FIRST-AID KIT KEEPFILL SERVICES AGREEMENT

This Services Agreement (“Agreement”) is entered into by and between **Contractor** (“Contractor”) and the **Spokane Transit Authority** (“STA”), a Washington State municipal corporation; each individually referred to as “Party” and collectively referred to as "Parties”.

In consideration of the mutual promises and covenants contained herein, the Parties agree as follows:

1. SCOPE OF WORK

Unless stated otherwise in this Agreement, the Contractor will provide First-Aid Kit Keepfill Services, and otherwise do all things necessary for or incidental to the performance of “Work” as described in the Scope of Work (“SOW”), attached hereto as Exhibit A and incorporated herein.

1. Modification. STA may modify the SOW and/or order changes in the work to be performed under this Agreement whenever it shall be deemed necessary or advisable to do so. The Contractor shall accept such modifications when ordered in writing by STA and shall promptly execute an amendment to this Agreement. If any such change causes an increase or decrease in the cost of, or the time required for, the performance of any part of the Work, an equitable adjustment may be made in the compensation, delivery schedule or other terms.

Any claim by the Contractor for adjustment under this clause must be asserted within thirty (30) days from the date of receipt by the Contractor of the notice of modification. Notwithstanding, STA may receive and act upon any such claim asserted at any time prior to final payment under this Agreement if the facts justify such action. Failure to agree to any adjustment shall be a dispute concerning a question of fact within the meaning of Section 16 herein. However, nothing in this clause shall excuse the Contractor from performance of the modified Work.

1. WARRANTY

The Contractor shall be solely responsible for all Work performed, including all services, materials, parts and accessories, whether manufactured by it or others, and for the effective installation and connection of all equipment, accessories, parts and components, as required in the SOW.

1. ACCEPTANCE

Unless STA otherwise agrees in writing, acceptance of any portion of the Work prior to final acceptance shall not release the Contractor from liability for faulty workmanship, materials, performance or failure to comply with the terms of this Agreement.

1. TERM

The initial “Term” of this Agreement shall be five years. This Agreement shall commence on XXX and conclude on XXX, unless terminated sooner in accordance with Section 17 herein.

1. COMPENSATION

The Contractor shall be compensated for the completion of Work in accordance with the “Compensation Schedule” attached hereto as Exhibit B and incorporated herein (“Contractor Compensation”). Contractor Compensation is subject to allowable additions or deductions as provided for in this Agreement.

1. INVOICING

Contractor shall submit an invoice to the representative listed in Section 11 for all Work performed in accordance with the Compensation Schedule. The invoice shall be (1) itemized and include sufficient detail to clearly identify each element of Work provided; (2) identify a subtotal, if applicable; (3) identify separately applicable sales taxes, if any; (4) identify an invoice total; and (5) identify this Agreement number. For any reimbursable or subcontracted expense, Contractor shall submit copies of receipts and/or subcontractor invoices to substantiate such expense.

STA shall not accept any invoice submitted by the Contractor which lacks sufficient detail or adequate documentation, as solely determined by STA. Any incomplete invoice shall be promptly returned to Contractor and the Contractor shall be required to resubmit said invoice complete with all necessary documentation to be considered for payment.

1. PAYMENT

Payments shall be made to Contractor within thirty (30) days of receipt of an approved invoice, less deductions, if any.

