



**BRAD LITTLE**  
Governor  
**KEITH REYNOLDS**  
Director  
**PAT DONALDSON**  
Administrator


**State of Idaho**  
**Department of Administration**  
**Division of Public Works**

502 North 4th Street  
Boise, ID 83720-0072  
Telephone (208) 332-1900  
[www.dpw.idaho.gov](http://www.dpw.idaho.gov)

**January 10, 2024**

**REQUEST FOR QUALIFICATIONS (RFQ)**

TO: Design-Build Teams (Historic Preservation Professionals)

FROM: Pat Donaldson, DPW Administrator 

SUBJECT: DPW PROJECT NO. 23889  
State of Idaho Deferred Maintenance Program  
Southwest Idaho Historic Rehab and Restoration

Responses to this RFQ will be received at the Division of Public Works (DPW) office, located at 502 N. 4th Street, PO Box 83720 Boise, ID 83720-0072, by 4:00 p.m., Mountain Standard Time Zone, on **February 7, 2024** for furnishing design build services to the State of Idaho.

Questions related to this RFQ should be addressed via email to:

Travis Casch, Owner's Representative  
Jacobs Project Management, Co.  
[Travis.Casch@Jacobs.com](mailto:Travis.Casch@Jacobs.com)

Responses to questions will be provided via addendum. No response will be provided for questions received after January 30, 2024.

There will be an informational meeting covering the contents of this RFQ and scope of work on January 23, 2024 at 11:00 a.m., Mountain Standard Time Zone, in person at 502 N 4th Street, Boise, ID. Attendance at this meeting is NOT MANDATORY to submit a Statement of Qualifications (SOQ).

Modifications (addenda) to this RFQ, if any, will be posted on the Division of Public Works web page at <https://dpw.idaho.gov/professional-services/>. It is recommended that responders to this RFQ check this page prior to making their submittal.

This project will be funded by the State of Idaho. The Division of Public Works (DPW) will administer the project according to the terms and conditions of the award, State laws and guidelines. The Design-Build team will receive general instructions through the State. DPW has contracted with Jacobs Project Management Co. (Jacobs) to serve as Owner's Project Manager and liaison for DPW, Agencies, and the Design-Build team.

## DESCRIPTION OF PROJECT

On June 11, 2021, Governor Brad Little issued Executive Order No. 2021-10 to develop a report on state deferred maintenance liabilities in collaboration with the Permanent Building Fund Advisory Committee (PBFAC). In the initial report, 28 agencies and institutions with approximately 27 million square feet of state-owned building space with a replacement value of over \$8 billion, reported a deferred maintenance liability of \$900 million.

The Division of Public Works has been appropriated \$544 million in funding to start addressing the state's deferred maintenance backlog. This funding is distributed across multiple agencies and institutions, statewide, to correct critical maintenance deficiencies involving mechanical, electrical, plumbing, exterior envelope, interior systems and finishes, and site work. DPW has previously issued nine other design-build RFQs for the Deferred Maintenance Program throughout the state:

- 23880 – Boise State University
- 23881 – Idaho State University
- 23882 – University of Idaho
- 23883 – Northern Region
- 23884 – Lewiston Region
- 23885 – Treasure Valley Region 1
- 23886 – Treasure Valley Region 2
- 23887 – Twin Falls Region
- 23888 – Southeast Region

The scope of work to be delivered by the Design-Builder selected as part of this RFQ process includes the following tasks (refer to Appendix A for additional information):

Agency	Location	General Description
Idaho State Historical Society	Boise, ID; Hansen, ID	Misc. historic renovation and repairs at the Old Penitentiary; Envelope (roof and siding) repairs at the Stricker Ranch site

## REQUIRED SERVICES

The State is requesting SOQs for complete Design-Build services. The Design-Build team should be proactive with the design and construction processes (design phases, Division of Occupational and Professional Licenses plan reviews/permitting, early construction and procurement bid packages, identify long lead items). The Design-Build team will be required to provide all services as per the terms of the Deferred Maintenance Design-Build Agreement (see Appendix B) for a stipulated sum of \$1,855,000.

**If an additional appropriation is received the stipulated sum amount could be increased.** Refer to Appendix A for a list of tasks, in order of priority based on available funding. The contract may be amended to add or remove tasks. **The Design-Build team shall be required to implement an integrated project delivery approach with the agency to prioritize and maximize the value delivered to the State within the stipulated sum.** The Design-Build team shall comply to all applicable codes and address building maintenance concerns throughout all phases of the project.



The Design-Build team shall develop the design only to the degree necessary to provide qualitative and quantitative information to achieve: Agency, Idaho Division of Occupational and Professional Licenses (IDOPL) and other Authorities Having Jurisdiction (AHJ) approval; permit for construction; and to a level with sufficient detail to construct. The Design-Build team shall provide a work breakdown structure, updated estimates, and variance reports throughout the planning and design phase to document project team decisions and value engineering alternatives that maximize project value.

The Design-Build team shall be required to provide and implement a project logistics and phasing plan to minimize disruptions to agency operations, public safety and convenience, and address tasks with seasonable constraints. The Design-Build team shall provide procurement and scheduling solutions to address escalation and supply chain issues and limited skilled trade resources.

The Design-Build team shall be responsible for the Construction Phase which shall include: procurement, installation and construction, construction administration by the Design- Builder as well as the Architect/Engineers of Record. Construction administration shall also include conferences, weekly site observations, document management as noted above, and progress meetings with the Agency and the Project Manager. The Design-Build team shall provide commissioning services to integrate new equipment and system retrofit into existing systems. The Design-Build team shall assist the Agencies with transition of operations of the Design-Builder's scope of work.

At the time of SOQ submittal, the Design Builder shall have a current Public Works contractor license in the State of Idaho (provide PWC License information in Exhibit B). The Design-Build team (design professional and required consultants) must be properly licensed to practice in the State of Idaho, per Idaho Statute-Title 54, for their specific disciplines (provide Idaho professional license numbers for the Design Professional and each consultant in Exhibit B). This tasks will need to be routed through, and receive approval by, the Idaho Division of Occupational and Professional Licenses (IDOPL) and any other authorities having jurisdiction.

