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Attorneys for Strider Construction Co., Inc.

**IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA**

STRIDER CONSTRUCTION CO. INC.,

Plaintiff,

vs.

IDAHO WATER RESOURCE BOARD,

Defendant.

Case No. CV01-22-10932

DECLARATION OF LINDSAY T.
WATKINS IN SUPPORT OF
PLAINTIFF'S RESPONSE TO MOTION
TO AMEND SCHEDULING ORDER

I, Lindsay Taft Watkins, state and declare as follows:

1. I am counsel for Plaintiff Strider Construction Co., Inc. ("Strider") in the above captioned matter. I am over the age of eighteen, competent to testify, and have personal knowledge of the matters herein.

2. Attached as **Exhibit A** is an excerpt of pertinent portions of the Request for Qualification (RFQ) issued by Idaho Water Resource Board to solicit a replacement contractor to

complete work allegedly not performed or defectively performed by Strider. The complete RFQ can be viewed at <https://idwr.idaho.gov/about-idwr/solicitations/>.

3. Attached as **Exhibit B** is a true and correct copy of email correspondence dated August 24, 2023 through September 11, 2023.

4. IWRB first issued discovery in November of 2022, to which Strider responded in January of 2023.

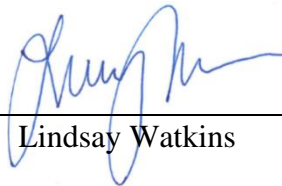
5. Strider has produced six different productions of documents in response to IWRB discovery requests.

6. I am unavailable from April 1, 2024 through April 10, 2024 due to previously booked travel plans.

I declare under penalty of perjury under the laws of the State of Idaho that the foregoing is true and correct.

DATED: This 27th day of September, 2023, in Seattle, Washington.

By: _____



Lindsay Watkins

CERTIFICATE OF SERVICE

I hereby certify that on the 27th day of September, 2023, a true and correct copy of the within and foregoing instrument was served upon:

Garrick L. Baxter, ISB #6301
Garrick.baxter@idwr.idaho.gov
Meghan M. Carter, ISB #8863
Meghan.carter@idwr.idaho.gov

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jtessmer@kmclaw.com

*Attorney for Defendant Idaho Water
Resource Board*

*Attorney for Defendant Idaho Water
Resource Board*

- Via U.S. Mail
- Via Legal Messenger
- Via Federal Express
- Via Facsimile
- Via iCourt E-File and Serve**

- Via U.S. Mail
- Via Legal Messenger
- Via Federal Express
- Via Facsimile
- Via iCourt E-File and Serve**

DATED: This 27th day of September, 2023.

/s/ Joe Meuleman

WATKINS

EXHIBIT A



Idaho Water Resource Board
REQUEST FOR QUALIFICATIONS

RFQ 2023-02

**Priest Lake Outlet Dam Improvements Project
Contractor Pre-Qualification**

March 29, 2023

QUALIFICATIONS DUE: May 5, 2023, at
4:00 p.m. Mountain Daylight Time



Figure 1: Existing Dam Outlet Structure

REQUEST FOR QUALIFICATIONS (RFQ)
RFQ 2023-02
Priest Lake Outlet Dam Improvements Project
Contractor Pre-Qualification

The Idaho Water Resource Board (IWRB) is soliciting Statements of Qualification (SOQs) from qualified contractors. Contractors who meet the IWRB's criteria will be allowed to submit bids for the Priest Lake Outlet Dam Improvement Project.

Sealed SOQs are to be delivered or mailed to Idaho Department of Water Resources (IDWR) Procurement no later than 4:00 p.m. MT on May 5, 2023, as follows:

By Mail to:

IDWR Procurement
Attn: Glyn Roberts
IWRB - RFQ No. 2023-02
322 E Front Street
PO Box 83720
Boise, ID 83720-0098

By Personal or Courier Delivery to:

IDWR Procurement
Attn: Glyn Roberts
IWRB - RFQ No. 2023-02
322 E Front Street, Suite 648
Boise, ID 83702

Note: If mailing the SOQ, please allow additional time to ensure the package arrives before the deadline.

All SOQs will be publicly opened on May 5, 2023, on or about 4:05 p.m. MT at:

Idaho Department of Water Resources State Office
322 E Front Street
6th Floor, Conference Room 602C
Boise, ID 83702

Information and specifications for same may be obtained at www.idwr.idaho.gov/solicitations.

Auxiliary aids or services for persons with disabilities are available upon request. Please contact IDWR Procurement at (208) 287-4820.

Table of Contents

1. Administrative Information	4
1.1 Summary	4
1.2 Definitions.....	4
1.3 Inquiries or Interpretation	4
1.4 Informational meeting.....	5
1.5 RFQ Schedule	5
1.6 IWRB Rights.....	6
1.7 Confidential Information	6
1.8 Respondent Costs Incurred	7
1.9 General Requirements.....	7
2. Description of Project.....	7
2.1 Services Required of Contractor	7
3. Instructions to Respondents.....	8
3.1 Preparations and Format of SOQs	8
3.2 Submittal Date of Response.....	9
3.3 Appeals	9
3.4 Pre-Qualification of Respondents	10
4. Evaluation Criteria.....	10
4.1 Company Overview and Key Personnel Experience	10
4.2 Relevant Experience	11
4.2.1 Relevant Experience – In-Water Construction & Execution of Bypass, Shoring, Cofferdam, and Dewatering Systems	11
4.2.2 Relevant Experience – Hydraulic Control Structures.....	12
4.2.3 Relevant Experience – Bypass, Shoring, Cofferdam, and Dewatering Plan Design	12
4.2.4 Relevant Experience – Concrete Installation and Finishing.....	12
5. Selection Process	12
5.1 Scoring Evaluation.....	12
5.2 Clarifications and Supplemental Information.....	13
5.3 Selection.....	13
Attachment A - Cover Page	
Attachment B - Certification Regarding Debarment, Suspension, and Other Responsibility Matters	
Attachment C - Signature Page	
Attachment D - Draft Construction Drawings	
Attachment E - Draft Technical Specifications with Appendices	
Attachment F - Draft Fixed Price Construction Contract	

