

**STATE OF IDAHO
DIVISION OF PUBLIC WORKS
Design-Build Agreement
DPW xx-xxx**

THIS DESIGN/BUILD AGREEMENT with Fixed Contract Price (“Agreement”) is made and entered into by and between **THE STATE OF IDAHO**, as represented by the DIVISION OF PUBLIC WORKS (“DPW”), hereinafter referred to as the Owner and **(Name of Design-Builder)** hereinafter referred to as the Design/Builder (**XXX**).

This Agreement is for the design and construction of DPW Project No. xx-xxx, **Project Name, Address** (the “Project”).

NOW, THEREFORE, 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, Owner and Design/Builder agree as follows:

ARTICLE 1

THE AGREEMENT AND THE CONTRACT DOCUMENTS

1.1 Contract Defined: “Contract” means and includes this Agreement (and all exhibits) and all Contract Documents.

1.2 Contract Documents Defined: “Contract documents” means and includes the programming, schematic design and design development documents as approved by the Owner.

1.3 Enumerated Documents Form Entire Contract. Documents not specifically enumerated in Paragraph 1.2 are not Contract Documents, and do not form any part of the Contract.

1.4 Complete Agreement. The Contract, together with Design/Builder’s and Surety’s performance and payment bonds for the Project, constitute the entire and exclusive agreement between Owner and Design/Builder with reference to the Project. The Contract supersedes any and all prior documents, discussions, communications, representations, understandings, negotiations or agreements by and between the parties.

1.5 Contract Interpreted as a Whole. The Contract is intended to be an integral whole and shall be interpreted as internally consistent. Work required by any page, part, or portion shall be required.

1.6 Provision of all Things Required. Anything that may be required, or reasonably implied or inferred by or from the Agreement or Contract Documents that make up the Contract, or any one or more of them, shall be provided by Design/Builder for the Fixed Contract Price.

1.7 Privity Only with Design/Builder. Nothing contained in the Contract shall create, nor be interpreted to create, privity or any other relationship whatsoever between Owner and any person except Design/Builder, and similarly, between Design/Builder and any person except Owner.

1.8 Agreed Interpretation of Contract Terms. When a word, term, or phrase is used in the 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. Headings are used solely for convenience.

1.9 Terms “Include” and “Days”. “Include,” “includes,” or “including,” as used in the Contract, shall be deemed in all cases to be followed by the phrase “without limitation.” The term “days,” unless otherwise specified, shall mean calendar days.

1.10 Use of Singular and Plural. Words or terms used as nouns in the Contract shall be inclusive of their singular and plural forms, unless the context of their usage clearly requires a contrary meaning.

1.11 Definition of Material Breaches Not Exhaustive. The specification of any act, failure, refusal, omission, event, occurrence or condition as constituting a material breach of the 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 the Contract.

ARTICLE 2

DESIGN/BUILDER’S REPRESENTATIONS AND WARRANTIES

2.1 Specific Representations. In order to induce Owner to execute this Agreement and recognizing that Owner is relying hereon, Design/Builder, by executing this Agreement, and without superseding, limiting, or restricting any other representation or warranty set forth elsewhere in this Agreement, or the Contract, or implied by operation of law, makes the following express representations to Owner:

.1 Design/Builder, on its own behalf or through contracts with others, is professionally and fully qualified to act as the design professional and the general contractor for the Project and is, and will remain, properly licensed in the state of Idaho to practice engineering and architecture and general contracting by all public entities having jurisdiction over Design/Builder or the Project. But without limitation, Design/Builder represents that it is licensed as a Class AAA Public Works Contractor by the State of Idaho, pursuant to I.C. § 54-1904, and as such is fully qualified to perform all the Work on the Project;

.2 Unless otherwise expressly provided in this Agreement, Design/Builder will obtain and maintain all necessary licenses, permits or other authorizations necessary to allow Design/Builder to perform the Work for the Project until Design/Builder’s duties have been fully satisfied;

.3 Design/Builder has the expertise, experience, and knowledge as well as the necessary plant, personnel and financial capability to perform the Design Services and the Work in accordance with the terms of the Agreement;

.4 Design/Builder represents that all design services for the Project have been or will be performed by **(Name of Design-Builder)(XXX), (Design-Build Address), and (Design Professional name and address)**, duly licensed in the state of Idaho and qualified to perform the Design Services required by this Agreement, and that all Design Services specified or contemplated in this Agreement will be performed by or at the specific direction of such design professionals;

.5 Prior to the execution of this Agreement, Design/Builder has visited and inspected the entire Project site and relevant areas adjacent thereto and the local conditions under which the Project is to be designed, constructed and operated and Design/Builder has reviewed the site as necessary, to determine the conditions under which the Work will be performed, and Design/Builder accepts the conditions of the Project site and areas adjacent thereto which may impact the performance of the Work and has taken those conditions into account in entering into the Agreement, provided, however, that Design Builder's acceptance herein applies to the extent that the Site conditions are unchanged in any material respect from those described in the demolition design documents;

.6 In entering into this Agreement, Design/Builder represents that it has made such independent inspections as it has determined, based on its extensive experience, to be reasonably necessary and prudent. The Fixed Contract Price includes amounts which Design/Builder understands and agrees are sufficient to cover any foreseeable conditions (concealed, subsurface, or other). Consequently, should foreseeable concealed conditions encountered in the performance of the Work, whether surface or subsurface, be at variance with the conditions indicated by the Contract Documents or at variance with Design/Builder's expectations, Design/Builder agrees that no adjustment in the Fixed Contract Price shall be made, and Design/Builder shall complete the Work, absorbing all such unexpected expense; provided, however that Design/Builder may seek an adjustment to the Fixed Contract Price if the conditions (including conditions addressed in Paragraph 16.2) encountered in the performance of the Work are covered by and within risks expressly assumed by the Owner in this Agreement;

.7 Design/Builder represents it has developed or fully reviewed the design attachments described in Paragraph 1.2 of this Agreement. Based thereon, Design/Builder represents that it will prepare the Detailed Design to be fully consistent with the purposes, standards, and provisions set forth in said attachments, and that the Project will be and is constructible in accordance with said documents and the Detailed Design;

.8 The Design/Builder warrants that the Contract Time is a reasonable period for performing the work, and that the Scheduled Completion Date provides a reasonable period of time for performing the Work;

.9 The Design/Builder represents it has received, reviewed, compared, studied, and carefully examined all of the documents which make up the Contract, and with regard to any furnished by Owner has had any questions about them answered to its satisfaction, and finds such documents in all respects to be complete, accurate, adequate, consistent, coordinated, and sufficient for Design/Builder to complete its performance as set forth in the Contract Documents. Such review, comparison, study, and examination shall be a warranty that the Project can be finally designed and constructed in accordance with the Detailed Design to be completed by Design/Builder and to the quality level specified herein for the Fixed Contract Price;

.10 Design/Builder assumes full responsibility to Owner for the improper acts and omissions of its Subcontractors or others employed or retained by Design/Builder in connection with the Project; and

.11 Design/Builder shall prepare all documents and things required by the Contract, including the Detailed Design and Design Documents, and shall perform all

Work in such a manner that they shall be accurate, complete, and for an amount not to exceed the Fixed Contract Price or the fixed prices established, and that all such documents and things prepared and all Work performed by Design/Builder shall be sufficient to accomplish the purposes of the Project, as identified by Owner, and shall be in conformity and comply with all applicable law, codes, and regulations.

ARTICLE 3 – NOT USED

ARTICLE 4 DETAILED DESIGN

4.1 Programming. Design/Builder shall gather all pertinent data required to develop a complete Project Program. The programming shall include, as a minimum, the following tasks:

.1 Establish Project and operational goals based upon the input of Agency Representatives from (Agency Name).

.2 Collect all pertinent facts about Project, including, but not limited to, evaluation of state code and regulation review, zoning, cost parameters and Project schedule.

.3 Submission of three (3) copies of the completed program with all verification documentation in written form, to the Owner for distribution and review, prior to the final presentation. After review and correction, two (2) copies shall be submitted as final record documents and be uploaded into the Owners electronic project management system.

.4 Presentation to Agency and DPW staff for approval.

.5 Prior to starting the Schematic Design Phase of this Project, Owner and Design/Builder shall mutually agree that the Project can be designed and built for the Fixed Contract Price identified in Paragraph 9.1. Approved Program Documents shall be incorporated into this Agreement via change order including any agreed upon adjustments with respect to program scope, schedule and/or construction budget. Either party may terminate this Agreement prior to the start of Schematic Design, as defined in Paragraph 4.2, without penalty, if it is determined by both parties that the Project cannot be designed and built for the Fixed Contract Price identified in Paragraph 9.1. Under this condition, the Design/Builder will be compensated for work satisfactorily completed in accordance with the applicable schedule of values.

4.2 Schematic Design. Based on approved programming documents and any adjustments authorized by the Owner and agreed to by the Design/Builder in the program, schedule or construction budget, the Design/Builder shall prepare, for approval by the Owner schematic design documents consisting of, as a minimum, the following:

.1 Alternative approaches to design and construction of the Project.

.2 Investigation and verification of the existing conditions of the site to the extent required to accomplish the Project.

.3 Summation of the various building code and zoning issues affecting the Project, including but not limited to, building height restrictions, building setbacks, fire flow requirements, structural requirements, etc.

.4 A preliminary estimate of construction cost based on current area, volume or other unit costs.

.5 Presentation of the schematic design and cost estimates to the Owner and Agency.

.6 Prior to starting the Design Development Phase of this Project, Owner and Design/Builder shall mutually agree that the Project can be designed and built for the Fixed Contract Price identified in Paragraph 9.1. Approved Schematic Design Documents shall be uploaded into the Owners electronic project management system and incorporated into this Agreement via change order including any agreed upon adjustments with respect to program scope, schedule and/or construction budget. Either party may terminate this Agreement prior to the start of Design Development, as defined in Paragraph 4.3, without penalty, if it is determined by both parties that the Project cannot be designed and built for the Fixed Contract Price identified in Paragraph 9.1. Under this condition, the Design/Builder will be compensated for work satisfactorily completed in accordance with the applicable schedule of values

4.3 Design Development. Based on approved schematic design documents and any adjustments authorized by the Owner and agreed to by the Design/Builder in the program, schedule or construction budget, the Design/Builder shall prepare, for approval by the Owner design development documents consisting of, as a minimum, the following:

.1 Drawings, to scale, showing building design, floor plans, typical equipment layout, building elevations, building and wall sections, mechanical and electrical plans, structural plans, project manual, etc. as required. The project manual shall include, but is not limited to outline specifications, in sufficient detail to fully describe the quantity and quality of the Project, material/color board, product data and fixture/equipment cut sheets.

.2 Analyze the Project for the various building code and zoning issues, make preliminary contacts with the appropriate Authorities Having Jurisdiction, and provide a summary of the code and zoning review analysis.

.3 Review design development documents with Owner, Agency and others, as required, and revise documents as required.

.4 An updated construction cost estimate, including a schedule of values.

.5 Presentation of the design development documents to the Permanent Building Fund Advisory Council at a regularly scheduled meeting.

