as bona fide unanticipated and unforeseeable circumstances that require extra work by the Consultant in order to complete a task or tasks in the Scope of Work.

The Consultant shall notify the SWD Project Manager of such contingencies prior to performing any additional work on them. Such notification shall include:

1. Identification of the task(s) of the Scope of Work affected by the contingency.
2. Description of the work necessary to meet the contingency.
3. A cost estimate for such work.

Upon determination by the City that the additional work is for a bona fide contingency and is not work that could have reasonably been anticipated by the Consultant and covered by the Consultant's cost estimates for performing the Scope of Work, the City shall authorize the Consultant in writing to proceed with the work and shall specify the amount of the Contingency Fund to be expended for that work, including, if applicable, any fee for profit.

The Consultant shall show separately on its invoices all charges against the Contingency Fund.

**F. Payment of Audit Findings**

If an audit of the Consultant (see Section VIII, "AUDIT") determines that the Consultant has been overpaid during the Contract period, the Consultant shall refund the excess amount to the City within sixty (60) days after the audit report is filed with the Consultant.

**G. Overtime Work**

No premium will be paid by the City for overtime work.

**H. Payment of WMBE Set-Asides**

As per Section X below, "WOMEN'S AND MINORITY BUSINESS UTILIZATION," the Consultant is legally obligated to utilize and pay the WBE and MBE subconsultants at least the amounts listed on the "Women and Minority Business Enterprise Information and Commitment Form" pertaining to this Contract and to any subsequent amendments to this Contract. If for any reason full payment of the dollars set aside to fulfill these commitments cannot be made to a WBE or MBE subconsultant, the unspent dollars shall be frozen and the situation reported immediately to the Seattle Water Department. No further expenditure of the frozen funds shall be made without written approval of the City.

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**I. Record-Keeping**

The Consultant and subconsultants shall keep complete and accurate time records with respect to all salaries paid as well as complete and accurate records of all reimbursable costs and expenses associated with this project. The cost records of the Consultant and subconsultants must identify all project expenses by task number.

**V. EXTRA WORK**

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

If at any time the Consultant believes a request by the City constitutes an increase in the SCOPE OF WORK, the Consultant shall say so in writing and request an amendment. If such work is performed by the Consultant without an amendment, it is understood that the Consultant will absorb the cost of performing such work, without reimbursement from the City.

**VI. AUDIT**

The Consultant shall permit the City and/or any other governmental agency that is involved in the funding of the project (hereinafter referred to as "Agency"), from time to time as the City Auditor or the Superintendent of Water or Agency deems necessary (including up to six (6) years after the final payment or release of withheld amounts has been made under this Contract), to inspect and audit at any and all reasonable times in King County, Washington, or at such other reasonable location as the City Auditor and/or Agency selects, all pertinent books and records of the Consultant and any subconsultants or other person or entity that has performed work in connection with or related to the Consultant's services under this Contract to verify, among other things, that the compensation or other consideration provided to the Consultant has been appropriate, and that the contracted-for services were provided in a timely manner; and shall supply the City records and any portion thereof, upon the City Auditor's, the Superintendent of Water's or the Agency's request.

The Consultant shall ensure that such inspection, audit and copying rights of the City and Agency are a condition of any subcontract, contract or other arrangement under which any other person or entity is permitted to perform work in connection with or related to the Consultant's services under this Contract.

All audit findings, except those for performance audits, will be governed by the Federal Acquisition Regulation (FAR), subpart 31, which is hereby incorporated in and made a part of this Contract.

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**VII. COMPLIANCE WITH CERTAIN LAWS**

**A. General Requirements**

The Consultant, in performing the work under this Contract and at its sole cost and expense, shall perform and comply with all applicable laws of the United States and the State of Washington; the Charter, Municipal Code, and ordinances of The City of Seattle; and rules, regulations, orders, and directives of their administrative agencies and the officers thereof.

**B. Licenses and Similar Authorizations**

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

The Consultant agrees to complete registration with the City of Seattle Department of Licenses and Consumer Affairs for a business and occupation license and with the Department of Revenue, General Administration Building, Olympia, Washington 98504, and/or the Secretary of State, Olympia, Washington 98504, prior to the execution of this Contract, if it has not already done so; and to pay such taxes, if required, as established by law for the privilege of conducting business in the City of Seattle and the State of Washington.

**C. Taxes**

The Consultant shall pay, before delinquency, all taxes, levies, and assessments arising from its activities and undertakings under this Contract; taxes levied on its property, equipment and improvements; and taxes on the Consultant's interest in this Contract and any leasehold interest deemed to have been created thereby under CH.82.29A RCW.

**D. Nondiscrimination and Affirmative Action**

Pursuant to Seattle Municipal Code Chapter 20.44, during the performance of this Contract, the Consultant agrees as follows:

The Consultant will not discriminate against any employee or applicant for employment because of race, religion, creed, color, sex, marital status, sexual orientation, political ideology, ancestry, national origin, or the presence of any sensory, mental or physical handicap, unless based upon a bona fide occupational qualification. The Consultant will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their creed, religion, race, color, sex, national origin, or the presence of any sensory, mental or physical handicap. 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. The Consultant agrees to post in conspicuous places, available to employees and applicants for employment,

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notices to be provided by the City setting forth the provisions of this nondiscrimination clause.

The Consultant will, prior to commencement and during the term of this Contract, furnish to the Director of the Department of Administrative Services (as used hereinafter in this section, the "Director" means the Director of the Seattle Department of Administrative Services or his/her designee) upon his/her request and on such form as may be provided by the Director therefor, a report of the affirmative action taken by the Consultant in implementing the terms of these provisions, and will permit access to his/her records of employment, employment advertisements, application forms, other pertinent data and records requested by the Director for the purposes of investigation to determine compliance with this provision.

If, upon investigation, the Director finds probable cause to believe that the Consultant has failed to comply with any of the terms of these provisions, the Consultant and the Seattle Water Department (SWD) shall be so notified in writing. The SWD shall give the Consultant an opportunity to be heard, after ten days' notice. If the SWD concurs in the findings of the Director, it may suspend the Contract and/or withhold any funds due or to become due to the Consultant, pending compliance by the Consultant with the terms of these provisions.

