PROJECT MANUAL
FOR:
Roofing
State of Idaho, Southwest Region
DPW Project No.'s 14859 & 14860

May 2, 2014

Jon Frew FOR TM

TIM MASON
ADMINISTRATOR, DIVISION OF PUBLIC WORKS

State of Idaho, Division of Public Works
502 N. 4th Street
Boise, Idaho 83720

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CONTENTS

ADVERTISEMENT FOR BIDS	AB-1
INSTRUCTIONS TO BIDDERS	ITB-1
BID PROPOSAL	BP-1
ATTACHMENT A: CONTRACTOR'S AFFIDAVIT CONCERNING ALCOHOL & DRUG-FREE WORKPLACE	BP-4
ATTACHMENT B: BIDDER'S ACKNOWLEDGEMENT STATEMENT	BP-5
ATTACHMENT C: CONTRACT	A-1
EXHIBIT A – OWNER'S PROJECT IDENTIFICATION INFORMATION	A-30
EXHIBIT B – ADDRESSES AND AUTHORIZED REPRESENTATIVES	A-31
EXHIBIT C – LIGHT CONSTRUCTION SPECIFICATIONS	A-32
EXHIBIT D - CONTRACTOR'S AFFIDAVIT CONCERNING TAXES	A-34

ADVERTISEMENT FOR BIDS

Sealed proposals will be received by Division of Public Works, State of Idaho, at 502 N. 4th St, PO Box 83720, Boise, Idaho 83720-0072 until 1:00 pm, prevailing local time on Tuesday, June 5, 2014 for DPW Project No. 14859 & 14860 Roofing Service Contracts, State of Idaho, Southwest Region. Proposals will be opened and publicly read at the above hour and date.

Specifications, proposal forms and other information are on file for examination at Division of Public Works, State of Idaho, 502 N. 4th St, Boise, Idaho and on the Division of Public Works website at dpw.idaho.gov.

A bid bond in the amount of $5,000 is required.

A Public Works Contractor's License, class C or higher, for the State of Idaho is required to bid on this work.

Estimated annual expenditure: One Hundred Thousand Dollars ($100,000)

Jan Frew, Deputy Administrator
Division of Public Works

END OF ADVERTISEMENT FOR BIDS

INSTRUCTIONS TO BIDDERS

GENERAL PROVISIONS

DEFINITIONS: Capitalized terms not otherwise defined in these Instructions to Bidders ("Instructions") shall have the meaning given to them in the Division of Public Works' Service Contract between Owner and Contractor, attached to the Project Manual as Attachment D and incorporated therein and herein by this reference (the "Contract").

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

REJECTION OF BIDS, WAIVER OF INFORMALITIES OR CANCELLATION: Prior to the effective date of a contract, the Administrator of the Division of Public Works shall have the right to accept or reject all bids, to waive any minor deviations/informalities or to cancel the bid.

ORAL INFORMATION: Questions concerning a bid must be directed in writing to the Owner no less than ten (10) calendar days before bids are due unless provided otherwise via an addendum. Oral information is not binding and any reliance by a bidder on any oral information or representation is at the bidder's sole risk. Any information given a prospective bidder in response to a written question will be provided to all prospective bidders by an addendum, if such information is necessary for purposes of submitting a bid or if failure to give such information would be prejudicial to uninformed bidders.

PUBLIC RECORDS: The Idaho Public Records Law, Sections 9-337 through 9-348, Idaho Code, allows the open inspection and copying of public records. Public records include any writing containing information relating to the conduct or administration of the public's business prepared, owned, used or retained by a State or local agency regardless of the physical form or character. Unless exempted by the Public Records Law, your bid will be a public record subject to disclosure under the Public Records Law. Any questions regarding the applicability of the Public Records Law should be addressed to your legal counsel prior to submission.

FORM OF AGREEMENT: Unless otherwise specified in the bid documents, the agreement between the successful bidder and the Owner ("State of Idaho") shall be substantially in the form of the Contract.

PERFORMANCE AND PAYMENT BONDS: A performance bond and payment bond are required for this Contract, each in an amount of not less than one hundred percent (100%) of the Estimated Annual Expenditure. The performance and payment bonds shall be AIA Document A312, 2010 or the most recent Edition, or a standard surety form certified approved to be the same as the AIA A312 form and shall be executed by a surety or sureties reasonably acceptable to the Owner and authorized to do business in the State of Idaho. Bonds must be provided within ten (10) calendar days following receipt of a Notice of Intent to Award.

BID SUBMISSION PROCESS

BID DOCUMENTS: The bid documents are available from the Owner or as provided in the Invitation to Bid or Advertisement for Bids. The responsibility is on the bidder to use a complete set of bid documents to prepare its bid and the Owner shall not incur any liability for the bidder's failure to do so. Bidders obtain no ownership interest or any use rights, except to use in preparation of their bid, by issuance of the bid documents.

ADDENDA: In the event it becomes necessary to revise any part of the bid documents, addenda will be issued. Information given to one bidder will be available to all other bidders if such information is necessary for purposes of submitting a bid or if failure to give such information would be prejudicial to uninformed bidders. It is the bidder's responsibility to check for addenda prior to submitting a bid. A bidder is required to acknowledge receipt of all addenda by identifying the addenda numbers in the space provided on the bid proposal form. Failure to do so may result in the bid being declared non-responsive. No addenda will be issued less than four (4) calendar days before the closing date unless the bid closing date is extended.

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

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

Bid Proposal Form
Contractor's Affidavit concerning Alcohol and Drug-Free Workplace
Bidder's Acknowledgement Statement
Bid Bond (bid security)

The person signing the bid must initial any and all changes appearing on any of the bid forms. If the bidder is a corporation or other legal entity, the bid forms must be signed by an authorized designee. Oral, telephonic, telegraphic, facsimile or other electronically transmitted bid forms and/or signatures will not be considered.

BID PRICES: The bid form may require bidders to submit bid prices for one (1) or more items on various bases, including, but not limited to, lump sum base bid, lump sum bid alternate prices, unit prices or any combination thereof.

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

SEALED ENVELOPE: Bids shall be submitted in a sealed envelope with the following clearly printed on the outside of the envelope:

SEALED BID, Roofing Service Contracts, State of Idaho, Southwest Region
DIVISION OF PUBLIC WORKS

MAILED BIDS: When bids are mailed or shipped, the sealed envelope containing the bid shall be enclosed in a separate mailing envelope with the notation "SEALED BID ENCLOSED" on the face thereof. If mailed, the mailing envelope shall be addressed as follows:

Division of Public Works
502 N. 4th Street
P. O. Box 83720
Boise, Idaho 83720-0072

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

BID CLOSING DECLARED: Immediately prior to the bid opening, the Owner's representative will declare the official bid closing. Any part of a bid not received prior to the bid closing declared by the Owner will not be considered and will be returned to the bidder unopened. All timely-bids shall be taken under advisement.

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

affidavit is attached to the Bid Proposal as Attachment A and is hereby incorporated herin and therin by this reference.