* 1. Covenant Against Contingent Fees. The Contractor warrants that no person or selling agency has been employed or retained to solicit or secure this Agreement upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business. For breach or violation of this warranty, STA shall have the right to annul this Agreement without liability or at its discretion, to deduct from the compensation or consideration due the Contractor, or otherwise recover, the full amount of such commission, percentage, brokerage or contingent fee.
	2. Payment Does Not Imply Acceptance of Work. The granting of any progress payment or payments by STA, or the receipt thereof by the Contractor, shall not constitute in any sense acceptance of the Work performed by Contractor, or any portion thereof, and shall in no way lessen the liability of the Contractor to re-perform Work which does not conform to this Agreement, though the character of such Work may not have been apparent or detected at the time such payment was made.
	3. Prompt Payment of Subcontractors. The Contractor is required to make payment to subcontractors within thirty (30) days from the receipt of each payment the Contractor receives from STA for satisfactorily completed subcontractor work, whether such payment is a progress or final payment. The Contractor agrees further to return retainage payments to each subcontractor within thirty (30) days after the subcontractor’s work is satisfactorily completed. If payment disputes arise between the Contractor and its subcontractors, such disputes shall be resolved promptly through mediation or arbitration in order to prevent injury to small business subcontractors. The Contractor shall specify in its subcontract agreement what dispute resolution method will be used. In addition, the Contractor will not be paid for subcontractors’ work unless the Contractor can show that a prompt payment method for its subcontractors is in place. The Contractor shall be required to provide copies of its subcontracts to STA showing inclusion of these provisions. STA may withhold the applicable sum due a subcontractor for non-compliance with this section.
1. TAXES
	1. Sales Tax. If applicable, sales tax as determined by the Washington State Department of Revenue will be added to the amounts due the Contractor. The Contractor will be responsible for submitting payment of the sales tax to the State of Washington.
	2. Other Taxes. The Contractor is solely responsible for ensuring all other taxes applicable to the Work or this Agreement are submitted correctly and promptly to the appropriate taxing authority, including but not limited to, federal income tax, State of Washington excise taxes, etc.
2. LIQUIDATED DAMAGES

The Contractor agrees to pay to STA liquidated damages in the amount of $10.00 for each day the Contractor fails to perform the Work in accordance with the terms of this Agreement. These liquidated damages are for the purpose of any delay or impact caused to STA by virtue of the Contractor’s acts or omissions. STA and the Contractor agree that such damage cannot be reasonably determined at this time. Such damages are very difficult to accurately estimate because of numerous factors, including, but not limited to inconvenience to STA. Further, the Parties agree this is a reasonable forecast of all factors now known and available for consideration relating to the delay caused by failure to perform.

The Contractor authorizes STA, any time after liquidated damages accrue and from time to time thereafter to the fullest extent permitted by law, to set off and apply any and all sums due and owing to the Contractor at any time held by STA and/or accrued under this Agreement, irrespective of whether STA has made any demand under this Agreement. STA agrees to advise the Contractor of any set off and application made by STA, provided that the failure to give such notification shall not affect the validity of such set off and application. The rights of STA under this section are in addition to other rights and remedies which STA may have.

1. NOTICES

All notices, requests, claims, demands and related communications shall be in writing and shall be signed by a person duly authorized to provide such notice. Notices permitted or requested to be given hereunder shall be deemed sufficient if given (1) in person; (2) by registered or certified mail, postage prepaid, return receipt requested; or (3) by email, addressed to the Parties’ representatives set forth below, or as may be revised by like notice from time to time.

All notices shall be deemed to have been duly received (1) when delivered in person; (2) upon receipt after dispatch by registered or certified mail, postage prepaid; or (3) upon confirmation of a read receipt when transmitted by email.

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| **Contractor** | **Spokane Transit Authority** |
| CompanyAttn: XXXAddressCity, ST ZIPE: email | Spokane Transit AuthorityAttn: Contracts1230 W Boone AveSpokane, WA 99201E: contracts@spokanetransit.com  |

1. COMMUNICATIONS

Any administrative or operational communications required by the Parties shall be directed to the Parties’ representatives set forth below:

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| --- | --- |
| **Contractor** | **Spokane Transit Authority** |
| ContactTitleCompanyAddressCity, ST ZIPE: email@P: (XXX) XXX-XXXX | ContactTitleSpokane Transit Authority1230 W Boone AveSpokane, WA 99201E: @spokanetransit.comP: (509) XXX-XXXX |

Communications to be given hereunder shall be deemed sufficient if given (1) in person; (2) by mail, postage prepaid; or (3) by email, addressed to the Parties’ representatives set forth above, or as may be revised by written notice in accordance with Section 10 of this Agreement.