Failure to comply with any of the terms of these provisions shall be a material breach of this Contract.

The Consultant shall insert the foregoing provisions in every subcontract pertaining to the work required to fulfill the terms of this Contract.

The Consultant shall take such action with respect to any subcontract as the City may direct as a means of enforcing such provisions, including sanctions for noncompliance; provided, however, that in the event that a Consultant becomes involved in, or is threatened with, litigation with a subconsultant as a result of such direction, the Consultant may request the City to enter into such litigation to protect the interests of the City.

**E. Recycled Content**

The Consultant shall, whenever practicable, use recycled content products in performing the tasks under this contract, including recycled paper for documents submitted to the City.

**F. Americans with Disabilities Act**

The Consultant shall comply with all applicable provisions of the Americans with Disabilities Act of 1990 (ADA) in performing its obligations under this Contract. In particular, if the Consultant is providing services, programs, or activities to City employees or members of the public as part of this Contract, the Consultant shall not deny participation or the benefits of such services, programs, or activities to people with disabilities on the basis of such disability. Failure to comply with the provisions of the ADA shall be a material breach of, and grounds for the immediate termination of, this Contract.

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**VII. WOMEN'S AND MINORITY BUSINESS ENTERPRISE UTILIZATION**

**A. General**

As used in this Contract, the term "WMBE" shall refer to Women's Business Enterprises (WBEs), Minority Business Enterprises (MBEs), Combination Business Enterprises (CBEs), and Minority Women's Business Enterprises (MWBES), collectively.

During the term of this Contract, the Consultant shall:

1. Meet the WBE and MBE set-asides established for the total compensation and expense reimbursement provided for in this Contract, in the percentages indicated below:

WBE 21 %                      MBE 7 %

2. Make affirmative efforts to utilize WMBEs in performing the Contract, whether as subconsultants, suppliers, or in any other capacity;
3. Require that all subconsultants make affirmative efforts to utilize WMBEs in performance of the Contract;
4. Maintain records reasonably necessary for monitoring compliance with the provisions of SMC 20.46A, and submit such information as may be requested by the Director of the City's Department of Administrative Services in order to monitor and enforce compliance; and
5. Require that subconsultants maintain records reasonably necessary for monitoring the subconsultants' compliance with the provisions of SMC 20.46A, and that the subconsultants submit such information as may be requested by the City's Director of Department of Administrative Services (DAS) in order to monitor and enforce compliance.

The Consultant shall comply with the requirements set forth in SMC 20.46A, the Department of Administrative Services Rules, and this Contract regarding utilization of WMBEs. Failure to meet the WBE and MBE utilization requirements will be considered a material breach of contract. The Department of Administrative Services (DAS) and the Superintendent of Water will monitor compliance with the WMBE requirements throughout the life of the Contract. The Consultant shall submit such reports and information as DAS may deem necessary to determine compliance. Expenditures paid to WMBEs will be evaluated to determine compliance with the Consultant's original WBE and MBE utilization commitment.

**B. Certified WMBEs**

Businesses used to meet the WMBE requirements must be certified by the Washington State Office of Minority and Women Business Enterprises (OMWBE) and have done business or sought to do business with or within The City of Seattle.

Utilization of a decertified WMBE will not count towards meeting the WBE and MBE utilization requirements. If the Consultant learns that a WMBE performing or scheduled to perform work on the Contract has been decertified,

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the Consultant shall immediately notify the Director of DAS. If the Consultant is utilizing a firm which becomes decertified, the Consultant shall make all reasonable efforts to obtain additional WMBE participation in order to meet the set-aside requirements established for the Contract.

**C. Substitution of WMBEs**

1. The Consultant may substitute or remove a WMBE whose utilization was made a condition of award of the Contract only for good cause and with the concurrence of the Director of DAS. Any substitution or removal of a WMBE shall be done by amendment.
2. The Consultant shall notify the Superintendent of Water whenever the Consultant intends to substitute or remove a WMBE. Where it is practicable to do so, the substitution or removal of a WMBE shall be approved by the Director of DAS prior to the removal of the WMBE or the new WMBE commencing work. The Superintendent of Water shall coordinate with DAS to obtain approval of the substitution by DAS in the form of a proposed amendment. DAS will review all proposed substitutions in accordance with SMC 20.46A.160B and DAS Rules (formerly SHRR Chapter 120-505).
3. Where it is not practicable to prepare an amendment prior to commencement of work by the new WMBE, the Superintendent of Water shall coordinate notification and a preliminary review by DAS of the proposed substitution in accordance with SMC 20.46A and DAS Rules (formerly SHRR Chapter 120-505). If DAS determines that the substitution was not for good cause, the work performed by the new WMBE shall not be counted toward fulfillment of the set-aside requirements.

**D. Changes in WMBE Set-Aside Requirements**

The Department of Administrative Services shall evaluate whether the set-aside percentages for this Contract should be modified whenever:

1. The original Contract is under \$15,000 and is subsequently amended to over \$15,000.
2. The original Contract is equal to or exceeds \$15,000 and is amended by any amendment in an amount equal to or exceeding \$15,000.

The Consultant shall be responsible for meeting the WBE and MBE set-aside percentages established by DAS for this Contract and for all applicable amendments to this Contract.

**E. WMBE Reporting Requirements**

Within 30 days after completion of the WMBEs' performance, the Consultant shall require all WMBE subconsultants and any second-tier subconsultants of all WMBE subconsultants, whether or not the second-tier subconsultants are WMBEs, to submit Declaration of Payment Received Reports to DAS stating the work actually performed on the Contract and a record of the total dollar amount received by type of work. These reporting forms are available from

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DAS. Additional documents may be requested as deemed necessary by DAS to determine compliance with the WMBE utilization requirements.

DAS may recommend that the City not accept the Contract as complete if the verified reports are not received. Additionally, DAS may consider the nonreceipt of verified reports as evidence that the WMBE set-aside requirements were not met and require that liquidated damages be withheld in the amount of the unverified payments. When WMBE subconsultants and any of their second-tier subconsultants are employed on more than one project with the same Consultant, the records kept by the Consultant shall delineate the work performed and total dollar amount received for each separate project.

