

GENERAL CONDITIONS  
SPOKANE AIRPORTS PUBLIC WORKS CONSTRUCTION 2021

**Spokane International Airport**  
**Request for Proposals (RFP) #21-41-1715**  
**for**  
**EMERGENCY ALERT NOTIFICATION SYSTEM UPGRADE**

<b>PRE-PROPOSAL MEETING</b>	
<p><u>MANDATORY</u> for all Proposers</p> <p><u>Pre-Proposal Meeting Location and Time:</u> <a href="https://us06web.zoom.us/j/84755813654?pwd=djBocVNhb3dndzNYclpONXR4MWZzZz09">https://us06web.zoom.us/j/84755813654?pwd=djBocVNhb3dndzNYclpONXR4MWZzZz09</a> Meeting ID: 847 5581 3654 Passcode: 800894</p> <p><b>Thursday, January 20, 2022 at 10:00 AM</b></p>	
<b>CONTACT PERSON FOR QUESTIONS</b>	
<p><u>Questions should be directed only to:</u> Margaret Merin, CPPB Contract &amp; Procurement Specialist mmerin@spokaneairports.net</p>	
<b>DEADLINE FOR SUBMISSION OF QUESTIONS</b>	
<p><u>Questions must be submitted to the individual named above no later than:</u> <b>Tuesday, January 25, 2022 at 2:00 PM</b></p>	
<b>PROPOSAL SUBMISSION PLACE AND DEADLINE</b>	
<p><u>Electronically Submit Proposals to:</u> Spokane International Airport Attn: Margaret Merin mmerin@spokaneairports.net</p>	<p><b>Tuesday, February 1, 2022 at 2:00 PM</b></p>

Posted on the Spokane International Airport website, at  
<https://business.spokaneairports.net/rfp/>

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## LIST OF ABBREVIATIONS

Airport.....	Spokane International Airport
ARFF .....	Aircraft Rescue and Firefighting
ATCT .....	Air Traffic Control Tower
CEO .....	Chief Executive Office
COO .....	Chief Operating Officer
EANS .....	Emergency Alert Notification Systems
FAA .....	Federal Aviation Administration
IT .....	Information Technology
NTP.....	Notice to Proceed
RCW .....	Revised Code of Washington
SIA .....	Spokane International Airport

**Spokane International Airport**  
**Request for Proposals (RFP) #21-41-1715**

for

**EMERGENCY ALERT NOTIFICATION SYSTEM UPGRADE**

Spokane International Airport (Airport) is soliciting Proposals for the purchase and installation of an Emergency Alert Notification System (“EANS” or the “System”).

**Background Information**

The current System relies on legacy copper phone line connections between the ATCT and the Airport Communications Center. Due to reliability issues, and lack of system diagnostic capabilities, the Airport is seeking to upgrade the System.

**Summary**

The Airport invites an experienced and qualified Contractor to purchase and install an EANS. This System will be the primary method of alerting Airport emergency response personnel, as well as off-airport emergency services, of aircraft or other emergencies at the Airport.

**Funding Source(s) / Budget**

The project will be funded by Airport General Funds. Grant and/or Federal funds will not be used for the work under this RFP. The estimated budget for this project is \$100,000.00.

**Contract Time, Liquidated Damages and Service & Support Term**

Contract time: Ninety (90) calendar days from NTP and coordination with FAA engineering services takes priority for starting and completed required work in the ATCT.

Liquidated damage: If the work is not substantially complete within Contract Time, Liquidated Damages as defined by the General Conditions will be assessed in the amount of \$500.00 per calendar day.

Service: Three (3) year service contract for support and training.

**Project Location**

Because of the distributed nature of the desired System, the project locations will include the FAA ATCT, Airfield Lighting Vault, ARFF Station, Airport Communication Center, IT hub rooms and the Airport Operations Building. No staging area is anticipated for this project besides minimal vehicle parking.

**Schedule**

The following is the schedule for this RFP process. Dates preceded by an asterisk (\*) are estimated dates. Estimated dates are for information only. The Airport reserves the right to modify the schedule through written addenda.:

Date	Description
January 12, 2022	Issue Date of RFP
January 20, 2022	Pre-Proposal Meeting
January 25, 2022	Deadline for Submission of Questions
January 27, 2022	Deadline for Airport’s Response to Questions Asked
February 1, 2022	Proposal Submission Deadline (Due Date)
February 14, 2022	*Successful Proposer Execution of Contract
February 17, 2022	Recommendation to Airport Board for Award
February 18, 2022	*Airport Execution of Contract
March 1, 2022	*Commencement of Services Under the Contract

**Submission Requirements**

**Mandatory Pre-Proposal Meeting:** Those interested in responding to this RFP are required to participate in a Pre-Proposal Meeting to be held on the date, time, and at the place indicated in the Schedule of this RFP. Any proposal submitted by a firm, which did not attend this pre-proposal meeting, will be rejected.

**Proposal Submission Deadline:**

- One (1) electronic copy of the Proposal, in *searchable* Adobe PDF format, in response to the information requested in the Evaluation Criteria section of this RFP. Proposals must be received by the Airport sent to mmerin@spokaneairports.net no later than the deadline noted in the cover letter of this RFP.
- **Late Proposals:** Proposals will not be accepted by the Airport after the date and time specified in the Schedule of this RFP. In the event that a Proposal is delivered after the Proposal submission deadline, the Proposal will not be accepted or considered. for delays in delivery of Proposals. It is the proposer’s responsibility to ensure The Airport has received their submission. The Airport will not be liable for proposals that may be sent, but not received due to technical issues.

**Submission Requirements:**

- No more than 16 pages total. The Airport will not review or evaluate pages in a Proposal that are in excess of any RFP page number limitation for a specific section of the Proposal.
- Proposals delivered by hand, fax, or telephone or any postal carrier will not be accepted. Electronic submittal shall be limited to the documents specified in the RFP document and shall

not include additional brochures, booklets or other sales material that are not specifically requested in the RFP.

**Organization of Proposals:** Proposals must address each of the evaluation criteria in this RFP in a clear, comprehensive, and concise manner. Proposals must be clearly separated, labeled by response to specific evaluation criteria and addressed in the same order as included in the RFP. Proposers are further advised that lengthy or wordy submissions are not necessary.

**Clear and Responsive Proposals:** The Airport has made every effort to include enough information within this RFP for a Company to prepare a responsive Proposal. Proposers are encouraged to submit the most comprehensive and competitive information possible. Proposals that do not respond completely or sufficiently to the evaluation criteria in this RFP may be rejected as non-responsive, or will receive correspondingly lower scores for those criteria, which may result in the Proposal not scoring high enough to be considered further.

**Questions About RFP:** Questions regarding this RFP should be addressed solely to the individual identified in the Schedule of this RFP. Questions must be asked prior to the deadline indicated in the Schedule of this RFP. The Airport may determine that a Proposal is non-responsive if the Proposer has had contact with any other representative of the Airport.

**Addenda:** Oral communications and emails from the Airport, its staff, agents, Airport members, employees or outside advisor, or any other person associated with this RFP shall not be binding on the Airport and shall in no way modify any provision of the RFP. Only formally issued addenda shall modify the terms of this RFP. Any addenda issued for this RFP will be published at the following website address: <http://www.spokaneairports.net/rfp.htm>. Proposers are responsible for checking the website prior to submission of Proposals for any addenda. If you are unable to download the addenda, you may contact the individual noted in the Schedule of this RFP. Receipt of addenda must be acknowledged by Proposers on the Proposal Information Form that must be submitted with the Proposal.

**Evaluation Criteria**

The Airport will evaluate Proposals received based on the following evaluation criteria and will score Proposals up to the maximum number of points as noted for each evaluation criterion. The Proposer must include in its Proposal the information noted in the evaluation criteria and must demonstrate how the Company meets the evaluation criteria.

<u>Evaluation Criteria</u>	<u>Weighting (Maximum Points)</u>
<u>MINIMUM REQUIREMENTS:</u>	
1) <u>Standard Contract Language:</u> The Airport intends to utilize its standard Service and Construction Contracts for this project. Samples are included in this RFP. Each firm must affirm in its Proposal that the terms and conditions of these Contracts are acceptable.	Pass/Fail
<u>SELECTION CRITERIA:</u>	
2) <u>Cover Letter:</u> A cover letter expressing interest, addressing, at a minimum, the following:	10

<p>a) <u>Executive Summary</u>: A high level, executive summary of your firm’s relevant qualifications and experiences, as well as the relevant experiences of key staff proposed for this project in performing similar services.</p> <p>b) <u>Firm Size and Workload</u>: Outline the size of your firm and discuss your capability to manage a project of this size and scope within the identified time frame, relative to your current workload.</p> <p>c) <u>Finances</u>: Discuss your firm’s financial and organizational stability.</p> <p>The cover letter must be electronically signed by an authorized representative of the Proposer who is authorized to execute contractual agreements and/or commitments on behalf of the Proposer.</p>	
<p>3) <u>Staff Experience and Availability</u>: Discuss your proposed team members’ availability and commitment for the duration of this project.</p>	10
<p>4) <u>Communication and Customer Services</u>: Describe the firms preferred method of communication for and the availability of Customer Service both pre and post installation. Contractor must be available 24/7 during project schedule. Describe what support services are available post installation.</p>	10
<p>5) <u>Risk, Performance and Quality Assurance</u>: Describe steps the Contractor intends to take to mitigate risk and assure quality performance.</p>	15
<p>6) <u>Submittal Forms</u>: The Proposal Information Form, Submittal Form A, Questionnaire: – KPI Metric, Submittal Form C, and Subcontractor List, Submittal Form D, to this RFP, must be completed, and submitted as part of your Proposal.</p>	10
<p>7) <u>Proposed Cost</u>: The proposed cost as per Submittal Form B. The Airport reserves the right to negotiate the cost with the selected Company.</p>	35
<p>8) <u>References</u>: At least three references from previous clients for similar work completed by your firm. Cited references should include project name, reference name, title, project role, and current contact telephone number. Refer to the Reference Checks section of this RFP for information about how reference checks will be used in the evaluation process.</p>	10
<b>Total Points</b>	<b>100</b>

**Selection Process**

**Selection Process:** The Proposals will be reviewed by an evaluation committee and the highest ranked Companies may be invited to an interview. The selected Company will be invited to enter into negotiations with the Airport. If the Airport and the selected Company cannot agree on terms that are fair and reasonable, the Airport may terminate negotiations and enter into negotiations with the next highest ranked Company.

**Rights Reserved:** The Airport reserves the following rights:

1. To waive as an informality any irregularities in Proposals and/or to reject any or all Proposals.
2. To extend the date for submittal of responses by addendum.
3. To request additional information and data from any or all Proposers following proposal submission.
4. To supplement, amend, or otherwise modify the RFP through addenda issued.

5. To cancel this RFP with or without the substitution of another RFP.
6. To reissue the RFP.
7. To make such reviews and investigations, as it considers necessary and appropriate for evaluation of the Proposals.
8. To not select the highest rated Company if the proposed price is more than the Airport's budget for the work.
9. To reject any Proposal in the event that the Airport's analysis of the Proposer's financial status and capacity indicates, in the Airport's judgment, that the Company is not able to successfully perform the work.
10. To establish a revised deadline for submission of Proposals in the event only one Proposal is received by the deadline.

**Reference Checks:** The Airport reserves the right to conduct reference checks of Company's submitting Proposals, either before or after Proposals have been evaluated, and/or after interviews have been held. In the event that information obtained from the reference checks reveals concerns about a Company's past performance or their ability to successfully perform the contract to be executed based on this RFP, the Airport may, at its sole discretion, select a different Company whose reference checks validate the ability of the Company to successfully perform the contract to be executed based on this RFP. In conducting reference checks, the Airport may include itself as a reference if the Company has performed work for the Airport, even if the Company did not identify the Airport as a reference, and may conduct reference checks with others not identified by the Proposer.

### Interviews

Proposers may be required to participate in an interview with, and/or make a presentation to, the selection committee and/or other Airport personnel with the date and time to be determined. In the event of interviews, the Airport will establish evaluation criteria and weighting for each criterion that will be added to the scores received for the written Proposals as part of making a final selection decision.

### Protest and Appeal Procedures

**Deadline for Protest:** The following deadlines for filing protests and appeals based on this RFP shall apply:

1. RFP: Any protest related to the requirements of this RFP must be received by the RFP Contact Person no later than two (2) business days before the proposal submittal deadline.
2. Awards: Any protest related to the award of a contract based on this RFP or protest of a decision by the Airport to reject a proposal must be received by the Airport's Contract & Procurement Specialist within two (2) business days after notification to the protesting party that it was not awarded a contract or its proposal was rejected.

### **Form and Manner of Filing:**

1. In Writing: All protests and appeals must be in writing, signed, and specify the reasons and facts upon which he protest or appeal is based. Failure to raise any reason or fact upon which the protest or appeal is based shall constitute a waiver and/or forfeiture of such reason or fact for protest or appeal.
2. File protest of award with the Airport's Contract & Procurement Specialist: All protests and appeals must be filed with the Spokane International Airport, 9000 W. Airport Drive, Suite 209, Spokane, WA 99224.

### **Airport's Review of Protests and Appeals**

1. The COO of the Airport shall review and investigate properly and timely filed protests and appeals. At the Airport's sole discretion, an informal hearing may be held with affected parties to gather additional information. The COO shall issue a written decision to the protestor, stating the reasons for the decision.
2. Appeal to Airport's CEO: Any further appeal of a formal decision by the COO must be received by the Airport's CEO within two (2) business days of receipt of the written decision by the COO. Properly and timely filed appeals of the decisions of the COO shall be reviewed and investigated by the Airport CEO, who shall issue the Airport's final decision.

**Failure to Meet Deadline:** Failure to meet any applicable deadline for a protest and appeal shall constitute a waiver of any and all rights to protest and appeal.

### **Administrative Requirements**

**Cost of the Proposal:** The Airport shall not, under any circumstances, be responsible for any costs or expenses associated with the Proposal submitted including, but not limited to, research, investigation, development, preparation, duplication, production, collation, packaging, delivery, transmittal, or presentation of the Proposal or any other related information, data, documentation, and material. All costs and expenses incurred by the Proposer in connection with the Proposal submitted, or participation in meetings or interviews, shall be the sole responsibility of (borne solely by) the Proposer.

### **Public Disclosure:**

1. **Property of Airport:** Proposals submitted to the Airport shall become the property of the Airport and shall not be returned to the Proposer.
2. **Proposals are Public Records:** Pursuant to Chapter 42.56 RCW, Proposals submitted under this RFP shall be considered public records and with limited exceptions will be available for inspection and copying by the public. Except to the extent protected by state and/or federal laws, Proposals shall be considered public documents and available for review and copying by the public after an award of contract is made by the Airport Board.
3. **Public Records Exemption:** Any proprietary information included in the Proposal that the Proposer wishes to remain confidential (to the extent allowed under the laws of the State of Washington) should be clearly identified as "Confidential" in the Proposal. In addition, the Proposer must provide the legal basis for the exemption to the Airport.
4. **Proposals Not Marked as Confidential:** If a Proposal does not clearly identify the confidential portions, the Airport will not notify the Proposer that its Proposal will be made available for inspection and copying.
5. **Process for Disclosing Information:** If a request is made for disclosure of material or any portion marked "Confidential" by the Proposer, the Airport will determine whether the material should be made available under the law. If the Airport determines that the material is not exempt and may be disclosed, the Airport will notify the Proposer of the request and allow the Proposer ten (10) business days to take appropriate action pursuant to RCW 42.56.540. If the Proposer fails or neglects to take such action within said period, the Airport may release the portions of the Proposal deemed subject to disclosure.
6. **Indemnification by Proposer:** To the extent that the Airport withholds from disclosure all or any portion of Proposer's documents at Proposer's request, Proposer shall agree to fully indemnify,



defend and hold harmless the Airport from all damages, penalties, attorneys' fees and costs the Airport incurs related to withholding information from public disclosure.

7. **No Claim Against Airport:** By submitting a Proposal, the Proposer consents to the procedure outlined in this section and shall have no claim against the Airport because of actions taken under this procedure.

**Basic Eligibility:** The successful Proposer must be licensed to do business in the State of Washington and must have a state Unified Business Identifier (UBI) number. In addition, the successful Proposer must not be debarred, suspended, or otherwise ineligible to contract with the Airport, and must not be on the federal government's list of Company's suspended or debarred from working on federally funded projects.

**Non-Discrimination:** All Proposers will be afforded the full opportunity to submit Proposals in response to this RFP, and no person or Company shall be discriminated against on the grounds of race, color, age, sex, or national origin in consideration for an award issued pursuant to this RFP.

**Approval of Sub-Consultants:** The Airport retains the right of final approval of any sub-consultant of the selected Proposer who must inform all sub-consultants of this provision.

**Other Contracts:** During the original term and all subsequent renewal terms of the contract resulting from this RFP, the Airport expressly reserves the right, through any other sources available, to pursue and implement alternative means of soliciting and awarding similar or related services as described in this RFP.

**Funding Availability:** By responding to this RFP, the Proposer acknowledges that for any contract signed as a result of this RFP, the authority to proceed with the work is contingent upon the availability of funding.

**Prohibition Against Lobbying:** The Proposer shall not lobby, either on an individual or collective basis, the Airport Board (its associated City and County employees, or outside advisors) or any federal, state, or local elected or public officials or staff regarding this RFP or its written Proposal. Proposers, the Proposer's acquaintances, friends, family, outside advisors, agents, or other representatives shall not contact the Airport Board (its associated City and County employees, or outside advisors) or any federal, state, or local elected or public officials or Airport staff to arrange meetings, visits, or presentations to influence the outcome of the selection process. Violation of this provision, by or on behalf of a Proposer, intentionally or unintentionally, will result in disqualification of the Proposer and/or rejection of a written Proposal.

**Insurance:** Prior to execution of a Contract for services under this RFP, the successful Proposer will be required to provide acceptable evidence of insurance coverage consistent with the insurance requirements outlined in the Airport's standard Consultant or Service Contract and referenced on the Airport's website as applying to this RFP.