1. INSURANCE
	1. Minimum Scope of Insurance. For the duration of this Agreement, Contractor shall procure and maintain, at its sole expense, commercial insurance against claims for injuries to persons or damage to property that may arise from or in connection with Contractor's own work, including the performance of Work, and the work of the Contractor’s officers, directors, employees, agents, representatives, subcontractors or subconsultants as required herein:
		1. General Liability. Commercial General Liability insurance with coverage at least as broad as Insurance Services Office form CG 00 01, on an occurrence basis with minimum limits of $1,000,000 per occurrence and $2,000,000 in the aggregate per project. Coverage shall include, but is not limited to, bodily injury, personal injury, advertising liability, blanket contractual liability, products and completed operations, and property damage.
		2. Automobile Liability. Commercial Automobile Liability insurance with coverage at least as broad as Insurance Services Office form CA 00 01, including coverage for any owned, hired, non-owned or rented automobile with minimum limits of $1,000,000 combined single limit, each accident.
		3. Umbrella Liability. Commercial Umbrella Liability insurance with coverage at least as broad as the primary coverages set forth above, with minimum limits of $1,000,000 per occurrence and $2,000,000 in the aggregate. Such policy shall include the following terms & conditions:
			1. A drop-down feature requiring the policy to respond if any primary insurance that would have otherwise applied proves to be uncollectible in whole or in part for any reason;
			2. Pay on behalf of wording as opposed to reimbursement;
			3. Concurrency of effective dates with primary policies;
			4. Policies shall “follow form” to the underlying primary policies; and
			5. Insureds under primary policies shall also be insureds under the Umbrella policy with no additional restrictions.
		4. Worker’s Compensation. Statutory requirements for Contractor’s state of residency. When Work is performed in the State of Washington, coverage as required by Chapter 51 RCW of the State of Washington.
	2. Insurance Rating. Insurance is to be underwritten by insurers licensed to provide insurance in the State of Washington with a current A.M. Best rating of not less than A:VII.
	3. Additional Insured. Contractor’s General Liability, Automobile Liability, Cyber Liability and Data Liability policies shall be endorsed using Insurance Services Office form GC 20 10 naming STA, its officials, officers, directors, employees, agents and representatives as additional insureds.
	4. Deductible. Contractor is responsible for the payment of any deductible or approved self-insured retention that is required by any of Contractor’s insurance policies. If STA is required to contribute to the deductible under any of Contractor’s insurance policies, the Contractor shall reimburse STA the full amount of STA’s contribution to the deductible. Contractor’s deductible for each insurance policy required herein shall be limited to no more than ten percent (10%) of the policy occurrence limit. STA reserves the right to withhold from any sum due the Contractor an amount equal to any STA contribution to the Contractor’s deductible under any Contractor’s insurance policy(ies).
	5. Self-Insured Retention. Any self-insured retentions must be declared to and approved by STA prior to execution of this Agreement. STA reserves the right to require that self-insured retentions be lowered, eliminated or replaced by a deductible. Self-insurance or self-insured retentions will not be considered to comply with these specifications unless approved in writing by STA prior to execution of this Agreement.
	6. Primary & Noncontributory. It is the intent of this Agreement for the Contractor’s insurance to be considered primary and noncontributory in the event of a loss, damage or suit. STA’s own comprehensive general liability policy will be considered excess coverage in respect to STA only. Additionally, the Contractor’s commercial general liability policy must provide cross-liability coverage as would be achieved under a standard ISO separation of insureds clause.
	7. Waiver of Subrogation. All insurance coverage maintained or procured pursuant to this Agreement shall be endorsed to waive subrogation against STA, its elected and appointed officials, officers, directors, employees, agents, representatives and volunteers, or shall specifically allow Contractor, or others providing insurance evidence in compliance with these specifications, to waive their right of recovery prior to a loss. Contractor hereby waives its own right of recovery against STA and shall require similar written express waivers and insurance clauses from each of its subcontractors.
	8. Verification of Coverage. Within five (5) days of execution of this Agreement, or prior to commencement of any Work, whichever occurs earlier, the Contractor shall furnish evidence of insurance in the form of a Certificate of Insurance and associated amendatory endorsements for coverages required herein. Should the Term and any Renewal Term(s) of this Agreement exceed the term of any of Contractor’s policies, the Contractor shall submit a Certificate of Insurance and associated amendatory endorsements evidencing continuation of such policies to STA prior to such policies’ expiration. STA reserves the right to receive a certified and complete copy of all Contractor’s insurance policies required herein.
	9. Notice of Cancellation. The Contractor must provide written notification to STA for any cancellation, suspension or material change in Contractor’s coverage at least thirty (30) days in advance of such cancellation, suspension or material change.
	10. Subcontractor Coverage. The Contractor shall ensure and require its subcontractors of any tier have insurance coverage equal to, or greater than, the requisite coverages specified herein.
	11. Limit of Liability. STA’s specification or approval of insurances and/or minimum amounts required herein shall not relieve or decrease the liability of the Contractor. Coverages and amounts are the minimum to be provided and are not limitations of liability under this Agreement, indemnification or applicable law provisions. The Contractor may, at its sole expense, procure and maintain additional coverage and/or greater amounts of coverage.
	12. Damages. If STA is damaged by the failure of the Contractor to maintain any of the above insurance or to so notify STA in accordance with this Section 11, the Contractor shall bear all costs attributable thereto. STA may withhold payment pending receipt of all certificates of insurance. Failure to withhold payment shall not constitute a waiver of any requirement herein.
	13. Right of Enforcement. In the event any policy of insurance required under this Agreement does not comply with these specifications, or is canceled and not replaced, STA has the right, but not the duty, to obtain the insurance it deems necessary. Any premium paid by STA will be promptly reimbursed by Contractor, or STA shall withhold amounts sufficient to pay such premium from Contractor payments.
	14. Submittals. Any communication, submittal or notice required by this Section shall be submitted to coi@spokanetransit.com.
2. INDEMNIFICATION