The Design-Build team shall be required to upload (and keep current) all documents to DPW's cloud-based project management system, ProjectMates. Documents may include, but are not limited to meeting minutes, sketches, diagrams, programming analysis, photographs relevant to the tasks, drawings, project manual, schedules, cost estimates, field reports, RFI's, Submittals, Proposal Requests, close out documents, warranties, etc.

The Design-Build team shall be required to meet monthly with the Project Manager for the purpose of providing a verbal and written report regarding the previous month's progress. Such monthly meetings will show funds expended in the completion of the tasks, task critical issues, schedule update, and specific accomplishments related to the completion of the tasks.

The selected Design Team should anticipate working closely in conjunction with Idaho State Historical staff architectural historians through out every phase of the tasks.

The Design-Build team shall develop all necessary presentation materials for, at minimum, one (1) presentation to the Permanent Building Fund Advisory Council.

## STATEMENT OF QUALIFICATIONS CONTENT

- A. **Cover Letter and Exhibit A, 5 points maximum:** Provide a one-page cover letter as an introductory statement and background for your team. In the cover letter, include the name, company, phone number and email address of the primary contact person. Attach completed Exhibit A to the cover letter. Failure to provide a completed Exhibit A, with original ink signatures, may result in the SOQ being deemed nonresponsive.
- B. **Design-Builder Qualifications, 20 points maximum:** Provide information relative to the Design-Builder's size, history, experience, personnel, and resources available. Provide the information requested in Exhibit B. The Design-Builder should have a demonstrated understanding of the local areas, state agencies and state public works statutes. Include design-build experience, experience with State of Idaho public agencies, regional design and construction market experience, deferred maintenance experience relevant to the tasks described herein, and other experience Design-Builder deems appropriate. Provide at least 4 relevant projects the Design-Builder has delivered within the past 10 years and explain why selected.

Please note: DPW reserves the right to investigate the financial responsibility and past project management for the design build firm and/or consultants. Unfavorable responses regarding financial statements, bank references, interviews with past consultants, employees, creditors, or design professionals and/or consultants that were the cause of improperly managing a DPW project in the past are grounds for rejection of SOQ.

- C. **Team Member Qualifications, 20 points maximum:** Provide the Design-Builder's organizational approach. List the key members (including design professionals and consultants) of the design builder's staff expected to accomplish the work. Describe who will perform the various tasks, the amount of their involvement and responsibilities, their qualifications, education, training, relevant special expertise in project type, and experience delivering projects with similar logistical constraints. Provide a list of at least three (3) projects, with brief descriptions, which show the team's ability to complete projects of this scope and/or type.
- D. **Project Approach, 10 points maximum:** Describe your approach to this specific project, including design philosophy, understanding of project challenges and requirements, agency operational needs, challenges of the current market, and opportunities as well as alternative concepts and methods that might be explored. Include your approach to designing within budget and how you will approach ideas such as phasing, designing efficiently and with historical appropriate materials and finishes. Discuss your success with working on historic projects, coordinating with other projects ongoing, and projects that may require to be partially occupied during construction.
- E. **Project Management, 20 points maximum:** Describe the firm's management approach to the project including approaches to quality, time, cost management and campus logistics planning. Include your approach to obtaining stakeholder input and approvals to meet project schedule requirements. Include your approach to maximizing the number of requested projects within the stipulated sum.

- F. **Format, 5 points maximum:** To assist evaluation it is desirable to format the submittal similar to the headings listed above. The submittals should be clear and to the point. Emphasis should be placed on specific qualifications of the people who will perform the project and the approach to the project. Proposals are to be limited to fifteen (15) (8.5" x 11") pages, front and back (30-page total) and in the format specified. Font shall be no smaller than 11 point. The proposal cover letter, section dividers, completed Exhibit A, and completed Exhibit B do not count towards the page limit.

### **SUBMITTAL**

Submit two (2) hard copies of the submittal; include one USB drive containing a PDF of the submittal. In your SOQ cover letter, include the name, company, phone number and email address of the primary contact person; **failure to provide this information may result in the proposal being nonresponsive.**

### **EVALUATION, INITIAL RANKING**

A selection committee consisting of one (1) person from DPW, one (1) person from DPW's Owner's Project Manager team, one (1) agency representative, and an independent Professional will rank the submittals. Firms may be selected for presentation-interviews. The initial ranking criteria will be weighted according to the following:

	<b>Criteria</b>	<b>Maximum Possible Points</b>
A	Cover Letter, Exhibit A	5
B	Design-Builder Qualifications	20
C	Team Member Qualifications	20
D	Project Approach	10
E	Project Management	20
F	Format	5
	<b>Total</b>	<b>80</b>

### **EVALUATION, FINAL RANKING, INTERVIEW PROCESS**

The Design-Build teams, if invited for a presentation-interview, will receive a final score based on the sum of the written submittal score and the selection committee's interview score. It is anticipated that the Design-Build Team will be presenting in person at DPW offices in Boise, ID. The room will be equipped to allow connection of a laptop computer to a projection screen or monitor for each interview. Each presentation-interview will be a maximum of one hour in length, in person.

The first half of the presentation is anticipated to take 25-30 minutes where the Design-Build Team will present responses to pre-provided questions, then 15-20 minutes for the selection committee to ask impromptu questions, and finally 5-10 minutes for the Design-Build team to ask the committee questions and provide closing comments. The following scoring criteria will be used to determine the interview scores.

<b>Criteria</b>	<b>Maximum Possible Points</b>
Team Presentation	10
Q & A	10
<b>Total</b>	<b>20</b>

## **AWARD**

Based on the results of the final proposals and interviews, DPW will recommend a course of action to the PBFAC at their next regularly scheduled meeting. If recommended, a notice of intent to negotiate will be issued by DPW.

## **KEY DATES:**

Informational Meeting	January 23, 2024 (see Page 1 for details)
SOQs Due	February 7, 2024
Interview-Presentations	February 14-16, 2024
PBFAC Selection Approval	March 5, 2024
Negotiate and Execute Agreement	March 2024

## **SELECTION**

The State will attempt to select a firm at the next scheduled Permanent Building Fund Advisory Council meeting. Upon selection of a firm, the State will issue a letter of intent. However, final award is contingent upon the successful negotiation of an Agreement.

