

Contract #00-00-0000-000-00

PROFESSIONAL SERVICES AGREEMENT (NON-A&E, NON-AVIATION RELATED)
for

Project Description, Project #00-00-0000

THIS AGREEMENT, made and entered into this _____ day of _____, 2015, by and between SPOKANE AIRPORT, by and through its AIRPORT BOARD, created pursuant to the provisions of Section 14.08.200 of the Revised Code of Washington, as a joint operation of the City and County of Spokane, municipal corporations of the State of Washington, hereinafter referred to as "Airport," and _____, a **Company** organized and **incorporated** in the State of _____, hereinafter referred to as "Consultant."

Consultant shall provide professional services for the _____ Project #**00-00-0000**, at the **Spokane International Airport(s)**. Said services shall be in accordance with the **Scope of Work - Exhibit A**, dated _____, 2015, attached hereto.

WITNESSETH:

The parties hereto agree as follows:

1. TIME OF PERFORMANCE: This Agreement shall run from time of execution by both parties until terminated as provided for herein.
2. MODIFICATION. The Airport may modify this Agreement and order changes in the work whenever necessary or advisable. Consultant will accept modification when ordered in writing by the Airport's designated representative, the time for performance and compensation being mutually agreed upon. Consultant shall make revisions to work included in this Agreement as are necessary to correct errors and omissions appearing therein when required to do so by the Airport without additional compensation.
3. COMPENSATION: The Airport will pay Consultant per the **Scope of Work - Exhibit A**, dated _____, 2015, attached hereto. The negotiated fee for said services shall be (on a time and material basis for a not to exceed amount of \$ _____) or (for a lump sum amount not to exceed \$ _____).

The Consultant agrees that any work identified during the project as outside of the original Scope of Work shall be discussed with the Airport prior to execution of such work. A separate written scope and fee will be prepared and forwarded to the Airport for consideration. Any work completed by the Consultant outside of the Scope of Work without express written prior approval from the Airport shall be considered incidental.

4. PAYMENT: Consultant will send its applications for payment to:

Spokane International Airport

Attn: _____ #00-00-0000

9000 W. Airport Drive, Suite 204
Spokane WA, 99224

5. TERMINATION: Airport may terminate this Agreement by thirty (30) days' written notice to the other party and Consultant may terminate this Agreement by sixty (60) days' written notice; provided, however, the party seeking to terminate this Agreement shall not be in default. In the event of such termination, the Airport shall pay Consultant for all services rendered and expenses incurred prior to date of termination. The Airport is not obligated to pay any fees or expenses which specifically involve negligent acts or omissions on the part of Consultant.
6. COMPLIANCE WITH LAWS: Consultant shall comply with all applicable federal, state, and local laws, regulations and executive orders which are incorporated by reference.
7. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION: The Consultant certifies, by execution of this Agreement, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency. It further agrees by executing this Agreement that it will include this clause without modification in all lower tier transactions, solicitations, proposals, contracts, and subcontracts. Where the Consultant or any lower tier participant is unable to certify to this statement, it shall attach an explanation to this Agreement.
8. OWNERSHIP OF DOCUMENTS: All drawings, plans, specifications, reports and other related documents prepared by Consultant under this Agreement are and shall be the property of the Airport. Any reuse shall be at the Airport's sole risk.
9. ENDORSEMENT OF PLANS: Consultant shall place its written endorsement on all plans, specifications, reports or documents developed by Consultant.
10. ASSIGNMENTS: This Agreement is binding on the parties and their heirs, successors, and assigns. Neither party may assign or transfer its interest, in whole or in part, without the other party's prior written consent.
11. LEGAL CLAIMS AND ATTORNEY FEES:
 - A. Each party hereto shall promptly report to the other any claim or suit against it arising out of or in connection with Consultant's duties. Subject to paragraphs 20 and 27 of this Agreement, the Airport and Consultant each have the right to compromise and defend the same to the extent of its own interest; provided the defense of the same has not been tendered and accepted by the other party. Consultant is an independent contractor in every respect, and not the agent of the Airport.
 - B. In the event either party requires the services of an attorney in connection with enforcing the terms of this Agreement or in the event suit is brought for the recovery of fees or other sums or charges otherwise payable to Consultant, the prevailing party will be entitled to reasonable attorneys' fees, consultants' fees, witness fees and other costs, both at trial and on appeal. For purposes of calculating attorneys' fees, legal services rendered on behalf of the Airport by

public attorneys shall be computed at hourly rates charged by attorneys of comparable experience in private practice in Spokane, Washington.