#### **About Spokane International Airport**

Spokane Airports are jointly owned by Spokane County and the City of Spokane. The city and county operate the airports under provisions of RCW 14.08 which establishes the operation of airports by more than one municipality under joint agreement. The operating authority of Spokane Airports is the Spokane Airport Board, consisting of seven appointees from the two governmental bodies.

The Board is responsible for the oversight of Spokane International Airport, Felts Field Airport, and the Airport Business Park. The Board also has a Grant of Authority to operate Foreign-Trade Zone #224.

**SUBMITTAL FORM A – Proposal Information Form**

**Spokane International Airport**  
**Request for Proposals (RFP)**  
**for**  
**EMERGENCY ALERT NOTIFICATION SYSTEM UPGRADE**  
**RFP #21-40-9999-003**

**PROPOSAL INFORMATION FORM**

The undersigned offers and agrees, if this offer is accepted within **90 calendar days** from the due date, to furnish all items upon which prices are bid, at the prices set forth in this quotation, delivered at the designated point(s) by the method of delivery and within the time specified herein and subject to the Terms and Conditions of this Request for Proposal.

Name of Vendor:	Contact Individual's Name:
Address of Contact Individual:	
Phone Number of Contact Individual:	E-mail Address of Contact Individual:
State of Washington UBI Number:	Contractor's License Number:
Receipt is hereby acknowledged of Addenda No(s).:	

**OFFICIAL AUTHORIZED TO SIGN FOR PROPOSER:**

"I certify (or declare) under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct and accept the terms and conditions of SIA Contract":	
Signature:	Date:
Print Name and Title	Location or Place Executed: (City, State)

**SUBMITTAL FORM B – Proposed Cost**

This section is to be completed by the Proposer.

**PROPOSAL**      **Vendor Name:** \_\_\_\_\_

Any costs associated with this project not specifically set forth in this Request for Proposal will be the responsibility of the Proposer, and will be deemed included in the fees and charges proposed.

The proposer, with the submission of a responsible proposal, is acknowledging complete understanding of the entire RFP which includes the scope of work, site specifications, attachments, prevailing wage, insurance, bonding and expectations for EANS covered by this RFP.

<u>DESCRIPTION</u>	<u>COST</u>	<u>SALES TAX @ 9%</u>	<u>TOTAL PRICE</u>
Design	\$	\$	\$
Endpoint Pricing, Type (Att-A.2.3.2):	\$	\$	\$
Mobilization	\$	\$	\$
Construction: Primary Location	\$	\$	\$
Construction: Secondary Location	\$	\$	\$
3 Year Support/Training Package	\$	\$	\$
<b>Total Bid (Subtotal + WSST)</b>			\$

**SUBMITTAL FORM C – Questionnaire**

This section is to be completed by the Proposer.

**PROPOSAL**      **Vendor Name:** \_\_\_\_\_

This questionnaire will be used to compare the Airports General Key Performance Indicator Metric requirements to the Proposers experience. Please complete the “Proposers Project Performance” below:

<u>PROJECT CONDITIONS</u>	<u>AIRPORT REQUIREMENT</u>	<u>PROPOSERS PROJECT PERFORMANCE</u>
# of Projects	1	
Type	EANS System	
Average Budget	\$100,000.	
# of Endpoints	6	
System Reliability	99.99%	
Training availability	Initial + 3 years	
Average Time Deviation	--	
Average Cost Deviation	--	
Average Customer Satisfaction	--	

**SUBMITTAL FORM D – Subcontractor List Form**

This section is to be completed by the Proposer.

**PROPOSAL**      **Vendor Name:** \_\_\_\_\_

1.1 TO:      Spokane Airports Board  
                  9000 W. Airport Drive, Suite 204  
                  Spokane, WA 99224

1.2 FOR:     Spokane International Airport  
                  Public Works Construction

**1.3 REQUIREMENTS:**

- A. Information Required: Proposer shall list all first tier subcontractors performing work or labor. Proposer shall not list more than one subcontractor for each category of work identified. Work not identified to be performed by a subcontractor shall be performed by the Proposer.
- B. Responsiveness: Failure of Proposer to submit as part of the proposal the names of all subcontractors shall render the Proposer’s proposal as non-responsive.
- C. Process: This list shall be submitted with the proposal. If list is NOT received with proposal, proposal shall be set aside as non-responsive.
- D. List of Subcontractors:

Subcontractor Name Address (City, State) Phone No.	Contractor’s Registration No.	Scope of Work to be Performed

*Proposer may attach a separate sheet for additional alternate proposal subcontractors if necessary.*

## ATTACHMENT A – Scope of Work/Specifications

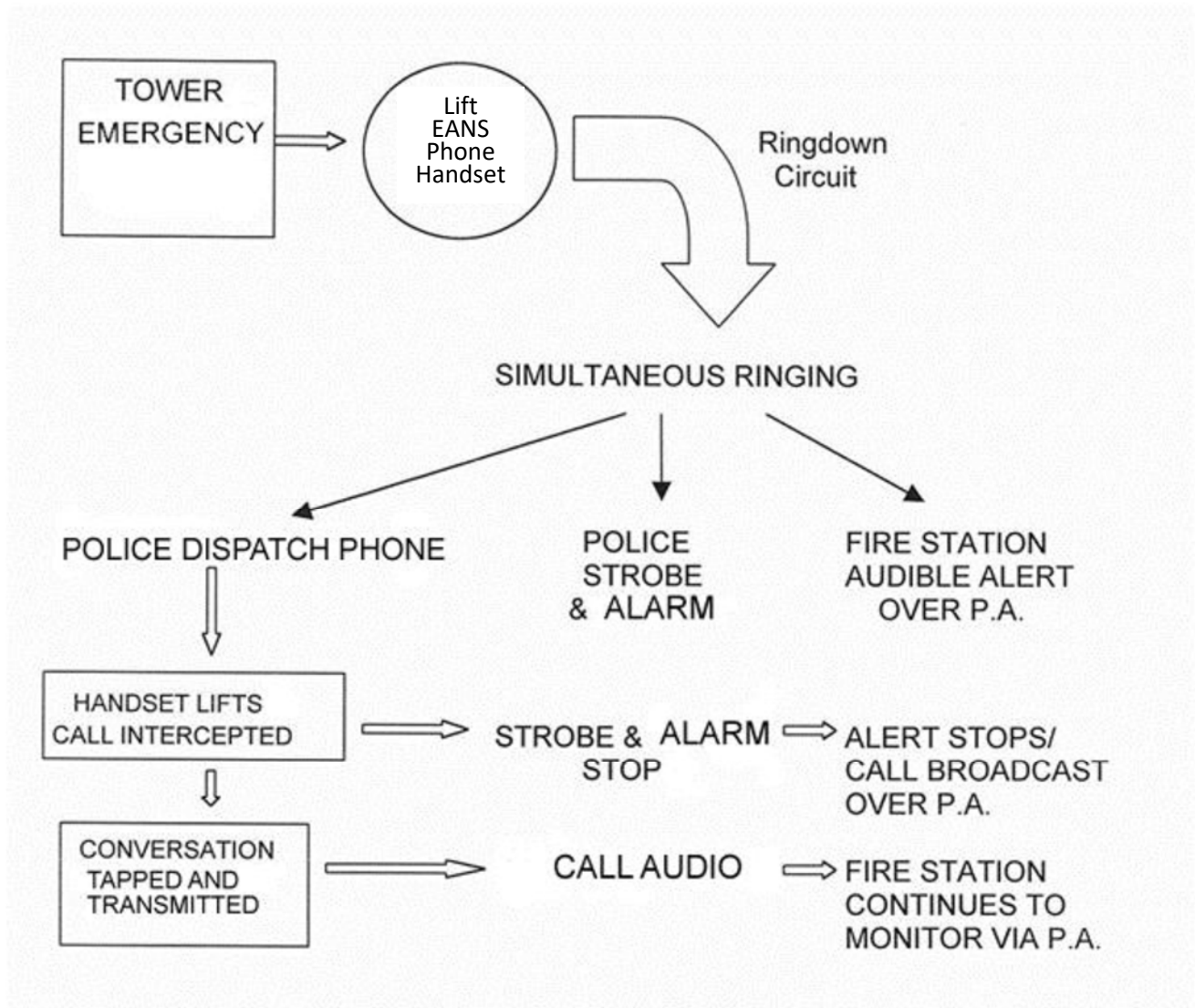
### Emergency Alert Notification System description

The Emergency Alert Notification System is installed for the critical event of an aircraft emergency. It is an FAA operational requirement and imperative the solution proposed by the apparent successful Proposer fulfills this functional requirement. Summarized below is the current operational process for the system.

- FAA ATCT personnel lift a single-line phone. It is programmed to ring down to a second extension when the receiver goes off-hook. Switch generated ring is directed to the Airport Communication Center and ARFF Station via a parallel tie to ring alert devices.
- The incoming call/ring alerts the Airport Communication Center with strobe light / bell devices in the dispatch offices. The same ring triggers an audio alert device to sound chime tones over the ARFF Station PA system.
- The Communications Center Dispatcher answers a dedicated the telephone set. This phone is a digital extension with a handset audio tape installed to transmit 2-way conversation over one, 2-wire pair routed to the ARFF Station. The Communications Center phone is programmed to ring with the analog alert line and perform a “pick” function when the receiver is lifted. The “pick” ties the ATCT caller to the digital set and halts alert ring devices.
- The tapped 2-way Dispatch / Tower conversation is played over the ARFF Station PA system.
- Summary: The Fire Station and Communication Center areas hear an alert sound when the tower phone goes off-hook until the line is answered by a Dispatcher. Call monitoring continues in the Fire Station until the call is completed.

*CONTINUED NEXT PAGE*

### Emergency Alert Notification System Diagram



### Section 1 Overview

This document summarizes the requirements for the System. Generally, the EANS shall consist of off-the-shelf technology (hardware and software) to provide for enhanced features, power, flexibility, expandability. All equipment in the EANS shall use digital Internet Protocol ("IP"). EANS shall be simple to use; users will be able to pick up a phone off a cradle (a position referred to as "off-hook" - the condition that exists when a telephone or other user instrument is in use) to initiate or to be connected to a call, which ends with the ATCT at the airport hanging up the phone by placing the handset back on the cradle (a position referred to as "on-hook" - the condition that exists when a telephone or other user instrument is not in use).

The contractor shall provide and install the necessary transport (Ethernet, fiber, etc.) to each endpoint utilizing current airport infrastructure where available and adding where required to complete the system. Fiber from the ATCT second level to regulator building shall be utilized.

EANS shall also have a logging system designed for non-technical personnel to track the activity and failure of a call.

In appendix A, there is a listing of locations and desired equipment.

This RFP is for a turn-key system with the Airport providing the network backbone required for the system.

## **Section 2: System Requirements**

### **2 Endpoint Requirements**

2.1 **Primary and Secondary Phones** shall be SIP compliant devices capable of the following configurations:

- 2.1.1 Hot-Dial (auto dial off hook)
- 2.1.2 Single or multiple button dial
- 2.1.3 Delayed dial
- 2.1.4 Speed dials for various end points
- 2.1.5 Speakerphone
- 2.1.6 Real time and delayed playback

2.2 **Monitoring** of the system is required to provide visual assurance the system is available, at a minimum it must:

- 2.2.1 Must have visual indication of each end point and server
- 2.2.2 Must provide visual and audible alarm at monitoring station

### **2.3 Mutual Aid Agencies**

2.3.1 If mutual aid agencies require notifications and they are not located on the Airport premises, the Airport may provide network connectivity to those desired endpoints, now or in the future. The vendor shall provide optional pricing per endpoint and list what options are available (i.e. phone, squawk box, IP speakers, strobe light, door opener, etc.).

### **2.4 Secondary Phones**

2.4.1 The Contractor shall ensure that the ATCT, and Airport Operations have Secondary Phones.

### **2.5 System Self -Testing**

2.5.1 The System shall always be operational. The System shall self-test itself in order to identify failures.

### **2.6 Digital Design**

2.6.1 All Phone/Devices shall be digital and IP from the head-end component and IP protocol through the circuits to the end-of-line Phones, Devices or adaptors.

### **2.7 Recording**

2.7.1 All alert transmissions shall be recorded. The recording will terminate when the call initiator puts the receiver back in the on-hook position.

### **2.8 Optional System Redundancy**

2.8.1 The System design can be such that there is no single point of failure.



## **2.9 System Availability**

2.9.1 System available to Tower and the Airport: shall be always available (99.99% uptime).

## **2.10 System Diagnostics.**

2.10.1 The EANS shall monitor and generate alerts for any IP hardware device issues with hardware or software failure.

## **2.11 State of Common Usage**

2.11.1 The Contractor shall provide hardware, software and communications protocols that, to the extent possible, are in a state of common usage, are industry-standard, and conform to an open architecture.

## **2.12 Installation**

2.12.1 The Contractor shall install all purchased hardware, communications equipment and systems provided under this Contract in accordance with local building codes and the National Electrical Code (NEC). The Contractor shall furnish all labor, tools, equipment and supplies required to install purchased equipment and systems. The Contractor shall define their times and method of equipment delivery, which is subject to The Airport's review and approval. Excluded from the Contractor's responsibility are common carrier circuits.

2.12.2 The Contractor shall coordinate with FAA on install and work conducted in the ATCT. The connection and termination will be overseen by the FAA as described in the Reimbursable agreement as in in Appendix B.

2.12.3 The contractor shall protect existing system in place till new system is verified.

## **2.13 Training**

2.13.1 The Contractor shall provide a Training Program in order to provide initial and ongoing training for users of the EANS.

## **2.14 Completion of Installation**

2.14.1 Upon successful installation, the Contractor shall prepare an "as built" for the completed system. This includes but is not limited to third party software documentation and licenses, software executable code, hardware documentation, one-line diagrams, and maintenance manuals.

## Appendix A End Points

### **Primary:**

ATCT 2 Locations in Cab - Phones  
Dispatch – Phone/Strobe/Monitoring Station  
ARFF – Strobe/Speaker

### **Secondary:**

Operations Tower – Phone/Speaker  
Tracon Supervisor - Phone

**ATTACHMENT B – Sample Service Contract**

**Contract #21-41-1715-000-00**

SERVICE CONTRACT

THIS SERVICE CONTRACT made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, 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 [Click or tap here to enter text.](#), a Company organized and existing under the laws of the State of [Click or tap here to enter text.](#), hereinafter referred to as "Contractor";

WITNESSETH

WHEREAS, the Airport Board is the administrator and operator of SPOKANE INTERNATIONAL AIRPORT, hereinafter referred to as "SIA", located in the City and County of Spokane, State of Washington, and is authorized to enter into contracts for goods and services and grant leases for real property and premises at SIA for the promotion, accommodation and development of commerce, commercial and general aviation air transportation; and

WHEREAS, the parties hereto desire to enter into a Service Contract, hereinafter referred to as "Contract", granting the Contractor the use, together with others, of SIA and its appurtenances for the purpose of providing Emergency Alert Notification System Upgrade service for the Airport to the extent of the Bid Proposal made by the Contractor, dated the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_, all in full compliance with the Contract Documents referred to herein; and

WHEREAS, the CONTRACT DOCUMENTS, including the signed copy of the BID PROPOSAL, the SPECIAL CONDITIONS and ADDENDUM [Click or tap here to enter text.](#), all titled Emergency Alert Notification System Upgrade, PROJECT #21-41-1715, are hereby referred to and by reference made a part of this Contract as fully and completely as if the same were fully set forth herein.

NOW THEREFORE, in consideration of the mutual covenants and conditions contained herein, the parties hereto agree for themselves, their successors and assigns as follows effective \_\_\_\_\_, 20\_\_:

1. TERM

The term of this Contract shall be three (3) year's commencing \_\_\_\_\_, 20\_\_ and expiring on \_\_\_\_\_, 20\_\_. The Airport shall have the option to renew this Contract for two (2) additional one (1) year term(s), providing that the work performed under this Contract has been fully satisfactory as determined solely by the Airport. Such option(s) shall be under the same terms and conditions contained herein except for the financial consideration and scope of work, which may be renegotiated as set forth in [Article 2 - FEES, Paragraph B](#). Said option(s) may be exercised by written notice from the Airport to the Contractor not later than ninety (90) days prior to the expiration of the current term.

2.

*FEES*

A. For the term commencing \_\_\_\_\_, 20\_\_ and expiring \_\_\_\_\_, 20\_\_ the Airport shall pay a **monthly** fee of (\_\_\_\_\_). Said **monthly** fee does not include Washington State Sales Tax in accordance with the terms set forth Attachment A. Contractor shall submit to Airport a detailed invoice of all fees, charges or costs for the preceding month, and payment by Airport shall be due thirty (30) days after Airport's receipt of such detailed invoice.

B. Fees quoted shall be firm for the term of the Contract. If the Airport exercises the option to renew, acceptance of a fee change for said services will be contingent upon renegotiation between the parties. If mutual agreement has not been achieved within thirty (30) days prior to the expiration of the current term, said option will be null and void. Agreement on any price change shall remain firm for the renewal year. Price changes for any option periods shall not exceed provable changes in expenses for labor and materials by the Contractor. All amendments or modification to this Contract, including but not limited to a fee change, shall be mutually-agreeable and set forth in a separate writing executed by both Contractor and the Airport.

C. The total value of this contract for any and all services pursuant to FEES, for the term commencing three (3) year(s) commencing \_\_\_\_\_, 20\_\_ and expiring on \_\_\_\_\_, 20\_\_, shall not exceed \_\_\_\_\_ (\_\_\_\_).

3. SCOPE OF WORK

All work will be accomplished per Attachment A attached hereto and made a part hereof.

4. RELATIONSHIP OF THE PARTIES

ARTICLE 2 - The parties intend that an independent contractor relationship will be created by this Contract. The Airport is interested only in the results to be achieved, and the conduct and control of all services or work will lie solely with the Contractor. No agent, employee, servant or otherwise of the Contractor shall be or shall be deemed to be an employee, agent, servant or otherwise of the Airport for any purpose, and the employees of the Contractor are not entitled to any of the benefits that the Airport provides for its employees. The Contractor will be solely and entirely responsible for its acts and for the acts of its agents, employees, servants, subcontractors, or otherwise during the performance of this Contract. In the performance of the services herein contemplated, the Contractor is an independent contractor with the authority to control and direct the performance and details of the work, the Airport being interested only in the results obtained; however, the work contemplated herein must meet the approval of the Airport pursuant to the provisions of the proposal under which the services and work were let to the Contractor.