EXECUTIVE ORDER 2009-10: Bidder shall prepare and submit its bid based on compliance with Executive Order 2009-10 (http://gov.idaho.gov/mediacenter/execorders/eo09/eo_2009_10.html) and shall substantiate that all employees providing services or involved in any way on projects funded directly by or assisted in whole or part by State funds or federal stimulus dollars can legally work in the United States. Any knowing or willful failure to confirm that an employee is eligible to work in the United States constitutes a material breach and shall be cause for the imposition of monetary penalties up to five percent of the Service Contract Estimate of Annual Expenditures, per violation and/or termination of this Contract.

BIDDER'S ACKNOWLEDGEMENT STATEMENT: The Bidder's Acknowledgement Statement, attached to the Bid Proposal as Attachment C and hereby incorporated therein and herein by this reference, must be completed and included or the bid may be found non-responsive.

PUBLIC WORKS CONTRACTOR'S LICENSE: This Project is not financed in whole or in part by federal funds. Bids will be accepted from those Contractors only (prime contractors, subcontractors and/or specialty contractors) who, prior to the bid opening, hold current licenses as public works contractors in the State of Idaho.

IDAHO LABOR REQUIREMENTS: This Project is subject to the provisions of Sections 44-1001 and 44-1002, Idaho Code, dealing with labor preference as issued by the Public Works Contractors State License Board.

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

IDAHO PUBLIC WORKS CONTRACTOR LICENSE: With regard to possessing an appropriate license or certificate of competency, the Contractor must have at the time of the bid opening and must maintain throughout the duration of the project, a current license in the appropriate category (class, type and specialty category) as issued by the Public Works Contractors State License Board.

BID SECURITY

AMOUNT AND FORM OF SECURITY: To be considered, bids must be accompanied by an acceptable bid security in an amount of $5,000.00. The security may be in the form of a bond or a certified or cashier's check. A standard surety bid bond form meeting all the conditions of AIA Document A310 is acceptable and, if used, must include a certified and current copy of the power of attorney if the bond is executed by the attorney-in-fact on behalf of the surety.

FORFEITURE: A successful bidder who fails to sign the Service Contract Agreement or furnish the required bonds and insurance certificates within ten (10) calendar days following the receipt of notice of intent to award a Contract is subject to forfeiture in accordance with Section 54-1904E, Idaho Code.

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

BID WITHDRAWAL

PRIOR TO BID CLOSING: If a bid has been submitted, it may be withdrawn in person by a bidder's authorized representative before the opening of the bids. A bidder's representative will be required to show identification and sign on a bid summary sheet before it will be released. **THE DIVISION OF PUBLIC WORKS RESERVES THE RIGHT TO REQUIRE PRESENTATION OF EVIDENCE SATISFACTORY TO IT TO ESTABLISH THE**

AUTHORITY TO ACT ON BEHALF OF THE SUBMITTING BIDDER. After bid closing, no bid may be withdrawn except in strict accordance with these Instructions or applicable law.

BID MODIFICATION

PRIOR TO BID CLOSING: If a bid has been submitted, it may be modified by the submission of a written document contained in a separate sealed envelope marked "Bid Modification from [Name of Bidder] for DPW Project No: 14859 & 14860. DPW Project Name: "Roofing Service Contracts, State of Idaho, Southwest Region." **THE DOCUMENT MODIFYING THE BID MUST BE SIGNED IN INK BY AN AUTHORIZED REPRESENTATIVE OF THE SUBMITTING BIDDER. THE DIVISION OF PUBLIC WORKS RESERVES THE RIGHT TO REQUIRE PRESENTATION OF EVIDENCE SATISFACTORY TO IT TO ESTABLISH THE AUTHORITY TO ACT ON BEHALF OF THE SUBMITTING BIDDER. NO OTHER FORM OF MODIFICATION (INCLUDING TELEPHONE, FACSIMILE OR ELECTRONIC MAIL) WILL BE ACCEPTED.** After bid closing, no bid may be withdrawn except in strict accordance with these Instructions or applicable law.

RELIEF FROM BIDS

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

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

BIDDER'S REPRESENTATIONS

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

1. The person signing the bid is authorized to bind the bidder;
2. It has all required licenses, permits or other authorizations necessary to submit its bid;
3. It has received, read and reviewed the Contract, has submitted any questions in writing regarding the same and has received an answer to such questions;
4. Its bid is based upon the requirements of the Contract without exception;
5. It is in compliance with Title 72, Chapter 17, Idaho Code, regarding a drug-free workplace and has included the required affidavit regarding the same;
6. Its bid is in compliance with Executive Order 2009-10 regarding employment of persons not authorized to work in the United States;
7. It will retain bid security and hold and honor all bid prices for forty-five (45) calendar days from the date of bid opening, and cannot be withdrawn after the bid opening;
8. Its bid prices shown for each item on the bid proposal form include all labor, material, equipment, overhead and compensation to complete all of the Work for that item.

BID AWARD

AWARD METHOD: Service contracts for the State of Idaho are awarded to the lowest responsible and responsive bidders. The low bidders, for purposes of award, shall be the responsible and responsive bidders offering the low aggregate amount for the Total Bid Amount, plus any weighting criteria selected by the Owner, and identified with the bid documents. The Owner anticipates issuing two contracts, one to each contractor submitting the two lowest bids. Award is also subject to the requirements of Idaho Code, including Title 67, Chapter 57; Title 67, Chapter 23; Title 54, Chapter 19; and Title 44, Chapter 10. It is the bidder's responsibility to conform to **ALL** applicable federal, state and local statutes or other applicable legal requirements. The information provided herein is intended to assist bidders in meeting applicable requirements but is not exhaustive and the Owner will not be responsible for any failure by any bidder to meet applicable requirements.

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

NOTICE OF EFFECTIVENESS: No Contract is effective until the authorized Owner's Official, the Administrator of Public Works, and the Contractor have signed the Contract. The bidder shall not provide any goods or render services until the Contract has been signed and a Work Order, Purchase Order, or Notice to Proceed has been issued. The Owner is in no way responsible for reimbursing the bidder for goods provided or services rendered prior to the issuance of a Work Order, Purchase Order, or Notice to Proceed from the Owner.

INCURRING COSTS: The Owner is not liable for any cost incurred by bidders prior to the Work Order, Purchase Order, or Notice to Proceed being issued.

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

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

END OF INSTRUCTIONS

BID PROPOSAL

TO: STATE OF IDAHO
DIVISION OF PUBLIC WORKS

Gentlemen:

The Bidder, in compliance with your Invitation for Bids for Roofing Service Contracts: 14859 & 14860, Roofing Service Contracts, State of Idaho, Southwest Region, having examined the Instructions to Bidders, this Bid Proposal and all attachments hereto, and the Contract Documents, hereby proposes to furnish all labor, materials and supplies and to provide the service and insurance in accordance with the Contract Documents at the prices stated. These prices are to cover all expenses incurred, including business overhead, profit, employee benefits, taxes, tools, equipment, transportation, etc., to perform the Work required under the Contract Documents. See Service Contract Exhibits A and C for project specific specialty equipment examples, payments, etc.

Bidder hereby agrees to commence work under the Contract upon receipt of a written Work Order, Purchase Order, or Notice to Proceed from the Owner and to expeditiously complete the Work. The Contract will be in effect for a period of one year from the Effective Date of the Contract with provisions for two, one year extensions.