The contents of the submittal may be used in a legal contract or agreement. Candidates should be aware that methods and procedures proposed could become contractual obligations. The successful firm will be required to sign an agreement including the State's standard terms, refer to Appendix B for details.

The State reserves the right to reject any or all proposals received as a result of this request.

The State may also negotiate separately with any source in any manner necessary to serve the best interests of the State of Idaho. Awards will be made on the basis of submittals resulting from this request and subsequent interviews and the associated ranking criteria noted above.

## **Attachments:**

- Exhibit A: Transparency and Attestation Design-Builder's Organization
- Exhibit B: Design-Builder's Organization
- Appendix A: Agency Task List
- Appendix B: Design-Build Agreement

**End #23889 Design-Build RFQ**

**Exhibit A**

**TRANSPARENCY AND ATTESTATION**

**Potential Conflicts of Interest**

Provide information about any business associations, financial interests or other circumstances that may create a conflict of interest with the Owner, Agency or any other Party known to be involved in the Project. If applicable, the information must be attached as a separate page to this document.

**Attestation**

The undersigned certifies under oath that submittal information in its entirety, including any schedule or attachment, is true and sufficiently complete so as not to be misleading.

Design-BUILDER

By: \_\_\_\_\_  
Original signature in ink

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

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

**End of Document – Exhibit A**

**Exhibit B**

**DESIGN-BUILDER'S ORGANIZATION**

**General Information:**

Name:

Primary Office Address:

Telephone:

Primary Contact:

Telephone:

E-mail address:

**Type of Organization:**

The Design Builders Organization is a:

List all Officers / Partners:

**Information about the Organization:**

Office Location(s):

Date Organization was established:

Total Number of Staff:

Approximately, the average time staff has worked with the organization:

Professional Liability Insurance Carrier:

Professional Affiliations and Memberships:

Professional Awards and Honors:

Idaho Public Works Contractor License Information:

In the past five (5) years, has the Design Builder had any business or professional license suspended or revoked?

Within the past five (5) years, indicate whether the Design Builder, or any individual listed in section 'B', has/have been the subject to any bankruptcy proceeding?



Within the past five (5) years, has Design Builder or any individual listed in section B been the subject of any state or federal suspension or disbarment?

**Design Professional:**

Name:

Primary Office Address:

Jurisdictions in which Design Professional is legally qualified to practice Architecture:

Date Organization was established:

Total Number of Staff:

Approximately, the average time staff has worked with the organization:

Telephone:

Primary Contact:

Telephone:

E-mail address:

**Primary Design Professional , and Consultants Names:**

Provide the firm names, key personnel anticipated to provide services, along with their Idaho State Professional License information, for the following (as applies):

Architecture:

Civil:

Structural:

Mechanical:

Electrical:

Landscape:

Other:

**End of Document – Exhibit B**

## Appendix A

### Agency Task List

	Phase 1 Validation Distribution	Draft Phase 2 Distribution
☐ 23889 - Treasure Valley Historic Renovation and Repairs		\$1,855,000.00
☐ Idaho State Historical Society		\$1,855,000.00
☐ Phase 1 Request		
02 Old Idaho Penitentiary Restoration & Paint Project - Mitigate Deteriorating of Wood and Stone		\$410,000.00
☐ Phase 2 Request		
00 Task Validation - 23889		\$20,000.00
01 Replace concrete and asphalt sidewalks and pads interior of walls Old Idaho Pen.		\$325,000.00
02 Wooden Catwalk Around Parameter and Guard Towers Rehabilitation Old Idaho Pen.		\$500,000.00
04 1930 Cannery, Butchery & Bull Gang Rest House roof replacements and siding repairs Old Idaho Pen.		\$250,000.00
05 Bon Clara Home Roof Replacement Cedar Shake & siding repairs at the Stricker Home Site.		\$350,000.00
Grand Total		\$1,855,000.00

## **Appendix B**

### **Design-Build Agreement**

**STATE OF IDAHO DIVISION OF PUBLIC WORKS  
DEFERRED MAINTENANCE  
DESIGN/BUILD AGREEMENT  
DPW PROJ 23889**

**PROJECT:**

**DPW Project No. 23889, Southwest Idaho Historic Rehab and Restoration  
- Idaho State Historical Society (Boise, ID; Hansen, ID)**

**THE OWNER:**

**State of Idaho  
Department of Administration  
Division of Public Works  
PO Box 83720  
Boise, Idaho 83720-0072  
Telephone No. (208) 332-1900**

**THE DESIGN/BUILDER:**

**Company  
Address**

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## **DEFERRED MAINTENANCE DESIGN/BUILD AGREEMENT**

This DESIGN/BUILD AGREEMENT with a Stipulated Sum (“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 **DESIGN/BUILDER**, hereinafter referred to as the Design/Builder. *The effective date of this Contract is XXXXXXX.*

This Agreement is for the design and construction of DPW Project No. **NUMBER, DESCRIPTION** for the following AGENCIES (the “Project”):

- **Agency 1 (City, City, City)**
- **Agency 2 (City, City, City)**

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 to take all reasonable means and measures to maximize the value to the State as follows:

### **ARTICLE 1**

#### **GENERAL PROVISIONS AND CONTRACT DOCUMENTS**

##### **1.1 Definitions.**

**.1** “Contract” means and includes this Agreement (and all exhibits) and all Contract Documents.

**.2** “Design Build Team” includes the Design/Builder and all design professionals, subconsultants, subcontractors, suppliers, and vendors.