To the maximum extent provided by law, the Contractor shall indemnify and hold STA, its officers, directors, employees, agents, representatives and volunteers harmless from any and all claims, demands, penalties, damages, losses, suits, including death, bodily injury or property damage, including attorneys’ fees and court costs, arising out of or resulting from the acts, errors or omissions of the Contractor, its officers, directors, employees, agents, representatives and subcontractors in its performance under this Agreement, except for claims caused by the sole negligence of STA. In the event that any claims, investigations, demands, suits, actions or lawsuits arise out of any of the aforesaid acts, errors or omissions, the Contractor shall assume all costs of defending such claims, suits, actions or lawsuits, including legal fees incurred by STA, any penalties imposed on STA or the Contractor, and all judgments that may be obtained against STA, or any of its officers, directors, employees, agents, representatives or volunteers in such suits.

To the maximum extent provided by law, STA shall defend, indemnify and hold the Contractor, its officers, directors, employees, agents and representatives harmless from any and all claims, demands, penalties, damages, losses, suits, including death, bodily injury or property damage, including attorneys’ fees and court costs, arising out of or resulting from the acts, errors or omissions of STA, its officers, directors, employees, agents and representatives in its performance under this Agreement, except for claims caused by the sole negligence of the Contractor, its officers, directors, employees, agents, representatives and subcontractors.

IT IS FURTHER SPECIFICALLY AND EXPRESSLY UNDERSTOOD THAT THE INDEMNIFICATION PROVIDED HEREIN CONSTITUTES THE CONTRACTOR’S WAIVER OF IMMUNITY UNDER INDUSTRIAL INSURANCE, TITLE 51 RCW, SOLELY FOR THE PURPOSES OF THIS INDEMNIFICATION. THE PARTIES FURTHER ACKNOWLEDGE THAT THEY HAVE MUTUALLY NEGOTIATED THIS WAIVER.

STA’s inspection or acceptance of the Contractor’s performance under this Agreement shall not be grounds to void any of these covenants of indemnification. STA is authorized to withhold or offset any fees owing the Contractor as a result of this indemnification.