5. CONTRACTOR'S RIGHTS AND OBLIGATIONS

The parties hereto covenant and agree as follows:

A. Subject to and in accordance with all applicable laws and ordinances and such reasonable rules and regulations as may be adopted by the Airport for the regulation thereof, Contractor may, together with others, use SIA and its appurtenances together for the purpose of providing the Airport with the work set forth in Attachment A at SIA. The privileges granted hereby shall be non-exclusive, and include without limiting the generality thereof.

B. Contractor's equipment, used by the Contractor shall be maintained at Contractor's sole expense, in good, safe and operative order, and in a clean and neat condition.

C. Personnel performing services at SIA shall be neat, clean and courteous. Contractor shall not permit its agents, servants or employees to conduct business or otherwise act in a loud, noisy, boisterous, offensive or objectionable manner.

D. Contractor shall observe and comply with any and all applicable Airport, federal, state and local laws, statutes, ordinance 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.

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

F. To the extent of its capabilities, Contractor agrees to cooperate with the Airport and/or any other Contractor in dealing with aircraft or related emergencies at SIA.

G. All vehicles shall display signs on both exterior sides of the vehicle doors identifying Contractor's business. Signs shall be no smaller than 8-1/2" by 11."

6. SECURITY

A. Contractor recognizes its obligations for security on SIA as prescribed by 49 CFR Part 1542, and agrees to employ such measures as are necessary to prevent or deter the unauthorized access of persons or vehicles into the secure area of SIA. Contractor shall comply with Transportation Security Regulation Part 1542 (Airport Security) and Airport security policies as presently outlined in its Airport Security Plan, as such Plan may be amended from time to time. Contractor shall pay any forfeitures or fines levied upon it, the Airport or SIA through enforcement of Transportation Security Regulation Part 1542, or any other applicable federal, state or local regulation, due to the

acts or omissions of Contractor, its employees, agents, suppliers, invitees or guests and for any attorney fees or related costs paid by the Airport as a result of any such violation.

B. Contractor shall abide by rules and regulations adopted by the Airport in carrying out the Airport's obligations under Aviation Security Regulations and Directives for the proper identification of persons and vehicles entering the aircraft operations area and other security measures as the Airport deems necessary from time to time. Contractor shall obtain SIA identification badges for all personnel working in restricted areas, which will require each worker to complete the SIA ID Card Application Form, available from the SIA Police. The applicant must submit his/her fingerprints for a criminal history check, for which the current cost is \$60.00. Contractor shall also pay a \$40.00 fee for the issuance of a new badge and the renewal of each ID Badge. The cost shall be the responsibility of the Contractor. The cost may be amended by the Airport from time to time. The Contractor shall deliver to the SIA Police Department in writing the names, mailing addresses and telephone numbers of all employees performing services under this Contract. Any change in personnel shall be reported to the Airport and the SIA Police Department. The Contractor shall be responsible for the prompt recovery of Airport keys and security identification badges.

C. Pursuant to applicable federal regulations, Contractor shall conduct an annual self-audit of Airport access media, such as keys and access cards, used by Contractor, its employees, agents, suppliers, invitees, sub-contractors or guests. Contractor shall provide the Airport with a written report of said audits and shall replace, reset or re-key, as appropriate, all affected Airport area access locks or devices whenever missing, lost, or stolen access media exceed five (5) percent of the access media issued for the affected lock or device.

D. The Contractor will comply with rules, practices, security restrictions and regulations as set forth by the Airport or any agency having jurisdiction at SIA. Any fines assessed against the Airport as a result of the Contractor's failure to comply with the provisions of this paragraph or other intentional or negligent acts or omissions of Contractor, its employees or agents will be paid promptly, upon demand, to the Airport by the Contractor.

E. All employees assigned by the Contractor shall be physically able to do their assigned work. The Airport shall have complete control over granting, denying, withholding or terminating security clearance for said employees. Clearance is required for all employees upon being hired or assigned to SIA. Contractor shall not permit any employee to begin work until SIA Police grants clearance to each individual employee.

F. Contractor employees shall identify, challenge, and report all unauthorized personnel (anyone without proper SIA-issued identification) to SIA Police Department in the SIA Terminal during all hours. NOTE: SIA Police are in the Terminal twenty-four (24) hours per day, seven (7) days per week.

#### 7. INDEMNITY AND WAIVER OF DAMAGES

A. The Contractor 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 Contractor's or Subcontractor's conduct of business or from any activity or other things done, permitted, or suffered by Contractor in, or about the Premises or SIA 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 Contractor prompt and reasonable notice of any such claim or actions made or filed against it.

B. Contractor 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 Contractor 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 SIA; and the Contractor 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 SIA. The above exception shall not limit a cause of action against other persons or entities, including licensees, concessionaires or aircraft operators.

C. Contractor 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 Contractor'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.

8. INSURANCE

The Contractor shall, at its own cost and expense, maintain insurance in full force and effect during the term of this Contract 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 Contract. The insurance policy(ies) shall be the standard comprehensive insurance coverage, with aircraft exclusions deleted, to cover all operations of the Contractor. The policy(ies) shall include, but not by way of limitation, bodily injury; property damage; automobile including owned, non-owned, leased and hired; aircraft; and contractual coverage, including the obligations pursuant to Article 7 - 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 the Contractor's use of SIA and the Premises which are the subject of this Contract. The Contractor's insurance shall be primary and non-contributory with any insurance maintained by the additional insureds. Contractor shall promptly upon execution of this Contract, furnish to the Airport appropriate certificates of insurance and additional insured endorsements evidencing coverage affected and to be maintained for the term of this Contract. The coverage shall not be less than One Million Dollars (\$1,000,000), combined single limit with an annual aggregate coverage of Two Million Dollars (\$2,000,000). The automobile coverage shall not be less than One Million Dollars (\$1,000,000) for owned, non-owned and hired automobiles. The Contractor's insurance policies shall be endorsed so that the insurance carrier will provide the Airport with at least thirty (30) days notification prior to cancellation or material change. Such notice of cancellation or material change shall be mailed to the Airport by certified mail. Where any policy(ies) has/have normal expirations during the term of this Contract, written evidence of renewal shall be furnished to the Airport at least thirty (30) days prior to such expiration. Upon written request by the Airport, Contractor shall permit the Airport to inspect the originals of all applicable policies. The Contractor's insurance identified in this Article 8 shall include a waiver of subrogation in favor of the additional insured. This Article 8—INSURANCE, shall be subject to periodic adjustments by the Airport.

9. FORCE MAJEURE

Neither the Airport or Contractor shall hold the other responsible for damages or delays 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.

10. NON-PERFORMANCE

A. Contractor shall perform all work to the satisfaction of the Airport, who shall have the right of inspection at all times and whose appraisal and acceptance of the work shall be a precedent to any payment made by the Airport under this Contract.

B. In the event of any dispute regarding employee(s), or scope of work required under this Contract, the decision and judgment of the Airport shall be final and binding.

11. CANCELLATION OF CONTRACT

This Contract shall be subject to cancellation by the Airport upon thirty (30) days advance written notice should Contractor fail to perform the services as outlined in the Scope of Work and as agreed to in the Proposal submitted by Contractor.

12. ADVERTISING AND SIGNS

Contractor shall have the right, at its own expense to utilize and maintain signs for the purpose of identification and cautionary notifications. Any signage shall be of professional quality and prior to utilization of such signage, the Contractor shall obtain the approval of the Airport. The right to utilize identification signs or cautionary signs for information to the traveling public shall be at a location, in the number and type, size and design approved in writing by the Airport. In the event the signs are removed and not replaced, Contractor shall repair the area to its normal appearance. To the extent that Contractor uses any electronic medium for identification and/or advertising

which includes any reference to Contractor's relationship with SIA, Airport shall have the right to review and approve the same.

13. 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 Contractor's operation at SIA. The Airport and Contractor 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 Contractor 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 Contract or in the event suit is brought for the recovery of any rent, fees or other sum or charges otherwise payable by Contractor, this Contract or the breach of any covenant or condition of this Contract, or for the restitution of the Premises to the Airport and/or eviction of Contractor during the term of this Contract, 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.

14. ANTI-KICKBACK

No officer or employee of the Airport, having the power or duty to perform an official act or action related to this Contract shall have or acquire any interest in the Contract, 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 Contract.

15. GOVERNMENT RESERVATIONS AND RESTRICTIONS

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

A. It is understood and agreed to by Contractor 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, the 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 Contract is executed, the provisions of this Contract insofar as they are inconsistent with the provisions of the agreement or lease with the Government, shall be suspended.

C. This Contract 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 Contract 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 SIA, the execution of which has been or may be required as a condition precedent to the expenditure of Federal funds for the development of SIA, 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 operation, maintenance of SIA 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 Contractor in and to the Premises and improvements thereon. Failure of Contractor to comply with the requirements of any existing or future agreement between the Airport and the United States Government, which failure shall continue after reasonable notice to make appropriate corrections, shall be cause for immediate termination of Contractor's rights hereunder.

16. CONTRACT SUBORDINATE TO BOND ORDINANCE

This Contract and all rights of the Contractor hereunder are expressly subordinated and subject to the lien and provisions of any pledge or assignment made by the Airport, the City of Spokane or County of Spokane to secure any bonds authorized by law to be issued for the development or improvement of SIA, and the Airport and the Contractor agree that the holders of the said Bonds shall possess, enjoy and may exercise all rights of the Airport

hereunder to the extent such possession, enjoyment and exercise are necessary to ensure compliance by Contractor and the Airport with the term and provisions of the bond covenants.

17. TITLE VI ASSURANCES

During the performance of this Contract, 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 Contract.

B. Nondiscrimination: The Consultant, with regard to the work performed by them during the Contract 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 Contract 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 Contract 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 Contract, 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.

18. 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 Contract including pertinent information which Consultant shall have kept in conjunction with this Contract 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.

19. SEVERABILITY

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

20. NON-WAIVER OF BREACH

The waiving of any of the covenants of this Contract 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 Contractor requiring the Airport's consent shall not be deemed to waive consent to any subsequent similar act by the Contractor.

21. SUBMISSION OF CONTRACT

The submission of this document for examination and negotiation does not constitute an offer to enter into or renew a contract or agreement. This document shall become effective and binding only upon execution and



delivery hereof by the Airport and Contractor. No act or omission of any officer, employee or agent of the Airport shall alter, change or modify any of the provisions hereof.

22. SURVIVAL OF INDEMNITIES

All indemnities provided in this Contract shall survive the expiration or any earlier termination of this Contract. In any litigation or proceeding within the scope of any indemnity provided in this Contract, Contractor shall, at the Airport's option, defend the Airport at Contractor's expense by counsel satisfactory to the Airport.

23. APPLICABLE LAW; VENUE; WAIVER OF TRIAL BY JURY

This Contract, 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 Contract 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 Contract, 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, demand and notices required herein shall be deemed to be properly served if hand delivered, or if sent by certified or registered mail, postage prepaid, to the last address previously furnished by the parties hereto. Until hereafter changed by the parties, in writing, notices shall be addressed as follows:

AIRPORT: SPOKANE AIRPORT  
Operations Department  
9000 W. Airport Drive, Suite 204  
Spokane, WA 99224

CONTRACTOR: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

The date of service of such notice shall be the date 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 Contract.

Emergency calls from the Airport require Contractor to respond within twelve (12) hours.

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 Contract.

*SIGNATURE PAGE FOLLOWS*

**ATTACHMENT C – Sample Construction Contract**

**Contract #21-41-1715-000-00**

**CONSTRUCTION CONTRACT**

For

**Emergency Alert Notification System Upgrade, PROJECT #21-41-1715**

THIS CONTRACT, made and entered into this \_\_\_\_\_, 2022 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 [Click or tap here to enter text.](#), a Company organized and incorporated in the State of [Click or tap here to enter text.](#), hereinafter referred to as "Contractor."

**WITNESSETH:**

The Contractor, in consideration of the sum to be paid to him by the Airport and of the covenants and conditions herein contained, hereby agrees at his own proper cost and expense, to complete all work, furnish all materials, tools, labor, appliances, equipment, machinery, and appurtenances for the Emergency Alert Notification System Upgrade, PROJECT #21-41-1715, to the extent of the Bid Proposal made by the Contractor, dated the \_\_\_\_ day of \_\_\_\_\_, 2022, all in full compliance with the Contract Documents referred to herein.

The CONTRACT DOCUMENTS, including the signed copy of the SUBMITTAL FORM B – Proposed Cost, the and GENERAL CONDITIONS, and ADDENDUM [Click or tap here to enter text.](#), all titled Emergency Alert Notification System Upgrade, PROJECT #21-41-1715, are hereby referred to and by reference made a part of this Contract as fully and completely as if the same were fully set forth herein.

In consideration of the performance of the work as set forth in these Contract Documents, the Airport agrees to pay to the Contractor the amount bid in the Bid Proposal of \$[Click or tap here to enter text.](#), which includes Washington State Sales Tax. Other adjustments shall be made in accordance with the Contract Documents or as otherwise herein provided. The Airport agrees to make such payments in the manner and at the times provided in the Contract Documents.

The Contractor agrees to complete the work within the time specified herein and to accept as full payment hereunder the amounts computed as determined by the Contract Documents and based upon the said Bid Proposal.

In the event that the Contractor shall fail to complete the work within the time limit or any extended time limit agreed upon, liquidated damages shall be assessed in the amount of \$500.00 per calendar day.

It is agreed that the time for completion of the Contract shall be completed within ninety (90) calendar days from the date of the Notice to Proceed.

The Contractor agrees to remedy all defects appearing in the work or developing in the materials furnished and the workmanship performed under this Contract for a period of one (1) year after the date of acceptance of the work by the Airport, and further agrees to indemnify and save the Airport harmless from any costs encountered in remedying such defects.

**ATTACHMENT C – Sample Construction Contract – General Conditions**

**GENERAL CONDITIONS  
SPOKANE AIRPORTS PUBLIC WORKS CONSTRUCTION 2021**

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**PART 1 – GENERAL PROVISIONS**

*1.01 DEFINITIONS*

- location, and dimensions of the Work, and may include plans, elevations, sections, details, schedules, and diagrams.
- A. "Application for Payment" means a written request in a format approved by Owner submitted by Contractor to A/E for payment of Work completed in accordance with the Contract Documents and approved Schedule of Values, supported by such substantiating data as Owner or A/E may require.
- B. "A/E" means an Architect, Engineer, or entity lawfully entitled to practice architecture or engineering, representing Owner within the limits of its delegated authority.
- C. "Change Order" means a written instrument signed by Owner, Contractor and Engineer stating their mutual agreement upon all of the following: (1) a change in the Work; (2) the amount of the adjustment in the Contract Sum, if any, and (3) the extent of the adjustment in the Contract Time, if any.
- D. "Claim" means Contractor's exclusive remedy for resolving disputes with Owner regarding the terms of a Change Order or a request for equitable adjustment, as more fully set forth in Part 8.
- E. "Contract Award Amount" is the sum of the Base Bid and any accepted Alternates.
- F. "Contract Documents" means the Advertisement for Bids, Instructions for Bidders, completed Form of Proposal, General Conditions, Modifications to the General Conditions, Supplemental Conditions, Public Works Contract, other Special Forms, Drawings and Specifications, and all addenda and modifications thereof.
- G. "Contract Sum" is the total amount payable by Owner to Contractor for performance of the Work in accordance with the Contract Documents.
- H. "Contract Time" is the number of calendar days allotted in the Contract Documents for achieving Substantial Completion of the Work.
- I. "Contractor" means the individual, partnership, firm, corporation, company, or joint venture contracting with the Owner to do prescribed Work.
- J. "Drawings" are the graphic and pictorial portions of the Contract Documents showing the design,
- K. "Excavation" means an operation in which earth, rock, or other material on or below the ground is moved or otherwise displaced by any means, except the tilling of soil less than 12 inches in depth for agricultural purposes, or road ditch maintenance that does not change the original road grade or ditch flow line.
- L. "Final Acceptance" means the written acceptance issued to Contractor by Owner after Contractor has completed the requirements of the Contract Documents.
- M. "Final Completion" means that the Work is fully and finally completed in accordance with the Contract Documents.
- N. "Force Majeure" means those acts entitling Contractor to request an equitable adjustment in the Contract Time, as more fully set forth in Part 3.05A.
- O. "Major Contract Item" is any item that is listed in the Bid Proposal of which the total cost is equal to or greater than 20% of the total amount of the awarded Contract amount."
- P. "Minor Contract Item" is any item that is not a "Major Contract Item."
- Q. "Notice" means a written notice which has been delivered in person to the individual or a member of the firm or entity or to an officer of the corporation for which it was intended or, if delivered or sent by registered or certified mail, to the last business address known to the party giving notice.
- R. "Notice to Proceed" means a notice from Owner to Contractor that defines the date on which the Contract Time begins to run.
- S. "Owner" means the Spokane Airport Board, a joint operation of the City of Spokane and Spokane County, or its authorized representative with the authority to enter into, administer, and/or terminate the Work in accordance with the Contract Documents and make related determinations and findings.
- T. "Person" means a corporation, partnership, business association of any kind, trust, company, or individual.

