



PROJECT MANUAL

8/7/23

WEST LOADING DOCK BOLLARD/BARRIER PROJECT

BIDS DUE: 8/29/23 BY 3:00PM LOCAL TIME

Buyer's Representative:

Cody Lund
Assistant Executive Director
Boise Centre
850 W. Front Street, Boise, Idaho 83702
208-489-3630
Clund@boisecentre.com

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GREATER BOISE AUDITORIUM DISTRICT
WEST LOADING DOCK BOLLARD/BARRIER PROJECT

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SECTION 00 11 16 INVITATION TO BID

8/8/2023

Greater Boise Auditorium District (“District”) invites submission of sealed bids for the WEST LOADING DOCK BOLLARD/BARRIER PROJECT in accordance with the formal bid process outlined in Idaho Code § 67-2805(2)(a). A Public Works License issued by the State of Idaho is required to bid on this work.

In accordance with the plans and specifications, the work will consist of the installation of shallow foundation depth, K12 crash rated barriers for Boise Centre’s West Loading Dock.

Bids will be prepared per the specifications detailed within the Project Manual. The Project Manual and the Drawings are being made available at the following locations:

- Greater Boise Auditorium District, 850 W. Front Street, Boise, Idaho 83702
- Online at www.boiseauditorium.com

Bids must be delivered electronically prior to 3PM, on August 29th, 2023 at this email address: clund@boisecentre.com A public bid opening will be held live via ZOOM. Following the Bid Opening, the bid results will be posted on District website.

District reserves the right to reject any and all proposals, to waive any irregularities in the proposals received, and to accept the proposal that is in the best interest of District. The issuance of the Invitation to Bid and the receipt and evaluation of sealed bids does not obligate District to award a contract. District will pay no costs incurred by Bidders in responding to this Invitation to Bid. District may in its discretion cancel this process at any time prior to execution of a contract without liability.

A **Pre-Bid Meeting** will be held at 2PM on Tuesday August 15th, at Boise Centre’s office, 850 W. Front Street, Boise, Idaho 83702. A Site Tour will follow. District strongly recommends attendance by the Bidders.

District appreciates your interest in meeting the needs of the agency and the citizens of Boise.

Cody Lund
Assistant Executive Director



END OF SECTION 00 11 16

SECTION 00 21 13 INSTRUCTIONS TO BIDDERS

1. BID SUBMISSION

Please follow these instructions for submitting a sealed bid.

DUE DATE: August 29th, 2023, no later than 3:00 p.m. local time

a. Pre-Bid

A Pre-Bid meeting will be held at 2PM on Tuesday, August 15th at District offices, 850 W. Front Street, Boise, Idaho 83702. A Site Tour of the Project Area will follow. District strongly recommends attendance by bidders.

b. Drawings; Specifications; Project Information

Bids must be prepared per the drawings and the specifications detailed in the Project Manual. The Project Manual, the Drawings, and other documents are being made available at the following location:

<https://www.boiseauditorium.com/>

The following Project information is provided as part of the bid documents, and is available at

<https://www.boiseauditorium.com/rfp-rfq/>

c. Submit Bid by Email

The bid must be submitted electronically by email to: clund@boisecentre.com

Please include this subject line on the email:

“BID SUBMITTAL: “West Loading Dock Bollard/Barrier Project”

All required bid submittal documents must be signed and dated and must be submitted via email either in one PDF or a separate PDF of each required document. Late or incomplete submittals will not be accepted; District takes no responsibility for bids received after the deadline or incomplete in any way. Bidder assumes full responsibility for the timely submittal of all bid documents via the email process.

Bidder assumes full responsibility for the timely delivery of its bid to District.

The Bidder will be responsible for all costs (including site visits where needed) incurred in preparing or responding to this bid invitation. All materials and documents submitted in response to this bid invitation become the property of District and will not be returned.

Bids will be prepared per the drawings and the specifications detailed in the Project Manual. The Project Manual, the Drawings, and other documents are being made available at the following location:

<https://www.boiseauditorium.com/>

The following Project information is provided as part of the bid documents, and is available at

<https://www.boiseauditorium.com/rfp-rfq/>

d. Attend the Live Bid Opening

The Public Bid Opening will be held live via ZOOM on Friday, September 1st, 2023, at 2PM local time. Attendance is encouraged but not mandatory. Please log on to Zoom and join the meeting by using the link or entering the Meeting ID shown below.

<https://us06web.zoom.us/j/3408388515>

Meeting ID: 340 838 8515

2. GENERAL CONDITIONS

2.1 Intent of Bid/Proposal

It is the intent of this Invitation to Bid to define requirements in sufficient detail to secure comparable Bids. Bids must be in accordance with Bid document requirements. Bids not conforming to the requested format or not in compliance with the specifications will be considered non-responsive.

District reserves the right to act in the public best interest and in furtherance of the purposes of the Idaho Code Title 50, Chapter 20 (Idaho Urban Renewal Law) and Idaho Code Title 67, Chapter 28 (Purchasing by Political Subdivisions). District reserves the right to waive any formalities or defects as to form, procedure, or content with respect to its Bid Invitation and any irregularities in the Bids received, to request additional data and information from any and all Bidders, to reject any submissions based on real or apparent conflict of interest, to reject any submissions containing inaccurate or misleading information, and to accept the proposal that is in the best interest of District. The issuance of this Bid Invitation and the receipt and evaluation of electronic bids does not obligate District to award a contract. District may in its discretion cancel this process at any time prior to execution of a contract without liability.

2.2 Public Records

District is a public agency. All documents in its possession are public records subject to disclosure under the Idaho Public Records Act, Title 74, Chapter 1, Idaho Code, and will be available for inspection and copying by any person.

If any Respondent claims any part of its submission is exempt from disclosure under the Idaho Public Records Act, Respondent must: A.) Indicate by marking the pertinent document “CONFIDENTIAL”; and B.) Include the specific basis for the position that it be treated as exempt from disclosure. Marking the entire submission as “Confidential” is not in accordance with the Idaho Public Records Act and will not be honored. District, to the extent allowed by law and in accordance with these Instructions, will honor a designation of nondisclosure. By claiming material to be exempt from disclosure under the Idaho Public Records Act, Respondent expressly agrees to defend, indemnify, and hold District harmless from any claim or suit arising from District’s refusal to disclose such materials. Any questions regarding the applicability of the Public Records Act should be addressed to your own legal counsel prior to submission.

2.3 Form of Agreement

Unless otherwise specified in the bid documents, the form of the agreement will be the Standard Agreement and General Conditions Between District and Contractor, as modified by District.

2.4 Performance and Payment Bond

A performance bond and payment bond are required for this Project, each in an amount of not less than one hundred percent (100%) of the Contract Price. The performance and payment bonds must be AIA Document A312, 2010 or the most recent Edition, or a standard surety form certified approved to be the same as the AIA A312 form and must be executed by a surety or sureties reasonably acceptable to District

and authorized to do business in the State of Idaho. Bonds must be provided within ten (10) calendar days following receipt of a Notice of Intent to Award.

2.5 Taxes

District is exempt from federal and state taxes and will execute the required exemption certificates for items purchased and used by District. Items purchased by District and used by a contractor are subject to Idaho use tax. All other taxes are the responsibility of Contractor and are to be included in Contractor's Bid pricing.

3. SUBMISSION PROCESS

3.1 All Forms to be Submitted

Bidders must submit the following completed forms via email to clund@boisecentre.com by the Bid Due Date and Time. Failure to submit all forms will render any Bid unresponsive and void.

00 41 13 Bid Form

00 45 46 Contractor's Affidavit Concerning Taxes

District has provided 00 43 10 Supplement to Bid Form as an Excel document to aid Bidder's. The document may be populated with pricing, printed, signed, and submitted as a PDF document in lieu of filling in the pdf form in the Project Manual.

3.2 Preparation of Bids

Fill in all blanks. All blank spaces on the Bid Form and Supplement to Bid Form must be filled in by the Bidder. Bidder must submit a bid amount for all alternates, additives, deductives, unit prices, and other prices as indicated on the forms. When submitting pricing on items for which there is no charge, Bidder must write the words, "no charge," "zero," or "0.00" in the space provided on the Form. If a Bidder fails to submit a bid price for any item or does not fill in all blank spaces on the Forms, the bid may be rejected as non-responsive.

3.3 Request for Clarification; Objections to Specifications or Process;

Any Bidder who wishes to request clarifications or object to specifications or bidding procedures outlined in this Invitation to Bid may submit a written notification to Cody Lund, Assistant Executive Director at clund@boisecentre.com. The notification will state the exact nature of the clarification or protest, describing the location of the protested portion or clause in the Bid/Proposal documents, and explaining why the provision should be struck, added, or altered, and contain suggested corrections. District may deny the objection, modify the Project Manual, and/or reject all or part of the objection. Changes to these specifications will be made by written addendum. Verbal responses will not be binding on District or the Bidder.

Deadline for Questions/Clarifications:

Tuesday, August 25th by 5PM

Deadline for Objections to Bid Process:

Tuesday, September 5th by 5PM

3.4 Addenda

In the event it becomes necessary to revise any part of the bid documents, written addenda will be issued. Information given to one bidder will be available to all other bidders if such information is necessary for purposes of submitting a bid or if failure to give such information would be prejudicial to uninformed bidders. Addenda will be made available by way of District website: www.boiseauditorium.com. It is the bidder's responsibility to check for addenda prior to submitting a bid. Bidders are required to acknowledge receipt of all addenda in the space provided on the bid proposal form. Failure to do so may result in the bid being declared non-responsive. No addenda will be issued fewer than four (4) business days before the submission deadline unless the deadline is extended.

3.5 Time for Submission

Bids must be submitted by the time specified in the Invitation to Bid. Late bids will be rejected.

3.6 Bid and Price Guarantee

A submitted Bid must remain open for sixty (60) days.

3.7 Bid Modification; Bid Withdrawal

A Bid may be modified or withdrawn by the Bidder prior to the set date and time for the opening of Bids. Bids may not be modified or withdrawn after the bid opening.

3.8 Bid Document Evaluation

When an item price is required to be set forth in the bid documents and the total for the item set forth separately does not agree with a figure which is derived by multiplying the item price times District's estimate of the quantity of work to be performed for said item, the item price will prevail over the sum set forth as the total for the item.

Should the bid contain only a total price for the item and the item price is omitted, District will determine the item price by estimated quantities of work to be performed as items of work.

If the bid contains neither the item price nor the total price for the item, then it may be deemed incomplete, and the bid may be rejected as non-responsive.

The unit prices submitted on the Supplement to Bid Form of the apparent low bid will be examined for reasonable conformance with Architect's estimated prices. A bid with extreme variations from Architect's estimate, or where obvious unbalancing of unit prices has occurred, will be evaluated. Where obvious unbalanced bid items exist, the decision to award or reject a bid will be supported by written justification. A bid found to be mathematically unbalanced, but not found to be materially unbalanced, may be awarded.

3.9 Legal Residency Requirement

By submitting a bid, the bidder attests, under penalty of perjury, that he (the bidder) is a United States citizen or legal permanent resident or that it is otherwise lawfully present in the United States pursuant to federal law. Prior to being issued a contract, the bidder will be required to submit proof of lawful presence in the United States in accordance with Idaho Code § 67-7903.

3.10 Public Works Contractor's License Requirements

This Project is not financed in whole or in part by federal funds. Bids will be accepted from those Contractors only (prime contractors, subcontractors and/or specialty contractors) who, prior to the bid opening, hold current valid licenses as public works contractors in the State of Idaho. Idaho Code § 54-1902 requires that public works contractors and subcontractors have the appropriate Public Works License for the particular type of construction work involved, and the prime contractor must perform at least 20% of the work under contract. District uses the Idaho Division of Building Safety's (DBS) online license database to verify that Bidders meet all PWC License requirements.

Contractor will, in the space provided in the Bid Form, provide the names and addresses and Idaho Public Works Contractor's license number of each subcontractor that Contractor will utilize for the construction, alteration or repair of the public works here involved, as required by Idaho Code § 67-2310. Failure to name subcontractors for plumbing, heating, air-conditioning, and electrical as required will render any Bid submitted by a general Contractor unresponsive and void.

4. BID SECURITY

A bid bond is not required.

District reserves the right, on the refusal or failure of the Successful Bidder to execute the agreement or furnish the required proof of insurance and bonds, to award the Project to the next lowest qualified Bidder.

5. SELECTION CRITERIA

Selection will be based on the procurement rules set forth in Idaho Code § 67-2805(2)(a). District has the right to waive or alter submission requirements or to reject any or all submissions, including without limitation, nonconforming, nonresponsive, unbalanced or conditional bids consistent with Idaho law. It is the bidder's responsibility to conform to all applicable federal, state and local statutes or other applicable legal requirements. The information provided herein is intended to assist bidders in meeting applicable requirements but is not exhaustive, and District will not be responsible for any failure by any bidder to meet applicable requirements.

6. OBJECTION TO CONTRACT AWARD

If any participating Bidder objects to District's award of the Project, that Bidder will respond in writing to the notice of the bid award from District within seven (7) calendar days of the date of transmittal of the notice, stating the express reason(s) that District's governing board's award decision is in error. Upon receipt of such objection, District Board of Commissioners will review the award and determine whether to affirm, modify, or re-bid, setting forth the reason(s) for its decision. At completion of the review process, District may proceed as it deems to be in the public interest.

END OF SECTION 00 21 13

SECTION 00 41 13 BID FORM

BID FORM

PROJECT: WEST LOADING DOCK BOLLARD/BARRIER PROJECT

THIS BID IS SUBMITTED TO:

Greater Boise Auditorium District
Attn: WEST LOADING DOCK BOLLARD/BARRIER PROJECT
Via email: clund@boisecentre.com

- 1.01 The undersigned Bidder proposes and agrees to enter into a contract with District in the form included in the Project Manual to perform all the Work as specified or indicated in the Project Manual for the prices indicated in this Bid and in accordance with the other terms and conditions of the Project Manual.
- 1.02 Bidder accepts all of the terms and conditions of the Advertisement or Invitation to Bid and Instructions to Bidders, including without limitation those dealing with the disposition of Bid security. The Bid will remain subject to acceptance for sixty (60) days after the Bid opening, or for such longer period of time that Bidder may agree to in writing upon request of District.
- 1.03 Within thirty (30) days from receiving a written notice of acceptance of this Bid, Bidder will execute the Agreement and will deliver evidence of required insurance coverages and bonds in the amounts required by the Agreement.
- 1.04 In submitting this Bid, Bidder represents, as set forth in the Agreement and Project Manual, that:
 - a. Bidder has examined and understands the Project Manual and the following Addenda:

Addendum No.	Addendum Date
_____	_____
 - b. Bidder has visited the Site and become familiar with and is satisfied as to the general, local, and Site conditions that may affect cost, progress, and performance of the Work.
 - c. Bidder is familiar with and is satisfied as to all federal, state, and local laws and regulations that may affect cost, progress, and performance of the Work.
 - d. Bidder has carefully studied: (1) all reports of explorations and tests of subsurface conditions at or contiguous to the Site and all drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the Site which have been identified in the Project Manual; and (2) all reports and drawings of a Hazardous Environmental Condition, if any, which has been identified in the Project Manual.
 - e. Bidder has obtained and carefully studied (or assumes responsibility for having done so) all additional or supplementary examinations, investigations, explorations, tests, studies, and data concerning conditions (surface, subsurface and Underground Facilities) at or contiguous to the Site which may affect cost, progress, or performance of the Work or which relate to any aspect of the means, methods, techniques, sequences, and procedures of construction to be employed by Bidder, including applying the specific means, methods, techniques, sequences, and procedures of construction expressly required by the

Project Manual to be employed by Bidder, and safety precautions and programs incident thereto.