.6 Prior to starting the Construction Phase of this Project, Owner and Design/Builder shall mutually agree that the Project can be designed and built for the Fixed Contract Price identified in Paragraph 9.1. Approved Design Development Documents shall be uploaded into the Owners electronic project management system and incorporated into this Agreement via change order including any agreed upon adjustments with respect to program scope, schedule and/or construction budget. Either party may terminate this Agreement prior to the start of Construction, as defined in Article 5, without

penalty, if it is determined by both parties that the Project cannot be designed and built for the Fixed Contract Price identified in Paragraph 9.1. Under this condition, the Design/Builder will be compensated for work satisfactorily completed in accordance with the applicable schedule of values

4.4 Design Documents Defined. “Design Documents” means all the design documents provided by Design/Builder and approved by Owner pursuant to the Agreement, including, without limitation, those for use in constructing the Project, performing the Work, and the rendering of the Project fully operational for its intended purposes, as identified by Owner, and shall include, without limitation, detailed plans, drawings, specifications, manuals, and related materials prepared by or on behalf of Design/Builder.

4.5 Preparation of Project Site Information. Design/Builder shall prepare, as necessary, surveys and topographic information needed to establish line and grade of sewers, location of property lines and easements. Sewer easements, both construction and permanent, shall be referenced to property lines by field surveys, and plans shall include the location of any improvements as it relates to property lines.

4.6 Design Services Defined. “Design Services” means any and all architectural, engineering, or design tasks or services required to be performed by Design/Builder for the completion of the Project, and all labor, materials, supervision, equipment, computers, documents, and other things necessary for the performance of such task or services.

4.7 Quality of Design Services. Design/Builder shall be responsible for the professional quality, completeness, accuracy, and coordination of the Design Documents. Design/Builder shall provide Design Services that will result in an operationally cost-efficient and economical facility that meets all environmental and regulatory requirements as of the date hereof, and uses the most appropriate available technology.

4.8 Compliance with Laws and Regulatory Requirements. In providing Design Services, Design/Builder shall comply with the lawful requirements of all federal, state, and local authorities having lawful jurisdiction over the Project. Design/Builder shall design the Project to meet all applicable requirements of building control laws and regulations in relation to the design, construction, occupation, and operation of the Project, including, without limitation, environmental standards, fire and safety regulations, and requirements and compliance with all other applicable standards and codes.

4.9 Duty to Correct Errors. Design/Builder shall, without additional compensation, immediately correct any errors, omissions or deficiencies in its Design Services and Design Documents.

4.10 Schedule of Design Services. As a supplement to and consistent with the project schedule attached hereto and referenced in Paragraph 1.2, and to the extent not already a part of said project schedule, Design/Builder shall submit for Owner’s approval a design schedule for the performance of Design/Builder’s Design Services which shall include allowance for reasonable time required for Owner’s review of submissions and for approvals of authorities having jurisdiction over the Project, and which shall describe in detail the break-down of the portions of the Detailed Design specified by Design/Builder in completing the entire Detailed Design, and the dates by which those specified portions of the Detailed Design will be completed. The design schedule, when approved by Owner, shall not, except for good cause, be exceeded by Design/Builder. Should Design/Builder, at any time during the course of performing the Agreement, have any reason to believe that it will be unable to meet any completion date in

accordance with the design schedule, it shall promptly notify Owner's Representative in writing. In such notice, Design/Builder shall state the reason for the delay, including the party responsible, if any, and the steps being taken to remedy or minimize the impact of the delay. Failure of Design/Builder to submit such notice shall constitute a waiver by Design/Builder of any claim for an adjustment to the design schedule or the Contract Time. Subject to the provisions of Paragraph 12.7 of this Agreement, Owner shall review and approve, where appropriate, the design schedule, or any portion thereof. The design schedule shall be incorporated into and be a part of the project schedule.

ARTICLE 5

PERFORMANCE OF CONSTRUCTION WORK

5.1 General Intent. Design/Builder shall perform all Work necessary to construct the Project in accordance with the Contract and to render the Project and all its components operational and functionally and legally usable for its intended purposes, as identified by Owner.

5.2 Work Defined. "Work" shall mean whatever is done by or required of Design/Builder to perform and complete its duties relating to the construction of the Project, including, without limitation, the following:

.1 Construction of the whole and all parts of the Project in full and strict conformity with the Contract;

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

.3 The procurement and furnishing of all necessary building permit[s] and other permits required for the construction of the Project, and the payment of all applicable fees, provided, however, that the Design/Builder is not responsible for and will not be required to pay impact fees imposed by local taxing authorities to which the Owner is not subject;

.4 The creation and submission to Owner of detailed as-built drawings depicting all as-built construction;

.5 The furnishing of all equipment and product warranties, manuals, test results and user guides required by the Contract or otherwise reasonably available to Design/Builder;

.6 The furnishing of all other services and things required or reasonably inferable from the Contract Documents, including the provisions of Article 8 below.

ARTICLE 6

OWNER'S REPRESENTATIVE

6.1 Owner's Representative. The Owner's Representative for the Project shall be the Administrator of the Division of Public Works or his designated representative. The Owner's Representative can act for and on behalf of Owner unless otherwise specified herein. Owner's

Representative has full authority to act on behalf of and to the same extent as Owner.

ARTICLE 7

TIME FOR CONSTRUCTION: THE CONTRACT TIME

7.1 Commencement of Construction. After Owner has approved the Design Documents for the Detailed Design, or specific portions thereof, Owner shall promptly notify Design/Builder in writing, by issuance of an applicable Notice to Proceed for Work, that Design/Builder should proceed with the Work or approved portions of the Work.

7.2 Schedule

.1 Pre-Construction services proposed include the following milestones:

- Programming: (Date)
- Schematic Design: (Date)
- Schematic Design Estimate: (Date)
Deliverable to Owner: (Date)
- Design Development: (Date)
Deliverable to Owner: (Date)
- PBFAC Presentation / Approval: (Date)
- Construction Document: (Date)
- Construction Document Approval (DPW/DBS): (Date)
- Bidding/Permitting Process: (Date)
- Construction: (Date)

It is assumed the above milestones and expected durations can change, and approval processes may require more time.

.2 Time for Completion. Design/Builder shall commence the Work when authorized by Owner under Paragraph 7.1, and the Work shall be carried out regularly and without interruption. Design/Builder shall substantially complete the Work not later than (date), or such other date as may by Change Order be designated (the "Scheduled Completion Date"). The number of calendar days between the effective date of the Notice to Proceed and the Scheduled Completion Date is the "Contract Time." Design/Builder shall achieve Final Completion of the Work no later than (date), or by such other date as may by Change Order be designated.

7.3 Liquidated Damages for Delay in Substantial Completion.

.1 Design/Builder shall be assessed (amount and no/100 dollars) (\$amount) per day as liquidated damages for each day of unexcused delay in achieving Substantial Completion beyond the Scheduled Completion Date.

.2 Any sums due and payable under this Paragraph 7.3 by Design/Builder shall be payable, not as a penalty, but as liquidated damages representing an estimate of delay damages likely to be sustained by Owner, estimated at the time of executing this Agreement. Such liquidated damages shall apply regardless of whether Design/Builder has been terminated by Owner prior to Substantial Completion so long as Design/Builder's actions or inactions substantially caused the delay; provided, however, that if Design/Builder is in substantial compliance with the project schedule at the time of

termination, no liquidated damages will be assessed against Design/Builder. All liquidated damages shall be in addition to and not in preclusion of the recovery of actual damages resulting from other defects in Design/Builder's performance hereunder for matters other than delays in Substantial Completion. When Owner reasonably believes that Substantial Completion will be inexcusably delayed, Owner shall be entitled, but not required, to withhold from any amounts otherwise due to Design/Builder an amount then believed by Owner to be adequate to recover liquidated damages applicable to such delays. Owner shall provide Design/Builder a ten (10) day notice of its intent to withhold liquidated damages and the amount of said liquidated damages to be withheld. If and when Design/Builder overcomes the delay in achieving Substantial Completion, or any part thereof, for which Owner has withheld payment, Owner shall promptly release to Design/Builder those funds withheld, but no longer applicable as liquidated damages.

7.4 Liquidated Damages for Delay in Final Completion.

.1 If Design/Builder fails to achieve Final Completion as required, Design/Builder will be assessed liquidated damages in accordance with the following schedule for each day of unexcused delay in achieving Final Completion:

(1) (\$ amount) per day

.2 Any sums due and payable under this Paragraph 7.4 by Design/Builder shall be payable, not as a penalty, but as liquidated damages representing an estimate of delay damages likely to be sustained by Owner, estimated at the time of executing this Agreement. Such liquidated damages shall apply regardless of whether Design/Builder has been terminated by Owner prior to Final Completion so long as Design/Builder's actions or inactions substantially caused the delay; provided, however, that if Design/Builder is in substantial compliance with the project schedule at the time of termination, no liquidated damages will be assessed against Design/Builder. Such liquidated damages shall be in addition to and not in preclusion of the recovery of actual damages resulting from other defects in Design/Builder's performance hereunder for matters other than delays in Final Completion. When Owner reasonably believes that Final Completion will be inexcusably delayed, Owner shall be entitled, but not required, to withhold from any amounts otherwise due to Design/Builder an amount then believed by Owner to be adequate to recover liquidated damages applicable to such delays. If and when Design/Builder overcomes the delay in achieving Final Completion, or any part thereof, for which Owner has withheld payment, Owner shall promptly release to Design/Builder those funds withheld, but no longer applicable as liquidated damages.

7.5 Time is of the Essence. All limitations of time set forth herein are material and time is of the essence of the Agreement.

7.6 Owner's Approvals/Project Schedule. The attached project schedule identifies dates and durations for Owner's approvals and actions. Failure of the Owner to adhere to this schedule shall be cause for time extensions to the Contract Time provided Design/Builder complies with the provisions of Article 16 of this Agreement.

ARTICLE 8

ADDITIONAL DUTIES AND RESPONSIBILITIES OF DESIGN/BUILDER

8.1 Design/Builder to Perform All Design Services and Work Required by the

Contract. The intent of the Contract is to require complete, correct and timely execution of the Design Services and the Work. Any and all Design Services and Work that may be required, reasonably implied or reasonably inferred by the Contract, or any part of it, as necessary to fully comply with the Contract and produce the intended result, or as otherwise indicated by Owner as of the effective date of this Agreement consistent with the attachments to this Agreement described in Paragraph 1.2, shall be provided by Design/Builder without increase to the Fixed Contract Price.

8.2 Strict Compliance with the Contract Documents. All Work performed by Design/Builder shall be in strict compliance with the Contract Documents, unless deviation from strict compliance has been approved by Owner. "Substantial compliance" is not strict compliance. Any Work not in strict compliance with the Contract Documents is defective.

8.3 Supervision of the Work. The Work shall be strictly supervised and directed using Design/Builder's best and highest skill and effort, Design/Builder bearing full responsibility for any and all acts or omissions of those engaged in the Work on behalf of Design/Builder.

8.4 Warranty of Workmanship and Materials. Design/Builder warrants and guarantees to Owner that all labor furnished to progress the Work under the Agreement will be competent to perform the tasks undertaken and is the best quality reasonably obtainable, that the product of such labor will yield only high quality results in strict compliance with the Contract, that materials and equipment furnished will be of high quality and new unless otherwise permitted by the Contract, and that the Work will be of high quality, free from faults and defects and in strict conformance with the Contract. Owner requires approval of final finish materials. All Work not strictly conforming to these requirements shall be considered defective and shall constitute a breach of Design/Builder's warranty.

8.5 Commencement of Guarantee and Warranty Periods. Special or specific guarantees and warranties, which are required by the Agreement to run for a fixed period of time, shall commence running on the date of Substantial Completion of all the Work.