The following Attachments are incorporated herein by this reference:

A. CONTRACTOR'S AFFIDAVIT CONCERNING ALCOHOL AND DRUG-FREE WORKPLACE
B. BIDDER'S ACKNOWLEDGEMENT STATEMENT
C. DIVISION OF PUBLIC WORKS ROOFING SERVICE CONTRACT FORM OF AGREEMENT

Bidder acknowledges receipt of Addenda No. _____.
(List all Addenda)

Hourly Rates for Labor:
Regular Rates and Overtime Rates for each level of worker shall be equal to or greater than the category below. The Foreman rate shall be equal to or greater than the Roofer rate which shall be equal to or greater than the General Laborer rate. No rate shall be lower than the Federal Minimum Wage.

(Regular Rate) Superintendent $_____ per hour X 800 hrs.* = $_____
plus
(Regular Rate) Foreman $_____ per hour X 1500 hrs.* = $_____
plus
(Regular Rate) Roofer $_____ per hour X 500 hrs.* = $_____
plus
(Regular Rate) General Laborer $_____ per hour X 800 hrs.* = $_____

Total Regular Rate = $_____ (A)

**Other Than Regular Hours (Overtime) Monday thru Friday, including weekends and Holidays.

(Regular Rate) Superintendent $_____ per hour X 80 hrs.* = $_____
plus
(Overtime Rate) Foreman $_____ per hour X 150 hrs.** = $_____
plus
(Overtime Rate) Roofer $_____ per hour X 60 hrs.** = $_____
plus
(Overtime Rate) General Laborer $_____ per hour X 80 hrs.** = $_____

Total Overtime Rate = $_____ (B)

Materials, Specialty Equipment, Parts, Subcontractor Costs:

Materials, specialty equipment, parts and subcontractor charges will be paid at the invoice cost plus the following percentage markup.

Cost Plus _____ Percent Markup X $60,000 *** = $ _____ (C)

Example: (15 Percent Markup/100 +1) X$60,000 =$69,000

Bond costs, shipping costs, permit fees and taxes will be paid at the contractor's or subcontractor's actual invoice cost, without markup. A copy of ALL invoices and timesheets must be submitted with billings for any item exceeding $100.00. At the discretion of the Owner, the contractor may be requested by the Owner to provide invoices for all items.

Total Bid Amount **A + B + C = $ _____TOTAL*****

* Regular Work Hours are defined to be ALL hours worked between 7:00 am and 5:00 pm, Monday thru Friday, to a maximum of forty (40) hours per individual.

Off-hours are defined to be from 5:00 pm to 7:00 am Monday through Friday, and all hours Saturday, Sunday, and holidays. If the owner requests for work to be conducted during these hours, the Contractor may charge Overtime rates.

** Other Than Regular Hours (Overtime) is defined as all other hours not considered regular work hours. This includes any/all hours worked on weekends and holidays. In addition all Overtime Rates must be equal to or greater than Regular Rates. Any Overtime Rates intentionally left blank or entered as zero (0), or Overtime Rates that are less than Regular Rates on the Bid Proposal Form (Page 1) will be considered non-responsive.

*** The Annual labor hours and material costs factors are for bid evaluation only. The actual hours worked, and materials furnished in a one year period will and may vary.

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

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

Upon receipt of written Notice of Intent to Award of this bid, Bidder will execute the Contract within ten (10) days and deliver Insurance Certificates as required by Article 21 of the Contract and Performance and Payment Bonds.

The bid security in the amount of $5,000.00 is to become the property of the Owner, in the event the Contract and bond are not executed within the time set forth, as liquidated damages for the delay and additional expense to the Owner caused thereby.

Bidder understands that a Contract shall be awarded to each of the two lowest responsive bidders as determined by the formula for bid evaluation contained within this bid proposal.

Bidder warrants that bid has been prepared and that any contract resulting from acceptance of this bid is subject to Executive Order 2009-10 and the Contract.

The undersigned certifies that it is of this date duly licensed as an Idaho Public Works Contractor and further that it possesses Idaho Public Works Contractor's License No. _____, and is domiciled in the State of _____.

Dated this _____ day of_____, _____.
(date) (month) (year)

Respectfully submitted by:

_____
(Company)

(Seal - if bid is by a corporation)

_____
(Street or PO Address)

_____
(City, State and zip code)

_____
(Authorized Signature)

_____
(Printed Name and Title)

_____
(Telephone Number)

_____
(FAX Number)

_____
(email address)

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

ATTACHMENT A

Execute and Submit with Bid

CONTRACTOR'S AFFIDAVIT
CONCERNING ALCOHOL AND DRUG-FREE WORKPLACE

STATE OF _____

COUNTY OF _____

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

_____
Name of Contractor

_____
Address

_____
City and State

By: _____
(Signature)

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

Commission expires:

_____
NOTARY PUBLIC, residing at

_____

_____

FAILURE TO EXECUTE THIS AFFIDAVIT AND SUBMIT IT ALONG WITH YOUR BID SHALL MAKE YOUR BID NONRESPONSIVE.

ATTACHMENT B

Execute and Submit with Bid

BIDDER'S ACKNOWLEDGMENT STATEMENT

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

Division of Public Works Project No.'s 14859 & 14860 Project Name: Roofing Service Contracts, State of Idaho, Southwest Region

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

- Contractor agrees to comply with conditions pertaining to Sections 44-1001 and 44-1002, Idaho Code, requiring the employment of ninety-five percent (95%) bona fide Idaho residents and providing for a preference in the employment of bona fide Idaho residents and with Executive Order 2009-10 regarding the employment of persons not authorized to work in the United States.
- Work done under this contract shall be performed by the least expensive labor category, per Exhibit A of the Contract, qualified to do the work.
- The Contractor may, on the terms and conditions set forth in the Contract, subcontract portions of the Work not done by the Contractor's own forces. The total amount of work to be subcontracted shall not exceed 50% of the total value of each Work Order, Purchase Order, or Notice to Proceed, unless authorized in writing by the Owner.

FAILURE TO EXECUTE THIS ACKNOWLEDGMENT MAY MAKE YOUR BID NONRESPONSIVE.

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

bidder, _____, does hereby certify that I have fully read
(type or print name of company)

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

Authorized Signature: _____

Title: _____

Date: _____

END OF BID PROPOSAL

ATTACHMENT C

DIVISION OF PUBLIC WORKS
ROOFING
SERVICE CONTRACT
FORM OF AGREEMENT
BETWEEN OWNER AND CONTRACTOR

DPW PROJECT NO.'s 14859 & 14860
STATE OF IDAHO, SOUTHWEST REGION

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 SERVICE CONTRACT PAYMENTS
8 INFORMATION AND MATERIAL SUPPLIED BY THE OWNER
9 STOP WORK ORDER
10 DUTIES, OBLIGATIONS AND RESPONSIBILITIES OF THE CONTRACTOR
11 DUTIES, OBLIGATIONS AND RESPONSIBILITIES OF THE OWNER
12 INDEMNITY
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 AND SPECIAL CONDITIONS (IF ANY)

B ADDRESSES AND REPRESENTATIVES

C ROOFING SPECIFICATIONS

D CONTRACTOR'S AFFIDAVIT CONCERNING TAXES

ROOFING SERVICE CONTRACT
BETWEEN OWNER AND CONTRACTOR

THIS ROOFING SERVICE CONTRACT BETWEEN OWNER AND CONTRACTOR (the "Contract") is by and between the State of Idaho, Department of Administration, Division of Public Works ("DPW" or the "Owner") and _____(the "Contractor") and is for work performed under DPW Project No. _____, ROOFING SERVICE CONTRACT, STATE OF IDAHO, SOUTHWEST REGION, (the Project) as more fully described in Exhibit A, and incorporated herein by reference. This Contract shall be effective on _____ (day) of _____ (month) 20____ (year), when executed by both parties (the Effective Date).