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- U. "Prior Occupancy" means Owner's use of all or parts of the Project before Substantial Completion.
- V. "Progress Schedule" means a schedule of the Work, in a form satisfactory to Owner, as further set forth in Part 3.02.
- W. "Project" means the total construction of which the Work performed in accordance with the Contract Documents may be the whole or a part and which may include construction by Owner or by separate contractors.
- X. "Project Record" means the separate set of Drawings and Specifications as further set forth in Part 4.02A.
- Y. "Schedule of Values" means a written breakdown allocating the total Contract Sum to each principal category of Work, in such detail as requested by Owner.
- Z. "Shop Drawings" means documents and other information required to be submitted to A/E by Contractor pursuant to the Contract Documents, showing in detail: the proposed fabrication and assembly of structural elements; and the installation (i.e. form, fit, and attachment details) of materials and equipment.
- AA. "Specifications" are that portion of the Contract Documents consisting of the written requirements for materials, equipment, construction systems, standards and workmanship for the Work, and performance of related services.
- AB. "Subcontract" means a contract entered into by Subcontractor for the purpose of obtaining supplies, materials, equipment, or services of any kind for or in connection with the Work.
- AC. "Subcontractor" means any individual, partnership, firm, corporation, company, or joint venture who is sublet part of the Contract by the Contractor.
- AD. "Substantial Completion" means that stage in the progress of the Work where Owner has full and unrestricted use and benefit of the facilities for the purposes intended, as more fully set forth in Part 6.07.
- AE. "Work" means the construction and services required by the Contract Documents, and includes, but is not limited to, labor, materials, supplies, equipment, services, permits, and the manufacture and fabrication of components, performed, furnished, or provided in accordance with the Contract Documents.
- 1.02 ORDER OF PRECEDENCE*
- Any conflict or inconsistency in the Contract Documents shall be resolved by giving the documents precedence in the following order:
1. Signed Public Works Contract/Agreement, including any Change Orders, any Special Forms.
  2. Addenda.
  3. Supplementary Conditions.
  4. WSDOT Amendments or FAA General Provisions, if identified or referenced in the Contract Documents.
  5. Modifications to the General Conditions.
  6. General Conditions for Spokane Airport Public Works Construction.
  7. Specifications--provisions in Division 1 shall take precedence over provisions of any other Division.
  8. Drawings--in case of conflict within the Drawings, large scale drawings shall take precedence over small scale drawings.
  9. Signed and Completed Bid/Proposal Form.
  10. Instructions to Bidders, including Supplementaries.
  11. Advertisement for Bids.
- 1.03 EXECUTION AND INTENT*
- Contractor makes the following representations to Owner:
1. The Contract Sum is reasonable compensation for the Work and the Contract Time is adequate for the performance of the Work, as represented by the Contract Documents;
  2. Contractor has carefully reviewed the Contract Documents, visited and examined the Project site, become familiar with the local conditions in which the Work is to be performed, and satisfied itself as to the nature, location, character, quality and quantity of the Work, the labor, materials, equipment, goods, supplies, work, services and

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other items to be furnished and all other requirements of the Contract Documents, as well as the surface and subsurface conditions and other matters that may or could be encountered at the Project site or affect performance of the Work or the cost or difficulty thereof;

3. Contractor is financially solvent, able to pay its debts as they mature, and possesses sufficient working capital to complete the Work and perform Contractor's obligations required by the Contract Documents; and
4. Contractor is able to furnish the plant, tools, materials, supplies, equipment and labor required to complete the Work and perform the obligations required by the Contract Documents and has sufficient experience and competence to do so.

**PART 2 – INSURANCE AND BONDS**

*2.01 CONTRACTOR'S LIABILITY INSURANCE*

Prior to commencement of the Work, Contractor shall obtain all the insurance and bonds required by the Contract Documents and provide evidence satisfactory to Owner that such insurance has been procured. Review of the Contractor's insurance by Owner shall not relieve or decrease the liability of Contractor. Companies writing the insurance to be obtained by this Part 2 shall be licensed to do business under Title 48 RCW or comply with the Surplus Lines Law of the State of Washington. Contractor shall include in the Contract Sum the cost of all insurance and bond costs required to complete the Work. Insurance carriers providing insurance shall be acceptable to Owner, and its A. M. Best rating shall be no less than A- VII and shall be indicated on the insurance certificates.

- A. Contractor shall maintain the following insurance coverage during the Work and until the statue of repose after Final Acceptance. Contractor shall also maintain the following insurance coverage during the performance of any corrective Work required by Part 5.16.

1. Commercial General Liability Insurance (CGL) written on ISO form CG 0001 Edition date 10/01 or equivalent and shall confer a status or contain endorsement (Form CG 2503 or equivalent) requiring that the general aggregate limit of liability shall apply to this Project. Coverage shall be based on an occurrence form and include the hazards of: (a) Construction Operation, (b) Subcontractors and Independent Contractors, (c) Products and Completed Operations applicable to the additional insureds with Completed Operations to remain in force from the date of Final

Acceptance of the Work until the statue of repose. CGL shall also include Contractual Liability coverage sufficient to meet the requirements of the Contract (including defense cost and attorney fees assumed under the Contract in addition to the required limits of liability).

2. Commercial Auto Liability Insurance written on ISO form CA 0001 Edition date of 10/13 or equivalent covering all owned, leased, hired and non-owned vehicles used in connection with the Contract.

- B. Contractor shall comply with the Washington State Industrial Insurance Act and, if applicable, the Federal Longshoremen's and Harbor Workers' Act and the Jones Act.
- C. All insurance coverages shall protect against claims for damages for personal and bodily injury or death, as well as claims for property damage, which may arise from operations in connection with the Work whether such operations are by Contractor or any Subcontractor.
- D. All insurance coverages shall be endorsed to include Owner, the City of Spokane, the County of Spokane, and their elected and appointed officials, agents, and employees, each as an additional named insured for Work performed in accordance with the Contract Documents, and all insurance certificates shall evidence additional insured. This insurance shall be primary to any insurance maintained by the additional insureds, with the additional insured insurance being noncontributory. This insurance shall include a waiver of subrogation in favor of the additional insured and shall include the severability of interest of the insureds and shall include a waiver of subrogation in favor of the additional insureds. The Additional Insured Endorsements must be on Form CG 2010, or CG2010 (10/01) plus CG 2037 (10/01) or equivalent and for Autos a CA 2048 or equivalent.
- E. Contractor shall ensure and require that Subcontractors have insurance coverage to cover bodily injury and property damage on all operations and all vehicles owned or operated by Subcontractors. Subcontractors shall name Contractor and Owner, the City of Spokane, the County of Spokane, and their elected and appointed officials, agents, and employees, each as an additional named and give at least 30 Days' Notice of cancellation.
- F. In accordance with RCW 60.28 the Owner will not withhold retainage, if funded in whole or in part by

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Federal funds. The Contractor shall in this case provide a retainage bond in the amount of 5% of the total Contract amount in lieu of the Owner withholding retainage, as identified in the General Conditions.

**2.02 COVERAGE LIMITS**

The coverage limits shall be not less than the amounts specified in the Agreement; if limits are not specified in the Agreement, coverage limits shall be not less than as follows:

- A. Limits of Liability shall not be less than \$1,000,000 Combined Single Limit for Bodily Injury and Property Damage (other than Automobile liability) Each Occurrence; Personal Injury and Advertising Liability Each Occurrence.
- B. \$2,000,000 Combined Single Limit Annual General Aggregate.
- C. \$2,000,000 Annual Aggregate for Products and Completed Operations Liability.
- D. \$1,000,000 Combined Single Limit for Automobile Bodily Injury and Property Damage Liability, Each Accident or Loss.
- E. For work on the AOA or in close proximity to Aircraft, limits will be a minimum of \$5,000,000.
- F. Coverages and Minimums: Coverages are the minimum to be provided and are not limitations of liability under the Contract, indemnification, or applicable provisions of law. Contractor may, at its expense, purchase larger coverage amounts. Contractor's policy shall be designated primary coverage for both defense and indemnity, and any Owner's policies excess.

**2.03 INSURANCE COVERAGE CERTIFICATES**

- A. Prior to commencement of the Work, Contractor shall furnish to Owner a completed certificate of insurance coverage and additional insured endorsements.
- B. All insurance certificates shall name Owner's Project number and Project title.
- C. All insurance certificates shall specifically require 45 Days prior notice to Owner of cancellation or any material change, except 30 days for surplus line insurance.

**2.04 PAYMENT AND PERFORMANCE BONDS**

Payment and performance bonds for 100% of the Contract Award Amount and state sales tax, shall be furnished for the Work, using the current version of the Payment Bond and Performance Bond form published by and available from the American Institute of Architects (AIA) -- AIA A312 Payment Bond Form and AIA A312 Performance Bond Form or equivalent separate payment and performance bond forms. No payment or performance bond is required if the Contract Sum is \$150,000 or less and Contractor agrees that Owner may, in lieu of the bond, retain 10% of the Contract Sum.

**2.05 ADDITIONAL BOND SECURITY**

Contractor shall promptly furnish payment and performance bonds from an alternate surety if:

- A. Owner has a reasonable objection to the surety; or
- B. Any surety fails to furnish reports on its financial condition if requested by Owner.

**2.06 BUILDER'S RISK**

- A. Contractor shall purchase and maintain builder's risk insurance, including coverage for portions of Work stored off-site and portions of Work in transit, in the amount of the insurable value, including all Change Orders, for the Work on a replacement cost basis until Substantial Completion. The insurance shall cover the interest of Owner, Contractor, and any Subcontractors, as their interests may appear.
- B. Builder risk insurance shall be on an "all-risk" or equivalent policy form and shall include, without limitation, insurance against the perils of fire (with extended coverage) and physical loss or damage including, without duplication of coverage, theft, vandalism, malicious mischief, collapse, earthquake, flood, windstorm, falsework, testing and startup, temporary buildings and debris removal including demolition occasioned by enforcement of any applicable legal requirements, and shall cover reasonable compensation for Architect's and Contractor's services and expenses required as a result of such insured loss. Contractor shall be responsible for any deductible.
- C. Builders risk insurance shall provide for partial occupancy or use, the insurance company or companies providing builder risk insurance shall consent to such partial occupancy or use by endorsement or otherwise. The Owner and the Contractor shall take reasonable steps to obtain consent of the insurance company or companies and shall, without mutual written consent, take no action

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with respect to partial occupancy or use that would cause cancellation, lapse or reduction of insurance.

- D. Before an exposure to loss may occur, the Contractor shall file with the Owner a copy of each policy that includes insurance coverages required by this Part 2.06. Each policy shall contain all generally applicable conditions, definitions, exclusions and endorsements related to this Project. Each policy shall contain a provision that the policy will not be canceled or allowed to expire, and that its limits will not be reduced, until at least 45 days' prior written notice has been given to the Owner.
- E. Owner and Contractor waive all subrogation rights against each other, any Subcontractors, A/E, A/E's subconsultants, separate contractors described in Part 5.19, if any, and any of their subcontractors, for damages caused by fire or other perils to the extent covered by insurance obtained pursuant to this Part 2.06, except such rights as they have to proceeds of such insurance held by Owner as fiduciary. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the Person or entity had an insurable interest in the property damaged.

**PART 3 – TIME AND SCHEDULE**

*3.01 PROGRESS AND COMPLETION*

Contractor shall diligently prosecute the Work to achieve Substantial Completion within the Contract Time.

*3.02 CONSTRUCTION SCHEDULE*

- A. Unless otherwise identified, the Contractor shall submit a preliminary Progress Schedule at the preconstruction meeting. The Progress Schedule shall show the sequence in which Contractor proposes to perform the Work, and the dates on which Contractor plans to start and finish major portions of the Work, including dates for shop drawings and other submittals, and for acquiring materials and equipment.
- B. Unless otherwise provided in Division 1, the Progress Schedule shall be in the form of a bar chart, or a critical path method analysis. The preliminary Progress Schedule may be general, showing the major portions of the Work, with a

more detailed Progress Schedule submitted as directed by Owner.

- C. Review by Owner of Contractor's schedule does not constitute an approval or acceptance of Contractor's construction means, methods, or sequencing, or its ability to complete the Work within the Contract Time. Contractor shall revise and resubmit its schedule, as necessary. Owner may withhold a portion of progress payments until a Progress Schedule has been submitted which meets the requirements of this part.
- D. Contractor shall utilize and comply with the Progress Schedule. On a monthly basis, or as otherwise directed by Owner, Contractor shall submit an updated Progress Schedule at its own expense to Owner indicating actual progress. If, in the opinion of Owner, Contractor is not in conformance with the Progress Schedule for reasons other than acts of Force Majeure as identified in Part 3.05, Contractor shall take such steps as are necessary to bring the actual completion dates of its work activities into conformance with the Progress Schedule.
- E. Contractor shall promptly notify Owner in writing of any actual or anticipated event which is delaying or could delay achievement of any milestone or performance of any critical path activity of the Work. Contractor shall indicate the expected duration of the delay, the anticipated effect of the delay on the Progress Schedule, and the action being or to be taken to correct the problem. Provision of such notice does not relieve Contractor of its obligation to complete the Work within the Contract Time.

*3.03 OWNER'S RIGHT TO SUSPEND THE WORK FOR CONVENIENCE*

- A. Owner may, at its sole discretion, order Contractor, in writing, to suspend all or any part of the Work for up to 90 days, or for such longer period as mutually agreed.
- B. Upon receipt of a written notice suspending the Work, Contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of cost of performance directly attributable to such suspension. Within a period up to 90 days after the notice is delivered to Contractor, or within any extension of that period to which the parties shall have agreed the Owner shall either:
  - 1. Cancel the written notice suspending the Work;
  - or



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2. Terminate the Work covered by the notice as provided in the termination provisions of Part 9.
- C. If a written notice suspending the Work is cancelled or the period of the notice or any extension thereof expires, Contractor shall resume Work.
- D. Contractor shall be entitled to an equitable adjustment in the Contract Time, or Contract Sum, or both, for increases in the time or cost of performance directly attributable to such suspension, provided Contractor complies with all requirements set forth in Part 7.
- 3.04 OWNER'S RIGHT TO STOP THE WORK FOR CAUSE**
- A. If Contractor fails or refuses to perform its obligations in accordance with the Contract Documents, Owner may order Contractor, in writing, to stop the Work, or any portion thereof, until satisfactory corrective action has been taken.
- B. Contractor shall not be entitled to an equitable adjustment in the Contract Time or Contract Sum for any increased cost or time of performance attributable to Contractor's failure or refusal to perform or from any reasonable remedial action taken by Owner based upon such failure.
- 3.05 DELAY**
- A. Any delay in or failure of performance by Owner or Contractor, other than the payment of money, shall not constitute a default hereunder if and to the extent the cause for such delay or failure of performance was unforeseeable and beyond the control of the party ("Force Majeure"). Acts of Force Majeure are limited to:
1. Acts of God or the public enemy;
  2. Acts or omissions of any government entity;
  3. Fire or other casualty for which Contractor is not responsible;
  4. Quarantine or epidemic;
  5. Strike or defensive lockout;
  6. Unusually severe weather conditions which could not have been reasonably anticipated after having reviewed local historical weather data; and
7. Unusual delay in receipt of supplies or products which were ordered and expedited and for which no substitute reasonably acceptable to Owner was available.
- B. Contractor shall be entitled to an equitable adjustment in the Contract Time for changes in the time of performance directly attributable to an act of Force Majeure, provided it makes a request for equitable adjustment according to Part 7.03. Contractor shall not be entitled to an adjustment in the Contract Sum resulting from an act of Force Majeure.
- C. Contractor shall be entitled to an equitable adjustment in Contract Time, and may be entitled to an equitable adjustment in Contract Sum, if the cost or time of Contractor's performance is changed due to the negligence of Owner, provided the Contractor makes a request according to Parts 7.02 and 7.03.
- D. Contractor shall not be entitled to an adjustment in Contract Time or in the Contract Sum for any delay or failure of performance to the extent such delay or failure was caused by Contractor or anyone for whose acts Contractor is responsible.
- E. To the extent any delay or failure of performance was concurrently caused by the Owner and Contractor, Contractor shall be entitled to an adjustment in the Contract Time for that portion of the delay or failure of performance that was concurrently caused, provided it makes a request for equitable adjustment according to Part 7.03, but shall not be entitled to an adjustment in Contract Sum.
- F. Contractor shall make all reasonable efforts to prevent and mitigate the effects of any delay, whether occasioned by an act of Force Majeure or otherwise.
- 3.06 NOTICE TO OWNER OF LABOR DISPUTES**
- A. If Contractor has knowledge that any actual or potential labor dispute is delaying or may delay timely performance in accordance with the Contract Documents, Contractor shall immediately give notice, including all relevant information, to Owner.
- B. Contractor agrees to insert a provision in its Subcontracts and to require insertion in all sub-subcontracts, that in the event timely performance of any such contract is delayed or threatened by delay by any actual or potential labor dispute, the

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Subcontractor or Sub-subcontractor shall immediately notify the next higher tier Subcontractor or Contractor, as the case may be, of all relevant information concerning the dispute.

equipment, tools, transportation, permits, and supplies, and perform the Work required in accordance with the Drawings, Specifications, and other provisions of the Contract Documents.

**3.07 DAMAGES FOR FAILURE TO ACHIEVE TIMELY COMPLETION**

**A. Liquidated Damages**

1. Timely performance and completion of the Work is essential to Owner and time limits stated in the Contract Documents are of the essence. Owner will incur serious and substantial damages if Substantial Completion of the Work does not occur within the Contract Time. However, it would be difficult if not impossible to determine the exact amount of such damages. Consequently, provisions for liquidated damages are included in the Contract Documents.
2. The liquidated damage amounts set forth in the Contract Documents will be assessed not as a penalty, but as liquidated damages for breach of the Contract Documents. This amount is fixed and agreed upon by and between the Contractor and Owner because of the impracticability and extreme difficulty of fixing and ascertaining the actual damages the Owner would in such event sustain. This amount shall be construed as the actual amount of damages sustained by the Owner, and may be retained by the Owner and deducted from periodic payments to the Contractor.
3. Assessment of liquidated damages shall not release Contractor from any further obligations or liabilities pursuant to the Contract Documents.
4. Liquidated damages shall be assessed at not less than \$1,000 (unless specifically called out as a different amount in the agreement between the parties) per calendar day for each day beyond the contract completion date that the Work remains incomplete.

B. The Contract Documents are complementary. What is required by one part of the Contract Documents shall be binding as if required by all. Anything mentioned in the Specifications and not shown on the Drawings, or shown on the Drawings and not mentioned in the Specifications, shall be of like effect as if shown or mentioned in both.

C. Contractor shall carefully study and compare the Contract Documents with each other and with written information furnished by Owner. If, during the performance of the Work, Contractor finds a conflict, error, inconsistency, or omission in the Contract Documents, it shall promptly and before proceeding with the Work affected thereby, report such conflict, error, inconsistency, or omission to the A/E in writing.

