

PROFESSIONAL SERVICES AGREEMENT

For

THIS AGREEMENT, made and entered into this _____ day of _____, 2010, by and between the SPOKANE AIRPORT BOARD, created pursuant to the provisions of Section 14.08.200 of the Revised Code of Washington, as an agency of the City and County of Spokane, municipal corporations of the State of Washington, hereinafter referred to as "Board," and _____, a company organized and existing under the laws of the State of _____, hereinafter referred to as "Consultant."

Consultant shall provide _____ services for the _____ Project at the Spokane International Airport(s). Said _____ services shall be in accordance with the Scope of Work - Exhibit A, and Fee Proposal - Exhibit B, attached hereto.

WITNESSETH:

The parties agree as follows:

1. **TIME OF PERFORMANCE:** This Agreement shall run from time of execution by both parties until terminated as provided for herein.
2. **MODIFICATION.** The Board may modify this Agreement and order changes in the work whenever necessary or advisable. Consultant will accept modification when ordered in writing by the Board's designated representative, the time for performance and compensation being mutually agreed upon. Consultant shall make revisions to work included in this Agreement as are necessary to correct errors and omissions appearing therein when required to do so by the Board without additional compensation.
3. **COMPENSATION:** The Board will pay Consultant per the Scope of Work - Fee Proposal, attached hereto. The negotiated fee for said services shall be in the amount of \$_____.

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

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

Spokane International Airport

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

5. TERMINATION: Either party may terminate this Agreement by thirty (30) days' written notice to the other party. In the event of such termination, the Board shall pay Consultant for all services rendered and expenses incurred prior to date of termination. The Board is not obligated to pay any fees or expenses which specifically involve negligent acts or omissions on the part of Consultant.
6. COMPLIANCE WITH LAWS: Consultant shall comply with all applicable federal, state, and local laws, regulations and executive orders which are incorporated by reference.
7. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION: The Consultant certifies, by submission of this proposal and execution of this Agreement, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency. It further agrees by executing this Agreement that it will include this clause without modification in all lower tier transactions, solicitations, proposals, contracts, and subcontracts. Where the Consultant or any lower tier participant is unable to certify to this statement, it shall attach an explanation to this Agreement.
8. OWNERSHIP OF DOCUMENTS: All drawings, plans, specifications, and other related documents prepared by Consultant under this Agreement are and shall be the property of the Board. Any reuse shall be at the Board's sole risk and the Board shall indemnify and hold harmless Consultant for any costs or damages resulting from such reuse.
9. ENDORSEMENT OF PLANS: Consultant shall place its endorsement on all developed plans and specifications.
10. ASSIGNMENTS: This Agreement is binding on the parties and their heirs, successors, and assigns. Neither party may assign or transfer its interest, in whole or in part, without the other party's prior written consent.
11. DISPUTE: This Agreement shall be performed under the laws of the State of Washington. Any litigation to enforce this Agreement or any of its provisions shall be brought in Spokane County, Washington. The prevailing party shall be allowed reasonable amounts for attorney fees, costs, and expenses as may be set by the court.
12. TITLE VI ASSURANCES: During the performance of this Agreement, Consultant, for itself, its assignees and successors in interest agrees as follows:
 - A. Compliance with Regulations: Consultant shall comply with the Regulations relative to nondiscrimination in Federally assisted programs of the Department of Transportation (hereinafter, "DOT") Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time, (hereinafter referred to as the "Regulations"), which are herein incorporated by reference and made a part of this Agreement.

- B. Nondiscrimination: Consultant, with regard to the work performed by them during the Agreement shall not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurement of materials and leases of equipment. The Consultant shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the Agreement covers a program set forth in Appendix B of the Regulations.
- C. Solicitation of Subcontracts Including the Procurement of Materials and Equipment: In all solicitations either by competitive bidding or negotiation made by 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 Consultant of the contractor's obligations under this Agreement and the Regulations relative to nondiscrimination on the grounds of race, color, or national origin.
- D. Information and Reports: 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 Board or the Federal Aviation Administration (FAA) to be pertinent to ascertain compliance with such regulations, orders, and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish this information, Consultant shall so certify to the Board 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 Consultant's non-compliance with the nondiscrimination provisions of this Agreement, the Board 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.
13. ANTI-KICKBACK: No officer or employee of the Spokane Airports, having the power or duty to perform an official act or action related to this Agreement shall have or acquire any interest in the Agreement, or have solicited, accepted or granted a present or future gift, favor, service or other thing of value from or to any person involved in this Agreement.
14. EXPERT LEGAL TESTIMONY: In the event of any legal or other controversy requiring the services of Consultant in providing expert testimony in connection with any project, except suits or claims by third parties against the Board arising out of negligent errors or omissions of Consultant, the Board shall pay Consultant for services rendered in regard to such legal or other controversy, including costs of preparation for controversy. Such payment to Consultant shall be at rates mutually agreed upon.
15. STANDARD PERFORMANCE: Consultant, in carrying out its responsibilities, acts, and duties, shall observe and meet the standard of an experienced and qualified professional engineer familiar with the construction industry, and in particular, airport construction, performing similar Services under similar conditions.

16. CONSTRUCTION AND SAFETY: Consultant shall not be responsible for the means, methods, techniques, sequences, or procedures of construction selected by contractors, or the safety precautions and programs incidental to the work of the Agreement. Consultant shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the Services contemplated herein for its own personnel while located on the Project site.

The duty of Consultant to prepare a safety plan does not include review or approval of the adequacy of the Contractor(s) safety program.

17. ACCESS, APPROVALS and PERMITS: The Board shall arrange for access to and make all provisions for Consultant to enter Spokane Airport property as required for Consultant to perform its services. Except as may be provided in individual agreements, the Board shall furnish appropriate approvals and permits from all governmental authorities having jurisdiction over the project and such approval and consents from others as may be necessary for completion of the project.

