

# **Priest Lake Water Management Project Outlet Dam Improvements**

**Idaho Water Resource Board**

Invitation to Bid No. 2020-002

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## **ADVERTISEMENT FOR BIDS**

Sealed proposals for construction of the Priest Lake Water Management Project Outlet Dam Improvements (Project) will be received by the Idaho Water Resource Board, State of Idaho (“Owner”), at 322 E Front Street, Boise, ID 83702, Attention: ITB Lead, until **4:00 PM MDT**, on **July 24, 2020**, and then publicly opened and read aloud. Bid opening will be at **4:30 PM MDT**, on **July 24, 2020** at the Idaho Department of Water Resources, 322 E. Front Street, Boise, Idaho 83702, 5<sup>th</sup> Floor, Conference Room 501E.

The Project generally includes providing all labor and materials, unless otherwise indicated in the Contract Documents or in the Drawings, to install a new concrete and armor rock scour apron extension. The improvements include extending the height of the existing tainter gates to accommodate higher pool levels, replacing trunnion pins, and strengthening existing gate assemblies. The project also includes repairing existing concrete, expansion joints, and the existing railing. This paragraph lists the major work items and may not include all of the work required to complete the Project in accordance with the Contract Documents.

Since the Project will be constructed within a riverine environment, the need for redirecting flows around portions of the Outlet Dam during various stages of construction, and strict compliance with regulatory permitting, bids will not be accepted from Bidders who did not attend the **mandatory** Pre-Bid Conference on Tuesday, **June 23, 2020**, at **11:30 AM MDT**. To attend pre-bid meeting you must register by phone (208) 287-4800 or email @ [purchasing@idwr.idaho.gov](mailto:purchasing@idwr.idaho.gov). Registration must include number of participants if planning to attend in person. Registration due by June 22, 2020 3:00 pm MST. Teleconference Information will be given to participants by email or phone after registration. Owner staff will perform the formal sign-in process for the Pre-Bid teleconference, which will become the official record of attendance for the purposes of determining eligible Bidders. Bidders on this project must have at least one full-time, permanent employee present. No proxy representatives, such as a subcontractor or consultant, meet this requirement. In the event a Bidder tenders a Bid but did not attend the Pre-Bid teleconference, the Bid will be returned unopened. Prospective Bidders can meet with representatives of the Owner and Owner’s Representative at the project site by meeting at a designated location on **Monday, June 29, 2020 at 9:00 AM PDT**. Bidders are limited to two (2) representatives on site.

Project Drawings and Specifications may be obtained in electronic format from the IDWR FTP Site. FTP Site access information is available at <https://idwr.idaho.gov/solicitations/>.

A Public Works Contractors License for the State of Idaho is required to bid on this work.

Individual bid items shall be on lump-sum and unit-price basis, and the award will be based on the lowest total Bid Price of the lowest, responsive, responsible, and qualified Bidder. One contract will be awarded for the Project. Bidders shall bid on all base bid items in the Bid Schedule. Bid Security in the amount of five percent (5%) of the Bid must accompany each Bid in accordance with the Instructions to Bidders. Bids not accompanied by Bid Security will be rejected.

It is anticipated that a contract will be executed on or around August 14, 2020, with in-water construction to commence on or around November 1, 2020. The Project is to be substantially complete by March 15, 2021.

# **INSTRUCTIONS TO BIDDERS**

## **GENERAL PROVISIONS**

**DEFINITIONS:** Capitalized terms used in these Instructions to Bidders (“Instructions”) shall have the meaning given to them in the Fixed Price Construction Contract for the Priest Lake Water Management Project Outlet Dam Improvements.

**HEADINGS:** Headings used in these Instructions are for convenience only.

**REJECTION OF BIDS, WAIVER OF INFORMALITIES OR CANCELLATION:** Prior to the effective date of a contract, the Executive Officer of the Idaho Water Resource Board shall have the right to accept or reject all bids, to waive any minor deviations/informalities or to cancel the bid.

**INFORMATION:** Questions concerning a bid must be directed in writing to the ITB Lead, or email at [Purchasing@idwr.idaho.gov](mailto:Purchasing@idwr.idaho.gov) by **July 6, 2020** unless provided otherwise via an addendum. Oral information is not binding and any reliance by a Bidder on any oral information or representation is at the bidder’s sole risk. Any information given a prospective Bidder in response to a written question will be provided to all prospective Bidders by an addendum on the Owner website, if such information is necessary for purposes of submitting a bid or if failure to give such information would be prejudicial to uninformed Bidders.

**PUBLIC RECORDS:** The Idaho Public Records Law, Title 74, Chapter 1, Idaho Code, allows the open inspection and copying of public records. Public records include any writing containing information relating to the conduct or administration of the public's business prepared, owned, used or retained by a State or local agency regardless of the physical form or character. Unless exempted by the Public Records Law, your bid will be a public record subject to disclosure under the Public Records Law. Any questions regarding the applicability of the Public Records Law should be addressed to your legal counsel prior to submission.

**FORM OF AGREEMENT:** Unless otherwise specified in the bid documents, the agreement between the successful bidder and the Owner (Idaho Water Resource Board) shall be the Fixed Price Construction Contract for the Project.

**PERFORMANCE AND PAYMENT BONDS:** 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 shall be AIA Document A312, 1984 or the most recent Edition, or a standard surety form certified approved to be the same as the AIA A312 form and shall be executed by a surety or sureties reasonably acceptable to the Owner 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.

## **BID SUBMISSION PROCESS**

**BID DOCUMENTS:** The bid documents are available from the Owner as provided in the Advertisement for Bids. The responsibility is on the Bidder to use a complete set of bid documents to prepare its bid and neither the Owner nor the Owner’s Representative shall incur any liability for the Bidder’s failure to do so. Bidders obtain no ownership interest or any use rights, except to use in preparation of their bid, by issuance of the bid documents.

Bidders and Sub-bidders shall field verify all dimensions pertaining to the Work and shall be responsible for the determination of all quantities of materials required for the completion of the Work. The bidder shall not rely on the scale drawings of the Bidding Documents in his determination of required materials quantities. No allowance shall be made for Bidder's failure to field-verify dimensions.

**ADDENDA:** In the event it becomes necessary to revise any part of the bid documents, 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. It is the Bidder's responsibility to check for addenda prior to submitting a bid. A Bidder is required to acknowledge receipt of all addenda by identifying the addenda numbers 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 later than **July 17, 2020** unless the bid closing date is extended.

**REVIEW:** It is the Bidder's responsibility to review the bid documents and compare them as needed, including with regard to any other work that is or may be under construction that might affect the Bidder or its work, to examine the site and local conditions and to report, in writing, any questions, errors, inconsistencies or ambiguities to the ITB Lead.

**PRODUCTS SPECIFIED AND PROPOSED SUBSTITUTIONS:** Materials, products or equipment, if specified by name or manufacturer, establish the standard of quality required and that must be met by any proposed substitution. Requests for substitutions must be made in writing to the ITB Lead by **July 6, 2020** unless provided otherwise via an addendum. Such requests must provide detailed information to allow the ITB Lead to determine if the proposed substitution is acceptable, including drawings or performance or test data and a detailed statement of how the substitution would change any other part of the Work. It is the bidder's obligation to satisfy this requirement and the ITB Lead's decision shall be final. To be allowed, substitutions must be approved in an addendum to the bid documents.

**BID FORM:** Bids must be submitted on the bid proposal forms, or copies of forms, furnished by the Owner. Bids submitted must contain signatures on the following forms:

- Bid Proposal Form
- Contractor's Affidavit Concerning Alcohol and Drug-Free Workplace
- Bidder's Acknowledgment Statement
- Bidder's Qualification Statement
- Bid Bond (bid security)
- Bidder's Checklist

The person signing the Bid Proposal Form must initial any and all changes appearing on any of the bid forms. If the bidder is a corporation or other legal entity, the bid forms must be signed by an authorized designee.

**BID PRICES:** The bid form may require bidders to submit bid prices for one (1) or more items on various bases, including lump sum base bid, lump sum bid alternate prices, unit prices or any combination thereof. Bid amounts shall be expressed in words and numbers. The amount in words shall prevail if there is a discrepancy.

**TIME FOR SUBMISSION:** Bids must be submitted on or before the time specified in the Advertisement for Bids. Any bid submitted late will be rejected.

**SUBMITTING BIDS:** Bids shall be submitted in a sealed envelope with the following clearly printed on the outside of the envelope: Project name and ITB No.; the name and address of the bidder; and a

statement, such as "BID ENCLOSED" to indicate that it is a bid. When bids are mailed or shipped, the sealed envelope containing the hard copy bid shall be enclosed in a separate mailing envelope with the notation "SEALED BID ENCLOSED" on the face thereof. If mailed, the mailing envelope shall be addressed as follows:

Idaho Water Resource Board  
Attn: 2020-001 ITB Lead  
322 E Front Street, Suite 648  
PO Box 83720  
Boise, ID 83720-0098

Electronic version of the bid may be submitted on a flash drive. If the bidder chooses to submit their bid on a flash drive, compile the bid into one pdf document. Also, include a copy of the completed Bid Schedule in excel or word format.

If the entity identified on the state supplied Signature page differs from the entity under which you submit your Bid to the Owner, the information provided on the Signature Page prevails.

It is the Bidder's responsibility to ensure that its bid is delivered to the place designated for receipt on or before the specified closing time. The Owner assumes no responsibility for delays in the delivery of mail by the U.S. Post Office or private couriers. Bidders should be advised the intra-state mail system may increase delivery time from arrival at Central Postal to the place designated for receipt and should plan accordingly. **LATE SUBMISSIONS WILL BE REJECTED, WILL NOT BE OPENED AND WILL BE RETURNED TO THE BIDDER. NO DEVIATIONS WILL BE ALLOWED.**

**BID CLOSING DECLARED:** Any part of a bid not received prior to the bid closing declared by the designated representative will not be considered and will be returned to the bidder unopened. All bids shall be taken under advisement.

**DRUG-FREE WORKPLACE:** Along with its bid, the Bidder shall submit an affidavit certifying compliance with Idaho Code, Title 72, Chapter 17, which requires the Contractor and its subcontractors at the time of bid to provide a drug-free workplace program and to maintain such program throughout the duration of the Contract. The form of affidavit is attached.

**ILLEGAL ALIENS:** Bidder shall warrant that the Bidder does not knowingly hire or engage any illegal aliens or persons not authorized to work in the United States; Bidder shall take steps to verify that it does not hire or engage any illegal aliens or persons not authorized to work in the United States; and that any misrepresentation in this regard or any employment of persons not authorized to work in the United States constitutes a material breach and shall be cause for the imposition of monetary penalties and/or termination of any Contract resulting from this bid.

**LEGAL RESIDENCY REQUIREMENT:** By submitting a bid, the Bidder attests, under penalty of perjury, that 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.

**BIDDER'S ACKNOWLEDGEMENT STATEMENT:** The attached Bidder's Acknowledgement Statement must be completed and included or the bid may be found non-responsive.

**PUBLIC WORKS CONTRACTOR'S LICENSE:** 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 licenses as public works contractors in the State of Idaho.

**WAGE RATES:** Bids shall be based on applicable wage determinations and labor standards established by the Secretary of Labor, United States Department of Labor.

**IDAHO LABOR REQUIREMENTS:** This Project is subject to the provisions of Idaho Code Sections 44-1001 and 44-1002, dealing with labor preference.

**IDAHO PREFERENCE LAW:** Idaho Code Section 67-2348, requires the Owner to apply a preference in determining which Contractor submitted the lowest responsible bid. If the Contractor who submitted the lowest dollar bid is domiciled in a state with a preference law that penalizes Idaho domiciled contractors, the Owner must apply the preference law (percentage amount) of that domiciliary state to that Contractor's bid.

**NAMING OF SUBCONTRACTORS:** Idaho Code Section 67-2310, requires general (prime) Contractors to include in their bid the name of the subcontractors who shall, in the event the Contractor secures the Contract, subcontract the plumbing, HVAC, and electrical work under the general (prime) Contract. Failure to name subcontractors as required by this section shall render any bid submitted by a general (prime) Contractor nonresponsive and void. Subcontractors named in accordance with the provisions of this section must possess an appropriate license or certificate of competency issued by the State of Idaho covering the Contractor work classification in which the subcontractor is named.

The Owner interprets Idaho Code Section 67-2310, to mean three (3) separate areas of work: plumbing work, HVAC, and electrical work. The Owner also requires that the general (prime) Contractor name the entity that will perform the Work, including if the entity is a subcontractor, a sub-subcontractor or the general (prime) Contractor submitting the bid. Failure to complete the Bid Proposal in full shall render a bid nonresponsive and void.

With regard to possessing an appropriate license or certificate of competency, all subcontractors listed by the general (prime) Contractor must have at the time of the bid opening a current license in the appropriate category (class, type and specialty category) as issued by the Public Works Contractors State License Board. In addition, plumbing, HVAC and electrical subcontractors shall have at the time of the bid opening a valid plumbing contractor's license, HVAC contractor's license or electrical contractor's license, respectively, as issued by the Idaho Division of Building Safety.

In determining if the above listed subcontractors are required on the Project, the Owner will refer to the plans and specifications. If doubt exists prior to bid closing, potential bidders should contact the ITB Lead, and the Owner's Representative who prepared the plans and specifications will be requested to make the determination. If plumbing, HVAC or electrical work are not shown on the plans and specifications, but are discovered by the Bidder prior to the date of bid opening, then the Bidder must request clarification from the ITB Lead. Absent such clarification, Work will be considered incidental and naming of a subcontractor will not be required.

## **BID SECURITY**

**AMOUNT AND FORM OF SECURITY:** To be considered, bids must be accompanied by an acceptable bid security in an amount not less than five percent (5%) of the total amount of the bid, including additive alternates. The security may be in the form of a bond or a certified or cashier's check. A standard surety bid bond form meeting all the conditions of AIA Document A310 is acceptable and, if used, must include

a certified and current copy of the power of attorney if the bond is executed by the attorney-in-fact on behalf of the surety.

**FORFEITURE:** A successful Bidder who fails to sign the Contract for the Work or furnish the required bonds within ten (10) calendar days following the receipt of notice of intent to award a Contract is subject to forfeiture in accordance with Idaho Code Section 54-1904E.

**RETENTION OF SECURITY:** Bid security shall be retained for no more than forty-five (45) calendar days after the opening of bids, so long as the bidder has not been notified of the acceptance of the bid.

## **BID WITHDRAWAL**

**PRIOR TO BID CLOSING:** If a bid has been submitted, it may be withdrawn in person by a bidder's authorized representative before the opening of the bids. A bidder's representative will be required to show identification and sign on a bid summary sheet before it will be released. After bid closing, no bid may be withdrawn except in strict accordance with these Instructions or applicable law.

## **BID MODIFICATION**

**PRIOR TO BID CLOSING:** If a bid has been submitted, it may be modified by the submission of a written document contained in a separate sealed envelope marked "Bid Modification from [Name of Bidder] for; Priest Lake Water Management Project Outlet Dam Improvements ITB No. 2020-002." **THE DOCUMENT MODIFYING THE BID MUST BE SIGNED BY AN AUTHORIZED REPRESENTATIVE OF THE SUBMITTING BIDDER. THE OWNER RESERVES THE RIGHT TO REQUIRE PRESENTATION OF EVIDENCE SATISFACTORY TO IT TO ESTABLISH THE AUTHORITY TO ACT ON BEHALF OF THE SUBMITTING BIDDER. NO OTHER FORM OF MODIFICATION (INCLUDING TELEPHONE, FACSIMILE OR ELECTRONIC MAIL) WILL BE ACCEPTED. AFTER BID CLOSING, NO BID MAY BE MODIFIED EXCEPT IN STRICT ACCORDANCE WITH THESE INSTRUCTIONS OR APPLICABLE LAW.**

## **RELIEF FROM BIDS**

**CONDITIONS FOR RELIEF:** Relief from bids is subject to Idaho Code Sections 54-1904B through 54-1904E. In the event a bidder discovers a mistake in its bid following the bid opening and wishes to withdraw its bid, the bidder shall establish to the satisfaction of the Owner, pursuant to Section 54-1904C, Idaho Code, that a clerical or mathematical mistake was made; the bidder gave the public entity (Owner) written notice within five (5) calendar days after the opening of the bid of the mistake, specifying in the notice in detail how the mistake occurred; and the mistake was material.