- f. Bidder does not consider that any further examinations, investigations, explorations, tests, studies, or data are necessary for the determination of this Bid for performance of the Work at the price(s) bid and within the times and in accordance with the other terms and conditions of the Project Manual.
 - g. Bidder is aware of the general nature of work to be performed by District and others at the Site that relates to the Work as indicated in the Project Manual.
 - h. Bidder has correlated the information known to Bidder, information and observations obtained from visits to the Site, reports and drawings identified in the Project Manual, and all additional examinations, investigations, explorations, tests, studies, and data with the Project Manual.
 - i. Bidder has given District written notice of all conflicts, errors, ambiguities, or discrepancies that Bidder discovered in the Project Manual, and the written resolution thereof by District is acceptable to Bidder.
 - j. The Project Manual is generally sufficient to indicate and convey understanding of all terms and conditions for the performance of the Work for which this Bid is submitted.
 - k. Bidder is responsible for ascertaining the existence of any addenda and the contents thereto.
- 1.05 Bidder represents that this Bid is genuine and not made in the interest of or on behalf of any undisclosed individual or entity and is not submitted in conformity with any agreement or rules of any group, association, organization, or corporation; Bidder has not directly or indirectly induced or solicited any other Bidder to submit a false or sham Bid; Bidder has not solicited or induced any individual or entity to refrain from bidding; and Bidder has not sought by collusion to obtain for itself any advantage over any other Bidder or over District.
- 1.06 Bidder will complete the Work in accordance with the Contract Documents for the lump sum given, which includes all taxes. Unit prices have been computed in accordance with the General Conditions. Bidder acknowledges that estimated quantities are not guaranteed, and are solely for the purpose of comparison of Bids, and final payment for all Work Item Quantities listed in the Supplement to Bid Form will be based on actual quantities provided, determined as provided in the Contract Documents. Bidder acknowledges that the quantities specified on the Supplement to Bid Form are approximate and that actual quantities in the field may increase or decrease from the quantities estimated. Bidder hereby agrees to perform all quantities of Work as either increased or decreased, as required by Architect and in accordance with the Contract Documents. The final payment to the Bidder will be based on the Total Bid Amount and the actual quantities completed (for items that are not lump sum).
- 1.07 Bidder agrees that the Work will be substantially completed and fully completed ready for final payment in accordance with General Conditions on or before the dates or within the number of calendar days indicated in the Contract Documents. Bidder accepts the provisions of the Agreement as to liquidated damages in the event of failure to complete the Work within the times specified.

- 1.08 Bidder agrees to comply with Idaho Code § 44-1001 through 44-1006 regarding employment of Idaho residents.
- 1.09 The following documents are attached to and made a condition of this Bid: (1) Supplement to Bid Form; and (2) Contractor's Affidavit Concerning Taxes.

Bidder agrees to include with the Bid the names and addresses and Idaho Public Works Contractor License numbers of the Subcontractors who will, in the event the Bidder secures the Agreement, subcontract the plumbing, heating and air-conditioning work, and electrical work under the general Contract.

- 1.10 WAIVER & RELEASE: Bidder has read and fully accepts District's discretion and non-liability as stipulated herein, expressly for, but not limited to, District's decision to proceed with a selection process in response to the Invitation to Bid, including the right in its sole discretion and judgment for whatever reason it deems appropriate, at any time unless contrary to applicable state law, to:
- a. Modify or suspend any and all aspects of the process seeking a contractor to construct Project.
 - b. Obtain further information from any person, entity, or group, including, but not limited to, any person, entity, or group responding to District's Bid Invitation (any such person, entity, or group responding is, for convenience, hereinafter referred to as "Bidder"), and to ascertain the depth of Bidder's capability and experience for construction of Project and in any and all other respects to meet with and consult with any Bidder or any other person, entity, or group.
 - c. Waive any formalities or defects as to form, procedure, or content with respect to its Bid Invitation and any responses by any Bidder thereto.
 - d. Accept or reject any sealed Bid received in response to the Bid Invitation, including any sealed Bid submitted by the undersigned; or select any one submission over another.
 - e. Accept or reject all or any part of any materials, plans, drawings, implementation programs, schedules, phrasings and proposals or statements, including, but not limited to, the nature and type of Bid.

Bidder agrees that District will have no liability whatsoever, of any kind or character, directly or indirectly, by reason of all or any decision made at the discretion of District as identified above.

SUBCONTRACTORS

Pursuant to Idaho Code § 67-2310, commonly known as the naming law, the names and addresses of subcontractors to whom work will be awarded, subject to approval of District and Architect, are as listed below. If such work is not required, Bidder will indicate "Not Applicable" in the list below. In the event that the general (Trade) contractor intends to self-perform the plumbing, HVAC, or electrical work, the general contractor must be properly licensed by the state of Idaho to perform such work. The general (Trade) contractor will demonstrate compliance with this requirement by listing the valid contractor's license number for the plumbing, HVAC, or electrical work to be self-performed by the general contractor on the bid form.

**FAILURE TO NAME SUBCONTRACTORS AS REQUIRED BY IDAHO CODE
WILL RENDER ANY BID SUBMITTED NON-RESPONSIVE AND VOID.**

Plumbing

Address:

Public Works License No.

Idaho Plumbing Contractors License No.

Heating & Air Conditioning

Address:

Public Works License No.

Idaho HVAC Contractors License No.

Electrical

Address:

Public Works License No.

Idaho Electrical Contractors License No.

BASE BID - OFFER

All the work described in the Project Manual, Bid Drawings and Specifications.

_____ (\$ _____) Dollars, lawful money of the United States.

[Show amounts in both words and figures; in event of discrepancy, the amount in words will govern.]

District reserves the right to include any and/or all Bid Alternates. If one or more Bid Alternates are chosen for inclusion, District will total the offers made by each Bidder for the Base Bid plus chosen Bid Alternates to determine the lowest responsive bid.

BID ALTERNATE INSTRUCTIONS

Submit bids for all Alternates listed below and described in Section 01 23 00 - ALTERNATES.

BID ALT "A" - OFFER

Provide all labor and material to [_____].

[ADD or DEDUCT]: _____

(\$ _____) Dollars, lawful money of the United States.

[Show amounts in both words and figures; in event of discrepancy, the amount in words will govern.]

BID FORM SIGNATURE

SUBMITTED on _____, 2023.

X

SIGNATURE

Print Name and Title

Contractor / Company

Address

City, State ZIP

Idaho Public Works Contractor License No.

License Expiration Date

Federal Tax ID #

E-mail Address

Phone No.

Fax No.

ATTENTION: Did you remember your Supplement to Bid Form and Contractor's Affidavit Concerning Taxes? Supplement to Bid Form and Contractor's Affidavit Concerning Taxes are REQUIRED.

IF SUPPLEMENT TO BID FORM, AND CONTRACTOR'S AFFIDAVIT ARE NOT INCLUDED, YOUR BID WILL BE CONSIDERED NON-RESPONSIVE.

END OF SECTION 00 41 13

SECTION 00 45 46 CONTRACTOR'S AFFIDAVIT CONCERNING TAXES
EXECUTE AND SUBMIT WITH BID

CONTRACTOR'S AFFIDAVIT CONCERNING TAXES

STATE OF _____

COUNTY OF _____

Pursuant to Chapter 15, Title 63, Idaho Code, the undersigned, being duly sworn, depose and certify that all taxes, excises and license fees due to the State of Idaho and its taxing units, for which I or my property is liable, then due or delinquent, have been paid, or arrangements have been made, before entering into a contract for construction of any public works in the State of Idaho.

Contractor / Company

X _____
Authorized Representative Signature

Address

Print Name and Title

City, State, Zip

Subscribed and sworn to before me this ____ day of _____, 2023.

Notary Public
Residing at: _____
Commission Expires: _____

END OF SECTION 00 45 46

SECTION 00 52 13 AGREEMENT BETWEEN DISTRICT AND CONTRACTOR

**STANDARD AGREEMENT AND GENERAL CONDITIONS
BETWEEN DISTRICT AND CONTRACTOR**

WEST LOADING DOCK BOLLARD/BARRIER PROJECT

(\$000,000)

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ARTICLE 1 AGREEMENT

This Agreement is made this ____ day of _____ in the year 2023, by and between the

DISTRICT: Greater Boise Auditorium District (District)
850 W. Front Street, Boise, Idaho 83702
and the

CONTRACTOR: _____

Tax identification number (TIN): _____

Idaho Public Works Contractor License No.: _____

for construction services in connection with the following PROJECT:

Project Identification: WEST LOADING DOCK BOLLARD/BARRIER PROJECT

Notice to the Parties must be given at the above addresses.

Project Manager is [Architect]

District’s Representative is [Name of Contracting Officer].

Contractor’s Representative is _____.

The Parties agree as set forth herein:

1.1 The Contract Price is _____. The Contract Price will be subject to increase or decrease as provided in Article 8..

1.2 Substantial Completion of the Work must be achieved not later than _____ Days after the Date of Commencement (the “Substantial Completion Deadline”).

1.3 The “Daily Liquidated Damages Amount” will be Five Hundred Dollars (\$500).

ARTICLE 2 GENERAL PROVISIONS

2.1 RELATIONSHIP OF PARTIES. Contractor represents that it is an independent contractor and that in its performance of the Work it will act as an independent contractor. District will have no right to control or direct the details, manner, or means by which Contractor accomplishes the results of the services performed hereunder.

2.1.1 Contractor has no obligation to work any particular hours or days or any particular number of hours or days. Contractor agrees, however, that its other contracts and services will not interfere with the performance of its services under this Agreement.

2.1.2 Contractor represents that it is an independent contractor and that in its performance of the Work it will act as an independent contractor. District will have no right to control or direct the details, manner, or means by which Contractor accomplishes the results of the services performed hereunder.

- 2.1.3 Contractor has no obligation to work any particular hours or days or any particular number of hours or days. Contractor agrees, however, that its other contracts and services will not interfere with the performance of its services under this Agreement.
- 2.1.4 Neither Contractor nor any of its agents or employees will act on behalf of or in the name of District except as provided in this Agreement or unless authorized in writing by District's Representative.
- 2.1.5 The Parties will perform their obligations with integrity, ensuring at a minimum that each: (a) avoids conflicts of interest and promptly discloses any to the other Party; and (b) warrants that it has not and will not pay or receive any contingent fees or gratuities to or from the other Party, including its agents, officers, and employees, subcontractors, or others for whom they may be liable, to secure preferential treatment.
- 2.2 DESIGN PROFESSIONAL. District's Design Professional is [Architect].
- 2.3 DEFINITIONS
- 2.3.1 "Agreement" means this Standard Agreement and General Conditions Between District and Contractor, as modified, and exhibits and attachments made part of this agreement upon its execution. For purposes of this Agreement, the terms "Agreement" and "Contract" are equivalent.
- 2.3.2 "Business Day" means all Days, except weekends and official federal or state holidays where the Project is located.
- 2.3.3 "Change Order" is a written order signed by District and Contractor after execution of this Agreement, indicating changes in the scope of the Work, the Contract Price, or Contract Time, including substitutions proposed by Contractor and accepted by District.
- 2.3.4 "Contract Documents" consist of this Agreement, the existing Contract Documents listed in Section 14.1, drawings, specifications, addenda issued and acknowledged prior to execution of this Agreement, information furnished by District pursuant to subsection 3.13.4, and modifications issued in accordance with this Agreement.
- 2.3.5 "Contract Price" is the amount indicated in section 0 of this Agreement.
- 2.3.6 "Contract Time" is the period between the Date of Commencement and Final Completion.
- 2.3.7 "Contractor" is the person or entity identified in Article 1 and includes Contractor's Representative, designated by Contractor as having authority to represent, make decisions, and act on behalf of Contractor. For purposes of this Agreement, the terms Contractor and Contractor with the capitalized "C" are equivalent.
- 2.3.8 "Construction Period" is the period of time between the Date of Commencement stated in the Notice to Proceed and the date of Final Completion stated in the Certificate of Final Completion.
- 2.3.9 "Cost of the Work" means the costs and discounts specified in section 8.3.2.
- 2.3.10 "Date of Commencement" is as set forth in section 6.1.
- 2.3.11 "Day" means a calendar day.
- 2.3.12 "Defective Work" is any portion of the Work that does not conform with the Contract Documents.

- 2.3.13 “Design Professional” means the licensed architect or engineer, and its consultants, retained by District to perform design services for the Project.
- 2.3.14 “Final Completion” occurs on the date when Contractor’s obligations under this Agreement are complete and accepted by District and final payment becomes due and payable. This date will be confirmed by a Certificate of Final Completion signed by District and Contractor.
- 2.3.15 “Interim Directed Change” is a change to the Work directed by District pursuant to section 8.2.
- 2.3.16 “Laws” mean federal, state, and local laws, ordinances, codes, rules, and regulations applicable to the Work with which Contractor must comply that are enacted as of the Agreement date.
- 2.3.17 “Material Supplier” is a person or entity retained by Contractor to provide material and equipment for the Work.
- 2.3.18 “Others” means other contractors, suppliers and persons at the Worksite who are not employed by Contractor or Subcontractors.
- 2.3.19 “Overhead” means (a) payroll costs and other compensation of Contractor employees in Contractor’s principal and branch offices; (b) general and administrative expenses of Contractor’s principal and branch offices including charges against Contractor for delinquent payments; and (c) Contractor’s capital expenses, including interest on capital used for the Work.
- 2.3.20 “District” is the person or entity identified in Article 1 and includes District’s Representative.
- 2.3.21 “District’s Representative” is the individual employed by District who will act as the prime point of contact between District and Project Manager (if any), will provide District’s instructions to Project Manager (if any), and will have authority to bind District in all matters requiring District’s approval, authorization or written notice.
- 2.3.22 “Parties” are collectively District and Contractor.
- 2.3.23 “Project” as identified in Article 1, is the construction, installation, repair or other improvements for which Contractor is to perform Work under this Agreement. It may also include construction by District or Others.
- 2.3.24 “Project Manager” is the individual or entity, if any, retained by District to perform day-to-day management of the Project on District’s behalf and will be the prime point of contact for Contractor. If District does not retain a Project Manager for the Project, then the duties of the Project Manager will be performed by the District’s Representative.
- 2.3.25 “Schedule of the Work” is the document prepared by Contractor that specifies the dates on which Contractor plans to begin and complete various parts of the Work, including dates on which information and approvals are required from District.
- 2.3.26 “Subcontractor” is a person or entity retained by Contractor as an independent contractor to provide the labor, materials, equipment, or services necessary to complete a specific portion of the Work. All subcontractors must hold valid Public Works Contractor licenses pursuant to Idaho Code § 54-1902.
- 2.3.27 “Substantial Completion” of the Work occurs on the date when the Work is sufficiently complete in accordance with the Contract Documents so that District may occupy or utilize the Project, or a

designated portion, for the use for which it is intended, without unscheduled disruption. This date will be confirmed by a Certificate of Substantial Completion signed by District and Contractor.