8.6 Design/Builder's Schedule of Construction. Design/Builder, within fifteen (15) days after the commencement of any construction activities, shall submit to Owner, for its information, and comply with, Design/Builder's schedule of construction for completing the Work by the Scheduled Completion Date. The schedule of construction shall be a detailed critical path ("CPM") schedule in a form mutually agreeable to Owner and Design/Builder. The schedule of construction shall be updated at least monthly and shall be revised to reflect conditions encountered from time to time and shall be related to the entire Project. Each such update shall be furnished to Owner. Strict compliance with the requirements of this Paragraph shall be a condition precedent for payment to Design/Builder, and failure to strictly comply with said requirements shall constitute a material breach of the Agreement. Design/Builder must utilize the most current version of Microsoft Project for Windows or, with prior approval of Owner, comparable alternate scheduling software. The scheduling software must support the following logic relationships: finish to start (FS), finish to finish (FF), start to start (SS) and start to finish (SF) with support for lead/lag. The scheduling software must support resource and cost loading. The storage media must be DOS compatible CD Rom, DVD, Thumb-drive as approved by Owner.

8.7 Record Copy of Contract Documents. Design/Builder shall continuously maintain at the site, accessible by Owner, an updated copy of the Agreement, including one record copy of the Contract Documents marked to record on a current basis changes, selections and modifications made during construction. Additionally, Design/Builder shall maintain at the site, accessible by Owner, a copy of all shop drawings, product data, samples, and other

submittals. Upon Substantial Completion of the Work, or upon Owner's request, all the documents described in this Paragraph shall be finally updated, uploaded into the Owners electronic project management system and hard copy delivered to Owner and shall become the property of Owner.

8.8 Review and Approval of Submittals. Design/Builder shall review, study, and approve, or take other necessary action upon all shop drawings, product data, samples, and other submittals to ensure that the Project will be constructed in a timely fashion in strict compliance with the Agreement. All such submittals shall be reviewed and accepted by the appropriate design architect or engineer as applicable.

8.9 Owner's Option to Review Submittals. Owner shall, in its discretion, have the right to review and approve submittals, and if Owner so elects, Design/Builder shall not perform any portion of the Work as to which Owner has required submittal and review until such Submittal has been approved by Owner's Representative. Approval by Owner, however, shall not be evidence that Work installed pursuant thereto conforms with the requirements of the Agreement nor shall such approvals relieve Design/Builder of any of its responsibilities or warranties under the Agreement. If Owner elects to review submittals, Design/Builder shall upload into the Owners electronic project management system and maintain a Submittal log which shall include, at a minimum, the date of each Submittal, the date of any resubmittal, the date of any approval or rejection, and the reason for any approval or rejection. Design/Builder shall have the duty to perform a review of all submittals for general content and for apparent compliance with the Detailed Design before submission of same to Owner. Shop drawings and other submittals from Design/Builder do not constitute a part of the Contract, but such submittals are understood to provide further definition and specificity of materials and equipment to be incorporated into the Work; provided, however, that if Design/Builder submits shop drawings or submittals which are at variance with the Contract Documents including the Detailed Design documents approved by Owner, Design/Builder must designate such fact in writing on or with the shop drawing or submittal. Failure of the Owner to approve submittals in a timely fashion and to adhere to the schedule, shall be cause for time extensions to the Contract Time, provided Design/Builder meets the requirements of Article 16 hereof.

8.10 Procurement and Review of Warranties. Design/Builder shall procure from all Subcontractors and Suppliers and shall transmit/upload to Owner, all warranties required by the Agreement. Design/Builder shall review all such warranties and shall certify to Owner that the warranties are in strict compliance with the requirements of the Contract.

8.11 Procurement of Operations and Maintenance Documentation. Design/Builder shall prepare or procure and shall transmit to Owner all documentation required by the Agreement regarding the operating and recommended maintenance programs relating to the various elements of the Work.

8.12 As-Built Drawings. Design/Builder shall prepare and provide to Owner a set of all as-built drawings that shall be complete and, except as specifically noted, shall reflect performance of the Work in strict compliance with the requirements of the Agreement. As-built drawings shall incorporate subsequent information developed by and from any additional surveying performed by the Design/Builder and shall indicate final as-built elevations of key site conditions including, but not limited to, sewer and water invert/connection, manhole rim, street/gutter high and low points, building first floor finish elevation, etc. For purposes of this Agreement, the Project site shall include the areas defined on the illustrative site plan. As-built drawings shall be in the form of updated Detail Design drawings and submitted in DWG format compatible with AutoCAD 2000-generated document, including being uploaded into the Owners electronic project management system, one plotted and printed full size set on mylar film.

8.13 Compliance with Labor Laws. Design/Builder shall assume all labor responsibility for all personnel assigned to or contracted for the performance of the Work and agrees to strictly comply with all its obligations as employer with respect to said personnel, including without limitation, Idaho Code §44-1001 and §44-1002.

.1 Design/Builder, his designers and subcontractors shall maintain a drug and alcohol free workplace in compliance with Idaho Code, Title 72, Chapter 17 and shall, when requested to do so by the Owner, submit an affidavit certifying compliance therewith.

.2 Design/Builder warrants that it does not knowingly hire or engage any illegal aliens or persons not authorized to work in the United States; it takes steps to verify that it does not hire or engage any illegal aliens or persons not authorized to work in the United States; and that any misrepresentation in this regard or any employment of persons not authorized to work in the United States constitutes a material breach and shall be cause for the imposition of monetary penalties not to exceed five percent (5%) of this contract per violation and/or termination of this contract.

8.14 Testing, Inspections, and Approvals. Owner is responsible for testing and inspections in accordance with Paragraph 12.11. Design/Builder shall provide, at its cost, whatever additional testing and/or inspections Design/Builder deems necessary for the completion of the Project and performance of the Work in accordance with this Agreement.

8.15 Applicable Laws. Design/Builder represents and warrants that it will comply with all public laws, ordinances, rules and regulations applicable to the services to be performed under the Contract, including, without limitation, those relating to the terms and conditions of the employment of any person by Design/Builder in connection with the Work to be performed under the Contract.

8.16 Compliance with Construction Regulations. Design/Builder shall perform the Work in accordance with all construction codes, laws, ordinances or regulations applicable to the design and execution of the Work. Any fine or penalty which may be imposed as consequence of any violation of this provision shall be paid by Design/Builder, and Design/Builder shall, to the extent of any violation by Design/Builder hereunder, indemnify and hold Owner harmless from all loss, damages, and expense, including attorney's fees, resulting from any such violation or alleged violation.

8.17 Permits, Licenses and Notices. All plan review fees (except for plan reviews done by the Division of Building Safety), construction and building permits, licenses and authorizations necessary for the construction of the Project shall be secured on behalf of Owner and paid for by Design/Builder, except as specified in this Agreement. Design/Builder shall notify Owner's Representative when it has received said permits, licenses and authorizations and upon receipt shall supply Owner with copies of same. The originals of said permits, licenses and authorizations shall be delivered to Owner upon completion of the Work, and receipt of such documents by Owner shall be a condition precedent to final payment. Design/Builder shall also give and maintain any and all notices required by applicable laws pertaining to the construction of the Work.

8.18 Site Safety and Security. Design/Builder shall take all reasonable steps and legally required measures at the site to comply with applicable safety regulations and standards and to adequately protect the Work, stored materials, and temporary structures located on the premises, and to prevent unauthorized persons from entering upon the site. Design/Builder shall at all times safeguard Owner's property and employees from injury or loss in connection with the

performance of the Agreement. Design/Builder shall at all times safeguard and protect its own partially or completely finished Work and that of the adjacent property and all adjacent work from damage. Design/Builder shall protect Owner's equipment, apparatus, machinery, and other property and all adjacent work with boarding and other safeguards so as to keep the premises free from dampness, dirt, dust, or other damage and shall remove all such temporary protection upon completion of the Work. Design/Builder shall, upon execution of this Agreement, submit to Owner its Project Safety Manual, and shall operate in accordance with said Manual.

8.19 Repair of Collateral Damages. Unless otherwise instructed by Owner, Design/Builder shall repair and return to original condition all buildings, streets, curbs, sidewalks, utilities or other facilities affected by Design/Builder's performance of the Work, all without additional cost to Owner.

8.20 Cleaning the Site. Design/Builder shall keep the site reasonably clean during performance of the Work. Upon Substantial Completion of the Work, Design/Builder shall thoroughly clean the Project site and the Project and remove all waste, debris, trash and excess materials or equipment, together with Design/Builder's property therefrom.

8.21 Owner's Access to Work. At all times relevant to the Agreement, Design/Builder shall provide access to the Work to Owner and its designees.

8.22 Decisions Regarding Aesthetic Effect. Owner's decisions in matters relating to aesthetic effect shall be final and have no effect on the Fixed Contract Price if consistent with the intent of the Detailed Design and the project budget.

8.23 Design/Builder to Remain an Independent Contractor. In the performance of the Agreement, Design/Builder's status as an independent contractor shall not be modified or diminished by reason of any instructions issued by Owner or Owner's Representative to Design/Builder or any of Design/Builder's employees, subcontractors, or representatives.

8.24 Periodic Meetings and Updates. Periodically, as agreed to by Owner and Design/Builder, or upon reasonable request of Owner, Design/Builder will attend meetings to update Owner on the progress of the Project and to answer any questions of Owner.

8.25 One-Year Walk Through. One year from the date of Substantial Completion, on a date mutually agreed upon by Owner and Design/Builder, Design/Builder shall accompany Owner on a walk-through of the Project and shall be responsible to correct any items found deficient during such inspection.

ARTICLE 9

FIXED CONTRACT PRICE

9.1 Fixed Contract Price. Design/Builder agrees that the fixed price Owner shall pay to the Design/Builder for the completion of all Design Services and all Work described in the Contract Documents to complete the Project in accordance with the Detailed Design and the Design Documents, and the purposes of the Project, as identified by Owner, shall be the sum of **(spell out amount) (\$x,xxx,xxx.xx)** (the "Fixed Contract Price.") The Fixed Contract Price shall not be modified unless all conditions precedent to a change in the Fixed Contract Price have been satisfied, including the execution of a Change Order in accordance with the requirements of this Agreement.

9.2 Adjustments to Fixed Contract Price. In entering into this Agreement, Design/Builder understands and agrees that the Fixed Contract Price can only be increased in limited circumstances, and in accordance with the provisions set forth in this Agreement, including but not limited to the Change Order procedures set forth in Article 15 and the Claims procedures set forth in Article 16. Subject to the provisions of this Agreement, the Fixed Contract Price can be increased if:

(a) Owner directs or agrees to a change in the Project that increases the cost of the Design Services or the Work;

(b) the Design/Builder encounters subsurface or concealed conditions at the Project site, which meet the requirements of Paragraph 16.2 and that cause the Design/Builder to incur increased costs in the Design Services or the Work;

(c) the Design/Builder encounters Hazardous Materials, complies with the provisions set forth therein, and incurs increased costs to the Design Services or the Work;

(d) Design/Builder incurs unavoidable increased costs in performing Design Services or the Work as a direct result of changes, after the execution of this Agreement, in directly applicable laws, codes and ordinances, such as changes in life-safety building codes or zoning laws, legislatively enacted new categories of taxes (such as a gross receipts tax), and changes in environmental regulations which relate to the Project; or

(e) emergencies that meet the requirements of Paragraph 15.9, and that cause Design/Builder to incur increased costs in the Design Services or the Work.