**.3** “Fixed Price” means the total cost to deliver the Task Authorization. It includes the following:

- (1)** Design Fee
- (2)** General Conditions
- (3)** Cost of Work
- (4)** Allowances: Fixed Price may include allowances such as escalation, weather protection, or other items as determined by the Design/Builder and Owner, and approved by the Owner. Unspent funds will be returned to the Owner.
- (5)** Contingencies: Fixed Price may include contingencies such as conditions, events, scope gaps, or other items not reasonably foreseen by the Design/Builder. Unspent funds will be returned to the Owner.
- (6)** Design-Builder Fee
- (7)** Indirect Costs, Insurances, Etc

**.4** “Notice to Proceed” means a written notice from Owner that work under the Task Authorization is to begin.

**.5** “Project” means all Tasks listed on the Task List (Exhibit I) that may be completed within the Stipulated Sum of this Agreement.

**.6** “Project Schedule” means the summation of the approved schedules for each Task Authorization.

.7 “Stipulated Sum” means the total appropriated funds approved for the Project.

.8 “Task” means each line item, listed by priority for each Agency, included in the Task List (Exhibit I).

.9 “Task List” means the list of Tasks included in Exhibit I. The Task List is subject to change via Change Order.

.10 “Task Number” means the number of the task as indicated on the Task List.

.11 “Task Authorization” means the package authorizing Design and/or Construction work for one or more Tasks wherein the Parties agree to scope of work, Task Price(s), Task Substantial Completion date(s), and Task Final Completion date(s). The executed Task Authorization shall serve as the Notice to Proceed for all scope included in the Task Authorization.

.12 “Task Authorization Change Order” means issuing additional design and/or procurement/construction services and time to an existing Task Authorization by issuing a Task Authorization Change Order

.13 “Task Price” means the Not-to-Exceed or Fixed Price cost for an individual Task.

**1.2 Contract Documents Defined:** “Contract documents” means and includes this Agreement, Executed Task Authorizations (including attachments and required deliverables), including the programming, schematic design, design development, construction documents, and specifications as approved and incorporated by the Owner and Design/Builder.

.1 The following attachments:

- (1) Exhibit A – Addresses and Authorized Representatives  
Exhibit B – Design/Builder’s Affidavit Concerning Taxes  
Exhibit C – Contractor’s Request for Tax Release  
Exhibit D – Release of Claims  
Exhibit E – Conditions Precedent to Final Payment  
Exhibit F – Training Confirmation Sign in Sheet  
Exhibit G – Finalization and Start-Up  
Exhibit H – Design/Builder’s Affidavit Concerning Alcohol & Drug-Free Workplace  
Exhibit I – Task List  
Exhibit J – Substantial Completion Certificate Form  
Exhibit K – Task Validation Report Form  
Exhibit L – Task Authorization Form  
Exhibit M – Task Authorization Change Order Form  
Exhibit N – Form WH-5 Public Works Contract Form
- (2) Proposal Documents, included by reference:  
Request For Qualifications dated **XX/XX/XX**, associated Attachments, and Addenda  
Design/Builder’s Statement of Qualifications dated **XX/XX/XX**

**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 Stipulated Sum.

**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 shall 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 properly licensed Public Works Contractor by the State of Idaho, pursuant to Idaho Code § 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 shall 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 shall be performed by duly licensed design professionals 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 shall be performed by or at the specific direction of such design professionals;

.5 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.

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

.7 Design/Builder shall prepare all documents and items required by the Contract, including the Detailed Design and Design Documents, and shall perform all Work in such a manner that is accurate, complete, and for an amount not to exceed the Stipulated Sum or the fixed prices established for the scope identified in the Task Authorization, and that all such documents and items prepared and all Work performed by Design/Builder shall be sufficient to accomplish the purposes of the scope identified in the Task Authorization, as identified by Owner, and shall be in conformity and comply with all applicable law, codes, and regulations.

### **ARTICLE 3 PHASES OF THE AUTHORIZED TASKS**

3.1 The Services may be provided in one or more phases as outlined below. Portions of each phase may commence before the previous phase is completed, in which case, both phases may proceed concurrently. The Phases of the Services shall include:

.1 Task Validation Phase.

.1 Design/Builder shall conduct a one-time initial validation of all Tasks listed on the

Task List and provide to Owner a Task Validation Report, a template of which is hereto attached as Exhibit K, within [REDACTED] days of execution of this Agreement. In the Task Validation Report, Design/Builder shall provide Owner a report of the preliminary task scope, cost, design and permit requirements, and an preliminary procurement/construction duration for each task, and proposal of design phase services to be completed under separate Task Authorization.

In addition, the Design/Builder shall provide a conceptual procurement and delivery plan, which includes a proposed Task Authorization approach and preliminary schedule for the Project.

.2 Upon Design/Builder's delivery of the Task Validation Reports for all Tasks and conceptual delivery plan, Design/Builder shall submit a one-time Lump Sum invoice for a total sum of [REDACTED] (\$00.00) which the Owner shall review and approve subject to the invoice and payment requirements in Article 10.

.3 Owner shall issue Task Authorizations to proceed to the appropriate Phase for one or more approved tasks. The Estimated or Fixed Price of all approved tasks, including Task Validation Phase, shall not exceed the Stipulated Sum. Upon receipt and acceptance of a Task Authorization, Design/Builder shall proceed with the appropriate services for the Task(s) included in the Task Authorization and submit invoices to Owner pursuant to Article 10. Invoices must be divisible by each, individual Task.

.4 Owner will provide the Design/Builder copies of previous design studies that are available prior to the start of the Task Validation phase. Owner will also make available any available Asbestos Survey's or arrange for a survey to be completed.

## .2 Design and Construction Phase

### .1 Design Phase.

.1 The Design Phase includes Services provided to the level authorized for each Task during the development of the design and specifications through the preparation of construction documents by the Design Professional, pursuant to the requirements in Article 4. The Design/Builder shall provide design to the level needed for agency review and approval; Idaho Division of Occupational and Professional Licenses (IDOPL) review, approval, and permitting; and Design/Builder pricing. The Design/Builder shall respond to comments made by owner's property insurance carrier.

.2 At the Conclusion of the Design Phase, Design/Builder shall provide Owner with a Fixed Task Price, schedule of values, Construction Schedule, and Substantial Completion Date.

.2 Construction Phase. The Construction Phase commences upon Owner's issuance of a Task Authorization Change Order for Procurement/Construction, a template of which is hereto attached as Exhibit M, to the Design/Builder to proceed with the construction of the Task and includes Services pursuant to the requirements in Article 5.

