



# COUNTY OF SPOKANE WASHINGTON

SMALL WORKS ROSTER CONSTRUCTION SERVICES AGREEMENT  
CONTRACT NUMBER [ Project Number ]

TITLE: [ Project Title ]

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## CONTRACT SUMMARY

Estimated Contract Value: \$

Estimated Completion Date:

Contract Type: Lump Sum, Cost Not To Exceed

Contract Administrator: «Name\_of\_Project\_Manager\_or\_Administrator», phone

«Project\_Manager\_or\_Administrator\_phone»

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## PARTIES

### COUNTY:

Spokane County Washington

C/O Spokane County Purchasing Department

Public Health Building

1101 W. College Ave., Suite 241B

Spokane, WA 99201

Contact: ??buyer name & title, Phone:, Phone: (509) 477-2301, Fax: (509) 477-6627

Email: ?Buyer email address

### CONTRACTOR:

[ Name ]

[ Address ]

Contact:

Phone: (509)

Fax: (509)

Email:

THIS AGREEMENT made and entered into effective the [?date] by and between SPOKANE COUNTY, a political subdivision of the State of Washington having offices for the transaction of business indicated above and hereinafter referred to as the "County", and the "Contractor", named and having offices for the transaction of business indicated above jointly, hereinafter referred to along with the County as the "Parties".

WHEREAS, the Board of County Commissioners of Spokane County pursuant to the provisions of the Revised Code of Washington Section 36.32.120(6) has the care of County property and the management of County funds and business; and

WHEREAS, the Board of County Commissioners of Spokane County pursuant to the above cited statutory section and those provisions as set forth in the Revised Code of Washington Section 39.04.155, et seq. did let out for bid the furnishing and installation of ? «Name\_of\_Project»; and

WHEREAS, the Board of County Commissioners of Spokane County did on «Date\_of\_Bid\_Opening» open said bid and did on ?[date] accept the bid of the Contractor herein as the lowest responsible bidder for Spokane County bid No. «Project\_Number».

NOW, THEREFORE, for and in consideration of the mutual promises set forth herein, the parties hereto do mutually agree as follows:

#### ARTICLE 1. COMPENSATION, WORK AND SERVICES

The Contractor for the consideration of [?contract amount words] (?\$), including sales tax, for work performed as specified in the “Contract Documents” as enumerated herein below, shall in strict accordance with all of the provisions therein, perform all work and provide all materials called for by the Contract Documents «Name\_of\_Project». The County agrees to pay the Contractor for said work as specified in the “Contract Documents.”

#### ARTICLE 2. CONTRACT DOCUMENTS

The Contract Documents consist of this Agreement, all conditions of Spokane County Bid No. «Project\_Number» and other documents listed below issued prior to the execution of this Agreement and all modifications and change orders issued subsequent thereto. These form a contract and all are as fully a part of the contract as if attached to this Agreement or repeated herein. In the event of a conflict between documents the order of precedence will be the order listed below. An enumeration of the contract documents is set forth below:

1. Change Orders; and
2. Notice to Proceed; and
3. Notice of Award; and
4. Agreement; and
5. Addenda; and
6. Specifications and Drawings; and
7. The provisions of Spokane County Bid No. «Project\_Number»; and
8. The bid proposal of the contractor dated [?]

#### ARTICLE 3. RELATIONSHIP OF THE PARTIES

The parties intend that an independent contractor relationship will be created by this Agreement. The County 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 County for any purpose, and the employees of the Contractor are not entitled to any of the benefits that the County provides for County 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 his 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 County being interested only in the results obtained; however, the work contemplated herein must meet the approval of the County pursuant to the provisions of the agreement under which the services and work were let to the Contractor.

#### ARTICLE 4. INDEMNIFICATION

The Contractor is an independent contractor and not the agent or employee of the County. No liability shall attach to the County for entering into this Contract or because of any act or omission of the Contractor except as expressly provided.

The Contractor agrees to defend, indemnify and hold the County and the County's Consultant(s), when used on the project, harmless from any and all claims, including but not limited to reasonable attorney fees, demands, losses and liabilities to or by third parties arising from, resulting from or connected with services performed or to be performed under this contract by the Contractor, its agents or employees to the fullest extent permitted by law. The Contractor's duty to indemnify the County and Consultant shall not apply to liability for damages arising out of bodily injury to persons or damage to property caused by or resulting from the sole negligence of the County or Consultant, their agents or employees. The Contractor's duty to indemnify the County and Consultant for liability for damages arising out of bodily injury to persons or damage to property caused by or resulting from the concurrent negligence or (a) the County or Consultant, their agents or employees, and (b) Contractor, its agents or employees shall apply only to the extent of negligence of the Contractor or its agents or employees. Contractor's duty to defend, indemnify and hold the County harmless shall include, as to all claims, demands, losses and liability to which it applies, the County's personnel-related costs, reasonable attorney's fees, court costs and all other claim-related expenses.

The Contractor's indemnification shall specifically include all claims for loss liability because of wrongful payments under the Uniform Commercial Code, or other statutory or contractual liens or rights or third parties, including taxes, accrued or accruing as a result of this contract or work performed or materials furnished directly or indirectly because of this contract.

Contractor further agrees that this duty to indemnify County applies regardless of any provisions in RCW Title 51 to the contrary, including but not limited to any immunity of Contractor for liability for injuries to Contractor's workers and employees, and Contractor hereby waives any such immunity for the purpose of this duty to indemnify County.