**F. Sanctions For Noncompliance**

Failure to comply with SMC 20.46A may result in the imposition of sanctions including but not limited to:

1. Withholding of funds;
2. Imposition of a civil fine or penalty;
3. Termination of the Contract based upon a material breach of the WMBE Contract provisions; and
4. Disqualification of a Bidder, Consultant, subconsultant or other business from eligibility for providing goods and services to the City for a period not to exceed five years.

Additionally, the Consultant may be subject to liquidated damages for failing to meet the set-aside requirements of this Contract.

**G. Liquidated Damages**

This Contract hereby incorporates by reference SMC 20.46A (the "Women's and Minority Business Utilization Ordinance"). The failure of the Consultant or any subconsultant to comply with any of the requirements of SMC 20.46A shall be a material breach of contract. The purpose of Seattle's WMBE Program is to provide a prompt remedy for the effects of past discrimination. The City in general, and its WMBE Program in particular, are damaged when a contract, or portion of a contract, to be performed by a WBE or MBE is not actually performed by a WBE or MBE in compliance with SMC 20.46A. Because the actual amount of such damage is not reasonably calculable, the parties agree and stipulate that liquidated damages equal to the unmet dollar amount of any WBE or MBE set-aside will fairly compensate the City for resulting delays in carrying out the purpose of the Program, the costs of meeting utilization targets through additional contracts, the administrative costs of investigation and enforcement, and other damages and costs caused by the violation.

**H. No Third Party Rights**

The parties agree that the provisions of this section are not intended to create any third party rights. Any actions taken by DAS with respect to this Contract are for the purposes of enforcing and implementing the provisions of SMC 20.46A, and not for the purpose of benefiting any particular entity.

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**IX. ASSIGNMENT OF WORK AND SUBCONTRACTING**

Neither party shall assign its obligations under this Contract, in whole or in part, without an amendment to this Contract. Approval of such assignment shall not be unreasonably withheld.

Neither party shall subcontract any of its obligations under this Contract, in whole or in part, without the other party's written consent. Any subcontract made by the Consultant with the consent of the City shall incorporate by reference all the terms of this Contract. The Consultant shall be responsible to ensure that all subconsultants comply with the obligations and requirements of this Contract.

Exhibit \_\_\_\_, "Subconsultants," which is by this reference incorporated in and made a part of this Contract, contains a list of subconsultants to perform under this Contract and their profit and overhead rates approved by the City; any adjustments to these rates shall be subject to written City approval. The names of all subconsultants authorized to perform portions of the SCOPE OF WORK of this Contract, the tasks assigned to each subconsultant, and the dollar amounts to be paid each subconsultant are enumerated in Exhibit \_\_\_\_, "Estimated Project Costs," referenced earlier in this Contract.

The Consultant shall notify the Superintendent of Water in advance of any proposed changes in the use of these subconsultants or any additional subcontracting for this project. The substitution of any WMBE subconsultants requires a contract amendment and approval by the Director of the Department of Administrative Services, per above Section X. WOMEN'S AND MINORITY BUSINESS ENTERPRISE, subsection C., "Substitution of WMBEs." In all cases, the Consultant agrees to seek out and utilize, wherever possible, the services of minority- and/or women-owned businesses and to document the affirmative efforts made in seeking such subconsultants.

All subcontracts under this Contract are subject to the City's review.

**X. ADDRESSES FOR NOTICES AND DELIVERABLE MATERIALS**

All notices and other material to be delivered hereunder shall be in writing and shall be delivered or mailed to the following addresses:

If to City: *[Project Manager]*  
Seattle Water Department  
720 Third Avenue 10th Floor  
Seattle, WA 98104

If to the Consultant:

or such other respective addresses as may be specified herein or as either party may, from time to time, designate in writing.

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**XI. LEGAL RELATIONS**

**A. Contractual Relationship**

This Contract does not constitute the Consultant as the agent or legal representative of the City for any purpose whatsoever. The Consultant is not granted any express or implied right or authority to assume or create any obligation or responsibility on behalf of or in the name of the City or to bind the City in any manner or thing whatsoever.

**B. Amendments**

No modification or amendment of the provisions hereof shall be effective unless in writing and signed by the Superintendent of Water and by an authorized representative of the Consultant. The parties hereto expressly reserve the right to modify this Contract, from time to time, by mutual agreement.

**C. Executory Contract**

This Contract will not be valid until executed by the City and signed by the Superintendent of Water, or his/her authorized designee.

**D. Binding Effect**

The provisions, covenants and conditions in this Contract apply to bind the parties, their legal heirs, representatives, successors, and assigns.

**E. Applicable Law and Venue**

This Contract 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 King County, Washington.

**F. Remedies Cumulative**

Rights under this Contract are cumulative; the failure to exercise on any occasion any right shall not operate to forfeit such right on another occasion. The use of one remedy shall not be taken to exclude or waive the right to use another.

**G. Captions**

The titles of sections are for convenience only and do not define or limit the contents.

**H. Invalidity of Particular Provisions**

A judicial determination that any term, provision, condition, or other portion of this Contract, or its application, is inoperative, invalid, or unenforceable shall not affect the remaining terms, provisions, conditions, or other portions of this

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Contract, nor shall such a determination affect the application of such term, provision, condition, or portion to persons or in circumstances other than those directly involved in the determination in which it is held to be inoperative, invalid, or unenforceable, and as to such other persons or in such other circumstances it shall continue in full force and effect.

**I. No Waiver**

No waiver of full performance by either party shall be construed, or operate, as a waiver of any subsequent default or breach of any of the terms, covenants or conditions of this Contract. The payment of compensation to the Consultant shall not be deemed a waiver of any right or the acceptance of defective performance.

**J. Entire Contract**

This Contract, including the exhibits and addenda attached hereto and forming a part hereto (if any), are all of the covenants, promises, agreements, and conditions, either oral or written, between the parties. No verbal agreements or conversations between any officer, agent, associate or employee of the City and any officer, agent, employee or associate of the Consultant prior to the execution of this Contract shall affect or modify any of the terms or obligations contained in this Contract. Any such verbal agreements shall be considered unofficial information and in no way binding on either party.