1. Administrative Information

1.1 Summary

The Idaho Water Resource Board (IWRB) will be soliciting competitive bids for the Priest Lake Outlet Dam Improvements project (Project) located at Priest Lake in Bonner County, Idaho.

Pursuant to Idaho Code § 67-5711C(4), the IWRB will pre-qualify contractors and subcontracts prior to bidding. Interested contractors must first submit a SOQ pursuant to this solicitation for qualification statements and be selected as a qualified respondent to receive the Invitation to Bid (ITB).

The Project will modify an existing dam to permit a 6-inch increase in the maximum water level of Priest Lake and to improve the dam's resistance to erosion caused by high stream flows. The Project includes placement of a concrete scour apron, armor stone, and other ancillary improvements and repair of items that have been damaged since the existing dam was built in 1978.

Construction work commenced in the Fall of 2020 but was not completed. The current effort is intended to complete the construction work begun by a previous contractor.

1.2 Definitions

Terminology and abbreviations appearing in this RFQ document are identified as follows:

[Reserved.]

1.3 Inquiries or Interpretation

All questions and/or requests for clarification must be submitted in writing to:

Glyn Roberts, Purchasing Agent
Idaho Department of Water Resources
322 E Front Street
PO Box 83720
Boise, ID 83720-0098
idwr.purchasing@idwr.idaho.gov

Written inquiries must be received by the IWRB by April 14, 2023, at 5:00 p.m. MT.

The IWRB will maintain all the official copies of correspondence and will respond to all inquiries through one addendum posted on the IDWR web page: <http://idwr.idaho.gov/solicitations/>. The IWRB may issue other addenda that will also be posted to the IDWR web page.

All addenda will be posted to the IDWR webpage by April 19, 2023, and shall constitute part of the instructions and specifications of this RFQ. Respondents to this RFQ must acknowledge all addenda when submitting their SOQ.

If the respondent is in doubt as to the meaning of any part of this RFQ, a written request for an interpretation may be submitted to IDWR Procurement. The IWRB will not be responsible for supplying any explanations or interpretations unless a request to do so is submitted in writing as described in this RFQ.

1.4 Informational meeting

An informational meeting will be held at 322 E Front Street 6th Floor, Conference Room 602C Boise, Idaho on April 11, 2023, at 10:00 a.m. to provide further clarifications and answer questions about the RFQ. A web conference link for the meeting will be available to Respondents not able to attend in person. Contact Glyn Roberts by email for the meeting link at: idwr.purchasing@idwr.idaho.gov All answers and pertinent discussion items will be posted via an addendum on the IDWR web page at: <https://idwr.idaho.gov/solicitations/>.

1.5 RFQ Schedule

The following is a schedule of events concerning the RFQ process:

RFQ issued.	March 29, 2023
Informational meeting at: IDWR, 322 E Front Street, Boise, Idaho, 6 th floor, Conference Room 602C.*	April 11, 2023, 10:00 a.m. MT
Deadline for questions on the RFQ.	April 14, 2023, 5:00 p.m. MT
Addenda for responses to questions posted to IDWR web page: https://idwr.idaho.gov/solicitations/ .	April 19, 2023
SOQ submission deadline. No SOQ packages will be accepted after this deadline.	May 5, 2023, 4:00 p.m. MT
SOQ opening at: * IDWR, 322 E Front Street, Boise, Idaho, Conference Room 602B.	May 5, 2023, 4:05 p.m. MT
Notify Respondents and Pre-Qualified Contractors.	May 19, 2023
Invitation to Bid and Bid Process.**	June – July 2023
Award Contract.**	July – August 2023
Construction.**	In-Water Work Begins November 1, 2023

* Web conference link for virtual meeting will be available. Contact Glyn Roberts for meeting link: idwr.purchasing@idwr.idaho.gov

** Estimated dates for ITB and Project construction. For reference only. Subject to change.

1.6 IWRB Rights

The issuance of this RFQ does not constitute an assurance by the IWRB that any contract will actually be entered into by the IWRB. The IWRB expressly reserves the right to the following:

- Waive any immaterial defect or informality in any response or response procedure.
- Reject any and all SOQs.
- Supplement, amend, or otherwise modify the RFQ prior to April 19, 2023.
- Cancel this RFQ with or without the substitution of another RFQ.
- Reissue another RFQ at the sole discretion of the IWRB.
- Request additional information and data from any or all Respondents.
- Extend the date for submission of responses.
- Disqualify any Respondent who fails to provide information or data requested in this RFQ.
- Disqualify any Respondent who provides unverified information or inaccurate data.
- Disqualify any Respondent on the basis of an identified financial conflict of interest.

By responding to this RFQ, the Respondent agrees that any finding by the IWRB of any fact in dispute as to this RFQ or its responses shall be final and conclusive, except as provided in this RFQ.