**DETERMINATION:** If the Owner determines that the bidder has satisfied the requirements of Idaho Code Section 54-1904C, to entitle it to relief from a bid because of a mistake, it shall prepare a report in writing to document the facts establishing the existence of each required element. The report shall be available for inspection as a public record and shall be filed with the public entity soliciting bids. A bidder claiming a mistake and satisfying all the required conditions of Section 54-1904C, Idaho Code, shall be entitled to relief from the bid and have any bid security returned by the Owner. Bidders not satisfying the conditions of Idaho Code Section 54-1904C, shall be subject to forfeiture in accordance with Idaho Code Section 54-1904B. A Bidder who claims a mistake or who forfeits its bid security shall be prohibited from participating in any re-bidding of that project on which the mistake was claimed or

security forfeited and the Owner may award the Contract to the next lowest responsive and responsible Bidder.

## **BIDDER'S REPRESENTATIONS**

**REPRESENTATIONS UPON SUBMITTING A BID:** By submitting its bid, a Bidder represents and warrants the following:

1. The person signing the bid is authorized to bind the Bidder;
2. It has all required licenses, permits or other authorizations necessary to submit its bid;
3. It has taken steps necessary to ascertain the nature and location of the Work and has investigated and satisfied itself as to the general and local conditions which can affect the Work or its cost, including but not limited to: (i) conditions bearing upon transportation, disposal, handling and storage of materials; (ii) the availability of labor, water, natural gas, electric power and roads; (iii) uncertainties of weather, river stages or similar physical conditions at the site; (iv) the conformation and conditions of the ground; and (v) the character of equipment and facilities needed preliminary to and during the Work;
4. It has satisfied itself as to character, quality and quantity of surface and subsurface materials or obstacles to be encountered insofar as this information is reasonably ascertainable from an inspection of the site, including exploratory work done by the Owner as well as from the drawings and specifications provided as part of the bid package, and that any failure of the Bidder to take such actions will not relieve the Bidder from responsibility for estimating properly the difficulty and cost of successfully performing the Work;
5. It has received, read and reviewed the Contract, has submitted any questions in writing regarding the same and has received an answer to such questions;
6. Its bid is based upon the requirements of the Contract without exception;
7. It is in compliance with Idaho Code Title 72, Chapter 17, regarding a drug-free workplace and has included the required affidavit regarding the same;
8. Its bid is in compliance with employment of persons authorized to work in the United States;
9. It will retain bid security and hold and honor all base bid prices for forty-five (45) calendar days from the date of bid opening, and cannot be withdrawn after the bid opening;
10. Its bid prices shown for each item on the bid proposal form include all labor, material, equipment, overhead and compensation to complete all of the Work for that item; and
11. It has included in its bid amount Idaho sales and/or use taxes on all materials and equipment and all other taxes imposed by law.

## **BID AWARD**

**AWARD METHOD:** Public works construction contracts for the State of Idaho are awarded to the "lowest responsible and responsive bidder." The low bidder, for purposes of award, shall be the responsible, responsive, and qualified bidder offering the low aggregate amount for the base bid item, plus any additive or deductive bid alternates selected by the Owner, and within funds available as determined by the Owner. The Owner will confirm the lowest responsible and responsive bidder, at its July 31, 2020 public meeting. The Award is also subject to the requirements of Idaho Code, including without limitation: Title 67, Chapter 57; Title 67, Chapter 23; Title 54, Chapter 19; and Title 44, Chapter 10. 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 the Owner will not be responsible for any failure by any bidder to meet applicable requirements.

**DETERMINATION OF RESPONSIBILITY:** The Owner reserves the right to make reasonable inquiry about or from the submitting bidder or from third parties to determine the responsibility of a submitting bidder. Such inquiry may include, but not be limited to, inquiry regarding experience and expertise related to the Project, manpower and other resources, financial stability, credit ratings, references, potential subcontractors and past performance. The unreasonable failure of a submitting bidder to promptly supply any requested information may result in a finding of non-responsibility.

**NOTICE OF EFFECTIVENESS:** No Contract is effective until the authorized Owner's official has signed the Contract and the Notice to Proceed has been issued. The Bidder shall not provide any goods or render services until the Contract has become effective. Furthermore, the Owner is in no way responsible for reimbursing the Bidder for goods provided or services rendered prior to the arrival of the Notice to Proceed.

**INCURRING COSTS:** The Owner is not liable for any cost incurred by Bidders prior to the Notice to Proceed.

**PRIOR ACCEPTANCE OF DEFECTIVE BIDS OR PROPOSALS:** The Owner generally will not completely review or analyze bids that appear to fail to comply with the requirements of the bid documents, nor will the Owner generally investigate the references or qualifications of those who submit such bids. Therefore, any acknowledgment that the selection is complete shall not operate as a representation by the Owner that an unsuccessful bid was responsive, complete, sufficient or lawful in any respect.

**POST-AWARD SUBMITTALS:** Upon receipt of a Notice of Intent to Award, the apparent low responsive and responsible bidder shall provide documentation required in such Notice. Such Notice of Intent to Award shall generally require the bidder to return to the Owner, within ten (10) days of receipt, a signed Contract, all required bonds, proof of insurance and documentation required by the Idaho State Tax Commission (report and affidavit).

**OWNER'S RIGHT TO REJECT:** Prior to execution of the Contract, the Owner shall provide written notice of any reasonable objection to any person or entity proposed by the bidder. Upon receipt of such notice, the bidder may withdraw its bid, without forfeiture, or propose a substitute and identify any change in any bid amount caused by such substitution. The Owner may accept or reject the substitution or the adjusted price. If the Owner rejects the substitution or the adjusted price, it will return the bidder's bid guarantee.

***END OF INSTRUCTIONS***

## BID PROPOSAL

**TO:** STATE OF IDAHO  
IDAHO WATER RESOURCE BOARD

The Bidder, in compliance with your Invitation to Bid No. 2020-002 for the Priest Lake Water Management Project Outlet Dam Improvements, having examined the bidding and Contract Documents and the site of the proposed Work, and being familiar with all of the conditions surrounding the construction of the proposed Project, including the availability of materials and labor, proposes to furnish all labor, materials and supplies and to provide the service and insurance in accordance with the Contract Documents, within the time set forth therein, and at the prices stated below. These prices are to cover all expenses incurred in performing the Work required under the Contract Documents.

Bidder agrees to commence Work under the Contract on a date to be specified in the written "Notice to Proceed" of the Owner. Bidder agrees to complete all in-water by March 15th, 2021 and all other work before the date set forth in the Contract Documents. The project shall be substantially completed by April 1st, 2021. Bidder further agrees to pay as liquidated damages, \$ 2,500 for each consecutive calendar day after the established substantial completion date or adjusted date as established by change order. In addition Bidder agrees to pay as liquidated damages, \$1,000 for each violation of work hour restrictions.

Bidder acknowledges receipt of Addenda:

Addendum No.	Addendum Date
_____	_____
_____	_____
_____	_____
_____	_____

**BID SCHEDULE****Priest Lake Water Management Project Outlet Dam Improvements**

<b>BASE BID (Bid all items)</b>					
Item No.	Description	Estimated Quantity	Unit	Unit Price	Total Price
1	Mobilization/Demobilization (10%)	1	LS		
2	Environmental Protection, Site Prep, and Site Restoration	1	LS		
3	Temporary Access Road/Structure and River Crossing	1	LS		
4	Construction Surveying	1	LS		
5	Cofferdams and Dewatering	1	LS		
6	Excavation and Disposal - Streambed	2,010	CY		
7	Concrete - Apron Scour	10	CY		
8	Reinforced Concrete - Apron Extension	365	CY		
9	Concrete Repair - Pier 6 Spalled Areas	36	CF		
10	Miscellaneous Steel - Strengthen Tainter Gate Skin Plate	11	BAY		
11	Miscellaneous Steel - Tainter Gate Extension	11	BAY		
12	Miscellaneous Steel - Replace Trunnion Pins	11	BAY		
13	Replace J-Seals	11	BAY		
14	Repair Expansion Joints - N & S Abutment Wing Walls	100	LF		
15	Railing - Repair Damaged Section	8	LF		
16	Replace Grease Fittings and Pump	11	BAY		
17	Install New Gauge on North Abutment and South Abutment	2	EA		
18	Vibrating Piezometer Array	1	LS		
19	Armor Stone	2,070	TON		
20	Bedding Stone	1,390	TON		
21	Crushed Rock Base Course	37	TON		
22	Geotextile Fabric	621	SY		
23	Approach Redevelopment - Base Course	39	TON		

24	Approach Redevelopment - Top Course	20	TON		
25	Approach Redevelopment - Hot Mix Asphalt Paving	25	TON		
26	Minor Changes	1	LS		

TOTAL BASE BID PRICE (Sum of Item No. 1 through Item No. 26):

\$ \_\_\_\_\_

TOTAL BASE BID PRICE (IN WORDS)

\_\_\_\_\_

Bidder understands that the Owner reserves the right to reject any or all bids and to waive any informality in the bidding.

The bidder agrees that this bid shall be good for a period of forty-five (45) calendar days after the scheduled opening time for receiving bids.

Upon receipt of written Notice of Intent to Award of this bid, Bidder will execute the formal Contract within ten (10) calendar days and deliver a Surety Bond or Bonds as required by paragraph "Performance and Payment Bonds" first page (ITB-1) of the Instructions to Bidders.

The bid security in the amount of five percent (5%) of the bid amount is to become the property of the Owner, in the event the Contract and bond are not executed within the time set forth, as liquidated damages for the delay and additional expense caused to the Owner.

The names and addresses of the entities who will perform the Work identified below, subject to approval of Owner and Owner's Representative, if undersigned is awarded the Contract, are as follows:

**SUBCONTRACTORS**

The Bidder further certifies that the following subcontracting firms or businesses will be awarded subcontracts for the following portions of the work in the event that the Bidder is awarded the Contract:

1)	
Name	License #
Street	City, State

2)	
Name	License #
Street	City, State

3)	
Name	License #
Street	City, State

**FAILURE TO NAME A PROPERLY LICENSED SUBCONTRACTOR WILL RENDER THE BID UNRESPONSIVE AND VOID.**

Should the listing of subcontractors change due to selection of alternates or other similar circumstances, attach explanation.

Bidder warrants that bid has been prepared and that any contract resulting from acceptance of this bid is subject to the Fixed Price Construction Contract.

The undersigned notifies that it is of this date duly licensed as an Idaho Public Works Contractor and further that it possesses Idaho Public Works Contractor's License No. \_\_\_\_\_, or that it and its subcontractors shall have secured a Public Works Contractor's License at or prior to award and execution of the Contract for construction and is domiciled in the State of \_\_\_\_\_.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.  
 (date) (month) (year)

Respectfully submitted by:

\_\_\_\_\_

(Contractor's Name- Typed)

*SEAL*  
 (Seal - if bid is by a corporation)

\_\_\_\_\_

(Street or PO Address)

\_\_\_\_\_

(City, State and zip code)

\_\_\_\_\_

(Authorized Signature)

\_\_\_\_\_

(Title)

\_\_\_\_\_

(Telephone Number)

\_\_\_\_\_

(FAX Number)

\_\_\_\_\_

(Email Address)

**Have you remembered to include bid security (bid bond or a certified or cashier's check), Contractor's Affidavit Concerning Alcohol and Drug-Free Workplace and a signed copy of the Bidder's Acknowledgment Statement with your bid?**

*Execute and Submit with Bid*

**CONTRACTOR'S AFFIDAVIT - CONCERNING ALCOHOL AND DRUG-FREE  
WORKPLACE**

STATE OF \_\_\_\_\_

COUNTY OF \_\_\_\_\_

Pursuant to Idaho Code Section 72-1717, I, the undersigned, being duly sworn, depose and certify that \_\_\_\_\_ is in compliance with the provisions of Section 72-1717, Idaho Code; that \_\_\_\_\_ provides a drug-free workplace program that complies with the provisions of Idaho Code Title 72, Chapter 17 and will maintain such program throughout the life of a state construction contract; and that \_\_\_\_\_ shall subcontract Work only to subcontractors meeting the requirements of Idaho Code Section 72-1717(1)(a).

\_\_\_\_\_  
Name of Contractor

\_\_\_\_\_  
Address

\_\_\_\_\_  
City and State

By: \_\_\_\_\_  
(Signature)

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
NOTARY PUBLIC  
Residing at: \_\_\_\_\_  
Commission expires: \_\_\_\_\_

**FAILURE TO EXECUTE THIS AFFIDAVIT AND SUBMIT IT ALONG WITH YOUR BID SHALL MAKE YOUR BID NON-RESPONSIVE.**

***Execute and Submit with Bid***

**BIDDER'S ACKNOWLEDGMENT STATEMENT**

**NOTE: THE INFORMATION CONTAINED HEREIN IS A SUMMARY OF VITAL CONTRACT PROVISIONS AND DOES NOT CHANGE THE CONTRACT DOCUMENTS THAT WILL GOVERN THIS PROJECT.**

**PRIEST LAKE WATER MANAGEMENT PROJECT OUTLET DAM IMPROVEMENTS**

By submitting a bid for this Project, the undersigned Bidder agrees that, if awarded the Contract for construction, Contractor will conform to all conditions and requirements of the Contract, including but not limited to:

- Contractor agrees to comply with conditions pertaining to Sections 44-1001 and 44-1002, Idaho Code, requiring the employment of ninety-five percent (95%) bona fide Idaho residents and providing for a preference in the employment of bona fide Idaho residents and regarding the employment of persons not authorized to work in the United States.
- Contractor will substantially complete the Work within the time stated in the Contract Documents, or as modified by Change Order(s).
- If the Contractor fails to substantially complete the Project within the time stated in the Contract Documents, or as modified by Change Order, the Contractor agrees that the Owner may deduct from the Contract amount liquidated damages in the amount per calendar day, indicated in the Contract Documents, times the number of calendar days until the Project is Substantially Complete, as defined in the Contract Documents and as determined by the Owner's Representative.
- The Contractor agrees that the amount allowed for overhead and profit on any Change Order is limited to the amounts indicated in subparagraph 16.3.11 of the Fixed Price Construction Contract for the Priest Lake Water Management Project Outlet Dam Improvements.
  1. For total changes the amount allowed for overhead, profit, bonds and insurance for the Contractor and all subcontractors of any tier combined shall not exceed fifteen percent (15%) of direct costs; or
  2. The Contractor will determine the amount of overhead and profit to be apportioned between the Contractor and its subcontractor of allowable amounts of overhead, profit, bonds and insurance.
- The Contractor agrees that Change Orders are governed by the Fixed Price Construction Contract for the Priest Lake Water Management Project Outlet Dam Improvements including as follows:
  1. By the execution of a Change Order, the Contractor agrees and acknowledges that it has had sufficient time and opportunity to examine the change in Work which is the subject of the Change Order and that it has undertaken all reasonable efforts to discover and disclose any concealed or unknown conditions which may, to any extent, affect the Contractor's ability to perform in accordance with the Change Order. Aside from those matters specifically set forth in the Change Order, the Owner shall not be obligated to make any adjustments to either the Contract Sum or Contract Time by reason of any conditions affecting the change in Work addressed by the Change Order that could have reasonably been discovered or disclosed by the Contractor's examination.

2. Any Change Order fully executed by the Owner and Contractor, including but not limited to, a Change Order arising by reason of the parties' mutual agreement or by mediation, shall constitute a final and full settlement of all matters relating to or affected by the change in the Work, including but not limited to, all direct and consequential costs associated with such change and any and all adjustments to the Contract Price and Contract Time. In the event a Change Order increases the Contract Price, the Contractor shall include the Work covered by such Change Order in the Application for Payment as if such Work was originally part of the Project and Contract Documents.

**FAILURE TO EXECUTE THIS ACKNOWLEDGMENT MAY MAKE YOUR BID NON-RESPONSIVE.**

I, \_\_\_\_\_, being duly authorized to bind the  
(type or print name of individual)

Bidder, \_\_\_\_\_, hereby certify that I have fully read  
(type or print name of company)

and understand this document and that it highlights certain parts of the Contract that will be entered between the parties and that will govern this Project.

Authorized Signature: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

***END OF BIDDER'S ACKNOWLEDGMENT STATEMENT***

**Execute and Submit with Bid**

**BIDDER'S QUALIFICATION STATEMENT**

Construction Company has successfully completed:

- A minimum of 3 project completed in that last 5 years with a value greater than \$500,000 that included dam & river improvement heavy civil type work located below ordinary high water requiring the use of stream diversion and dewatering plans, large stone installation, structural concrete below ordinary high water and electronic surveying of in-water constructed features.