Except for the foregoing, Design/Builder agrees that the Design/Builder assumes all other risks which may cause increased costs to the Design Services or the Work, and agrees that the Fixed Contract Price will not be increased as a result of any such risks.

9.3 Taxes. Unless otherwise provided in this Agreement, the Fixed Contract Price shall include all taxes that are or may be legally assessed or exacted during the construction of the Project.

ARTICLE 10

PAYMENT OF THE FIXED CONTRACT PRICE

10.1 Payment Procedure. Owner shall pay the Fixed Contract Price, as it may be adjusted by the operation of this Agreement, to Design/Builder in accordance with the procedures set forth in this Article 10.

10.2 Schedule of Values. Design/Builder shall prepare and present to the Owner the Design/Builder's schedule of values apportioning the Fixed Contract Price among the different elements of the Project for purposes of periodic and final payment within the Owner's provided schedule of values excel template. Pursuant to this Paragraph, Design/Builder shall, within thirty (30) calendar days of the Notice to Proceed, submit to Owner a detailed schedule of values for Design Services and a preliminary schedule of values for construction services to be rendered in performance of the Work and shall within thirty (30) days of the authorized commencement of some construction activities in performance of the Work submit to Owner a detailed schedule of values for all construction activities related to the performance of the Work. The Design/Builder's schedules of values shall be presented in a format, with such reasonable detail as the Owner

requests. Design/Builder shall not imbalance its schedule of values nor artificially inflate any element thereof. The violation of this provision by the Design/Builder shall constitute a material breach of this Agreement. The Design/Builder's schedule of values will be utilized for the Design/Builder's payment requests but shall only be so utilized after it has been acknowledged in writing by Owner. The Schedule of Values shall be presented in the Owner's web-based construction management software. The schedule of values submitted by Design/Builder pursuant to this Paragraph may from time to time be amended by Design/Builder, subject to the approval of Owner.

10.3 Submission of Payment Requests. On or before the 25th day of each month after commencement of performance, but no more frequently than once monthly, the Design/Builder may submit to the Owner's Representative, a payment request for the period ending the last day of the month. Said payment request shall be submitted via the Owners electronic project management system and shall include whatever supporting information as may be required by Owner. Therein, the Design/Builder may request payment as follows:

.1 for work not subject to retainage: One hundred percent (100%) of that part of the Fixed Contract Price allocated on the schedule of values to the following tasks performed by the Design/Builder's architect and engineers:

- Programming
- Schematic Design
- Design Development
- Construction Documents
- Construction Administration tasks of shop drawing review and document interpretation.

.2 for work subject to retainage ninety-five percent (95%) of that part of the Fixed Contract Price allocated on the schedule of values to Construction Services to the date of the Payment Request for properly provided labor and materials, and for equipment properly incorporated in the Project, and materials or equipment necessary for the Project and properly stored at the Project site (or elsewhere if off-site storage is approved in writing by the Owner, such approval not to be unreasonably withheld), less the total amount of previous payments received from the Owner and Closeout line item, less the total amount of previous payments received from the Owner. Any payment on account of stored materials or equipment will be subject to the Design/Builder providing written proof that the Owner has title to such materials or equipment and that they are fully insured against loss or damage.

10.4 Owner's Right to Inspect. As an additional condition precedent to payment under this Article 10, and including payment for Substantial Completion and on Final Completion, Owner may inspect Design/Builder's books and records which support and confirm all of the items set forth in the schedule of values and all other items described in any request for Payment by Design/Builder.

10.5 Warranty of Completed Work; Review of Payment Requests.

.1 Each Payment Request shall be signed by the Design/Builder and shall constitute the Design/Builder's 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, and that the Design/Builder knows of no reason why payment should not be made as requested.

.2 Thereafter, the Owner's Representative shall review the Payment Request and may also review the Work at the Project site or elsewhere to determine whether the quantity and quality of the Work is as represented in the Payment Request and is as required by this Contract. The Owner's Representative shall approve in writing the amount, which is properly owing to the Design/Builder.

10.6 Conditions Precedent to Payment. In addition to all other conditions precedent contained herein, it shall be a condition precedent to payment of any pay request that Design/Builder, if requested by Owner, have submitted updated schedules for the performance of its Work and Design Services as required by this Agreement and that Design/Builder shall have furnished to Owner properly executed waivers of rights to claim against the Owner, in a form acceptable to Owner, from all Subcontractors, materialmen, Suppliers or others lien or other claim rights, wherein they shall acknowledge receipt of all sums due pursuant to all prior pay requests and waive and relinquish any claim rights relating thereto. The submission by the Design/Builder of a payment request also constitutes an affirmative representation and warranty 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.

10.7 Time for Payment. Subject to Owner's right of review and objection, the Owner shall make payment to the Design/Builder within forty-five (45) days following receipt of the Design/Builder's submittal of a proper payment request.

10.8 Amount of Progress Payments. Owner shall pay the amount of each pay request properly due under this Agreement less such amounts, if any, owing by Design/Builder to Owner or which Owner shall have the right to withhold as authorized by this Agreement.

10.9 Title Passes upon Payment. Design/Builder warrants and represents that upon payment of any pay request submitted by Design/Builder, title to all Work covered by the pay request shall immediately pass to Owner.

10.10 Design/Builder's Use of Progress Payments. Upon receipt of any payment from Owner, Design/Builder shall promptly pay all Subcontractors, materialmen, laborers, and Suppliers such amounts as they are entitled for the Work covered by such payment.

10.11 Use of Joint Checks. If Owner becomes aware or is informed that Design/Builder has not paid a Subcontractor, materialmen, laborer, or Supplier as provided herein, Owner shall have the right, but not the duty, to issue checks and payment then or thereafter otherwise due to Design/Builder naming Design/Builder and any such Subcontractor, materialmen, laborer, or Supplier as joint payees. Before issuing any joint checks hereunder, Owner shall provide five (5) days prior written notice to Design/Builder. Such joint check procedure, if employed by 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 Owner to repeat the procedure in the future nor to create any contractual or other relationship of any kind between Owner and such person or entity.

10.12 Payment Not A Waiver of Acceptance. No payment to Design/Builder shall be interpreted or construed to constitute acceptance of any Work not in strict compliance with the Contract, and Design/Builder expressly accepts the risk that defective Work may not be detected (1) during any inspection by Owner, (2) prior to making of any payment to Design/Builder, or (3) before Owner's occupancy of the Project.

10.13 Withholding of Payment. Notwithstanding any withholding of payments

hereunder, Owner shall timely pay to Design/Builder all amounts due Design/Builder under this Article which are not in dispute under this Paragraph. Owner shall have the right to refuse to make payment (and, if necessary, may demand the return of a portion or all of the amount previously paid to Design/Builder) in an amount then believed by Owner to be adequate to cover the penalties, damages, and potential losses resulting or likely to result from:

- .1 The quality of a portion, or all, of Design/Builder's Work not being in strict accordance with the requirements of this Contract;
- .2 The quantity of Design/Builder's Work not being as represented in Design/Builder's pay request, or otherwise;
- .3 Design/Builder's rate of progress being such that, in Owner's opinion, Substantial Completion, Final Completion, or both, may be inexcusably delayed;
- .4 Design/Builder's failure to use Contract funds, previously paid Design/Builder by Owner, to properly pay Design/Builder's Project-related obligations including, but not limited to, Subcontractors, laborers and material and equipment Suppliers;
- .5 Evidence that the balance of the Work cannot be completed in accordance with the Agreement for the unpaid balance of the Fixed Contract Price;
- .6 Claims made, or likely to be made, against Owner or its property because of acts or omissions of Design/Builder;
- .7 Loss caused by Design/Builder; or
- .8 Design/Builder's failure or refusal to perform any of its obligations to Owner.

In the event that Owner makes written demand upon Design/Builder for amounts previously paid by Owner as contemplated in this Paragraph 10.13, Design/Builder shall promptly comply with such demands.

10.14 Unexcused Failure to Pay. If Owner, without justifiable cause or basis hereunder, fails to pay Design/Builder any amounts due and payable to Design/Builder within forty-five (45) days after the date established herein for payment of such amounts, then Design/Builder may suspend its Design Services or, as applicable, the Work until payment is made, provided that Design/Builder first gives five (5) days' written notice to Owner of its intent. Any payment due hereunder which is not made within thirty (60) days after the date due shall bear interest at statutory interest rate set forth in Idaho Code 63-3045.

ARTICLE 11

SUBSTANTIAL AND FINAL COMPLETION

11.1 Substantial Completion. With respect to the Project, "Substantial Completion" means that stage in the progression of the Work, as approved by Owner in writing, when the Project is sufficiently complete in accordance with the Agreement that Owner can enjoy beneficial use or occupancy of the entire Project and can utilize it for all of its intended purposes. Owner reserves the right to occupy and use any part, portion, or system of the Project when such part, portion, or system is substantially completed. For purposes of this Agreement, a part, portion or

system shall mean a housing building. If Owner elects to occupy a part, portion, or system of the Project, that part, phase or system, shall be deemed substantially complete; provided that Owner shall first notify Design/Builder of Owner's intent to occupy such part, portion, or system, and the Owner's Representative shall thereupon promptly perform an inspection of the subject part, portion or system to determine that the work is in fact substantially complete, and shall prepare a punch list of remaining items to be completed to achieve final completion of the subject part, portion or system. The fact that some part, portion or system of the Project is deemed substantially complete under this Paragraph shall not result in the entire Project being deemed substantially complete, nor will such partial use or occupancy be determinative of Substantial Completion as defined in Paragraph 11.2.

11.2 Determination of Substantial Completion. When Design/Builder considers Substantial Completion has been achieved for the Project, the Design/Builder shall notify the Owner in writing and shall furnish to the Owner a listing of those matters yet to be finished. The Owner or its designee will thereupon conduct an inspection to confirm that the work is in fact substantially complete. Upon its confirmation that the Design/Builder's work is substantially complete, the Owner will so notify the Design/Builder in writing and will therein set forth the date of Substantial Completion. If the Owner, through its inspection, fails to find that the Design/Builder's work is substantially complete, the Owner shall notify the Design/Builder of such findings, indicating items that cause the Work to be incomplete or unsatisfactory for acceptance. By furnishing a list of incomplete or unsatisfactory items, the Owner does not warrant that the list is a total and complete list of all items necessary to achieve Substantial Completion. Upon completion or correction by the Design-Builder of all items necessary to achieve Substantial Completion, Owner shall repeat all, or any portion, of its Substantial Completion inspection as often as necessary until Substantial Completion is achieved. If Owner is required to perform more than three (3) Substantial Completion inspections, the Design/Builder shall bear the cost of each additional inspection, which cost may be deducted by the Owner from any payment then or thereafter due to the Design/Builder. Owner shall notify Design/Builder, in writing, prior to commencing any inspections for which it may deduct payment to the Design/Builder therefore. Guarantees and equipment warranties required by the Contract shall commence on the date of Substantial Completion.

11.3 Payment upon Substantial Completion. Upon Substantial Completion of the Work, the Owner shall pay the Design/Builder an amount sufficient to increase total payments to the Design/Builder to ninety-five percent (95%) of the Fixed Contract Price, as adjusted by the operation of this Agreement less any amounts attributable to liquidated damages, together with 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 threatened claims, which result from Design/Builder's acts or omissions.

11.4 Final Completion Defined. With respect to the Project, "Final Completion" means the completion of all Design Services and all Work required by, and in strict compliance with, the Agreement, as approved by Owner in writing, including the satisfactory completion or resolution of all deficiencies (punch list items) and Design/Builder's provision to Owner of all documents and things required by the Agreement. "Final Completion" does not include services under maintenance service agreements and other services intended to continue beyond the Scheduled Completion Date.