.3 Task Authorization Change Orders. Additional design, procurement, or construction services and time may be added to an existing Task Authorization by issuing a



Task Authorization Change Order. As soon as possible and when mutually agreed, Task Authorization Change Orders will be issued by Owner to deduct all unpaid allowance and contingency balances.

## **ARTICLE 4**

### **DESIGN**

**4.1 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 Task, performing the Work, and the rendering of the Task fully operational for its intended purposes, as identified by Owner for the scope of work for individual Tasks, and shall include, without limitation, detailed plans, drawings, specifications, manuals, and related materials prepared by or on behalf of Design/Builder.

**4.2 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.

**4.3 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 Task, and all labor, materials, supervision, equipment, computers, documents, and other items necessary for the performance of such task or services.

**4.4 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 shall result in an operational system or facility for the scope of work identified in the Task Authorization, that meets all environmental and regulatory requirements as of the Agreement’s effective date, and uses the most appropriate available technology.

**4.5 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.

**4.6 Duty to Correct Errors.** Design/Builder shall, without additional compensation, promptly correct any errors, omissions or deficiencies in its Design Services and Design Documents upon written notice from Owner.

**4.7 Schedule of Design Services.** As a supplement to and consistent with the Project schedule, or as modified by each Task Authorization, and referenced in Paragraph 1.2, and to the extent not already a part of the 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 breakdown 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 shall 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 shall 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 a 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.

**4.8 Programming/Investigation.** Design/Builder shall gather all pertinent data required to develop a complete Task Program/Investigation. The programming/investigation shall include, as a minimum, the following items:

.1 Establish Task performance and operational goals based upon the input of Agency Representatives.

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

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

.4 Establish updated task design requirements, estimated task price and construction duration.

.5 Review program/findings with the Owner and appropriate Agency

.6 Prior to proceeding to the Appropriate Design Phase of this Task, Owner and Design/Builder shall mutually agree that the Task can be designed and built for the Estimated Task Price and that the aggregate of all Estimated/Fixed Task Prices are within the Stipulated Sum identified in Paragraph 9.1. Approved Program/Investigation Documents shall be uploaded into the Owners electronic project management system and incorporated into this Agreement.

**4.9 Schematic Design.** Based on documents incorporated by the Owner and agreed to by the Design/Builder in the Task Authorization, the Design/Builder shall prepare, for approval by the Owner schematic design documents consisting of, as a minimum, the following:

.1 Collect all pertinent facts about the Task, including, but not limited to, evaluation of state code and regulation review, Agency Design Standards, cost parameters and Project schedule;

.2 Alternative approaches to design and construction of the Task.

.3 Investigation and verification of the existing conditions of the site to the extent required to accomplish the Task.

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

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

.6 Estimate of construction schedule which includes seasonal and operational constraints and other activities of the Task Authorization.

.7 Review of the schematic design, construction schedule and cost estimates with the Owner and Agency.

.8 Prior to the next Phase of this Task, the Owner and Design/Builder shall mutually agree that the Task can be designed and built for the Estimated Task Price and that the aggregate of all Estimated/Fixed Task Prices are within the Stipulated Sum identified in Paragraph 9.1. Approved Schematic Design Documents shall be uploaded into the Owners electronic project management system and incorporated into this Agreement.

**4.10 Design Development.** Based on documents and any adjustments authorized by the Owner and agreed to by the Design/Builder in the program/investigation, schematic design, schedule or estimated task price, 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 applicable to and commensurate with the scope identified for the tasks. The project manual shall include, but is not limited to, outline specifications in sufficient detail to fully describe the quantity and quality of the Task, material/color board, product data, and fixture/equipment cut sheets.

.2 Analyze the Task for the various 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 task price estimate, including a schedule of values.

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

.6 Prior to starting the Task Construction Phase of each Task Authorization, Owner and Design/Builder shall mutually agree that the Task can be designed and built for the Estimated Task Price and that the aggregate of all Estimated/Fixed Task Prices are within the Stipulated Sum identified in Paragraph 9.1. Approved Design Development Documents shall be uploaded into the Owners electronic project management system and incorporated into this Agreement.

**4.11 Construction Document Phase.** Based on the approved Design Development 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 review by the Owner, Construction Documents consisting of:

.1 Complete working drawings and specifications as required for construction of the Task. Working drawings and specifications for the Task shall be completed and submitted for approval by the Owner and all required agencies. The submitted documents and approved documents shall be uploaded to OMS.

.2 The Design/Builder shall provide the Owner with copies of the Construction Documents as requested and upload to OMS review sets of working drawings and specifications plus such documents as required by the Idaho Division of Occupational and Professional Licenses (IDOPL). The Design/Builder shall coordinate plan review and permitting requirements with IDOPL to ensure Design/Builder meets IDOPL requirements.

.3 Prior to starting the Construction Phase of the Task Authorization, Owner and Design/Builder shall mutually agree that the Task can be built for the Fixed Task Price and that the aggregate of all Estimated/Fixed Task Prices are within the Stipulated Sum identified in Paragraph 9.1. Approved Construction Documents shall be uploaded into the Owner's electronic project management system and incorporated into this Agreement.

## ARTICLE 5

### PERFORMANCE OF CONSTRUCTION WORK

**5.1 General Intent.** The Design/Builder shall perform all Work necessary to construct the scope of work identified in the Task in accordance with the Contract and to render the Task and all its components operational and functionally and legally usable for its intended purposes, as identified by the Contract Documents.

**5.2 Work Defined.** "Work" shall mean whatever is done by or required of the 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 Task 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 items required for the construction of the Task;

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

.4 The Design-Build team shall provide commissioning services to integrate operation of new equipment with existing system(s), and/or system components to ensure compatibility with User operation and maintenance of existing systems. The Design-Build team

shall train and provide “hands on” assistance to the User during transition of operations of the Design-Builder’s Work.

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

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

.7 The furnishing of all other services and items 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 the Owner unless otherwise specified herein. The Owner’s Representative has full authority to act on behalf of and to the same extent as the Owner.