- Project #1

- Project Name: \_\_\_\_\_
- Project Location: \_\_\_\_\_
- Date of Execution: \_\_\_\_\_
- Total Contract Value: \_\_\_\_\_
- Project Owner Name: \_\_\_\_\_

- Project #2

- Project Name: \_\_\_\_\_
- Project Location: \_\_\_\_\_
- Date of Execution: \_\_\_\_\_
- Total Contract Value: \_\_\_\_\_
- Project Owner Name: \_\_\_\_\_

- Project #3

- Project Name: \_\_\_\_\_
- Project Location: \_\_\_\_\_
- Date of Execution: \_\_\_\_\_
- Total Contract Value: \_\_\_\_\_
- Project Owner Name: \_\_\_\_\_

Project Manager has successfully completed:

- A minimum of 3 project completed in that last 5 years with a value greater than \$500,000 that included dam & river improvement heavy civil type work located below ordinary high water requiring the use of stream diversion and dewatering plans, large stone installation, structural concrete below ordinary high water and electronic surveying of in-water constructed features.

- Project #1

- Project Name: \_\_\_\_\_
- Project Location: \_\_\_\_\_
- Date of Execution: \_\_\_\_\_
- Total Contract Value: \_\_\_\_\_
- Project Owner Name: \_\_\_\_\_

- Project #2

- Project Name: \_\_\_\_\_

- Project Location: \_\_\_\_\_
- Date of Execution: \_\_\_\_\_
- Total Contract Value: \_\_\_\_\_
- Project Owner Name: \_\_\_\_\_

○ Project #3

- Project Name: \_\_\_\_\_
- Project Location: \_\_\_\_\_
- Date of Execution: \_\_\_\_\_
- Total Contract Value: \_\_\_\_\_
- Project Owner Name: \_\_\_\_\_

\_\_\_\_\_  
Name of Contractor

\_\_\_\_\_  
Address

\_\_\_\_\_  
City and State

By: \_\_\_\_\_  
(Signature)

***END OF BIDDER'S QUALIFICATION STATEMENT***

***Execute and Submit with Bid***

**BIDDER'S CHECKLIST**

This checklist is intended as a tool for Bidders but does not include all details. For detailed requirements, refer to the ITB document.

**Bidder's Checklist**

- Bids must be received before the closing time for receiving bids, or will be returned unopened.
- Bids and questions must be submitted as described in the ITB.
- Bids must be submitted in a manner that does not reveal the price prior to the bid opening.
- Bids must be in a sealed envelope with the following clearly printed on the outside of the envelope: Project name and ITB No.; the name and address of the bidder; and a statement, such as "BID ENCLOSED" to indicate that it is a bid.
- Bidders are required to attend the MANDATORY pre-bid conference.
- Bidders must have a Public Works Contractors License for the State of Idaho at the time of bid opening.

**Documents required for each bid submission:**

- Bid Proposal Form (sign all addenda when applicable), completed and signed.
- Contractor's Affidavit Concerning Alcohol & Drug-Free Workplace, completed and signed.
- Bidders Acknowledgement Statement
- Bidders Bond, completed and signed.
- Bidder's Checklist, completed and signed.
- Bidder's Qualifications Statement, completed and signed.

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Name of Contractor

---

Signature

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Date

**FIXED PRICE CONSTRUCTION CONTRACT FOR THE PRIEST LAKE WATER  
MANAGEMENT PROJECT OUTLET DAM IMPROVEMENTS**

CONXXXXX

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**FIXED PRICE CONSTRUCTION CONTRACT  
FOR THE PRIEST LAKE WATER MANGEMENT PROJECT OUTLET DAM IMPROVEMENTS**

THIS FIXED PRICE CONSTRUCTION CONTRACT FOR THE PRIEST LAKE WATER MANAGEMENT PROJECT OUTLET DAM IMPROVEMENTS (the "Contract") is between the State of Idaho, Idaho Water Resource Board ("Owner") and (insert name of contractor) (the "Contractor") and is for the construction of the project (the "Project"), as more fully described in Exhibit A, and incorporated by reference. This Contract shall take effect when both parties have signed it. The date of this Contract will be the date the Contract is signed by the last party to sign it.

THE OWNER AND THE CONTRACTOR AGREE:

**ARTICLE 1  
CONTRACT DOCUMENTS**

**1.1** The Contract Documents consist of this Contract, the drawings and specifications for the Project (the "Drawings and Specifications") identified in Exhibit C and any Addenda issued prior to execution of this Contract, written amendments signed by both the Owner and the Contractor, Change Orders signed by both the Owner and the Contractor, Construction Change Directives and any written orders by the Owner's Representative for minor changes in the Work (the "Contract Documents"). Documents not included or expressly contemplated in this Article 1 do not, and shall not, form any part of the Contract Documents.

**1.2** The term "Work" means the construction and services required by the Contract Documents, whether completed or partially completed, and includes all other labor, materials, equipment and services provided or to be provided by the Contractor to fulfill the Contractor's obligations.

**ARTICLE 2  
REPRESENTATIONS AND WARRANTIES OF THE CONTRACTOR**

The Contractor makes the following representations to the Owner:

**2.1** The Contractor is fully qualified to act as the Contractor for the Project and has, and shall maintain, any and all licenses, permits or other authorizations necessary to act as the Contractor for, and to construct, the Project.

**2.2** The Contractor has become familiar with the Project site and the local conditions under which the Project is to be constructed and operated particularly in correlation to the requirements of the Contract.

**2.3** The Contractor has received, reviewed, compared, studied and carefully examined all of the documents which make up the Contract Documents, including the Drawings and Specifications, and any Addenda, and has found them in all respects to be complete, accurate, adequate, consistent, coordinated and sufficient for construction. Such review, comparison, study and examination shall be a warranty that the contractor believes that the documents are complete and the Project is buildable as described except as reported.

**2.4** The Contractor warrants that the Contract Time is a reasonable period for performing the Work.

**2.5** The Contractor warrants to the Owner and Owner's Representative that all labor furnished on this Project shall be competent to perform the tasks undertaken; materials and equipment furnished under the Contract will be new and of high quality unless otherwise required or permitted by the Contract Documents; that the Work will be complete, of high quality and free from defects not inherent in the quality required or permitted; and that the Work will strictly conform to the requirements of the Contract Documents. Any Work not strictly conforming to these requirements, including substitutions not properly approved and authorized, shall be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse by Owner or its representatives, modifications not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by the Owner, the Contractor shall furnish satisfactory evidence as to

the kind and quality of materials and equipment. This warranty shall survive the completion of the Contract and final payment to the Contractor.

**2.6** The Contractor provides the warranties and representations contained in the Specifications.

### **ARTICLE 3 INTENT AND INTERPRETATION**

**3.1** This Contract constitutes the entire and exclusive agreement between the parties with reference to the Project, and supersedes any and all prior discussions, communications, representations, understandings, negotiations or agreements. This Contract also supersedes any bid documents.

**3.2** The intent of the Contract is to include all items necessary for the proper execution and completion of the Project and anything that may be required, implied or inferred by the documents which make up this Contract, or any one or more of them, shall be provided by the Contractor for the Fixed Price Contract Amount. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all.

**3.3** Nothing contained in this Contract shall create, nor be interpreted to create, privity or any other relationship whatsoever between the Owner and any person or entity except the Contractor; provided, however, that the Owner's Representative is entitled to performance and enforcement of obligations under the Contract intended or necessary to facilitate its duties. Any reference to the Owner, the Contractor or the Owner's Representative will be deemed to include authorized representatives.

**3.4** When a word, term or phrase is used in this Contract, it shall be interpreted or construed first as defined in this Contract; second, if not defined, according to its generally accepted meaning in the construction industry; and third, if there is no generally accepted meaning in the construction industry, according to its common and customary usage.

**3.5** The words "include," "includes," or "including," as used in this Contract, are deemed to be followed by the phrase "without limitation."

**3.6** The specification of any act, failure, refusal, omission, event, occurrence or condition as constituting a material breach of this Contract shall not imply that any other, non-specified act, failure, refusal, omission, event, occurrence or condition will not constitute a material breach of this Contract.

**3.7** The Contractor shall have a continuing duty to read, examine, review, compare and contrast each of the documents which make up this Contract, shop drawings and other submittals, and shall give timely written notice to the Owner and the Owner's Representative of any conflict, ambiguity, error or omission which the Contractor may find with respect to these documents before proceeding with the affected Work.

**3.8** The express or implied approval by the Owner or the Owner's Representative of any shop drawings or other submittals shall not relieve the Contractor of the continuing duties imposed hereby, nor shall any such approval be evidence of the Contractor's compliance with this Contract. The Owner has requested that the Owner's Representative prepare documents for the Project, including the Drawings and Specifications for the Project, which are accurate, adequate, consistent, coordinated and sufficient for construction. **HOWEVER, THE OWNER MAKES NO REPRESENTATION OR WARRANTY OF ANY NATURE WHATSOEVER TO THE CONTRACTOR CONCERNING SUCH DOCUMENTS.** The Contractor again hereby acknowledges and represents that it has received, reviewed and carefully examined such documents; has found them to be complete, accurate, adequate, consistent, coordinated and sufficient for construction; and that the Contractor has not, does not and will not rely upon any representations or warranties by the Owner concerning such documents, as no such representations or warranties have been or are hereby made.

**3.9** In the event of any conflict among any of the documents which make up this Contract, the Owner's Representative shall interpret the documents, and the interpretation shall be binding on both the Owner and Contractor; provided, however, that this does not change the Owner's right to make decisions regarding Claims in accordance with Article 13 and Article 14. If no interpretation is provided by the Owner's Representative, the most stringent requirement in the Contract Documents will apply.

**ARTICLE 4  
OWNERSHIP OF DOCUMENTS**

**4.1** Unless otherwise agreed by the Owner's Representative and its consultants, the party that prepared the drawings, specifications and other documents is the author of such with all copyright, common law, statutory and other reserved rights. The Contractor may retain one (1) record set of the Drawings and Specifications and other documents but shall not own or claim any copyright in them.

**4.2** The Drawings and Specifications and other documents, and any copies, are to be used solely for this Project, and not on any other project, or additions to this Project outside this Contract, without written consent of the Owner, the Owner's Representative and the Owner's Representative's consultants; provided, however, that copies may be made of applicable portions as necessary for completion of the Work. Such copies shall include any copyright notice on the Drawings and Specifications and other documents.

**4.3** Submission to or use by a regulatory body related to this Project is an acceptable use.

**ARTICLE 5  
CONTRACTOR'S PERFORMANCE**

The Contractor shall perform all of the Work required, implied or reasonably inferable from this Contract, including the following:

**5.1** Construction of the Project.

**5.2** The furnishing of any required surety bonds and insurance.

**5.3** The provision or furnishing, and prompt payment therefore, of labor, supervision, services, materials, supplies, equipment, fixtures, appliances, facilities, tools, transportation, storage, power, fuel, heat, light, cooling or other utilities required for construction and all necessary permits, including any required elevator permits, required for the construction of the Project. Construction projects for the State of Idaho require a building permit issued by the Division of Building Safety.

**5.4** The creation and submission of a detailed and comprehensive set of marked up blue or black-lined record drawings. Said record drawings shall be submitted to and approved by the Owner's Representative as a condition precedent to final payment to the Contractor.

**ARTICLE 6  
TIME FOR CONTRACTOR'S PERFORMANCE**

**6.1** The Contractor shall commence the performance of this Contract in accordance with the "Notice to Proceed" (Exhibit F) issued by the Owner and shall diligently continue its performance to and until final completion of the Project. The Contractor shall accomplish Substantial Completion of the Project on or before the time indicated in Exhibit A. The period of time, including any adjustments made under this Contract, for the Contractor to reach Substantial Completion is the "Contract Time."

**6.2** The Contractor may be assessed by and be responsible to the Owner for the amount indicated in Exhibit A per day for each and every calendar day of unexcused delay in achieving Substantial Completion beyond the date set forth for Substantial Completion. Any sums owed hereunder by the Contractor shall be payable not as a penalty but as liquidated damages, representing an estimate of delay damages likely to be sustained by the Owner estimated at the time of this Contract. When the Owner reasonably believes that Substantial Completion will be inexcusably delayed, the Owner shall be entitled, but not required, to withhold from any amounts otherwise due the Contractor an amount then believed by the Owner to be adequate to recover liquidated damages applicable to such delays. If and when the Contractor overcomes the delay in achieving Substantial Completion, or any part thereof, for which the Owner has withheld payment, the Owner shall promptly release to the Contractor those funds withheld, but no longer

applicable, as liquidated damages. The Owner's right to liquidated damages is not, and shall not be deemed to be, an exclusive remedy for delay and the Owner shall retain all remedies at law or in equity for delay or other breach.

**6.3** The term "Substantial Completion," shall mean that point at which, as certified in writing by the Owner's Representative, the entire Project is at a level of completion in strict compliance with the Contract Documents, such that the Owner or its designee can enjoy beneficial use or occupancy and can use or operate it in all respects for its intended purpose. If, in the reasonable determination of the Owner, receipt of operation and maintenance manuals or completion of training is necessary for such beneficial use or occupancy, then there shall be no Substantial Completion until such manuals are provided or such training is completed. Partial use or occupancy of the Project shall not result in the Project being deemed substantially complete, or accepted as substantially complete, and such partial use or occupancy shall not be evidence of Substantial Completion. The Project shall not be deemed accepted until it is finally complete.

**6.4** Any request by the Contractor for an extension of the Contract Time must be made in accordance with, and is subject to, Article 13 and Article 14 related to Claims.

**6.5** The Owner shall have no liability of any kind to the Contractor if a schedule or other document submitted by the Contractor shows an intention to complete the Work prior to the scheduled completion date and for any reason other than Owner caused delay, the Contractor is not able to achieve such early completion.

## **ARTICLE 7 FIXED PRICE AND CONTRACT PAYMENTS**

**7.1** The Owner shall pay, and the Contractor shall accept, as full and complete payment for the Contractor's timely performance of its obligations hereunder, the Fixed Price Contract Amount indicated in Exhibit A. The Fixed Price Contract Amount shall not be modified except as provided in this Contract.

**7.2** Prior to approval of the contract, the Contractor shall prepare and present to the Owner and the Owner's Representative the Contractor's Schedule of Values apportioning the Fixed Price Contract Amount among the different elements of the Project for purposes of periodic and final payment. The Contractor shall not imbalance its Schedule of Values nor artificially inflate any element thereof. The violation of this provision by the Contractor shall constitute a material breach of this Contract. The Contractor's Schedule of Values will be utilized for the Contractor's requests for payment but shall only be so utilized after it has been approved in writing by the Owner's Representative.

**7.3** The Owner shall pay the Fixed Price Contract Amount to the Contractor in accordance with the procedures set forth in this Article. The Contractor shall submit a Contractor's Request for Payment, on or before the day of each month indicated in Exhibit A or otherwise agreed to, after commencement of performance, but no more frequently than once monthly. Said payment shall include whatever supporting information as may be required by the Owner's Representative, the Owner or both. The Contractor may request payment for one hundred percent (100%) of the Work satisfactorily completed to the date of the Contractor's Request for Payment, less five percent (5%) retainage, based on the Fixed Price Contract Amount allocated on the Schedule of Values. The Contractor's Request for Payment may include only:

**.1** Properly provided labor, materials or equipment properly incorporated into the Project, and time and materials or equipment necessary for the Project or that will be incorporated into the Project and are properly stored at the Project site (or elsewhere if off-site storage is approved in writing by the Owner).

**.2** The Contractor's Request for Payment must exclude the total amount of previous payments received from the Owner. Any payment on account of stored materials or equipment will be subject to the Contractor providing written proof that the Owner has title to such materials or equipment and that they are fully insured against loss or damage.

**.3** Each Request for Payment shall be signed by the Contractor and its submission shall constitute the Contractor's affirmative representation that the quantity of Work has reached the level for which payment is requested; that the Work has been properly installed or performed in strict compliance with the Contract; that all Work for which the Owner has previously paid is free and clear of any lien, claim or other encumbrance of any person whatsoever; and that the Contractor knows of no reason why payment should not be made as requested.

**.4** As a condition precedent to payment, the Contractor shall, if required by the Owner, furnish to the Owner properly executed waivers or releases, in a form acceptable to the Owner, from all subcontractors, materialmen, suppliers or others having any claims or alleged claims, wherein said subcontractors, materialmen, suppliers or others shall acknowledge receipt of all sums due pursuant to all prior Contractor's Requests for Payment, and waive and relinquish any rights or other claims relating to the Project or Project site. The submission by the Contractor of the Contractor's Request for Payment also constitutes the Contractor's affirmative representation that, upon payment of the Contractor's Request for Payment submitted, title to all Work included in such payment shall be vested in the Owner.