11.5 Determination of Final Completion. When Design/Builder considers the Project finally complete and the Design/Builder is ready for a final inspection, it shall notify the Owner and Owner's Representative in writing. Thereupon, the Owner's Representative will perform a final inspection of the Project.

11.6 Final Payment. If the Owner's Representative confirms that the entire Project is complete in full accordance with the Contract and that the Design/Builder has performed all of its obligations to the Owner under the Contract, the Owner's Representative will furnish a final approval for payment to the Owner certifying to the Owner that the Project is complete and the Design/Builder is entitled to the remainder of the unpaid Fixed Contract Price as adjusted by operation of this Agreement, less any amounts attributable to liquidated damages, together with 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 threatened claims, which result from Design/Builder's acts or omissions. If the Owner's Representative is unable to issue its final approval for payment and is required to repeat its final inspection more than three (3) times, the Design/Builder shall bear the cost of each additional inspection, which cost may be deducted by the Owner from the Design/Builder's final payment.

11.7 Conditions Precedent to Final Payment. Prior to being entitled to receive final payment, and as a condition precedent thereto, Design/Builder shall furnish Owner, in the form and manner required by Owner, the following:

.1 An affidavit that all of Design/Builder'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 If required by Owner, separate releases or waivers from each Subcontractor, lower tier subcontractor, laborer, Supplier or other person or entity with connection to the Project, or proof of payment such as receipts;

.3 Consent of surety to final payment;

.4 Complete as-built drawings and the record set of Contract Documents;

.5 All product warranties, operating manuals, instruction manuals and other record documents, drawings and things customarily required of a Contractor, or expressly required herein, as a part of or prior to Project closeout; and

.6 Verification that Design/Builder has paid all taxes as required by Idaho Code, Title 63, Chapter 15.

11.8 Acceptance of Final Payment a Waiver. Acceptance by Design/Builder of final payment shall constitute a waiver and release of all claims against Owner by Design/Builder except for those claims previously made in writing against Owner by Design/Builder, pending at the time of final payment and specifically identified on Design/Builder's pay request for final payment as unsettled at the time it submits its pay request.

ARTICLE 12

OWNER'S DUTIES, OBLIGATIONS, AND RESPONSIBILITIES

12.1 Provide Project Information. Owner shall provide Design/Builder with information regarding Owner's requirements for the Project including any desired or required design or construction schedule. By furnishing such information, Owner does not represent, warrant, or guarantee its accuracy or completeness either in whole or in part, and shall have no liability therefore.

12.2 Review of Documents. Owner shall review any documents submitted by Design/Builder requiring Owner's decision, and shall render any required decisions pertaining thereto.

12.3 Provide Notice of Defects. In the event Owner knows of any material fault or defect in the Work, nonconformance with the Agreement, or of any errors, omissions or inconsistencies in the Design Documents, then Owner shall give prompt notice thereof in writing to Design/Builder.

12.4 Access to the Site and the Work; Providing Information. Owner shall provide Design/Builder access to the Project site and to the Work., and shall provide Design/Builder with such information, existing and reasonably available, necessary to Design/Builder's performance of the Contact as Design/Builder may request.

12.5 Cooperation to Secure Permits, Licenses, Approvals, and Authorizations. Owner shall cooperate with Design/Builder in securing any necessary licenses, permits, approvals or other necessary authorizations for the design, construction and certification of the Project.

12.6 Timely Performance. Owner shall perform the duties set forth in this Article 12 in a reasonably expeditious fashion and in accordance with the project schedule so as to permit the orderly and timely progress of Design/Builder's Design Services and of the Work.

12.7 Owner's Reviews, Inspections, Approvals, and Payments Not a Waiver. Owner's review, inspection, or approval of any Work, Design Documents, submittals, or pay requests by Design/Builder shall be solely for the purpose of determining whether such Work and such documents are generally consistent with Owner's construction program and requirements. No review, inspection, or approval by Owner of such Work or documents shall relieve Design/Builder of its responsibility for the performance of its obligations under the Agreement or the accuracy, adequacy, fitness, suitability, or coordination of its Design Services or the Work. Approval by any governmental or other regulatory agency or other governing body of any Work, Design Document, or Contract Documents shall not relieve Design/Builder of responsibility for the strict performance of its obligations under the Agreement. Payment by Owner pursuant to the Agreement shall not constitute a waiver of any of Owner's rights under the Agreement or at law, and Design/Builder expressly accepts the risk that defects in its performance, if any, may not be discovered until after payment, including final payment, is made by Owner.

12.8 Delay or Forbearance Not a Waiver. Owner's agreement not to exercise, or its delay or failure to exercise, any right under the Agreement or to require strict compliance with any obligation of Design/Builder under the Agreement shall not be a waiver of the right to exercise such right or to insist on such compliance at any other time or on any other occasion.

12.9 Subsurface and Other Information Provided by Owner. Owner shall furnish to Design/Builder, prior to the execution of this Agreement, any and all written and tangible material knowingly in its possession concerning conditions below ground at the site of the Project, including without limitation a soils report, survey and site demolition bidding documents. By furnishing such material, Owner does not represent, warrant, or guarantee its accuracy or completeness either in whole or in part, and shall have no liability therefore.

12.10 Approvals and Easements. Owner shall obtain all easements required for construction, and shall pay for necessary assessments and charges required for use and occupancy of the Work. Design/Builder shall render such assistance as Owner may request in obtaining such easements, certificates, and the like, including for example, assistance with

drawings or legal descriptions and attendance at hearings if necessary.

12.11 Testing and Inspection. Owner shall be responsible for testing and inspections required by sound professional practice and by governmental authorities having jurisdiction over the Project. Contractor will be responsible only for the cost of failed testing.

12.12 Right to Stop Work. In the event Design/Builder fails or refuses to perform the Work in strict accordance with the Agreement, or is otherwise in breach of this Contract, Owner may, at its option, instruct Design/Builder to cease and desist from performing further Work, or any part thereof. Upon receipt of such instruction from Owner in writing specifying the reasons therefore, Design/Builder shall immediately cease and desist as instructed by Owner and shall not proceed further until the cause for Owner's instructions has been corrected, no longer exists, or Owner instructs that the Work may resume.

12.13 Owner's Right to Perform Work. In the event Owner issues such instructions to stop Work, and in the further event that Design/Builder fails and refuses within seven (7) days of receipt of same to provide adequate assurance to Owner that the cause of such instructions will be eliminated or corrected, then Owner shall have the right to carry out the Work with its own forces, or with the forces of other contractors, and Design/Builder shall be fully responsible for the reasonable costs incurred in performing such Work. The rights set forth in Paragraph 12.12 and this Paragraph 12.13 are in addition to, and without prejudice to, any other rights or remedies Owner may have against Design/Builder, including the rights to terminate or withhold payment as provided herein.

12.14 Owner Personnel. Owner shall provide to Design/Builder a listing of key project personnel of Owner working on the Project.

ARTICLE 13

PROJECT DOCUMENTATION

13.1 Maintenance of Project-Related Records. Design/Builder shall maintain and protect all records relating in any manner whatsoever to the Project (the "Project Records") for no less than four (4) years after Final Completion of the Project, and for any longer period of time as may be required by law or good management practice.

13.2 Availability of Project-Related Records to Owner. All Project Records, which are in the possession of Design/Builder or Design/Builder's Subcontractors, shall be made available to Owner for inspection and copying upon Owner's request at any reasonable time. Additionally, such records shall be made available upon request by Owner to any state, federal or other regulatory authorities, and any such authority may review, inspect and copy such records. The Project Records include, without limitation, all drawings, plans, specifications, submittals, correspondence, logs, minutes, memoranda, photographs, tape or videotape recordings, or other writings or things which document the Project, its design, or its construction. Said records include those documents reflecting the cost of design and construction to Design/Builder.

ARTICLE 14

PERSONNEL, SUBCONTRACTORS AND SUPPLIERS

14.1 Subcontractor Defined. "Subcontractor" means an entity or person that has a

direct contract with Design/Builder to perform a portion of the Work or the Design Services. For purposes of the Agreement, Subcontractors shall also include those furnishing equipment and materials fabricated especially for the Project.

14.2 Supplier Defined. “Supplier” means an entity or person providing only equipment or materials for the performance of the Work.

14.3 Naming of Subcontractors. At the time of the execution of this Agreement, Design/Builder shall provide to Owner in writing a list of those subcontractors who Design/Builder intends to use in the performance of those portions of the Work under the Contract which involve plumbing, heating, air conditioning or electrical work. Prior to any construction, and on an ongoing basis in order to keep the information current, complete and accurate, Design/Builder must provide to Owner forms, as required by the applicable taxing authority(ies), showing dates, names, addresses, contracting parties, including all Subcontractors and Suppliers and all other relevant information required.

14.4 Terms of Subcontracts and Purchase Orders. All subcontracts and purchase orders with Subcontractors shall afford Design/Builder rights against the Subcontractor which correspond to those rights afforded to Owner against Design/Builder herein, including those rights of Contract suspension, termination, and stop Work orders as set forth herein. It is expressly agreed that no relationship of agency, employment, contract, obligation or otherwise shall be created between Owner and any Subcontractor of Design/Builder and a provision to this effect shall be inserted into all agreements between Design/Builder and its Subcontractors.

14.5 Design/Builder Responsible for Acts of its Subcontractors. Should Design/Builder subcontract all or any part of the Work, such subcontracting of the Work shall not relieve Design/Builder from any liability or obligation under the Contract or under any applicable policy, law or regulation, and Design/Builder shall be responsible for all and any acts, defaults, omissions or negligence of its Subcontractors, Suppliers, and consultants, as related to or affecting the performance of Design Services and the Work.

14.6 Personnel. Design/Builder shall employ and assign only qualified and competent personnel to perform any service or task concerning the Project. Design/Builder shall designate one such person as the Project Manager. Absent written instruction from Design/Builder to the contrary, the Project Manager shall be deemed to be Design/Builder’s authorized representative and shall be authorized to receive and accept all communications from Owner. Key design and supervisory personnel assigned by Design/Builder to this Project are as follows:

Name	Function
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(Insert Names and Function for each individual)

Design/Builder shall submit the names of other key supervisory personnel, and evidence of their competence, as such key supervisory personnel are appointed by Design/Builder. Evidence of the above-named personnel’s competence, such as a resume, shall be provided to Owner prior to said personnel beginning performance of the function indicated. So long as the individuals named above remain actively employed or retained by Design/Builder, or any related entity or affiliate thereof, they shall perform the functions indicated next to their names unless Owner agrees to the contrary in writing or unless Owner requests removal of any such individual from the Project. Owner requests to remove any of the Design/Builder’s personnel shall be in writing and shall contain substantive reasons therefore. In the event Owner requests the removal of any of the individuals named above, Design/Builder shall immediately comply and shall immediately replace such individual with a qualified substitute to whom Owner makes no objection, at no cost

or penalty to Owner for delays or inefficiencies the change may cause. In the event one or more individuals not listed above subsequently assumes one or more of those functions listed above, Design/Builder shall be bound by the provisions of this Paragraph 14.6 as though such individuals had been listed above.