D. Contractor shall do no Work without applicable Drawings, Specifications, or written modifications, or Shop Drawings where required, unless instructed to do so in writing by Owner. If Contractor performs any construction activity, and it knows or reasonably should have known that any of the Contract Documents contain a conflict, error, inconsistency, or omission, Contractor shall be responsible for the performance and shall bear the cost for its correction.

E. Contractor shall provide any work or materials the provision of which is clearly implied and is within the scope of the Contract Documents even if the Contract Documents do not mention them specifically.

F. Questions regarding interpretation of the requirements of the Contract Documents, missing information, or need of further clarification shall be referred to the A/E in the form of Request for Information (RFI).

**4.02 PROJECT RECORD**

A. Contractor shall legibly mark in ink on a separate set of the Drawings and Specifications all actual construction, including depths of foundations, horizontal and vertical locations of internal and underground utilities and appurtenances referenced to permanent visible and accessible surface improvements, field changes of dimensions and details, actual suppliers, manufacturers and trade names, models of installed equipment, and Change

**PART 4 – SPECIFICATIONS, DRAWINGS, AND OTHER DOCUMENTS**

**4.01 DISCREPANCIES AND CONTRACT DOCUMENT REVIEW**

A. The intent of the Specifications and Drawings is to describe a complete Project to be constructed in accordance with the Contract Documents. Contractor shall furnish all labor, materials,

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Order proposals. This separate set of Drawings and Specifications shall be the "Project Record."

which are not required by the Contract Documents may be returned without action.

- B. The Project Record shall be maintained on the project site throughout the construction and shall be clearly labeled "PROJECT RECORD". The Project Record shall be updated at least weekly noting all changes and shall be available to Owner and A/E at all times.
- C. Contractor shall submit the completed and finalized Project Record to A/E prior to Final Acceptance.

- C. Approval, or other appropriate action with regard to Shop Drawings, by Owner or A/E shall not relieve Contractor of responsibility for any errors or omissions in such Shop Drawings, nor from full responsibility for compliance with the requirements of the Contract Documents. Unless specified in the Contract Documents, review by Owner or A/E shall not constitute an approval of the safety precautions employed by Contractor during construction, or constitute an approval of Contractor's means or methods of construction. If Contractor fails to obtain approval before installation and the item or work is subsequently rejected, Contractor shall be responsible for all costs of correction.

**4.03 SHOP DRAWINGS**

- A. Shop Drawings include, but are not limited to, drawings, diagrams, layouts, schematics, descriptive literature, illustrations, schedules, performance and test data, samples, and similar materials furnished by Contractor to explain in detail specific portions of the Work required by the Contract Documents. For materials and equipment to be incorporated into the Work, Contractor submittal shall include the name of the manufacturer, the model number, and other information concerning the performance, capacity, nature, and rating of the item. When directed, Contractor shall submit all samples at its' own expense. Owner may duplicate, use, and disclose Shop Drawings provided in accordance with the Contract Documents.
- B. Contractor shall coordinate all Shop Drawings, and review them for accuracy, completeness, and compliance with the Contract Documents and shall indicate its approval thereon as evidence of such coordination and review. Where required by law, Shop Drawings shall be stamped by an appropriate professional licensed by the state of Washington. Shop Drawings submitted to A/E without evidence of Contractor's approval shall be returned for resubmission. Contractor shall review, approve, and submit Shop Drawings with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of Owner or separate contractors. Contractor's submittal schedule shall allow a reasonable time for A/E review. A/E will review, approve, or take other appropriate action on the Shop Drawings. Contractor shall perform no portion of the Work requiring submittal and review of Shop Drawings until the respective submittal has been reviewed and the A/E has approved or taken other appropriate action. Owner and A/E shall respond to Shop Drawing submittals with reasonable promptness. Any Work by Contractor shall be in accordance with reviewed Shop Drawings. Submittals made by Contractor

- D. If Shop Drawings show variations from the requirements of the Contract Documents, Contractor shall describe such variations in writing, separate from the Shop Drawings, at the time it submits the Shop Drawings containing such variations. If A/E approves any such variation, an appropriate Change Order will be issued. If the variation is minor and does not involve an adjustment in the Contract Sum or Contract Time, a Change Order need not be issued; however, the modification shall be recorded upon the Project Record.
- E. Unless otherwise provided in Division I, Contractor shall submit to A/E for approval 5 copies of all Shop Drawings. Unless otherwise indicated, 3 sets of all Shop Drawings shall be retained by A/E and 2 sets shall be returned to Contractor.

**4.04 ORGANIZATION OF SPECIFICATIONS**

Specifications are prepared in sections which conform generally with trade practices. These sections are for Owner and Contractor convenience and shall not control Contractor in dividing the Work among the Subcontractors or in establishing the extent of the Work to be performed by any trade.

**4.05 OWNERSHIP AND USE OF DRAWINGS, SPECIFICATIONS, AND OTHER DOCUMENTS**

- A. The Drawings, Specifications, and other documents prepared by A/E are instruments of A/E's service through which the Work to be executed by Contractor is described. Neither Contractor nor any Subcontractor shall own or claim a copyright in the Drawings, Specifications, and other documents prepared by A/E, and A/E shall be deemed the author of them and will, along with any rights of Owner, retain all common law, statutory, and other

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reserved rights, in addition to the copyright. All copies of these documents, except Contractor's set, shall be returned or suitably accounted for to A/E, on request, upon completion of the Work.

- B. The Drawings, Specifications, and other documents prepared by the A/E, and copies thereof furnished to Contractor, are for use solely with respect to this Project. They are not to be used by Contractor or any Subcontractor on other projects or for additions to this Project outside the scope of the Work without the specific written consent of Owner and A/E. Contractor and Subcontractors are granted a limited license to use and reproduce applicable portions of the Drawings, Specifications, and other documents prepared by A/E appropriate to and for use in the execution of their Work.
- C. Contractor and all Subcontractors grant a non-exclusive license to Owner, without additional cost or royalty, to use for its own purposes (including reproduction) all Shop Drawings, together with the information and diagrams contained therein, prepared by Contractor or any Subcontractor. In providing Shop Drawings, Contractor and all Subcontractors warrant that they have authority to grant to Owner a license to use the Shop Drawings, and that such license is not in violation of any copyright or other intellectual property right. Contractor agrees to defend and indemnify Owner pursuant to the indemnity provisions in Part 5.22 from any violations of copyright or other intellectual property rights arising out of Owner's use of the Shop Drawings hereunder, or to secure for Owner, at Contractor's own cost, licenses in conformity with this Part.
- D. The Shop Drawings and other submittals prepared by Contractor, Subcontractors of any tier, or its or their equipment or material suppliers, and copies thereof furnished to Contractor, are for use solely with respect to this Project. They are not to be used by Contractor or any Subcontractor of any tier, or material or equipment supplier, on other projects or for additions to this Project outside the scope of the Work without the specific written consent of Owner. The Contractor, Subcontractors of any tier, and material or equipment suppliers are granted a limited license to use and reproduce applicable portions of the Shop Drawings and other submittals appropriate to and for use in the execution of their Work under the Contract Documents.

**PART 5 – PERFORMANCE**

**5.01 CONTRACTOR CONTROL AND SUPERVISION**

- A. Contractor shall supervise and direct the Work, using its best skill and attention, and shall perform the Work in a skillful manner. Contractor shall be solely responsible for and have control over construction means, methods, techniques, sequences, and procedures and for coordinating all portions of the Work, unless the Contract Documents give other specific instructions concerning these matters. Contractor shall disclose its means and methods of construction when requested by Owner.
  - B. Performance of the Work shall be directly supervised by a competent superintendent who is satisfactory to Owner and has authority to act for Contractor. The superintendent shall not be changed without the prior written consent of Owner.
  - C. Contractor shall be responsible to Owner for acts and omissions of Contractor, Subcontractors, their employees and agents, including but not limited to their suppliers and materialmen.
  - D. Contractor shall enforce strict discipline and good order among Contractor's employees and other persons performing the Work. Contractor shall not permit employment of persons not skilled in tasks assigned to them. Contractor's employees shall at all times conduct business in a manner which assures fair, equal, and nondiscriminatory treatment of all persons. Owner may, by written notice, require Contractor to remove from the Work or Project site any employee Owner reasonably deems incompetent, careless, or otherwise objectionable.
  - E. Contractor shall keep on the Project site a copy of the Drawings, Specifications, addenda, reviewed Shop Drawings, and permits and permit drawings.
- 5.02 PERMITS, FEES, AND NOTICES**
- A. Unless otherwise provided in the Contract Documents, Contractor shall pay for and obtain all permits, licenses, and inspections necessary for proper execution and completion of the Work. Prior to Final Acceptance, the approved, signed permits shall be delivered to Owner.
  - B. Permits and utility fees are called for and shall be included in Contractor's bid.
  - C. Contractor shall comply with and give notices required by all federal, state, and local laws, ordinances, rules, regulations, and lawful orders of public authorities applicable to performance of the Work.

**5.03 PATENTS AND ROYALTIES**

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Contractor is responsible for, and shall pay, all royalties and license fees. Contractor shall defend, indemnify, and hold Owner harmless from any costs, expenses, and liabilities arising out of the infringement by Contractor of any patent, copyright, or other intellectual property right used in the Work; however, provided that Contractor gives prompt notice, Contractor shall not be responsible for such defense or indemnity when a particular design, process, or product of a particular manufacturer or manufacturers is required by the Contract Documents. If Contractor has reason to believe that use of the required design, process, or product constitutes an infringement of a patent or copyright, it shall promptly notify Owner of such potential infringement.

**5.04 PREVAILING WAGES**

- A. Contractor shall pay the prevailing rate of wages to all workers, laborers, or mechanics employed in the performance of any part of the Work in accordance with RCW 39.12 and the rules and regulations of the Washington State Department of Labor and Industries. All determinations of the prevailing rate of wage shall be made by the industrial statistician of the Washington State Department of Labor and Industries. It is the Contractor's responsibility to verify the applicable prevailing wage rate.
- B. Before commencing the Work, Contractor shall file a statement under oath with Owner and with the Director of Washington State Department of Labor and Industries certifying the rate of hourly wage paid and to be paid each classification of laborers, workers, or mechanics employed upon the Work by Contractor and Subcontractors. Such rates of hourly wage shall not be less than the prevailing wage rate. Statements of Intent to Pay Prevailing Wages are required from the Contractor and all subcontractors prior to the approval of the first progress payment. Affidavits of Wages Paid are required for the Contractor and all subcontractors prior to release of retainage.
- C. Disputes regarding prevailing wage rates shall be referred for arbitration to the Director of the Washington State Department of Labor and Industries. The arbitration decision shall be final and conclusive and binding on all parties involved in the dispute as provided for by RCW 39.12.060.
- D. Each Application for Payment submitted by Contractor shall state that prevailing wages have been paid in accordance with the prefiled statement(s) of intent, as approved. Copies of the approved intent statement(s) shall be posted on the job site with the address and telephone number of

the Industrial Statistician of the Washington State Department of Labor and Industries where a complaint or inquiry concerning prevailing wages may be made. Certified payrolls for the Contractor and all Subcontractors shall be submitted to the Owner by the Contractor on a weekly basis unless previously waived in writing by the Owner.

- E. In compliance with chapter 296-127 WAC, Contractor shall pay to the Washington State Department of Labor and Industries the currently established fee(s) for each statement of intent and/or affidavit of wages paid submitted to the Washington State Department of Labor and Industries for certification.

**5.05 HOURS OF LABOR**

- A. Contractor shall comply with all applicable provisions of RCW 49.28 and they are incorporated herein by reference. Pursuant to that statute, no laborer, worker, or mechanic employed by Contractor, any Subcontractor, or any other person performing or contracting to do the whole or any part of the Work, shall be permitted or required to work more than eight hours in any one calendar day, provided, that in cases of extraordinary emergency, such as danger to life or property, the hours of work may be extended, but in such cases the rate of pay for time employed in excess of eight hours of each calendar day shall be not less than one and one-half times the rate allowed for this same amount of time during eight hours' service.
- B. Notwithstanding the preceding paragraph, RCW 49.28 permits a contractor or subcontractor in any public works contract subject to those provisions, to enter into an agreement with its employees in which the employees work up to ten hours in a calendar day. No such agreement may provide that the employees work ten-hour days for more than four calendar days a week. Any such agreement is subject to approval by the employees. The overtime provisions of RCW 49.28 shall not apply to the hours, up to forty hours per week, worked pursuant to any such agreement.
- C. Contractor shall be responsible for additional Owner's Representative costs, including but not limited to survey, inspection, etc. and other costs incurred by the Owner for contractor work over 40 hours per week.

**5.06 NONDISCRIMINATION**

- A. Discrimination in all phases of employment is prohibited by, among other laws and regulations,

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Title VII of the Civil Rights Act of 1964, the Equal Employment Act of 1972, sections 503 and 504 of the Vocational Rehabilitation Act of 1973, the Vietnam Era Veterans Readjustment Act of 1974, the Age Discrimination Act of 1967, the Americans with Disabilities Act of 1990, the Civil Rights Act of 1991, Presidential Executive Order 11246, Executive Order 11375, the Washington State Law Against Discrimination, RCW 49.60, and Gubernatorial Executive Order 85-09. These laws and regulations establish minimum requirements for affirmative action and fair employment practices which Contractor must meet.

**B. During performance of the Work:**

1. Contractor shall not discriminate against any employee or applicant for employment because of race, creed, color, national origin, sex, age, marital status, or the presence of any physical, sensory, or mental disability, Vietnam era veteran status, or disabled veteran status, nor commit any other unfair practices as defined in RCW 49.60.
2. Contractor shall, in all solicitations or advertisements for employees placed by or for it, state that all qualified applicants will be considered for employment, without regard to race, creed, color, national origin, sex, age, marital status, or the presence of any physical, sensory, or mental disability.
3. Contractor shall send to each labor union, employment agency, or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice advising the labor union, employment agency, or workers' representative of Contractor's obligations according to the Contract Documents and RCW 49.60.
4. Contractor shall permit access to its books, records, and accounts, and to its premises by Owner, and by the Washington State Human Rights Commission, for the purpose of investigation to ascertain compliance with this Part of the Contract Documents.
5. Contractor shall include the provisions of this Part in every Subcontract.
6. RCW 49.60 is incorporated herein by reference.

**C. Additionally, for Contracts funded by the Federal Aviation Administration ("FAA"):**

1. Discrimination in all tiers of employment is prohibited by, among other laws and regulations, Title VI of the Civil Rights Act of 1964, on the basis of race, creed, color, national origin or sex in the performance of the Work.
2. The Contractor shall carry out applicable requirements of 49 CFR 26 – Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs in the Award and administration of FAA Contracts.
3. Failure by the Contractor to carry out these requirements is a material breach of this Contract, which may result in the termination of this Contractor or such other remedy as the Owner deems appropriate, which may include but is not limited to:
  - a. Withholding monthly progress payments;
  - b. Assessing sanctions;
  - c. Liquidated damages; and/or
  - d. Disqualifying the Contractor from future bidding as non-responsible.

**5.07 SAFETY PRECAUTIONS**

- A. Contractor shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the performance of the Work. The Contractor shall be responsible for the safety of all workers and shall comply with all appropriate state safety and health standards, codes, rules, and regulations, including, but not limited to, those promulgated under the Washington Industry Safety and Health Act, RCW 49.17 (WISHA) and as set forth in Title 296 WAC (Washington State Department of Labor and Industries). In particular the Contractor's attention is drawn to the requirements of WAC 296-800 which requires employers to provide a safe workplace. More specifically WAC 296-800-11025 prohibits alcohol and narcotics in the workplace. The Contractor shall likewise be obligated to comply with all federal safety and health standards, codes, rules, and regulations that may be applicable to the Contract Work.
- B. In carrying out its responsibilities according to the Contract Documents, Contractor shall protect the lives and health of employees performing the Work and other persons who may be affected by the

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Work; prevent damage to materials, supplies, and equipment whether on site or stored off-site; and prevent damage to other property at the site or adjacent thereto. Contractor shall comply with all applicable laws, ordinances, rules, regulations, and orders of any public body having jurisdiction for the safety of persons or property or to protect them from damage, injury, or loss; shall erect and maintain all necessary safeguards for such safety and protection; and shall notify owners of adjacent property and utilities when prosecution of the Work may affect them.

- C. Contractor shall maintain an accurate record of exposure data on all incidents relating to the Work resulting in death, traumatic injury, occupational disease, or damage to property, materials, supplies, or equipment. Contractor shall immediately report any such incident to Owner. Owner shall, at all times, have a right of access to all records of exposure.
- D. Contractor shall provide all persons working on the Project site with information and training on hazardous chemicals used in their work at the time of their initial assignment, and whenever a new hazard is introduced into their work area.
1. Information. At a minimum, Contractor shall inform persons working on the Project site of:
    - a. The requirements of chapter 296-62 WAC, General Occupational Health Standards;
    - b. Any operations in their work area where hazardous chemicals are present; and
    - c. The location and availability of written hazard communication programs, including the required list(s) of hazardous chemicals and material safety data sheets required by chapter 296-800WAC.
  2. Training. At a minimum, Contractor shall provide training for persons working on the Project site which includes:
    - a. Methods and observations that may be used to detect the presence or release of a hazardous chemical in the work area (such as monitoring conducted by the employer, continuous monitoring devices, visual appearance or odor of hazardous chemicals when being released, etc.);
    - b. The physical and health hazards of the chemicals in the work area;
- c. The measures such persons can take to protect themselves from these hazards, including specific procedures Contractor, or its Subcontractors, or others have implemented to protect those on the Project site from exposure to hazardous chemicals, such as appropriate work practices, emergency procedures, and personal protective equipment to be used; and
- d. The details of the hazard communications program developed by Contractor, or its Subcontractors, including an explanation of the labeling system and the material safety data sheet, and how employees can obtain and use the appropriate hazard information.
- E. Contractor's responsibility for hazardous, toxic, or harmful substances shall include the following duties:
1. Contractor shall not keep, use, dispose, transport, generate, or sell on or about the Project site, any substances now or hereafter designated as, or which are subject to regulation as, hazardous, toxic, dangerous, or harmful by any federal, state or local law, regulation, statute or ordinance (hereinafter collectively referred to as "hazardous substances"), in violation of any such law, regulation, statute, or ordinance, but in no case shall any such hazardous substance be stored more than 90 days on the Project site.
  2. Contractor shall promptly notify Owner of all spills or releases of any hazardous substances which are otherwise required to be reported to any regulatory agency and pay the cost of cleanup. Contractor shall promptly notify Owner of all failures to comply with any federal, state, or local law, regulation, or ordinance; all inspections of the Project site by any regulatory entity concerning the same; all regulatory orders or fines; and all responses or interim cleanup actions taken by or proposed to be taken by any government entity or private party on the Project site.
- F. All Work shall be performed with due regard for the safety of the public. Contractor shall perform the Work so as to cause a minimum of interruption of vehicular traffic or inconvenience to pedestrians. All arrangements to care for such traffic shall be Contractor's responsibilities. All expenses involved in the maintenance of traffic by way of detours shall be borne by Contractor.