**ARTICLE 5: TERMINATION:** Contract(s) resulting from this bid may be terminated, in whole or in part, under the following conditions: 1) by mutual written agreement; 2) by the County for breach by the bidder of any of the obligations or requirements set forth in the contract documents. The County retains the option to require the bidder to assume liability for any and all damages, including the excess of re-procuring similar products or services; 3) for the convenience of the County; or 4) by the County for non-appropriation of funds.

**ARTICLE 6: TERMINATION BY THE COUNTY WITHOUT CAUSE:** Notwithstanding any other provisions contained herein, the County, without cause, may terminate the contract between the parties by providing notice to the Contractor. Upon termination under this section: 1) All remaining obligations of the parties are discharged, but any right based upon breach or performance occurring prior to termination survives; 2) If the reasonable costs of performance incurred by the Contractor prior to termination exceed the amount paid by the County to the Contractor on the Contract Sum, the County shall reimburse the Contractor in the amount of such excess; 3) If the amount paid by the County to the Contractor on the Contract Sum exceeds the reasonable costs of performance incurred by the Contractor prior to termination, the Contractor shall reimburse the County in the amount of such excess; 4) Any funds obtained or retained by the Contractor as provided in 2) or 3) of this paragraph, shall constitute full payment and consideration for the services performed by the Contractor prior to termination.

#### **ARTICLE 7. MAINTENANCE OF RECORDS**

The Firm will maintain, for at least three (3) years after completion of this contract, all relevant records pertaining to this contract. The Firm shall make available to the County or the Washington State Auditor or their duly authorized representatives, at any time during their normal operating hours, all records, books or pertinent information which the Firm shall have kept in conjunction with this Agreement and which the County may be required by law to include or make part of its auditing procedures, an audit trail or which may be required for the purpose of funding the services contracted for herein.

#### **ARTICLE 8. VENUE STIPULATION**

This Agreement has and shall be construed as having been made and delivered in the State of Washington, and the laws of the State of Washington shall be applicable to its construction and enforcement. Any action at law, suit in equity or judicial proceeding for the enforcement of this Agreement or any provisions hereto shall be instituted only in courts of competent jurisdiction within Spokane County, Washington, unless relocation or commencement elsewhere is required by law.

#### **ARTICLE 9. COMPLIANCE WITH LAWS**

The Contractor in the performance of this Agreement agrees to comply with all applicable federal, state and local laws, ordinances and regulations including but not limited to those pertaining to civil rights. The Contractor may not, without the prior written approval of the County, assign, sublet or transfer in whole or in part his interest in this Agreement.

#### **ARTICLE 10. INTEGRATION**

This Agreement contains all the terms and conditions agreed upon by the Parties. No other understanding, oral or otherwise regarding the subject matter of this Agreement shall be deemed to exist or to bind any of the parties. All Parties have read and understand the above contract and now state that no representations, promises, or agreements not expressed by this Agreement have been made to induce the other to execute the same.

#### **ARTICLE 11. LIQUIDATED DAMAGES**

Time is of the essence in the performance of the contract. Because the County finds it impractical to calculate the actual costs of delays, it has adopted the Liquidated Damage Table in the Attachment to the Bid Documents.

Liquidated damages will not be assessed for any days for which an extension of time is granted. No deduction or payments of liquidated damages will in any degree, release the Contractor from further obligation and liabilities to complete the entire work.

#### ARTICLE 12. RECOVERY OF FUNDS

Whenever, under the contract, any sum of money shall be recoverable from or payable by the Contractor to Spokane County the same amount may be deducted from any sum due to the Contractor under the contract or under any other contract between the contractor and Spokane County. The rights of Spokane County are in addition and without prejudice to any other right Spokane County may have to claim the amount of any loss or damage suffered by Spokane County on account of the acts or omissions of the Contractor.

#### ARTICLE 13. ENFORCEMENT COSTS

If any legal action or other proceeding is brought for the enforcement of this Contract, or because of an alleged dispute, breach, default or misrepresentation in connection with any provisions of this Contract, the successful or prevailing party or parties shall be entitled to recover reasonable attorney's fees, court costs, and all expenses (including taxes) even if not taxable as court costs (including, without limitation, all such fees, costs, and expenses incident to appeals), incurred in that action or proceeding, in addition to any other relief to which such party or parties may be entitled.

#### ARTICLE 14. ANTI-KICKBACK

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

#### ARTICLE 15. WAIVER

No officer, employee, agent or otherwise of the County has the power, right or authority to waive any of the conditions or provisions to this Agreement. No waiver of any breach of this Agreement shall be held to be a waiver of any other or subsequent breach. All remedies afforded in this Agreement or at law shall be taken and construed as cumulative, that is, in addition to every other remedy provided herein or by law. Failure of the County to enforce at any time any of the provisions of this Agreement or to require at any time performance by Contractor of any provision hereof, shall in no way be construed to be a waiver of such provisions, nor in any way affect the validity of this Agreement or any part hereof, or the right of the County to hereafter enforce each and every such provision.

#### ARTICLE 16. EXECUTION

The PARTIES warrant that the officers/individuals executing below have been duly authorized to act for and on behalf of the Party for purposes of confirming this Agreement.

#### ARTICLE 17. COUNTERPARTS

This Agreement may be executed in any number of counterparts, each of which, when so executed and delivered, shall be an original, but such counterparts shall together constitute but one and the same.

#### ARTICLE 18. THIRD PARTY BENEFICIARIES

This Agreement is intended for the benefit of the County and Contractor and not for the benefit of any third parties.

#### ARTICLE 19. SURVIVAL

Without being exclusive, the Article for Indemnification and the Article for Venue Stipulation of this Agreement shall survive any termination, expiration or determination of invalidity of this Agreement in whole or in part. Any other Articles of this Agreement which, by their sense and context, are intended to survive shall also survive.