14.7 Removal of Subcontractors. If, at any time during the course of the Project, Owner reasonably determines that the performance of any Subcontractor working on the Project is unsatisfactory, Owner's Representative shall notify Design/Builder of the same, and shall set forth the instances of unsatisfactory performance. Promptly on receipt of such notice, Design/Builder shall undertake to cure such unsatisfactory performance, or shall remove such Subcontractor from the Project and promptly replace such Subcontractor. Any cure of unsatisfactory performance or any replacement of a Subcontractor pursuant to this Paragraph shall be at no cost or penalty to Owner for any increased costs, delays or inefficiencies caused by such unsatisfactory performance, its cure, or by the replacement of a Subcontractor hereunder.

ARTICLE 15 CHANGES IN THE PROJECT

15.1 Owner's Right to Order Changes. The Owner, without invalidating the Agreement, may unilaterally order Changes in the Project within the general scope of the Contract, consisting of additions, deletions or other revisions. All changes in the Project, which adjust the Fixed Contract Price or the Contract Time, shall be authorized only by Change Order and Design/Builder specifically recognizes and acknowledges that methods available for adjustments to the Fixed Contract Price set forth in Paragraph 15.3.

15.2 Change Order Defined. "Change Order" means and includes a written order to the Design/Builder signed by the Owner or Owner's Representative and the Design/Builder and issued after the execution of this Agreement, authorizing a change in the Project and/or an adjustment in the Fixed Contract Price or the Contract Time.

15.3 Adjustment to Fixed Contract Price. The increase or decrease in the Fixed Contract Price resulting from a Change Order shall be determined in the following order of precedence:

.1 First, by mutual agreement between the Owner and the Design/Builder as evidenced by (1) the change in the Fixed Contract Price being set forth in a Change Order, (2) such change in the Fixed Contract Price together with any conditions or requirements relating thereto, being signed by both parties, and (3) the Design/Builder's execution of the Change Order;

.2 Second, if no mutual agreement occurs between the Owner and Design/Builder, under Paragraph 15.3(1), the change in the Fixed Contract Price, if any, shall be derived by determining the reasonable costs incurred or savings achieved, resulting from revisions in the Work, utilizing the 2009 Means Cost Guide, as adjusted for Boise, Idaho, provided Design Builder shall properly itemize the costs or savings and shall submit sufficient substantiating data to permit evaluation and including a reasonable design fee to perform needed design work to implement the revisions in the Work;

.3 Third, if the parties do not agree on the adjustment to the Fixed Contract Price utilizing the methodology set forth in Paragraph 15.3(1) or 15.3(2), then the amount of the change in the Fixed Contract Price shall be calculated by pricing the labor at the

actual wage or hourly rates paid for doing the additional Design Services and the Work; if any, plus the actual cost of materials and equipment, if any; provided, however, that such “actual costs” must be reasonable. In addition Owner shall allow a total mark-up of no greater than fifteen percent (15%) for all overhead, all indirect costs, and profit to be added to the actual costs of labor, if any, and materials and equipment, if any, pro-rated between the Design/Builder and Subcontractors, if any, as the Design/Builder determines, and in no event shall include any consequential damages of the Design/Builder; or

.4 Any such costs or savings shall be documented in the format and with such content and detail as is acceptable to the Owner.

15.4 Extension of Contract Time. Any extension of the Contract Time requested by Design/Builder for performance of any change in the Design Services or the Work ordered by Owner may be granted by mutual agreement and then set forth in the Change Order. Otherwise, extensions of the Contract Time must be requested by Design/Builder pursuant to the terms and conditions of Article 16 of this Agreement. The failure of Design/Builder to provide notice in writing to Owner in accordance with Article 16 of this Agreement of any request for extension of the Contract Time shall constitute a waiver by Design/Builder of any entitlement to an extension of the Contract Time.

15.5 Effect of Executed Change Order. The execution of a Change Order by Design/Builder shall constitute conclusive evidence of Design/Builder’s and Owner’s agreement to the ordered changes in the Project, the Agreement as thus amended, the Fixed Contract Price as thus amended and the Contract Time as thus amended. Design/Builder, by executing the Change Order, waives and releases any claim against Owner for additional time or compensation for matters relating to, arising out of, or resulting from the Design Services or the Work included within or directly affected by the executed Change Order.

15.6 Consent of Surety. Design/Builder shall notify and obtain the consent and approval of Design/Builder’s surety with reference to all Change Orders if such notice, consent or approval is required by Owner, Design/Builder’s surety or by law. Design/Builder’s execution of the Change Order shall constitute Design/Builder’s warranty to Owner that the surety has been notified of, and consents to, such Change Order and the surety shall be conclusively deemed to have been notified of such Change Order and to have expressly consented thereto.

15.7 Fiduciary Relationship. Design/Builder recognizes and accepts a fiduciary relationship of trust and confidence established between Design/Builder and Owner by this Agreement and agrees that it shall at all times in good faith use its best efforts to advance Owner’s interests and agrees to perform the Design Services and the Work in the best professional manner.

15.8 Minor Changes in the Project. The Owner will have authority to order minor changes in the Work not involving an adjustment in the Fixed Contract Price or an extension of the Contract Time and not inconsistent with the intent of the Detailed Design and Design Documents. Such Changes may be effected by written order and shall be binding on the Owner and the Design/Builder.

15.9 Emergencies. In any emergency affecting the safety of persons or property, the Design/Builder shall act, at Design/Builder’s discretion, to prevent threatened damage, injury or loss. Any increase in the Fixed Contract Price or extension of the Contract Time claimed by the Contractor on account of emergency work shall be determined as provided in this Article.

ARTICLE 16
CLAIMS FOR ADDITIONAL COST OR TIME

16.1 Limitation on and Operation of Design/Builder Claims.

.1 Design/Builder and Owner understand and agree that the Fixed Contract Price cannot increase, unless Owner specifically orders a Change to the Project pursuant to Article 15 of this Agreement, or unless Design/Builder encounters a condition or situation within the risk assumed by the Owner under Paragraph 9.2 of this Agreement. In the event Design/Builder believes it is entitled to make claims to increase the Fixed Contract Price or to extend the Contract Time, such claims must be made in strict compliance with this Article 16.

.2 The procedures of this Article relating to claims of the Design/Builder are understood to be a construction management tool of Owner. The use of the term "claim" in this Article does not constitute an error, omission, or inappropriate conduct by either party.

16.2 Claims for Extraordinary Unforeseeable Subsurface or Concealed Conditions.

.1 Under the provisions of this Agreement, including the representations and warranties of Design/Builder contained in Paragraphs 2.1(5) and (6), Design/Builder understands and agrees that the risk of increased costs in the Design Services and the Work caused by the conditions of the Project site, whether surface, subsurface, or other conditions which affect the site or the performance of Design Services or the Work have been transferred to and assumed by Design/Builder under this Agreement, and that such increased costs will be absorbed by Design/Builder, and that there will be no increase in the Fixed Contract Price as a result of Design/Builder encountering such conditions and increased costs. Notwithstanding this general transference of the risk of such conditions, the parties agree that there are limited circumstances under which Design/Builder may be entitled to an increase in the Fixed Contract Price due to conditions that are unknown, concealed, and unforeseeable conditions, as set forth in this Article.

.2 If subsurface or otherwise concealed conditions are encountered at the Project site which are:

- (1) unknown to Design/Builder; and
- (2) not reasonably foreseeable or anticipated by Design/Builder in view of Design/Builder's representations and warranties contained in Article 2.
- (3) which are either:
 - (i) materially different from those indicated in any respective soils reports provided; or
 - (ii) materially different from those ordinarily found to exist and generally recognized and inherent in construction activities of the character provided for in the Contract, then Design/Builder may seek an adjustment to the Fixed Contract Price and/or an extension of the Contract Time, in accordance with the provisions of this Article 16, and provided that

Design/Builder shall give notice to the Owner in writing before the conditions are disturbed and in no event later than seven (7) calendar days after Design/Builder discovers or observes the conditions.

(iii) Upon receipt of said notice, Owner shall investigate such conditions and make a determination as to whether the conditions meet the requirements set forth in this Paragraph 16.2 above. Owner shall notify Design/Builder in writing within fourteen (14) days of its determination. If Owner determines that the conditions do not meet the requirements of Paragraph 16.2, Owner shall specify the reasons for that determination.

.3 Examples of conditions that would not be reasonably foreseeable and thus may qualify for an adjustment in the Fixed Contract Price, and/or an extension of the Contract Time include: buried vehicle bodies, which reasonably require Design/Builder to utilize equipment to remove said vehicles which was not contemplated by Design/Builder as necessary to perform the Work; burial or archeological finds; dump or garbage pits that contain more than fifty (50) cubic yards of refuse to be hauled off of the Project site; drain fields; storage tanks, voids or tunnels; or rock formations which require “jack hammering” or “blasting” to excavate or remove; and groundwater higher than three (3) feet below existing ground level, which cannot be diverted or removed through the use of four-inch (4”) pumps on the Project site.

.4 Examples of conditions that are reasonably foreseeable under the Contract, and do not qualify for an adjustment in either the Fixed Contract Price and/or an extension of the Contract Time include: materials expected to be found in river bottom soil, including but not limited to, cobblestones, clay, sand, silt and gravel (and combinations thereof), boulders up to one ton in size, car bodies or vehicles, which do not require Design/Builder to utilize equipment for removal which was not contemplated by Design/Builder for use in performing the Work, garbage pits containing less than fifty (50) cubic yards of material.

16.3 Conditions for Design/Builder Claims. Claims by the Design/Builder against the Owner are subject to the following terms and conditions:

.1 All Design/Builder claims against the Owner shall be initiated by a written claim submitted to the Owner’s Representative. Such claim must be received by the Owner’s Representative no later than seven (7) calendar days after the event or the first appearance of the circumstances causing the claim, and must set forth in detail all known facts and circumstances supporting the claim and such claim must designate whether the claim affects the Design Services and Work;

.2 The Design/Builder and the Owner shall continue their performance hereunder regardless of the existence of any claims submitted by the Design/Builder;

.3 In the event the Design/Builder seeks to make a claim for an increase in the Fixed Contract Price, as a condition precedent to any liability of the Owner therefore, the Design/Builder shall strictly comply with the requirements of Subparagraph 16.3(1) above, and such claim shall be made by the Design/Builder before proceeding to execute any additional or changed work. Failure of the condition precedent to occur shall constitute a waiver by the Design/Builder of any claim for additional compensation;

.4 In connection with any claim by the Design/Builder against the Owner for

an increase in the Fixed Contract Price, any liability of the Owner shall be strictly limited to the actual costs incurred by the Design/Builder and a total mark-up of no greater than 15% for all overhead, all indirect costs, and profit of Design/Builder and its Subcontractors, suppliers, consultants and agents, and shall in no event include consequential damages of the Design/Builder. The Owner shall not be liable to the Design/Builder for claims of third parties, including Subcontractors, unless and until liability of the Design/Builder has been established therefore in a court of competent jurisdiction;

.5 In the event the Design/Builder should be delayed in performing any task which at the time of the delay is then critical or which during the delay becomes or may become critical to the extent attributable to any act or omission by the Owner or someone acting in the Owner's behalf, or by Owner-authorized Change Orders, unusually bad weather not reasonably anticipatable, unavoidable accidents beyond Design/Builder's control, fire, active interference by third parties with Design/Builder's duties on-site, or other acts of God, all relating to the Project site, the date for achieving Substantial Completion, or, as applicable, Final Completion, shall be appropriately adjusted by the Owner upon the written claim of the Design/Builder, in accordance with Subparagraph 16.3(1), as the Design/Builder's sole remedy. A task is critical within the meaning of this Subparagraph 16.3(5) if, and only if, said task is on the critical path of the project schedule so that a delay in performing such task will delay the Substantial or Final Completion of the Project. Any claim for an extension of time by the Design/Builder shall strictly comply with the requirements of Subparagraph 16.3(1) above. If the Design/Builder fails to make such claim as required in this Subparagraph 16.3(5), any claim for an extension of time shall be waived.