## ARTICLE 7

### TIME FOR CONSTRUCTION: THE CONTRACT TIME

**7.1 Commencement of Construction.** After the Owner has approved the Design Documents for the Detailed Design, or specific portions thereof, the Owner shall promptly notify Design/Builder in writing, by issuance of an applicable Task Authorization Change Order for Construction, that Design/Builder should proceed with the Construction of the Task(s) or approved portions thereof.

#### **7.2 Task Authorization Schedule(s).**

.1 The Design-Builder shall maintain an inclusive Schedule that includes the following at a minimum:

- (1) Scope/Design Development necessary to begin construction further described in Article 4;
- (2) Seasonal and Operational constraints (allotment of time and sequencing where construction work does not interfere with, Facility Operations, equipment and building system use, and User activities);
- (3) Building permitting and Owner approvals of all required contract deliverables;
- (4) Permanent Building Fund Advisory Committee approvals;
- (5) Mobilization, staging, and installation and removal of temporary construction;
- (6) Procurement of long lead items;
- (7) Construction/Installation of each approved scope of work;
- (8) Equipment/System startup, testing, commissioning and acceptance. Including required system shutdowns, provide no less than 7 day Notice prior to any planned system shutdown;



- (9) Substantial Completion of each approved scope of work;
- (10) Closeout, including appropriate training, punchlisting (including completion of punchlist items), O&M manuals, attic stock, warranty certificates; and
- (11) Final Completion of each approved scope of work

It is anticipated that the above schedule and expected durations will change, and approval processes may require more time.

**.2 Time for Completion.** The Design/Builder shall commence the Work when authorized by the Owner under Paragraph 7.1, and the Work shall be carried out regularly and without interruption. The Design/Builder shall substantially complete each Task not later than date specified in the Task Authorization for Construction.

**7.3 Project Schedule.** The Design/Builder's Project Schedule is the summation of all Task Authorization Schedules.

#### **7.4 Liquidated Damages for Delay in Substantial Completion.**

**.1** The Design/Builder shall be assessed liquidated damages for each day of unexcused delay in achieving Substantial Completion beyond the Scheduled Completion Date in the amount noted in the Task Authorization if liquidated damages are elected at the execution of the Task Authorization.

**.2** Any sums due and payable under this Paragraph 7.3 by the Design/Builder shall be payable, not as a penalty, but as liquidated damages representing an estimate of delay damages likely to be sustained by the Owner, estimated at the time of executing this Agreement. The liquidated damages shall apply regardless of whether the Design/Builder has been terminated by the Owner prior to Substantial Completion so long as the Design/Builder's actions or inactions substantially caused the delay; provided, however, that if the Design/Builder is in substantial compliance with the Project schedule at the time of termination, no liquidated damages shall be assessed against the Design/Builder. Liquidated damages assessed under Section 7.3 shall be Owner's sole and exclusive remedy for failure to substantially complete the Task Authorization by the Scheduled Substantial Completion Date, subject to extensions and adjustments permitted under the Contract Documents. When the Owner reasonably believes that Substantial Completion shall be inexcusably delayed, the Owner shall be entitled, but not required, to withhold from any amounts otherwise due to the Design/Builder an amount then believed by the Owner to be adequate to recover liquidated damages applicable to such delays. The Owner shall provide the 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 the Design/Builder overcomes the delay in achieving Substantial Completion, or any part thereof, for which the Owner has withheld payment, the Owner shall promptly release to the Design/Builder those funds withheld, but no longer applicable as liquidated damages.

#### **7.5 Liquidated Damages for Delay in Final Completion.**

**.1** If the Design/Builder achieves Substantial Completion on a Task, but fails to achieve Final Completion, the Design/Builder shall be assessed liquidated damages if liquidated damages are elected at the execution of the Task Authorization.

**.2** Any sums due and payable under this Paragraph 7.4 by the Design/Builder shall

be payable, not as a penalty, but as liquidated damages representing an estimate of delay damages likely to be sustained by the Owner, estimated at the time of executing this Agreement. The liquidated damages shall apply regardless of whether the Design/Builder has been terminated by the Owner prior to Final Completion so long as the Design/Builder's actions or inactions substantially caused the delay; provided, however, that if the Design/Builder is in substantial compliance with the project schedule at the time of termination, no liquidated damages shall be assessed against the Design/Builder. Liquidated damages assessed under Section 7.5 shall be Owner's sole and exclusive remedy for failure to achieve final completion of the Task Authorization by the Scheduled Final Completion Date, subject to extensions and adjustments permitted under the Contract Documents. When Owner reasonably believes that Final Completion shall be inexcusably delayed, the Owner shall be entitled, but not required, to withhold from any amounts otherwise due to the Design/Builder an amount then believed by the Owner to be adequate to recover liquidated damages applicable to such delays. If and when the Design/Builder overcomes the delay in achieving Final Completion, or any part thereof, for which the Owner has withheld payment, the Owner shall promptly release to the Design/Builder those funds withheld, but no longer applicable as liquidated damages.

**7.6 Task Authorization Liquidated Damages.** Owner and Design/Builder may mutually agree to elect liquidated damages or direct damages for each Task Authorization at the execution of a Task Authorization. In the event this liquidated damages clause is found to be penal in nature because it gives the State the option to invoke it, the parties agree that the liquidated damages provision shall apply and the option shall be null and void. Direct damages shall be defined as:

- .1 Design/Builder's general conditions
- .2 Temporary heating and cooling to spaces impacted by work
- .3 Temporary protection to exterior to weatherproof building
- .4 Extension of lease costs if work requires relocation
- .5 Temporary domestic water
- .6 Stormwater-drainage control equipment
- .7 Temporary fire protection and annunciation
- .8 Temporary standby power
- .9 Temporary facility access/egress
- .10 Temporary pedestrian and traffic safety
- .11 Temporary lighting
- .12 Repairs for damage caused by delinquent work
- .13 Temporary irrigation

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

**7.8 Owner's Approvals.** Task Authorization Schedules will identify dates and durations for the Owner's approvals and actions. Failure of the Owner to adhere to this schedule shall be cause for time extensions to the Contract Time and Stipulated Sum provided the 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 for the scope of work identified in the Task Authorization, or as otherwise indicated by the 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 the Design/Builder without increase to the Stipulated Sum.

