

SERVICES CONTRACT BETWEEN OWNER AND CONTRACTOR

THIS AGREEMENT is effective and made this ____ day of _____, _____, by and between _____ (“Contractor”) and the Spokane Housing Authority (“Owner”).

1. **THE WORK:** Contractor shall furnish the material, labor, equipment, tools, and supervision necessary to perform the following described work: _____ (hereinafter called the “work”), located at _____. The work shall be performed in strict accordance with the plans and specifications supplied by Owner, which are hereby incorporated into this Agreement and are binding on Contractor. Contractor agrees to immediately inform Owner in writing of any discrepancies, errors, or omissions in the plans or specifications or materially changed or unanticipated conditions and not to proceed with any work affected by such discrepancy until Owner directs Contractor to do so.

2. **COMPLIANCE WITH LAWS.** Contractor shall comply with all laws and regulations applicable to the work.

3. **PRICE AND PAYMENTS.** The total amount to be paid by Owner to the Contractor for all work under this Agreement is the lump sum amount of _____ (\$_____). The Contract Price is inclusive of all taxes of any kind or nature.

a. **Progress Payments.** On the first business day of every month, Contractor shall present to Owner an Application for Payment to Owner. Contractor’s Applications for Payment shall show the percentage of completion of each portion of the work as of the end of the period covered by the Application for Payment. Owner shall make payment to Contractor based on the percentage of the work completed for the period covered by the Application for Payment date plus sales tax, less previous payments and less retainage specified in Section 3.b. Owner shall make payment no later than twenty-five (25) calendar days from the date of receipt of each Application for Payment.

b. **Retainage.** Owner shall withhold five percent (5%) as retainage from each progress payment (the “Retainage”). Retainage shall be released to Contractor at the time of Final Payment. The Retainage is a fund for the protection of the Owner (i) from incomplete or defective work by Contractor; (ii) for the payment of persons who supplied materials or who worked on the project and were not paid by Contractor; and (iii) damages incurred due to other breaches of the Agreement.

c. **Final Payment.** Within ten (10) days after Contractor notifies Owner that the work is substantially complete, Owner shall inspect the Work with Contractor and deliver to Contractor a comprehensive list of items to be completed or corrected prior to Final Payment (the “Punch List”). The Punch List and other work shall be finished by Contractor within ten (10) calendar days of Contractor’s receipt of the Punch List. Final Payment shall be due fourteen (14) days after Contractor (1) completes the work in accordance with the Contract Documents; and (2) provides Owner with final lien releases from Contractor and all subcontractors and suppliers, conditioned only on receipt of Final Payment. Contractor’s acceptance of Final Payment shall constitute a waiver of any and all claims Contractor has or may have against Owner relating to the Agreement or the work.

4. **CHANGES.** Owner reserves the right to make changes in the work, without invalidating the Agreement. In the event the Owner directs any changes in the work, the Contract Price shall be adjusted based on either: (a) a mutually agreed upon lump sum amount prior to commencement of the changed work; or (b) in the absence of agreement, the Contractor’s actual costs for labor, subcontracts, materials, equipment, bond and insurance, taxes, and any other expenses reasonably incurred to perform the changed work, plus overhead and profit on all such costs in the amount of 10% of all costs. Contractor shall not proceed with any changes in the work without written authorization from Owner, and Contractor waives any claim for additional compensation if Contractor proceeds without written authorization from Owner.

5. **TIME FOR PERFORMANCE.** Time is of the essence in performance of this Agreement. Contractor shall commence the work upon receipt of a notice to proceed from Owner and shall achieve substantial completion of the work no later than _____. If Contractor fails to achieve substantial completion of the Work by the date set forth herein, Owner will suffer substantial damages that are both extremely difficult and impractical to determine. Owner and Contractor agree that if Contractor fails to meet the substantial completion date, then Contractor shall pay Owner liquidated damages at a daily rate of _____ Dollars (\$_____). The parties agree that liquidated damages are not a penalty, but rather a reasonable estimate of the amount of damages Owner will suffer in the event of delay. Owner shall have the right to withhold the amount of liquidated damages from any sums due to Contractor.

6. **INSURANCE.** Before commencing the Work and as a condition of payment, and as part of the Lump Sum Amount, Contractor shall purchase and maintain insurance as described below from an insurer admitted to do business in Washington with an A.M. Best financial strength rating of A-1 or better, that will protect it from bodily injury or property damage claims arising out of its operations under this Agreement, whether the operations are by Contractor, Contractor’s consultants or subcontractors, anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable.

a. Commercial General Liability (CGL) insurance providing bodily injury liability and property damage liability with combined single limits of not less than \$500,000 per occurrence, and \$1,000,000 general aggregate limits, and Products/Completed Operations aggregate limits of \$1,000,000, written on an occurrence form. Owner shall be included as an additional insured under the CGL policy.

b. Automobile liability insurance with a minimum limit of liability of not less than \$300,000 per occurrence for all owned, non-owned and hired automobiles.

c. Worker’s compensation insurance, at statutory limits.