12. TITLE VI ASSURANCES: During the performance of this Agreement, the Consultant, for itself, its assignees and successors in interest agrees as follows:
 - A. Compliance with Regulations: Consultant shall comply with the Regulations relative to nondiscrimination in Federally assisted programs of the Department of Transportation (hereinafter, "DOT") Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time, (hereinafter referred to as the "Regulations"), which are herein incorporated by reference and made a part of this Agreement.
 - B. Nondiscrimination: The Consultant, with regard to the work performed by them during the Agreement shall not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurement of materials and leases of equipment. The Consultant shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the Agreement covers a program set forth in Appendix B of the Regulations.
 - C. Solicitation of Subcontracts Including the Procurement of Materials and Equipment: In all solicitations either by competitive bidding or negotiation made by the Consultant for work to be performed under subcontract, including procurement of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the Consultant of the obligations under this Agreement and the Regulations relative to nondiscrimination.
 - D. Information and Reports: The Consultant, and all subcontractors and suppliers of the Consultant, shall provide all information and reports required by the Regulations or directives issued pursuant thereto and shall permit access to its books, records, accounts, other sources of information and its facilities as may be determined by the Airport or the Federal Aviation Administration (FAA) to be pertinent to ascertain compliance with such Regulations, orders, and instructions. Where any information required of a Consultant is in the exclusive possession of another who fails or refuses to furnish this information, the Consultant shall so certify to the Airport or the FAA, as appropriate, and shall set forth what efforts it has made to obtain the information.
 - E. Sanctions for Noncompliance: In the event of the Consultant's non-compliance with the nondiscrimination provisions of this Agreement, the Airport shall impose such contract sanctions as it or the FAA may determine to be appropriate, including, but not limited to withholding of payments to Consultant until Consultant complies, and/or cancellation, termination, or suspension of the agreement in whole or in part.
13. ANTI-KICKBACK: No officer or employee of the Airport, having the power or duty to perform an official act or action related to this Agreement shall have or acquire any interest in the Agreement, or have solicited, accepted or granted a present or future gift, favor, service or other thing of value from or to any person involved in this Agreement.

14. EXPERT LEGAL TESTIMONY: In the event of any legal or other controversy requiring the services of Consultant in providing expert testimony in connection with any project, except suits or claims by third parties against the Airport arising out of negligent errors or omissions of Consultant, the Airport shall pay Consultant for services rendered in regard to such legal or other controversy, including costs of preparation for controversy. Such payment to Consultant shall be at rates mutually agreed upon.
15. STANDARD PERFORMANCE: Consultant, in carrying out its responsibilities, acts, and duties, shall observe and meet the standard of an experienced and qualified professional consultant familiar with the industry, performing similar services under similar conditions.
16. ACCESS, APPROVALS and PERMITS: The Airport shall arrange for access to and make all provisions for Consultant to enter Spokane Airport property as required for Consultant to perform its services. Except as may be provided in individual agreements, the Airport shall furnish appropriate approvals and permits from all governmental authorities having jurisdiction over the project and such approval and consents from others as may be necessary for completion of the project.
17. MAINTENANCE OF RECORDS: Consultant shall make available to the Airport's auditor, or his fully authorized representative, all records created as a result of the Agreement including pertinent information which Consultant shall have kept in conjunction with this Agreement and which the Airport may be required by law to include or make part of its auditing procedures, or which may be required for the purpose of funding the service contracted for herein. Consultant agrees to maintain a copy of said records for a minimum of seven (7) years following completion of its services.
18. INSURANCE:
 - A. Consultant shall carry Professional Liability insurance coverage, including coverage for job supervision, in the minimum amount of \$1,000,000, per claim and in the aggregate.
 - B. Consultant shall, at its expense, maintain insurance in full force and effect during the term of this Agreement in such amounts as to meet the minimum limits of liability specified below and insurance shall be placed with companies or underwriters authorized to do business in the State of Washington and carry a Best's rating no lower than A-. Failure to obtain and maintain such insurance shall constitute a default under this Agreement. The insurance policy(ies) shall be the standard comprehensive general liability insurance coverage with aircraft exclusion deleted and shall include, but not by way of limitation, bodily injury; property damage; products liability; and contractual coverage. Consultant shall also maintain a vehicular policy insuring any of its vehicular operations on the Airport and the policy shall be issued by a company authorized to do business in the State of Washington. Consultant shall promptly upon execution of this Agreement, furnish to the Airport appropriate certificates of insurance evidencing coverage affected and to be maintained for the term of this Agreement. The coverage shall not be less than \$1,000,000 combined single limit or split limits

equal to and not less than \$1,000,000, for bodily injury and property damage with respect to each occurrence; such limits subject to periodic adjustments. The insurance policies shall not be subject to cancellation except after notice to the Airport by registered mail at least thirty (30) days prior to the date of such cancellation. Where any policy(ies) has/have normal expirations during the term of this Agreement, written evidence of renewal shall be furnished to the Airport at least thirty (30) days prior to such expiration. The Airport, its staff, and employees shall be named as additional insured on Consultant's Comprehensive General Liability coverage, with respect to Consultant's use of the Airport and the Premises which are subject of this Agreement. Upon written request by the Airport, Consultant shall permit the Airport to inspect all originals of all applicable policies. Required additional insured language is as follows: *"The Airport, the City and County of Spokane, their elected officials, agents and employees are additional insured with respects to Liability arising out of the operations of the named insured."*