1.7 Confidential Information

All SOQs submitted in response to this RFQ will become property of the IWRB and will be kept confidential until successful pre-qualified contractors have been announced. Thereafter, except for financial statements, SOQs are subject to public inspection and disclosure under the Idaho Public Records Act, Idaho Code, Title 74, Chapter 1. Please keep a copy of all submitted information, as the original documents will not be returned. If a Respondent believes that any portion of its SOQ or related communication contains trade secrets or other proprietary information that the Respondent believes would cause substantial injury to its competitive position if disclosed, the Respondent may make specific request that the IWRB withhold from disclosure the proprietary information by marking that portion on each page containing such proprietary information as confidential. By submitting an SOQ with portions marked confidential, a Respondent represents its determination that portions marked as such qualify for exemption from disclosure under the Idaho Public Records Act. A Respondent may not designate its entire SOQ as confidential. The IWRB will not honor such designations and will disclose submittals so designated to the public. If a Respondent requests that marked information be withheld from disclosure and the IWRB complies with the Respondent's request, the Respondent shall assume all responsibility for any challenges resulting from the non-disclosure and shall indemnify and hold harmless the IWRB from and against all damages, including but not limited to attorney's fees that may be awarded to the party requesting the Respondent

information, and pay any and all costs and expenses related to the withholding of Respondent's information. Respondent shall not make a claim, sue, or maintain any legal action against the IWRB or its director, employees, agents, or advisors concerning the withholding from disclosure of Respondent's information. Absent a written request from a Respondent that the IWRB withhold from disclosure information identified as confidential, the IWRB shall have no obligation to withhold the information and may release the information without incurring any liability to Respondent.

1.8 Respondent Costs Incurred

The Respondent will be responsible for all costs incurred in preparing or responding to this RFQ. All materials and documents submitted in response to RFQ 2023-02, except marked proprietary materials, the return of which is specifically requested, and shipping fees furnished by the Respondent, become the property of IWRB and will not be returned.

1.9 General Requirements

It is essential that RFQ Respondents be adequately staffed with experienced personnel capable of and devoted to the successful accomplishment of work to be performed under the contract. Care should be taken to identify subcontractors and key personnel listed in the SOQ. The ITB will require respondents to identify its project team during the bidding process. Without disclosure and written approval of replacement key personnel by IWRB staff, teams presented in the bidding process that are inconsistent with a SOQ project team will result in disqualification. Replacement key personnel submitted for approval during the bidding process must have qualifications and experience at least equal to those listed in the SOQ.

A response to the SOQ does not obligate the contractor to the Project or IWRB in any way. Pre-qualification by the RFQ does not obligate the contractor to submit a bid as part of the Project's construction bidding process.

2. Description of Project

2.1 Services Required of Contractor

The IWRB is seeking a contractor to complete work begun, but not completed, by a previous contractor. The original project included addition of steel extensions and stiffeners to the Dam's Tainter gates, replacement of the Tainter gates' rubber J-Seals, installation of three vibrating wire piezometers, a 15-foot extension of the concrete apron below the Dam, placement of armor and bedding stone above and below the Dam, repairs to damaged concrete piers, renovation and repair of steel handrails, and renovation of the access road. The previous contractor completed the addition of the steel extensions, completed a portion of the concrete apron, installed two vibrating wire piezometers, placed a portion of the armor and bedding stone, and completed a portion of the access road.

The current project will require the following work:

- Inspection of the steel extensions on the Dam's Tainter Gates and, where necessary, renovation and repair.
- Replacement of all Tainter Gates' rubber J-Seals.
- Completion of the 15-foot concrete apron extension.
- Placement of the remaining armor and bedding stone below the Dam.
- Repair of damaged concrete to existing Pier 6.
- Renovation and repair of existing handrails.
- Inspection of the soil beneath the existing and new concrete Dam aprons and, where necessary, fill voids.
- Completion of gravel access road improvements.
- Installation of vibrating wire piezometer and ancillary facilities.
- Additional ancillary work according to Contract Documents.

To perform the Project work, it will be necessary for the contractor to design, construct, and operate a temporary combined bypass, cofferdam, and dewatering system that will allow for inspection and repair of voids beneath the apron near the middle of the dam, place geotextile, bedding stone and armor stone, and to place concrete to complete the 15-foot apron extension.

The following preliminary Project documents, which will be finalized for the ITB, are included with this RFQ as a reference for Respondents and to help Respondents understand the project and expectations of the successful bidder.

- Attachment D – Draft Construction Drawings
- Attachment E – Draft Technical Specifications with Appendices
- Attachment F – Draft Fixed Price Construction Contract

3. Instructions to Respondents

3.1 Preparations and Format of SOQs

SOQ submittal should conform with the criteria below. Failure to conform with these criteria may result in your submittal package not being considered by the evaluation committee.

SOQs shall be enclosed in a sealed, opaque envelope and must be clearly mark RFQ 2023-02, Priest Lake Outlet Dam Contractor Pre-Qualification. SOQ submittal packages must include five hard copies and a USB drive containing a PDF electronic copy of the SOQ submittal. Submittals must be typewritten for ease of evaluation. Contents of SOQs must include:

A. Cover Page (see Attachment A).

- B. The body of the submission should:
 - a. Respond to criteria 4.1 through 4.2. Each section must be identified separately and be clearly marked.
 - b. Be no more than 18 pages long total. This does not include copies of contractor licenses and certifications.
 - c. Be in a legible font, no less than 11 points.
- C. Signed Certification Regarding Debarment, Suspension, and Other Responsibility Matters (see Attachment B).
- D. Signed Signature Page (see Attachment C).
- E. Include contact information for all references cited. These may be included in a separate section.
- F. Include copies of relevant contractor licenses or certifications used to support team member qualifications. These may be included in a separate section.