In consideration of the mutual promises, covenants, and agreements stated herein, and for other good and valuable consideration, the sufficiency of which is hereby acknowledged, the Owner and the Contractor agree as set forth below:

ARTICLE 1
CONTRACT DOCUMENTS

1.1 The Contract Documents consist of this Contract, the Conditions of the Contract (General, Supplementary and other conditions) and any Addenda thereto issued prior to and all modifications issued after execution of this Contract, written amendments signed by both the Owner and the Contractor, Change Directives, Modifications, written Work Orders by the Owner, Purchase Orders, and Notices to Proceed (collectively, 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.

1.3 The Contractor will receive detailed information for each separate scope of work (each such scope of work is a "Project"), and a separate Work Order, Purchase Order, or Notice to Proceed will be issued by the Owner describing each Project, including scope and method of compensation. Any Work Order, Purchase Order, or Notice to Proceed shall be incorporated into this Contract.

ARTICLE 2
REPRESENTATIONS AND WARRANTIES OF THE CONTRACTOR

In order to induce the Owner to execute this Contract and recognizing that the Owner is relying thereon, the Contractor, by executing this Contract, makes the following express 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 shall 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 and subsequent information as provided per paragraph1.3.

2.3 The Contractor has received, reviewed, compared, studied and carefully examined all of the documents which make up the Contract Documents, including the Specifications, Summary of Work, and any Addenda, and has found them in all respects to be complete, accurate, adequate, consistent, coordinated and sufficient for execution.

2.4 The Contractor warrants to the Owner that all labor furnished on Projects assigned under this contract 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 and covered by Contractor's Warranty. 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 final payment to the Contractor for any specific Project.

2.5 Work done under this contract shall be performed by the least expensive labor category, per Exhibit A, qualified to do the work.

ARTICLE 3
INTENT AND INTERPRETATION

With respect to the intent and interpretation of this Contract, the Owner and the Contractor agree as follows:

3.1 This Contract constitutes the entire and exclusive agreement between the parties with reference to Projects assigned under this contract, 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 Service Contract Amount(s). 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 is entitled to performance and enforcement of obligations under the Contract intended or necessary to facilitate its duties. Any reference to the Owner or the Contractor shall 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 herein; 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, shall be deemed to be followed by the phrase "without limitation."

3.6 The specification herein 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 shall be deemed not to 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 of any conflict, ambiguity, error or omission which the Contractor may find with respect to these documents before proceeding with the affected Work authorized by each Work Order, Purchase Order, or Notice to Proceed.

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

3.9 In the event of any conflict among any of the Contract Documents, the Owner's 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, the most stringent requirement in the Contract Documents will apply.

ARTICLE 4
OWNERSHIP OF DOCUMENTS

4.1 Unless otherwise agreed by the Owner, 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 work done under this Contract, and not on any other project, or outside this Contract, without written consent of the Owner, and/or the Owner'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. 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 each Project as defined by each Work Order, Purchase Order, or Notice to Proceed.

5.2 The furnishing of any required surety bonds and insurance.

5.3 The provision or furnishing, and prompt payment therefore, of labor, supervision, services, materials, supplies, equipment, fixtures, appliances, facilities, tools, transportation, storage, power, fuel, heat, light, cooling or other utilities required for construction and all necessary permits, required for the construction of the Project.

5.4 For projects exceeding $50,000, 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 as a condition precedent to payment to the Contractor, unless waived in writing by the Owner.

ARTICLE 6
TIME FOR CONTRACTOR'S PERFORMANCE

6.1 The Contractor shall commence performance of the work in accordance with each Work Order, Purchase Order, or Notice to Proceed issued by the Owner and shall diligently continue its performance to and until final completion of each Project. The Contractor shall accomplish Substantial Completion, as defined in Section 6.3 of each Project on or before the time indicated in each Notice to Proceed or Work Order. 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 an amount indicated in each Notice to Proceed or Work Order 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 the delay and the Owner shall retain all remedies at law or in equity for the delay or other breach.

6.3 The term "Substantial Completion," as used herein, shall mean that point at which, as certified in writing by the Design Professional, or if there is no Design Professional, as certified by the Owner, 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. If the Contract Documents require a manufacturer's warranty, then there shall be no Substantial Completion until such warranty has been provided. 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.

.1 In addition to any other requirements, the following are minimum prerequisites for Substantial Completion of any roofing:

.1 All roofing materials complete, in place, and watertight.

.2 All flashings and counter-flashings complete, in place, and watertight, with all anchors, connections, and sealants, etc. installed.

.3 All roofing accessories required by the Contract Documents complete, in place, and operable together with all anchors, fastening devices, etc.

.4 All excess materials, debris, equipment, tools, etc. removed from site and roof surface cleaned of all debris.

.5 All roof drains and piping cleaned and fully functional.

.6 All mechanical and electrical equipment connected and fully operational.

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.

ARTICLE 7
SERVICE 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 authorized compensation indicated in each Work Order, Purchase Order or Notice to Proceed using the submitted labor rates and other compensation provisions contained in Exhibit A. The authorized compensation shall not be modified except as provided in this Contract.

7.2 Prior to submitting its first pay application, the Contractor shall prepare and present to the Owner the Contractor's Schedule of Values apportioning the authorized compensation among the different elements of the Project for purposes of periodic and final payment. The Contractor's Schedule of Values shall be presented in whatever format, with such detail, and backed up with whatever supporting information the Owner reasonably requests. The Contractor shall not imbalance it's Schedule of Values nor artificially inflate any element thereof. The

violation of this provision by the Contractor shall constitute a material breach of this Contract. The Contractor's Schedule of Values will be utilized for the Contractor's requests for payment but shall only be so utilized after it has been approved in writing by the Owner. A schedule of values is not required on projects with an authorized compensation amount of less than $50,000.

7.3 The Owner shall make payment to the Contractor in accordance with the procedures set forth in this Article. The Contractor shall submit a Contractor's Request for Payment, after the Effective Date and commencement of performance of work, but no more frequently than once monthly. Said payment request shall be on Owner's standard form, or an alternate form approved by the Owner, and shall include whatever supporting information as may be required by the Owner. Therein, 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, based on the Service Contract Amount allocated on the Schedule of Values. The Contractor's Request for Payment may include only: 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 . The Contractor's Request for Payment must exclude the total amount of previous payments received from the Owner. Each such Contractor's 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. 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.

The Owner 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 shall approve in writing the amount which, in the opinion of the Owner, is properly owing to the Contractor and such approval is required before the Owner shall have any payment obligation. The Owner 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.

7.4 The Owner shall make payment to the Contractor no more than twenty-one (21) days following receipt by the Owner of the written approval of each Contractor's Request for Payment. The amount of each such payment shall be the amount approved for payment by the Owner 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 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 7.8 hereinafter.