18. MAINTENANCE OF RECORDS: Consultant shall make available to the Board's auditor, or his fully authorized representative, all records created as a result of the Agreement including pertinent information which Consultant shall have kept in conjunction with this Agreement and which the Board 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. INSURANCE:

A. Consultant shall carry Professional Liability insurance coverage, including coverage for job supervision, in the minimum amount of \$1,000,000.00, \$5,000,000, per occurrence and in the aggregate.

B. Consultant shall, at its expense, maintain insurance in full force and effect during the term of this Agreement in such amounts as to meet the minimum limits of liability specified below and insurance shall be placed with companies or underwriters authorized to do business in the State of Washington and carry a Best's rating no lower than A-. Failure to obtain and maintain such insurance shall constitute a default under this Agreement. The insurance policy(ies) shall be the standard comprehensive general liability insurance coverage with aircraft exclusion deleted and shall include, but not by way of limitation, bodily injury, property damage, products liability, automobile including owned, non-owned, leased and hired, and contractual coverage. Consultant shall also maintain a vehicular policy insuring any of its vehicular operations on Airport and the policy shall be issued by a company authorized to do business in the State of Washington. Consultant shall promptly upon execution of this Agreement, furnish to the Board appropriate certificates of insurance evidencing coverage affected and to be maintained for the term of this Agreement. The coverage shall not be less than One Million Dollars (\$1,000,000), combined single limit or

split limits equal to and not less than One Million Dollars (\$1,000,000), for bodily injury and property damage with respect to each occurrence; such limits subject to periodic adjustments. The insurance policies shall not be subject to cancellation except after notice to the Board by registered mail at least thirty (30) days prior to the date of such cancellation or material change. Where any policy(ies) has/have normal expirations during the term of this Agreement, written evidence of renewal shall be furnished to the Board at least thirty (30) days prior to such expiration. The Board its staff and employees shall be named as additional insured on Consultant's Comprehensive General Liability coverage, with respect to Consultant's use of the Airport and the Premises which are subject of this Agreement. Upon written request by the Board, Consultant shall permit the Board to inspect all originals of all applicable policies.

20. INDEMNIFICATION:

A. The Consultant shall indemnify the Board, their elected and appointed officials, agents, employees and representatives (collectively, the "Constituents") from only that portion of any liability that is caused by any negligent error, or negligent act or omission by the Consultant with regard to the professional services it has performed for the Board, as such liability as it finally determined after trial and any appeal thereof. If the Consultant is alleged to have any liability for a shared or joint negligent error or omission of the Consultant and the Board, Consultants indemnification obligation shall be apportioned on a comparative fault basis, and the Consultant shall not be required to indemnify the Board and the Constituents for any amount in excess of the Consultants own comparative fault as finally determined after trail and any appeal thereof. The Board and the Constituents shall not have comparative fault for selection, administration, monitoring, or controlling the Consultant, or in approving or accepting the Consultants work. This paragraph shall not nullify, extend or expand any statute of limitations that is otherwise applicable to any negligence or other claim against the Consultant. This indemnification is not intended to, and does not alter or interfere with any duties that the Consultant may have under its insurance agreements, such as the duty to cooperate fully with the insurer in defending any claims, the duty to obtain the consent of the insurer to pay or compromise any claim, or the duty to refrain from prejudicing the insurer's subrogation rights. This indemnification is solely for the benefit of the Board and the Constituents and not third party beneficiary or other rights shall be created under this provision. If and when a claim lawsuit is brought against the Board and the Constituents and if the Board requests to defend it/them in regard to the lawsuit, the Consultant agrees to consider in good faith such a request. If the Consultant does not agree to defend the Board and Constituents in the lawsuit but is ultimately found liable in the lawsuit for any negligent error, act or omission by the Consultant with regard to the legal work the Consultant has performed for the Board, then the Consultant shall reimburse the Board for the portion of its/their defense costs for which are attributable to the negligent error, act or omission of the Consultant.

B. Consultant hereby agrees to release and hold harmless the Board, its elected and appointed officials, agents and employees, from any damages to the Consultant caused by noise, vibrations, fumes, dust, fuel particles and all other effects that may be caused by the operation of aircraft landing at or taking off from, or operating at or on the Airport; and the

Consultant does hereby fully waive, remise and release any right or cause of action which it may now have or which it may have in the future against the Board, its successors and assigns, due to such noise, vibrations, fumes, dust, fuel particles, and all other effects that may be caused or may have been caused by the operation at or on the Airport. The above exception shall not limit a cause of action against other persons or entities, including licensees, concessionaires or aircraft operators.

C. Consultant further agrees to hold the Board, their agents, officials and employees free and harmless for any claims arising out of the damage, destruction or loss of any or all of Consultant's equipment excluding any claims arising out of the sole negligence of the Board, the City and County of Spokane, their elected officials, agents and employees.

21. AUTHORIZATION TO PROCEED: Consultant will not begin work on any of the services listed until the Board provides written direction to proceed.
22. FORCE MAJEUR: Neither the Board or Consultant shall hold the other responsible for damages nor delay in performance caused by acts of God, strikes, lockouts, accidents, or other events beyond the control of the other or the others employees and agents.
23. HAZARDOUS MATERIALS: Dealing with hazardous materials is not within Consultant's obligations. An amendment to this Agreement will be required for work involving hazardous materials.
24. SERVICES OF CONSULTANT: Unless this Agreement is terminated as specified herein by reason of substantial failure of either party to fulfill its obligations under this Agreement, Consultant shall perform all services specified in this Agreement.

For Internal Use Only

Project Number: _____

Funding Source: _____