SOQs will be dated and time stamped as they are received. Proposals received after May 5, 2023, at 4:00 p.m. will be deemed non-responsive and not considered. It is the sole responsibility of the Respondent to submit its SOQ to the correct office prior to the date and time specified.

3.2 Submittal Date of Response

SOQs shall be submitted to and received by IDWR Procurement no later than 4:00 p.m. MT on May 5, 2023. SOQs shall be submitted to:

By Mail to:

IDWR Procurement
 Attn: Glyn Roberts
 IWRB – RFQ No. 2023-02
 322 E Front Street
 PO Box 83720
 Boise, ID 83720-0098

By Personal or Courier Delivery to:

IDWR Procurement
 Attn: Glyn Roberts
 IWRB – RFQ No. 2023-02
 322 E Front Street, Suite 648
 Boise, ID 83702

Note: If mailing the SOQ, please allow additional time to ensure the package arrives before the deadline.

SOQs are to be sealed and clearly marked “RFQ 2023-02 Priest Lake Outlet Dam Improvements Contractor Pre-Qualification” along with the Respondent’s name and address.

3.3 Appeals

Written objections to prequalification procedures must be received by IDWR, at the location provided in Section 3.2, at least three (3) business days before the date and time that SOQs are due.

3.4 Pre-Qualification of Respondents

The Respondents shall be deemed pre-qualified to submit bids when formal notice is given by IWRB staff. The IWRB anticipates that it will provide formal notice by 5:00 p.m. MT May 19, 2023.

4. Evaluation Criteria

4.1 Company Overview and Key Personnel Experience

Provide a brief overview of the work history, work experience, and capabilities of the prime contractor, subcontractor, and Key Personnel who will perform Project work identified below. Each contractor and subcontractor must have a minimum of one Key Personnel identified. Depending on experience and qualifications, one person may be identified as a Key Personnel for multiple disciplines. Provide copies of certifications and licenses for companies and Key Personnel.

A. Prime Contractor & Construction Management

- a. Company Name
- b. Superintendent – Key Personnel
- c. QA/QC Manager – Key Personnel
- d. Safety Manager – Key Personnel
- e. Submittal and Shop Drawing Manager – Key Personnel

B. Bypass, Shoring, Cofferdam, and Dewatering Plan

- a. Company Name
- b. Design Engineer of Record – Key Personnel
 1. Idaho PE License required.

C. Execution of Bypass, Shoring, Cofferdam, and Dewatering System

- a. Company Name
- b. Key Personnel & responsibilities.

D. Concrete Installation and Finishing

- a. Company Name
- b. Key Personnel & responsibilities.

E. Concrete Testing Agency

- a. Company Name
- b. Key Personnel
 1. ACI concrete field-testing technician, grade 1 certification or equivalent certification required.

- F. Tainter Gate J Seal Replacement
 - a. Company Name
 - b. Key Personnel & responsibilities.
- G. Welding Inspection and Repair of Steel Tainter Gate Extension
 - a. Company Name
 - b. Key Personnel & responsibilities.
 - 1. AWS Certified Welder certification according to AWS D1.1/D1.1M required.
- H. High Performance Cementitious Material Installation for Repair of Pier 6
 - a. Company Name
 - b. Key Personnel & responsibilities.

Other subcontractors used for the project but not performing the work identified above are not required to be identified in Respondent's SOQ.

4.2 Relevant Experience

Provide project examples according to the subsections below in which the company and/or subcontractors have performed similar construction work. The same project may be used in multiple subsections if work performed is separately relevant to each subsection. Key Personnel identified in Section 4.1 must be directly involved in project examples presented in Section 4.2. For newly hired Key Personnel, projects completed while at other companies may be presented.

For each project example, identify:

- A. Key Personnel individual and position or responsibilities in project example.
- B. Previous employer (if other than current company presented for this project).
- C. Name of facility owner with contact person reference with telephone and email address
- D. Location, size, and description of project
- E. Dates the work was performed.
- F. Description of work performed.
- G. At least one picture of project.

4.2.1 Relevant Experience – In-Water Construction & Execution of Bypass, Shoring, Cofferdam, and Dewatering Systems

Provide a minimum of three (3) project examples in the past ten years in which the company and/or subcontractors have performed similar construction work requiring cofferdams, dewatering, temporary bridge access structures, and/or in-water construction work. Include discussion of construction staging and planning, permit

compliance, turbidity monitoring, and mitigation requirements for each project example.

4.2.2 Relevant Experience – Hydraulic Control Structures

Provide a minimum of two (2) project examples in the past ten years in which the company and/or subcontractors have performed similar construction work on dam or water resource structures including gate repair or adjustment, gate seal modifications or replacement, and/or concrete structure repair or placement. At least one (1) project presented must be related to work on gates of hydraulic control structure or similar hydraulic control structure.

4.2.3 Relevant Experience – Bypass, Shoring, Cofferdam, and Dewatering Plan Design

Provide a minimum of three (3) project examples in the past ten years in which the Professional Engineer identified to prepare the dewatering plan for the Project has prepared dewatering and cofferdam plans for projects of similar size, nature, and scale. In project examples, identify key considerations, calculations and analysis performed as part of preparing dewatering and cofferdam plans.