.6 An extension of the Contract Time will be the Design/Builder's sole remedy for any delays of Design/Builder, whether or not delays are caused by Owner, Owner's Representative and whether or not such delays are foreseeable, unless delays are caused by acts of the Owner which constitute active interference with Design/Builder's performance of the Work, and only to the extent such acts continue after the Design/Builder furnishes the Owner with written notice of such interference. In no other event shall the Design/Builder be entitled to any compensation or recovery of any damages in connection with any delay, including, without limitation, consequential damages, lost opportunity costs, impact damages, or other similar remuneration. The Owner's exercise of any of its rights or remedies under the Contract Documents, including, without limitation, ordering changes in the Work, direct suspension, or correction of the Work and, regardless of the extent or frequency of the Owner's exercise of such remedies, shall not be construed as active interference with the Design/Builder's performance of the Work.

.7 If the Design/Builder submits a schedule or progress report indicating, or otherwise expressing an intention to achieve completion of the work prior to any completion date required by the Contract Documents or expiration of the Contract Time, no liability of the Owner to the Design/Builder for any failure of the Design/Builder to so complete the Work shall be created or implied. However, Owner agrees to reasonably cooperate with requests of Design/Builder to accelerate the Work.

ARTICLE 17

UNCOVERING AND CORRECTING WORK

17.1 Design/Builder Not to Cover Work Contrary to Requirements. If any of the

Work is covered, concealed or obscured contrary to the written request of Owner, or contrary to any provision of the Agreement, said Work shall, if required by Owner, be uncovered for inspection and shall be properly replaced at Design/Builder's expense without change in the Contract Time.

17.2 Owner's Right to Order Uncovering of Any Work. If any of the Work is covered, concealed or obscured by Design/Builder in a manner consistent with its obligations under this Agreement, it shall, if required by Owner, be uncovered for inspection. If such Work conforms strictly with the Agreement, the cost of uncovering and proper replacement shall by Change Order be charged to Owner. If such Work does not strictly conform with the Agreement, Design/Builder shall pay the cost of uncovering and proper replacement.

17.3 Duty to Correct Rejected Work. Design/Builder shall immediately proceed to correct Work rejected by Owner as defective or failing to conform to the Agreement. Design/Builder shall pay all costs and expenses associated with correcting such rejected Work, including any additional testing and inspections made necessary thereby.

17.4 Duty to Correct Defective Work Discovered After Completion. In addition to its warranty obligations set forth elsewhere herein, Design/Builder shall be specifically obligated to correct any and all defective or nonconforming Work for a period of twelve (12) months following beneficial occupancy or Final Completion, whichever occurs first, upon written direction from Owner. This obligation shall survive final payment by Owner and termination of the Agreement.

17.5 No Period of Limitation Established. Nothing contained in Paragraph 17.4 shall establish any period of limitation with respect to other obligations, which Design/Builder has under the Agreement. Establishment of the one-year time period in Paragraph 17.4 above relates only to the duty to Design/Builder to specifically correct the Work.

17.6 Owner's Option to Accept Defective Work. Owner may, but shall in no event be required to, choose to accept defective or nonconforming Work. In such event, and if the Design/Builder has refused to promptly remove and correct the defective work, the Fixed Contract Price shall be reduced by the reasonable costs of removing and correcting the defective or nonconforming Work. Owner shall be entitled to such reduction in the Fixed Contract Price regardless of whether Owner has, in fact, removed and corrected such defective Work. If the unpaid balance of the Fixed Contract Price, if any, is insufficient to compensate Owner for the acceptance of defective or nonconforming Work, Design/Builder shall, upon written demand from Owner, pay Owner such additional compensation for accepting defective or nonconforming Work.

ARTICLE 18

SUSPENSION AND TERMINATION

18.1 Suspension of Performance. Owner may for any reason whatsoever suspend performance under the Contract. Owner shall give written notice of at least five (5) days of such suspension to Design/Builder specifying when such suspension is to become effective.

18.2 Ceasing Performance upon Suspension. From and upon the effective date of any suspension ordered by Owner, Design/Builder shall incur no further expense or obligations in connection with the Agreement, and Design/Builder shall cease its performance. Design/Builder shall also, at Owner's direction, either suspend or assign to Owner any of its open or outstanding subcontracts or purchase orders.

18.3 Claim for Costs of Suspension. In the event Owner directs a suspension of

performance under this Article 18, through no fault of Design/Builder, and provided Design/Builder submits a proper claim as provided in this Agreement, Owner shall pay Design/Builder as full compensation for such suspension Design/Builder'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 material or equipment purchased for the Project, including insurance thereon; and
- .4 Performing in a later, different, or during a longer, time frame than that contemplated by this Contract.

18.4 Resumption of Work after Suspension. If Owner lifts the suspension it shall do so in writing, and Design/Builder shall promptly resume performance of the Agreement unless, prior to receiving the notice to resume, Design/Builder has exercised its right of termination as provided herein.

- .1 Design/Builder reserves the right to change its personnel for the performance of the Work, to the extent such personnel are not reasonably available upon the resumption of the Work; provided that Owner may direct by Change Order that such personnel be retained on the Project. If Owner directs such retention, Owner shall pay Design/Builder the reasonable costs incurred by Design/Builder to keep and/or make such personnel available upon the resumption of the Work, including necessary stand-by costs.

18.5 Termination by Design/Builder for Prolonged Suspension of Performance. If performance of the Agreement is stopped for a period of ninety (90) consecutive days at the direction of Owner pursuant to Paragraph 18.1 or by an order of any court or other public authority, or as a result of any act of government, and provided that such suspension by Owner or public authority is through no fault of Design/Builder or any person or entity working directly or indirectly for Design/Builder, Design/Builder may, upon ten (10) days' written notice to Owner, terminate performance under the Agreement and recover from Owner on the terms and conditions and in the amounts provided in Paragraph 18.7 below.

18.6 Termination by Design/Builder for Cause. If Owner shall persistently or repeatedly fail to perform any material obligation to Design/Builder for a period of thirty (30) days after receiving written notice from Design/Builder of its intent to terminate hereunder, Design/Builder may terminate performance under the Agreement by written notice to Owner. In such event, Design/Builder shall be entitled to recover from Owner on the terms and conditions and in the amounts as though Owner had terminated Design/Builder's performance under the Agreement for convenience pursuant to Paragraph 18.7 below.

18.7 Termination by Owner for Convenience. Owner may, for any reason whatsoever, or without reason, terminate performance under the Agreement by Design/Builder for convenience. Owner shall give at least thirty (30) days prior written notice of such termination to Design/Builder specifying when termination becomes effective. Design/Builder shall incur no further obligations in connection with the Agreement and Design/Builder shall stop Design Services and the Work when such termination becomes effective. Design/Builder shall also, at Owner's direction, either terminate or assign to Owner outstanding purchase orders and

subcontracts. Design/Builder shall settle the liabilities and claims arising out of any terminated subcontracts. Owner may direct Design/Builder to assign Design/Builder's rights, title and interest under terminated orders or subcontracts to Owner or its designee. Design/Builder shall transfer title and deliver to Owner such completed or partially completed Design Documents, Work and materials, equipment, parts, fixtures, information and appropriate contract rights as Design/Builder has.

18.8 Submission of Termination Claim and Compensation for Termination for Convenience. When terminated for convenience, Design/Builder shall be compensated as follows:

.1 Design/Builder shall submit a termination claim to Owner specifying the amounts believed to be due because of the termination for convenience together with costs, pricing or other data required by Owner. If Design/Builder fails to file a termination claim within three (3) months from the effective date of termination, Owner shall pay Design/Builder an amount derived in accordance with Subparagraph (3) below;

.2 Owner and Design/Builder may agree to the compensation, if any, due to Design/Builder hereunder;

.3 Absent agreement to the amount due to Design/Builder, Owner shall pay Design/Builder, as full compensation for termination for convenience, the following amounts:

(1) That portion of the Fixed Contract Price representing the value of the Design Services and the Work, as reflected on the schedule of values, performed by Design/Builder prior to the date of termination, which is completed and accepted by Owner for which Design/Builder has not been previously paid;

(2) Reasonable costs incurred in preparing to perform and in performing the terminated portion of the Design Services and the Work, and in terminating Design/Builder's performance, plus a fair and reasonable allowance for direct job site overhead and profit thereon (such profit shall not include anticipated profit or consequential damages); provided however, that if Owner can show that Design/Builder 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 rate of loss, if any; and

(3) Reasonable costs of settling and paying costs and claims arising out of the termination of subcontractors or orders pursuant to Paragraph 18.7 above. These costs shall not include amounts paid in accordance with other provisions hereof.

In no event shall Design/Builder be entitled to recover anticipated profits or other consequential damages from Owner on account of a termination for convenience or an erroneous termination for cause, as described below. The total sum to be paid Design/Builder under this Paragraph shall not exceed the Fixed Contract Price, as properly adjusted, reduced by the amount of payments otherwise made, and shall in no event include duplication of payment.

18.9 Termination by Owner for Cause. If Design/Builder does not perform the Work, or any part thereof, in a timely manner, supply adequate labor, supervisory personnel or proper

equipment or materials, or if it fails to timely discharge its obligations for labor, equipment and materials, or proceeds to disobey applicable laws, ordinances, rules, regulations or orders of any public authority having jurisdiction, or otherwise commits a violation of a material provision of the Agreement, then Owner may by written notice to Design/Builder, without prejudice to any other right or remedy against Design/Builder or others, terminate the performance of Design/Builder and take possession of the Project site and of all materials and equipment at the site and may finish the Work by methods it may deem expedient. In such cases, Design/Builder shall not be entitled to receive any further payment until the Work is finished.

18.10 Erroneous Termination for Cause. In the event the employment of Design/Builder is terminated by Owner for cause pursuant to Paragraph 18.9 and it is subsequently determined by a court or other tribunal of competent jurisdiction that such termination was without cause, such termination shall thereupon be deemed a Termination for Convenience under Paragraph 18.7 and the provisions of Paragraph 18.8 regarding compensation shall apply.

18.11 Payments to Design/Builder after Termination for Cause. Upon a termination by Owner for cause, if the unpaid balance of the Fixed Contract Price exceeds the cost of finishing the Work, including compensation for Owner's additional costs and expenses of every nature whatsoever made necessary thereby, such excess shall be paid to Design/Builder. If such costs exceed the unpaid balance, Design/Builder shall pay the difference to Owner. This obligation for payment shall survive the termination of the Agreement.

ARTICLE 19 OWNERSHIP OF DOCUMENTS

19.1 Documents Owner's Property. The Design Documents and the Contract Documents, including but not limited to, the drawings, specifications and other documents or things prepared by Design/Builder for the Project, shall become and be the sole property of Owner. Any documents furnished by Owner shall remain the property of Owner. Design/Builder may be permitted to retain copies of the Design Documents and Contract Documents and any documents furnished by Owner for its records; provided, however, that in no event shall Design/Builder use, or permit to be used, any portion of all of such documents on other projects without Owner's prior written authorization.

