

SAMPLE

EMPLOYEE HEALTH AND WELFARE BENEFITS

BROKER SERVICES AGREEMENT

BETWEEN

SPOKANE AIRPORT

AND

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**EMPLOYEE HEALTH AND WELFARE BENEFITS
INSURANCE BROKER SERVICES AGREEMENT**

THIS AGREEMENT, made and entered into this _____ day of _____, 2017, 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 _____ organized and existing under the laws of the State of _____, hereinafter referred to as "Broker";

WITNESSETH:

WHEREAS, the Airport Board is the administrator of Spokane International Airport, Felts Field Airport and the Spokane International Airport Business Park, hereinafter collectively referred to as "Spokane Airport", and operates the same for the promotion, accommodation and development of air commerce and transportation and commercial and industrial purposes; and

WHEREAS, on March 12, 2017, March 15, 2017 and March 19, 2017, the Airport published an advertisement for Request for Proposals for Employee Health and Welfare Benefit Broker Services, hereinafter referred to as "RFP"; and

WHEREAS, the Airport received proposals on or before April 10, 2017 and has selected a Broker; and

WHEREAS, the Airport desires to enter into an Employee Health and Welfare Benefits Broker Services Agreement with Broker, hereinafter referred to as "Agreement", granting the Broker the right to provide professional, insurance brokerage services to Spokane Airport; and

NOW THEREFORE, in consideration of the mutual covenants and conditions contained herein, the parties hereto agree for themselves, their successors and assigns as follows:

1. TERM

A. The term of this Agreement shall be three (3) years commencing June 1, 2017 and ending May 31, 2020 unless sooner terminated or cancelled as herein provided.

B. The Airport shall have the option to renew this Agreement for two (2) additional one (1) year terms, provided that the work performed under this Agreement has been fully satisfactory as determined solely by the Airport. Such option shall be under the same terms and conditions contained herein except for the financial consideration, which shall be renegotiated as set forth in Article 3 - COMPENSATION, Paragraph B below. Said option may be exercised by written notice from the Airport to the Broker not later than ninety days (90) days prior to the expiration of the current term.

2. SCOPE OF WORK

The Broker agrees to provide professional employee health and welfare insurance broker and consulting services for the marketing, placement and management of the Airport's Employee Insurance program and other insurance related services, including but not limited to those outlined in the RFP, Section 8.1 – Services. This Agreement is subject to the terms and conditions set forth herein and as stated in the RFP attached hereto and made a part hereof and as outlined below. In the event of a conflict between this Agreement and the RFP, the terms of this Agreement shall prevail.

3. COMPENSATION

A. As consideration for the services to be performed as outlined in the RFP, the Airport agrees to pay the Broker an annual fee in the amount of \$ _____. Broker agrees to submit an itemized billing to the Airport on a monthly basis.

B. Annual Fee quoted shall be firm for the initial term of the Agreement. If said option(s) to renew, as outlined in Article 1 – TERM, Paragraph B, is exercised by the Airport, acceptance of a fee change for said services will be contingent upon renegotiation between the parties. If mutual agreement has not been achieved within ninety (90) days prior to the expiration of the current term, said option shall be null and void. Agreement on any price change shall remain firm for the renewal period.

C. All premium refunds shall be paid immediately by the Broker to the Airport upon receipt of the refund by the Broker.

D. The Broker shall not accept any payment other than the fixed fee paid by the Airport for placing the Airport's coverage. The Broker must disclose and remit to the Airport all standard commissions received as a result of coverage placed on behalf of the Airport.

E. The Airport reserves the right to add to or delete from the scope of work specified in the RFP, by giving written notice to Broker. Broker's compensation for additional services shall be mutually agreed to by the parties prior to Broker providing additional services.

F. Broker shall bear all expenses required to perform services pursuant to this Agreement.

4. AGREEMENT DOCUMENTS

The Request for Proposals and any addenda(s) thereto, published in connection herewith and the Broker's Proposal shall all form a part of the Agreement between the parties hereto.

5. BROKER'S RIGHTS AND OBLIGATIONS

The parties hereto covenant and agree as follows:

A. Broker shall observe and comply with any and all applicable Airport, Federal, state and local laws, statutes, ordinances and regulations and shall abide by and be subject to all reasonable rules and regulations which are now, or may from time to time be, promulgated by any Federal, state or local government or agency thereof.