- 2.3.28 “Sub-subcontractor” is a person or entity who has an agreement with a Subcontractor or another Sub-subcontractor to perform a portion of the Subcontractor’s Work.
- 2.3.29 “Terrorism” means a violent act, or an act that is dangerous to human life, property, or infrastructure, that is committed by an individual or individuals and that appears to be part of an effort to coerce a civilian population or to influence the policy or affect the conduct of any government by coercion. Terrorism includes, but is not limited to, any act certified by the United States government as an act of terrorism pursuant to the Terrorism Risk Insurance Act, as amended.
- 2.3.30 “Work” means the construction and services necessary or incidental to fulfill Contractor’s obligations for the Project in conformance with this Agreement and the other Contract Documents. The Work may refer to the whole Project or only a part of the Project if work is also being performed by District or Others.
- 2.3.31 “Worksite” means the geographical area of the Project Location as identified in Article 1 where the Work is to be performed.

ARTICLE 3 CONTRACTOR’S RESPONSIBILITIES

3.1 GENERAL RESPONSIBILITIES

- 3.1.1 Contractor will provide all labor, materials, equipment, and services (except those items specifically identified in the Contract Documents as products, equipment, systems or materials that District will provide) necessary to complete the Work, all of which will be provided in full accord with and reasonably inferable from the Contract Documents.
- 3.1.2 Contractor will be responsible for the supervision and coordination of the Work, including the construction means, methods, techniques, sequences, and procedures utilized, unless the Contract Documents give other specific instructions. In such case, Contractor will not be liable to District for damages resulting from compliance with such instructions unless Contractor recognized and failed to timely report to Project Manager any error, inconsistency, omission, or unsafe practice that it discovered in the specified construction means, methods, techniques, sequences, or procedures.
- 3.1.3 Contractor will perform Work only within locations allowed by the Contract Documents, Laws, and applicable permits.

3.2 COOPERATION WITH WORK OF DISTRICT AND OTHERS

- 3.2.1 District may perform work at the Worksite directly or by Others. Any agreements with Others to perform construction or operations related to the Project will include provisions pertaining to insurance, indemnification, waiver of subrogation, consequential damages, coordination, interference, cleanup, and safety that are substantively the same as the corresponding provisions of this Agreement.
- 3.2.2 If District elects to perform work at the Worksite directly or by Others, Contractor and District will coordinate the activities of all forces at the Worksite and agree upon fair and reasonable schedules and operational procedures for Worksite activities. District will require each separate contractor to cooperate with Contractor and assist with the coordination of activities and the review of

construction schedules and operations. The Contract Price and Contract Time will be equitably adjusted, as mutually agreed by the Parties, for changes made necessary by the coordination of construction activities, and the Schedule of the Work will be revised accordingly. Contractor, District, and Others will adhere to the revised construction schedule.

- 3.2.3 With regard to the work of District and Others, Contractor will: (a) proceed with the Work in a manner that does not hinder, delay, or interfere with the work of District or Others or cause the work of District or Others to become defective; (b) afford District or Others reasonable access for introduction and storage of their materials and equipment and performance of their activities; and (c) coordinate Contractor's Work with theirs.
- 3.2.4 Before proceeding with any portion of the Work affected by the construction or operations of District or Others, Contractor will give District prompt written notification of any defects Contractor discovers in their work which will prevent the proper execution of the Work. Contractor's obligations in this subsection do not create a responsibility for the work of District or Others, but are for the purpose of facilitating the Work. If Contractor does not notify District of defects interfering with the performance of the Work, Contractor acknowledges that the work of District or Others is not defective and is acceptable for the proper execution of the Work. Following receipt of written notice from Contractor of defects, District will promptly inform Contractor what action, if any, Contractor will take with regard to the defects.

3.3 RESPONSIBILITY FOR PERFORMANCE

- 3.3.1 Prior to commencing the Work, Contractor will examine and compare the drawings and specifications with information furnished by District that are Contract Documents, relevant field measurements made by Contractor, and any visible conditions at the Worksite affecting the Work.
- 3.3.2 Should Contractor discover any errors, omissions, or inconsistencies in the Contract Documents, Contractor will promptly report them to Project Manager and District's Representative. It is recognized, however, that Contractor is not acting in the capacity of a licensed design professional, and that Contractor's examination is to facilitate construction and does not create an affirmative responsibility to detect errors, omissions, or inconsistencies or to ascertain compliance with applicable laws, building codes, or regulations. Following receipt of written notice from Contractor of defects, District will promptly inform Contractor what action, if any, Contractor will take with regard to the defects.
- 3.3.3 Contractor will have no liability for errors, omissions, or inconsistencies discovered under this section 3.3 unless Contractor knowingly fails to report a recognized problem to Project Manager and District's Representative.
- 3.3.4 Contractor may be entitled to additional costs or time because of clarifications or instructions arising out of Contractor's reports described in this section 3.3.
- 3.3.5 Nothing in this section 3.3 will relieve Contractor of responsibility for its own errors, inconsistencies, and omissions.

3.4 CONSTRUCTION PERSONNEL AND SUPERVISION

- 3.4.1 Contractor will provide competent supervision for the performance of the Work. Before commencing the Work, Contractor will notify Project Manager and District's Representative in writing of the name and qualifications of its proposed Contractor's Representative so Project Manager and District's Representative may review the individual's qualifications. If, for reasonable

cause, Project Manager and/or District's Representative refuses to approve the individual or withdraws its approval after once giving it, Contractor will name a different Contractor's Representative for District's review. Any disapproved Project Manager will not perform in that capacity thereafter at the Worksite.

3.4.2 Contractor will be responsible to District for acts or omissions of parties or entities performing portions of the Work for or on behalf of Contractor or any of its Subcontractors.

3.4.3 Contractor will permit only qualified persons to perform the Work. Contractor will enforce safety procedures, strict discipline, and good order among persons performing the Work. If District determines that a particular person does not follow safety procedures, or is unfit or unskilled for the assigned Work, Contractor will immediately reassign the person upon receipt of District's written notice to do so.

3.4.4 Contractor's Representative will possess full authority to receive instructions from District Representative directly or through Project Manager and to act on those instructions. If Contractor changes Contractor's Representative or his/her authority, Contractor will immediately notify Project Manager and District's Representative in writing.

3.5 **WORKMANSHIP.** The Work must be executed in accordance with the Contract Documents in a workmanlike manner. All materials used in the Work must be furnished in sufficient quantities to facilitate the proper and expeditious execution of the Work and will be new except such materials as may be expressly provided in the Contract Documents to be otherwise.

3.6 **MATERIALS FURNISHED BY THE DISTRICT OR OTHERS.** If the Work includes installation of materials or equipment furnished by District or Others, it will be the responsibility of Contractor to examine the items so provided and thereupon handle, store, and install the items, unless otherwise provided in the Contract Documents, with such skill and care as to provide a satisfactory and proper installation. Loss or damage due to acts or omissions of Contractor will be the responsibility of Contractor and may be deducted from any amounts due or to become due Contractor. Any defects discovered in such materials or equipment will be reported at once to Project Manager. Following receipt of written notice from Contractor of defects, Project Manager will promptly inform Contractor what action, if any, Contractor will take with regard to the defects.

3.7 TESTS AND INSPECTIONS

3.7.1 Contractor will schedule all required tests, approvals, and inspections of the Work or portions thereof at appropriate times so as not to delay the progress of the Work or other work related to the Project. Contractor will give proper notice to all required parties of such tests, approvals, and inspections. If feasible, Project Manager, District's Representative and Others may timely observe the tests at the normal place of testing. Except as provided in subsection 3.7.3 and the Drawings and Specifications, Contractor will bear all expenses associated with tests, inspections, and approvals required by the Contract Documents, which, unless otherwise agreed to, will be conducted by an independent testing laboratory or entity retained by Contractor. Unless otherwise required by the Contract Documents, required certificates of testing, approval, or inspection will be secured by Contractor and promptly delivered to Project Manager, with copies to District's Representative.

3.7.2 If District or appropriate authorities determine that tests, inspections, or approvals in addition to those required by the Contract Documents will be necessary, Contractor will arrange for the procedures and give timely notice to District and Others who may observe the procedures. Costs

of the additional tests, inspections, or approvals are at District's expense except as provided in subsection 3.7.3.

- 3.7.3 If the procedures described in the two subsections above indicate that portions of the Work fail to comply with the Contract Documents due to negligence of Contractor, Contractor will be responsible for costs of correction and retesting.

3.8 WARRANTY

- 3.8.1 Contractor warrants that all materials and equipment will be new unless otherwise specified, of good quality, in conformance with the Contract Documents, and free from defective workmanship and materials. At District's request, Contractor will furnish satisfactory evidence of the quality and type of materials and equipment furnished. Contractor further warrants that the Work will be free from material defects not intrinsic in the design or materials required in the Contract Documents. Contractor's warranty does not include remedies for defects or damages caused by normal wear and tear during normal usage, use for a purpose for which the Project was not intended, improper or insufficient maintenance, modifications performed by District or Others, or abuse. Contractor's warranty will commence on the Date of Substantial Completion of the Work, or of a designated portion.

- 3.8.2 To the extent products, equipment, systems or materials incorporated in the Work are specified and purchased by District, they will be covered exclusively by the warranty of the manufacturer. There are no warranties which extend beyond the description on the face of any such warranty.

- 3.8.3 Contractor will obtain from its Subcontractors and Material Suppliers any special or extended warranties required by the Contract Documents. All such warranties will be listed in an attached exhibit to this Agreement. After that period, Contractor will provide reasonable assistance to District in enforcing the obligations of Subcontractors or Material Suppliers for such extended warranties.

3.9 CORRECTION OF WORK WITHIN TWO YEARS

- 3.9.1 If, prior to Substantial Completion and within two years after the Date of Substantial Completion of the Work, any Defective Work is found, District will promptly notify Contractor in writing. Unless District provides written acceptance of the condition, Contractor will promptly correct the Defective Work at its own cost and time and bear the expense of additional services required for correction of any Defective Work for which it is responsible. If within the two-year correction period District discovers and does not promptly notify Contractor or give Contractor an opportunity to test or correct Defective Work as reasonably requested by Contractor, District waives Contractor's obligation to correct that Defective Work as well as District's right to claim a breach of the warranty with respect to that Defective Work.

- 3.9.2 With respect to any portion of Work first performed after Substantial Completion, the two-year correction period will be extended by the period of time between Substantial Completion and the actual performance of the later Work. Correction periods will not be extended by corrective work performed by Contractor.

- 3.9.3 If Contractor fails to correct Defective Work within a reasonable time after receipt of written notice from District prior to final payment, District may correct it in accordance with District's right to carry out the Work. In such case, an appropriate Change Order will be issued deducting the cost of correcting the Defective Work from payments then or thereafter due Contractor. If payments then

or thereafter due Contractor are not sufficient to cover such amounts, Contractor will pay the difference to District within forty-five (45) days.

- 3.9.4 Contractor's obligations and liability, if any, with respect to any Defective Work discovered after the two-year correction period will be determined by the Law. If, after the two-year correction period but before the applicable limitation period has expired, District discovers any Work which District considers Defective Work, District will, unless the Defective Work requires emergency correction, promptly notify Contractor and allow Contractor an opportunity to correct the Work if Contractor elects to do so. If Contractor elects to correct the Work, it will provide written notice of such intent within fourteen (14) Days of its receipt of notice from District and will complete the correction of Work within a mutually agreed timeframe. If Contractor does not elect to correct the Work, District may have the Work corrected by itself or Others, and, if District intends to seek recovery of those costs from Contractor, District will promptly provide Contractor with an accounting of the correction costs it incurs.
- 3.9.5 If Contractor's correction or removal of Defective Work causes damage to or destroys other completed or partially completed Work or existing buildings, Contractor will be responsible for the cost of correcting the destroyed or damaged property.
- 3.9.6 The two-year period for correction of Defective Work does not constitute a limitation period with respect to the enforcement of Contractor's other obligations under the Contract Documents.
- 3.9.7 Prior to final payment, at District's option and with Contractor's agreement, District may elect to accept Defective Work rather than require its removal and correction. In such case, the Contract Price will be equitably adjusted for any diminution in the value of the Project caused by such Defective Work.

3.10 CORRECTION OF COVERED WORK

- 3.10.1 On request of Project Manager, Work that has been covered without a requirement that it be inspected prior to being covered may be uncovered for Project Manager's and, if desired District's inspection. District will pay for the costs of uncovering and replacement if the Work proves to be in conformance with the Contract Documents, or if the defective condition was caused by District or Others. If the uncovered Work proves to be defective, Contractor will pay the costs of uncovering and replacement.
- 3.10.2 If, contrary to specific requirements in the Contract Documents or contrary to a specific request from Project Manager or District, a portion of the Work is covered, Project Manager or District, by written request, may require Contractor to uncover the Work for Project Manager's and, if desired District's observation. In this circumstance, the Work will be replaced at Contractor's expense and with no adjustment to the Contract Time.

3.11 SAFETY OF PERSONS AND PROPERTY

- 3.11.1 Contractor will have overall responsibility for safety precautions and programs in the performance of the Work. However, such obligation does not relieve Subcontractors of their responsibility for the safety of persons or property in the performance of their work or for compliance with Laws.
- 3.11.2 Contractor will seek to avoid injury, loss, or damage to persons or property by taking reasonable steps to protect: (a) its employees and other persons at the Worksite; (b) materials and equipment stored at onsite or offsite locations for use in the Work; and (c) property located at the Worksite and adjacent to Work areas, whether or not the property is part of the Worksite.