19. INDEMNIFICATION:

- A. The Consultant shall indemnify the Airport, its elected and appointed officials, agents, employees and representatives (collectively, the "Constituents") from only that portion of any liability that is caused by any negligent act, error, or omission by the Consultant with regard to the professional services it has performed for the Airport, as such liability is finally determined after trial and any appeal thereof. The Airport and the Constituents shall not have comparative fault for selection, administration, monitoring, or controlling the Consultant, or in approving or accepting the Consultant's work. This paragraph shall not nullify, extend or expand any statute of limitations that is otherwise applicable to any negligence or other claim against the Consultant. This indemnification is not intended to, and does not alter or interfere with any duties that the Consultant may have under its insurance agreements, such as the duty to cooperate fully with the insurer in defending any claims, the duty to obtain the consent of the insurer to pay or compromise any claim, or the duty to refrain from prejudicing the insurer's subrogation rights. This indemnification is solely for the benefit of the Airport and the Constituents and no third party beneficiary or other rights shall be created under this provision.
- B. Consultant hereby agrees to release and hold harmless the Airport and Constituents from any damages to the Consultant caused by noise, vibrations, fumes, dust, fuel particles and all other effects that may be caused by the operation of aircraft landing at or taking off from, or operating at or on the Airport; and the Consultant does hereby fully waive, remise and release any right or cause of action which it may now have or which it may have in the future against the Airport, its successors and assigns, due to such noise, vibrations, fumes, dust, fuel particles, and all other effects that may be caused or may have been caused by the operation at or on the Airport. The above exception shall not limit a cause of action against other persons or entities, including licensees, concessionaires or aircraft operators.
- C. Consultant further agrees to hold the Airport and Constituents free and harmless for any claims arising out of the damage, destruction or loss of any or all of

Consultant's equipment excluding any claims arising out of the sole negligence of the Airport, the City and County of Spokane, their elected officials, agents and employees.

20. AUTHORIZATION TO PROCEED: Consultant will not begin work on any of the services listed until the Airport provides written direction to proceed.
21. FORCE MAJEUR: Neither the Airport or Consultant shall hold the other responsible for damages nor delay in performance caused by acts of God, strikes, lockouts, accidents, or other events beyond the control of the other or the others employees and agents.
22. HAZARDOUS MATERIALS: Dealing with hazardous materials is not within Consultant's obligations. An amendment to this Agreement will be required for work involving hazardous materials.
23. SERVICES OF CONSULTANT: Unless this Agreement is terminated as specified herein by reason of substantial failure of either party to fulfill its obligations under this Agreement, Consultant shall perform all services specified in this Agreement.
24. SUBMISSION OF AGREEMENT: The submission of this document for examination and negotiation does not constitute an offer or Agreement. This document shall become effective and binding only upon execution and delivery hereof by an authorized representative of each the Airport and Consultant. No act or omission of any officer, employee or agent of the Airport shall alter, change or modify any of the provisions hereof.
25. RELATIONSHIP OF THE AIRPORT AND CONSULTANT: Nothing contained herein shall be deemed or construed as creating the relationship of principal and agent, partnership, or joint venture, and no provision contained in this Agreement nor any acts of Consultant and the Airport shall be deemed to create any relationship other than that of Consultant serving as an independent contractor of the Airport.
26. SURVIVAL OF INDEMNITIES: All indemnities provided in this Agreement shall survive the expiration or any earlier termination of this Agreement. In any litigation or proceeding within the scope of any indemnity provided in this Agreement, Consultant shall, at the Airport's option, defend the Airport at Consultant's expense by counsel satisfactory to the Airport.

27. APPLICABLE LAW; VENUE; WAIVER OF TRIAL BY JURY: This Agreement, and the rights and obligations of the parties hereto, shall be construed and enforced in accordance with the laws of the State of Washington. Jurisdiction and venue for any action on or related to the terms of this Agreement shall be exclusively in either the United States District Court for the Eastern District of Washington at Spokane or the Spokane County Superior Court for the State of Washington, and the parties irrevocably consent to the personal jurisdiction of such courts over themselves for the purposes of determining such action and waive any right to assert a claim for inconvenient forum. In any action on or related to the terms of this Agreement, the parties (for themselves and their successors and assigns) hereby waive any right to trial by jury and expressly consent to trial of any such action before the court.

For Internal Use Only

Project Number: _____

Funding Source: _____

Attachments:

Exhibit A: Professional Services Guidelines

Exhibit B: Invoice Approval Checklist

Exhibit C: Scope of Work

Exhibit D: Fee Proposal