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- G. In an emergency affecting the safety of life or the Work or of adjoining property, Contractor is permitted to act, at its discretion, to prevent such threatened loss or injury, and Contractor shall also act if so authorized or instructed by Owner or authorized representative.
- H. Nothing provided in this Part shall be construed as imposing any duty upon Owner or A/E with regard to, or as constituting any express or implied assumption of control or responsibility over, Project site safety, or over any other safety conditions relating to employees or agents of Contractor or any of its Subcontractors, or the public.
- 5.08 *OPERATIONS, MATERIAL HANDLING, AND STORAGE AREAS*
- A. Contractor shall confine all operations, including storage of materials, to Owner-approved areas.
- B. Temporary buildings (e.g., storage sheds, shops, offices) and utilities may be provided by Contractor only with the consent of Owner and without expense to Owner. The temporary buildings and utilities shall remain the property of Contractor and shall be removed by Contractor at its expense upon completion of the Work.
- C. Contractor shall use only established roadways or temporary roadways authorized by Owner. When materials are transported in prosecuting the Work, vehicles shall not be loaded beyond the loading capacity recommended by the manufacturer of the vehicle or prescribed by federal, state, or local law or regulation.
- D. Materials measured and paid for by weight shall be in accordance with Section 1-09.2 of the Standard Specifications for Road, Bridge, and Municipal Construction, 2020, M 41-10, Washington State Department of Transportation, which is incorporated herein by reference, including all citations and cross-references contained within 1-09.2 on the 2020 Standard Specifications.
- E. Ownership and control of all materials or facility components to be demolished or removed from the Project site by Contractor shall immediately vest in Contractor upon severance of the component from the facility or severance of the material from the Project site. Contractor shall be responsible for compliance with all laws governing the storage and ultimate disposal. Contractor shall provide Owner with a copy of all manifests and receipts
- evidencing proper disposal when required by Owner or applicable law.
- F. Contractor shall be responsible for the proper care and protection of its materials and equipment delivered to the Project site. Materials and equipment may be stored on the premises subject to approval of Owner. When Contractor uses any portion of the Project site as a shop, Contractor shall be responsible for any repairs, patching, or cleaning arising from such use.
- G. Contractor shall protect and be responsible for any damage or loss to the Work, or to the materials or equipment until the date of Substantial Completion, and shall repair or replace without cost to Owner any damage or loss that may occur, except damages or loss caused by the acts or omissions of Owner. Contractor shall also protect and be responsible for any damage or loss to the Work, or to the materials or equipment, after the date of Substantial Completion, and shall repair or replace without cost to Owner any such damage or loss that might occur, to the extent such damages or loss are caused by the acts or omissions of Contractor, or any Subcontractor.
- 5.09 *PRIOR NOTICE OF EXCAVATION*
- Before commencing any excavation, Contractor shall provide notice of the scheduled commencement of excavation to all owners of underground facilities or utilities, through locator services.
- 5.10 *UNFORESEEN PHYSICAL CONDITIONS*
- Differing site conditions (Changed Conditions) will be handled according to Section 1-04.7 of the WSDOT 2020 Standard Specifications for Road, Bridge, and Municipal Construction M 41-10. Section 1-04.7 is included herein by reference.
- 5.11 *PROTECTION OF EXISTING STRUCTURES, EQUIPMENT, VEGETATION, UTILITIES, AND IMPROVEMENTS*
- A. Contractor shall protect from damage all existing structures, equipment, improvements, utilities, and vegetation: at or near the Project site; and on adjacent property of a third party, the locations of which are to be determined by Contractor in advance of actual physical work by Contractor. Contractor shall review and fully comply with RCW 19.122, State of Washington underground utility



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damage prevention act which is incorporated herein by reference. Contractor shall be responsible for repair of any damage, including that to the property of a third party, resulting from failure to comply with the requirements of the Contract Documents or failure to exercise reasonable care in performing the Work. If Contractor fails or refuses to repair the damage promptly, Owner may have the necessary work performed and either charge the cost to Contractor or deduct or offset the cost from any funds due Contractor.

- B. Contractor shall only remove trees when specifically authorized to do so, and shall protect vegetation that will remain in place.

**5.12 LAYOUT OF WORK**

- A. Contractor shall plan and lay out the Work in advance of operations so as to coordinate all work without delay or revision.
- B. Contractor shall lay out the Work from Owner-established baselines and bench marks indicated on the Drawings, and shall be responsible for all field measurements in connection with the layout. Contractor shall furnish, at its own expense, all stakes, templates, platforms, equipment, tools, materials, and labor required to lay out any part of the Work. Contractor shall be responsible for executing the Work to the lines and grades that may be established. Contractor shall be responsible for maintaining or restoring all stakes and other marks established.

**5.13 MATERIAL AND EQUIPMENT**

- A. All equipment, material, and articles incorporated into the Work shall be new and of the most suitable grade for the purpose intended, unless otherwise specifically provided in the Contract Documents. References in the Specifications to equipment, material, articles, or patented processes by trade name, make, or catalog number, shall be regarded as establishing a standard quality and shall not be construed as limiting competition. Contractor may, at its option, use any equipment, material, article, or process that, in the judgment of A/E, is equal to that named in the specifications, unless otherwise specifically provided in the Contract Documents.
- B. Contractor shall do all concrete saw cutting, cutting, fitting, or patching that may be required to make its several parts fit together properly, or receive or be received by work of others set forth in, or reasonably implied by, the Contract Documents. Contractor shall not endanger any work by cutting,

excavating, or otherwise altering the Work and shall not cut or alter the work of any other contractor unless approved in advance by Owner.

- C. Should any of the Work be found defective, or in any way not in accordance with the Contract Documents, this Work, in whatever stage of completion, may be rejected by Owner.

**5.14 AVAILABILITY AND USE OF UTILITY SERVICES**

- A. Owner shall make all reasonable utilities available to Contractor from existing outlets and supplies, as specified in the Contract Documents. Unless otherwise provided in the Contract Documents, the utility service consumed shall be charged to or paid for by Contractor at prevailing rates charged to Owner or, where the utility is produced by Owner, at reasonable rates determined by Owner. Owner may also deduct or offset such cost from any funds due Contractor. Contractor will carefully conserve any utilities furnished.
- B. Contractor shall, at its expense and in a skillful manner satisfactory to Owner, install and maintain all necessary temporary connections and distribution lines, together with appropriate protective devices, and all meters required to measure the amount of each utility used for the purpose of determining charges. Prior to the date of Final Acceptance, Contractor shall remove all temporary connections, distribution lines, meters, and associated equipment and materials.

**5.15 TESTS AND INSPECTION**

- A. Contractor shall maintain an adequate testing and inspection program and perform such tests and inspections as are necessary or required to ensure that the Work conforms to the requirements of the Contract Documents. Contractor shall be responsible for inspection and quality surveillance of all its Work and all Work performed by any Subcontractor. Unless otherwise provided, Contractor shall make arrangements for such tests, inspections, and approvals with an independent testing laboratory or entity acceptable to Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections, and approvals. Contractor shall give Owner timely notice of when and where tests and inspections are to be made. Contractor shall maintain complete inspection records and make them available to Owner.
- B. Owner may, at any reasonable time, conduct such inspections and tests as it deems necessary to ensure

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that the Work is in accordance with the Contract Documents. Owner shall promptly notify Contractor if an inspection or test reveals that the Work is not in accordance with the Contract Documents. Unless the subject items are expressly accepted by Owner, such Owner inspection and tests are for the sole benefit of Owner and do not:

1. Constitute or imply acceptance;
  2. Relieve Contractor of responsibility for providing adequate quality control measures;
  3. Relieve Contractor of responsibility for risk of loss or damage to the Work, materials, or equipment;
  4. Relieve Contractor of its responsibility to comply with the requirements of the Contract Documents; or
  5. Impair Owner's right to reject defective or nonconforming items, or to avail itself of any other remedy to which it may be entitled.
- C. Neither observations by an inspector retained by Owner, the presence or absence of such inspector on the site, nor inspections, tests, or approvals by others, shall relieve Contractor from any requirement of the Contract Documents, nor is any such inspector authorized to change any term or condition of the Contract Documents.
- D. Contractor shall promptly furnish, without additional charge, all facilities, labor, material and equipment reasonably needed for performing such safe and convenient inspections and tests as may be required by Owner. Owner may charge Contractor any additional cost of inspection or testing when Work is not ready at the time specified by Contractor for inspection or testing, or when prior rejection makes reinspection or retest necessary. Owner may also deduct or offset such cost from any funds due Contractor. Owner shall perform its inspections and tests in a manner that will cause no undue delay in the Work.

**5.16 CORRECTION OF NONCONFORMING WORK**

- A. If a portion of the Work is covered contrary to the requirements in the Contract Documents, it must, if required in writing by Owner, be uncovered for Owner's observation and be replaced at the Contractor's expense and without change in the Contract Time.

- B. If, at any time prior to Final Completion, Owner desires to examine the Work, or any portion of it, which has been covered, Owner may request to see such Work and it shall be uncovered by Contractor. If such Work is in accordance with the Contract Documents, the Contractor shall be entitled to an adjustment in the Contract Sum for the costs of uncovering and replacement, and, if completion of the Work is thereby delayed, an adjustment in the Contract Time, provided it makes a request therefor as provided in Part 7. If such Work is not in accordance with the Contract Documents, the Contractor shall pay the costs of examination and reconstruction.
- C. Contractor shall promptly correct Work found by Owner not to conform to the requirements of the Contract Documents, whether observed before or after Substantial Completion and whether or not fabricated, installed, or completed. Contractor shall bear all costs of correcting such nonconforming Work, including additional testing and inspections.
- D. If, within one year after the date of Final Completion of the Work or designated portion thereof, or within one year after the date for commencement of any system warranties established under Part 6.09, or within the terms of any applicable special warranty required by the Contract Documents, any of the Work is found to not be in accordance with the requirements of the Contract Documents, Contractor shall correct it promptly after receipt of written notice from Owner to do so. Owner shall give such notice promptly after discovery of the condition. This period of one year shall be extended, with respect to portions of Work first performed after Substantial Completion, by the period of time between Substantial Completion and the actual performance of the Work. Contractor's duty to correct with respect to Work repaired or replaced shall run for one year from the date of repair or replacement. Obligations under this paragraph shall survive Final Acceptance.
- E. Contractor shall remove from the Project site portions of the Work which are not in accordance with the requirements of the Contract Documents and are neither corrected by Contractor nor accepted by Owner.
- F. If Contractor fails to correct nonconforming Work within a reasonable time after written notice to do so, Owner may replace, correct, or remove the nonconforming Work and charge the cost thereof to the Contractor, or deduct or offset the cost from any funds due Contractor.

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- G. Contractor shall bear the cost of correcting destroyed or damaged Work, whether completed or partially completed, caused by Contractor's correction or removal of Work which is not in accordance with the requirements of the Contract Documents.
- H. Nothing contained in this Part shall be construed to establish a period of limitation with respect to other obligations which Contractor might have according to the Contract Documents. Establishment of the time period of one year as described in paragraph 5.16D relates only to the specific obligation of Contractor to correct the Work, and has no relationship to the time within which the Contractor's obligation to comply with the Contract Documents may be sought to be enforced, including the time within which such proceedings may be commenced.
- I. If Owner prefers to accept Work which is not in accordance with the requirements of the Contract Documents, Owner may do so instead of requiring its removal and correction, in which case the Contract Sum may be reduced as appropriate and equitable.

**5.17 CLEAN UP**

Contractor shall at all times keep the Project site, including hauling routes, infrastructures, utilities, and storage areas, free from accumulations of waste materials. Before completing the Work, Contractor shall remove from the premises its rubbish, tools, scaffolding, equipment, and materials. Upon completing the Work, Contractor shall leave the Project site in a clean, neat, and orderly condition satisfactory to Owner. If Contractor fails to clean up as provided herein, and after reasonable notice from Owner, Owner may do so and the cost thereof shall be charged to Contractor, or Owner may deduct or offset the cost from any funds due Contractor.

**5.18 ACCESS TO WORK**

Contractor shall provide Owner and A/E access to the Work in progress wherever located.

**5.19 OTHER CONTRACTS**

Owner may undertake or award other contracts for additional work at or near the Project site. Contractor shall reasonably cooperate with the other contractors and with Owner's employees and shall carefully adapt scheduling and perform the Work in accordance with these Contract Documents to reasonably accommodate the other work.

**5.20 SUBCONTRACTORS AND SUPPLIERS**

- A. Before submitting the first Application for Payment, Contractor shall furnish in writing to Owner the names, addresses, and telephone numbers of all Subcontractors, as well as suppliers providing materials in excess of \$2,500.00. Contractor shall utilize Subcontractors and suppliers which are experienced and qualified, and meet the requirements of the Contract Documents, if any. Contractor shall not utilize any Subcontractor or supplier to whom the Owner has a reasonable objection, and shall obtain Owner's written consent before making any substitutions or additions.
- B. Contractor shall, prior to final progress payment, submit Owner-approved conditional lien releases from Contractor, subcontractors and suppliers performing work or providing materials in excess of \$2,500.00. Contractor shall, prior to release of retainage, submit Owner-approved unconditional lien releases from Contractor, subcontractors and suppliers performing work or providing materials in excess of \$2,500.00. All Subcontracts must be in writing and signed by the parties thereto. By appropriate written agreement, Contractor shall require each Subcontractor, so far as applicable to the Work to be performed by the Subcontractor, to be bound to Contractor by terms of the Contract Documents, and to assume toward Contractor all the obligations and responsibilities which Contractor assumes toward Owner in accordance with the Contract Documents. Each Subcontract shall preserve and protect the rights of Owner in accordance with the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights. Where appropriate, Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. However, nothing in this paragraph shall be construed to alter the contractual relations between Contractor and its Subcontractors with respect to insurance or bonds.
- C. Contractor shall schedule, supervise, and coordinate the operations of all Subcontractors. No Subcontracting of any of the Work shall relieve Contractor from its responsibility for the performance of the Work in accordance with the Contract Documents or any other obligations of the Contract Documents.
- D. Each Subcontract for a portion of the Work is hereby assigned by Contractor to Owner provided that:
1. The assignment is effective only after termination by Owner for cause pursuant to

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Part 9.01 and only for those Subcontracts which Owner accepts by notifying the Subcontractor in writing; and

2. Owner shall have assumed in writing all future duties and obligations toward the Subcontractor which Contractor assumed in the Subcontract.
3. The assignment is subject to the prior rights of the surety, if any, obligated under any bond provided in accordance with the Contract Documents.

**5.21 WARRANTY OF CONSTRUCTION**

- A. In addition to any special warranties provided elsewhere in the Contract Documents, Contractor warrants that all Work conforms to the requirements of the Contract Documents and is free of any defect in equipment, material, or design furnished, or workmanship performed, by Contractor.
- B. With respect to all warranties, express or implied, for Work performed or materials furnished according to the Contract Documents, Contractor shall:
  1. Obtain all warranties that would be given in normal commercial practice;
  2. Require all warranties to be executed, in writing, for the benefit of Owner;
  3. Enforce all warranties for the benefit of Owner, if directed by Owner; and
  4. Be responsible to enforce any subcontractor's, manufacturer's, or supplier's warranty should they extend beyond the period specified in the Contract Documents.
- C. The obligations under this Part shall survive Final Acceptance.

**5.22 INDEMNIFICATION**

- A. The Contractor shall defend, indemnify, and hold harmless the City and County of Spokane, their elected and appointed officials, the Spokane Airport Board, their Agents, Officers, and employees; and A/E, his Agents, Officers, and employees from and against any and all suits, actions, legal or administrative proceedings, claims, demands, damages, losses, penalties, fines, costs, and expenses of whatsoever kind or character, including, but not limited to, attorneys' fees and expenses, whether for bodily injury, sickness, disease or death, or to injury to or destruction of property, including

the loss of use resulting therefrom, arising out of or in any manner caused or occasioned or claimed to be caused or occasioned by any act, error, omission, fault, or negligence of Contractor or any person or entity employed by or acting on his behalf, including, but not limited to, Subcontractors and vendors, their Subcontractors and subvendors, and the employees and agents of any of the foregoing, in connection with or incident to the Contract or the Work to be performed thereunder, except where caused by the sole negligence of the indemnitee, unless otherwise specifically provided in this Part. For suits, actions, legal or administrative proceedings, claims, demands, damages, losses, penalties, fines, costs, and expenses caused by or resulting from the concurrent negligence of the Owner and the A/E or the Owner's or A/E's agents or employees and the Contractor or the Contractor's agents or employees, in situations where liability for damages arises from claims or bodily injury to persons or damage to property, the preceding indemnity provision shall be valid and enforceable only to the extent of the Contractor's negligence.