1. INDEPENDENT CAPACITY
	1. Employees, Agents & Representatives. In its performance hereunder, the Contractor, its officers, directors, employees, agents and representatives shall be acting as an independent contractor and shall not be deemed or construed to be employees or agents of STA in any manner whatsoever. The Contractor shall not hold itself out as, nor claim to be, an officer or employee of STA by reason hereof and will not make any claim, demand or application to or for any right or privilege applicable to an officer or employee of STA. The Contractor shall be solely responsible for any claims for wages or compensation by the Contractor’s employees, agents and representatives and shall save and hold STA harmless therefrom.
	2. No Partnership and No Third-Party Beneficiaries. It is agreed by the Parties that this Agreement does not create a partnership or joint venture relationship between the Parties and does not benefit or create any rights in a third party.
2. PRECEDENCE

Any conflict or inconsistency in this Agreement shall be resolved by giving the Agreement documents precedence in the following order:

* + 1. Agreement Amendments in descending order;
		2. Executed Agreement, Attachments and Exhibits;
		3. Scope of Work;
		4. Specifications;
		5. Executed Price Proposal Form;
		6. RFP documents & attachments/exhibits excluding Instructions to Proposers;
		7. Instructions to Proposers.
1. DISPUTE RESOLUTION

Disputes arising in the performance of this Agreement which are not resolved by agreement of the Parties shall be decided in writing by STA’s Contracts Compliance Specialist II, or their designee. This decision shall be final and conclusive unless within ten (10) calendar days from the date of receipt of its copy, the Contractor mails or otherwise furnishes a written appeal to the Chief Executive Officer of STA. In connection with said appeal, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its position. Pending final decision of a dispute hereunder, the Contractor shall proceed diligently with the performance of its obligations under this Agreement while matters in dispute are being resolved. The final decision of STA’s Chief Executive Officer shall be binding upon STA’s Contract Compliance Specialist II, or their designee, and the Contractor, and the Parties shall abide by the decision.

1. TERMINATION
	1. Convenience. STA may terminate this Agreement, in whole or in part, at any time and for any reason. Termination shall be effected by serving a Notice of Termination (“NOT”) in accordance with Section 10 of this Agreement, setting forth the effective date of termination. The Contractor shall be compensated for its performance of Work delivered to and approved by STA, in accordance with the terms of this Agreement, through the effective date of termination, in accordance with Sections 6 and 7 herein. If Contractor has any property in its possession belonging to STA, the Contractor will account for same and return it to STA or dispose of it in the manner STA directs in writing.
	2. Default, Breach or Cause. STA may terminate this Agreement for default, breach or cause in the event the Contractor fails to perform a material obligation hereunder or fails to comply with any provision of this Agreement. Termination shall be effected by serving a NOT in accordance with Section 10 of this Agreement, setting forth the manner in which the Contractor is in default or breach, and the effective date of termination. The Contractor will only be compensated for the performance of Work delivered to and approved by STA in accordance with the manner of performance set forth in the SOW, subject to setoff for damages caused to STA. If it is later determined, in the sole discretion of STA, that the Contractor had an excusable reason for non-performance which is not the fault of, or beyond the control of, the Contractor, after establishing a new performance/delivery schedule, STA may permit the Contractor to continue the performance of Work under this Agreement, or treat the termination as a termination for convenience in accordance with Section 17.A.
		1. Opportunity to Cure . STA, in its sole discretion, may allow the Contractor an appropriate period of time, as solely determined by STA, in which to cure the breach or default in its performance hereunder. In such case, the NOT shall state the time period in which the breach or default shall be cured and the appropriate conditions to satisfy such opportunity to cure. If the Contractor fails to remedy to STA’s satisfaction the breach or default within the stated time period of remedy, STA shall have the right to terminate this Agreement without further obligation to the Contractor. Any such termination for default shall not in any way operate to preclude STA from also pursuing all available legal remedies against the Contractor and its sureties for said breach or default.
		2. Waiver of Default or Breach. Waiver of any term, condition or covenant of this Agreement, or Contractor default or breach by STA shall not be deemed to be a waiver of any subsequent term, condition or covenant of this Agreement or Contractor default or breach. Any waiver shall not be construed to be a modification of the terms of this Agreement unless stated to be such by amendment of this Agreement in accordance with Section 24.
2. FORCE MAJEURE