B. Broker shall be responsible for all its expenses in connection with its operation at the Airport and the rights and privileges herein granted, including without limitation by reason of enumeration, costs for wages, benefits, taxes, permit fees, license fees and assessments lawfully levied or assessed upon the Broker, and secure all such permits and licenses as may be lawfully required.

C. Broker shall be obligated to perform services for the Airport under the terms and conditions of this Agreement and as further specified in the RFP.

6. PERSONNEL

Broker agrees to assign competent, fully trained professionals to perform the services required under this Agreement and shall use its best efforts to ensure continuity of personnel assigned to perform said services.

7. NON-PERFORMANCE

A. Broker shall perform all work to the satisfaction of the Airport and whose appraisal and acceptance of the work shall be a precedent to any payment made by the Airport under this Agreement.

B. In the event of any dispute under this Agreement, the decision and judgment of the Airport shall be final and binding.

8. TERMINATION

A. In addition to any other rights and remedies allowed by law and this Agreement, either party may terminate this Agreement with or without cause, by giving ninety (90) days advance, written notice. Such termination shall be effective as of the date specified in the written notice.

B. Upon termination of this Agreement, Broker may be compensated only for services actually performed and accepted by the Airport. Broker shall not be entitled to any compensation for contractual damages, including but not limited to, expected lost profits, office overhead, loss of productivity or any other consequential or incidental damages arising from the termination of this Agreement.

C. Upon termination of this Agreement, Broker shall immediately deliver to the Airport all property belonging to the Airport, whether given to the Broker by the Airport or prepared by Broker in the course of rendering the services under this Agreement, including but

not limited to all work then in progress and all material that contains proprietary information, subject to the retention provisions of applicable Washington State law.

9. PROPRIETARY INFORMATION

The Broker's services under this Agreement may involve access to and creation of proprietary information. During the term of this Agreement and continuing thereafter, the Broker shall hold and use all proprietary information in strict confidence, without benefit to the Broker or any other third party.

10. SECURITY

Broker acknowledges that it understands and is aware of Security rules, regulations and requirements for Spokane Airport. If the Transportation Security Administration (TSA) imposes a fine or penalty on the Airport for Broker's non-compliance with federal laws and/or TSA rules and regulations, then the Broker shall reimburse and indemnify the Airport for the entire amount of the fine or penalty.

11. INDEMNITY AND WAIVER OF DAMAGES

A. The Broker shall indemnify, hold harmless and defend the Airport, the City and County of Spokane, their elected and appointed officials, agents, employees and representatives from and against any and all claims and actions, demands, damages, civil penalties, charges, judgments, losses, liabilities of any character or kind and other legal actions and proceedings of whatever nature, including reasonable attorney's fees (including fees to establish the right to indemnification) resulting from, arising out of, related to, or caused by Broker's conduct of business or from any activity or other things done, permitted, or suffered by Broker in, or about Spokane Airport or other act or failure to act, excluding only claims or actions arising out of the sole negligence of the Airport, the City and County of Spokane, their elected and appointed officials, agents and employees, provided that the Airport shall give the Broker prompt and reasonable notice of any such claim or actions made or filed against it.

B. Broker hereby agrees to release and hold harmless the Airport, the City and County of Spokane, its elected and appointed officials, agents and employees, from any damages to the Broker 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 Spokane Airport; and the Broker 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 Spokane Airport. The above exception shall not limit a cause of action against other persons or entities, including licensees, concessionaires or aircraft operators.

C. Broker further agrees to hold the Airport, the City and County of Spokane, their agents, officials and employees free and harmless for any claims arising out of the damage,

destruction or loss of any or all of Broker'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.

12. INSURANCE

A. Broker 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 issue said insurance 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 standard comprehensive insurance coverage to cover all operations of the Broker and shall include, but not by way of limitation, bodily injury; property damage; products liability; automobile including owned, non-owned, leased and hired; and contractual coverage, including the obligations pursuant to Article 11 - INDEMNITY AND WAIVER OF DAMAGES, herein. The Airport, the City and County of Spokane, their elected and appointed officials, agents and employees shall be named as additional insureds with respect to Broker's use of Spokane Airport which is the subject of this Agreement. The coverage shall not be less than One Million Dollars (\$1,000,000.00) combined single limit or split limits equal to and not less than One Million Dollars (\$1,000,000.00), for bodily injury and property damage with respect to each occurrence; such limits are 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 or any material change. Where any policy(ies) has (have) normal expirations during the term of this Agreement, written evidence or renewal shall be furnished to the Airport at least thirty (30) days prior to such expiration. Upon written request by the Airport, Broker shall permit the Airport to inspect the originals of all applicable policies.