**K. Strict Compliance Required**

Strict compliance with the terms of this Contract is essential for the legal disbursement of public funds for the purposes described herein. Deviation by the Consultant from any of the terms contained in this Contract must be formally authorized in writing by the Superintendent of Water.

**XII. ERRORS AND OMISSIONS; CORRECTION**

The Consultant shall be responsible for the professional quality, technical accuracy and the coordination of all designs, specifications, reports, data, computer models and other services furnished by or on behalf of the Consultant under this Contract. The Consultant shall, without additional compensation, correct or revise any errors or deficiencies in the Consultant's work products and/or other Consultant services immediately upon notification by the City. The obligations provided for in this section with respect to any acts or omission during the term of this Contract shall survive any termination or expiration of this Contract.

**XIII. INDEMNIFICATION**

The Consultant hereby agrees to indemnify, save harmless and defend the City from all claims, demands, suits, judgments, and liability (including reasonable attorney's fees, losses, costs and expenses of any kind) arising out of, in connection with, or incident to the negligent acts, errors or omissions of the Consultant, its agents, and employees in

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performing the work required by this Contract, but only to the extent such claims, actions, costs, damages or expenses are caused by the negligence of the Consultant, its authorized agents, or employee. The indemnification provided for in this section shall survive any termination or expiration of this Contract. The Consultant further waives, with respect to the City and this Agreement only, its immunity under RCW Title 51, Industrial Insurance.

#### **XIV. INSURANCE**

Prior to undertaking any work under this Contract, the Consultant, at no expense to the City, shall obtain and file with the Superintendent of Water and the City's Risk Manager evidence of a policy or policies of insurance as enumerated below. In most cases, the following will constitute acceptable evidence of insurance coverage: Declaration pages, the forms endorsement listing the forms applicable to the policy, and evidence (as described later in this Contract) that the City is named as an additional insured. However, the Consultant may also be required by the City to submit a copy or certified copy of the policy and all forms and endorsements to the policy.

1. A policy of commercial general liability insurance, written on an occurrence form, including all the usual coverages known as:
  - Premises/Operations Liability
  - Products/Completed Operations
  - Personal/Advertising Injury
  - Contractual Liability
  - Explosion, Collapse and Underground Property DamageSaid policy must provide the following minimum coverage:
  - Bodily Injury and Property Damage -
  - \$1,000,000 per occurrence,
  - \$1,000,000 annual aggregate.Any deductible or self-insured retention must be disclosed and is subject to approval by the City's Risk Manager.
2. A policy of commercial automobile liability, including coverage for owned, non-owned, leased or hired vehicles.  
Such policy must provide the following minimum coverage:
  - Liability - \$300,000 per accident.
3. A policy of professional liability insurance ("errors and omissions").  
Such policy must provide the following minimum coverage:
  - Liability - \$1,000,000 each occurrence.If such policy is written on a claims made form, the retroactive date shall be prior to or coincident with the date of this contract. The policy shall state that coverage is claims made, and state the retroactive date. Claims made form coverage shall be maintained by the Consultant for a minimum of three years following the termination of this Contract, and the Consultant shall annually provide the City with proof of renewal. If renewal of the claims made form of coverage becomes unavailable, or economically prohibitive, the Consultant shall purchase an extended reporting period ("tail") or execute another form of guarantee acceptable to the City to assure financial responsibility for liability for services performed.

The above policy or policies, endorsements thereto, and subsequent renewals:

- (a) shall be subject to approval by the City's Risk Manager as to company (must be rated A-:VII or higher in the A.M. Best's Key Rating Guide and licensed to do business in the State of Washington or issued as a surplus line by a Washington broker or agent), form and coverage and primary to all other insurance the City may secure, and
- (b) must protect the City within the policy limits from any and all claims and risks in connection with any activity performed by the Consultant by virtue of this Contract, and
- (c) must be maintained in full force and effect throughout the entire term of this Contract, and
- (d) must name The City of Seattle as an additional insured (excluding professional liability). The following evidence will be acceptable:
  - (i) An additional insured endorsement issued on an Insurance Services Office (ISO) form (CG 20 26 or comparable), naming "The City of Seattle, its officers, elected officials, employees, agents, and volunteers" as an additional insured. The endorsement must also be signed by an authorized representative of the insurance company and include the policy number and name of the insured on the endorsement.
  - (ii) A blanket policy or endorsement clause adding as additional insureds anyone for whom the Consultant is required to provide insurance under a contract or permit.
  - (iii) An additional insured endorsement containing the following provision:

"The City of Seattle, its officers, elected officials, employees, agents and volunteers are an additional insured for all coverages provided by this policy and shall be fully and completely protected to the extent provided in said policy for any and every injury, death, damage and loss of any sort sustained by any person, organization or corporation in connection with any activity performed by the Consultant (except for professional liability) by virtue of the provisions of that Contract between the City of Seattle and *[insert name of Consultant]* entitled *[insert title of the Contract]*, (Department Contract No. \_\_\_\_\_), dated \_\_\_\_\_ {mon & year}."

"The coverages provided by this policy to the City or any other named insured shall not be terminated, reduced or otherwise materially changed without providing at least forty-five (45) days prior written notice to the City of Seattle."

- (e) must also include a "separation of insureds" or "severability of interests" clause indicating essentially that "except with respect to the limits of insurance, and any rights or duties specifically assigned to the first named insured, this insurance applies as if each named insured were the only named insured, and separately to each insured against whom claim is made or suit is brought."

Failure of the Consultant to comply with any of the terms of the above insurance provisions shall be considered a material breach of this Contract and cause for its immediate termination.