**7.4** The Owner's Representative shall review the Contractor's Request for Payment and may also review the Work at the Project site or elsewhere to determine whether the quantity and quality of the Work are as represented in the Contractor's Request for Payment and as required by this Contract. The Owner's Representative shall approve in writing the amount which, in the opinion of the Owner's Representative, is properly owing to the Contractor and such approval is required before the Owner shall have any payment obligation. The Owner's Representative may withhold such approval, in whole or in part, as necessary to protect the Owner if it reasonably believes that the quantity or quality of the Work is not as represented in the Contractor's Request for Payment or is not in strict conformance to the Contract Documents.

**7.5** The Owner shall make payment to the Contractor no more than thirty (30) days following receipt by the Owner of the Owner's Representative's written approval of each Contractor's Request for Payment. The amount of each such payment will be the amount approved for payment by the Owner's Representative less such amounts, if any, otherwise owing by the Contractor to the Owner or which the Owner shall have the right to withhold as authorized by this Contract. The Owner's Representative's approval of the Contractor's Request for Payment shall not preclude the Owner from the exercise of any of its rights it may have in this Contract, at law or in equity, as set forth in Paragraph 7.9.

**7.6** Off-site storage will not be approved at locations outside the State of Idaho and any payment for any off-site storage is subject to the following:

**.1** The Contractor must provide at least thirty (30) days' advance written notice of its request to store off-site. Such notice must include a description of the type, quantities, locations and values of materials involved for the next billing cycle. All invoices must indicate the type, quantities and value of materials or equipment for which payment is requested;

**.2** All materials stored off-site must be segregated and clearly marked with the Project name and as being the "Property of the State of Idaho;"

**.3** The Owner's Representative and/or the Owner's Construction Manager must have unrestricted access to the stored materials during all business hours and may physically inventory all invoiced materials and equipment and may physically inspect the storage conditions;

**.4** The Contractor must provide written Consent of Surety to off-site storage of materials and equipment and to payment for such materials and equipment prior to incorporation in the Work. Consent must be from the Surety. Consent of local broker or agent is not acceptable.

**.5** The Contractor must maintain and must provide to the Owner's Representative and the Owner's Construction Manager, upon request, a current log of stored materials and equipment, which reflects when materials and equipment are used or added; and

**.6** The Contractor must obtain and maintain all risk property insurance at replacement cost, with the State of Idaho listed as loss payee on all materials and equipment stored off-site and in transit.

**7.7** When payment is received from the Owner, the Contractor shall immediately pay all subcontractors, materialmen, laborer and suppliers the amounts they are due for the Work covered by such payment. The Contractor shall not withhold from a subcontractor or supplier more than the percentage withheld from a payment certificate for the subcontractor's or supplier's portion of the Work. In the event the Owner becomes informed that the Contractor has not paid a subcontractor, materialmen, laborer or supplier as provided herein, the Owner shall have the right, but not the duty, to issue future checks and payment to the Contractor of amounts otherwise due hereunder naming the Contractor and any such subcontractor, materialmen, laborer or supplier as joint payees. Such joint check procedure,

if employed by the Owner, shall create no rights in favor of any person or entity beyond the right of the named payees to payment of the check and shall not be deemed to commit the Owner to repeat the procedure in the future.

**7.8** Payment to the Contractor, utilization of the Project for any purpose by the Owner, or any other act or omission by the Owner shall not be interpreted or construed as an acceptance of any Work of the Contractor not strictly in compliance with this Contract.

**7.9** The Owner shall have and be entitled to the right to refuse to make any payment, including by reducing payment under any Contractor's Request for Payment, and, if necessary, may demand the return of a portion or all of an amount previously paid to the Contractor for reasons that include the following:

- .1 The quality of the Contractor's work, in whole or part, is not in strict accordance with the requirements of this Contract or identified defective work, including punch list work, is not remedied as required by the Contract Documents;
- .2 The quantity of the Contractor's work, in whole or in part, is not as represented in the Contractor's Request for Payment or otherwise;
- .3 The Contractor's rate of progress is such that, in the Owner's opinion, Substantial Completion or final completion, or both, may be inexcusably delayed or that the Owner will incur additional costs or expense related to repeated Substantial Completion or final completion inspections through no fault of the Owner;
- .4 The Owner reasonably believes that the Contractor has failed to use Contract funds, previously paid the Contractor by the Owner, to pay Contractor's project-related obligations, including subcontractors, laborers and material and equipment suppliers;
- .5 There are claims made or it seems reasonably likely that claims will be made, against the Owner;
- .6 The Contractor has caused a loss or damage to the Owner, the Owner's Representative or another contractor;
- .7 The Owner reasonably believes that the Project cannot be completed for the unpaid balance of the Fixed Price Contract Amount or the Owner reasonably believes that the Project cannot be completed within the Contract Time and that the unpaid balance of the Fixed Price Contract Amount would be inadequate to cover the cost of actual or liquidated damages for the anticipated delay;
- .8 The Contractor fails or refuses to perform any of its obligations to the Owner; or
- .9 The Contractor fails to pay taxes as required by Title 63, Chapter 15, Idaho Code.

In the event that the Owner makes written demand upon the Contractor for amounts previously paid by the Owner as contemplated in this Paragraph 7.9, the Contractor shall promptly comply with such demand.

**7.10** If the Owner, without cause, fails to pay the Contractor any amounts due and payable thirty (30) days after those amounts are due pursuant to Paragraph 7.5, the Contractor shall have the right to cease the Work until receipt of proper payment. Contractor must first provide written notice to the Owner of the Contractor's intent to cease the Work ten (10) days prior to stopping the Work under this Paragraph. If any amounts remain unpaid after fifty-one (51) days after the Owner's Representative approves the Contractor's Request for Payment under Paragraph 7.5, interest at the rate of four percent (4%) per annum shall accrue on those unpaid amounts.

**7.11** When Contractor considers Substantial Completion has been achieved, the Contractor shall notify the Owner and the Owner's Representative in writing and shall furnish to the Owner's Representative a listing of those matters yet to be finished. The Owner's Representative and/or Owner's Contract Manager will conduct an inspection to confirm that the Work is, in fact, substantially complete. Upon its confirmation that the Contractor's work is substantially complete, the Owner's Representative will notify the Owner and Contractor in writing and will therein set forth the date of Substantial Completion. The Owner and the Contractor must accept the date of Substantial Completion in writing. Guarantees and warranties required by this Contract shall commence on the date of Substantial Completion. At the Contractor's Request for Payment following Substantial Completion, the Owner shall pay the Contractor an amount sufficient to increase total payments to the Contractor to ninety-five percent (95%) of the Fixed Price Contract Amount, less any liquidated damages, less the reasonable costs as determined by the Owner's Representative for completing all incomplete work, correcting and bringing into conformance all defective and

nonconforming work, and handling any outstanding or potential claims. If the Owner's Representative determines that the Contractor has made or is making satisfactory progress on any uncompleted portions of the Work, the Owner may, at its discretion, release a portion of the retainage to the Contractor prior to the actual final completion of the conditions set forth in Paragraph 7.14. It is the intent of the parties that the Project will be accepted only in total (at Substantial Completion and final completion) and not in phases unless provided for in Exhibit A. Any acceptance other than in total shall require written agreement of Owner and Owner's Representative.

**7.12** When Contractor considers the Project is at final completion, it shall notify the Owner and the Owner's Representative in writing. The Owner's Representative will perform a final inspection of the Project. If the Owner's Representative confirms that the Project is complete in full accordance with the Contract Documents and that the Contractor has performed all of its obligations to the Owner, the Owner's Representative will furnish a final approval for payment to the Owner certifying to the Owner that the Project is complete and the Contractor is entitled to the remainder of the unpaid Fixed Price Contract Amount, less any amount withheld pursuant to this Contract.

**7.13** If the Contractor fails to achieve final completion within a reasonable number of days as established by the Owner's Representative from the date of Substantial Completion, the Contractor may be assessed and be responsible to the Owner for fifty percent (50%) of the daily amount of liquidated damages as established pursuant to Paragraph 6.2 and Exhibit A, per day for each and every calendar day of unexcused delay in achieving final completion beyond the date established for final completion of the Work. Any sums due and payable by the Contractor shall be payable not as a penalty but as liquidated damages representing an estimate of delay damages likely to be sustained by the Owner, estimated at or before the time of executing this Contract. When the Owner reasonably believes that final completion will be inexcusably delayed, the Owner may withhold from any amounts otherwise due the Contractor an amount then believed by the Owner to be adequate to recover liquidated damages applicable to such delays. If and when the Contractor overcomes the delay in achieving final completion, or any part thereof, for which the Owner has withheld payment, the Owner shall promptly release to the Contractor those funds withheld, but no longer applicable, as liquidated damages. The Owner's right to liquidated damages is not, and shall not be deemed to be, an exclusive remedy for delay and the Owner shall retain all remedies at law or in equity for delay or other breach.

**7.14** As a condition precedent to final payment, the Contractor must furnish the Owner, in the form and manner required by Owner, and with a copy to the Owner's Representative of the following:

- .1 An affidavit that all of the Contractor's obligations to subcontractors, laborers, equipment or material suppliers or other third parties in connection with the Project have been paid or otherwise satisfied;
- .2 A release by the Contractor of all Claims it has or might have against the Owner or the Owner's property (Exhibit H);
- .3 Contractor's Affidavit of Debts and Claims (AIA Document G706);
- .4 Consent of Surety to final payment (AIA Document G707);
- .5 Confirmation of all required training, product warranties, operating manuals, instruction manuals and other record documents, drawings and things customarily required of the Contractor; and
- .6 A Public Works Contract Tax Release issued by the Idaho Tax Commission (See "Request for Tax Release" form, Exhibit G, to be submitted by Contractor to the Idaho Tax Commission).

**7.15** The Owner shall, subject to its rights set forth in this Contract, make final payment of all sums due the Contractor within thirty (30) days of the Owner's Representative's execution of a final approval for payment and receipt of documentation required by Paragraph 7.14, whichever is received later.

## **ARTICLE 8 INFORMATION AND MATERIAL SUPPLIED BY THE OWNER**

**8.1** The Owner's Chairman or his designee shall be the sole representative of the State of Idaho. The Owner's Representative shall have authority to bind Owner only as specifically set forth in this Contract.

**8.2** The Owner will assign an Owner's Representative and Owner's Construction Manager to represent the Owner, identified in Exhibit B.

**8.3** The Owner shall furnish to the Contractor, prior to the execution of this Contract, any and all written and tangible material in its possession concerning conditions below ground at the site of the Project. Such written and tangible material is furnished to the Contractor only in order to make complete disclosure of such material as being in the possession of the Owner and for no other purpose. By furnishing such material, the Owner does not represent, warrant or guarantee its accuracy, either in whole in part, implicitly or explicitly.

**8.4** The Owner will secure and pay for all required easements, conditional use permits and any other permits and fees specifically indicated in the Contract Documents to be secured and paid for by the Owner.

**8.5** The Owner will provide the Contractor one (1) copy of this complete Contract and the number of sets of Drawings and Project Manuals (including Specifications) as indicated in Exhibit A.

## **ARTICLE 9 STOP WORK ORDER**

**9.1** In the event the Contractor fails or refuses to perform the Work as required or fails or refuses to correct nonconforming Work, the Owner may instruct the Contractor to stop Work in whole or in part. Upon receipt of such instruction, the Contractor shall immediately stop as instructed by the Owner and shall not proceed further until the cause for the Owner's instructions has been corrected, no longer exists or the Owner instructs that the Work may resume. In the event the Owner issues such instructions to stop, and in the further event that the Contractor fails and refuses within seven (7) days of receipt of same to provide adequate assurance to the Owner that the cause of such instructions will be eliminated or corrected, then the Owner shall have the right, but not the obligation, to carry out the Work with its own forces or with the forces of another contractor, and the Contractor shall be fully responsible and liable for the costs of performing such Work by the Owner. Without limiting what else might constitute nonconforming Work, the existence of a gross safety violation or other situation or condition that creates, or could imminently create, a threat of serious harm to persons or property, shall constitute nonconforming Work and any order to stop the Work issued for such reason shall not be considered an interference with the Contractor's performance of the Work or its means and methods. The rights set forth herein are in addition to, and without prejudice to, any other rights or remedies the Owner may have against the Contractor.

**9.2** Any order to stop the Work issued pursuant to Paragraph 9.1 shall not be used to justify any Claim by the Contractor for additional time or money.

## **ARTICLE 10 DUTIES, OBLIGATIONS AND RESPONSIBILITIES OF THE CONTRACTOR**

In addition to any and all other duties, obligations and responsibilities of the Contractor set forth in this Contract, the Contractor shall have and perform the following duties, obligations and responsibilities to the Owner:

**10.1** The Contractor's continuing duties set forth in Paragraph 3.7 are by reference hereby incorporated in this Paragraph 10.1. The Contractor shall not perform Work without adequate plans and specifications or, as appropriate, approved shop drawings or other submittals. If the Contractor performs Work knowing or believing it involves an error, inconsistency or omission in the Contract without first providing written notice to the Owner's Representative and Owner, the Contractor shall be responsible for such Work and shall pay the cost of correcting same.

**10.2** The Contractor shall take field measurements, verify field conditions, and shall carefully compare such field measurements, conditions, and other information known to the Contractor with the Contract Documents before commencing Work. Errors, inconsistencies or omissions discovered shall be reported to the Owner's Representative, the Owner, and the Owner's Construction Manager immediately. Such examination, review, and comparison shall be a warranty that the Contract Documents are complete and the Project is buildable as described except as reported. Reported errors, inconsistencies or omissions will constitute a request for an interpretation by the Owner's Representative and may constitute a claim pursuant to Article 13 where appropriate.

**10.3** The Contractor shall ensure that all Work shall strictly conform to the requirements of this Contract.

**10.4** The Work shall be strictly supervised, the Contractor bearing full responsibility for any and all acts or omissions of those engaged in the Work on behalf of the Contractor.

**10.5** All labor furnished on this Project shall be competent to perform the tasks undertaken; materials and equipment furnished under the Contract will be new and of high quality unless otherwise required or permitted by the Contract Documents; the Work will be complete, of high quality and free from defects not inherent in the quality required or permitted; and the Work will strictly conform to the requirements of the Contract Documents. Any Work not strictly conforming to these requirements, including substitutions not properly approved and authorized, shall be considered defective.

**10.6** Except as provided in Paragraph 8.4, the Contractor shall secure or provide and pay for all licenses, permits, governmental approvals and inspections, connections for outside services for the use of municipal or private property for storage of materials, parking, utility services, temporary obstructions, enclosures or opening and patching of streets, and for all other facilities and services necessary for proper execution and completion of the Project.

**10.7** The Contractor shall comply with and give notices required by laws, ordinances, rules, regulations and lawful orders of public authorities bearing on performance of the Work.

**10.8** The Contractor shall employ and maintain at the Project site only competent supervisory personnel. Key supervisory personnel assigned by the Contractor to this Project are as listed in Exhibit B.

**10.9** The Contractor shall employ a competent superintendent and necessary assistants, as needed, to oversee execution of the Work. The superintendent shall be in attendance at the Project site during the progress of the Work. The superintendent and any project manager, if the Contractor uses a project manager, shall be reviewed and must be approved by the Owner's Representative and Owner, and neither shall be changed except with the consent of the Owner's Representative and Owner, unless the superintendent and/or project manager cease to be employed by the Contractor. Under this circumstance, any new superintendent or new project manager must be satisfactory to the Owner's Representative and Owner. Such approval shall not be unreasonably withheld. The superintendent and any project manager shall represent the Contractor and all communications given to the superintendent or project manager are deemed given to the Contractor.

**10.10** So long as the individuals named above remain actively employed or retained by the Contractor, they shall perform the functions indicated next to their names unless the Owner agrees to the contrary in writing. In the event one or more individuals not listed in Paragraph 10.9 subsequently assumes one or more of those functions listed in Paragraph 10.9, the Contractor shall be bound by the provisions of this paragraph as though such individuals had been listed in Paragraph 10.9.

**10.11** The Contractor shall provide to the Owner, the Owner's Representative, and Owner's Construction Manager a Construction Sequence Work Plan for completing the Work within the Contract Time. The Construction Sequence Work Plan shall be in a form specified in Division 1 of the Specifications and be acceptable to the Owner and to the Owner's Representative. The Construction Sequence Work Plan must be submitted to and accepted by the Owner's Representative 45 days prior to the start of construction unless otherwise specified by Division 1 of the Specifications. The Contractor's Construction Sequence Work Plan must be updated as required by the Owner's Representative and/or the Owner to reflect conditions encountered and shall apply to the total Project. The Contractor's revisions to the Construction Sequence Work Plan shall not constitute a waiver of the requirement to complete the Project in the time allowed by the Contract, unless additional time for performance has been allowed pursuant to a Change Order. Any changes in the Construction Sequence Work Plan begin or end dates must be furnished to the Owner, the Owner's Representative, and the Owner's Construction Manager. Strict compliance with the requirements of this Paragraph shall be a condition precedent to the payment to the Contractor and failure by the Contractor to strictly comply with said requirements shall constitute a material breach of this Contract.