- 3.11.3 Contractor will appoint a worksite safety representative with a duty to prevent accidents, who will be Contractor's Representative unless otherwise provided. Contractor will report promptly in writing to Project Manager, with a copy to District's Representative, all recordable accidents and injuries occurring at the Worksite. When Contractor is required to file an accident report with a public authority, Contractor will furnish a copy of the report to Project Manager and District's Representative.
- 3.11.4 Contractor will provide Project Manager and District's Representative with copies of all notices required of Contractor by law or regulation. Contractor's safety program will comply with the requirements of governmental and quasi-governmental authorities having jurisdiction.
- 3.11.5 Damage or loss not insured under property insurance which may arise from the Work, to the extent caused by the negligent acts or omissions of Contractor, or anyone for whose acts Contractor may be liable, will be promptly remedied by Contractor.
- 3.11.6 If Project Manager deems any part of the Work or Worksite unsafe, Project Manager, without assuming responsibility for Contractor's safety program, may require Contractor to stop performance of the Work or take corrective measures satisfactory to Project Manager, or both. If Contractor does not adopt corrective measures, District may perform them and deduct their cost from the Contract Price. Contractor agrees to make no claim for damages, for an increase in the Contract Price or for a change in the Contract Time based on Contractor's compliance with Project Manager's or District's reasonable request.
- 3.12 EMERGENCIES. In an emergency affecting the safety of persons or property, Contractor will act in a reasonable manner to prevent threatened damage, injury, or loss. If appropriate, an equitable adjustment in the Contract Price or Contract Time resulting from the actions of Contractor in an emergency situation will be determined as provided for in Article 8.
- 3.13 HAZARDOUS MATERIALS
- 3.13.1 A Hazardous Material is any substance or material identified now or in the future as hazardous under Laws, or any other substance or material that may be considered hazardous or otherwise subject to statutory or regulatory requirement governing handling, disposal, or cleanup. Contractor will not be obligated to commence or continue work until any Hazardous Material discovered at the Worksite has been removed, rendered, or determined to be harmless by District as certified by an independent testing laboratory and approved by the appropriate governmental agency.
- 3.13.2 If after commencing the Work, Hazardous Material is discovered at the Worksite, Contractor will be entitled to immediately stop Work in the affected area. Contractor will promptly report the condition to Project Manager and District's Representative and, if required, the governmental agency with jurisdiction.
- 3.13.3 Contractor will not be required to perform any Work relating to or in the area of Hazardous Material without written mutual agreement.
- 3.13.4 District will be responsible for retaining an independent testing laboratory to determine the nature of the material encountered and whether the material requires corrective measures or remedial action. Such measures will be the sole responsibility of District, and will be performed in a manner minimizing any adverse effect upon the Work. Contractor will resume Work in the area affected by any Hazardous Material only upon written agreement between the Parties after the Hazardous Material has been removed or rendered harmless and only after approval, if necessary, of the governmental agency with jurisdiction.

3.13.5 If Contractor incurs additional costs or is delayed due to the presence or remediation of Hazardous Material, Contractor will be entitled to an equitable adjustment in the Contract Price or the Contract Time.

3.13.6 To the extent permitted by section 6.7 and to the extent not caused by the negligent acts or omissions of Contractor, its Subcontractors and Sub-subcontractors, and the agents, officers, directors, and employees of each of them, District will defend, indemnify, and hold harmless Contractor, its Subcontractors and Sub-subcontractors, and the agents, officers, directors, and employees of each of them, from and against all claims, damages, losses, costs, and expenses, including but not limited to reasonable attorneys' fees, costs, and expenses incurred in connection with any dispute resolution process, arising out of or relating to the performance of the Work in any area affected by Hazardous Material.

3.13.7 MATERIALS BROUGHT TO THE WORKSITE

3.13.7.1 Material Safety Data (MSD) sheets as required by law and pertaining to materials or substances used or consumed in the performance of the Work, whether obtained by Contractor, Subcontractors, District, or Others, will be maintained at the Worksite by Contractor and made available to Project Manager, Subcontractors, and Others.

3.13.7.2 Contractor will be responsible for the proper delivery, handling, application, storage, removal, and disposal of all materials and substances brought to the Worksite by Contractor, its Subcontractors, or both, in accordance with the Contract Documents and used or consumed in the performance of the Work.

3.13.7.3 To the extent caused by the negligent acts or omissions of Contractor, its agents, officers, directors, and employees, Contractor will indemnify and hold harmless District, its agents, officers, directors, and employees, from and against any and all claims, damages, losses, costs, and expenses, including but not limited to attorneys' fees, costs, and expenses incurred in connection with any dispute resolution procedure, arising out of or relating to the delivery, handling, application, storage, removal, and disposal of all materials and substances brought to the Worksite by Contractor, its Subcontractors, or both, in accordance with the Contract Documents.

3.13.7.4 This section 3.13.7 will survive the completion of the Work or any termination of this Agreement.

3.14 SUBMITTALS

3.14.1 Contractor will submit to Project Manager all shop drawings, samples, product data, and similar submittals required by the Contract Documents for review and approval. Contractor will be responsible for the accuracy and conformity of its submittals to the Contract Documents. At no additional cost, Contractor will prepare and deliver its submittals in a manner consistent with the Schedule of the Work and in such time and sequence so as not to delay the performance of the Work or the work of District and Others. Contractor submittals will identify in writing for each submittal all changes, deviations, or substitutions from the requirements of the Contract Documents. The approval of any Contractor submittal will not be deemed to authorize changes, deviations or substitutions from the requirements of the Contract Documents unless express written approval is obtained from Project Manager specifically authorizing such deviation, substitution or change. To the extent a change, deviation or substitution causes an impact to the Contract Price or Contract Time, such approval will be promptly memorialized in a Change Order. Neither Project

Manager nor District will make any change, deviation or substitution through the submittal process without specifically identifying and authorizing such deviation to Contractor.

- 3.14.2 Contractor agrees upon request to submit in a timely fashion to Project Manager, with copies to District's Representative, for review any shop drawings, samples, product data, manufacturers' literature or similar submittals as may reasonably be required by Project Manager.
- 3.14.3 Contractor will perform all Work strictly in accordance with approved submittals. Approval of shop drawings is not an authorization to perform changed work, unless the procedures of Article 8 are followed. Approval does not relieve Contractor from responsibility for Defective Work resulting from errors or omissions on the approved shop drawings.
- 3.14.4 No substitutions will be made in the Work unless permitted in the Contract Documents and then only after Contractor obtains approvals required under the Contract Documents for substitutions. All such substitutions will be promptly memorialized in a Change Order no later than seven (7) Days following approval by the Project Manager and District and, if applicable, Design Professional provide for an adjustment in the Contract Price or Contract Time.
- 3.14.5 As-Built Documents: Contractor will maintain at the Worksite for District one (1) copy of each of the Drawings and Specifications, Addenda, Change Orders, and other modifications, in good order and marked to indicate field changes and selections made during construction; and one (1) copy or sample of approved shop Drawings, Product Data, Samples, and similar required submittals.

3.15 CONCEALED OR UNKNOWN SITE CONDITIONS. Contractor acknowledges that it has visited, or has had the opportunity to visit, the Worksite to visually inspect the general and local conditions which could affect the Work. If the conditions encountered at the Worksite are (a) subsurface or other physical conditions materially different from those indicated in the Contract Documents, or (b) unusual and unknown physical conditions materially different from conditions ordinarily encountered and generally recognized as inherent in Work provided for in the Contract Documents, Contractor will stop affected Work after the condition is first observed and give prompt written notice of the condition to Project Manager. Contractor will not be required to perform any Work relating to the unknown condition without the written mutual agreement of the Parties. Any change in the Contract Price or the Contract Time as a result of the unknown condition will be determined as provided in Article 8.

3.16 PERMITS AND TAXES

- 3.16.1 Contractor will give public authorities all notices required by law and will obtain and pay for all necessary permits, licenses, and renewals pertaining to the Work. Contractor will provide to Project Manager and District's Representative copies of all notices, permits, licenses, and renewals required under this Agreement.
- 3.16.2 Contractor will pay all applicable taxes enacted when bids are received or negotiations concluded for the Work provided by Contractor.
- 3.16.3 If, in accordance with District's direction, Contractor claims an exemption for taxes, District will indemnify and hold Contractor harmless from any liability, penalty, interest, fine, tax assessment, attorneys' fees, or other expense or cost incurred by Contractor as a result of any such action.

3.17 CUTTING, FITTING, AND PATCHING. Contractor will perform cutting, fitting and patching necessary to coordinate the various parts of the Work and to prepare its Work for the work of District or Others. Cutting, patching or altering the work of District or Others will be done with the prior written approval of District. Such approval will not be unreasonably withheld.

3.18 CLEANING UP

3.18.1 Contractor will regularly remove debris and waste materials at the Worksite resulting from the Work. Prior to discontinuing Work in an area, Contractor will clean the area and remove all rubbish and its construction equipment, tools, machinery, waste, and surplus materials. Contractor will minimize and confine dust and debris resulting from construction activities. At the completion of the Work, Contractor will remove from the Worksite all construction equipment, tools, surplus materials, waste materials, and debris.

3.18.2 If Contractor fails to commence compliance with cleanup duties within two (2) Business Days after written notification from Project Manager of non-compliance, Project Manager may implement appropriate cleanup measures without further notice and will deduct the reasonable costs from any amounts due or to become due Contractor in the next payment period.

3.19 ACCESS TO WORK. Contractor will facilitate the access of Project Manager, District, and Others to Work in progress.

3.20 COMPLIANCE WITH LAWS. Contractor will comply with all Laws at its own costs. Contractor will be liable to District for all loss, cost, or expense attributable to any acts or omissions by Contractor, its employees, subcontractors, and agents for failure to comply with Laws, including fines, penalties, or corrective measures. However, liability under this section will not apply if notice to Project Manager was given, and advance approval by appropriate authorities, including District, is received.

3.21 CONFIDENTIALITY. Unless compelled by law, a governmental agency or authority, an order of a court of competent jurisdiction, or a validly issued subpoena, Contractor will treat as confidential and not disclose to third-persons, except Subcontractors, Sub-subcontractors, and Material Suppliers as is necessary for the performance of the Work, or use for its own benefit, any of District's confidential information, know-how, discoveries, production methods, and the like that may be disclosed to Contractor or which Contractor may acquire in connection with the Work. District will treat as confidential information, all of Contractor's estimating systems and historical and parameter cost data that may be disclosed to District in connection with the performance of this Agreement. District and Contractor will each specify those items to be treated as confidential and will mark them as "Confidential." In the event of a legal compulsion or other order seeking disclosure of any Confidential Information, Contractor or District, as the case may be, will promptly notify the other Party to permit that Party's legal objection, if necessary.

ARTICLE 4 DISTRICT'S RESPONSIBILITIES

4.1 INFORMATION AND SERVICES Any information or services to be provided by District will be fulfilled with reasonable detail and in a timely manner.

4.2 WORKSITE INFORMATION To the extent District has obtained, or is required elsewhere in the Contract Documents to obtain, the following Worksite information, District will provide at District's expense and with reasonable promptness:

4.2.1 Information describing the physical characteristics of the Worksite, including surveys, Worksite evaluations, legal descriptions, data or drawings depicting existing conditions, subsurface conditions, and environmental studies, reports, and investigations. Legal descriptions will include easements, title restrictions, boundaries, and zoning restrictions. Worksite descriptions will include existing buildings and other construction and all other pertinent Worksite conditions. Adjacent property descriptions will include structures, streets, sidewalks, alleys, and other features relevant to the Work. Utility details will include available services, lines at the Worksite and adjacent thereto, and connection points. The information will include public and private information,

subsurface information, grades, contours, and elevations, drainage data, exact locations and dimensions, and benchmarks that can be used by Contractor in laying out the Work;

4.2.2 Tests, inspections, and other reports dealing with environmental matters, Hazardous Material and other existing conditions, including structural, mechanical, and chemical tests, required by the Contract Documents or by Law; and

4.2.3 Any other information or services requested in writing by Contractor which are required for Contractor's performance of the Work and under District's control.

4.3 DISTRICT'S CUTTING AND PATCHING. Cutting, patching, or altering the Work by District or Others will be done with the prior written approval of Contractor, which approval will not be unreasonably withheld.

4.4 DISTRICT'S RIGHT TO CLEAN UP. In case of a dispute between Contractor and Others with regard to respective responsibilities for cleaning up at the Worksite, District may implement appropriate cleanup measures after two (2) Business Days' notice and allocate the cost among those responsible during the following pay period.

4.5 COST OF CORRECTING DAMAGED OR DESTROYED WORK. With regard to damage or loss attributable to the acts or omissions of District or Others and not to Contractor, District may either (1) promptly remedy the damage or loss or (2) accept the damage or loss. If Contractor incurs additional costs or is delayed due to such loss or damage, Contractor will be entitled to an equitable adjustment in the Contract Price or Contract Time.

ARTICLE 5 SUBCONTRACTS

5.1 SUBCONTRACTORS. The Work not performed by Contractor with its own forces will be performed by Subcontractors holding valid Public Works Contractor licenses pursuant to Idaho Code § 54-1902. All subcontracts will be issued on a lump sum basis unless District has given prior written approval of a different method of payment to the Subcontractor.

5.2 AWARD OF SUBCONTRACTS AND OTHER CONTRACTS FOR PORTIONS OF THE WORK. Promptly after the award of this Agreement, Contractor will provide Project Manager and District's Representative with a written list of the proposed Subcontractors and significant Material suppliers.

5.3 BINDING OF SUBCONTRACTORS AND MATERIAL SUPPLIERS Contractor agrees to bind every Subcontractor and Material Supplier (and require every Subcontractor to so bind its subcontractors and material suppliers) to all the provisions of this Agreement and the Contract Documents as they apply to the Subcontractor's or Material Supplier's portions of the Work.

5.4 CONTINGENT ASSIGNMENT OF SUBCONTRACTS

5.4.1 If this Agreement is terminated, each subcontract and supply agreement will be assigned by Contractor to District, subject to the prior rights of any surety, provided that: (a) this Agreement is terminated by District pursuant to sections 11.2 or 11.3; and (b) District accepts such assignment after termination by notifying the Subcontractor and Contractor in writing, and assumes all rights and obligations of Contractor pursuant to each subcontract agreement.

- 5.4.2 If District accepts such an assignment, and the Work has been suspended for more than thirty (30) consecutive Days, following termination, if appropriate, the Subcontractor's compensation will be equitably adjusted as a result of the suspension.

ARTICLE 6 TIME

6.1 **DATE OF COMMENCEMENT** Contractor will not commence the Work until it receives a written notice to proceed from District. The notice to proceed will identify the Date of Commencement. Unless instructed by District in writing, Contractor will not knowingly commence the Work before the effective date of insurance and bonds to be provided by Contractor or District as required by the Contract Documents.