4.2.4 Relevant Experience – Concrete Installation and Finishing

Provide a minimum of three (3) successful project examples in the past ten years in which the concrete installing contractor has completed concrete work similar in material, design, and extent to that indicated for this Project. At least one (1) project presented must be related to in-water concrete work, and one (1) project presented must be related to cold weather construction.

5. Selection Process

5.1 Scoring Evaluation

A selection committee will evaluate each SOQ on a pass/fail basis. To be considered a successful respondent must receive a “Pass” for each evaluation criterion. As part of the process, the IWRB will review contractor licenses and certifications for compliance with certifications required in specifications and conduct initial checking by phone and/or email of the reference(s) offered by the Respondent. One or more of the listed references will be consulted, and information obtained may be used to verify the validity of information included in SOQs. Non-responsive references or references that fail to support applicable SOQ information may disqualify the Respondent from being selected as a pre-qualified contractor for the ITB. Deficient contractor licenses or certifications may disqualify the respondent from being selected as a pre-qualified contractor. Staff currently employed by the IWRB shall be excluded from being named as a reference by the Respondent.

Criterion Number	Criterion	Evaluation
4.1	Company Overview and Key Personnel Experience	Pass/Fail
4.2.1	Relevant Experience – In-Water Construction & Execution of Bypass, Shoring, Cofferdam, and Dewatering Systems	Pass/Fail
4.2.2	Relevant Experience – Hydraulic Control Structures	Pass/Fail
4.2.3	Relevant Experience – Bypass, Shoring, Cofferdam, and Dewatering Plan Design	Pass/Fail
4.2.4	Relevant Experience – Concrete Installation and Finishing	Pass/Fail
TOTAL: Submittal Package		Pass/Fail

Table 1: Evaluation Criteria Summary

As a guide to selection committee members and ensuring transparency, for each Criterion:

- “Fail” is equivalent of an incomplete response, insufficient experience, insufficient licenses and certifications, or non-supportive references. Projects presented are not applicable projects or project approach responses do not demonstrate an understanding of the project. Key Personnel were not directly involved in projects presented.
- “Pass” is equivalent of satisfactory responses that demonstrate an understanding of the project. Key Personnel proposed for this Project, identified in Section 4.1 were directly involved in project examples presented in Section 4.2. Projects presented in Section 4.2 are relevant to this project. Licenses and certifications presented meet Project requirements.

5.2 Clarifications and Supplemental Information

During the evaluation, validation, and selection process, IWRB may request answers from the Respondent to specific questions, orally and/or in writing. Clarifications requested and questions will be limited to the scope of services, approach to the Project, and pertinent experience.

5.3 Selection

Refer to Section 3.4 for Respondent notification of Pre-Qualified Contractor List.

The contents of the submittal may be used in a legal contract. Candidates should be aware that methods and procedures proposed could become contractual obligations.

End RFQ

PRIEST LAKE WATER MANAGEMENT PROJECT OUTLET DAM IMPROVEMENTS

PRELIMINARY TECHNICAL SPECIFICATIONS

Division 01
Division 02
Division 03
Division 05
Division 31
Division 35
Appendices

TABLE OF CONTENTS

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 41 00	Precast Structural Concrete
03 73 00	Concrete Repair
05 05 00	Galvanizing
05 12 00	Structural Steel Framing
31 00 00	Excavation and Fill
31 09 13	Geotechnical Instrumentation and Monitoring
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

DIVISION 1 – GENERAL REQUIREMENTS
Section 01 00 00 – General Requirements

agencies where side agreements or special easements have been made by the Contractor or where the Contractor's operations, for any reason, have not been kept within the construction right-of-way obtained by the Owner.

2. It is anticipated that the required easements and permits will be obtained before construction is started. However, should the procurement of any easement or permit be delayed, the Contractor shall schedule and perform the work around these areas until such a time as the easement or permit has been secured.

I. LAND MONUMENTS

1. The Contractor shall notify the Owner's Representative of any existing Federal, State, City, County, and private land monuments encountered. Private monuments that are within 5 feet of the trench centerline shall be preserved or replaced by a licensed surveyor at the Owner's expense. When Government monuments are encountered, the Contractor shall notify the Owner's Representative at least 2 weeks in advance of the proposed construction in order that the Owner's Representative will have ample opportunity to notify the proper authority and reference these monuments for later replacement.

1.04 TIME FOR COMPLETION OF PROJECT

- A. Substantially complete project in accordance with the Contract Drawings and Specifications within the timeframe outlined herein. Final Completion of the project, in accordance with Contract Documents shall occur within 30 calendar days from substantial completion date.
- B. All in-water work shall be completed by March 15th, 2024. All other work shall be completed before the date set forth in the Contract Documents. The project shall be substantially completed by April 1st, 2024.
- C. No time extensions or extra compensation will be granted for delays due to inclement weather conditions or due to a delayed start.

1.05 PROJECT START DATE

- A. The Project Start Date shall be identified in the Notice to Proceed. No work is allowed within the project site limits or laydown and access area prior to Tuesday, September 15th, 2023. Work below OHW shall start on or around November 1st, 2023. No work below OHW is allowed prior to November 1st, 2023. Hauling and stockpiling of stone at the designated site(s) and inspection of existing stockpiled material outlined in Appendix C – Stockpiling Areas, may start before the Project Start Date.