B. Broker shall be required to maintain Professional Liability insurance coverage in the minimum amount of Five Million Dollars (\$5,000,000) per occurrence.

13. GOVERNMENT RESERVATIONS AND RESTRICTIONS

The rights granted by this Agreement shall be subject to all enforced reservations and restrictions, including but not limited to, the following:

A. It is understood and agreed to by Broker that nothing herein contained shall be construed to grant or authorize the granting of any exclusive right forbidden by the Airport Development Act, 49 U.S.C., 47101, et seq., and Section 308 of the Federal Aviation Act of 1958 and as amended.

B. During time of war or national emergency, Airport shall have the right to lease the landing area or any part thereof to the United States Government for military or naval use and, if such Agreement is executed, the provisions of this Agreement insofar as they are inconsistent with the provisions of the agreement or lease with the Government, shall be suspended.

C. This Agreement shall be subject to the terms of any sponsor's assurances and agreements now required or imposed in the future, between the Airport and the Federal Aviation Administration or any successor Federal agency.

D. This Agreement shall be subordinate to the provisions of any existing or future agreement between the United States Government and the Airport relative to the operation or maintenance of Spokane Airport, the execution of which has been or may be required as a condition precedent to the expenditure of Federal funds for the development of Spokane Airport, by the provisions of the Airport Improvement Program, and as the program may be amended, or any other federal act, deed, grant agreement or program affecting the use operation or maintenance of Spokane Airport now or in the future; provided however, that the Airport shall, to the extent permitted by law, use its best efforts to cause any such agreements to include provisions protecting and preserving the rights of Broker.

14. FEDERAL NONDISCRIMINATION

A. Broker understands and acknowledges that the Airport has given to the United States of America, acting by and through the FAA, certain assurances with respect to nondiscrimination, which have been required by Title VI of the Civil Rights Act 1964 and by 49 CFR Part 21 as a condition precedent to the Government making grants in aid to the Airport for certain Airport programs and activities, and that Airport is required under those regulations to include in every agreement pursuant to which any person or persons, other than Airport, operates or has the right to operate any facility on Spokane Airport providing services to the public, the following covenant, to which Broker agrees:

B. Broker, in its operation at and use of Spokane Airport, covenants that:

1. No person on the grounds of race, color, or national origin shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities;

2. In the construction of any improvements on, over, or under such land and the furnishing of services thereon, no person on the grounds of race, color, or national origin shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination;

3. It shall use the Premises in compliance with all other requirements imposed by or pursuant to 49 CFR Part 21, Nondiscrimination in Federally-Assisted Programs of the Department of Transportation Effectuations of Title VI of the Civil Rights Act of 1964, and as that regulation may be amended; and

4. Broker further agrees promptly to provide the Airport, upon written request by the Airport, such information the Airport is required to obtain from Broker to show compliance with applicable nondiscrimination laws.

15. AIRPORT'S RIGHTS OF CANCELLATION

In addition to any conditions as specified herein and all other remedies available to the Airport, this Agreement shall be subject to cancellation by the Airport should any one or more of the following occur:

A. If the Broker shall file a voluntary petition in bankruptcy, or proceeding in bankruptcy shall be instituted against the Broker and the Broker is thereafter adjudicated a bankrupt pursuant to such proceedings, or if a court shall take jurisdiction of the Broker and its assets pursuant to proceedings brought under the provisions of any Federal Reorganization or Bankruptcy Act, or if a Receiver for the Broker's assets is appointed, or if the Broker shall be divested of its rights, powers and privileges under this Agreement by other operation of law and such proceeding is not dismissed within sixty (60) days of filing.

B. If the Broker shall fail to perform, keep and observe any of the applicable covenants and conditions contained in this Agreement, provided that upon the happening of any contingency recited in this Article, the Broker shall be given written notice to correct or cure such default, failure to perform or breach. If, within thirty (30) days from the date of such notice, the default, breach, or complaint shall not have been corrected in a manner satisfactory to the Airport, then and in such event the Airport shall have the right to declare this Agreement terminated. The Airport does, however, reserve the right to extend the time period to correct the default, if, in its opinion, due diligence is shown by the Broker in curing the default.