6.2 **COMPLETION** Substantial Completion of the Work must be achieved by the Substantial Completion Deadline. The Substantial Completion Deadline is subject to adjustments as provided for in the Contract Documents. Unless otherwise specified in the Certificate of Substantial Completion, Contractor will achieve Final Completion within twenty-one (21) Days after the Date of Substantial Completion (the "Final Completion Deadline"). Time is of the essence for this Agreement and the Contract Documents.

6.3 SCHEDULE OF THE WORK

6.3.1 Before submitting the first application for payment, Contractor will submit to Project Manager and District's Representative for approval a Schedule of the Work showing the dates on which Contractor plans to commence and complete various parts of the Work, including dates on which information and approvals are required from Project Manager. Contractor will comply with the approved Schedule of the Work, unless directed by Project Manager to do otherwise or Contractor is otherwise entitled to an adjustment in the Contract Time. Contractor will update the Schedule of the Work on a monthly basis or at appropriate intervals as required by the conditions of the Work and the Project.

6.3.2 Project Manager may determine the sequence in which the Work will be performed, provided it does not unreasonably interfere with the Schedule of the Work. District may require Contractor to make reasonable changes in the sequence at any time during the performance of the Work in order to facilitate the performance of work by District or Others. To the extent such changes increase Contractor's costs or time, the Contract Price and Contract Time will be equitably adjusted.

6.4 DELAYS AND EXTENSIONS OF TIME

6.4.1 If Contractor is delayed at any time in the commencement or progress of the Work by any cause beyond the control of Contractor, Contractor will be entitled to an equitable extension of the Contract Time. Examples of causes beyond the control of Contractor include, but are not limited to, the following: (a) acts or omissions of Project Manager, District, or Others; (b) changes in the Work or the sequencing of the Work ordered by Project Manager or District, or arising from decisions of Project Manager or District that impact the time of performance of the Work; (c) encountering Hazardous Materials, or concealed or unknown conditions; (d) delay authorized by Project Manager or District pending dispute resolution or suspension by District under section 11.1; (e) transportation delays not reasonably foreseeable; (f) labor disputes not involving Contractor; (g) general labor disputes impacting the Project but not specifically related to the Worksite; (h) fire; (i) Terrorism; (j) epidemics; (k) adverse governmental actions; (l) unavoidable accidents or circumstances; (m) adverse weather conditions not reasonably anticipated. Contractor will submit any requests for equitable extensions of Contract Time in accordance with the provisions of Article 8.

6.4.2 In addition, if Contractor incurs additional costs as a result of a delay that is caused by items (a) through (m) immediately above, Contractor will be entitled to an equitable adjustment in the Contract Price subject to section 6.7.

6.4.3 If delays to the Work are encountered for any reason, Contractor will provide prompt written notice to Project Manager with a copy to District's Representative of the cause of such delays after Contractor first recognizes the delay. District and Contractor agree to take reasonable steps to mitigate the effect of such delays.

6.5 **NOTICE OF DELAY CLAIMS.** If Contractor requests an equitable extension of the Contract Time or an equitable adjustment in the Contract Price as a result of a delay described in the section above, Contractor will give District written notice of the claim in accordance with section 8.4. If Contractor causes delay in the completion of the Work, District will be entitled to recover its additional costs subject to section 6.7. District will process any such claim against Contractor in accordance with Article 8.

6.6 LIQUIDATED DAMAGES

6.6.1 **Substantial Completion.** Contractor understands that District will suffer damages which are difficult to determine and accurately specify if Contractor fails to achieve Substantial Completion of the entire Work by the Substantial Completion Deadline. Contractor agrees that if Contractor fails to achieve Substantial Completion of the entire Work by the Substantial Completion Deadline, Contractor will pay District the Daily Liquidated Damages Amount (as liquidated damages and not as a penalty) for each Day that Substantial Completion extends beyond the Substantial Completion Deadline. The liquidated damages provided herein will be in lieu of any consequential damages incurred by District which are occasioned by Contractor's fails to achieve Substantial Completion of the Work by the Substantial Completion Deadline.

6.6.2 **Final Completion.** Contractor understands that District will suffer damages which are difficult to determine and accurately specify if Contractor fails to achieve Final Completion of the entire Work by the Final Completion Deadline. Contractor agrees that if Contractor fails to achieve Substantial Completion of the entire Work by the Final Completion Deadline, Contractor will pay District the Daily Liquidated Damages Amount (as liquidated damages and not as a penalty) for each Day that Final Completion extends beyond the Final Completion Deadline. The liquidated damages provided herein will be in lieu of any consequential damages incurred by District which are occasioned by Contractor's fails to achieve Final Completion of the Work by the Final Completion Deadline.

6.6.3 **Other Liquidated Damages.** District and Contractor may agree upon the imposition of liquidated damages based on other project milestones or performance requirements. Such agreement will be included as an exhibit to this Agreement.

6.7 **LIMITED MUTUAL WAIVER OF CONSEQUENTIAL DAMAGES.** Except for damages mutually agreed upon by the Parties as liquidated damages in subsection 6.6 and excluding losses covered by insurance required by the Contract Documents, District and Contractor agree to waive all claims against each other for any consequential damages that may arise out of or relate to this Agreement, except for those specific items of damages excluded from this waiver as mutually agreed upon by the Parties and identified below. District agrees to waive damages, including but not limited to District's rental expenses incurred, loss of financing related to the Project, as well as the loss of financing not related to this Project, loss of reputation, or insolvency. Contractor agrees to waive damages, including but not limited to loss of business, loss of financing, loss of profits not related to this Project, loss of bonding capacity, loss of reputation, or insolvency. The provisions of this section will also apply to the termination of this Agreement and will

survive such termination. District and Contractor will require similar waivers in contracts with Subcontractors and Others retained for the Project.

ARTICLE 7 PRICE

As full compensation for performance by Contractor of the Work in conformance with the Contract Documents, District will pay Contractor the Contract Price. The Contract which will be subject to increase or decrease as provided in Section **Error! Reference source not found.** and Article 8.

ARTICLE 8 CHANGES

Changes in the Work that are within the general scope of this Agreement will be accomplished, without invalidating this Agreement, by Change Order and Interim Directed Change.

8.1 CHANGE ORDER

8.1.1 Contractor may request or District may order, at any time before completion of the Project, changes in the Work or the timing or sequencing of the Work that impacts the Contract Price or the Contract Time. All such changes in the Work that affect Contract Time or Contract Price will be formalized in a Change Order. All terms and conditions of the original contract will become a part of each Change Order.

8.1.1.1 District-Initiated Proposal Requests: Before any change is made or work done, District will issue a detailed written description of proposed changes in the Work. Proposal requests issued by District are for information only. Contractor will not consider them instructions either to stop Work in progress or to execute the proposed change. Promptly after receipt of such instructions, Contractor will submit to District within ten (10) days a proposal with a detailed estimate showing the cost of the proposed change in the Work, including a detailed breakdown of costs for the additional work as well as the credit for the original Work, and a revised schedule showing the extension of time, if any. The revised schedule showing any time extension will be submitted in writing under separate cover and approved by District. District will promptly notify Contractor in writing whether the estimate is acceptable and, if it is, in writing authorize the change to be made or Work to be done. District reserves the right to reject any such proposal and to have the work done by others.

8.1.1.2 Contractor-Initiated Proposals: If Contractor contends that it has encountered conditions, changes, or occurrences entitling it to a change in the Contract or an adjustment in the contract schedule or price, Contractor will propose changes by submitting a written request for a change to District. The proposal will include a statement outlining reasons for the change and the effect of the change on the Work, the effect of the proposed change on the Contract Sum including a detailed breakdown of costs for the additional work as well as the credit for the original Work, list of quantities of products required or eliminated, applicable taxes, delivery charges, equipment rental, and amounts of trade discounts and a revised schedule showing any time extension. The proposal will be submitted to District within ten (10) days of the discovery of the condition, changes, or occurrences for review and approval. Except in an emergency, the proposal will be given before proceeding with the Work. The failure of Contractor to provide the written proposal as provided herein within such time period will constitute a waiver by Contractor of any claim for compensation or time extension, notwithstanding any purported knowledge or lack of prejudice of District. This written proposal requirement may not be waived, except explicitly and in writing by District.

8.1.2 NO OBLIGATION TO PERFORM Contractor will not be obligated to perform, and Owner will not be obligated to pay for, changes in the Work that impact Contract Price or Contract Time until a Change Order has been executed or a written Interim Directed Change has been issued.

8.2 INTERIM DIRECTED CHANGE

8.2.1 District may issue a written Interim Directed Change directing a change in the Work prior to reaching agreement with Contractor on the adjustment, if any, in the Contract Price or the Contract Time. Contractor will proceed with the change in the Work when indicated in writing by District, for subsequent inclusion in a Change Order.

8.2.2 District and Contractor will negotiate expeditiously and in good faith for appropriate adjustments, as applicable, to the Contract Price or the Contract Time arising out of an Interim Directed Change. As the changed Work is performed, Contractor will submit its costs for such Work with its application for payment beginning with the next application for payment within thirty (30) Days of the issuance of the Interim Directed Change. If there is a dispute as to the cost to District, District will pay Contractor fifty percent (50%) of its estimated cost to perform such Work. In such event, the Parties reserve their rights as to the disputed amount, subject to the requirements of Article 12.

8.2.3 When District and Contractor agree upon the adjustment in the Contract Price or the Contract Time, for a change in the Work directed by an Interim Directed Change, such agreement will be the subject of a Change Order. The Change Order will include all outstanding Interim Directed Changes on which District and Contractor have reached agreement on Contract Price or Contract Time issued since the last Change Order.

8.3 DETERMINATION OF COST OR CREDIT

8.3.1 An increase or decrease in the Contract Price or the Contract Time resulting from a change in the Work will be determined by one or more of the following methods:

8.3.1.1 Unit prices set forth in this Agreement or as subsequently agreed;

8.3.1.2 A mutually accepted, itemized lump sum;

8.3.2 "Cost of the Work" will include the following costs necessary and reasonably incurred by Contractor to perform a change in the Work. For Contractor self-performed Changes in the Work, Change Order markup costs for Contractor are limited to 10% for Overhead and profit on direct costs of Contractor. For Subcontractor performed Work, any Change Order markup costs for Contractor are limited to 5% for Overhead and profit on direct costs of Contractor and any markup costs for Subcontractors are limited to 10% for Overhead and profit on direct costs of the Subcontractors.

8.3.2.1 Wages paid for labor in the direct employ of Contractor in the performance of the Work.

8.3.2.2 Salaries of Contractor's employees when stationed at the field office or branch office to the extent necessary to complete the applicable Work and employees engaged on the road expediting the production or transportation of material and equipment;

8.3.2.3 Cost of applicable employee benefits and taxes, including but not limited to, workers' compensation, unemployment compensation, social security, health, welfare, retirement and other fringe benefits as required by law, labor agreements, or paid under Contractor's

standard personnel policy, insofar as such costs are paid to employees of Contractor who are included in the Cost of the Work in subsections 8.3.2.1 and 8.3.2.2 immediately above;

- 8.3.2.4 Reasonable transportation, travel, and hotel expenses of Contractor's personnel incurred in connection with the Work;
 - 8.3.2.5 Cost of all materials, supplies, and equipment incorporated in the Work, including costs of inspection and testing if not provided by District, transportation, storage, and handling.
 - 8.3.2.6 Payments made by Contractor to Subcontractors for Work performed under this Agreement;
 - 8.3.2.7 Cost, including transportation and maintenance of all materials, supplies, equipment, temporary facilities, and hand tools not owned by the workers that are used or consumed in the performance of the Work, less salvage value or residual value; and cost less salvage value of such items used, but not consumed that remain the property of Contractor;
 - 8.3.2.8 Rental charges of all necessary machinery and equipment, exclusive of hand tools owned by workers, used at the Worksite, whether rented from Contractor or Others, including installation, repair and replacement, dismantling, removal, maintenance, transportation, and delivery costs. Rental from unrelated third parties will be reimbursed at actual cost. Rentals from Contractor or its affiliates, subsidiaries, or related parties will be reimbursed at the prevailing rates in the locality of the Worksite up to eighty-five percent (85%) of the value of the piece of equipment;
 - 8.3.2.9 Cost of the premiums for all insurance and surety bonds which Contractor is required to procure or deems necessary, and approved by District including any additional premium incurred as a result of any increase in the cost of the Work;
 - 8.3.2.10 Sales, use, gross receipts or other taxes, tariffs, or duties related to the Work for which Contractor is liable;
 - 8.3.2.11 Permits, fees, licenses, tests, and royalties;
 - 8.3.2.12 Reproduction costs, photographs, facsimile transmissions, long-distance telephone calls, data processing costs and services, postage, express delivery charges, data transmission, telephone service, and computer-related costs at the Worksite to the extent such items are used and consumed in the performance of the Work or are not capable of use after completion of the Work;
 - 8.3.2.13 All water, power, and fuel costs necessary for the Work;
 - 8.3.2.14 Cost of removal of all nonhazardous substances, debris, and waste materials;
 - 8.3.2.15 All costs directly incurred to perform a change in the Work which are reasonably inferable from the Contract Documents for the changed Work.
- 8.3.3 Discounts. All discounts for prompt payment will accrue to District. All trade discounts, rebates and refunds, and all returns from sale of surplus materials and equipment, will be credited to the Cost of the Work.