**10.12** Unless otherwise provided in the Construction Documents, on all projects where the Fixed Price Contract Amount is over \$1,000,000, the Contractor shall schedule and perform the Work in accordance with a Critical Path Method ("CPM") to indicate the rate of progress and practical order of the Project. The purpose of this scheduling requirement is to assure adequate planning, coordination and execution of the Work. The schedule shall indicate the dates for starting and completing major work activities, project events, major equipment, material and equipment submittals and delivery of major items. Project activities having critical time restraints on action, required by the Owner, shall be shown as scheduled milestones. The Contractor's schedule shall demonstrate the order,

interdependence and sequence of activities. Critical paths shall be highlighted or distinguished. The schedule shall include all the dates specified in the Contract for Substantial Completion and final completion of the Work. The time limit set forth in the Contract for Substantial Completion and final completion must govern; the schedule must be adjusted to meet these dates. Schedule float shall belong to the Project. The Contractor shall submit to the Owner, Owner's Representative, and Owner's Construction Manager a CPM schedule within three (3) weeks after award of the Contract and maintain such schedule on a current basis in accordance with the Contract Documents.

**10.13** Once a month, or at intervals as required by the Owner's Representative, the Contractor shall update the Owner and the Owner's Representative of the status of the Work (in duplicate) on the current Construction Sequence Work Plan. If any project dates are not met on schedule, the Contractor shall immediately advise the Owner and Owner's Representative in writing of the proposed action to bring the Work on schedule. The Contractor shall also submit a detailed short term schedule that shall include a description of current and anticipated problem areas, delaying factors and their impact, and explanation of corrective action taken or proposed. If the Work is behind schedule, the Contractor shall indicate what measures it will take to put the Work back on schedule.

**10.14** If the Work is not progressing through no fault of the Owner or the Owner's Representative, as shown on the milestone schedule, as determined by the Owner's Representative, and the Owner and the Owner's Representative do not believe the Contractor's proposed action to bring the Work on schedule is adequate, then the Contractor shall be deemed in default under this Contract and the progress of the Work shall be deemed unsatisfactory. In such event, the Owner, at its discretion, may require the Contractor to work such additional time over regular hours, including Saturdays, Sundays and holidays, without additional cost to the Owner to bring the Work on schedule.

**10.15** The Contractor shall keep an updated copy of the Drawings (including Specifications) and Addenda at the site. Additionally, the Contractor shall keep a current submittal schedule and a copy of approved shop drawings and other submittals. All of these items shall be available to the Owner, Owner's Construction Manager and the Owner's Representative at all regular business hours. Upon final completion of the Work, all of these items must be updated by the Contractor and provided to the Owner's Representative and shall become the property of the Owner.

**10.16** The Contractor shall carefully review and inspect for compliance with the Contract Documents, the shop drawings and other submittals (including product data and samples) required by the Contract Documents and shall submit to the Owner's Representative only submittals approved in accordance with this section. Such review and submittal shall be done promptly and in a sequence that will not delay its Work under this Contract or the activities of the Owner or of separate contractors. Shop drawings and other submittals from the Contractor do not constitute a part of the Contract. The Contractor shall not do any work requiring shop drawings or other submittals unless the Owner's Representative has verified compliance in writing. All Work requiring verified shop drawings or other submittals shall be done in strict compliance with such approved documents. However, verification of compliance by the Owner's Representative shall not be evidence that Work installed pursuant thereto conforms to the requirements of this Contract. The Owner's Representative shall have no duty to review submittals that are not Contractor approved, partial submittals or incomplete submittals. The Contractor shall maintain a submittal log which shall include, at a minimum, the date of each submittal, the date of any re-submittal, the date of any approval or rejection and the reason for any rejection.

**10.17** The Contractor shall maintain the Project site in a reasonably clean condition during performance of the Work. Upon final completion, the Contractor shall thoroughly clean the Project site of all debris, trash and excess materials or equipment.

**10.18** At all times relevant to this Contract, the Owner and the Owner's Representative shall have a right to enter the Project site and the Contractor shall allow the Owner and/or the Owner's Representative to review or inspect the work without formality or other procedure.

**10.19** The presence or duties of the Owner's Representative's or the Owner's personnel or representatives at the construction site, does not make any of them responsible for those duties that belong to the Contractor or other entities and does not relieve the Contractor or any other entities of their obligations, duties and responsibilities, including any obligation or requirement to have or to implement any health or safety plans or precautions. Except as provided in Paragraph 10.9, Owner's Representative's and Owner's personnel have no authority to exercise any control over any Contractor or other entities or their employees in connection with their work or any health or safety precautions and have no duty for inspecting, noting, observing, correcting or reporting on health or safety deficiencies of the Contractor or other entities or any other persons at the site except their own personnel. The presence of Owner's Representative's or Owner's personnel at a construction site is for the purpose of providing to Owner a

greater degree of confidence that the completed Work will conform to the Contract Documents and that the integrity of the design concept as reflected in the Contract Documents has been implemented and preserved by the Contractor.

## **ARTICLE 11 INDEMNITY**

**11.1** The Contractor shall defend, indemnify and hold harmless the Owner, Owner's Representative, and their employees, officers and agents harmless from any and all claims, liabilities, damages, losses, costs and expenses of every type whatsoever, including attorney fees and expenses, arising out of or resulting from the Contractor's work, acts or omissions under or related to the Contract Documents, to the extent caused by the Contractor, or anyone for whose acts the Contractor may be liable, regardless of whether such liability, claim, damage, loss, cost or expense is caused in part by the Owner.

**11.2** The limits of any insurance of the Contractor shall not be, and shall not be deemed to be, a limitation of the Contractor's defense and indemnity obligations contained in this Article.

**11.3** In claims against any person or entity indemnified under this Article by an employee of the Contractor, a subcontractor, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, the indemnification obligation under this Article shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the Contractor or a subcontractor under workers' or workmen's compensation acts, disability benefit acts or other employee benefit acts.

## **ARTICLE 12 THE OWNER'S REPRESENTATIVE**

The Owner's Representative for this Project is identified in Exhibit B, incorporated herein by reference, along with any authorized representatives and any limitations of responsibility. If the employment of the Owner's Representative is terminated, the Owner may retain a replacement professional and the role of the replacement professional shall be the same as the role of the Owner's Representative. Unless otherwise directed by the Owner in writing, the Owner's Representative will perform those duties and discharge those responsibilities allocated to the Owner's Representative in this Contract. The duties, obligations and responsibilities of the Owner's Representative shall be for contract administration and include the following:

**12.1** Unless otherwise directed by the Owner in writing, the Owner's Representative shall not act as the Owner's agent.

**12.2** Unless otherwise directed by the Owner in writing, the Owner and the Contractor shall communicate with each other through the Owner's Representative.

**12.3** When requested by the Owner or Contractor in writing, the Owner's Representative shall within seven (7) days render written interpretations necessary for the proper execution or progress of the Work or shall provide a written explanation as to why more time is needed and provide a date by which it will be provided.

**12.4** The Owner's Representative shall draft proposed change authorization(s).

**12.5** The Owner's Representative shall review and verify compliance or respond otherwise as necessary concerning shop drawings or other submittals received from the Contractor.

**12.6** The Owner's Representative shall be authorized to refuse to accept Work that is defective or otherwise fails to comply with the requirements of this Contract. If the Owner's Representative deems it appropriate, the Owner's Representative may, with the Owner's consent, require extra inspections or testing of the Work for compliance with the requirements of this Contract.

**12.7** The Owner's Representative shall review the Contractor's Request for Payment and shall verify in writing those amounts which, in the opinion of the Owner's Representative, are properly owing to the Contractor as provided in this Contract.

**12.8** The Owner's Representative shall, upon written request from the Contractor, perform Substantial Completion and final completion inspections contemplated by Article 6.

**12.9** The Owner's Representative may require the Contractor to make changes which do not involve a change in the Fixed Price Contract Amount or in the Contract Time consistent with the intent of this Contract. Such changes shall be given to the Contractor in writing under signature of the Owner's Representative, with a copy to the Owner, and may be in the form of a supplemental instruction.

**12.10** The Owner's Representative shall review and evaluate Claims and take other actions related to Claims in accordance with Articles 13 and 14.

**12.11** The duties, obligations and responsibilities of the Contractor under this Contract shall in no manner whatsoever be changed, altered, discharged, released or satisfied by any duty, obligation or responsibility of the Owner's Representative. The Contractor is not a third-party beneficiary of any Contract by and between the Owner and the Owner's Representative. It is expressly acknowledged and agreed that the duties of the Contractor to the Owner are independent of, and are not diminished by, any duties of the Owner's Representative to the Owner.

### **ARTICLE 13 CLAIMS**

**13.1** For purposes of this Contract, a "Claim" means a demand by the Contractor to the Owner, or by the Owner to the Contractor, for a change in the Fixed Price Contract Amount, an extension of the Contract Time, an adjustment to or interpretation of the Contract terms, or other relief with respect to the terms of the Contract, which demand the Contractor or Owner asserts is required or allowed under the Contract Documents and which the Contractor and the Owner have previously discussed and failed to agree upon.

**13.2** For the Claim to be considered, it must meet the following requirements:

- .1 The Claim must be in writing;
- .2 The Claim must be signed by an authorized representative of the entity making the claim;
- .3 The Claim by the Contractor must be provided to the Owner and to the Owner's Representative and the Claim by the Owner must be provided to the Contractor and to the Owner's Representative;
- .4 The Claim must be made no later than ten (10) days after the event or first appearance of the circumstance giving rise to the Claim;
- .5 The Claim must describe in detail all known facts and circumstances that the Contractor or Owner asserts support the Claim;
- .6 The Claim must refer to the provision(s) of the Contract Documents that the Contractor or Owner asserts support the Claim;
- .7 The Contractor or Owner must provide all documentation or other information to substantiate the Claim; and
- .8 The Contractor or Owner must continue its performance under this Contract pending the resolution of any Claim; provided, however, that the Contractor shall not perform any additional or changed work not otherwise authorized in accordance with the Contract Documents.

**13.3** The failure by the Contractor to meet any of the requirements of Paragraph 13.2 shall constitute a complete waiver by the Contractor of any rights arising from or related to the Claim. Similarly, the failure by the Owner to meet any of the requirements of Paragraph 13.2 shall constitute a complete waiver by the Owner of any rights arising from or related to the Claim.

**13.4** If the Claim is made based on concealed or unknown site conditions, the following shall apply in addition to all other provisions applicable to the Claim:

.1 The condition must have been previously concealed and unknown or of a type not ordinarily encountered in the general geographic location of the Project and must not have been reasonably susceptible to discovery; and

.2 The Contractor shall notify the Owner's Representative and the Owner of the condition and shall not disturb the condition until the Owner's Representative and Owner have observed it or have waived in writing the right to observe it.

**13.5** If the Claim by the Contractor is for an increase in the Fixed Price Contract Amount, the following shall apply in addition to all other provisions applicable to the Claim:

.1 Any increase in the Fixed Price Contract Amount shall be strictly limited to the direct costs incurred by the Contractor and shall not include any other costs, indirect or other, including any costs for or related to lost productivity, profit, home office overhead and any other overhead, legal fees, claim preparation, any matter previously resolved by a change order, equipment costs, costs related to the services of a project manager unless the project manager was required full time by the Owner or the Contract Documents, any costs associated with the failure to complete the Work early or in advance of the date required by the Contract Documents, it being specifically agreed to by the parties that there is no intention to have the Eichleay or other similar formula applicable to this Contract nor shall this Contract be deemed to be subject to any such formula; and

.2 The Owner shall have no liability for, and the Fixed Price Contract Amount shall not be increased related to, any claims of third parties, including subcontractors, unless and until the liability of the Contractor for such has been established in a court of competent jurisdiction and any such liability of the Owner shall be limited in the same manner as described in subparagraph 13.5.1.

**13.6** If the Claim by the Owner is for a change in the Fixed Price Contract Amount, all other applicable provisions to the Claim apply.

**13.7** If the Claim by the Contractor is for an extension of the Contract Time, one of the following shall apply in addition to all other provisions applicable to the Claim:

.1 The Contractor has been delayed in its performance by an act or omission of the Owner and through no fault of the Contractor;

.2 The Contractor has been delayed in its performance by unusually severe weather that could not reasonably have been anticipated or by another event not within its reasonable control; or

.3 At the time it occurs or during its occurrence, the delay will preclude completion of the Project in the time required by the Contract Documents.

Any extension of the Contract Time shall be the Contractor's sole and exclusive remedy for any delay except a delay caused by the active interference of the Owner with the Contractor's performance which active interference continues after written notice to the Owner. The Owner's exercise of any of its rights or remedies under this Contract, including ordering changes in the Work, directing suspension, rescheduling or correction of the Work, do not constitute active interference.

**13.8** If a Claim is made based on an error, inconsistency or omission in the Contract that was reasonably susceptible to discovery by the Contractor and was not reported in accordance with Paragraph 2.3, that Claim shall be denied.

## **ARTICLE 14 RESOLUTION OF CLAIMS**

**14.1** All Claims made in accordance with Article 13 shall be reviewed and evaluated by the Owner's Representative. If the Claim is not made in strict accordance with Article 13, it shall be rejected as waived. Any failure by the Owner's Representative to reject the Claim for failure to meet the requirements of Article 13 is not binding on the Owner and the Owner may reject the Claim for such failure.

**14.2** No later than seven (7) days from receipt of the Claim by the Owner's Representative, it shall:

.1 Make a written request to the Contractor or Owner for more data to support the Claim;

.2 Attempt to facilitate resolution of the Claim through informal negotiations; or

.3 If the Claim is by the Contractor, make a written recommendation to the Owner, with a copy to the Contractor, that the Owner reject or approve all or part of the Claim and state the reasons for the Owner's Representative's recommendation. If the Claim is by the Owner, make a written recommendation to the Contractor, with a copy to the Owner, that the Contractor reject or approve all or part of the Claim and state the reasons for the Owner's Representative's recommendation.

**14.3** If the Owner's Representative requests more data from the Contractor or the Owner under subparagraph 14.2.1, the Contractor or Owner shall respond no later than seven (7) days from receipt of such request, and provide additional data, provide a date certain by which additional data will be provided, or state that it will not provide additional data. Upon receipt of data, if any, in accordance with this section, the Owner's Representative will complete the evaluation of the Claim. Failure to respond at all or failure to provide data by the date specified in the response to the request shall result in the Claim being evaluated based on the information in the Owner's Representative's possession.

**14.4** In evaluating the Claim, the Owner's Representative may consult with the Contractor, the Owner or other persons with knowledge or expertise that may assist the Owner's Representative in its evaluation.

**14.5** No later than fourteen (14) days after receipt by the Owner of the Owner's Representative's recommendation regarding the Contractor's Claim, the Owner shall, in writing, notify the Contractor and the Owner's Representative of its decision regarding the Claim. No later than fourteen (14) days after receipt by the Contractor of the Owner's Representative's recommendation regarding the Owner's Claim, the Contractor shall, in writing, notify the Owner and the Owner's Representative of its decision regarding the Claim.

**14.6** The Owner's decision regarding the Contractor's Claim is binding on the Owner and the Contractor but is subject to mediation in accordance with this Contract, and the Contractor's decision regarding the Owner's Claim is binding on the Owner and the Contractor but is subject to mediation in accordance with this Contract.

## **ARTICLE 15 SUBCONTRACTORS**

**15.1** A document in the form of Exhibit E shall be completed and submitted upon execution of this Contract and those subcontractors named shall match those subcontractors named in the Contractor's bid unless otherwise agreed to in writing by the Owner. Also upon execution of this Contract by the Contractor, the Contractor shall identify to the Owner and the Owner's Representative, in writing, those parties intended as subcontractors on the Project not otherwise named in Exhibit E. The Owner shall, in writing, state any objections the Owner may have to one or more of such subcontractors. The Contractor shall not enter into a subcontract with an intended subcontractor to whom the Owner objects. All subcontracts shall afford the Contractor rights against the subcontractor which correspond to those rights afforded to the Owner against the Contractor herein, including those rights of Contract Termination as set forth in this Contract. All subcontractors shall, throughout the duration of this Contract, be properly licensed as Idaho Public Works Contractors.

**15.2** The Contractor conditionally assigns each of its subcontracts related to the Project to the Owner. All subcontracts between the Contractor and the subcontractors shall obligate the subcontractor to such conditional assignment. Upon a Termination by the Owner for cause under Paragraph 20.1, the Owner may accept such conditional assignment by written notification to the applicable subcontractor and to the Contractor. Such acceptance is subject to the rights of the Surety, if any, relating to the Contract.