TABLE OF CONTENTS

ARTICLE

1	CONTRACT DOCUMENTS
2	REPRESENTATIONS AND WARRANTIES OF THE CONTRACTOR
3	INTENT AND INTERPRETATION
4	OWNERSHIP OF DOCUMENTS
5	CONTRACTOR'S PERFORMANCE
6	TIME FOR CONTRACTOR'S PERFORMANCE
7	FIXED PRICE AND CONTRACT PAYMENTS
8	INFORMATION AND MATERIAL SUPPLIED BY THE OWNER
9	STOP WORK ORDER
10	DUTIES, OBLIGATIONS, AND RESPONSIBILITIES OF THE CONTRACTOR
11	INDEMNITY
12	OWNER'S REPRESENTATIVE
13	CLAIMS
14	RESOLUTION OF CLAIMS
15	SUBCONTRACTORS
16	CHANGES IN THE WORK
17	DISCOVERING AND CORRECTING DEFECTIVE OR INCOMPLETE WORK
18	TERMINATION BY THE CONTRACTOR
19	OWNER'S RIGHT TO SUSPEND CONTRACTOR'S PERFORMANCE
20	TERMINATION BY THE OWNER
21	CONTRACTOR'S LIABILITY INSURANCE
22	OWNER'S LIABILITY INSURANCE
23	PROPERTY INSURANCE
24	PERFORMANCE AND PAYMENT BONDS
25	PROJECT RECORDS
26	MISCELLANEOUS PROVISIONS
27	EQUAL OPPORTUNITY
28	SUCCESSORS AND ASSIGNS
29	SEVERABILITY
30	MEDIATION
31	WAIVER OF CONSEQUENTIAL DAMAGES

EXHIBITS

- A** Project identification, addenda, contract amount, contract time, accepted alternates, liquidated damages
- B** Addresses and representatives (including limitations)
- C** List of drawings and specifications
- D** Contractor's affidavit concerning taxes
- E** Named subcontractors
- F** Notice to proceed
- G** Request for tax release
- H** Release of claims
- I** Conditions precedent to final payment

FIXED PRICE CONSTRUCTION CONTRACT FOR PRIEST LAKE OUTLET DAM IMPROVEMENTS

This fixed price construction contract for Priest Lake 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, attached 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.

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.

- 2.5** 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 within the Contract Documents, 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 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 made in the Contract Documents.

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, 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.

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 The Fixed Price Contract Amount will be apportioned and paid for according to the Bid Schedule indicated in Exhibit A and Contractor's Schedule of Values. 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 lump sum (LS) bid items within the Bid Schedule 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 Bid Schedule and 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. Bid items within the Bid Schedule with units CY, SY, Ton, CF, and LF will be paid according to the estimated quantity within the Bid Schedule. Work items will not be paid according to the measured and installed in-place quantity. If it is shown from verifiable measurements that to complete the work according to the Contract Documents, actual installed quantities exceeded the estimated quantities within the Bid Schedule by greater than 25%, compensation for the additional work will be determined according to Article 16.3.4.

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, described in Article 24, 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 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 7.15. 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 7.15, 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 In Exhibit B, the Owner has identified an Owner's Representative and Owner's Construction Manager to represent the Owner.

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 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 this reference 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 Contractor shall strictly supervise the Work and bears 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 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 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 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.

10.20 The Contractor Superintendent or approved replacement will be present for all meetings, including Substantial Completion and Final Inspection walkthroughs.

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 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. 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.

14.2 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.

14.3 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.

14.4 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.

14.5 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

WATKINS

EXHIBIT B

Lindsay Watkins

From: Lindsay Watkins
Sent: Monday, September 11, 2023 4:48 PM
To: Jennifer Reinhardt-Tessmer
Cc: Joe Meuleman; Madison Hyland; Steven Andersen; David Gardner; Nicholas Korst; Ashton Ruff
Subject: RE: strider evidence

Jennifer,

Your attempts to misrepresent my email correspondence and what has occurred is inappropriate and unproductive. When you requested one specific date in Boise to inspect the J Seal, we were looking into options to make that possible. Unfortunately, those did not come to fruition. When you inquired to confirm, I immediately informed you that the date in Boise was not a mutually agreeable date (consistent with the discovery responses), but the material would be available in Wenatchee on that same date. In addition, I have both (a) continued to inform you that it is ready and available in Wenatchee and (b) have offered available dates in Boise. What other specifics do you need? It is a physical piece of evidence. It is currently in Wenatchee at Strider's offices but Strider is willing to agree on a mutually agreeable date to bring it to Boise (and has offered multiple options). Let me know what additional questions you have or specifics you would like to know.

For the depositions, I had hoped we would come to a reasonable resolution. I also had hoped that there would be an additional date from the Court. I cannot control the Court's availability, and despite follow up and additional requests, as confirmed by the Court, that was the sole time and date available. If you would like to proceed via zoom, we can proceed and avoid the need for the hearing/additional briefing all together. If not, please provide proposed dates.

For the dam inspection, the lack of detail in your response indicates that the Board is failing to take any urgency with the inspection and resolution of this matter – as I am sure you recall, when we were told the Board would be seeking a continuance so that it could perform an inspection in November, our previous objection, in addition to the continued hardship on Strider, was that the Board has had ample time to schedule this inspection, but failed to do so. Strider does oppose any request to continue the trial or move the current stipulated dates. Finally, for the detail, it is still unclear what will be done to allow the inspection and in what location? Will a cofferdam be installed? In what location? The length of the dam or just a portion? Will the area be completely dewatered or only dewatered to a certain water level? Our experts will inspect to the extent possible given the conditions. Additional detail from the Board, given the Board is directing the Contractor as to what will be performed, would not only be helpful but is necessary to provide any more detail from our side.