- 8.3.4 Cost Reporting. Contractor will maintain in conformance with generally accepted accounting principles a complete and current set of records that are prepared or used by Contractor to calculate the Cost of Work. District will be afforded access to Contractor's records, books, correspondence, instructions, drawings, receipts, vouchers, memoranda and similar data relating to requested payment for Cost of the Work. Contractor will preserve all such records for a period of three (3) years after the final payment or longer where required by law.
- 8.3.5 Cost And Schedule Estimates. Contractor will use reasonable skill and judgment in the preparation of a cost estimate or schedule for a change to the Work, but does not warrant or guarantee their accuracy.
- 8.3.6 Interim Directed Change. If an increase or decrease in the Contract Price or Contract Time cannot be agreed to as set forth in subsection 8.3.1, and District issues an Interim Directed Change, the cost of the change in the Work will be determined by the reasonable actual expense incurred and savings realized in the performance of the Work resulting from the change. If there is a net increase in the Contract Price, Contractor's Overhead and profit will be adjusted accordingly. In case of a net decrease in the Contract Price, Contractor's Overhead and profit will not be adjusted unless ten percent (10%) or more of the Project is deleted. Contractor will maintain a documented, itemized accounting evidencing the expenses and savings.
- 8.3.7 Unit Prices If unit prices are set forth in the Contract Documents or are subsequently agreed to by the Parties, but the character or quantity of such unit items as originally contemplated is so different in a proposed Change Order that the original unit prices will cause substantial inequity to District or Contractor, such unit prices will be equitably adjusted.
- 8.3.8 Work Scope Disagreements. If District and Contractor disagree as to whether work required by District is within the scope of the Work, Contractor will furnish District with an estimate of the costs to perform the disputed work in accordance with District's interpretations. If District issues a written order for Contractor to proceed, Contractor will perform the disputed work and District will pay Contractor fifty percent (50%) of its estimated cost to perform the work. In such event, both Parties reserve their rights as to whether the work was within the scope of the Work, subject to the requirements of Article 12. District's payment does not prejudice its right to be reimbursed should it be determined that the disputed work was within the scope of the Work. Contractor's receipt of payment for the disputed work does not prejudice its right to receive full payment for the disputed work should it be determined that the disputed work is not within the scope of the Work.
- 8.4 CLAIMS FOR ADDITIONAL COST OR TIME
- 8.4.1 Suspension of Work. Contractor will not proceed with work which would alter, cover, damage or destroy evidence in support of Contractor's Claim. If Contractor proceeds to perform Work, with or without notice to Project Manager, that alters, covers, damages or destroys evidence in support of Contractor's Claim, Contractor is indicating by proceeding its acceptance and agreement that the work performed does not add to the Contract Sum or Contract Time.
- 8.4.2 Action on Change Order. Project Manager will review the Claim and will forward recommendations to District regarding the Claim within five (5) business days. Negotiation of changes to the Contract Sum and/or Contract Time between District and Contractor will follow the procedures set forth in the Contract Documents.
- 8.4.3 District and Project Manager will respond in writing approving or denying Contractor's claim no later than fourteen (14) Days after receipt of Contractor's claim. District's failure to so respond will

be deemed a denial of the claim. Any change in the Contract Price or the Contract Time resulting from such claim will be authorized by Change Order.

8.5 **Incidental Changes.** Project Manager may direct Contractor to perform incidental changes in the Work, upon concurrence with Contractor that such changes do not involve adjustments in the Contract Price or Contract Time. Incidental changes will be consistent with the scope and intent of the Contract Documents. Project Manager will initiate an incidental change in the Work by issuing a written order to Contractor. Such written notice will be carried out promptly and is binding on the Parties.

ARTICLE 9 PAYMENT

9.1 **SCHEDULE OF VALUES.** In accordance with requirements in Division 01 Section 01 29 00 for “Schedule of Values,” Contractor will prepare and submit to Project Manager a Schedule of Values apportioned to the various divisions or phases of the Work. Each line item contained in the Schedule of Values will be assigned a value such that the total of all items will equal the Contract Price. Maintain the Schedule of Values during the construction period. If the Schedule of Values is revised, submit the updated Schedule of Values for Project Manager’s review and approval after each meeting or other activity where revisions have been recognized or made.

9.2 APPLICATIONS FOR PAYMENT

9.2.1 **Progress Payments.** Contractor will submit to Project Manager a monthly application for payment no later than the 5th Business Day of the calendar month for the preceding thirty (30) Days. Contractor’s applications for payment will be itemized and supported by Contractor’s Schedule of Values and any other substantiating data as required by this Agreement. Applications for payment will include payment requests on account of properly authorized Change Orders or Interim Directed Changes. District will pay the amount otherwise due on any payment application, as certified by Project Manager, no later than thirty (30) Days after Contractor has submitted a complete and accurate payment application and District has approved Contractor’s payment application, or such shorter time period as required by applicable state statute. District may deduct from any progress payment amounts that may be retained pursuant to subsection 9.2.3. The initial Application for Payment and the Applications for Payment at Substantial Completion and Final Completion have additional requirements as stated in Division 01 Section 01 29 00 “Applications for Payment”.

9.2.2 **Stored Materials and Equipment.** Unless otherwise provided in the Contract Documents, applications for payment may include materials and equipment not yet incorporated into the Work but delivered to and suitably stored onsite or offsite including applicable insurance, storage, and costs incurred in transporting the materials to an offsite storage facility. Approval of payment applications for stored materials and equipment stored offsite will be conditioned on a submission by Contractor of bills of sale and proof of required insurance, or such other documentation satisfactory to District to establish the proper valuation of the stored materials and equipment, District’s title to such materials and equipment, and to otherwise protect District’s interests therein, including transportation to the Worksite.

9.2.3 **Retainage.** From each progress payment made prior to Substantial Completion, District may retain five percent (5%) of the amount otherwise due after deduction of any amounts as provided in section 9.3, and in no event will such percentage exceed any applicable statutory requirements. If District chooses to use this retainage provision, then (a) District may, in its sole discretion, reduce the amount to be retained at any time; and (b) District may release retainage on that portion of the Work a Subcontractor has completed in whole or in part, and which District has accepted. In lieu of retainage, Contractor may furnish a retention bond or other security interest acceptable to District, to be held by District.

9.3 ADJUSTMENT OF CONTRACTOR'S PAYMENT APPLICATION District may adjust or reject a payment application or nullify a previously approved payment application, in whole or in part, as may reasonably be necessary to protect District from loss or damage based upon the following, to the extent that Contractor is responsible under this Agreement:

- 9.3.1 Contractor's repeated failure to perform the Work as required by the Contract Documents;
- 9.3.2 Except as accepted by the insurer providing builders risk or other property insurance covering the project, loss or damage arising out of or relating to this Agreement and caused by Contractor to District or to Others to whom District may be liable;
- 9.3.3 Contractor's failure to properly pay Subcontractors and Material Suppliers following receipt of such payment from District;
- 9.3.4 rejected, nonconforming or Defective Work not corrected in a timely fashion;
- 9.3.5 reasonable evidence of delay in performance of the Work such that the Work will not be completed within the Contract Time;
- 9.3.6 reasonable evidence demonstrating that the unpaid balance of the Contract Price is insufficient to fund the cost to complete the Work; and
- 9.3.7 uninsured third-party claims involving Contractor, or reasonable evidence demonstrating that third-party claims are likely to be filed unless and until Contractor furnishes District with adequate security in the form of a surety bond, letter of credit, or other collateral or commitment sufficient to discharge such claims if established.

No later than seven (7) Days after receipt of an application for payment, Project Manager will give written notice to Contractor, at the time of disapproving or nullifying all or part of an application for payment, stating its specific reasons for such disapproval or nullification, and the remedial actions to be taken by Contractor in order to receive payment. When the above reasons for disapproving or nullifying an application for payment are removed, payment will be promptly made for the amount previously withheld.

9.4 ACCEPTANCE OF WORK Neither District's payment of progress payments nor its partial or full use or occupancy of the Project constitutes acceptance of Work not complying with the Contract Documents.

9.5 PAYMENT DELAY If for any reason not the fault of Contractor, Contractor does not receive a progress payment from District within seven (7) Days after the time such payment is due, then Contractor, upon giving seven (7) Days' written notice to District, and without prejudice to and in addition to any other legal remedies, may stop Work until payment of the full amount owing to Contractor has been received. Interest will not accrue on any unpaid amounts. The Contract Price and Contract Time will be equitably adjusted by a Change Order for reasonable cost and delay resulting from shutdown, delay and start-up.

9.6 SUBSTANTIAL COMPLETION

9.6.1 Contractor will notify Project Manager and, if directed, District, when it considers Substantial Completion of the Work or a designated portion to have been achieved. Project Manager and District's Representative will promptly conduct an inspection to determine whether the Work or designated portion can be occupied or used for its intended use by District without excessive interference in completing any remaining unfinished Work. If Project Manager determines that the Work or designated portion has not reached Substantial Completion, Project Manager will promptly

compile a list of items (“Punch List”) to be completed or corrected so District may occupy or use the Work or designated portion for its intended use. Contractor will promptly complete all items on the Punch List and the list compiled by Project Manager.

- 9.6.2 When Substantial Completion of the Work or a designated portion is achieved, District will prepare a Certificate of Substantial Completion establishing the date of Substantial Completion and the respective responsibilities of District and Contractor for interim items such as security, maintenance, utilities, insurance, and damage to the Work. In the absence of a clear delineation of responsibilities, District will assume all responsibilities for items such as security, maintenance, utilities, insurance, and damage to the Work. The Certificate of Substantial Completion will also list any items to be completed or corrected, and establish the time for their completion or correction.
- 9.6.3 The Certificate of Substantial Completion will be submitted first to Project Manager for written concurrence that Substantial Completion has been achieved and then to Contractor for written acceptance of responsibilities assigned in the Certificate of Substantial Completion. The Certificate of Substantial Completion with signatures from Project Manager and Contractor will be submitted to District for District’s signature indicating District’s acceptance of responsibilities assigned to District in the Certificate of Substantial Completion and approval of the Certificate. A copy of the signed Certificate of Substantial Completion will be provided to Contractor.
- 9.6.4 Unless otherwise provided in the Certificate of Substantial Completion, warranties required by the Contract Documents will commence on the date of Substantial Completion of the Work or a designated portion.
- 9.6.5 Upon District’s written acceptance and issuance of the Certificate of Substantial Completion, District will pay to Contractor the remaining retainage held by District for the Work described in the Certificate of Substantial Completion, less a sum equal to one hundred fifty percent (150%) of the estimated cost of completing or correcting remaining items on that part of the Work, as agreed to by District and Contractor as necessary to achieve Final Completion. Uncompleted items will be completed by Contractor in a mutually agreed upon timeframe. District will pay Contractor monthly the amount retained for unfinished items as each item is completed.
- 9.7 PARTIAL OCCUPANCY OR USE. District may occupy or use completed or partially completed portions of the Work when: (a) the portion of the Work is designated in a Certificate of Substantial Completion; (b) appropriate insurer(s) consent to the occupancy or use; and (c) appropriate public authorities authorize the occupancy or use. Such partial occupancy or use will constitute Substantial Completion of that portion of the Work.
- 9.8 FINAL COMPLETION AND FINAL PAYMENT
- 9.8.1 Upon notification from Contractor that the Work is complete and ready for final inspection and acceptance, Project Manager and District’s Representative will promptly conduct an inspection to determine if the Work has been completed and is acceptable under the Contract Documents.
- 9.8.2 If Project Manager and District’s Representative determine that the Project has attained Final Completion, Project Manager will request the following submissions from Contractor:
- (a) an affidavit declaring any indebtedness connected with the Work, e.g. payrolls or invoices for materials or equipment, to have been paid, satisfied, or to be paid with the proceeds of final payment, so as not to encumber District’s property;

- (b) as-built drawings and specifications, manuals, copies of warranties, and all other close-out documents required by the Contract Documents;
 - (c) release of any liens, conditioned on final payment being received;
 - (d) consent of any surety;
 - (e) any outstanding known and unreported accidents or injuries experienced by Contractor or its Subcontractors at the Worksite; and
 - (f) any other submissions required by the Contract Documents.
- 9.8.3 When Final Completion has been achieved, Contractor will prepare for District's written acceptance a final application for payment stating that to the best of Contractor's knowledge, and based on District's inspections, the Work has reached Final Completion in accordance with the Contract Documents.
- 9.8.4 Upon receipt of a final application for payment and Contractor's satisfactory completion of closeout procedures stated in sections 9.6 and 9.8, Project Manager will prepare a Certificate of Final Completion establishing the date of Final Completion. Upon signature by Project Manager, the Certificate of Final Completion will be submitted to Contractor for signature. The Certificate of Final Completion with signatures from Project Manager and Contractor will be returned to District for District's signature indicating District's approval of the Certificate of Final Completion. A copy of the signed Certification of Final Completion will be provided to Contractor. Project Manager's signature on the Final Completion Certificate will signify the following: (a) Final Completion has been achieved; (b) Project has been inspected and complies with the requirements of the Contract Documents; and (c) Contractor has submitted all required closeout submittals and completed all required closeout procedures.
- 9.8.5 Final payment of the balance of the Contract Price will be made to Contractor within thirty (30) Days after Contractor has submitted a complete and accurate application for final payment, has satisfactorily completed the requirements as set forth in sections 9.6 and 9.8 above, and a Certificate of Final Completion has been executed by District and Contractor.
- 9.8.6 If, after Substantial Completion of the Work, the Final Completion of a portion of the Work is materially delayed through no fault of Contractor, District will pay the balance due for portion(s) of the Work fully completed and accepted. If the remaining contract balance for Work not fully completed and accepted is less than the retained amount prior to payment, Contractor will submit to Project Manager the written consent of any surety to payment of the balance due for portions of the Work that are fully completed and accepted. Such payment will not constitute a waiver of claims, but otherwise will be governed by these final payment provisions.

ARTICLE 10 INDEMNITY, INSURANCE, AND BONDS

10.1 INDEMNITY. To the fullest extent permitted by law, Contractor will indemnify, defend and hold harmless District, Project Manager and Design Professional, and the agents and employees of any of them (the "Indemnitees") from all claims for bodily injury and property damage, other than to the Work itself and other property insured, including reasonable attorneys' fees, costs and expenses, that may arise from the performance of the Work, but only to the extent caused by the negligent or intentional acts or omissions of Contractor, Subcontractors, or anyone employed directly or indirectly by any of them or by anyone for whose acts any of them may be liable. Nothing herein obligates Contractor to indemnify, defend and hold harmless any of the Indemnities for the negligence of any of the Indemnities. If Contractor defends an

Indemnitor and the Indemnitor is found to have been negligent, then Contractor will be entitled to recover from the Indemnitor the reasonable attorneys' fees and costs incurred by Contractor in defending the Indemnitor with respect to the Indemnitor's negligence. In any and all claims against the Indemnitors by any employee of Contractor, anyone directly or indirectly employed by Contractor or anyone for whose acts Contractor may be liable, the indemnification obligation will not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for Contractor under workers' compensation acts, disability benefit acts, or other employment benefit acts.

10.2 INSURANCE. Contractor's insurance obligations are set forth in Division 00 Section 00 73 16 (Insurance And Bonding Requirements).

10.3 BONDS. Contractor's bond obligations are set forth Division 00 Section 00 73 16 (Insurance And Bonding Requirements).

ARTICLE 11 SUSPENSION, NOTICE TO CURE, AND TERMINATION

11.1 SUSPENSION BY DISTRICT FOR CONVENIENCE. Should District order Contractor in writing to suspend, delay, or interrupt the performance of the Work for the convenience of District and not due to any act or omission of Contractor or any person or entity for whose acts or omissions Contractor may be liable, then Contractor will immediately suspend, delay or interrupt that portion of the Work for the time period ordered by District. Contractor will take the actions necessary (or that District may direct) for the protection and preservation of the Work and strive to minimize any further costs. Any suspension will be for such period of time as District may determine, but in no event more than 14 consecutive days or 30 cumulative days, without the written agreement of Contractor. The Contract Price and the Contract Time will be equitably adjusted by Change Order for the cost and delay resulting from any such suspension. Any action taken by District that is permitted by any other provision of the Contract Documents and that result in a suspension of part or all of the Work does not constitute a suspension of Work under this section 11.1.