Prior to starting work, Contractor shall provide a copy of the actual additional insured endorsement or blanket additional insured policy wording to the CGL policy that documents the Owner’s additional insured status.

7. **INDEMNIFICATION.** Contractor agrees to defend, indemnify and hold harmless the Owner and its agents, employees, and representatives from any and all claims, demands, losses and liabilities to or by third parties arising from, resulting from or connected with

services performed or to be performed under this Agreement by Contractor, its subcontractors, its agents or employees, even though such claims may prove to be false, groundless or fraudulent, to the fullest extent permitted by law and subject to the limitations provided below. In cases involving claims of personal injury or property damage, the following limitations shall apply: (a) Contractor shall not be required to indemnify Owner if the claim, demand, loss or liability is caused by Owner's sole negligence; and (b) in the event of concurrent negligence between the Owner and Contractor, the Contractor's duty to indemnify shall be limited to the extent of the Contractor's share of the fault.

For purposes of the foregoing indemnification provision only, and only to the extent of claims against Contractor by Owner under such indemnification provision, Contractor specifically waives any immunity it may be granted under the Washington State Industrial Insurance Act, Title 51 RCW. The indemnification obligation under this Agreement shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable to or for any third party under workers compensation acts, disabilities benefit acts, or other employee benefit acts.

8. **SAFETY.** Contractor and its subcontractors shall take all reasonably necessary safety precautions, including compliance with applicable laws, ordinances, regulations, and orders issued by a public authority, whether federal, state, or local. Contractor shall at all times be responsible for providing a safe job site and be responsible for the work performance and safety of all employees, personnel, equipment, and materials within the care, custody, or control of Contractor or its subcontractors of any tier.

9. **SUBCONTRACTORS.** Prior to the effectiveness of this Agreement, Contractor shall furnish in writing to Owner the names of all persons or entities proposed as subcontractors for any aspect of the Work. Contractor shall not subcontract with a proposed person or entity to whom Owner has reasonable objection. Contractor shall not substitute a subcontractor, person, or entity previously identified and approved by Owner without Owner's written approval.

10. **LABOR REGULATIONS.** Contractor shall comply with all labor regulations relating to the work, as may apply based on the source of project funds, including (without limitation) Washington State Prevailing Wages, federal Davis Bacon Wage Rates, and/or HUD Determined Non-Routine Maintenance.

11. **TERMINATION.**

a. **Termination by Owner for Cause.** Owner may, after giving Contractor seven (7) days written notice and an opportunity to commence and continue to cure the alleged cause, terminate the Agreement if Contractor violates any material provision of this Contract or: (i) refuses or fails to supply enough properly skilled workers or proper materials; or fails to make payment to subcontractors for materials or labor in accordance with the respective agreements between Contractor and the subcontractors; or (ii) persistently disregards laws, ordinances, rules, regulations or orders of public authorities having jurisdiction; or (iii) fails to provide Owner, upon request, reasonable evidence that the work will be completed by the date of Substantial Completion.

b. **Termination by Owner for Convenience.** Owner may terminate the Contract for Owner's convenience. Upon receipt of written notice from Owner of such termination, Contractor shall: (i) cease operations as directed by Owner in the notice; (ii) take actions necessary, or that Owner may direct, for the protection and preservation of the Work; and (iii) except for work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing subcontracts and purchase orders and enter into no further subcontracts and purchase orders.

In case of Termination by Owner for Convenience, Contractor shall be entitled to receive payment for work executed to the effective date of termination, based on the percentage of the work completed, plus those costs necessary to satisfy the obligations incurred as a result of the requirements of subsections (i)-(iii), above.

12. **MISCELLANEOUS TERMS AND CONDITIONS.**

a. **Entire Agreement and Binding Effect.** This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior agreements, understandings and negotiations, both written and oral, between the parties with respect to the subject matter of this Agreement. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns.

b. **Governing Law.** This Agreement shall be governed by, and interpreted and enforced in accordance with, the laws in force in the State of Washington. Any litigation arising out of or in connection with this Agreement shall be conducted in Spokane County, Washington.

c. **Severability.** If any provision of this Agreement shall be held by a court of competent jurisdiction to be invalid, unenforceable or void, the remainder of this Agreement shall remain in full force and effect unless enforcement of the remaining terms defeats the essential purpose of the Agreement.

IN WITNESS WHEREOF the parties hereto have executed this Agreement by their proper officers or duly authorized agents.

CONTRACTOR

SPOKANE HOUSING AUTHORITY (OWNER)

By: _____

By: _____

Title: _____

Date: _____

Date: _____