7.5 Payment for off-site storage will not be allowed under this Agreement.

7.6 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 request 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.

7.7 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.

7.8 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, or another contractor;

.7 The Owner reasonably believes that the Project cannot be completed for the unpaid balance of the Contract Amount or the Owner reasonably believes that the Project cannot be completed within the Contract Time and that the unpaid balance of the 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 Paragraph 7.8, the Contractor shall promptly comply with such demand.

7.9 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 7.4, 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 approves the Contractor's Request for Payment under Paragraph 7.4, interest at the rate of four percent (4%) per annum shall accrue on those unpaid amounts.

7.10 When Contractor considers Substantial Completion has been achieved, the Contractor shall notify the Owner in writing and shall furnish to the Owner a listing of those matters yet to be finished. The Owner will thereupon 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 will so notify the Contractor in writing and will therein set forth the date of Substantial Completion. The Owner and the Contractor must accept the date of Substantial Completion in writing. Guarantees and warranties required by this Contract shall commence on the date of Substantial Completion. At the Contractor's Request for Payment following Substantial Completion, the Owner shall pay the Contractor an amount sufficient to increase total payments to the Contractor to ninety-five percent (95%) of the Contract Amount, less any liquidated damages, less the reasonable costs as determined by the Owner 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 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

7.12. 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. Any acceptance other than in total shall require written agreement by the Owner.

.1 For projects less than $50,000 the Contractor may submit a final billing as a means of establishing the date of Substantial Completion.

7.11 When Contractor considers the Project is at final completion, it shall notify the Owner thereof in writing. Thereupon, the Owner will perform a final inspection of the Project. If the Owner 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, final approval for payment certifying to the Owner that the Project is complete and the Contractor is entitled to the remainder of the unpaid Contract Amount, less any amount withheld pursuant to this Contract.

7.12 As a condition precedent to final payment, on projects with a Contract Sum exceeding $50,000, the Contractor must furnish the Owner, in the form and manner required by Owner 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 (DPW's form, 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, shop drawings, as-builts, 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).

7.13 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 execution of a final approval for payment and receipt of documentation required by Paragraph 7.12, whichever is received later.

ARTICLE 8
INFORMATION AND MATERIAL SUPPLIED BY THE OWNER

8.1 The Administrator of DPW or his designee shall be the sole representative of the State of Idaho. The Owner shall have authority to bind Owner only as specifically set forth in this Contract.

8.2 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.

8.3 The Owner will secure and pay for all required easements, the plan check fee required by the Division of Building Safety, conditional use permits and any other permits and fees specifically indicated in the Contract Documents to be secured and paid for by the Owner. Contractor shall provide all other permits, including building permits from the Division of Building Safety per paragraph 10.6.

8.4 The Owner will provide the Contractor one (1) copy of this complete Contract and/or Drawings, and/or Project Manuals (including Specifications).

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 and duties outlined in Exhibit C are by reference hereby incorporated in this Paragraph 10.1. The Contractor shall not perform Work without adequate plans and specifications or, as appropriate, a written description of the work, 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, the Contractor shall be responsible for such Work and shall pay the cost of correcting same.

10.2 The Contractor shall take field measurements and verify field conditions and shall carefully compare such field measurements and 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 and the Owner 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 and may constitute a Claim pursuant to Article 13 hereof where appropriate.

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

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

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

10.6 Except as provided in Paragraph 8.3, the Contractor shall secure or provide and pay for all licenses, permits required by the Idaho Division of Building Safety, 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 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, unless deemed unnecessary by the Owner.. The superintendent shall be reviewed and must be approved by the Owner, and shall not be changed except with the consent of the 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. 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.

10.9 On projects where the Contract Sum exceeds $50,000, the Contractor shall provide to the Owner a schedule for completing the Work within a reasonable time, as agreed to by the Contractor and the Owner. Such schedule shall be in a form specified in Division 1 of the Specifications and be acceptable to the Owner. The schedule must be submitted to and accepted by the Owner prior to the first request for payment unless required earlier by the Specifications. The Contractor's schedule must be updated as required by the Owner to reflect conditions encountered and shall apply to the total Project. The Contractor's revisions to the schedule shall not constitute a waiver of the requirement to complete the Project in a timely manner or a manner allowed by the Contract, unless additional time for performance has been allowed pursuant to a Change Order. Any changes in milestone begin or end dates must be furnished to the Owner. 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.

10.10 Once a month, or at intervals as required by the Owner, the Contractor shall advise the Owner of the status of the Work (in duplicate) on the current schedule. If any project dates are not met on schedule, the Contractor shall immediately advise the Owner in writing of the proposed action to bring the Work on schedule. The Contractor shall also submit a detailed short term schedule, as required by the Specifications. This short term schedule 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.

10.11 If the Work is not progressing through no fault of the Owner, as shown on the schedule, as determined by the Owner, and the Owner does 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.

10.12 The Contractor shall keep an updated copy of the Drawings and Project Manual (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 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 and shall become the property of the Owner. This paragraph is not applicable to projects authorized through a Work Order, Purchase Order or Notice to Proceed where no drawings or project manuals are utilized.

10.13 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 only submittals approved in accordance with this Article. 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 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 shall not be

evidence that Work installed pursuant thereto conforms to the requirements of this Contract. The Owner 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.

10.14 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.

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

10.16 The presence or duties of 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 10.8, 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 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. For this Contract only, construction sites include places of manufacture for materials incorporated into the construction Work and Contractor includes manufacturers of materials incorporated into the construction Work.

10.17 All work completed by the Contractor shall be warranted for the period of one-year from the date of Substantial Completion to be free from all defects in materials, workmanship and quality. Contractor shall repair any items identified to be defective within the one year period at no additional cost to the Owner. Warranties in addition to those identified above in this section, including manufacturer's warranties for equipment and materials shall be as identified in the project manuals, drawings or other documentation for each specific project as referenced in the Work Order, Purchase Order, or Notice to Proceed.

Article 11
DUTIES, OBLIGATIONS AND RESPONSIBILITIES OF THE OWNER

The Owner for this Project is identified in Exhibit B, incorporated herein by reference, along with any authorized representatives and any limitation of responsibility. The duties, obligation and responsibilities of the Owner shall be for contract administration and include the following:

11.1 The Owner shall draft proposed change authorization(s).

11.2 The Owner shall review and verify compliance or respond otherwise as necessary concerning shop drawing or other submittals received from the Contractor.

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

11.4 The Owner shall review the Contractor's Request for Payment and shall verify in writing those amounts which are properly owing to the Contractor as provided in the Contract.

11.5 The Owner may require the Contractor to make changes which do not involve a change in the 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, and may be in the form of a supplemental instruction.

11.6 The Owner shall review and evaluate Claims and take other actions related to Claims in accordance with Articles 13 and 14.

ARTICLE 12
INDEMNITY

12.1 The Contractor shall defend, indemnify and hold harmless the Owner, 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.

12.2 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.

12.3 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.

12.4 Nothing in this Contract shall be a waiver of sovereign immunity or liability caps, which immunity and caps are hereby expressly reserved.