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**XV. SPECIAL STIPULATIONS**

**A. Conflict of Interest**

The Consultant confirms that the Consultant does not have a business interest or a close family relationship with any City officer or employee who was, is, or will be involved in the consultant selection, negotiation, drafting, signing, administration, or evaluating the Consultant's performance. As used in this section, the term "Consultant" shall include any employee of the Consultant who was, is, or will be involved in the negotiation, drafting, signing, administration, or performance of the Contract. As used in this section, the term "close family relationship" refers to the following: spouse or domestic partner; any dependent parent, parent-in-law, child, son-in-law, or daughter-in-law; or any parent, parent-in-law, sibling, uncle, aunt, cousin, niece or nephew residing in the household of a City officer or employee described above.

**B. Involvement of Former City Employees**

The Consultant agrees to inform the City of any former City officer or employee who terminated City office or employment in the last twelve (12) months and who will be working on or subcontracting for any of the work under this Contract. The Consultant further agrees that no work under this Contract will be done by a former City officer or employee who terminated City office or employment in the last twelve (12) months and who, in the course of official City duties, was involved in, participated in or acted on any matter related to this Contract

**C. Consultant's Lead Staff Commitment**

As the expertise of the staff assigned by the Consultant to this project in the original proposal weighed heavily in the selection of the Consultant, the City shall expect the Consultant to maintain, in all phases of the project, the lead staff named in the Consultant's proposal, unless changes have been authorized by the City.

The parties agree that the individuals named in Exhibit \_ are essential to the full performance of this Agreement and a critical factor in the City's selection of the Consultant. Consultant agrees that:

1. It will not transfer or reassign such individuals without the express written agreement of the City which agreement shall not be unreasonably withheld; and
2. Should such individuals no longer be employed by the Consultant, Consultant shall present to the City an individual with equal or greater 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.

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**D. Working Relationship**

The work under this Contract shall at all times be subject to the general review of the City and to its approval. The Consultant shall periodically, during the progress of the work, confer with the City and shall prepare and present such information and materials as may be pertinent, necessary, or as may be requested by the City to determine the adequacy of the work as it progresses.

For the purposes of this Contract, the "City" shall mean the Superintendent of Water. However, the Superintendent delegates responsibility for project administration and management to the Project Manager. The Consultant shall work directly with the Project Manager even though the official relationship is with the Superintendent of Water.

The working relationship as indicated herein shall exist at the discretion of the Superintendent of Water; it may be revised at any time upon written notice at the sole discretion of the Superintendent.

**E. Confidentiality**

Except as provided in Subsection XVA, the parties agree that they will not permit the duplication or disclosure of any information designated in advance by the other party as "Confidential and Proprietary" information to any person (other than its own employee, agent, or representative who must have such information for the performance of its obligations hereunder) unless such duplication, use or disclosure is specifically authorized in writing by the other party or is required by law, in which case the information will be treated as confidential for all other purposes. The term "Confidential and Proprietary Information" does not include ideas, concepts, know-how or techniques related to information which, at the time of disclosure, is in the public domain unless the entry of that information into the public domain is a result of any breach of this Contract. Likewise, the term "Confidential and Proprietary Information" does not apply to information that is independently developed, already possessed without obligation of confidentiality, or rightfully obtained from a third party without an obligation of confidentiality.

**F. Copyright**

The Consultant and the City agree that all material produced pursuant to this Contract is "work made for hire" and the City owns all of the rights comprised in the copyright. The Consultant shall place the following notice on all visually perceptible copies of materials produced pursuant to this Contract:

- 1) "c", "Copyright", or "Copr.",
- 2) Year of first publication, and
- 3) Owner of copyright - "City of Seattle, Water Department".

The notice shall be affixed to all copies of the material in such a manner and location as to give reasonable notice of the copyright. Except as permitted by this Contract, the Consultant shall not use any of the material described above without the prior written approval of the Superintendent of Water.

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**G. Ownership of Documents**

All drawing, prints, plans, field notes, reports, documents, files, input materials, output materials, the media upon which they are located (including cards, tapes, discs and other storage facilities), software programs or packages (including source code or codes, object codes, upgrades, revisions, modifications, and any related materials) and/or any other related documents or materials which are developed solely for, and paid for by, the City in connection with the performance of the work hereunder, shall be the property of the City. The Consultant shall place an appropriate plaque, emblem, and/or decal thereon, including evidence of the City's ownership of such documents and/or materials.

Any invention, improvement, or discovery, together with all related information, including but not limited to, designs, specifications, data, patent rights and findings developed in connection with the performance of the Contract or any subcontract hereunder, shall be made available to the public through dedication, assignment to the City, or such other means as the City may determine.

Notwithstanding the above, the Consultant does not convey to the City nor does the City obtain any right to any document or material utilized by Consultant that was created or produced separate from this Contract or was preexisting material (not already owned by the City), provided that the Consultant has clearly identified in writing such material as preexisting prior to commencement of work. To the extent that preexisting materials are incorporated into the work, the Consultant grants the City an irrevocable, non-exclusive right and/or license to use, execute, reproduce, display, and transfer the preexisting material, but only as an inseparable part of the work.

**H. Disputes**

Any disputes concerning the Consultant's performance of this Contract, which are not disposed of by agreement between the Consultant's Project Manager and the City's Project Manager, shall be referred to the Superintendent of Water and the Consultant's senior executive(s). If such parties do not agree upon a decision within a reasonable period of time, the parties may pursue other legal means to resolve such disputes.

**I. Restrictions on Contracting**

Consultant understands that it is being retained by the City to assist it in development and conducting of a competitive process related to the Tolt River Filtration Plant Project, and that it is essential that there be no questions about the integrity of that competitive process. Consultant agrees, therefore, that it will not participate in any way as a proposer or consultant to any proposer on the Request for Proposal for a Design/Build/Operate Contract for the Tolt Filtration Plant Project, nor will it provide any information to any persons about this Project without the express approval of the City. Additionally, Consultant will require that all of its officers, employees, agents and subcontractors associated with this Project to agree to these restrictions in a manner satisfactory to the City.

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**XVI. TERMINATION OF CONTRACT**

**A. For Cause**

Either party may terminate this Contract in the event the other fails to perform its obligations as described in this Contract, and such failure has not been corrected within a specified time frame and to the reasonable satisfaction of the other after notice of breach has been provided to such other party.