In the event that any Party’s obligations under this Agreement are substantially delayed, prevented or rendered impractical by fire, flood, riot, earthquake, civil commotion, war, strike, lockout, labor disturbance, exposition, sabotage, accident or other casualty, weather event, pandemic, act of God, any law ordinance, rule or regulation which becomes effective after the date of this Agreement, measures of governmental authority including but not limited to any temporary law ordinance, health directive, rule, regulation, travel or movement restriction, or limitation on the size of gatherings implemented by the local health department, board or officer in the jurisdiction where the event is to be held, the Washington State Department of Health, the Governor of the State of Washington, the Washington State Military Department, the United States Department of Health & Human Services, the United States Centers for Disease Control and Prevention, or any other Local, State, or Federal Public Health Agency which adversely affects the ability of either Party to perform its obligations under this Agreement, pandemics, viral or communicable disease outbreak, quarantine or any other cause beyond the reasonable control of any Party, then the Parties shall be released from performance under this Agreement. The Parties hereby waive any claim for damages or compensation for such delay or failure to perform, other than obligations incurred up to the date of such force majeure.

1. CIVIL RIGHTS
	1. Nondiscrimination. In accordance with Title VI of the Civil Rights Act, as amended, 42 USC §2000d; Section 303 of the Age Discrimination Act of 1975, as amended, 42 USC §6102; Section 202 of the Americans with Disabilities Act of 1990, 42 USC §12132; and Federal transit law at 49 USC §5332, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, sexual orientation, gender identity, age or disability. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.
	2. Equal Employment Opportunity. The following equal employment opportunity requirements apply to this Agreement:
		1. Race, Color, Creed, National Origin, Sex, Sexual Orientation, Gender Identity. In accordance with Title VII of the Civil Rights Act, as amended, 42 USC §2000e, and Federal transit law at 49 USC §5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Dept. of Labor (“US DOL”) regulations, *Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor*, 41 CFR Parts 60 *et seq*. (which implement Executive Order No.11246, *Equal Employment Opportunity*, as amended by Executive Order No. 13672, *Further Amendments to Executive Order 11478, Equal Employment Opportunity in the Federal Government, and Executive Order 11246, Equal Employment Opportunity.,* 42 USC §2000e note), and with any applicable Federal statutes, executive orders, regulations and Federal policies that may in the future affect construction activities undertaken in the course of this Agreement. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, sexual orientation, gender identity or age. Such action shall include, but not be limited to, employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.
		2. Age. In accordance with Section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 USC §623, and Federal transit law at 49 USC §5332, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.
		3. Disabilities. In accordance with Section 102 of the Americans with Disabilities Act, as amended, 42 USC §12112, the Contractor agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, *Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act*, 29 CFR Part 1630, pertaining to employment of persons with disabilities. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.
	3. The Contractor agrees to include these requirements in each subcontract financed in whole or in part with Federal assistance provided by FTA, modified only if necessary to identify the affected parties.
2. COMPLIANCE WITH LAWS

Each Party to this Agreement shall comply with all applicable federal, state and local laws and regulations.

1. GOVERNING LAW & VENUE

This Agreement shall be governed by and construed according to the laws of the State of Washington. Nothing in this Agreement shall be construed as altering or diminishing the rights or responsibilities of the Parties as granted or imposed by State law. The Parties agree to exclusive personal jurisdiction, subject matter jurisdiction and venue in the Superior Court of Spokane County, Washington.

1. QUALIFIED TO DO BUSINESS

Contractor represents and warrants that it is in good standing and qualified to do business in the State of Washington, that it is registered with the Washington State Department of Revenue and the Washington Secretary of State, that it possesses and shall keep current all required licenses and/or approvals, and that it is current, in full compliance, and has paid all applicable taxes owed to the State of Washington.