16. BROKER'S RIGHTS OF CANCELLATION

In addition to all other remedies available to the Broker, this Agreement shall be subject to cancellation by Broker should any one or more of the following occur:

A. The permanent abandonment of any portion of Spokane Airport.

B. The issuance of any order, rule or regulation by the Federal Aviation Administration or any other federal agency or by any court of competent jurisdiction of an injunction, materially restricting for a period of at least ninety (90) days, the use of the Spokane Airport for scheduled air transportation.

C. The breach by the Airport of any covenants, terms or conditions of this Agreement to be kept, performed and observed by the Airport and the failure to remedy such breach for a period of sixty (60) days after written notice from Broker of the existence of such breach.

D. The assumption of the United States Government, or any authorized agent of the same, of the operation, control or use of Spokane Airport and its facilities in such manner as to substantially restrict the Broker from conducting its business, if such restriction be continued for a period of ninety (90) continuous days or more.

E. The occurrence of any event or events beyond the reasonable control of Broker, including, but not limited to, any act of God or other supervening event which precludes the Broker from the use of the property for the purposes enumerated herein, or from the use of airport facilities.

17. ASSIGNMENT

Broker is prohibited from assigning this Agreement.

18. 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 the Broker's operation at Spokane Airport. The Airport and Broker shall 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. The Broker 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 any rent, fees or other sum or charges otherwise payable by Broker, this Agreement or the breach of any covenant or condition of this Agreement, or for the restitution of the Premises to the Airport and/or eviction of Broker during the term of this Agreement, or after the expiration thereof, 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.

19. LICENSES AND PERMITS

Broker shall possess all licenses, permits, qualifications and approvals of whatever nature legally required for Broker to perform the services under this Agreement. Broker warrants and represents that it, at its sole cost and expense, shall keep in effect at all times during the term of this Agreement any and all licenses, permits and approvals that are required for Broker to practice its profession and/or perform the services.

20. SEVERABILITY

If any term or provision of this Agreement shall to any extent be held invalid or unenforceable, the remaining terms and provisions of this Agreement shall not be affected thereby, but each term and provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.

21. NON-WAIVER OF BREACH

The waiving of any of the covenants of this Agreement by either party shall be limited to

the particular instance and shall not be deemed to waive any other breaches of such covenants. The consent by the Airport to any act by the Broker requiring the Airport's consent shall not be deemed to waive consent to any subsequent similar act by the Broker.

22. PRIOR AND COLLATERAL AGREEMENTS

This Agreement shall constitute the entire Agreement between the parties and no other stipulation, agreement or understanding, written or oral, expressed or implied of the parties hereto or of their agents, relating to the Agreement, shall limit or modify its terms. This Agreement shall, as of the commencement date hereof, cancel and supersede all prior agreements, written or oral, expressed or implied, between the parties for the rights granted herein. This Agreement shall not be subject to modification or change except by written instrument duly signed.

23. 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.

24. NOTICES

All payments, demands and notices required herein shall be deemed to be properly served if personally delivered, or if sent by overnight courier or certified mail, to the last address furnished by the parties hereto. Until hereafter changed by the parties, in writing, notices shall be addressed as follows:

AIRPORT: Human Resource Director
Spokane Airport
9000 W. Airport Dr., Suite 204
Spokane, WA 99224

BROKER: _____

The date of service of such notice shall be upon personal delivery, one (1) day after such notice is deposited with reliable overnight courier or three (3) days after such notice is deposited in a Post Office of the U.S. Post Office Department.

25. TIME OF ESSENCE

It is mutually agreed that time is of the essence in the performance of all covenants and conditions to be kept and performed under the terms of this Agreement.

26. PARAGRAPH HEADINGS

Paragraph headings contained herein are for convenience in reference only and are not intended to define or limit the scope of any provision of this Agreement.

IN TESTIMONY WHEREOF, witness the signature of the parties hereto the day and year first above written.

SPOKANE AIRPORT BOARD:

APPROVED AS TO FORM:

By: Lawrence J. Krauter
Chief Executive Officer
Date: _____

Brian M. Werst
General Counsel
Date: _____

BROKER

Title: _____
Date: _____