Without limiting the foregoing, Contractor shall defend, indemnify, and hold harmless the City and County of Spokane, the Spokane Airport Board, their agents, officers and employees from and against any and all suits, actions, legal or administrative proceedings, claims, demands, damages, penalties, fines, costs, and expenses of whatsoever kind or character, including, but not limited to, attorneys' fees and expenses, arising out of or by reason of any damage or injuries (including death to any person or entity employed by or acting on Contractor's behalf under this Contract, except where caused by the sole negligence of the indemnitee, unless otherwise specifically provided in this Part. For suits, actions, legal or administrative proceedings, claims, demands, damages, losses, penalties, fines, costs, and expenses caused by or resulting from the concurrent negligence of the Owner and the A/E or the Owner's or A/E's agents or employees and the Contractor or the Contractor's agents or employees, in situations where liability for damages arises from claims of bodily injury to persons or damage to property, the preceding indemnity provision shall be valid and enforceable only to the extent of the Contractor's negligence.

The obligation of the Contractor under this Article shall not extend to the liability of the Owner and his agents or employees arising out of the preparation or approval of maps, drawings, reports, surveys, Change Orders, designs, or specifications.

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Contractor acknowledges that by entering into a Contract with Owner, he has mutually negotiated the above indemnity provisions with the Owner and knowingly waives all defenses regarding the validity or effectiveness of the same.

Contractor's indemnity and defense obligations shall survive the termination or completion of the Contract and remain in full force and effect until satisfied in full.

**PART 6 – PAYMENTS AND COMPLETION**

*6.01 CONTRACT SUM*

Owner shall pay Contractor the Contract Sum for performance of the Work, in accordance with the Contract Documents. The Contract Sum shall include all taxes imposed by law and properly chargeable to the Project, including sales tax.

*6.02 SCHEDULE OF VALUES*

Before submitting its first Application for Payment, Contractor shall submit to Owner for approval a breakdown allocating the total Contract Sum to each principal category of work, in such detail as requested by Owner ("Schedule of Values"). The approved Schedule of Values shall include appropriate amounts for demobilization, record drawings, O&M manuals, and any other requirements for Project closeout, and shall be used by Owner as the basis for progress payments. Payment for Work shall be made only for and in accordance with those items included in the Schedule of Values.

*6.03 UNIT ITEMS*

For unit items paid for by weight, the Contractor shall provide Owner with each load ticket of material delivered to Project site for each individual truck load on the same day of delivery. Contractor waives all rights and/or claims for payment of any material delivered to Project site for which Contractor does not provide Owner with a load ticket evidencing such material on the same day as delivery.

*6.04 APPLICATION FOR PAYMENT*

- A. At monthly intervals, unless determined otherwise by Owner, Contractor shall submit to Owner an itemized Application for Payment for Work completed in accordance with the Contract Documents and the approved Schedule of Values. Each application shall be supported by such substantiating data as Owner may require.
- B. By submitting an Application for Payment, Contractor is certifying that all Subcontractors have

been paid, less earned retainage in accordance with RCW 60.28.011, as their interests appeared in the last preceding certificate of payment. By submitting an Application for Payment, Contractor is recertifying that the representations set forth in Part 1.03 are true and correct, to the best of Contractor's knowledge, as of the date of the Application for Payment.

- C. At the time it submits an Application for Payment, Contractor shall analyze and reconcile, to the satisfaction of Owner, the actual progress of the Work with the Progress Schedule.
- D. If authorized by Owner, the Application for Payment may include request for payment for material delivered to the Project site and suitably stored, or for completed preparatory work. Payment may similarly be requested for material stored off the Project site, provided Contractor complies with or furnishes satisfactory evidence of the following:
1. The material will be placed in a warehouse that is structurally sound, dry, lighted and suitable for the materials to be stored;
  2. The warehouse is located within a 10-mile radius of the Project. Other locations may be utilized, if approved in writing, by Owner;
  3. Only materials for the Project are stored within the warehouse (or a secure portion of a warehouse set aside for the Project);
  4. Contractor furnishes Owner a certificate of insurance extending Contractor's insurance coverage for damage, fire, and theft to cover the full value of all materials stored, or in transit;
  5. The warehouse (or secure portion thereof) is continuously under lock and key, and only Contractor's authorized personnel shall have access;
  6. Owner shall at all times have the right of access in company of Contractor;
  7. Contractor and its surety assume total responsibility for the stored materials; and
  8. Contractor furnishes to Owner certified lists of materials stored, bills of lading, invoices, and other information as may be required, and shall also furnish notice to Owner when materials are moved from storage to the Project site.

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**6.05 PROGRESS PAYMENTS**

- A. Owner shall make progress payments, in such amounts as Owner determines are properly due, within 30 days after receipt of a properly executed Application for Payment. Owner shall notify Contractor in accordance with RCW 39.76.020 if the Application for Payment does not comply with the requirements of the Contract Documents.
- B. Unless funded in whole or in part by Federal funds, Owner shall retain 5% of the amount of each progress payment until 45 days after Final Acceptance and receipt of all documents required by law or the Contract Documents, including, at Owner's request, consent of surety to release of the retainage. In accordance with RCW 60.28, Contractor may request that monies reserved be retained in a fund by Owner, deposited by Owner in a bank or savings and loan, or placed in escrow with a bank or trust company to be converted into bonds and securities to be held in escrow with interest to be paid to Contractor.
- C. Title to all Work and materials covered by a progress payment shall pass to Owner at the time of such payment free and clear of all liens, claims, security interests, and encumbrances. Passage of title shall not, however, relieve Contractor from any of its duties and responsibilities for the Work or materials, or waive any rights of Owner to insist on full compliance by Contractor with the Contract Documents.
- D. Payments due and unpaid in accordance with the Contract Documents shall bear interest as specified in RCW 39.76.

**6.06 PAYMENTS WITHHELD**

- A. Owner may withhold or, on account of subsequently discovered evidence, nullify the whole or part of any payment to such extent as may be necessary to protect Owner from loss or damage for reasons including but not limited to:
  - 1. Work not in accordance with the Contract Documents and/or otherwise allow for deduction or offset from any funds due Contractor in accordance with the Contract Documents;
  - 2. Reasonable evidence that the Work required by the Contract Documents cannot be completed for the unpaid balance of the Contract Sum;

- 3. Work by Owner to correct defective Work or complete the Work in accordance with Parts 5.16 and 5.17;
- 4. Failure to perform in accordance with the Contract Documents; or
- 5. Cost or liability that may occur to Owner as the result of Contractor's fault or negligent acts or omissions, including fines for acts of non-compliance with security regulations.
- 6. Overtime work by Owner's Representative and assessed liquidated damages.

- B. In any case where part or all of a payment is going to be withheld for unsatisfactory performance, Owner shall notify Contractor in accordance with RCW 39.76.020.

**6.07 RETAINAGE AND BOND CLAIM RIGHTS**

RCW chapters 39.08 and 60.28, concerning the rights and responsibilities of Contractor and Owner with regard to the performance and payment bonds and retainage, are made a part of the Contract Documents by reference as though fully set forth herein.

**6.08 SUBSTANTIAL COMPLETION**

- A. Substantial Completion is the stage in the progress of the Work (or portion thereof designated and approved by Owner) when the construction is sufficiently complete, in accordance with the Contract Documents, so Owner can fully occupy the Work (or the designated portion thereof) for the use for which it is intended. All Work other than incidental corrective or punch list work shall be completed. Substantial Completion shall not have been achieved if all systems and parts are not functional, if utilities are not connected and operating normally, if all required occupancy permits have not been issued, or if the Work is not accessible by normal vehicular and pedestrian traffic routes. The date Substantial Completion is achieved shall be established in writing by Owner. Once Substantial Completion is achieved, the Contractor will not be charged additional time under the Contract unless the Contractor fails to diligently work towards Final Completion. Owner's occupancy of the Work or designated portion thereof does not necessarily indicate that Substantial Completion has been achieved. Once Substantial Completion is achieved, the Contractor will have 10 days to schedule a punchlist walkthrough at a time mutually convenient to the parties. Once the punchlist is complete and received by the Contractor, the Contractor shall have

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14 days to achieve Final Completion. If the Contractor fails to achieve contract completion within that timeframe, Contract Time will be re-started. Once Contractor achieves Final Completion, Contractor shall notify Owner in writing of same, and schedule a Final Inspection.

- B. Once Substantial Completion is achieved, the Contractor shall have 90 days to reconcile quantities with the Owner. The agreed upon quantities shall then be included in the following Application for Payment. Contractor waives all rights and/or claims for payment for any quantities in which Contractor did not reconcile quantities pursuant to this Part 6.08(B).

**6.09 PRIOR OCCUPANCY**

- A. Owner may, upon written notice thereof to Contractor, take possession of or use any completed or partially completed portion of the Work ("Prior Occupancy") at any time prior to Substantial Completion. Unless otherwise agreed in writing, Prior Occupancy shall not: be deemed an acceptance of any portion of the Work; accelerate the time for any payment to Contractor; prejudice any rights of Owner provided by any insurance, bond, guaranty, or the Contract Documents; relieve Contractor of the risk of loss or any of the obligations established by the Contract Documents; establish a date for termination or partial termination of the assessment of liquidated damages; or constitute a waiver of claims.
- B. Notwithstanding anything in the preceding paragraph, Owner shall be responsible for loss of or damage to the Work resulting from Prior Occupancy, but only if such loss or damage is attributable to Owner. Contractor's one year duty to repair and any system warranties shall begin on building systems activated and used by Owner as agreed in writing by Owner and Contractor.

**6.10 FINAL COMPLETION, ACCEPTANCE, AND PAYMENT**

- A. Final Completion shall be achieved when the Work is fully and finally complete in accordance with the Contract Documents. The date Final Completion is achieved shall be established by Owner in writing.
- B. Final Acceptance is the formal action of Owner acknowledging in writing Final Completion. Prior to Final Acceptance, Contractor shall, in addition to all other requirements in the Contract Documents, submit to Owner a written notice of

any outstanding disputes or claims between Contractor and any of its Subcontractors, including the amounts and other details thereof. Neither Final Acceptance, nor final payment, shall release Contractor or its sureties from any obligations of these Contract Documents or the Bonds required by this Contract, or constitute a waiver of any claims by Owner arising from Contractor's failure to perform the Work in accordance with the Contract Documents.

- C. Acceptance of final payment by Contractor, or any Subcontractor, shall constitute a waiver and release to Owner of all claims by Contractor, or any such Subcontractor, for an increase in the Contract Sum or the Contract Time, and for every act or omission of Owner relating to or arising out of the Work, except for those Claims made in accordance with the procedures, including the time limits, set forth in Part 8.

**PART 7 – CHANGES**

**7.01 CHANGES IN THE WORK**

- A. Owner may, at any time and without notice to Contractor's surety, order additions, deletions, revisions, or other changes in the Work. These changes in the Work shall be incorporated into the Contract Documents through the execution of written Contract Change Directive (CCD), which are ultimately incorporated into Change Orders. If any change in the Work ordered by Owner causes an increase or decrease in the Contract Sum or the Contract Time, an equitable adjustment shall be made as provided in Part 7.02 or 7.03, respectively, and such adjustment(s) shall be incorporated into a Change Order.
- B. If Owner desires to order a change in the Work, it may request a written proposal from Contractor. Contractor shall submit a proposal within 7 days of the request from Owner, or within such other period as mutually agreed. Contractor's proposal shall be full compensation for implementing the proposed change in the Work, including any adjustment in the Contract Sum or Contract Time, and including compensation for all delays in connection with such change in the Work and for any expense or inconvenience, disruption of schedule, or loss of efficiency or productivity occasioned by the change in the Work.
- C. Upon receipt of the proposal, or a request for equitable adjustment in the Contract Sum or Contract Time, or both, as provided in Parts 7.02 and 7.03, Owner may accept or reject the proposal,

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request further documentation, or negotiate acceptable terms with Contractor. Pending agreement on the terms of the Change, Owner may direct Contractor to proceed immediately with the Work. Contractor shall not proceed with any change in the Work until it has obtained Owner's approval. All Work done pursuant to any Owner-directed change in the Work shall be executed in accordance with the Contract Documents.

D. If Owner and Contractor reach agreement on the terms of any change in the Work, including any adjustment in the Contract Sum or Contract Time, such agreement shall be incorporated in a CCD, which will become a Change Order once authorized by the Owner. The Change Order shall constitute full payment and final settlement of all claims for time and for direct, indirect, and consequential costs, including costs of delays, inconvenience, disruption of schedule, or loss of efficiency or productivity, related to any Work either covered or affected by the Change Order, or related to the events giving rise to the request for equitable adjustment.

E. If Owner and Contractor are unable to reach agreement on the terms of any change in the Work, including any adjustment in the Contract Sum or Contract Time, Contractor may at any time in writing, request a final offer from Owner. Owner shall provide Contractor with its written response within 30 days of Contractor's request. Owner may also provide Contractor with a final offer at any time. If Contractor rejects Owner's final offer, or the parties are otherwise unable to reach an agreement, Contractor's only remedy shall be to file a Claim as provided in Part 8.

#### 7.02 CHANGE IN CONTRACT SUM

##### A. General Application

1. The Contract Sum shall only be changed by a Change Order. Contractor shall include any request for a change in the Contract Sum in its Change Order proposal.
2. If the cost of Contractor's performance is changed due to the fault or negligence of Owner, or anyone for whose acts Owner is responsible, Contractor shall be entitled to make a request for an equitable adjustment in the Contract Sum in accordance with the following procedure. No change in the Contract Sum shall be allowed to the extent: Contractor's changed cost of performance is due to the fault or negligence of Contractor, or

anyone for whose acts Contractor is responsible; the change is concurrently caused by Contractor and Owner; or the change is caused by an act of Force Majeure as defined in Part 3.05.

a. A request for an equitable adjustment in the Contract Sum shall be based on written notice delivered to Owner within 7 days of the occurrence of the event giving rise to the request. For purposes of this Part, "occurrence" means when Contractor knew, or in its diligent prosecution of the Work should have known, of the event giving rise to the request. If Contractor believes it is entitled to an adjustment in the Contract Sum, Contractor shall immediately notify Owner and begin to keep and maintain complete, accurate, and specific daily records. Contractor shall give Owner access to any such records and, if requested shall promptly furnish copies of such records to Owner.

b. Contractor shall not be entitled to any adjustment in the Contract Sum for any occurrence of events or costs that occurred more than 7 days before Contractor's written notice to Owner. The written notice shall set forth, at a minimum, a description of: the event giving rise to the request for an equitable adjustment in the Contract Sum; the nature of the impacts to Contractor and its Subcontractors of any tier, if any; and to the extent possible the amount of the adjustment in Contract Sum requested. Failure to properly give such written notice shall, to the extent Owner's interests are prejudiced, constitute a waiver of Contractor's right to an equitable adjustment.

c. Within 15 days of the occurrence of the event giving rise to the request, unless Owner agrees in writing to allow an additional period of time to ascertain more accurate data, Contractor shall supplement the written notice provided in accordance with paragraph 7.02A above with additional supporting data. Such additional data shall include, at a minimum: the amount of compensation requested, itemized in accordance with the procedure set forth herein; specific facts, circumstances, and analysis that



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confirms not only that Contractor suffered the damages claimed, but that the damages claimed were actually a result of the act, event, or condition complained of and that the Contract Documents provide entitlement to an equitable adjustment to Contractor for such act, event, or condition; and documentation sufficiently detailed to permit an informed analysis of the request by Owner. When the request for compensation relates to a delay, or other change in Contract Time, Contractor shall demonstrate the impact on the critical path, in accordance with paragraph 7.03C. Failure to provide such additional information and documentation within the time allowed or within the format required shall, to the extent Owner's interests are-prejudiced, constitute a waiver of Contractor's right to an equitable adjustment.

- d. Pending final resolution of any request made in accordance with this paragraph, unless otherwise agreed in writing, Contractor shall proceed diligently with performance of the Work.
  - e. Any requests by Contractor for an equitable adjustment in the Contract Sum and in the Contract Time that arise out of the same event(s) shall be submitted together.
3. The value of any Work covered by a Change Order, or of any request for an equitable adjustment in the Contract Sum, shall be determined by one of the following methods:
- a. On the basis of a fixed price as determined in paragraph 7.02B.
  - b. By application of unit prices to the quantities of the items involved as determined in paragraph 7.02C.
  - c. On the basis of time and material as determined in paragraph 7.02D.
4. When Owner has requested Contractor to submit a Change Order proposal, Owner may direct Contractor as to which method in Part 7.02A3 to use when submitting its proposal. Otherwise, Contractor shall determine the value of the Work, or of a request for an equitable adjustment, on the basis of the fixed price method.

**B. Change Order Pricing -- Fixed Price**

When the fixed price method is used to determine the value of any Work covered by a Change Order, or of a request for an equitable adjustment in the Contract Sum, the following procedures shall apply:

- 1. Contractor's Change Order proposal, or request for adjustment in the Contract Sum, shall be accompanied by a complete itemization of the costs, including labor, material, subcontractor costs, and overhead and profit. The costs shall be itemized in the manner set forth below, and shall be submitted on breakdown sheets in a form approved by Owner.
- 2. All costs shall be calculated based upon appropriate industry standard methods of calculating labor, material, equipment, overhead, profit, bond and insurance costs.
- 3. If any of Contractor's pricing assumptions are contingent upon anticipated actions of Owner, Contractor shall clearly state such assumptions in the proposal or request for an equitable adjustment.
- 4. The cost of any additive or deductive changes in the Work shall be calculated as set forth below, except that overhead and profit shall not be included on deductive changes in the Work. Where a change in the Work involves additive and deductive work by the same Contractor or Subcontractor, overhead, profit, bond and insurance markups will apply to the net difference.
- 5. If the total cost of the change in the Work or request for equitable adjustment does not exceed \$1,000, Contractor shall not be required to submit a breakdown if the description of the change in the Work or request for equitable adjustment is sufficiently definitive for Owner to determine fair value.
- 6. Any request for adjustment of Contract Sum based upon the fixed price method shall be subject to the following maximum markup percentages:
  - a. Contractor costs: This is defined as payments to Contractor for changed Work performed by Contractor. The maximum markup percentages for Contractor costs shall be a single markup percentage not-to-exceed ten percent (10%) of the net direct

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costs of: (1) direct labor and allowable labor burden costs applicable solely to the Change Order; (2) net cost of material and equipment incorporated solely into the Work covered by a Change Order; and (3) net rental cost of major equipment and related fuel costs solely necessary to complete the Work covered by a Change Order.