**8.2 Strict Compliance with the Contract Documents.** All Work performed by the Design/Builder shall be in strict compliance with the Contract Documents, unless deviation from strict compliance has been approved by the 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 the Design/Builder’s best and highest skill and effort, the Design/Builder bearing full responsibility for any and all acts or omissions of those engaged in the Work on behalf of the Design/Builder.

**8.4 Warranty of Workmanship and Materials.** The Design/Builder warrants and guarantees to the Owner that for a period of one year after the Substantial Completion of the Work, all labor furnished to progress the Work under the Agreement shall be competent to perform the tasks undertaken and is the best quality reasonably obtainable, that the product of such labor shall yield only high quality results in strict compliance with the Contract, that materials and equipment furnished shall be of high quality and new unless otherwise permitted by the Contract, and that the Work shall be of high quality, free from faults and defects and in strict conformance with the Contract. The 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 the Design/Builder’s warranty. This warranty excludes damage or defects caused by equipment abuse, improper or insufficient maintenance, improper operation, normal wear and tear, and normal usage. The Owner’s sole and exclusive remedy for any breach of the Design/Builder’s warranty shall be the correction and repair of such defective work at the Design/Builder’s cost provided that the Owner provides written notice to the Design/Builder during the one-year warranty period.

**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 the Task Authorization.

**8.6 Design/Builder’s Schedule of Construction.** The Design/Builder, within fifteen (15) days after the commencement of any Task Authorizations, shall submit to the Owner, for its information, and comply with, the Design/Builder’s schedule of construction for completing the Scope of Work identified in the Task Authorization by the Scheduled Completion Date. The schedule of construction shall be a detailed critical path (“CPM”) schedule in a form mutually agreeable to the Owner and the 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 the Owner. Strict compliance with the requirements of this Paragraph shall be a condition precedent for payment to the Design/Builder, and failure to strictly comply with said requirements shall constitute a material breach of the Agreement. The Design/Builder must utilize a Critical Path Method (CPM) scheduling tool acceptable to the Owner. 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.

**8.7 Record Copy of Contract Documents.** The Design/Builder shall continuously maintain at the site, accessible by the 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, the Design/Builder shall maintain at the site, accessible by the Owner, a copy of all shop drawings, product data, samples, and other submittals. Upon Substantial Completion of the Work, or upon the 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 the Owner and shall become the property of the Owner.

**8.8 Review and Approval of Submittals.** The 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 shall 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.** Design/Builder shall provide a submittal register at the conclusion of Design. The Owner shall, in its discretion, have the right to review and approve submittals, and if the Owner so elects, the Design/Builder shall not perform any portion of the Work as to which the Owner has required submittal and review until such Submittal has been approved by the Owner's Representative. Owner shall review Submittals within the durations set forth in the agreed upon submittal schedule. Approval by the 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 the Owner elects to review submittals, the 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. The 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 the Owner. Shop drawings and other submittals from the 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 the Design/Builder submits shop drawings or submittals which are at variance with the Contract Documents, including the Detailed Design documents approved by the Owner, the Design/Builder must designate that 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, and if the Owner's delay results in any documented cost impacts an adjustment to the Stipulated Sum, provided the Design/Builder meets the requirements of Article 16 hereof.

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

**8.11 Procurement of Operations and Maintenance Documentation.** The Design/Builder shall prepare or procure and shall transmit to the 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.** The Design/Builder shall prepare and provide to the Owner a set of all as-built drawings for the Task Authorization scope of work 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 Owner's electronic project management system, one plotted and printed full size set.

**8.13 Compliance with Labor Laws.** The 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 The 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.

.2 The 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 of this contract.

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

**8.15 Applicable Laws.** The Design/Builder represents and warrants that it shall 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 the Design/Builder in connection with the Work to be performed under the Contract.

**8.16 Compliance with Construction Regulations.** The 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 the Design/Builder, and the Design/Builder shall, to the extent of any violation by the Design/Builder hereunder, indemnify and hold the 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 IDOPL construction and building permits, licenses and authorizations necessary for the construction of the Project shall be secured on behalf of the Owner and paid for by the Design/Builder, except as specified in this Agreement. The Design/Builder shall notify the Owner's Representative when it has received the permits, licenses, and authorizations and upon receipt, shall supply the Owner with copies of same. The original permits, licenses, and authorizations shall be delivered to the Owner upon completion of the Work,



and receipt of such documents by the Owner shall be a condition precedent to final payment. The 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.** The 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. The Design/Builder shall at all times safeguard the Owner's property and employees from injury or loss in connection with the performance of the Agreement. The 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. The Design/Builder shall protect the 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 temporary protection upon completion of the Work. The Design/Builder shall, upon execution of this Agreement, submit to the Owner its Project Safety Manual, and shall operate in accordance with that Manual.

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

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

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

**8.22 Decisions Regarding Aesthetic Effect.** The Owner's decisions in matters relating to aesthetic effect shall be final and have no effect on the Stipulated Sum if consistent with the intent of the Detailed Design and the Task Authorization budget.

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

- 8.24 Periodic Meetings and Updates.** Periodically, as agreed to by the Owner and the Design/Builder, or upon reasonable request of the Owner, the Design/Builder shall attend meetings to update the Owner on the progress of the Project and to answer any questions of the Owner. Frequency of the meetings will be based on level of activity and critical project stages ranging from weekly to monthly. Agenda will consist of, but not limited to:
- .1 Safety Summary
  - .2 Progress and Schedule update including procurement and long lead items
  - .3 Status of Design Builder deliverables
  - .4 Updated cost and budget variance report
  - .5 Outstanding risks/ issues
  - .6 Owner response, decision and approval status of submittals and contract

- deliverables
- .7 Quality items needing correction
- .8 Site Management and logistics

**8.25 One-Year Walkthrough.** One year from the date of Substantial Completion, on a date mutually agreed upon by the Owner and the Design/Builder, the Design/Builder shall accompany the Owner on a walkthrough of the Project and shall be responsible to correct any items found deficient during such inspection, subject to Section 8.4.