**B. For Reasons Beyond the Control of Parties**

Either party may terminate this Contract 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 acts of nature, war or warlike operations, civil commotion, riot, labor dispute including strike, walkout, or lockout, sabotage, or superior governmental regulation or control.

**C. For Public Convenience**

The City may terminate this Contract in whole or in part whenever the City determines that such termination is in the best interests of the public or for lack of continuing appropriations.

**D. Partial Termination**

The City may terminate either the work related to the development of the Request for Proposal or the site design work and require the Consultant to complete the remaining work. In the event of such a partial termination, the Consultant shall only be entitled to be paid for the hours of work performed on the terminated portion of the Agreement, provided that in no event will the Consultant be entitled to compensation in excess of the Estimated Project costs for such terminated work.

**E. Notice**

Notice of termination pursuant to subsections A., B. and C. above hereof shall be given by the party terminating the Contract to the other not less than five (5) days prior to the effective date of termination.

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IN WITNESS WHEREOF, the parties have executed this Contract by having their representatives affix their signatures below.

CONSULTANT

By \_\_\_\_\_ Date \_\_\_\_\_  
(Signature)

Name \_\_\_\_\_  
(Print or type)

Title \_\_\_\_\_

Seattle Business License Number \_\_\_\_\_

CITY OF SEATTLE

By \_\_\_\_\_ Date \_\_\_\_\_  
DIANA GALE  
Superintendent of Water

Funded by \_\_\_\_\_

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EXHIBIT \_\_

Page \_\_ of \_\_

ESTIMATE PROJECT COSTS:  
SUMMARY

	<u>Original</u>	<u>Supp. #1</u>	<u>Supp. #2</u>	...
<u>Total</u>				
LABOR (Prime's)	\$	\$	\$	
\$				
<b>DIRECT EXPENSES</b>				
Subconsultants:				
WBE	\$	\$	\$	
\$				
MBE	\$	\$	\$	
\$				
Non-WMBE	\$	\$	\$	
\$				
Other ("ODCs")	\$	\$	\$	
\$				
<u>SUBTOTAL</u>	\$	\$	\$	
\$				
Fixed Fee	\$	\$	\$	
\$				
Contingency Fund	\$	\$	\$	
\$				
<u>TOTAL CONTRACT</u>	\$	\$	\$	
\$				

SUMMARY OF WMBE PARTICIPATION\*

	<u>Original</u>	<u>Supp. #1</u>	<u>Supp. #2</u>	...
<u>Total</u>				
WBE (Names)	\$	\$	\$	
\$				
\$	\$	\$	\$	
\$				

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TOTAL WBE \$		\$		\$
\$				
<u>MBE</u> (Names)	\$	\$	\$	\$
\$	\$	\$	\$	\$
\$	\$	\$	\$	\$
\$				
TOTAL MBE \$	_____	\$	_____	\$
\$				

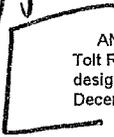
\* Where work has been completed and final payment has been made to any WMBEs, please show actual sums paid (rather than just your "commitment").

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By *Page*

From: Mike Schaefer  
To: Sea-Leg.Council & Central Staff(KOSBORN)  
Date: 1/17/96 1:33pm  
Subject: New, Improved Ordinance Title

Kim, thanks for the input - here's the entire opening paragraph from the ordinance -- hope this works better!



AN ORDINANCE relating the Water Department; authorizing the issuance of a consultant services contract for Tolt River Water Treatment Facilities Solicitation Support, assisting the Department in conducting a design/build/operate process and implementing the workplan adopted by Council in Resolution #29251, dated December 8, 1995.

CC: Sea-Leg.Council & Central Staff(MGREENO),Law.Civil...

CB 111104

UTILITIES &  
ENVIRONMENTAL  
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Diana Gale, Superintendent  
Norman B. Rice, Mayor

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January 17, 1996

**TO:** Utilities and Environmental Management Committee  
Councilmembers Margaret Pageler, Chair  
Jane Noland  
Sue Donaldson

via Mayor Norm Rice

**Attn:** Tom Tierney, Director Office of Management & Planning  
**cc:** Judith Noble/Rich Richmire  
Rodney Eng, Law Department

**FROM:** Diana Gale  
Superintendent of Water *MPB for DG*

**RE:** Legislation Authorizing Solicitation Support Services for the  
Tolt River Water Treatment Facilities

Enclosed for the City Council's review and action is an ordinance, which, once adopted, will authorize the Superintendent of Water to enter into a contract for solicitation support services on the Tolt River Water Treatment Facilities Project.

Last December, after adoption of Ordinance #117930 and Resolution #29251, Seattle Water agreed to solicit proposals and negotiate a contract for the provision of consultant services to assist the department in conducting a design/build/operate ("DBO") process for the new Tolt River Water Treatment Facilities. Having completed this solicitation, the department now returns for authorization to proceed with the implementation this support services contract with the successful proposer, the consultant team of RW Beck/Malcolm Pirnie.

An appropriation of funds is not required since we will use adopted 1996 CIP budget authority. We look forward to working with council members over the next few months as this team supports the department in preparing the critical information required for the successful implementation of these new facilities. Please contact Dave Parkinson, Chief Engineer for Resource Development, (684-5931) or Mike Schaefer(684-4607), the Acting Tolt Project Manager should you have any questions or need additional information on this legislation.

Dexter Horton Building, 10th Floor 710 Second Avenue Seattle, WA 98104

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Negotiation Document

SEATTLE WATER DEPARTMENT  
SOLICITATION SUPPORT SERVICES  
TOLT RIVER WATER TREATMENT FACILITIES

Draft Scope of Work  
Date: January 17, 1996

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**OVERVIEW AND UNDERSTANDING**

The Seattle Water Department (SWD) intends to develop a water filtration plant on the Tolt River using a Design-Build-Operate (DBO) solicitation process, provided that DBO proposals demonstrate overall cost savings when benchmarked against an equivalent facility developed using a design-bid-construct process and operated by SWD staff. It is understood that the SWD will retain other consultants or have staff available to address legal, risk management and insurance, and certain business/financial issues.