- b. Subcontractor costs: This is defined as payments Contractor makes to Subcontractors for changed Work performed by Subcontractors of any tier. The Subcontractors' cost of Work shall be calculated and itemized in the same manner as prescribed herein for Contractor. The maximum markup percentages for Subcontractor costs shall be a single markup percentage not-to-exceed five percent (5%) of the net direct costs of all Work covered by a Change Order and performed by a Subcontractor.

C. Change Order Pricing -- Unit Prices

- 1. Whenever Owner authorizes Contractor to perform Work on a unit-price basis, Owner's authorization shall clearly state:
  - a. Scope of Work to be performed;
  - b. Type of reimbursement including pre-agreed rates for material quantities; and
  - c. Cost limit of reimbursement.
- 2. Contractor shall:
  - a. Cooperate with Owner and assist in monitoring the Work being performed. As requested by Owner, Contractor shall identify workers assigned to the Change Order Work and areas in which they are working;
  - b. Leave access as appropriate for quantity measurement; and
  - c. Not exceed any cost limit(s) without Owner's prior written approval.
- 3. Contractor shall submit costs in accordance with paragraph 7.02B and satisfy the following requirements:

- a. Unit prices shall include reimbursement for all direct and indirect costs of the Work, including overhead and profit, and bond and insurance costs; and
- b. Quantities must be supported by field measurement statements signed by Owner.

D. Change Order Pricing -- Time-and-Material Prices

- 1. Whenever Owner authorizes Contractor to perform Work on a time-and-material basis, Owner's authorization shall clearly state:
  - a. Scope of Work to be performed;
  - b. Type of reimbursement including pre-agreed rates, if any, for material quantities or labor; and
  - c. Cost limit of reimbursement.
- 2. Contractor shall:
  - a. Cooperate with Owner and assist in monitoring the Work being performed. As requested by Owner, identify workers assigned to the Change Order Work and areas in which they are working;
  - b. Identify on daily time sheets all labor performed in accordance with said authorization. Submit copies of daily time sheets within 2 working days for Owner's review;
  - c. Leave access as appropriate for quantity measurement;
  - d. Perform all Work in accordance with this Part as efficiently as possible; and
  - e. Not exceed any cost limit(s) without Owner's prior written approval.
- 3. Contractor shall submit costs in accordance with paragraph 7.02B and additional verification supported by:
  - a. Labor detailed on daily time sheets; and
  - b. Invoices for material.

7.03 *CHANGE IN THE CONTRACT TIME*

- A. The Contract Time shall only be changed by a Change Order. Contractor shall include any request

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for a change in the Contract Time in its Change Order proposal.

B. If the time of Contractor's performance is changed due to an act of Force Majeure, or due to the fault or negligence of Owner or anyone for whose acts Owner is responsible, Contractor shall be entitled to make a request for an equitable adjustment in the Contract Time in accordance with the following procedure. No adjustment in the Contract Time shall be allowed to the extent Contractor's changed time of performance is due to the fault or negligence of Contractor, or anyone for whose acts Contractor is responsible.

1. A request for an equitable adjustment in the Contract Time shall be based on written notice delivered within 7 days of the occurrence of the event giving rise to the request. If Contractor believes it is entitled to adjustment of Contract Time, Contractor shall immediately notify Owner and begin to keep and maintain complete, accurate, and specific daily records. Contractor shall give Owner access to any such record and if requested, shall promptly furnish copies of such record to Owner.
2. Contractor shall not be entitled to an adjustment in the Contract Time for any events that occurred more than 7 days before Contractor's written notice to Owner. The written notice shall set forth, at a minimum, a description of: the event giving rise to the request for an equitable adjustment in the Contract Time; the nature of the impacts to Contractor and its Subcontractors of any tier, if any; and to the extent possible, the amount of the adjustment in Contract Time requested. Failure to properly give such written notice shall, to the extent Owner's interests are prejudiced, constitute a waiver of Contractor's right to an equitable adjustment.
3. Within 30 days of the occurrence of the event giving rise to the request, unless Owner agrees in writing to allow an additional period of time to ascertain more accurate data, Contractor shall supplement the written notice provided in accordance with paragraph 7.03B(2) with additional supporting data. Such additional data shall include, at a minimum: the amount of delay claimed, itemized in accordance with the procedure set forth herein; specific facts, circumstances, and analysis that confirms not only that Contractor suffered the delay claimed, but that the delay claimed was actually a result of the act, event, or condition complained of,

and that the Contract Documents provide entitlement to an equitable adjustment in Contract Time for such act, event, or condition; and supporting documentation sufficiently detailed to permit an informed analysis of the request by Owner. Failure to provide such additional information and documentation within the time allowed or within the format required shall, to the extent Owner's interests are prejudiced, constitute a waiver of Contractor's right to an equitable adjustment.

4. Pending final resolution of any request in accordance with this paragraph, unless otherwise agreed in writing, Contractor shall proceed diligently with performance of the Work.

C. Any change in the Contract Time covered by a Change Order, or based on a request for an equitable adjustment in the Contract Time, shall be limited to the change in the critical path of Contractor's schedule attributable to the change of Work or event(s) giving rise to the request for equitable adjustment. Any Change Order proposal or request for an adjustment in the Contract Time shall demonstrate the impact on the critical path of the schedule. Contractor shall be responsible for showing clearly on the Progress Schedule that the change or event: had a specific impact on the critical path, and except in case of concurrent delay, was the sole cause of such impact; and could not have been avoided by resequencing of the Work or other reasonable alternatives.

D. Contractor may request compensation for the cost of a change in Contract Time in accordance with this paragraph, 7.03D, subject to the following conditions:

1. The change in Contract Time shall solely be caused by the fault or negligence of Owner, A/E or Force Majeure;
2. Compensation under this paragraph is limited to changes in Contract Time for which Contractor is not entitled to be compensated under Part 7.02;
3. Contractor shall follow the procedure set forth in paragraph 7.03B;
4. Contractor shall establish the extent of the change in Contract Time in accordance with paragraph 7.03C; and
5. The daily cost of any change in Contract Time shall be limited to the items below, less funds

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that may have been paid pursuant to a change in the Contract Sum that contributed to this change in Contract Time:

- a. Cost of nonproductive field supervision or;
- b. Cost of weekly meetings or similar indirect activities extended because of the delay;
- c. Cost of temporary facilities or equipment rental extended because of the delay;
- d. Cost of insurance extended because of the delay;
- e. General and administrative overhead in an amount to be agreed upon, but not to exceed 3% of Contract Sum divided by the Contract Time for each day of the delay.

**7.04 DIFFERING SITE CONDITIONS**

The parties agree that differing site conditions (Changed Conditions) will be handled in complete accordance with Section 1-04.7 of the Standard Specifications for Road, Bridge, and Municipal Construction, 2020, M 41-10, Washington State Department of Transportation, which is attached hereto by reference, including all citations and cross-references contained within 1-04.7, Section 1-08.8, 1-09.4, 1-05.1, 1-04.5, and 1-09.11 on the 2020 Standard Specifications. If there is a conflict between the Standard Specification and these General Conditions, the Standard Specifications shall govern.

**PART 8 – CLAIMS & DISPUTE RESOLUTION**

**8.01 CLAIMS ET AL**

The parties agree that disputes and claims will be handled in complete accordance with the Standard Specifications for Road, Bridge and Municipal Construction, 2020, M 41-10, Washington State Department of Transportation, the following sections of which are made a part of this Contract and are attached hereto by reference: Section 1-03.7, Judicial Review; Section 1-04.4, Changes; Section 1-04.5, Procedure & Protest by the Contractor; Section 1-04.7, Differing Site Conditions (Changed Conditions); Section 1-08.10 Termination of Contract, Section 1-09.11, Disputes & Claims; Section 1-09.12, Audits; and Section 1-09.13, Claims Resolution. If there is a conflict between any other portion of these General Conditions and the 2020 Standard Specifications, referenced above, the Standard Specifications shall govern.

**PART 9 – TERMINATION OF WORK**

**9.01 TERMINATION BY OWNER FOR CAUSE**

- A. Owner may, upon 7 days written notice to Contractor, terminate (without prejudice to any right or remedy of Owner) the Work, or any part of it, for cause upon the occurrence of any one or more of the following events:
1. Contractor fails to prosecute the Work or any portion thereof with sufficient diligence to ensure Substantial Completion of the Work within the Contract Time;
  2. Contractor is adjudged bankrupt, makes a general assignment for the benefit of its creditors, or a receiver is appointed on account of its insolvency;
  3. Contractor fails in a material way to replace or correct Work not in conformance with the Contract Documents;
  4. Contractor repeatedly fails to supply skilled workers or proper materials or equipment, as determined in the sole discretion of Owner;
  5. Contractor repeatedly fails to make prompt payment due to Subcontractors or for labor;
  6. Contractor materially disregards or fails to comply with laws, ordinances, rules, regulations, or orders of any public authority having jurisdiction; or
  7. Contractor is otherwise in material breach of any provision of the Contract Documents.
- B. Upon termination, Owner may at its option:
1. Take possession of the Project site and take possession of or use all materials, equipment, tools, and construction equipment and machinery thereon owned by Contractor to maintain the orderly progress of, and to finish, the Work;
  2. Accept assignment of subcontracts pursuant to Part 5.20; and
  3. Finish the Work by whatever other reasonable method it deems expedient.
- C. Owner's rights and duties upon termination are subject to the prior rights and duties of the surety, if any, obligated under any bond provided in accordance with the Contract Documents.

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- D. When Owner terminates the Work in accordance with this Part, Contractor shall take the actions set forth in paragraph 9.02(B), and shall not be entitled to receive further payment until the Work is accepted.
- E. If the unpaid balance of the Contract Sum exceeds the cost of finishing the Work, including compensation for A/E's services and expenses made necessary thereby and any other extra costs or damages incurred by Owner in completing the Work, or as a result of Contractor's actions, such excess shall be paid to Contractor. If such costs exceed the unpaid balance, Contractor shall pay the difference to Owner. These obligations for payment shall survive termination.
- F. Termination of the Work in accordance with this Part shall not relieve Contractor or its surety of any responsibilities for Work performed.
- G. If Owner terminates Contractor for cause, and it is later determined that none of the circumstances set forth in paragraph 9.01A exist, then such termination shall be deemed a termination for convenience pursuant to Part 9.02.

**9.02 TERMINATION BY OWNER FOR CONVENIENCE**

- A. Owner may, upon written notice, terminate (without prejudice to any right or remedy of Owner) the Work, or any part of it, for the convenience of Owner.
- B. Unless Owner directs otherwise, after receipt of a written notice of termination for either cause or convenience, Contractor shall promptly:
  - 1. Stop performing Work on the date and as specified in the notice of termination;
  - 2. Place no further orders or subcontracts for materials, equipment, services or facilities, except as may be necessary for completion of such portion of the Work as is not terminated;
  - 3. Cancel all orders and subcontracts, upon terms acceptable to Owner, to the extent that they relate to the performance of Work terminated;
  - 4. Assign to Owner all of the right, title, and interest of Contractor in all orders and subcontracts;
  - 5. Take such action as may be necessary or as directed by Owner to preserve and protect the Work, Project site, and any other property related to this Project in the possession of Contractor in which Owner has an interest; and

- 6. Continue performance only to the extent not terminated.

- C. If Owner terminates the Work or any portion thereof for convenience, Contractor shall be entitled to make a request for an equitable adjustment for its reasonable direct costs incurred prior to the effective date of the termination, plus a reasonable allowance for overhead and profit on Work performed prior to termination, plus the reasonable administrative costs of the termination, but shall not be entitled to any other costs or damages, whatsoever, provided however, the total sum payable upon termination shall not exceed the Contract Sum reduced by prior payments. Contractor shall be required to make its request in accordance with the provisions of Part 7.
- D. If Owner terminates the Work or any portion thereof for convenience, the Contract Time shall be adjusted as determined by Owner.

**PART 10 – MISCELLANEOUS PROVISIONS**

**10.01 GOVERNING LAW**

The Contract Documents and the rights of the parties herein shall be governed by the laws of the state of Washington. Venue shall be the Superior Court of Spokane County, WA.

**10.02 SUCCESSORS AND ASSIGNS**

Owner and Contractor respectively bind themselves, their partners, successors, assigns, and legal representatives to the other party hereto and to partners, successors, assigns, and legal representatives of such other party in respect to covenants, agreements, and obligations contained in the Contract Documents. Neither party shall assign the Work without written consent of the other. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations set forth in the Contract Documents.

**10.03 MEANING OF WORDS**

Unless otherwise stated in the Contract Documents, words which have well-known technical or construction industry meanings are used in the Contract Documents in accordance with such recognized meanings. Reference to standard specifications, manuals, or codes of any technical society, organization, or association, or to the code of any governmental authority, whether such reference be specific or by implication, shall be to the latest standard specification, manual, or code in effect on the date for

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submission of bids, except as may be otherwise specifically stated. Reference to the Revised Code of Washington or Washington Administrative Code shall be the code provision in effect or as may be amended. Wherever in the Drawings and Specifications an article, device, or piece of equipment is referred to in the singular manner, such reference shall apply to as many such articles as are shown on the drawings, or required to complete the installation.

*10.04 RIGHTS AND REMEDIES*

No action or failure to act by Owner or A/E shall constitute a waiver of a right or duty afforded them under the Contract Documents, nor shall such action or failure to act constitute approval of an acquiescence in a breach therein, except as may be specifically agreed in writing.

*10.05 CONTRACTOR REGISTRATION*

Pursuant to RCW 39.06, Contractor shall be registered or licensed as required by the laws of the State of Washington, including but not limited to RCW 18.27.

*10.06 TIME COMPUTATIONS*

When computing any period of time, the day of the event from which the period of time begins shall not be counted. The last day is counted unless it falls on a weekend or legal holiday, in which event the period runs until the end of the next day that is not a weekend or holiday. When the period of time allowed is less than 7 days, intermediate Saturdays, Sundays, and legal holidays are excluded from the computation.

*10.07 RECORDS RETENTION*

The wage, payroll, and cost records of Contractor, and its Subcontractors, and all records created or used for the work performed pursuant to this Contract, shall be retained for a period of not less than 6 years after the date of Final Acceptance.

*10.08 THIRD-PARTY AGREEMENTS*

The Contract Documents shall not be construed to create a contractual relationship of any kind between: A/E and Contractor; Owner and any Subcontractor; or any persons other than Owner and Contractor.

*10.09 ANTITRUST ASSIGNMENT*

Owner and Contractor recognize that in actual economic practice, overcharges resulting from antitrust violations are in fact usually borne by the purchaser. Therefore, Contractor hereby assigns to Owner any and all claims for such overcharges as to goods, materials, and equipment

purchased in connection with the Work performed in accordance with the Contract Documents, except as to overcharges which result from antitrust violations commencing after the Contract Sum is established and which are not passed on to Owner under a Change Order. Contractor shall put a similar clause in its Subcontracts, and require a similar clause in its sub-Subcontracts, such that all claims for such overcharges on the Work are passed to Owner by Contractor.

*10.10 PAY FOR UNITS CONSTRUCTED*

Section 1-09.9, Payments, and Section 1-09.9(1) Retainage, of the WSDOT 2020 Standard Specifications, M 41-10, is incorporated herein by reference.

*10.11 SUSPENSION OF WORK*

Section 1-08.6, Suspension of Work, of the WSDOT 2020 Standard Specifications, M 41-10, is incorporated herein by reference.

*10.12 MAINTENANCE DURING SUSPENSION*

Section 1-08.7, Maintenance During Suspension, of the WSDOT 2020 Standard Specifications, M 41-10, is incorporated herein by reference.

*10.13 EXTENSIONS OF TIME*

Section 1-08.8, Extensions of Time, of the WSDOT 2020 Standard Specifications, M 41-10, is incorporated herein by reference.

*10.14 TEMPORARY WATER POLLUTION/EROSION CONTROL*

Section 1-07.15, Temporary Water Pollution Prevention, of the WSDOT 2020 Standard Specifications, M 41-10, is incorporated herein by reference.

*10.15 CONTROL OF MATERIAL*

The following sections of the WSDOT 2020 Standard Specifications, M 41-10, are incorporated herein by reference: 1-06.1, Approval of Materials Prior to Use; 1-06.1 (1), Qualified Products List; 1-06.1 (2), Request for Approval of Material; 1-06.2 (1) Samples and Tests for Acceptance.

*10.16 ARCHAEOLOGICAL AND HISTORICAL OBJECTS*

Section 1-07.16(4), Archaeological and Historical Objects, of the WSDOT 2020 Standard Specifications, M 41-10, is incorporated herein by reference

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*10.17 TEMPORARY TRAFFIC CONTROL*

Section 1-10, Temporary Traffic Control, of the WSDOT 2020 Standard Specifications, M 41-10, is incorporated herein by reference.

*10.18 AIRPORT SECURITY PLAN VIOLATIONS*

Contractor shall comply with the Airport Security Program (ASP); 49 CFR 1542. Failure to comply with the ASP will result in a \$1,000.00 fine per violation incident. Upon the third violation, the Contractor may be subject to review by the Airport Board. All fines and or violations against Owner due to Contractor fault or negligence will be assessed against the Contractor and withheld from progress payments per Part 6.05. Actions by the Owner may include, but not limited to, removal of Contractor and/or Subcontractor(s) from project, Suspension of Work per Section 1-08.6, and Termination for Default per Section 1-08.10(1), of the WSDOT 2020 Standard Specifications M 41-10.

*10.19 LITIGATION COSTS AND EXPENSES*

If either Owner or Contractor institutes any legal suit, action or proceeding against the other party to enforce the Contract Documents, the prevailing party in the suit, action or proceeding is entitled to receive, and the non-prevailing shall pay, in addition to all other remedies to which the prevailing party may be entitled, the costs and expenses incurred by the prevailing party in conducting the suit, action or proceeding, including actual attorneys' fees, expenses, and court costs, even if not recoverable by law (including, without limitation, all fees, taxes, costs and expenses incident to appellate, bankruptcy and post-judgment proceedings).