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 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 by the Contractor must be signed by an authorized representative of the Contractor, and the Claim by the Owner must be signed by an authorized representative of the Owner;

.3 The Claim by the Contractor must be provided to the Owner and the Claim by the Owner must be provided to the Contractor;

.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 wavier 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 of the condition and shall not disturb the condition until the Owner has 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 Contract Amount, the following shall apply in addition to all other provisions applicable to the Claim:

.1 Any increase in the 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 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 Contractor is for a change in the 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, 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;

.3 The delay will preclude completion of the Project in the time required by the Contract Documents; and

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

14.2 No later than seven (7) days from receipt of the Claim by the Owner or Contractor, it shall:

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

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

.3 The Owner shall reject or approve all or part of the Claim by the Contractor and state the reasons for its decision. The Contractor shall reject or approve all or part of the Claim by the Owner, and state the reasons for its decision

14.3 If the Owner or Contractor requests more data from the Contractor or the Owner under subparagraph 14.2.1, the Owner or Contractor 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 or Contractor 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 or Contractor's possession.

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

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

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

ARTICLE 15
SUBCONTRACTORS

15.1 The Contractor may subcontract portions of the Work not done by the Contractor's own forces. The total amount of Work to be subcontracted shall not exceed 50% of the total value of each Work Order, Purchase Order, or Notice to Proceed unless authorized in writing by the Owner. Upon issuance of a Work Order, Purchase Order, or Notice to Proceed by the Owner, the Contractor shall identify to the Owner, in writing, those parties intended as subcontractors on a Project and the anticipated subcontract amounts. 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 with reference 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 each Work Order, Purchase Order, or Notice to Proceed without invalidating the Contract, by issuance of an additional Work Order or by Change Order, 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 Work Order or Change Order.

16.2 Change Orders

.1 A "Change Order" is a written instrument prepared by the Owner and signed by the Contractor and Owner, stating their agreement upon: a change in the work, any adjustment in the authorized compensation and any adjustment in the Contract Time;

.2 The adjustment to the authorized compensation shall be based on the hourly rates and allowed mark ups per Exhibit A.

.3 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 authorized compensation and Contract Time. In the event a Change Order increases the authorized compensation, 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

.4 By the execution of a Change Order, the Contractor agrees and acknowledges that it has had sufficient time and opportunity to examine the change in Work which is the subject of the Change Order and that it has undertaken all reasonable efforts to discover and disclose any concealed or unknown conditions which may to any extent affect the Contractor's ability to perform in accordance with the Change Order. Aside from those matters specifically set forth in the Change Order, the Owner shall not be obligated to make any adjustments to either the Contract 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 The Owner will have authority to order minor changes in the Work not involving adjustment in the authorized compensation or extension of the Contract Time and not inconsistent with the intent of the Contract Documents. Such changes shall be effected by written order and shall be binding on the Owner and Contractor. The Contractor shall carry out such written orders promptly.

ARTICLE 17
DISCOVERING AND CORRECTING DEFECTIVE OR INCOMPLETE WORK

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

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

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

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

17.5 The Owner may, but shall not be required to, choose to accept defective or nonconforming Work. In such event, the Contract Amount shall be reduced by the lesser of: (i) the reasonable costs of removing and correcting the defective or nonconforming Work; or (ii) the difference between the fair market value of the Project as constructed and the fair market value of the Project had it not been constructed in such a manner as to include defective or nonconforming Work. If the remaining portion of the unpaid Contract Amount, if any, is insufficient to compensate the Owner for the acceptance of defective or nonconforming Work, the Contractor shall, upon written demand from the Owner, pay the Owner such remaining compensation for accepting defective or nonconforming work.

ARTICLE 18
TERMINATION BY THE CONTRACTOR

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

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

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

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

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

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

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

.1 Demobilization and remobilization, including such costs paid to subcontractors;

.2 Preserving and protecting Work in place;

.3 Storage of materials or equipment purchased for the Project, including insurance thereon; and

.4 Performing in a later, or during a longer, time frame than that provided by this Contract.

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

.1 That performance is, was or would have been so suspended, delayed or interrupted by another cause for which the Contractor is responsible; or

.2 That an equitable adjustment is made or denied under another provision of the Contract.

ARTICLE 20
TERMINATION BY THE OWNER

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

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

20.2 When the Owner terminates the Contract for cause as provided in Paragraph 20.1, the Contractor shall not be entitled to receive further payment until the Work is finished and shall only be entitled to payment for Work satisfactorily performed by the Contractor in accordance with the Contract Documents. If the costs of finishing the Work, exceed the unpaid balance, the Contractor shall pay the difference to the Owner. This obligation for payment shall survive termination of the Contract. The Contractor shall also terminate outstanding orders and subcontracts. The Contractor shall settle the liabilities and Claims arising out of the termination of subcontracts and orders. In the event the Contractor is terminated by the Owner for cause pursuant to Paragraph 20.1 and it is subsequently determined by a court of competent jurisdiction that such termination was without cause, such termination shall thereupon be deemed a Termination under Paragraph 20.3 and the provisions of Paragraph 20.3 shall apply.

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

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

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

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

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

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

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

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

ARTICLE 21
CONTRACTOR'S LIABILITY INSURANCE

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

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

.2 Claims for damages because of bodily injury, occupational sickness or disease or death of the Contractor's employees;

.3 Claims for damages because of bodily injury, sickness or disease or death of any person other than the Contractor's employees;

.4 Claims for damages insured by usual personal injury liability coverage which are sustained: (i) by a person as a result of an offense directly or indirectly related to employment of such person by the Contractor; or (ii) by another person;

.5 Claims for damages, other than to the Work itself, because of injury to or destruction of tangible property, including loss of use resulting there from;

.6 Claims for damages because of bodily injury, death of a person or property damage arising out of ownership, maintenance or use of a motor vehicle;

.7 Claims for bodily injury or property damage arising out of completed operations; and

.8 Claims involving contractual liability insurance applicable to the Contractor's obligations under Article12.

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

.1 The insurance required by Paragraph 21.1 above shall be written for not less than the following limits:

.1 Workers' Compensation and Employer's Liability

(a) State Workers Compensation: Statutory

(b) Employer's Liability: $100,000 per Accident

$500,000 Disease, Policy Limit

$100,000 Disease, Each Employee

.2 Comprehensive Commercial General Liability and Umbrella Liability Insurance. Contractor shall maintain Commercial General Liability ("CGL") and, if necessary, commercial umbrella insurance with a limit of not less than $1,000,000.00 each occurrence. If such CGL insurance contains a general aggregate limit, it shall apply separately to this project location;

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

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

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

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

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

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

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

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

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

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

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

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

21.3 The Owner shall be named as additional insured or loss payee, as applicable, on the insurance required in subparagraphs 21.2.1.2, 21.2.1.3 and 21.2.1.5 above, and the insurance shall contain the severability of interest clause as follows:

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

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

21.5 Certificates of Insurance for Workers' Compensation shall be on the standard form. Certificates of Insurance for Commercial or Comprehensive General Liability shall be the most current ACORD Form 25 or 28, must be acceptable to the Owner and shall be filed with the Owner prior to commencement of the Work. The Owner may require proof of coverage by an endorsement. The Contractor shall not allow coverages afforded under the policies to be canceled or to expire until at least thirty (30) days' prior written notice has been given to the Owner.

ARTICLE 22
OWNER'S LIABILITY INSURANCE

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

ARTICLE 23
PROPERTY INSURANCE

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

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

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

23.4 Boiler and Machinery Insurance. The Owner will purchase and maintain boiler and machinery insurance, which shall specifically cover such insured objects during installation and testing.