## **ARTICLE 16 CHANGES IN THE WORK**

**16.1** General

.1 Changes in the Work may be accomplished after execution of the Contract, and without invalidating the Contract, by Change Order, Construction Change Directive or order for a minor change in the Work, subject to the limitations stated in this Article and elsewhere in the Contract Documents; and

.2 Changes in the Work shall be performed under applicable provisions of the Contract Documents and the Contractor shall proceed promptly, unless otherwise provided in the Change Order, Construction Change Directive or order for a minor change in the Work.

## **16.2 Change Orders**

.1 A "Change Order" is a written instrument prepared by the Owner's Representative and signed by the Owner, Contractor and Owner's Representative, stating their agreement upon: a change in the work, any adjustment in the Fixed Price Contract Amount and any adjustment in the Contract Time;

.2 Methods used in determining adjustments to the Fixed Price Contract Amount may include those listed in subparagraph 16.3.4;

.3 The amount allowed for overhead and profit on any Change Order is limited to the amounts indicated in subparagraph 16.3.11;

.4 Any Change Order prepared, including those arising by reason of the parties' mutual agreement or by mediation, shall constitute a final and full settlement of all matters relating to or affected by the change in the Work, including all direct, indirect and consequential costs associated with such change and any and all adjustments to the Fixed Price Contract Amount and Contract Time. In the event a Change Order increases the Fixed Price Contract Amount, the Contractor shall include the Work covered by such Change Order in the Contractor's Request for Payment as if such Work were originally part of the Project and Contract Documents; and

.5 By the execution of a Change Order, the Contractor agrees and acknowledges that it has had sufficient time and opportunity to examine the change in Work which is the subject of the Change Order and that it has undertaken all reasonable efforts to discover and disclose any concealed or unknown conditions which may to any extent affect the Contractor's ability to perform in accordance with the Change Order. Aside from those matters specifically set forth in the Change Order, the Owner shall not be obligated to make any adjustments to either the Fixed Price Contract Amount or Contract Time by reason of any conditions affecting the change in Work addressed by the Change Order, which could have reasonably been discovered or disclosed by the Contractor's examination.

## **16.3 Construction Change Directive (CCD)**

.1 A "Construction Change Directive" is a written order prepared by the Owner's Representative and signed by the Owner and Owner's Representative directing a change in the Work prior to agreement on adjustment, if any, in the Fixed Price Contract Amount or Contract Time or both. The Owner may by Construction Change Directive, without invalidating the Contract, order changes in the Work within the general scope of the Contract, consisting of additions, deletions or other revisions, the Fixed Price Contract Amount and Contract Time being adjusted accordingly;

.2 A Construction Change Directive, within limitations, may also be used to incorporate minor changes in the Work agreed to by the Owner, Owner's Representative, the Owner's Construction Manager and the Contractor's superintendent or project manager. The limits of these representatives' authority with regard to Construction Change Directives shall be documented in writing by the Owner's Representative, Owner and Contractor;

.3 A Construction Change Directive shall be used in the absence of total agreement on the terms of a Change Order;

.4 If the Construction Change Directive provides for an adjustment to the Fixed Price Contract Amount, the adjustment shall be based on one (1) of the following methods:

- .1 Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation, examples include item quotes, man hours, number of laborers, equipment cost breakdown, or timing;
- .2 Unit prices stated in the Contract Documents or subsequently agreed upon. A change in unit price will only be considered if the needed quantity is greater than 25% of the quantity outlined in the in the Contract Documents. Unit price changes that are different from the ones stated in the bid schedule will require substantiating data to support the change in unit price;
- .3 Cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or
- .4 As provided in subparagraph 16.3.7;
- .5 Upon receipt of a Construction Change Directive, the Contractor shall promptly proceed with the change in the Work involved and advise the Owner's Representative in writing within forty-eight (48) hours of the Contractor's agreement or disagreement with the method, if any, provided in the Construction Change Directive for determining the proposed adjustment in the Fixed Price Contract Amount or Contract Time;
- .6 A Construction Change Directive signed by the Contractor indicates the agreement of the Contractor therewith, including adjustment in Fixed Price Contract Amount and Contract Time or the method for determining them. Such agreement shall be effective immediately and shall be incorporated into a future Change Order;
- .7 If the Contractor does not respond promptly or disagrees with the method for adjustments in the Fixed Price Contract Amount or Contract Time, the method and the adjustment shall be determined by the Owner's Representative on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Fixed Price Contract Amount, an allowance for overhead and profit in accordance with subparagraph 16.3.11. In such case of an increase in Fixed Price Contract Amount, and also under subparagraph 16.3.4, the Contractor shall keep and present, in such form as the Owner's Representative may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this subsection shall be limited to the following:
  - .1 Costs of labor, including social security, old age and unemployment insurance, fringe benefits required by agreement or custom and workers' compensation insurance;
  - .2 Costs of materials, supplies and equipment, including cost of transportation, whether incorporated or consumed;
  - .3 Rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Contractor or others;
  - .4 Costs of permit fees and sales, use or similar taxes related to the Work; and
  - .5 Additional costs of supervision and field office personnel directly attributable to the change;
- .8 The amount of credit to be allowed by the Contractor to the Owner for a deletion or change which results in a net decrease in the Fixed Price Contract Amount shall be for the actual net cost of the decrease, confirmed by the Owner's Representative. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of net increase, if any, with respect to that change;
- .9 Pending final determination of the total cost of a Construction Change Directive to the Owner, amounts not in dispute for such changes in the Work shall be included in the Contractor's Request for Payment accompanied by a Change Order indicating the parties' agreement with part or all of such costs;
- .10 When the Owner and Contractor agree with the determination by the Owner's Representative concerning the adjustments in the Fixed Price Contract Amount and Contract Time, or otherwise reach agreement upon the adjustments, such agreement shall be effective immediately and shall be recorded by preparation and execution of an appropriate Change Order; and

**.11** For purposes of subparagraphs 16.2.3 and 16.3.7, the allowance for combined overhead, profit, bonds and insurance shall be limited as follows, unless otherwise provided in the Contract Documents:

**.1** For changes, the amount allowed for overhead, profit, bonds and insurance for the Contractor and all subcontractors of any tier combined shall not exceed fifteen percent (15%) of direct costs; or

**.2** The Contractor will determine the apportionment between the Contractor and its subcontractors of allowable amounts of overhead, profit, bonds and insurance.

## **ARTICLE 17**

### **DISCOVERING AND CORRECTING DEFECTIVE OR INCOMPLETE WORK**

**17.1** If the Contractor covers, conceals or obscures its Work in violation of this Contract or in violation of a directive or request from the Owner or the Owner's Representative, such Work shall be uncovered and displayed for the Owner's or Owner's Representative's inspection upon request and shall be reworked at no cost in time or money to the Owner.

**17.2** If any of the Work is covered, concealed or obscured in a manner not addressed by Paragraph 17.1, it shall, if directed by the Owner or the Owner's Representative, be uncovered and displayed for the Owner's or Owner's Representative's inspection. If the uncovered Work conforms strictly with this Contract, the costs incurred by the Contractor to uncover and subsequently replace such Work shall be borne by the Owner. Otherwise, such costs shall be borne by the Contractor.

**17.3** The Contractor shall, at no cost in time or money to the Owner, promptly correct Work (fabricated, installed or completed) rejected by the Owner or by the Owner's Representative as defective or that fails to conform to this Contract whether discovered before or after Substantial Completion. Additionally, the Contractor shall reimburse the Owner for all testing, inspections and other expenses incurred as a result thereof.

**17.4** In addition to any other warranty obligations in this Contract, the Contractor shall be specifically obligated to correct, upon written direction from the Owner, any and all defective or nonconforming Work for a period of twelve (12) months following Substantial Completion.

**17.5** The Owner may, but shall in no event be required to, choose to accept defective or nonconforming Work. In such event, the Fixed Price Contract Amount shall be reduced by the lesser of: (i) the reasonable costs of removing and correcting the defective or nonconforming Work; or (ii) the difference between the fair market value of the Project as constructed and the fair market value of the Project had it not been constructed in such a manner as to include defective or nonconforming Work. If the remaining portion of the unpaid Fixed Price Contract Amount, if any, is insufficient to compensate the Owner for the acceptance of defective or nonconforming Work, the Contractor shall, upon written demand from the Owner, pay the Owner such remaining compensation for accepting defective or nonconforming work.

## **ARTICLE 18**

### **TERMINATION BY THE CONTRACTOR**

**18.1** The Contractor may terminate the Contract if the Work is stopped for a period of ninety (90) consecutive days through no act or fault of the Contractor or a subcontractor, sub-subcontractor or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Contractor, for any of the following reasons:

**.1** Issuance of an order by a court or by another public authority having jurisdiction and authority which requires all Work to be stopped; or

**.2** An act of government, such as a declaration of national emergency, which requires all Work to be stopped.

**18.2** In such event, the Contractor shall be entitled to recover from the Owner as though the Owner had terminated the Contractor's performance under this Contract pursuant to Paragraph 20.3.

**ARTICLE 19**  
**OWNER'S RIGHT TO SUSPEND CONTRACTOR'S PERFORMANCE**

**19.1** The Owner may, at any time and without cause, order the Contractor, in writing, to suspend, delay or interrupt the Work in whole or in part for such period of time as the Owner may determine. If the Owner directs any such suspension, the Contractor must immediately comply with same.

**19.2** In the event the Owner directs a suspension of performance under this Article, and such suspension is through no fault of the Contractor, the Fixed Price Contract Amount and Contract Time shall be adjusted for increases in the cost and time caused by such suspension, delay or interruption to cover the Contractor's reasonable costs, actually incurred and paid, of:

- .1 Demobilization and remobilization, including such costs paid to subcontractors;
- .2 Preserving and protecting Work in place;
- .3 Storage of materials or equipment purchased for the Project, including insurance thereon; and
- .4 Performing in a later, or during a longer, time frame than that provided by this Contract.

**19.3** The adjustment of the Fixed Price Contract Amount shall include an amount for a reasonable profit. The adjustment of the Fixed Price Contract Amount shall not include any amount not otherwise allowed under this Contract, including any limitations applicable to Claims. The Contractor shall provide supporting documentation related to any increase upon request of the Owner. No adjustment shall be made to the extent:

- .1 That performance is, was or would have been so suspended, delayed or interrupted by another cause for which the Contractor is responsible; or
- .2 That an equitable adjustment is made or denied under another provision of the Contract.

**ARTICLE 20**  
**TERMINATION BY THE OWNER**

The Owner may terminate this Contract in accordance with the following terms and conditions:

**20.1** If the Contractor does not perform the Work, or any part thereof, in accordance with the Contract Documents, or in a timely manner; does not supply adequate labor, supervisory personnel, or proper equipment or materials; fails to pay subcontractors; fails to timely discharge its obligations for labor, equipment, and materials; proceeds to disobey applicable law; or otherwise breaches this Contract, then the Owner, in addition to any other rights it may have against the Contractor, may terminate the Contract and assume control of the Project site and of all materials and equipment at the site and may complete the Work. In such case, the Contractor shall not be paid further until the Work is complete. Upon such Termination, the Owner may, subject to any superior rights of the Surety, take possession of the site and of all materials, equipment, tools and construction equipment and machinery thereon owned by the Contractor; accept assignment of those subcontracts conditionally assigned under Paragraph 15.2; and finish the Work by whatever reasonable method the Owner may deem expedient.

**20.2** When the Owner terminates the Contract for cause as provided in Paragraph 20.1, the Contractor shall not be entitled to receive further payment until the Work is finished and shall only be entitled to payment for Work satisfactorily performed by the Contractor in accordance with the Contract Documents. If the costs of finishing the Work, including compensation for the Owner's Representative's services and expenses made necessary thereby, exceed the unpaid balance, the Contractor shall pay the difference to the Owner. This obligation for payment shall survive termination of the Contract. The Contractor shall also terminate outstanding orders and subcontracts. The Contractor shall settle the liabilities and claims arising out of the termination of subcontracts and orders. In the event the employment of the Contractor is terminated by the Owner for cause pursuant to Paragraph 20.1 and it is subsequently determined by a court of competent jurisdiction that such termination was without cause, such

termination shall thereupon be deemed a Termination under Paragraph 20.3 and the provisions of Paragraph 20.3 shall apply.

**20.3** The Owner may, at any time and for any reason, terminate this Contract. The Owner shall give no less than seven (7) days' written notice of such Termination to the Contractor specifying when termination becomes effective. The Contractor shall incur no further obligations in connection with the Work and the Contractor shall stop Work when such Termination becomes effective. The Contractor shall also terminate outstanding orders and subcontracts. The Contractor shall settle the liabilities and claims arising out of the termination of subcontracts and orders. The Owner may direct the Contractor to assign the Contractor's right, title and interest under termination orders or subcontracts to the Owner or its designee. The Contractor shall transfer title and deliver to the Owner such completed or partially completed Work and materials, equipment, parts, fixtures, information and Contract rights as the Contractor has. When terminated pursuant to this section, the following shall apply:

**.1** The Contractor shall submit a Termination Claim to the Owner and the Owner's Representative specifying the amounts claimed due because of the Termination, together with costs, pricing or other supporting data required by the Owner or the Owner's Representative. Failure by the Contractor to file a Termination Claim within ninety (90) days from the effective date of termination shall be deemed a complete waiver by the Contractor of any right to any payment;

**.2** Before or after receipt of the Termination Claim, the Owner and the Contractor may agree to the compensation, if any, due to the Contractor hereunder; and

**.3** If the Contractor has filed the Termination Claim but the Contractor and the Owner do not agree on an amount due to the Contractor, the Owner shall pay the Contractor the following amounts:

**.1** Unpaid Contract prices for labor, materials, equipment and other services provided or perfected prior to termination and acceptable to or accepted by the Owner;

**.2** Reasonable costs incurred in preparing to perform the terminated portion of the Work, and in terminating the Contractor's performance, plus a fair and reasonable allowance for direct job-site overhead and profit related to such preparation (such profit shall not include anticipated profit or consequential damages); provided, however, that if it appears that the Contractor would have not profited or would have sustained a loss if the entire Contract would have been completed, no profit shall be allowed or included and the amount of compensation shall be reduced to reflect the anticipated loss, if any; and

**.3** Reasonable costs of settling and paying claims arising out of the Termination of subcontracts or orders pursuant to this Paragraph 20.3.

**20.4** Costs described in subparagraphs 20.3.3.2 or 20.3.3.3 above shall not include amounts paid in accordance with other provisions hereof. In no event shall the total sum to be paid the Contractor under subparagraph 20.3.3 exceed the total Fixed Price Contract Amount, as properly adjusted, reduced by the amount of payments previously or otherwise made and by any other deductions permitted under this Contract and shall in no event include duplication of payment.

## **ARTICLE 21**

### **CONTRACTOR'S LIABILITY INSURANCE**

**21.1** The Contractor, subcontractor and sub-subcontractor shall purchase and maintain in full force and effect from a company or companies lawfully authorized to do business in the State of Idaho such insurance as will protect the Contractor, subcontractor and sub-subcontractor from claims set forth below which may arise out of or result from the Contractor's or subcontractor's operations under the Contract and for which the Contractor may be legally liable, whether such operations be by the Contractor or by a subcontractor or by anyone directly or indirectly employed by any of them or by anyone for whose acts any of them may be liable:

**.1** Claims under workers' or workmen's compensation, disability benefits and other similar employee benefit acts which are applicable to the work to be performed;

- .2 Claims for damages because of bodily injury, occupational sickness or disease or death of the Contractor's employees;
- .3 Claims for damages because of bodily injury, sickness or disease or death of any person other than the Contractor's employees;
- .4 Claims for damages insured by usual personal injury liability coverage which are sustained: (i) by a person as a result of an offense directly or indirectly related to employment of such person by the Contractor; or (ii) by another person;
- .5 Claims for damages, other than to the Work itself, because of injury to or destruction of tangible property, including loss of use resulting there from;
- .6 Claims for damages because of bodily injury, death of a person or property damage arising out of ownership, maintenance or use of a motor vehicle;
- .7 Claims for bodily injury or property damage arising out of completed operations; and
- .8 Claims involving contractual liability insurance applicable to the Contractor's obligations under Article 11.