1. INTERPRETATION

As a further condition of this Agreement, STA and the Contractor acknowledge that this Agreement shall be deemed and construed to have been prepared mutually by each Party and it shall be expressly agreed that any uncertainty or ambiguity existing herein shall not be construed against any Party. In the event that any Party shall take an action, whether judicial or otherwise, to enforce or interpret any of the terms of this Agreement, the prevailing Party shall be entitled to recover from the other Party all expenses which it may reasonably incur in taking such action, including attorneys' fees and costs, whether incurred in a court of law or otherwise.

1. ENTIRE AGREEMENT

This Agreement and its attachments constitute the entire Agreement between the Parties and supersedes all prior negotiations, representations and agreements between the Parties relating to the subject matter hereof.

1. MODIFICATION

This Agreement may be amended or modified only by written instrument signed by the Parties hereto, except as provided in Section 1.

1. SEVERABILITY

Should any provision of this Agreement be deemed invalid or inconsistent with any federal, state or local law or regulation, the remaining provisions shall continue in full force and effect. The Parties agree to immediately attempt to renegotiate such provision that is invalidated or superseded by such laws or regulations.

1. SUCCESSORS & ASSIGNS

This Agreement shall be binding on the Parties hereto. Neither Party may delegate the performance of any obligation hereunder to a third party without prior written approval from the other Party.

1. ANTI-KICKBACK

No officer, director, employee, agent or representative of the Spokane Transit Authority or the Contractor, 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.

1. CONFLICT OF INTEREST

No officer, director employee, agent or representative of STA shall participate in the selection, award or administration of an agreement or contract if a conflict of interest, real or apparent, would be involved. Such a conflict would arise under the following circumstances, or as otherwise defined by law:

* 1. the officer, director, employee, agent or representative;
	2. any member of his/her immediate family;
	3. his or her partner; or
	4. an organization which employs, or is about to employ, any officer, director, employee, agent or representative of STA

has a financial or other interest in the firm selected for award.

1. EMPLOYEE SOLICITATION

Contractor, without the consent of STA, shall not directly or indirectly solicit, influence, entice or hire or attempt to solicit, influence, entice or hire any employee of STA to: (a) cease employment with STA; or (b) do business related to a business connected with the Contractor’s business during this Agreement and for a period of three (3) years from the date on which the Agreement terminates, or the Work is accepted by STA, whichever is earlier. STA’s employee shall be deemed to be related to or connected with a Contractor if such STA employee becomes (a) a partner in a general or limited partnership or employee of a partnership; or (b) a shareholder, officer, employee or director of a corporation, member, consultant or agent for the Contractor or any of Contractor’s affiliates, subsidiaries or connected businesses. This Section shall survive the termination of this Agreement. This Agreement is not restricted to any geographical area.

Contractor recognizes and acknowledges that STA’s employees may receive training and other benefits from its contractual relationship with STA because of STA’s assignment of employees to work in connection with this Agreement. Contractor agrees the restrictions on soliciting, influencing, enticing or hiring STA employees are reasonable.

1. TRADEMARKS AND LOGOS

The Parties are prohibited from using, and agree not to use, directly or indirectly, any name, trademark or logo of the other Party without first obtaining prior written consent from the other Party.