Lindsay Watkins
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***Please note our new address above

This message contains information which may be confidential and privileged. Unless you are the addressee (or authorized to receive e-mail correspondence on behalf of the addressee), you may not use, copy or disclose to anyone this message or any information contained in this message. If you have received this message in error, please advise the sender by reply e-mail at lindsay.watkins@acslawyers.com, and delete this message.

From: Jennifer Reinhardt-Tessmer <jtessmer@kmclaw.com>
Sent: Monday, September 11, 2023 9:06 AM
To: Lindsay Watkins <lindsay.watkins@acslawyers.com>
Cc: Joe Meuleman <jmeuleman@meulemanlaw.com>; Madison Hyland <mhyland@kmclaw.com>; Steven Andersen <sandersen@kmclaw.com>; David Gardner <dgardner@kmclaw.com>; Nicholas Korst <nicholas.korst@acslawyers.com>; Ashton Ruff <aruff@kmclaw.com>
Subject: RE: strider evidence

Lindsay –

You have still not provided any specifics regarding when the evidence will be available. As you know, you sought and were granted, a discovery extension to our formal discovery request back in July to inspect the physical evidence, on the basis that you were retaining local Boise counsel and that would impact your answer to the pending discovery request. You then provided a discovery request stating it would be available in Wenatchee or Boise with your newly retained Boise counsel, Joe Meuleman. Nearly a month ago, I emailed you advising I wanted to inspect the evidence in Boise ahead of the September depositions in Boise. This request went unanswered despite my numerous follow up emails until close to depositions, where now you are advising you will not make it available in Boise until sometime in November. You state it is available in Wenatchee but provide no specifics. Your offers as to when and where the evidence will be available is a moving target, and it's causing unreasonable delay. Additionally, your filing of a motion for protective order to move the depositions to a different state so closely to the scheduled depositions (and sending a notice for hearing *the day before* the scheduled depositions) makes it logistically impossible to proceed with the depositions without knowing with certainty how the court will rule – although we are confident the law is on our side and the judge will rule accordingly. As such, we are forced to vacate the depositions and will reschedule for a later date when these issues can be resolved.

As to the dam inspection, we are waiting on details from the new contractor who is charged with creating the new schedule, but I am told it will be in late December. As to your question of “what is possible” – I’m not exactly sure what you mean by that. If your expert(s) have any tests or inspections they wish to conduct at the dam, please advise immediately and we will request with the new contractor.

Jennifer

KIRTON M'CONKIE
Jennifer Reinhardt-Tessmer
Shareholder
d 208.370.3323
c 208.957.3939

From: Lindsay Watkins <lindsay.watkins@acslawyers.com>
Sent: Friday, September 8, 2023 4:26 PM
To: Jennifer Reinhardt-Tessmer <jtessmer@kmclaw.com>
Cc: Joe Meuleman <jmeuleman@meulemanlaw.com>; Madison Hyland <mhyland@kmclaw.com>; Steven Andersen <sandersen@kmclaw.com>; David Gardner <dgardner@kmclaw.com>; Nicholas Korst <nicholas.korst@acslawyers.com>
Subject: Re: strider evidence

CAUTION: EXTERNAL

Jennifer,

As I indicated in my earlier email, there is not a mutually agreeable date in Boise for the J Seal inspection prior to the scheduled dep. Again, however, it has been and is available for inspection in Wenatchee prior to the noted deps. Let me know if there is a date that works for you to confirm.

We do intend to submit a motion for partial summary judgment to be heard November 8 at 4pm, so provided that date is not modified, that would be a mutually agreeable date for inspection in Boise or as previously proposed, during the site visit. If you want to move the depositions until after that I can check on availability. Also, I have yet to hear back on my email regarding the site inspection. When will you be providing an update and additional detail as to the site inspection?

Lindsay Watkins

lindsay.watkins@acslawyers.com

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On Sep 4, 2023, at 4:16 PM, Jennifer Reinhardt-Tessmer <jtessmer@kmclaw.com> wrote:

Lindsay,

Please provide dates when the evidence will be Joe's office in Boise in Sept. before the scheduled depositions on 9/20.

<image001.png>

Jennifer Reinhardt-Tessmer

Shareholder

d 208.370.3323

c 208.957.3939

From: Lindsay Watkins <lindsay.watkins@acslawyers.com>

Sent: Monday, September 4, 2023 2:45 PM

To: Jennifer Reinhardt-Tessmer <jtessmer@kmclaw.com>; Joe Meuleman <jmeuleman@meulemanlaw.com>

Cc: Madison Hyland <mhyland@kmclaw.com>; Steven Andersen <sandersen@kmclaw.com>; David Gardner <dgardner@kmclaw.com>; Nicholas Korst <nicholas.korst@acslawyers.com>

Subject: RE: strider evidence

CAUTION: EXTERNAL

Jennifer,

I disagree with the contentions in your email below.

As you quote, the discovery response provides that the J seal would be available at a mutually agreeable time at either the Wenatchee office or the Boise office. You just recently requested that they be made available on a single date in Boise. That date in Boise is **not** a mutually agreeable time for Strider. That date can occur, however, in Wenatchee. This response is entirely consistent with the discovery responses and Strider's obligations. You indicate your expert is flying, you have provided no basis for why the inspection cannot occur in Wenatchee. If the inspection must occur in Boise, I will review with Strider and provide some available dates. I am not aware of a mutually agreeable date before the deposition. We can discuss some additional dates for the deposition if that is an issue. If you need to inspect before the deposition, the J Seal is available in Wenatchee.