11.2 DISTRICT'S RIGHT TO TERMINATE FOR DEFAULT

11.2.1 If Contractor fails to supply enough qualified workers, proper materials, or equipment to maintain the approved Schedule of the Work, or fails to make prompt payment to its workers, Subcontractors, or Material Suppliers, or disregards Laws or orders of any public authority having jurisdiction, or is otherwise guilty of a material breach of a provision of this Agreement, Contractor may be deemed in default by District.

11.2.2 If, within seven (7) Days of receipt of a notice from District to cure a default, Contractor fails to commence and satisfactorily continue correction of the default set forth in the notice to cure, District may notify Contractor and, if applicable, the surety, that it intends to terminate this Agreement for default absent appropriate corrective action within seven (7) additional Days. After the expiration of the additional seven (7) Day period, District may, subject to any prior rights of the surety: (a) terminate this Agreement by written notice; (b) exclude Contractor from the Worksite and take possession of the site and of all materials previously paid for by District; (c) accept assignment of subcontracts; and (d) finish the Work by a reasonable method District may deem expedient. Upon written request of Contractor, District will furnish to Contractor an accounting of the costs incurred by District in finishing the Work. If District terminates the Agreement for one of the reasons stated above, Contractor will not be entitled to receive further payment until the Work is finished. If the unpaid balance of the contract price exceeds costs of finishing the Work, including compensation for consultant services and expenses made necessary thereby, and other damages incurred by District, such excess will be paid to Contractor. If such costs and damages exceed the unpaid balance, the Contractor will pay the difference to District.

The remedies in this Section are in addition to any other remedies at law or in equity available to District.

- 11.2.3 If District or Others perform work under this section 11.2, District will have the right to take and use any materials, supplies, and equipment belonging to Contractor and located at the Worksite for the purpose of completing any remaining Work. Immediately upon completion of the Work, any remaining materials, supplies, or equipment not consumed or incorporated in the Work will be returned to Contractor in substantially the same condition as when they were taken, reasonable wear and tear excepted.
- 11.2.4 If Contractor files a petition under the Bankruptcy Code, this Agreement will terminate if Contractor or Contractor's trustee rejects the Agreement, or if there has been a default and Contractor is unable to give adequate assurance that Contractor will perform as required by this Agreement or otherwise is unable to comply with the requirements for assuming this Agreement under the applicable provisions of the Bankruptcy Code.
- 11.2.5 District will make reasonable efforts to mitigate damages arising from Contractor default, and will promptly invoice Contractor for all amounts due pursuant to section 11.2.
- 11.2.6 If District terminates this Agreement for default, and it is later determined that Contractor was not in default, or that the default was excusable under the terms of the Contract Documents, then, in such event, the termination will be deemed a termination for convenience, and the rights of the Parties will be as set forth in section 11.3.

11.3 TERMINATION BY DISTRICT FOR CONVENIENCE

- 11.3.1 Upon written notice to Contractor, District may, without cause, terminate this Agreement. Contractor will immediately stop the Work, follow District's instructions regarding shutdown and termination procedures, and strive to minimize any further costs.
- 11.3.2 If District terminates this Agreement for Convenience, Contractor will be paid for the Work performed to date and for all demobilization costs and third-party costs incurred as a result of the termination, but not overhead, profit or losses related to Work not performed.
- 11.3.3 If District terminates this Agreement, Contractor will:

- 11.4.3.1 Execute and deliver to District all papers and take all action required to assign, transfer, and vest in District the rights of Contractor to all materials, supplies and equipment for which payment has been or will be made in accordance with the Contract Documents and all subcontracts, orders and commitments which have been made in accordance with the Contract Documents;

- 11.4.3.2 Exert reasonable effort to reduce to a minimum District's liability for subcontracts, orders, and commitments that have not been fulfilled at the time of the termination;

- 11.4.3.3 Cancel any subcontracts, orders, and commitments as District directs; and

- 11.4.3.4 Sell at prices approved by District any materials, supplies, and equipment as District directs, with all proceeds paid or credited to District.

11.4 CONTRACTOR'S RIGHT TO TERMINATE

11.4.1 Upon seven (7) Days' written notice to District, Contractor may terminate this Agreement if the Work has been stopped for a thirty (30) Day period through no fault of Contractor for any of the following reasons:

11.5.1.1 under court order or order of other governmental authorities having jurisdiction;

11.5.1.2 as a result of the declaration of a national emergency or other governmental act during which, through no act or fault of Contractor, materials are not available; or

11.5.1.3 suspension by District for convenience pursuant to section 11.1.

11.4.2 In addition, upon seven (7) Days' written notice and opportunity to cure, Contractor may terminate this Agreement if District fails to pay Contractor in accordance with this Agreement and Contractor has complied with section 9.5.

11.4.3 In addition, upon thirty (30) Days' written notice and opportunity to cure to District, Contractor may terminate this Agreement if District otherwise materially breaches this Agreement.

11.4.4 Upon termination by Contractor in accordance with section 11.4, Contractor will be entitled to recover from District payment for all Work executed and for any proven loss, cost, or expense in connection with the Work, including all demobilization costs plus reasonable Overhead and profit on Work not performed.

11.5 OBLIGATIONS ARISING BEFORE TERMINATION. Even after termination, the provisions of this Agreement still apply to any Work performed, payments made, events occurring, costs charged or incurred or obligations arising before the termination date.

ARTICLE 12 DISPUTE MITIGATION AND RESOLUTION

12.1 WORK CONTINUANCE AND PAYMENT. Unless otherwise agreed in writing, Contractor will continue the Work and maintain the Schedule of the Work during any dispute mitigation or resolution proceedings. If Contractor continues to perform, District will continue to make payments in accordance with this Agreement.

12.2 DIRECT DISCUSSIONS. In the event that a dispute arises between District and Contractor regarding application or interpretation of any provision of this Agreement, the aggrieved Party will promptly notify the other Party to this Agreement of the dispute within ten (10) days after such dispute arises. If the Parties will have failed to resolve the dispute within thirty (30) days after delivery of such notice, the Parties may first endeavor to settle the dispute in an amicable manner by mediation. If the Parties elect to mediate their dispute, the Parties will select a mediator by mutual agreement and agree to each pay half of the mediator's costs and fees. The mediation will take place in Boise, Idaho, unless otherwise agreed by the Parties in writing. Should the Parties be unable to resolve the dispute to their mutual satisfaction within thirty (30) days after such completion of mediation, each Party will have the right to pursue any rights or remedies it may have at law or in equity. If the Parties do not mutually agree to mediate the dispute, either Party may pursue any rights or remedies it may have at law.

ARTICLE 13 MISCELLANEOUS

13.1 EXTENT OF AGREEMENT. Except as expressly provided, this Agreement is for the exclusive benefit of the Parties, and not for the benefit of any third party. This Agreement represents the entire and integrated agreement between the Parties, and supersedes all prior negotiations, representations, or agreements, either written or oral.

13.2 ASSIGNMENT. Except as to the assignment of proceeds, the Parties will not assign their interest in this Agreement without the written consent of the other. The terms and conditions of this Agreement will be binding upon both Parties, their partners, successors, assigns, and legal representatives. Neither Party will assign the Agreement as a whole without written consent of the other. If either Party attempts to make such an assignment, that Party will nevertheless remain legally responsible for all obligations under this Agreement, unless otherwise agreed in writing by the other Party.

13.3 GOVERNING LAW. This Agreement will be governed by the laws of the State of Idaho.

13.4 SEVERABILITY. The partial or complete invalidity of any one or more provisions of this Agreement will not affect the validity or continuing force and effect of any other provision.

13.5 NO WAIVER OF PERFORMANCE. The failure of either Party to insist, in any one or more instances, on the performance of any of the terms, covenants, or conditions of this Agreement, or to exercise any of its rights, will not be construed as a waiver or relinquishment of such term, covenant, condition, or right with respect to further performance or any other term, covenant, condition, or right.

13.6 TITLES. The titles given to the articles are for ease of reference only and will not be relied upon or cited for any other purpose.

13.7 JOINT DRAFTING. The Parties expressly agree that this Agreement was jointly drafted, and that both had opportunity to negotiate its terms and to obtain the assistance of counsel in reviewing its terms prior to execution. Therefore, this Agreement will be construed neither against nor in favor of either Party, but will be construed in a neutral manner.

13.8 RIGHTS AND REMEDIES. The Parties' rights, liabilities, responsibilities and remedies with respect to this Agreement, whether in contract, tort, negligence or otherwise, will be exclusively those expressly set forth in this Agreement.

13.9 ANTI-BOYCOTT AGAINST ISRAEL CERTIFICATION. Contractor, by entering into this Agreement, hereby certifies that it is not currently engaged in, or for the duration of this Agreement will not engage in, a boycott of goods or services from the State of Israel or territories under its control.

ARTICLE 14 CONTRACT DOCUMENTS

14.1 EXISTING CONTRACT DOCUMENTS This Agreement expressly incorporates the following documents, together with any amendments that may be agreed to in writing by both parties:

14.2 INTERPRETATION OF CONTRACT DOCUMENTS

14.2.1 The drawings and specifications are complementary. If Work is shown only on one but not on the other, Contractor will perform the Work as though fully described on both, consistent with the Contract Documents and reasonably inferable from them.

14.2.2 In case of conflicts between the drawings and specifications, the specifications will govern. In any case of omissions or errors in figures, drawings, or specifications, Contractor will immediately submit the matter to Project Manager for clarification. Project Manager will confer with District's Representative, and will issue a clarification to Contractor. District's clarifications are final and binding on all Parties, subject to an equitable adjustment in Contract Time or Contract Price or dispute mitigation and resolution.

14.2.3 Where figures are given, they will be preferred to scaled dimensions.

- 14.2.4 Unless otherwise specifically defined in this Agreement, any terms that have well-known technical or trade meanings will be interpreted in accordance with their well-known meanings.
- 14.2.5 In case of any inconsistency, conflict, or ambiguity among the Contract Documents, the documents will govern in the following order: (a) Change Orders and written amendments to this Agreement; (b) this Agreement; (c) subject to subsection 14.2.2, the drawings (large scale governing over small scale), specifications, and addenda issued prior to the execution of this Agreement or signed by both Parties; (d) information furnished by District pursuant to subsection 3.13.4 or designated as a Contract Document in section 14.1; (e) other documents listed in this Agreement. Among categories of documents having the same order of precedence, the term or provision that includes the latest date will control. Information identified in one Contract Document and not identified in another will not be considered a conflict or inconsistency.

End of Agreement | *Signatures appear on the following page.*

IN WITNESS WHEREOF, DISTRICT AND CONTRACTOR have executed this Agreement with an effective date as first written above.

DISTRICT: Greater Boise Auditorium District

BY: _____

Patrick Rice, Executive Director

Date: _____

Approved as to Form

Mary Watson, General Counsel

CONTRACTOR: [insert company name]

BY: _____

[Insert name of person who can sign contract and Title]

Date: _____

END OF DOCUMENT

APPLICATION FOR PAYMENT – INSTRUCTIONS

A. GENERAL INFORMATION

The sample Schedule of Values (next page) is intended as a guide only. Many projects require a more extensive form with space for numerous items, descriptions of Change Orders, identification of variable quantity adjustments, summary of materials and equipment stored at the site and other information. It is expected that a separate form will be developed by Project Manager and Contractor at the time Contractor's Schedule of Values is finalized. Note also that the format for retainage must be changed if the Contract permits (or the law provides), and Contractor elects to deposit securities in lieu of retainage. See Division 01 Section 01 29 00 "Applications for Payment" for provisions concerning payments to Contractor.

B. COMPLETING THE FORM

The Schedule of Values, submitted and approved as provided in the General Conditions, should be reproduced as appropriate in the space indicated on the Application for Payment form. Note that the cost of materials and equipment is often listed separately from the cost of installation. Also, note that each Unit Price is deemed to include Contractor's overhead and profit.

All Change Orders affecting the Contract Price should be identified and included in the Schedule of Values as required for progress payments.

The form is suitable for use in the Final Application for Payment as well as for Progress Payments; however, the required accompanying documentation is usually more extensive for final payment. All accompanying documentation should be identified in the space provided on the form.

C. LEGAL REVIEW

All accompanying documentation of a legal nature, such as lien waivers, should be reviewed by an attorney, and Project Manager should so advise District.

END OF SECTION 00 62 76

SECTION 00 63 13 REQUEST FOR INFORMATION FORM

REQUEST FOR INFORMATION

PROJECT: _____ RFI#: _____

ITEM: _____

REF. DWG. OR SPEC.: _____

SCHEDULE IMPACT? YES NO COST IMPACT? YES NO

REQUEST RETURN BY: _____

DESCRIPTION/REQUEST: _____

ORIGINATOR: _____ FIRM: _____ DATE: _____

RESPONSE

BY: _____ FIRM: _____ DATE: _____

This is not an authorization to proceed with work involving additional costs and/or time. Notification must be given in accordance with the Contract Documents if any response causes any changes to the Contract Documents.

END OF SECTION 00 63 13

SECTION 00 63 49 WORK CHANGE DIRECTIVE FORM

WORK CHANGE DIRECTIVE FORM

No. _____

DATE OF ISSUANCE _____

EFFECTIVE DATE _____

DISTRICT _____

CONTRACTOR _____

Contract: _____

Project: _____

You are directed to proceed promptly with the following change(s):

Description:

Purpose of Work Change Directive:

Attachments: (List documents supporting change)

If District or Contractor believe that the above change has affected Contract Price, any Claim for a Change Order based thereon will involve one or more of the following methods as defined in the Contract Documents.

Method of determining change in Contract Price:

- Unit Prices
- Lump Sum
- Cost of the Work

Estimated increase (decrease) in Contract Price:

\$ _____

If the change involves an increase, the estimated amount is not to be exceeded without further authorization.

Estimated increase (decrease) in Contract Times:

Substantial Completion: _____ days;

Ready for final payment: _____ days.

RECOMMENDED

AUTHORIZED

PROJECT MANAGER

DISTRICT

By: _____

By: _____

WORK CHANGE DIRECTIVE – INSTRUCTIONS

A. GENERAL INFORMATION

This document was developed for use in situations involving changes in the Work which, if not processed expeditiously, might delay the Project. These changes are often initiated in the field and may affect the Contract Price or the Contract Times. This is not a Change Order, but only a directive to proceed with Work that may be included in a subsequent Change Order. See Division 01 General Requirements for procedures regarding issuance of Work Change Directives by Project Manager.