**21.2** The insurance required by Paragraph 21.1 above shall be written for not less than limits of liability specified in this Contract or as required by law, whichever is greater. Coverages, whether written on an occurrence or claims-made basis, shall be maintained without interruption from date of commencement of the Work until date of final payment and termination of any coverage required to be maintained after final payment. In addition, for any insurance required that is obtained on a claims-made basis, "tail coverage" is required at the completion of the Work for twenty-four (24) months. Continuous claims-made coverage will be acceptable in lieu of "tail coverage" provided the retroactive date is on or before the effective date of this Contract or twenty-four (24) months "prior acts" coverage is provided. The insurance required by Paragraph 21.1 above shall be written for not less than the following limits:

- .1 Workers' Compensation and Employer's Liability
  - (a) State Workers Compensation: Statutory
  - (b) Employer's Liability: \$1,000,000 per Accident  
\$1,000,000 Disease, Policy Limit  
\$1,000,000 Disease, Each Employee
- .2 Comprehensive Commercial General Liability and Umbrella Liability Insurance. Contractor shall maintain Commercial General Liability ("CGL") and, if necessary, commercial umbrella insurance with a limit of not less than \$2,000,000 each occurrence. If such CGL insurance contains a general aggregate limit, it shall apply separately to this project location;

CGL insurance shall be written on Insurance Services Office ("ISO") occurrence form CG 00 01 12 04 (or a substitute form providing equivalent coverage) and shall cover liability arising from premises, operation, independent contractors, products-completed operations, personal (including employee acts) and advertising injury and liability assumed under an insured contract (including the tort liability of another assumed in a business contract). As applicable, coverage must also include a broad form CGL endorsement if the substitute insurance is a 1973 edition CGL or its equivalent;

Owner shall be included as an additional insured under the CGL, using ISO additional insured endorsement CG 20 10 and CG 20 37 or their equivalent, which endorsement shall include coverage for the Owner with respect to liability arising out of the Work, including completed operations of Contractor, and which coverage shall be maintained in effect for the benefit of Owner for a period of two (2) years following the completion of the work specified in this Contract. Additional insured coverage as required in this subparagraph shall apply as primary insurance with respect to any other insurance or self-insurance programs afforded to the Owner;

(a) For the hazards of explosion, collapse, and damage to underground property, commonly referred to as XCU, coverage shall be required if the exposures exist; and

(b) This coverage may be provided by the subcontractor if the Owner and prime Contractor are named as additional insureds;

**.3** Business Auto and Umbrella Liability Insurance: Contractor shall maintain business, auto liability and, if necessary, commercial umbrella liability insurance with a limit of not less than \$1,000,000 each accident;

Such insurance shall cover liability arising out of any auto (including owned, hired, and non-owned autos);

Business auto coverage shall be written on ISO form CA 00 01, CA 00 05, CA 00 12, CA 00 20 or a substitute form providing equivalent liability coverage. If necessary, the policy shall be endorsed to provide contractual liability coverage equivalent to that provided in the 1990 and later editions of CA 00 01;

If hazardous waste will be hauled, Contractor shall obtain pollution liability coverage equivalent to that provided under the ISO pollution liability-broadened coverage for covered autos endorsement (CA 99 48) and the Motor Carrier Act endorsement (MCS 90) shall be attached;

**.4** If the General Liability coverages are provided by Commercial Liability policies the:

**.1** General Aggregate shall be not less than \$4,000,000; and

**.2** Fire legal liability shall be provided in an amount not less than \$100,000 per occurrence; and

**.5** Umbrella Excess Liability. An umbrella policy may be used in combination with other policies to provide the required coverage.

**21.3** The Owner shall be named as additional insured or loss payee, as applicable, on the insurance required in subparagraphs 21.2.2, 21.2. 3 and 21.2. 5 above, and the insurance shall contain the severability of interest clause as follows:

"The insurance afforded herein applies separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the company's 'liability.' "

**21.4** The Contractor may include all subcontractors as insureds under the Contractor's policies in lieu of separate policies by each subcontractor. The Contractor must furnish the Owner, with the required endorsements or certificates of insurance from each subcontractor which names the subcontractor, its officials, employees and volunteers as insureds.

**21.5** Certificates of Insurance for Workers' Compensation shall be on the standard form. Certificates of Insurance for Commercial or Comprehensive General Liability shall be the most current ACORD Form 25 or 28, must be acceptable to the Owner and shall be filed with the Owner prior to commencement of the Work. The Owner may require proof of coverage by an endorsement. If any of the foregoing insurance coverages are required to remain in force after final payment and are reasonably available, an additional certificate evidencing continuation of such coverage shall be submitted with the final Contractor's Request for Payment as required by Article 7. Information concerning reduction of coverage shall be furnished by the Contractor with reasonable promptness in accordance with the Contractor's information and belief.

## **ARTICLE 22 OWNER'S LIABILITY INSURANCE**

The Owner, at its option, may purchase or maintain insurance for protection against claims which may arise from operations under the Contract.

**ARTICLE 23**  
**PROPERTY INSURANCE**

**23.1** Unless otherwise provided, the Owner shall purchase or maintain, from a company or companies lawfully authorized to do business in the State of Idaho, property insurance written on a builders risk "all-risk" or equivalent policy form in an amount not less than the initial Fixed Price Contract Amount. Such property insurance shall be maintained until final payment to the Contractor has been made. This insurance shall include interests of the Owner, the Contractor, subcontractors and sub-subcontractors.

**23.2** Property insurance shall be on an "all-risk" or equivalent policy form and shall include, but not necessarily be limited to insurance against the perils of fire (with extended coverage) and mischief, collapse, earthquake, flood, windstorm, temporary buildings and debris removal, including demolition occasioned by enforcement of any applicable legal requirements, and shall cover necessary and reasonable expenses for the Owner's Representative's expenses required as a result of such insured loss.

**23.3** If the property insurance requires deductibles, the Owner shall pay costs of such deductibles.

**23.4** Loss of Use Insurance. The Owner, at the Owner's option, may purchase and maintain such insurance as will insure the Owner against loss of the Owner's property due to fire or other hazards, however caused.

**23.5** Waivers of Subrogation. The Owner and Contractor waive all rights against: (i) each other and any of their subcontractors, sub-subcontractors, agents and employees, each of the other; and (ii) the Owner's Representative, Owner's Representative's consultants, separate contractors, if any, and any of their subcontractors, sub-subcontractors, agents and employees, for damages to the Work caused by fire or other causes of loss to the extent covered by property insurance obtained pursuant to this Article or other property insurance applicable to the Work, except such rights as they have to proceeds of such insurance held by the Owner. The Owner or Contractor, as appropriate, shall require of the Owner's Representative, Owner's Representative's consultants, separate contractors, if any, and the subcontractors, sub-subcontractors, agents and employees of any of them, by appropriate agreements, written where legally required for validity, similar waivers each in favor of other parties enumerated herein. The policies shall provide such waivers of subrogation by endorsement. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged. The Owner does not waive its subrogation rights to the extent of its property insurance on structures or portions of structures that do not comprise the Work.

**23.6** The Contractor authorizes the Owner to negotiate and agree on the value and extent of, and to collect the proceeds payable with respect to, any loss under a policy of insurance carried by the Owner pursuant to any of the provisions of this Article. The Owner shall have full right and authority to compromise any claim, or to enforce any claim by legal action or otherwise, or to release and discharge any insurer, by and on behalf of the Owner and Contractor. The Owner shall provide written notice to Contractor of: (i) its having reached any such settlement or adjustment with an insurer; and (ii) the receipt of any funds pursuant to this Article. Any objection by the Contractor to a settlement or adjustment made under this Article must be made in writing to the Owner within five (5) business days of the notice from the Owner. The Owner and the Contractor agree to attempt to resolve the dispute by mutual agreement.

**23.7** A loss under the Owner's property insurance shall be adjusted by the Owner and made payable to the Owner for the insureds, as their interests may appear, subject to requirements of any applicable mortgagee clause.

**23.8** The Owner shall deposit proceeds so received, in a manner in which such proceeds can be separately accounted for, which proceeds the Owner shall distribute in accordance with such agreement as the parties in interest may reach. If after such loss no other special agreement is made and unless the Owner terminates the Contract pursuant to Article 20, replacement of damaged property shall be performed by the Contractor after notification of a Change in the Work in accordance with Article 16.

**23.9** The Contractor shall pay subcontractors their shares of the insurance proceeds received by the Contractor, and by appropriate agreements, written where legally required for validity, shall require subcontractors to acknowledge the Owner's authority under this Article 23 and make payments to their sub-subcontractors in similar manner.

**23.10** Nothing contained in this Article 23 shall preclude the Contractor from obtaining, solely at its own expense, additional insurance not otherwise required.

## **ARTICLE 24 PERFORMANCE AND PAYMENT BONDS**

**24.1** The Contractor shall furnish separate performance and payment bonds to the Owner. Each bond shall set forth a penal sum in an amount not less than the Fixed Price Contract Amount and shall include a power of attorney attached to each bond. The signature of both the Contractor (principal) and the Surety are required. If the Surety is incorporated, both bonds must have the corporate seal. Each bond furnished by the Contractor shall incorporate by reference the terms of this Contract as fully as though they were set forth verbatim in such bonds. In the event the Fixed Price Contract Amount is adjusted by Change Order executed by the Contractor, the penal sum of both the performance bond and the payment bond shall be deemed increased by like amount. The performance and payment bonds furnished by the Contractor shall be AIA Document A312, or a standard surety form certified approved to be the same as the AIA Document A312, and shall be executed by a Surety, or Sureties, reasonably acceptable to the Owner and authorized to do business in the State of Idaho.

**24.2** Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Contract, the Contractor shall promptly furnish a copy of the bonds or shall permit a copy to be made.

**24.3** It is the Contractor's obligation to notify the Surety in the event of changes in the Contract Documents, which in the absence of notification might serve to discharge the Surety's obligations, duties or liability under bonds or the Contract.

## **ARTICLE 25 PROJECT RECORDS**

**25.1** All documents relating in any manner whatsoever to the Project, or any designated portion thereof, which are in the possession of the Contractor or any subcontractor of the Contractor, shall be made available to the Owner or the Owner's Representative for inspection and copying upon written request. Furthermore, said documents shall be made available, upon request by the Owner, to any state, federal or other regulatory authority and any such authority may review, inspect and copy such records. Said records include all drawings, plans, specifications, submittals, correspondence, minutes, memoranda, tape recordings, videos or other writings or things which document the Project, its design and its construction. Said records expressly include those documents reflecting the cost of construction to the Contractor. The Contractor shall maintain and protect these documents for no less than four (4) years after final completion or termination of the Contract or for any longer period of time as may be required by law or good construction practice.

## **ARTICLE 26 MISCELLANEOUS PROVISIONS**

**26.1** The law is hereby agreed to be the law of the State of Idaho. The parties further agree that venue for any proceeding related to this Contract shall be in Boise, Ada County, Idaho, unless otherwise mutually agreed by the parties.

**26.2** Pursuant to Idaho Code Section 54-1904A, within thirty (30) days after award of this Contract, the Contractor shall file with the Idaho State Tax Commission, with a copy to the Owner, a signed statement showing the date of Contract award, the names and addresses of the home offices of contracting parties, including all subcontractors, the state of incorporation, the Contract Number and a general description of the type and location of the Work, the amount of the prime contracts and all subcontracts and all other relevant information which may be required on forms which may be prescribed by the Idaho State Tax Commission.

**26.3** The Contractor, in consideration of securing the business of erecting or constructing public works in the State of Idaho, recognizing that the business in which it is engaged is of a transitory character, and that in the pursuit

thereof, its property used therein may be without the state when taxes, excises or license fees to which it is liable become payable, agrees:

**.1** To pay promptly when due all taxes (other than on real property), excises and license fees due to the State of Idaho, its sub-divisions, and municipal and quasi-municipal corporations therein, accrued or accruing during the term of this Contract, whether or not the same shall be payable at the end of such term;

**.2** That if the said taxes, excises and license fees are not payable at the end of said term, but liability for the payment thereof exists even though the same constitute liens upon its property, to secure the same to the satisfaction of the respective officers charged with the collection thereof; and

**.3** That, in the event of its default in the payment or securing of such taxes, excises and license fees, to consent that the department, officer, board or taxing unit entering into this Contract may withhold from any payment due it hereunder the estimated amount of such accrued and accruing taxes, excises and license fees for the benefit of all taxing units to which said Contractor is liable.

**26.4** Before entering into this Contract, the Contractor shall be authorized to do business in the State of Idaho and shall submit a properly executed Contractor's Affidavit Concerning Taxes (Exhibit D).

**26.5** Pursuant to Idaho Code Section 44-1002, Contractor "must employ ninety-five percent (95%) bona fide Idaho residents as employees on any job under any such contract except where under such contracts fifty (50) or less persons are employed the contractor may employ ten percent (10%) nonresidents, provided, however, in all cases employers must give preference to the employment of bona fide residents in the performance of said work, and no contract shall be let to any person, firm, association, or corporation refusing to execute an agreement with the above mentioned provisions in it."

**26.6** The Contractor shall maintain, in compliance with Idaho Code, Title 72, Chapter 17, a drug-free workplace program throughout the duration of this Contract and shall only subcontract work to subcontractors who have programs that comply with Idaho Code, Title 72, Chapter 17.

**26.7** As between the Owner and Contractor as to acts or failures to act, any applicable statute of limitations shall commence to run and any legal cause of action shall be deemed to have accrued in any and all events in accordance with Idaho law.

**26.8** The Contractor and its subcontractors and sub-subcontractors shall comply with all applicable Idaho statutes with specific reference to Idaho Public Works Contractors' licensing laws in the State of Idaho, Title 54, Chapter 19, Idaho Code, as amended.

**26.9** The Contractor shall not knowingly hire or engage any illegal aliens or persons not authorized to work in the United States and take steps to verify that it does not hire or engage any illegal aliens or persons not authorized to work in the United States. Any misrepresentation in this regard or any employment of persons not authorized to work in the United States constitutes a material breach and shall be cause for the imposition of monetary penalties not to exceed five percent (5%) of the Fixed Price Contract Amount per violation and/or Termination of this Contract. The Contractor also acknowledges that, if it is a natural person, it is subject to Title 67, Chapter 79, Idaho Code regarding verification of lawful presence in the United States.

## **ARTICLE 27 EQUAL OPPORTUNITY**

The Contractor shall maintain policies of employment as follows:

**27.1** The Contractor and the Contractor's subcontractors shall not discriminate against any employee or applicant for employment because of race, religion, color, sex, age or national origin. The Contractor shall take affirmative action to insure that applicants are employed, and that employees are treated during employment, without regard to their race, religion, color, sex, age or national origin. Such action shall include the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the policies of non-discrimination.

**27.2** The Contractor and the Contractor's subcontractors shall, in all solicitation or advertisements for employees placed by them or on their behalf; state that all qualified applicants will receive consideration for employment without regard to race, religion, color, sex, age or national origin.

## **ARTICLE 28 SUCCESSORS AND ASSIGNS**

**28.1** Each party binds itself, its successors, assigns, executors, administrators or other representatives to the other party hereto and to successors, assigns, executors, administrators or other representatives of such other party in connection with all terms and conditions of this Contract. The Contractor shall not assign this Contract or any part of it or right or obligation pursuant to it without prior written consent of the Owner. If Contractor attempts to make assignment without consent of Owner, Contractor shall remain legally responsible for all obligations under this Contract.

## **ARTICLE 29 SEVERABILITY**

**29.1** In the event any provision or section of this Contract conflicts with applicable law or is otherwise held to be unenforceable, the remaining provisions shall nevertheless be enforceable and shall be carried into effect.

## **ARTICLE 30 MEDIATION**

**30.1** Contractor Claims for additional cost or time that are subject to Article 13, shall be reviewed as provided in accordance with that Article and, as a condition precedent to litigation, are subject to dispute resolution attempts and mediation in accordance with this Article. All other issues and disputes arising from this Contract are also subject to dispute resolution attempts & mediation in accordance with this Article, as a condition precedent to litigation.

**30.2** The parties agree that resolution of any dispute or disagreement without formal legal proceedings is to their mutual benefit and to the benefit of the Project.