As you recall the Judge also indicated that there is likely additional J seal located at the disposal site. If you need that location, I can get that information as well.

Strider does object to you taking the seal out of Strider's possession especially with no detail or basis as to the intent. Is it now your position that Strider is not able to be present for the site inspection? What is your authority for that position?

Strider is not the party that continues to create discovery disputes, corroborated by the denial of the Board's initial, improper motion on this issue. The board has been well aware the J Seal is located in Wenatchee, while we were amenable to finding a mutually agreeable date (i.e., a date that works for *both* Strider and the Board), the one date you proposed is not that.

Also, please keep Nick Korst on emails in this matter. As was previously explained, he substituted for Ms. Southwell who is currently on leave dealing with a family medical issue.

[<image002.png>](#)

[<image003.png>](#)

Lindsay Watkins

lindsay.watkins@acslawyers.com

[<image003.png>](#)

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From: Jennifer Reinhardt-Tessmer <jtessmer@kmclaw.com>

Sent: Monday, September 4, 2023 12:45 PM

To: Lindsay Watkins <lindsay.watkins@acslawyers.com>; Joe Meuleman

<jmeuleman@meulemanlaw.com>

Cc: Madison Hyland <mhyland@kmclaw.com>; Steven Andersen <sandersen@kmclaw.com>; David

Gardner <dgardner@kmclaw.com>

Subject: RE: strider evidence

Lindsay,

This is my attempt to formally meet and confer with you on this topic prior to filing a motion to compel production in Boise. As you know, you previously refused to produce the evidence for physical inspection outside of formal discovery, which we served. You then sought an extension on that formal discovery on the basis that you were in the process of retaining Boise counsel, and you wanted to incorporate that Boise counsel into your discovery response. We granted that extension. Your discovery response provided as follows:

<image004.png>

Knowing that the depositions of your clients are approaching, I have reached out to schedule the inspections. I requested the evidence be available for inspection in Boise on 8/16. I emailed three times total about this and only now, nearly three weeks later after several exchanges, are you denying the request and without any justification and insisting again we travel to Winatchee. Not only in this unreasonable, it's inconsistent with your own discovery response. Further, the Striders' availability for my experts to inspect evidence is irrelevant. This is not a mutual exam. You have no right to "supervise" or observe our expert's non-destructive examination, nor do you have a right to witness our expert's exam on-site at the dam. Your pattern of fighting every stage of discovery is a disservice to your clients and only serves to increase costs and delay proceedings. Please advise by tomorrow if the evidence will be made available with your local counsel where your client filed this action or if a motion to compel production will be required. Please note we will need to delay depositions to accommodate the motion and examination of evidence.

Jennifer

From: Jennifer Reinhardt-Tessmer <jtessmer@kmclaw.com>
Sent: Monday, September 4, 2023 11:18 AM
To: Joe Meuleman <jmeuleman@meulemanlaw.com>
Cc: Lindsay Watkins <lindsay.watkins@acslawyers.com>; Madison Hyland <mhyland@kmclaw.com>
Subject: RE: strider evidence

Joe and Lindsay –

Our expert has booked his travel for the evidence inspection. To confirm your discovery response is still accurate, the physical evidence in your possession consists only of old and new J-seal material. Please let me know asap if this is incorrect so he can plan accordingly. Thank you.

Jennifer

<image001.png>

Jennifer Reinhardt-Tessmer
Shareholder
d 208.370.3323
c 208.957.3939

From: Jennifer Reinhardt-Tessmer
Sent: Thursday, August 24, 2023 5:38 PM
To: Joe Meuleman <jmeuleman@meulemanlaw.com>

Cc: Lindsay Watkins <lindsay.watkins@acslawyers.com>; Madison Hyland <mhyland@kmclaw.com>
Subject: strider evidence

Hi Joe –

Our expert will be here Sept. 13th to inspect the evidence. It's my understanding it's being kept at your office. Can I plan to pick it up the evening of 9/12 or morning of 9/13 and return it at the end of the day? Thanks.

<image005.png>

Boise Office
1100 W. Idaho St. #930
Boise, ID 83702
kmclaw.com

Jennifer Reinhardt-Tessmer
Shareholder

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c 208.957.3939
jtessmer@kmclaw.com

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<image001.png>

Jennifer Reinhardt-Tessmer
Shareholder

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From: Lindsay Watkins <lindsay.watkins@acslawyers.com>
Sent: Monday, September 4, 2023 12:55 PM
To: Jennifer Reinhardt-Tessmer <jtessmer@kmclaw.com>; Joe Meuleman <jmeuleman@meulemanlaw.com>
Cc: Madison Hyland <mhyland@kmclaw.com>
Subject: RE: strider evidence

CAUTION: EXTERNAL

Jennifer,

I was looking 9/13 but that date does not work for Strider. If you want to review it on that date, it is available in Wenatchee, WA as stated in the discovery responses. My recommendation is that the J-Seal be reviewed during the site inspection in November. Do you have a response to my previous email on that topic? We also do not agree to it be taken off site.

<[image002.png](#)>

<image003.png>

Lindsay Watkins
lindsay.watkins@acslawyers.com

<image003.png>

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