1. RIGHTS IN DATA AND COPYRIGHTS/PATENTS
2. The Contractor, without exception, shall indemnify and save harmless STA, its officers, directors, employees, agents and representatives from liability of any kind, including cost and expenses for or on account of any copyrighted, patented or unpatented invention, process or article manufactured or used in the performance of Work under this Agreement, including its use by STA.
3. If the Contractor uses any design, device or materials covered by letters, patents or copyright, it is mutually agreed and understood without exception that Contractor Compensation shall include all royalties or cost arising from the use of such design, device or materials in any way involved in the Work.
4. If an infringement claim is made, Contractor will immediately and at its sole expense: (a) procure for STA the right to continue use and sale of the Work; or (b) replace the Work with a version of the Work that is non-infringing. If Contractor is unable to take either of the actions set forth in the preceding sentence, Contractor will promptly refund to STA all amounts paid to Contractor by STA under this Agreement; provided payment of such refund shall not act to relieve Contractor of any other obligations under this Agreement.
5. Contractor warrants that:
	1. Contractor has the full and exclusive right and power to enter into and perform according to the terms of this Agreement;
	2. Any software provided under the terms of this Agreement will meet the specifications listed in the SOW and the RFP or IFB from which this Agreement is derived, and all amendments thereto, will be complete and accurate, and will comply with all applicable laws and regulations;
	3. The Work provided by Contractor do not and will not infringe any copyright, patent, trade secret, trademark or other proprietary right held by any third party; and
	4. Contractor will not, without the express prior written permission of STA, incorporate into its Work any third-party product, software or other materials for which the intellectual property rights are not owned or licensed by Contractor.
6. PUBLIC RECORDS ACT

The Contractor understands and acknowledges that STA is a municipal corporation of the State of Washington subject to the “Public Records Act”, RCW 42.56, *et seq*.

Contractor understands and agrees that the records it obtains or produces under this Agreement may be public records under the Public Records Act, or its successor act. The Contractor shall cooperate in a timely manner with STA in responding to a public records request (“PRR”) related to this Agreement or the Work. Such cooperation shall include searching all records regarding the Work and/or this Agreement, and producing all records that are potentially responsive to a PRR to STA. Contractor shall mark and segregate all materials in its possession that may be protected by the Public Records Act to protect against inadvertent disclosure of such documents and to facilitate STA’s application of allowable Public Records Act exemptions. Contractor shall not charge STA for the time spent gathering and producing records pursuant to a PRR.

1. AUDIT/RECORDS

The Contractor shall maintain for a minimum of six (6) years following final payment or expiration of this Agreement, whichever occurs later, all records related to its performance of this Agreement. STA may audit any record related to this Agreement for any reason and the Contractor shall provide copies of and access to, at reasonable times, any such record upon request by STA. The Contractor shall also provide access to authorized representatives of the Washington State Auditor’s Office at reasonable times and in a reasonable manner to inspect and copy any such record. In the event of conflict between this provision and related auditing provisions required under federal law applicable to this Agreement, the federal law shall prevail.

Records and other documents, in any medium, furnished by any Party to this Agreement to another Party will remain the property of the furnishing Party, unless otherwise agreed in writing. Subject to Section 32 of this Agreement, the receiving Party will not disclose or make available any confidential information to any third parties without first giving notice to the furnishing Party and giving it a reasonable opportunity to respond. Each Party will utilize reasonable security procedures and protections to assure that records and documents provided by the other Party are not erroneously disclosed to third parties.

1. COUNTERPARTS

This Agreement may be executed in one or more counterparts, each of which shall constitute an original Agreement, but all of which together shall constitute one and the same instrument.

1. ELECTRONIC SIGNATURES

A signed copy of this Agreement or any other ancillary agreement transmitted by email or other means of electronic transmission or electronically or digitally executed shall be deemed to have the same legal effect as delivery of any original executed copy of this Agreement or such other ancillary agreement for all purposes.

[signatures on the following page]

1. SIGNATURES

The Parties affirm the individuals signing this Agreement have been granted the authority to do so and by their signature affirm the Parties will comply with the terms and conditions of this Agreement.

|  |  |
| --- | --- |
| **Contractor** | **Spokane Transit Authority** |
|  By: XXXTitle: XXXDate:  |  By: E. Susan MeyerTitle: Chief Executive OfficerDate:  |
|  | Attest: By: Dana InfaltTitle: Clerk of the AuthorityDate:  |
|  | Disadvantaged Business Enterprises Compliance By: Jordan Hayes-HortonTitle: DBE LiaisonDate:  |

SCOPE OF WORK WILL BE INSERTED HERE IN FINAL CONTRACT

CONTRACTOR COMPENSATION DETAILS WILL BE INSERTED HERE IN FINAL CONTACT