ARTICLE 20 INDEMNIFICATION

20.1 Design/Builder Indemnification of Owner for Personal Injury or Damage to Tangible Property. Design/Builder shall indemnify and hold Owner and Owner's Representative harmless from any and all claims, liability, damages, loss, cost and expense of every type whatsoever including, without limitation, attorneys' fees and expenses, in connection with Design/Builder's performance of this Contract, provided that such claims, liability, damage, loss, cost or expense is due to sickness, personal injury, disease or death, or to loss or destruction of tangible property (other than the Work itself), including loss of use resulting therefrom, to the extent caused by Design/Builder or anyone for whose acts Design/Builder may be liable.

20.2 Design/Builder Indemnification of Owner for Violations of Laws, Environmental Requirements and Licensing Requirements. Design/Builder shall indemnify

and hold harmless Owner and its affiliates, officers, directors, and employees from and against all claims, liabilities, damages, losses, costs, expenses (including reasonable attorney's fees and expenses, and fees and expenses of experts) for bodily injury, including death, or damage to or loss of property, or any other type or form of loss occurring or sustained or resulting from:

.1 Any violation by Design/Builder, its Subcontractors, representatives, employees, and agents of any municipal, state or federal laws, rules, or regulations applicable to the performance of its obligations under the Agreement;

.2 Environmental violations or contamination from hazardous substances, hazardous wastes and emissions or other substances or chemicals regulated by any applicable environmental laws or regulations and to the extent caused by any willful misconduct, negligent act or omission, or legal violation by Design/Builder, its Subcontractors, Suppliers, representatives, employees, or agents;

.3 The failure of any of Design/Builder's employees, agents, representatives, Suppliers, or Subcontractors to obtain and maintain the required skills, licenses, certificates and permits mandated by applicable federal, state or local governing authorities with jurisdiction over construction, fabrication, environmental, health and safety matters of the Project.

20.3 Hazardous Materials. In the event Design/Builder discovers hazardous or contaminated materials, including but not limited to asbestos, PCBs, petroleum, hazardous waste, or radioactive materials ("Hazardous Materials"), Design/Builder shall stop all Work in connection with such hazardous condition and in any area affected thereby, and notify Owner of the discovery of said condition. Design/Builder shall strictly comply with all laws, regulations, rules or other promulgations by governing bodies, agencies, authorities or organizations having jurisdiction over Design/Builder's Activities on the Project relating to Hazardous Materials. Design/Builder shall comply with all laws, regulations, rules or other promulgations by governing bodies, agencies, authorities or organizations having jurisdiction over the discovery of hazardous or contaminated material. Design/Builder shall secure the Work site to prevent access by unauthorized personnel. If Design/Builder fails to comply with this Paragraph 20.3 or contaminated, hazardous or suspected contaminated or hazardous material is knowingly transported (either on or off site) by Design/Builder without notice to Owner, Design/Builder shall be solely responsible for all costs and fines as a result of such failure or knowing transportation.

ARTICLE 21 INSURANCE

21.1 Required Coverage and Limits. Design/Builder shall have and maintain the insurance described in Exhibit "Y" attached hereto and incorporated herein by reference during the entire performance of this Contract, and for a period of two (2) years after Final Completion of the Project. Such insurance shall cover the claims and provide the limits of coverage set forth in Exhibit "Y."

21.2 Proof of Insurance. Design/Builder shall provide Owner with certificates of insurance naming Owner as an additional insured (except for professional liability insurance) or certified copies of the policies required by Owner, certifying that all insurance is in force, within ten (10) days after the Agreement becomes effective or on the date construction is commenced, whichever occurs first. Certificates of insurance evidencing the coverages required by the Agreement shall contain an endorsement requiring sixty (60) days' written notice to Owner prior

to any cancellation or alteration of said coverage. Said coverage shall be written by an insurer properly licensed in Idaho and having a Best's rating of A or A+ and shall be in a form reasonably acceptable to Owner. Insurance required by this Agreement must apply separately to each insured against whom a claim is made or suit is brought, except with respects to the limits of the company's liability.

21.3 Increases in Coverage. At the request of Owner, Design/Builder shall increase the above insurance limits or obtain additional coverage at Owner's expense.

21.4 Subrogation. Owner and Design/Builder waive all rights against each other and against the respective consultants, subcontractors, agents and employees of the other for damages covered by Exhibit "Y", part 3, Property Insurance except that neither waives any right to seek to recover from the other deductibles or other amounts required to be paid in self-insurance before such property coverage becomes effective and neither waives any right as they have to proceeds of such insurance held by Design/Builder. Further, 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. Owner and Design/Builder each shall require appropriate similar waivers from their consultants, subcontractors and agents.

ARTICLE 22 SURETY BONDS

22.1 Performance Bond and Payment Bond. Prior to the start of construction, Design/Builder must furnish separate performance and payment bonds to Owner. Each bond shall set forth a penal sum in an amount not less than the Fixed Contract Price. Each bond furnished by Design/Builder shall incorporate by reference the terms of the Agreement as fully as though they were set forth verbatim in such bonds. In the event the Fixed Contract Price is adjusted by Change Order executed by Design/Builder, 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 Design/Builder shall be in form suitable to Owner and shall be executed by a surety, or sureties, properly licensed in Idaho and having a Best's rating of A. Design/Builder recognizes and acknowledges that the performance bond must cover all services (design and construction) to be provided by the Design/Builder under this Agreement.

ARTICLE 23 MISCELLANEOUS PROVISIONS

23.1 Governing Law. The Agreement shall be governed by the laws of the State of Idaho. The parties agree that venue for any filed legal proceeding will be in the state courts of Ada County, Idaho and hereby consent to the jurisdiction of such courts.

23.2 Successors and Assigns. Owner and Design/Builder bind themselves, their successors, assigns, executors, administrators and other legal representatives to the other party hereto and to successors, assigns, executors, administrators and other legal representatives of such other party in respect to all terms and conditions of this Contract.

23.3 Assignment. Design/Builder shall not assign the Agreement, or any part of the Agreement, without prior written consent of Owner.

23.4 Notices. Any notice required to be given herein shall be deemed to have been given to the other party if (1) given by first class mail, registered or express mail, courier service, or hand delivery; or (2) by fax, provided that such notice is also confirmed by first class mail, registered or express mail, courier service, or hand delivery to the following addresses:

TO OWNERS:

Division of Public Works
502 N. 4th Street
P.O. Box 83720
Boise, ID 83720-0072
Attn: Pat Donaldson, Administrator

TO DESIGN/BUILDER:

(fill in Name, Attn: & Address)

All notices shall be effective upon receipt.

23.5 Publicity. No information relative to the existence or the details of the Design Services or the Work shall be released by Design/Builder, either before or after completion of the Project, for publication, advertising or any commercial purposes without Owner's prior written consent.

23.6 Severability. In the event that any portion or any portions of this Contract are held to be unenforceable by a court of competent jurisdiction, then the remainder of this Contract shall be enforced as though such portions had not been included, unless to do so would cause this Contract to fail of its essential purposes.

23.7 Effective Date. The effective date of this Contract is **(Insert date)**.

ARTICLE 24 DISPUTE RESOLUTION

24.1 Initial Dispute Resolution. If a dispute arises out of or relates to this Agreement or its breach, the parties shall endeavor to settle the dispute first through direct discussions. If the dispute cannot be settled through direct discussions, the parties shall endeavor to settle the dispute by mediation.

24.2 Work Continuance and Payment. Unless otherwise agreed in writing, the Design/Builder shall continue the Work and maintain the approved schedules during any mediation proceedings. If the Design/Builder continues to perform, the Owner shall continue to make payments in accordance with this Agreement.

24.3 Multiparty Proceeding. The parties agree that all parties necessary to resolve a dispute shall be parties to the same mediation proceeding.

24.4 If Mediation Fails. If mediation fails to resolve the dispute, either party may file an action in the state courts of Ada County, Idaho.

Executed by the parties' duly authorized representatives as indicated by their signatures below.

OWNER

Division Of Public Works
Boise, Idaho

By: _____

Jan P. Frew, Administrator

DESIGN/BUILDER

By: _____

Name, Title

Tax ID. No. xx-xxxxxxx

EXHIBIT Y
INSURANCE

1.1 DESIGN/BUILDER'S LIABILITY INSURANCE. The Design/Builder shall purchase and maintain in full force and effect such insurance as will protect the Design/Builder from claims set forth below which may arise out of or result from the Design/Builder's operations under the Contract and for which the Design/Builder may be legally liable, whether such operations be by the Design/Builder or by a Subcontractor or by anyone directly or indirectly controlled 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 Design/Builder's employees;
- .3 Claims for damages because of bodily injury, sickness or disease, or death of any person other than the Design/Builder'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 Design/Builder 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 therefrom;
- .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 Design/Builder's obligations under the Agreement.

1.2 The insurance required by Paragraph 1.1 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 \$3,000,000 each occurrence. If such CGL insurance contains a general aggregate limit, it shall apply separately to this project location;

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

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

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

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

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

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

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

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

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

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

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

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

.6 Professional Liability coverage with limits of not less than \$5,000,000.

.1 If the Professional Liability coverage required by this Paragraph is provided through a claim made policy, the Design/Builder must maintain such insurance for two (2) years after the date services are last provided under this Agreement. The Design/Builder shall be responsible for all premiums, deductibles and all costs not covered by such insurance.

1.3 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 certificates, or endorsements if required, and the insurance policies required by this Article shall contain a provision that coverages afforded under the policies will not be canceled or allowed to expire until at least thirty (30) days' prior written notice has been given to the Owner (and the Idaho State Building Authority). If any of the foregoing insurance coverages are required to remain in force after final payment and are reasonably available, an additional certificate evidencing continuation of such coverage shall be submitted with the final Contractor's Request for Payment as required by Article 7. Information concerning reduction of coverage shall be furnished by the Contractor with reasonable promptness in accordance with the Contractor's information and belief.

2.1 **OWNER'S LIABILITY INSURANCE.** The Owner at its option may purchase and maintain other insurance for self-protection against claims, which may arise from operations under the Contract.

3.1 **PROPERTY INSURANCE.** Design/Builder shall purchase and maintain property insurance written on a builder's risk "all risk," including earthquake and flood or equivalent policy form in the amount of the Fixed Contract Price plus the value of any upward adjustments to the Fixed Contract Price permitted by the Contract, on a replacement cost basis without optional deductibles. Such property insurance shall be maintained, unless otherwise provided in the Contract or as otherwise agreed in writing by the Owner and Design/Builder, until final payment has been made as provided in the Contract or until no person other than Owner has an insurable interest in the Project, whichever is later. This insurance shall include interests of Owner, Design/Builder, Subcontractors and sub-subcontractors in the Work, and Owner shall be named as an additional insured.

.1 If the property insurance requires deductibles, the Design/Builder shall pay costs of such deductibles.

.2 A loss insured under Design/Builder's all-risk policy shall be adjusted by Design/Builder as fiduciary and made payable to Design/Builder as fiduciary for the insureds.

Upon, occurrence of an insured loss, Owner may require Design/Builder to give bond for proper performance of Design/Builder's duties. Design/Builder shall deposit in a separate account proceeds received, which Design/Builder shall distribute in accordance with such agreement as the parties in interest reach. If, after such insured loss, no other special agreement is made, and unless Owner terminates the Contract for convenience, replacement of damaged property shall be performed by Design/Builder.

3.2 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 Design Professional's expenses required as a result of such insured loss.

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

END OF EXHIBIT Y - INSURANCE