For supplemental instructions and minor changes not involving a change in the Contract Price or the Contract Times a Field Order should be used.

B. COMPLETING THE FORM

Project Manager initiates the form, including a description of the items involved and attachments.

Based on conversations between Project Manager and Contractor, Project Manager completes the following:

METHOD OF DETERMINING CHANGE, IF ANY, IN CONTRACT PRICE: Mark the method to be used in determining the final cost of Work involved and the estimated net effect on the Contract Price. If the change involves an increase in the Contract Price and the estimated amount is approached before the additional or changed Work is completed, another Work Change Directive must be issued to change the estimated price or Contractor may stop the changed Work when the estimated time is reached. If the Work Change Directive is not likely to change the Contract Price, the space for estimated increase (decrease) should be marked "Not Applicable."

Once Project Manager has completed and signed the form, all copies should be sent to District for authorization – Project Manager alone does not have authority to authorize changes in Price or Times. Once authorized by District, a copy should be sent by Project Manager to Contractor. Price and Times may only be changed by Change Order signed by District and Contractor with Project Manager's recommendation.

Once the Work covered by this directive is completed or final cost and times are determined, Contractor should submit documentation for inclusion in a Change Order. Division 01 General Requirements requires that a Change Order be initiated and processed to cover any undisputed sum or amount of time for Work actually performed pursuant to this Work Change Directive.

THIS IS A DIRECTIVE TO PROCEED WITH A CHANGE THAT MAY AFFECT THE CONTRACT PRICE OR CONTRACT TIMES. A CHANGE ORDER, IF ANY, SHOULD BE CONSIDERED PROMPTLY.

END OF SECTION 00 63 49

SECTION 00 73 00 SUPPLEMENTARY CONDITIONS

1. **FEDERAL, STATE, AND LOCAL PAYROLL TAXES:** Neither federal, state or local income taxes, nor payroll taxes of any kind will be withheld and paid by District on behalf of Contractor or the employees of Contractor. Contractor will not be treated as an employee with respect to the services performed hereunder for federal or state tax purposes. Contractor understands that Contractor is responsible to pay, according to law, Contractor's income tax. Contractor further understands that Contractor may be liable for self-employment (Social Security) tax to be paid by Contractor according to law.
2. **LICENSES AND LAW:** Contractor represents that it possesses the requisite skill, knowledge, and experience necessary, as well as all licenses required to perform the services under this Agreement. Contractor further agrees to comply with all applicable laws, ordinances, and codes of Federal, State and local governments in the performance of the services hereunder.
3. **FRINGE BENEFITS:** Because Contractor is engaged in its own independently established business, Contractor is not eligible for, and will not participate in, any employee pension, health, or other fringe benefit plans of District.
4. **AMENDMENTS:** This Agreement, including the amount of compensation and the Scope of Work, may be amended only in writing, upon mutual agreement of both District and Contractor.
5. **DISCRIMINATION PROHIBITED:** In performing the services required herein, Contractor will not discriminate against any person on the basis of race, color, religion, sex, sexual orientation, gender identity, national origin or ancestry, age or handicap. Violation of this section will constitute a material breach of this Agreement and be deemed grounds for cancellation, termination or suspension of the Agreement by District, in whole or in part, and may result in ineligibility for further work for District.
6. **NUMERATION:** District and Contractor acknowledge the Agreement may contain gaps in the numbering of the provisions. Despite the gaps in the numbering, District and Contractor acknowledge the Agreement is the complete Agreement between them.
7. **SILENCE OF SPECIFICATION:** The apparent silence of this specification and supplemental specifications as to any detail, or the apparent omission from it of a detailed description concerning any point will be regarded as meaning that only best commercial practice is to be used. Any exception to this specification will be cause for rejection. District reserves the right to verify specification compliance and other information with published sources as deemed necessary.
8. **ACCIDENT PREVENTION:** Contractor will provide and maintain work environments and procedures which will:
 - A. Safeguard the public and Government personnel, property, materials, supplies, and equipment exposed to Contractor operations and activities.
 - B. Comply with all local, County, State, or other applicable legal requirements and will exercise all legally required safety precautions at all times.
 - C. Ensure that all Contractor employees who are performing work in the streets wear an appropriate safety vest.
 - D. Avoid interruptions of Government operations and delays in Project completion dates; and will exercise due care during the performance of work to protect from damage all existing facilities, structures, landscaping and utilities on local jurisdiction and private property.

E. For these purposes on contracts for construction or dismantling, demolition, or removal of improvements, Contractor will:

- i. Provide appropriate safety barricades, signs, and signal lights;
- ii. Ensure that any additional measures District determines to be reasonably necessary for the purposes are taken.
- iii. Take every reasonable effort to keep sidewalks, vehicle travel lanes, driveways and crosswalks open at all times.
- iv. Report to District immediately any Contractor caused damages.
- v. Effect the prompt repair any damage to any public property incurred while installing the required items. Repairs to be completed as quickly as is reasonably possible and as required by local ordinance.

9. EMPLOYMENT OF IDAHO RESIDENTS IN PUBLIC WORKS CONSTRUCTION. Contractor will comply with Idaho Code § 44-1001 in performing the Work on the Project. **This Code provision is reproduced below for convenience from the State of Idaho website and will be verified by Contractor.**

44-1001. EMPLOYMENT OF RESIDENTS OF IDAHO -- WAGE SCALE -- FEDERAL FUNDS. In all state, county, municipal, and school construction, repair, and maintenance work under any of the laws of this state Contractor, or person in charge thereof must employ ninety-five percent (95%) bona fide Idaho residents as employees on any such contracts except for procurement authorized in section 67-2808(2), Idaho Code, or where under such contracts fifty (50) or less persons are employed Contractor may employ ten percent (10%) nonresidents, provided however, in such a case employers must give preference to the employment of bona fide Idaho residents in the performance of such work; provided, that in work involving the expenditure of federal aid funds this act shall not be enforced in such a manner as to conflict with or be contrary to the federal statutes prescribing a labor preference to honorably discharged members of the United States armed forces, including airmen, soldiers, sailors, and marines, prohibiting as unlawful any other preference or discrimination among the citizens of the United States.

END OF SECTION 00 73 00

SECTION 00 73 16 INSURANCE AND BONDING REQUIREMENTS

Insurance

Upon execution of the Contract and prior to commencing any Work under the Contract, Contractor will obtain at its sole cost and expense and thereafter maintain, for the duration of the Contract, at least the minimum insurance coverages set forth below:

- (a) Worker's compensation insurance as required by applicable law or regulation;
- (b) Employer's liability insurance in the minimum amount of \$500,000 each accident for bodily injury, \$500,000 each employee for bodily injury by disease and \$500,000 policy limit for bodily injury by disease;
- (c) Commercial General Liability ("CGL") insurance covering all operations by or on behalf of Contractor with minimum limits of liability of \$1,000,000 for each occurrence and \$2,000,000 aggregate for both bodily injury and property damage. Contractor may provide insurance up to the required limits through a CGL policy or through a CGL policy and an umbrella policy.

The aggregate limits must apply separately to the Project, or Contractor must obtain separate insurance to provide the required limit which will not be subject to depletion because of claims arising out of any other project or activity of Contractor.

The CGL insurance policy will name District as Additional Insured and will protect its officers, agents and employees from and against claims for bodily injury, property damage, personal injury and advertising injury that will be no less comprehensive and no more restrictive than the coverage provided by Insurance Services Office (ISO) form for Commercial General (CG 00 01 04 13).

By its terms or appropriate endorsements such insurance will include the following coverage, to wit: Bodily Injury, Property Damage, Fire Legal Liability (not less than the replacement value of the portion of the premises occupied), Personal Injury, Blanket Contractual, Independent Contractors, Premises Operations, Products and Completed Operations for a minimum of two (2) years following Final Completion of the Project. The policy cannot be endorsed to exclude the perils of explosion (x), collapse (c) and underground (u) exposures without the specific written approval of District. District will be named as an Additional Insured by the terms of the policy or by an endorsement issued by the insurer; and

- (d) Automobile liability insurance including coverage for owned, hired, and non-owned automobiles. The limits of liability will not be less than \$1,000,000 combined single limit each accident for bodily injury and property damage combined. Contractor will require each of its subcontractors to include in their liability insurance policies coverage for automobile contractual liability. The automobile liability insurance policy will name District as Additional Insured and will protect its officers, agents and employees from and against claims.

All insurance required in the Contract will be occurrence-based coverage as opposed to claims-based coverage and will be procured from companies which are authorized to do business in Idaho.

To the extent commercially available to Contractor from its current insurance company, insurance policies required under the Contract will contain a provision that the insurance company or its designee must give

District written notice transmitted in paper or electronic format: (a) 30 Days before coverage is non-renewed by the insurance company and (b) within 10 Business Days after cancelation of coverage by the insurance company. Prior to commencing the Work and upon renewal or replacement of the insurance policies, Contractor will furnish District with certificates of insurance until two years after Substantial Completion or longer if required by the Contract. In addition, if any insurance policy required under the Contract is not to be immediately replaced without lapse in coverage when it expires, exhausts its limits, or is to be cancelled, Contractor will give District prompt written notice upon actual or constructive knowledge of such condition.

Contractor may include all subcontractors as insureds under Contractor's policies in lieu of separate policies by each subcontractor.

Contractor will furnish District with a copies of the CGL policies or endorsement naming District as an Additional Insured and certificates of insurance including the required endorsements for Contractor and all subcontractors not included under Contractor's policy prior to execution of the contract by District and prior to any work being performed.

All insurance provided by Contractor under the Contract will include a waiver of subrogation by the insurers in favor of District. Contractor hereby releases District, including its respective affiliates, directors, and employees, for losses or claims for bodily injury, property damage covered by Contractor's insurance or other insured claims arising out of Contractor's performance under the Contract.

The foregoing insurance coverage will be primary and noncontributing with respect to any other insurance or self-insurance that may be maintained by District. The fact that Contractor has obtained the insurance required will in no manner lessen or affect Contractor's other obligations or liabilities set forth in the Contract.

Payment and Performance Bonds

Payment and Performance Bonds are required of Contractor. Such bonds will be issued by a surety admitted in the state of Idaho, payable to District, and must be acceptable to District to be valid. District's acceptance will not be withheld without a reasonable cause. The penal sum of the bonds will each be one hundred percent (100%) of the original Contract Price. Any increase in the Contract Price that exceeds ten percent (10%) in the aggregate will require a rider to the Bonds increasing penal sums accordingly. Up to such ten percent (10%) amount, the penal sum of the bond will remain equal to one hundred percent (100%) of the Contract Price. Contractor will endeavor to keep its surety advised of changes potentially impacting the Contract Price and Contract Time, though Contractor will require that its surety waives any requirement to be notified of any alteration or extension of time within the scope of the initial Agreement. The performance bond will include coverage in favor of District for correction of Defective Work by Contractor for two years following Substantial Completion of the Work.

END OF SECTION 00 73 16

SECTION 00 73 73 STATUTORY REQUIREMENTS – TAX COMMISSION

Idaho Code § 54-1904A and § 63-3624(g) require all public works contracts to be reported to the Tax Commission within thirty (30) days after a contract is awarded.

Contractor will complete the WH-5 PUBLIC WORKS CONTRACT REPORT and provide to District at the time of execution of the Contract. See WH-5 report on next page.

Contractor: Do not file with the State Tax Commission; District will file the WH-5 Report.

END OF SECTION 00 73 73



**Form WH-5
Public Works Contract Report**

Contractors awarded Idaho public works contracts must submit this form to the Tax Commission within 30 days of receiving the award. (Idaho Code sections 54-1904A and 63-3624(g)).

Contract awarded by (public body and address)

Contract awarded to (contractor's name and address)

State of incorporation	Federal Employer Identification Number (EIN)	Date qualified to do business in Idaho
Business operates as <input type="checkbox"/> Sole Proprietorship <input type="checkbox"/> Partnership <input type="checkbox"/> Corporation <input type="checkbox"/> LLC		Public works contractor license number
Sole proprietor's Social Security number	Idaho sellers permit number	Idaho withholding tax permit number
Awarding agency project number		Amount of contract \$

Description and location of work to be performed

Project Dates

Scheduled project start date: _____ Completion date: _____

If the following information isn't available at this time, please enter date it will be: _____

All Subcontractors

Name			Federal EIN
Address			Public works contractor license number
City	State	ZIP Code	Amount of subcontract \$

Description of work

Name			Federal EIN
Address			Public works contractor license number
City	State	ZIP Code	Amount of subcontract \$

Description of work

Name			Federal EIN
Address			Public works contractor number
City	State	ZIP Code	Amount of subcontract \$

Description of work

Name			Federal EIN
Address			Public works contractor license number
City	State	ZIP Code	Amount of subcontract \$

Description of work



All Subcontractors (continued)

Name			Federal EIN
Address			Public works contractor license number
City	State	ZIP Code	Amount of subcontract \$
Description of work			

Name			Federal EIN
Address			Public works contractor license number
City	State	ZIP Code	Amount of subcontract \$
Description of work			

Name			Federal EIN
Address			Public works contractor license number
City	State	ZIP Code	Amount of subcontract \$
Description of work			

Suppliers

List your major suppliers of materials, equipment, and supplies. Include items removed from inventory and items provided to you by the government agency for use in this project.

Name		Federal EIN	Total value \$
Address		Materials and equipment purchased and used	
City, State, ZIP Code	Phone number	Please select how sales or use tax was paid. <input type="checkbox"/> Tax paid to supplier <input type="checkbox"/> Tax paid to state* <input type="checkbox"/> No tax was paid	

Name		Federal EIN	Total value \$
Address		Materials and equipment purchased and used	
City, State, ZIP Code	Phone number	Please select how sales or use tax was paid. <input type="checkbox"/> Tax paid to supplier <input type="checkbox"/> Tax paid to state* <input type="checkbox"/> No tax was paid	

Name		Federal EIN	Total value \$
Address		Materials and equipment purchased and used	
City, State, ZIP Code	Phone number	Please select how sales or use tax was paid. <input type="checkbox"/> Tax paid to supplier <input type="checkbox"/> Tax paid to state* <input type="checkbox"/> No tax was paid	

*If you're reporting any untaxed materials, equipment, or supplies as "items subject to use tax" on your Idaho return, provide the period when you did or will report it: _____

If you paid tax to a state other than Idaho, write the name state next to "total value" boxes, above. For any tax due that you haven't reported yet, include payment with this form. You can make copies of this form if you need more room.

Sign Here	Authorized signature	Print name	Phone number	Date

File with the Idaho State Tax Commission, PO Box 36, Boise ID 83722-0410
For more information, call (208) 334-7618 | Fax: (208) 332-6619 | Email: contractdesk@tax.idaho.gov