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

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

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

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

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

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

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

ARTICLE 24
PERFORMANCE AND PAYMENT BONDS

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

be executed by a Surety, or Sureties, reasonably acceptable to the Owner and authorized to do business in the State of Idaho.

.1 In lieu of separate bonds for each Work Order, Purchase Order or Notice to Proceed, the Contractor may provide a bond in the full amount of the anticipated annual expenditure prior to beginning any work. If this option is utilized, bond costs will be reimbursed as a percentage of the overall bond costs, based on the ratio of Contract Amount to anticipated annual expenditure.

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

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

ARTICLE 25
PROJECT RECORDS

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

ARTICLE 26
MISCELLANEOUS PROVISIONS

26.1 This Contract is governed by the laws of the State of Idaho. Venue for any proceeding related to this Contract shall be in Boise, Ada County, Idaho, unless otherwise mutually agreed by the parties.

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

26.3 The Contractor, in consideration of securing the business of erecting or constructing public works in the State of Idaho, recognizing that the business in which it is engaged is of a transitory character, and that in the pursuit thereof, its property used therein may be subject to State taxes, excises or license fees to which it is liable become payable, agrees:

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

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

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

26.4 Before entering into a Contract, the Contractor shall be authorized to do business in the State of Idaho and shall submit an executed Contractor's Affidavit Concerning Taxes (Exhibit D), which is hereby incorporated by this reference.

26.5 Pursuant to Section 44-1002, Idaho Code, the Contractor "must employ ninety-five percent (95%) bona fide Idaho residents as employees on any job under any such contract except where under such contracts fifty (50) or less persons are employed the contractor may employ ten percent (10%) nonresidents, provided, however, in all cases employers must give preference to the employment of bona fide residents in the performance of said work, and no contract shall be let to any person, firm, association, or corporation refusing to execute an agreement with the above mentioned provisions in it; provided, that, in contracts involving the expenditure of federal aid funds this act shall not be enforced in such a manner as to conflict with or be contrary to the federal statutes prescribing a labor preference to honorably discharged soldiers, sailors, and marines, prohibiting as unlawful any other preference or discrimination among citizens of the United States."

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

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

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

26.9 The Contractor shall substantiate that all employees providing services or involved in any way on projects funded directly by or assisted in whole or part by State funds or federal stimulus dollars can legally work in the United States. Any knowing or willful failure to confirm that an employee is eligible to work in the United States constitutes a material breach and shall be cause for the imposition of monetary penalties up to five percent of the aggregrate Service Contract Amount, per violation, and/or termination of this Contract.

26.10 The Contractor acknowledges that the Owner may review, and ask others involved with the Project to review, the Contractor's performance on the Project. The Contractor further acknowledges that the Owner may use the results of the evaluation in evaluating the Contractor for purposes of awarding future projects. The Owner's Contractor Performance Evaluation Form is attached hereto as Exhibit I, and incorporated by this reference.

26.11 This Contract may be extended for three additional 12-month periods without change in contract rates or conditions if agreed to in writing by the Contractor and the Owner sixty (60) days prior to its expiration.

ARTICLE 27
EQUAL OPPORTUNITY

The Contractor shall maintain policies of employment as follows:

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

post in conspicuous places, available to employees and applicants for employment, notices setting forth the policies of non-discrimination.

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

ARTICLE 28
SUCCESSORS AND ASSIGNS

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

ARTICLE 29
SEVERABILITY

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

ARTICLE 30
MEDIATION

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ARTICLE 31
WAIVER OF CONSEQUENTIAL DAMAGES

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

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

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

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

IN WITNESS WHEREOF, the parties have executed this Contract on the dates set forth below.

OWNER
State of Idaho
Division of Public Works

_____
Date Executed

By: _____
Tim Mason, Administrator

CONTRACTOR

_____ SEAL

(Contractor's Name- Typed)

By: _____
Signature

_____
Printed Name

_____
Title

_____
Date Executed

EXHIBIT A

OWNER'S PROJECT IDENTIFICATION INFORMATION:

DPW Project No. 14859 & 14860
Roofing Service Contracts
State of Idaho, Southwest Region

DESCRIPTION:

Work done under this Service Contract includes miscellaneous small construction projects. These may include small repair jobs, partial replacements, re-roofing projects, or new roofs. It is anticipated the majority of the work performed will be done with the Contractor's own forces, employed directly by the Contractor. Contractor will commence work under this contract upon receipt of a written Work Order, Purchase Order, or Notice to Proceed from the Owner and will expeditiously complete the work, and by any such date stipulated in the Work Order, Purchase Order, or Notice to Proceed.

The estimated annual expenditure per this contract is $100,000.

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

Addendum No. _ Dated _____
Addendum No. _Dated _____
Addendum No. _Dated _____

Furnish all labor, materials and supplies and provide the service and insurance in accordance with the Contract Documents, within the time set forth therein, and at the prices stated. These prices are to cover all expenses incurred, including business overhead, profit, employee benefits, taxes, tools, equipment, transportation, etc., to perform the Work required under the Contract Documents.

HOURLY RATES FOR LABOR;

For labor actually performed at the project site, compensation will be as follows:'

* Regular Work Hours Monday thru Friday

(Regular Rate) Foreman $_____ per hour

(Regular Rate) Roofer $_____ per hour

(Regular Rate) General Laborer $_____ per hour

**Other Than Regular Hours (Overtime) Monday thru Friday, including weekends and Holidays.

(Overtime Rate) Foreman $_____ per hour

(Overtime Rate) Roofer $ _____ per hour

(Overtime Rate) General Laborer $_____ per hour

* Regular Work Hours are defined to be ALL hours worked between 7 am and 5 pm, Monday thru Friday, to a maximum of forty (40) hours per individual.

** Other Than Regular Hours (Overtime) is defined as all other hours not considered regular work hours. This includes any/all hours worked on weekends and holidays.

At the discretion of the Owner, the Contractor may be requested to provide time cards for any work performed.

MATERIAL COST:

Materials, authorized subcontracts, authorized consumables and disposal charges will be paid at the Contractor's invoice cost plus the following percentage markup:

Cost plus ____ percent

TRAVEL COSTS:

The contractor will be paid for company vehicle related travel at the rate established by the Idaho State Board of Examiners and in effect at the time the travel occurred (currently $0.55 per mile) on any project that is more than 35 miles from the Contractor's principal place of business. In the event that the Contractor's principal place of business is outside the State of Idaho, the Owner will pay mileage from the city within the region that has the largest population, or the Contractor's place of business, whichever is closer. The State Travel Mileage Chart will be used to determine the actual miles.

Hourly rates for personnel do not apply during travel and will only apply to on-site construction activities.

Overnight lodging and meal allowance will be allowed for projects that are more than 50 miles from the Contractor's principal place of business. In the event that the Contractor's place of business is outside the State of Idaho, the Owner will pay lodging and meal allowance for projects that are more than 50 miles from the city within the region that has the largest population, or the Contractor's principal place of business, whichever is closer. The maximum allowable lodging cost and meal allowance will be $100.00 per day per person for lodging and $50 per day per person for meals. Reimbursement will be for actual cost, verified by receipt.