**30.3** The parties agree to make every reasonable attempt to resolve any issues or disputes informally. The parties further agree that prior to the institution by either of legal or equitable proceedings of any kind, and as a condition precedent thereto, any dispute between the Contractor and the Owner related to the Contract, including a dispute over the Owner's decision regarding a Claim, shall be subject to mediation as follows:

**.1** If the issue to be mediated involves only a dispute regarding the Contract Time, no request to mediate shall be made unless liquidated damages have been assessed by the Owner. If the issue to be mediated involves a Claim or other financial dispute, no request to mediate shall be made unless the amount is \$50,000 or more or until there are cumulative Claims or disputes amounting to \$50,000 or more; provided, however, that a mediation request can be made as to any Claim or financial matter at any time after Substantial Completion;

**.2** The party seeking mediation shall notify the other party in writing of its mediation request. In such written request, the requesting party must clearly describe the issues it believes are subject to mediation;

**.3** Within fifteen (15) days of receipt of the mediation request, the non-requesting party shall respond in writing to the request;

**.4** Unless the Owner and the Contractor agree to other rules for mediation, mediation shall be in accordance with the Construction Industry Rules of Arbitration and Mediation Procedures in effect at the time of the mediation;

**.5** The parties shall share the mediator's fee and any filing fees equally; provided, however, that if a party makes a written request to the mediator without satisfying the requirements of this section and by doing so incurs any costs or fees, that party shall be solely responsible for the costs or fees;

**.6** Unless otherwise mutually agreed to by the parties, the mediation shall be in Boise, Ada County, Idaho;

**.7** The parties shall cooperate in arranging the other details of mediation, such as selection of the mediator, mediation dates and times;

**.8** The parties agree that all parties necessary to resolve the matter shall be parties to the same mediation proceeding; provided, however, that no subcontractor or sub-subcontractor shall attend the mediation absent advance notice and consent from the Owner;

**.9** Agreements reached in mediation shall be enforceable as settlement agreements in any court having proper jurisdiction; and

**.10** Unless otherwise agreed in writing, the Contractor shall continue the Work and maintain the approved schedules during any mediation proceedings. If the Contractor continues to perform, the Owner shall continue to make payments in accordance with the Contract Documents.

**30.4** If mediation fails to resolve the dispute, either party may file an action in the courts of Idaho in accordance with the venue provision contained in this Contract.

### **ARTICLE 31 WAIVER OF CONSEQUENTIAL DAMAGES**

**31.1** The Contractor and Owner waive claims against each other for consequential damages arising out of or relating to this Contract. This mutual waiver includes:

**.1** Damages incurred by the Owner for rental expenses, for losses of use, income, profit, financing, business and reputation and for loss of management or employee productivity or of the services of such persons.

**.2** Damages incurred by the Contractor for principal office expenses, including the compensation of personnel stationed there; for losses of income, financing, business and reputation; loss of management or employee productivity or of the services of such persons; and for loss of profit except profit arising directly from the Work.

**31.2** This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Articles 18 and 20. Nothing contained in this paragraph shall be deemed to preclude an award of the assessment of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents.

The parties have signed this Contract on the dates set forth below.

OWNER

State of Idaho  
Idaho Water Resource Board

\_\_\_\_\_  
Date Executed

By: \_\_\_\_\_

CONTRACTOR

\_\_\_\_\_  
(Contractor's Name- Typed)

SEAL

\_\_\_\_\_  
Date Executed

By: \_\_\_\_\_

Signature

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Title

## EXHIBIT A

### OWNER'S PROJECT IDENTIFICATION INFORMATION:

IWRB Contract No. <number>  
Project Title Priest Lake Water Management Project Outlet Dam Improvements  
Project Location Priest Lake

#### General Project Description:

The Project generally includes providing all labor and materials, unless otherwise indicated in the Contract Documents or in the Drawings, to install a new concrete and armor rock scour apron extension. The improvements include extending the height of the existing tainter gates to accommodate higher pool levels, replacing trunnion pins, and strengthening existing gate assemblies. The project also includes repairing existing concrete, expansion joints, and the existing railing. This paragraph lists the major work items and may not include all of the work required to complete the Project in accordance with the Contract Documents.

#### ADDENDA: Addenda applicable to the Contract and made a part of are as follows:

Addendum No. \_ Dated \_\_\_\_\_  
Addendum No. \_ Dated \_\_\_\_\_  
Addendum No. \_ Dated \_\_\_\_\_

### FIXED PRICE CONTRACT AMOUNT AND ACCEPTED ALTERNATES:

Base Bid Amount per Bid Schedule: \$ .00  
Total Fixed Price Contract Amount  
( \_\_\_\_\_ ) Dollars \$ .00

Contractor's Requests for Payment are to be submitted for Work accomplished through the last day of each month as described in Paragraph 7.3.

### TIME FOR PERFORMANCE AND LIQUIDATED DAMAGES:

- A. The Contractor shall commence construction of its scope of the Work in accordance with the Notice to Proceed issued by the Owner, and which will become Exhibit F to this Contract.
- B. The Contractor shall accomplish Substantial Completion as defined in Article 6 of the Contract by April 1, 2021.
- C. The amount of liquidated damages per day for each and every day of unexcused delay as outlined in Article 6 on the Contract is: **Two thousand five hundred Dollars** (\$2500). In addition, the amount of liquidated damages for each violation of work hour restrictions is: **One thousand Dollars** (\$1000).

### DRAWINGS AND SPECIFICATIONS

The Contractor will be furnished with \_\_\_ sets of Drawings and Project Manuals.

**BID SCHEDULE**

Item No.	Description	Estimated Quantity	Unit	Unit Price	Total Price
1	Mobilization/Demobilization (10%)	1	LS		
2	Environmental Protection, Site Prep, and Site Restoration	1	LS		
3	Temporary Access Road/Structure and River Crossing	1	LS		
4	Construction Surveying	1	LS		
5	Cofferdams and Dewatering	1	LS		
6	Excavation and Disposal - Streambed	2,010	CY		
7	Concrete - Apron Scour	10	CY		
8	Reinforced Concrete - Apron Extension	365	CY		
9	Concrete Repair - Pier 6 Spalled Areas	36	CF		
10	Miscellaneous Steel - Strengthen Tainter Gate Skin Plate	11	BAY		
11	Miscellaneous Steel - Tainter Gate Extension	11	BAY		
12	Miscellaneous Steel - Replace Trunnion Pins	11	BAY		
13	Replace J-Seals	11	BAY		
14	Repair Expansion Joints - N & S Abutment Wing Walls	100	LF		
15	Railing - Repair Damaged Section	8	LF		
16	Replace Grease Fittings and Pump	11	BAY		
17	Install New Gauge on North Abutment and South Abutment	2	EA		
18	Vibrating Piezometer Array	1	LS		
19	Armor Stone	2,070	TON		
20	Bedding Stone	1,390	TON		
21	Crushed Rock Base Course	37	TON		
22	Geotextile Fabric	621	SY		
23	Approach Redevelopment - Base Course	39	TON		
24	Approach Redevelopment - Top Course	20	TON		
25	Approach Redevelopment - Hot Mix Asphalt Paving	25	TON		
26	Minor Changes	1	LS		

**EXHIBIT B**

**ADDRESSES and AUTHORIZED REPRESENTATIVES:** The names, addresses and authorized representatives of the Owner, the Contractor and the Owner's Representative are:

**OWNER:** State of Idaho  
Idaho Water Resource Board  
322 E Front Street, Suite 648  
PO Box 83720  
Boise, ID 83720-0098

Project Manager: [Name]  
Telephone:  
E-mail:  
Fax:  
May sign for Owner: Yes [ X ] No [ ]

Construction Manager: [Name]  
Telephone:  
E-mail:  
Fax:  
May sign for Owner: Yes [ X ] No [ ]

**CONTRACTOR:** \_\_\_\_\_ (company name)  
\_\_\_\_\_ (address)  
\_\_\_\_\_ (city, state, zip)  
\_\_\_\_\_ (telephone and FAX)  
Public Works Contractors License No. \_\_\_\_\_

Officer: \_\_\_\_\_ (name and title)  
\_\_\_\_\_ (telephone)  
\_\_\_\_\_ (E-mail)

Contractor's  
Project Manager: \_\_\_\_\_ (name)  
\_\_\_\_\_ (telephone and FAX)  
\_\_\_\_\_ (E-mail)

May sign for Contractor: Yes [ ] No [ ]  
Change Orders: up to: \$\_\_\_\_.00  
Construction Change Authorizations: up to: \$\_\_\_\_.00  
Contractor's Request for Payment

Contractor's  
Superintendent: \_\_\_\_\_ (name)  
\_\_\_\_\_ (telephone and FAX)  
\_\_\_\_\_ (E-mail)

May sign for Contractor: Yes [ ] No [ ]  
Construction Change Authorizations: up to \$\_\_\_\_.00

**Owner's Representative:**

Mott MacDonald, LLC  
1601 5<sup>th</sup> Avenue, Suite 800  
Seattle WA 98101  
T: (425) 778-6042

Professional's  
Project Manager:

\_\_\_\_\_ (name)  
Professional License No. \_\_\_\_\_  
\_\_\_\_\_ (telephone)  
\_\_\_\_\_ (FAX)  
\_\_\_\_\_ (E-mail)

Professional's  
Field Representative:

\_\_\_\_\_ (name)  
\_\_\_\_\_ (telephone)  
\_\_\_\_\_ (FAX)  
\_\_\_\_\_ (E-mail)

May sign for Owner's Representative:

Field Reports	Yes [ ]	No [ ]
Change Order Proposal Requests	Yes [ ]	No [ ]
Construction Change Authorization:	Yes [ ]	No [ ]
Construction Change Order	Yes [ ]	No [ ]
Owner's Representative's Supplemental Instructions	Yes [ ]	No [ ]
Interpretations of the Contract Documents	Yes [ ]	No [ ]
Contractor's Request for Payment	Yes [ ]	No [ ]
Acceptance of Substantial Completion	Yes [ ]	No [ ]
Acceptance of final completion	Yes [ ]	No [ ]

## **EXHIBIT C - LIST OF DRAWINGS AND SPECIFICATIONS**

The drawings and specifications listed below are incorporated by reference to this Contract.

### **DIVISION 1 - GENERAL REQUIREMENTS**

01 10 00	General Requirements
01 11 00	Summary of Work
01 20 00	Measurement and Payment
01 31 19	Project Meetings
01 33 00	Submittals
01 35 43	Environmental Controls
01 40 00	Quality Requirements
01 41 00	Regulatory Requirements
01 50 00	Temporary Facilities and Controls
01 57 13	Temporary Erosion and Sediment Control
01 70 00	Project Closeout
01 71 23	Construction Surveying

### **DIVISION 2-35 – TECHNICAL DIVISIONS**

02 20 00	Cofferdams and Dewatering
03 30 00	Cast-in-Place Concrete
03 73 00	Concrete Repair
05 05 00	Galvanizing
05 12 00	Structural Steel Framing
31 00 00	Excavation and Fill
35 31 23	Armor Stone

### **APPENDICES**

- Appendix A – Permit Documents
- Appendix B – Geotechnical Report
- Appendix C – Stockpiling Areas
- Appendix D – Existing Utility Drawings
- Appendix E – Water Level & Flow Data
- Appendix F – Original Construction Plans

**EXHIBIT D**

**CONTRACTOR'S AFFIDAVIT CONCERNING TAXES**

STATE OF \_\_\_\_\_)

COUNTY OF \_\_\_\_\_)

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

*SEAL*

\_\_\_\_\_  
Name of Contractor

\_\_\_\_\_  
Address

\_\_\_\_\_  
City and State

By:

\_\_\_\_\_  
(Signature)

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
NOTARY PUBLIC

Residing at: \_\_\_\_\_

Commission expires: \_\_\_\_\_

**EXHIBIT E**

**NAMED SUBCONTRACTORS:**

Pursuant to Section 67-2310, Idaho Code, commonly known as the naming law, the names and addresses of the entities who will perform the work were named in the bid and are as follows:

---

Name License #

---

Street City, State

**EXHIBIT F**

**PRIEST LAKE WATER MANAGEMENT PROJECT OUTLET DAM IMPROVEMENTS  
NOTICE TO PROCEED**

TO CONTRACTOR:

CONTRACT NUMBER:

CONTRACT DATE:

OWNER'S REPRESENTATIVE: Mott MacDonald

CONTRACT AMOUNT: \$

DATE OF ISSUANCE:

OWNER: State of Idaho  
Idaho Water Resource Board

---

You are hereby notified to commence work on the above referenced contract on/or before \_\_\_\_\_ and are to substantially complete the work within \_\_\_\_\_ consecutive calendar days thereafter; therefore your contract completion date is \_\_\_\_\_.

The contract provides for the sum of **\$2500** as liquidated damages for each consecutive calendar day after the above established substantial completion date that the work remains incomplete. Completion date will be established by "Certificate of Substantial Completion." In addition, the amount of liquidated damages for each violation of work hour restrictions is **\$1000**

You are reminded that any changes to the original contract document regarding either cost or completion date must be effected by a change order approved by this department.

Standard Construction Document Templates (Pay Application, Change Order, Change Directive, etc) will be provided to you at the preconstruction meeting.

**Mott MacDonald** has been appointed Owner's Representative for this project. Please contact at **[phone]** prior to beginning work. A pre-construction meeting will be held \_\_\_\_\_, at \_\_\_\_\_, at \_\_\_\_\_ **(location)**

Sincerely,

Brian Patton  
Executive Officer

DISTRIBUTION: Tax Commission

**EXHIBIT G**

Idaho State Tax Commission  
REQUEST FOR TAX RELEASE

Date: \_\_\_\_\_

**PART I -- AWARDING AGENCY INFORMATION:**

Name of agency		Mailing address	City, state, and ZIP Code
Contact name	Phone number		Email address

**PART II -- CONTRACTOR INFORMATION:**

Name of contractor		Mailing address	City, state, and ZIP Code
Federal EIN	Contact name	Phone number	Email address

**PART III -- CONSTRUCTION/CONTRACT MANAGER INFORMATION (if applicable):**

Name of business		Mailing address	City, state, and ZIP Code
Federal EIN	Contact name	Phone number	Email address

Send a copy of the approved Tax Release to: Awarding Agency  Contractor  Construction Manager

**NOTE:** We will email all copies unless otherwise requested

**PART IV -- PROJECT INFORMATION:**

Name of project		Location of project	
Description of project			
Project number assigned by awarding agency	Project start date	Project completion date	Final/closing contract amount (includes all change orders)
			\$

Did any government entities supply materials which were installed by this contractor or its subs?: Yes  No

If YES, list these materials and their dollar values. (Attach additional information if needed)

List Materials	List Dollar Values of Materials
	\$
	\$
	\$

Send to: Contract Desk/Sales Tax Audit  
Idaho State Tax Commission  
PO Box 36  
Boise ID 83722-0410  
Phone: (208) 334-7618 • Fax: (208) 332-6619 • Email: [contractdesk@tax.idaho.gov](mailto:contractdesk@tax.idaho.gov)

**NOTE:** Please allow 30 days to process a Tax Release Request. You must send a complete, signed Form WH-5 Public Works Contract Report to the Idaho State Tax Commission to complete this request.

**EXHIBIT H**

**RELEASE OF CLAIMS**

(TO BE COMPLETED FOR FINAL PAYMENT)

I, \_\_\_\_\_, do hereby release the State of Idaho from any and all claims of any character whatsoever arising under and by virtue of contract number \_\_\_\_\_ Dated \_\_\_\_\_ as amended, except as herein stated.

Dated \_\_\_\_\_ Contractor \_\_\_\_\_

**EXHIBIT J**

**Conditions Precedent to Final Payment**

Date: \_\_\_\_\_

Contract No. \_\_\_\_\_

Project Title: \_\_\_\_\_

Location: \_\_\_\_\_

Send to:	Copy to:
Idaho Water Resource Board	Owner's Representative

**Contractor's Responsibilities:**

Per Paragraph 7:14 of the Fixed Price Contract: As a condition precedent to final payment, the Contractor must furnish the owner, in the form and manner required by Owner, to be submitted to the Owner's Representative for approval, the following:

- Contractor's Final Request for Payment Form has been provided;
- Release of Claims form has been provided (Exhibit H);
- Contractor's Affidavit of Payment of Debts and Claims Form has been provided (AIA G706);
- Consent of Surety to Final Payment has been provided (AIA G707);
- Public Works Contract Tax Release from the Idaho Tax Commission has been provided.

\_\_\_\_\_  
Contractor's Signature

\_\_\_\_\_  
Date

**Owner's Representative's Approval for Payment:**

- All Documents Required per Paragraph 7.14 of the Fixed Price Contract
- All Warranties, Guarantees, etc. have been received, approved and have been provided.
- As-Built Drawings have been received, reviewed and approved.
- Record Drawings have been completed. All of the required copies of the Record Documents and electronic media are attached and/or uploaded to OMS.
- All punch list items have been verified and signed off as complete.

To the best of my knowledge, information, and belief, and on the basis of my observations and inspections, I certify the Work has been completed in accordance with the terms and conditions of the Contract Documents and that the required documentation required by Paragraph 7.13 of the fixed priced contract has been received. The entire balance, as shown on the attached Final Request for Payment, is due and payable.

\_\_\_\_\_  
Owner's Representative's Signature

\_\_\_\_\_  
Date