R. W. Beck, Inc. (the Consultant) will provide engineering consulting services to: 1) assist SWD through the DBO solicitation process; 2) evaluate proposals using predetermined criteria and benchmark costs; 3) provide assistance to obtain certain agreements related to permitting; and 4) provide assistance during DBO proposal solicitation and contract negotiations. This work will be conducted in the following phased approach:

- Phase I Develop Strategy
- Phase II Develop Framework
- Phase III Develop Request for Qualifications (RFQ) and Request for Proposals (RFP) Documents
- Phase IV Solicitation Implementation

In addition, the Consultant will provide project management services through all phases for monitoring and controlling the Consultant team's budgets and schedules and for communicating routinely with SWD staff. Budgets developed for this Scope of Work assume a duration for Phases I through IV not to exceed 16 months.

If the project results in an executed DBO contract, SWD at its discretion may amend this contract to provide additional follow-on support services such as assistance on project financing, technical review of the contractor's designs; site preparation construction administration and inspection; plant commissioning support; plant maintenance inspection support; and operational audits.

**PHASE I: DEVELOP STRATEGY****Objectives:**

- Provide overall project direction
- Resolve issues necessary for timely and efficient preparation of solicitation documents
- Enhance teamwork between Consultant and SWD staff

**TASK I.1 PHASE I PROJECT MANAGEMENT**

The Consultant's project manager will provide Phase I project management support, including:

1. Monthly invoicing and progress reporting.
2. Weekly progress meetings, either in person or by conference call, between SWD's project manager, the Consultant's project manager and project coordinator, and other members of the project team as appropriate. It is assumed the Consultant will prepare brief summaries of these meetings.
3. Ongoing coordination and communication with staff and subconsultants.

The budget estimate assumes these project management services will be provided over a six-week period.

If Strategy Session 3, described below under Task I.2, results in changes that would affect the Consultant's Scope of Work, a revised Scope and Budget estimate for subsequent phases will be prepared.

**TASK I.2 STRATEGY SESSIONS**

The Consultant will conduct three strategy sessions with SWD to develop an overall direction for the project as follows:

**Session 1: Determine the right balance for the City between City control and DBO contractor flexibility.** The intent of this session is to raise and resolve questions, early on, related to the degree of control the City wishes to exert over the DBO contractor versus the amount of flexibility provided in the solicitation documents. It is assumed that the first strategy session will take place over two days and, in addition to SWD technical staff, will be attended by SWD representatives who have the responsibility and authority to make key policy decisions related to the solicitation. The budget estimate assumes Consultant team members at the strategy session will include Bingham, Tangora, Westerhoff, and Torres.

Prior to the session, the Consultant will work with SWD's project manager to develop and expand on the list of key questions, prepare an agenda, and summarize useful technical data.

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**Session 2: Discuss and select approaches to enhance the competitive process.** The intent of this session is to identify and select competitive enhancements that are consistent with the direction established in the first session. The Consultant will also work with SWD to develop an agenda and supporting graphic materials to facilitate discussion during the session. It is assumed this second session would be conducted over one day and will be attended by Bingham, Tangora, Westerhoff, and Torres.

**Session 3: Develop and integrate SWD/Consultant work plan and schedule.** At least two days prior to the third session, the Consultant will prepare a draft work plan and schedule that details assignments for both City and Consultant work related to the DBO solicitation. Twenty (20) copies of the draft work plan/schedule will be provided.

It is envisioned that the work plan may assign SWD/Consultant working teams to investigate or draft certain portions of the solicitation documents. The work plan may also identify specific topics to be discussed/resolved at subsequent work sessions or briefings. The schedule will be prepared in sufficient detail to identify the relationship and timing of specific work activities so that all individuals working on the project understand when their activities must be completed. Consultant team members at the third strategy session are assumed to include Bingham, Tangora, Moore, with Westerhoff and Torres participating by telephone.

Following the third strategy session, which is assumed to last one day, a final draft integrated work plan and schedule will be developed for SWD final review. Five (5) copies of the final draft work plan/schedule will be provided. Following receipt of consolidated SWD comments, the Consultant will finalize the work plan/schedule and provide twenty (20) copies to SWD.

#### TASK I.3 DBO STRATEGY DOCUMENT

The Consultant will summarize the results of the first two strategy sessions in a Strategy Document and provide SWD with 20 copies. It is assumed that any revisions to or clarifications of the strategy provided by SWD will be incorporated into the Phase II Framework Document.

#### TASK I.4 PHASE I STAFF BRIEFINGS

The Consultant will prepare for and attend two staff briefings on the results of Phase I activities. Working with SWD's project manager, the Consultant will prepare agendas for the two briefings. It is expected that the first briefing will discuss the DBO Strategy Document and the integrated work plan, and the second briefing, which will serve as a kickoff to Phase II, will be to receive and discuss SWD comments and refinements to the Strategy Document.

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**Phase I Deliverables:**

- Progress meeting summaries (6)
- Monthly invoice and progress report (1)
- Attendance at Strategy Session 1
- Attendance at Strategy Session 2
- Draft integrated work plan and schedule (20 copies)
- Attendance at Strategy Session 3
- Final draft integrated work plan and schedule (5 copies)
- Final integrated work plan and schedule (20 copies)
- Strategy Document (20 copies)
- Attendance at two staff briefings

**PHASE II: DEVELOP FRAMEWORK**

**Objectives:**

- Provide detailed instructions that will allow for efficient drafting of solicitation documents.
- Determine and refine City's preferred risk posture.
- Resolve key business and legal issues necessary for SWD to develop draft Services Agreement.
- Refine and expand permitting/mitigation strategy to support development of solicitation documents and SWD permitting activities.
- Define benchmark project and develop methodology for application of the benchmark in evaluating proposals.

**TASK II.1 PHASE II PROJECT MANAGEMENT**

The Consultant's project manager will provide ongoing project management, including:

1. Monthly invoicing and project reporting;
2. Weekly progress meetings, either in person or by conference call, between SWD's project manager, the Consultant's project manager and project coordinator, and as appropriate, selected members of the project team.
3. Ongoing coordination and communication with staff and subconsultants.
4. Monitoring the status of activities relative to the integrated work plan and schedule.
5. Providing final quality review of key documents.