TIME FOR PERFORMANCE AND LIQUIDATED DAMAGES:

A. The Contractor shall commence construction of its scope of work in accordance with each individual Work Order, Purchase Order, or Notice to Proceed issued by the Owner.

B. The Contractor shall accomplish Substantial Completion as defined in Article 6 of the Contract within the timeframe indicated in each individual Work Order, Purchase Order, or Notice to Proceed issued by the Owner.

C. The amount of liquidated damages per day for each and every day of unexcused delay as outlined in Article 6 of the Contract is: **One Hundred Dollars ($100.00).**

DRAWINGS AND SPECIFICATIONS:

The Owner Shall furnish a minimum of one set of any required Drawings and Specifications with each Work Order, Purchase Order, or Notice to Proceed.

EXHIBIT B

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

OWNER:

State of Idaho
Division of Public Works
502 N. 4th Street
P.O. Box 83720
Boise, ID 83720-0072

Josh Lewis, Project Manager
Joshua.Lewis@adm.idaho.gov
Phone: (208) 332-1908

CONTRACTOR:

_____ (company name)
_____ (address)
_____ (city, state, zip)
_____ (telephone and FAX)
Public Works Contractors License No. _____

Contractor's Project Manager:

_____ (name)
_____ (telephone and FAX)
_____ (E-mail)

Contractor's Superintendent:

_____ (name)
_____ (telephone and FAX)
_____ (E-mail)

EXHIBIT C

SERVICE CONTRACT SPECIFICATIONS:

General

The work of this contract is intended to provide the State of Idaho, Division of Public Works (the Owner) with available employees of the Contractor to perform Roofing services and 24-hour emergency response services at the State of Idaho, Southwest Region. The scope of this contract will include but will not be limited to; repairs, demolition, replacements, and new installations.

State agencies at locations in the areas within the state where the contractor has a physical presence, may use this contract if mutually agreed upon by the Contractor and the Owner. All billings will be sent directly to the Agency requesting the work. Copies of all payment requests will be sent to the Owner in order to maintain a record of the total Contract expenditures.

The buildings covered in this service agreement have been constructed and maintained under applicable code requirements. The Contractor will maintain the integrity of the buildings as it applies to these code requirements.

The Contractor shall be properly licensed and shall have sufficient licensed personnel and equipment to perform the work.

The Contractor will submit a detailed written Not to Exceed cost estimate and schedule of activities including any factors that could affect the cost or schedule, for all work requested by the Owner. The not to exceed cost estimate will be based on this contracts labor and material rates, and the following:

Scheduling

The Contractor shall coordinate all activities that effect building operations with the Owner 48 hours prior to commencing work. All work effecting individual agencies will be coordinated in advance by the Contractor with the affected agency.

Equipment

All equipment required to perform the work will be provided by the Contractor. State owned equipment will not be used by the Contractor.

Material and Supplies

All material and supplies will be provided by the Contractor unless prior arrangements are made with the state. The Owner reserves the right to provide any or all materials and supplies without any percent markup by the Contractor.

Hours and Manner of Work

The Contractor will work regular hours unless otherwise requested. Work to be performed off hours and charged at the other than regular working hour rate must first be pre-approved by the Owner and the requesting agency representative. All work that is potentially harmful or disruptive to business will be scheduled to take place during off hours. It is the Contractor's responsibility to identify off-hour work requirements prior to beginning work.

Off-hours will be from 5:00 P.M. to 7:00 A.M. Monday through Friday, and all hours Saturday, Sunday and holidays.

Other than regular hours (Overtime), is defined as all hours worked above Forty (40) hours per person in one week beginning at 12:00 AM Monday and ending at 11:59 PM Friday. If the Contractor elects to work overtime, the Owner will pay at the regular rate for all hours worked.

All work shall be accomplished utilizing a minimum of one Foreman level worker. When conditions warrant, the Contractor will utilize Apprentice workers or general laborers before adding additional Foreman level workers. Exceptions may be allowed, by the Owner, with a written authorization prior to beginning work. A 'Foreman level worker' shall be defined as a worker with a minimum of four (4) years experience in their field of interest, fully aware of all modern techniques and procedures used in the industry. A 'Roofer' shall be defined as a worker with a minimum or two (2) years experience in the installation of the specified roofing materials.

Contractors Site Inspection

The Contractor will be required to visit the proposed work site and adjacent areas affecting the work and familiarize himself with all existing conditions. The Contractor shall verify locations, sizes, dimensions, obstructions, and the extent of work before submitting all cost estimates. Any cost adjustments after the cost estimate submission will be absorbed and borne by the Contractor. Exceptions include new scope of work or specific items identified by the Contractor on the cost estimate as non-verifiable during the aforementioned work site visit.

Protective Covering

All carpet and furnishing shall be protected from dirt, debris, dust, liquids or other substances that are generated by the work. Any cleaning or replacement that is required as a result of the work will be charged back to the contractor.

Clean-up Services

The Contractor will provide continuous clean-up services at all times during construction and service operations. All salvage or waste materials will be removed on a daily basis. All salvageable materials are the property of the Owner. The Owner will make the final decision on disposition of materials.

Workmanship

All workmanship shall be in accordance with the highest standards of practice by a qualified worker. All Work shall be accurately formed to shapes, sizes, and dimensions indicated, with all lines and angles in true alignment, straight, plumb, level, and in proper plan. Poor workmanship or improper installation shall be sufficient cause for rejection of the components with replacement at no additional cost to the state.

Owners Right to Inspect and Require Work

The Owner reserves the right to make such inspections and tests whenever necessary to ascertain that the requirements of this Contract are being fulfilled. Deficiencies noted shall be promptly corrected at the Contractor's expense. If the Contractor fails to perform the work required by the terms of this agreement in a diligent and satisfactory manner, the Owner may, after ten (10) days written notice to the Contractor, perform or cause to be performed all or any part of the work required hereunder.

The Contractor agrees that it will reimburse the Owner for any expense incurred therefore, and the Owner, at his election, may deduct from the amount any sum owing the Contractor. The waiver of the Owner of a breach of any provision of this Contract by the Contractor shall not operate or be construed as a waiver of any subsequent breach by the Contractor. A qualified construction consultant acceptable to both parties may be retained by the Owner to mediate any disputes.

Contractor to Comply With Laws

In the performance of this contract, the Contractor agrees he will abide by all existing laws, codes, rules and regulations set forth by all appropriate authorities having jurisdiction in the location where the work is to be performed.

Permits and Inspection Fees

State permits and inspection fees shall be paid by the Contractor and invoiced to the Owner at no additional mark-up. Fees for re-inspection due to failure to eliminate deficiencies covered by this maintenance agreement will be paid by the Contractor.

Employees of Contractor to be Satisfactory

The Contractor agrees that all work shall be performed by and under the supervision of skilled, experienced persons supervised by the Contractor. Any and all employees performing work under this contract shall be satisfactory to the Owner.

END OF ROOFING SPECIFICATIONS

EXHIBIT D

CONTRACTOR'S AFFIDAVIT CONCERNING TAXES

STATE OF _____)

COUNTY OF _____)

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

_____
Name of Contractor

_____
Address

_____
City and State

By: _____
(Signature)

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

Commission expires:

_____
NOTARY PUBLIC, residing at

_____

_____