It is assumed these project management services will be provided over a six-week period.

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**TASK II.2 DEVELOP RISK MATRIX/RISK-BASED COST ANALYSIS**

In collaboration with SWD and based on the direction provided in the Phase I Strategy Document, the Consultant will develop a draft risk matrix that describes and quantifies, if possible, various project financial, schedule, permitting, performance, legal, technical, and regulatory risks. Elements in the draft risk matrix will include:

- Risk Type
- Specific Description of the Risk
- Causes of the Risk
- Likelihood of Occurrence for Each Cause
- Consequences (such as dollars days of delay)
- Strategies for Reducing the Likelihood of Occurrence or for Managing the Consequences
- Standard Industry Practices for Allocating a Particular Risk (if applicable)
- City Strategy for Allocating Risk
- Affected Solicitation Documents and Sections

Examples of specific risk-related issues to be addressed in the draft risk matrix are listed below. In addition, the risk analysis will determine the value of certain risk-based costs such as the costs of insurance requirements that might be placed on the DBO contractor.

- Construction
  - adherence to specified construction schedule
  - permitting process and unexpeditious reviews by regulatory agencies
  - subsurface conditions
  - change orders by City
  - change orders by subcontractors
  - construction quality
  - acceptance testing
- Operations
  - raw water quality
  - drought conditions
  - treated water quality
  - number of hours per day the plant is staffed
  - operations and maintenance costs
  - facility upgrades and capital improvements
  - permit compliance
- Legal and Financial
  - strikes and work stoppages (local, regional, and national)
  - insurance and performance bonds
  - Force Majeure
  - project financing
  - failure to meet acceptance standards

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- change orders
- change in law
- termination clauses
- default provisions

It is assumed that City staff and/or advisors will take the lead in evaluating legal and insurance issues. Twenty (20) copies of the draft risk matrix will be presented to SWD staff to determine and discuss the SWD's preferred risk posture. Based on SWD's comments, the risk matrix will be finalized, and twenty (20) copies will be provided to SWD. The Consultant will prepare the final risk matrix in a format that can eventually be incorporated into the Framework used internally to guide development of solicitation documents.

#### TASK II.3 IDENTIFY AND RESOLVE KEY BUSINESS AND LEGAL ISSUES

The Consultant will develop a list of business and legal issues that should be resolved prior to developing and issuing solicitation documents. Any direction from Phase I related to these issues will also be identified by the Consultant. Five (5) copies of the list will be provided to SWD.

The Consultant will then work collaboratively with the City's legal staff, risk managers, financial advisor, and project manager to analyze and resolve these issues and to prepare appropriate written directions for the SWD to develop a draft services agreement.

The list of issues will focus primarily on those that require technical, legal, and financial analysis that need to be completed and resolved prior to developing the draft service agreement and solicitation documents under Phase III. Issues will likely be related to how the City's proposed risk posture should be incorporated into requirements for performance bonds, performance guarantees, insurance, pass through costs, construction delays, uncontrollable circumstances, default, project acceptance, buy down provisions, ongoing monitoring, remedies for lack of performance during operation, liquidated damages, and operator incentives. Accordingly, it is assumed that work under this task will occur in coordination with development of the risk matrix. It is also assumed that SWD and its legal staff and financial advisors will provide timely review and resolution of legal issues, insurance issues, and contract financial issues raised by the Consultant.

#### TASK II.4 PERMITTING/MITIGATION FRAMEWORK

The Consultant will develop a Technical Memorandum, describing permit-related information to guide development of the solicitation documents, including:

- Permits that the DBO contractor will be required to pursue
- Permits/agreements the City wishes to obtain
- Information related to site environmental conditions
- Information related to typical permit restrictions such as seasonal restrictions on in-water construction

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- Likely restrictions on DBO use/development of the site (i.e., areas that must be avoided)
- Approach to penalties for inability and/or delay in obtaining permits
- Role of SWD in permit application review, review of mitigation plans, monitoring of the site during construction, and monitoring the implementation of mitigation

The Technical Memorandum will also describe the preferred approach for ongoing SWD work related to permitting. It is assumed that this ongoing work would include developing agreements with the U.S. Army Corps of Engineers and King County related to mitigation for impacts to central wetlands on the site and preparing preliminary mitigation concepts so that the amount of flexibility/risk taken on by the DBO contractor related to this issue can be more clearly defined in the RFP. Five (5) copies of the Technical Memorandum will be provided.

#### **TASK II.5 DEFINE PERFORMANCE REQUIREMENTS AND DEVELOP DRAFT DETAILED ANNOTATED OUTLINE FOR PERFORMANCE SPECIFICATIONS**

Consistent with the DBO Strategy and Risk Matrix, the Consultant will develop a draft annotated outline of the performance specifications. The draft annotated outline will describe the technical nature and quality of the facility, processes, and operations and will define the scope of the performance specifications. It will provide detailed guidance on how each of the performance specifications is to be written (i.e., it will define those areas where detailed specifications are to be developed and those areas where flexibility is to be given to the DBO Contractor). It is anticipated that performance specifications will be organized according to the following categories:

- Technical Specifications
- Performance Standards
- Acceptance Test Procedures and Standards

Twenty (20) copies of the draft annotated performance specifications outline will be provided to SWD. It is assumed that SWD will provide consolidated review comments and that the revised annotated outline will be included in the draft Framework Document described below in Task II.7.

#### **TASK II.6 BENCHMARK METHODOLOGY**

Based on the performance specifications and discussions with SWD, the Consultant will define an equivalent benchmark project. Issues that will need to be resolved in defining the benchmark project will likely include: 1) the type of materials, equipment, and replacement schedules required to provide an equivalent level of reliability and project life; 2) approach to staffing in the benchmark project, such as 24-hour staffing or not; 3) plant capacities and treatment efficiencies; 4) required permits; 5) site development requirements; and 6) City general and administrative costs (i.e., insurance, administration). It is assumed that these issues will be resolved in a half-day work session with appropriate SWD staff.

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