## ARTICLE 9

### STIPULATED SUM

**9.1 Stipulated Sum.** The Design/Builder agrees that the stipulated sum the Owner shall pay to the Design/Builder for the completion of all Design Services and all Construction 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 the Owner, shall be **Nine hundred and thirty-six thousand hundred (\$936,000.00) and 00/100 dollars** for XX Agency, **Nine hundred and thirty-six thousand hundred (\$936,000.00) and 00/100 dollars** for XX Agency, **Nine hundred and thirty-six thousand hundred (\$936,000.00) and 00/100 dollars** for XX Agency for a total sum of **Nine hundred and thirty-six thousand hundred (\$936,000.00) and 00/100 dollars** (the “Stipulated Sum.”) The Stipulated Sum shall not be modified unless all conditions precedent to a change in the Stipulated Sum have been satisfied, including the execution of a Change Order in accordance with the requirements of this Agreement.

**9.2 Adjustments to Stipulated Sum.** In entering into this Agreement, the Design/Builder understands and agrees that the Stipulated Sum 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 Contract Time and Stipulated Sum shall be increased if:

- .1** the Owner directs or agrees to a change in the Project that increases the cost of the Design Services or the Work;
- .2** 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;
- .3** the Design/Builder encounters unknown physical conditions of an unusual nature that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents;
- .4** the Design/Builder encounters Hazardous Materials, complies with the provisions set forth therein, and incurs increased costs to the Design Services or the Work;
- .5** the 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

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

Except for the foregoing, the 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 Stipulated Sum shall not be increased as a result of any such risks.

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

## **ARTICLE 10**

### **PAYMENT OF THE STIPULATED SUM**

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

**10.2 Schedule of Values.** The Design/Builder shall prepare and present to the Owner the Design/Builder's schedule of values apportioning the Stipulated Sum among the different Task Authorizations of the Project for purposes of periodic and final payment within the Owner's provided schedule of values Excel template. Pursuant to this Paragraph, the Design/Builder shall, within thirty (30) calendar days of the Notice to Proceed, submit to the 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 commencement of construction activities in performance of the Work, submit to the 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. The Design/Builder shall not imbalance its schedule of values nor artificially inflate any element of it. The violation of this provision by the Design/Builder shall constitute a material breach of this Agreement. The Design/Builder's schedule of values shall be utilized for the Design/Builder's payment requests, but shall only be so utilized after it has been acknowledged in writing by the Owner. The Schedule of Values shall be presented in the Owner's web-based construction management software. The schedule of values submitted by the Design/Builder pursuant to this Paragraph may from time to time be amended by the Design/Builder, subject to the approval of the Owner.

**10.3 Allowances and Contingencies.** Requested payment for allowances and contingencies requires prior authorization.

**10.4 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. The payment request shall be submitted via the Owner's electronic project management system and shall include whatever supporting information as may be required by the Owner. The Design/Builder may request payment as follows:

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

- Task Validation Phase

- Programming
- Schematic Design
- Design Development
- Construction Documents for IDOPL
- 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 Task 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 shall be subject to the Design/Builder providing written proof that the Owner has title to the materials or equipment and that they are fully insured against loss or damage. Retainage to be released for each Task Authorization upon achieving Substantial Completion.

#### **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 Then 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 in this Agreement, it shall be a condition precedent to payment of any pay request that the Design/Builder, if requested by the Owner, have submitted updated schedules for the performance of its Work and Design Services as required by this Agreement and that the Design/Builder shall have furnished to the Owner properly executed conditional waivers of payment rights, in a form acceptable to the Owner, waiving rights to payment claims and liens from all Subcontractors, materialmen, and Suppliers, wherein they shall acknowledge receipt of all sums due pursuant to all prior pay requests and waive and relinquish any payment 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 Subcontractor, materialman, or Supplier performing work under the direction or control of the Design/Builder.

**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 the amounts, if any, owing by the Design/Builder to the Owner or which the

Owner shall have the right to withhold as authorized by this Agreement.

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

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

**10.11 Use of Joint Checks.** If the Owner becomes aware or is informed that the Design/Builder has not paid a Subcontractor, materialmen, laborer, or Supplier as provided herein, the Owner shall have the right, but not the duty, to issue checks and payment then or thereafter otherwise due to the Design/Builder naming the Design/Builder and any such Subcontractor, materialmen, laborer, or Supplier as joint payees. Before issuing any joint checks, the Owner shall provide five (5) days' prior written notice to the Design/Builder. Such joint check procedure, if employed by the Owner, shall create no rights in favor of any person or entity beyond the right of the named payees to payment of the check and shall not be deemed to commit the Owner to repeat the procedure in the future nor to create any contractual or other relationship of any kind between the Owner and the person or entity.

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

**10.13 Withholding of Payment.** Aside from any withholding of payments allowed by this Paragraph, the Owner shall timely pay to the Design/Builder all amounts due the Design/Builder under this Article which are not in dispute under this Paragraph. The 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 the Design/Builder) in an amount then believed by the 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 the Design/Builder's Work not being in strict accordance with the requirements of this Contract;

.2 The quantity of the Design/Builder's Work not being as represented in the Design/Builder's pay request, or otherwise;

.3 The Design/Builder's rate of progress being such that, in the Owner's opinion, Substantial Completion, Final Completion, or both, may be inexcusably delayed;

.4 The Design/Builder's failure to use Contract funds, previously paid to the Design/Builder by the Owner, to properly pay the 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 Task Price;

.6 Claims made, or likely to be made, against the Owner or its property because of acts or omissions of the Design/Builder;

- .7 Loss caused by the Design/Builder; or
- .8 The Design/Builder's failure or refusal to perform any of its material obligations to Owner.

Prior to exercising any right to refuse or withhold payment, the Owner shall provide the Design/Builder written notice detailing the factual basis for the withholding and provide the Design/Builder a reasonable opportunity to correct the issue. The Owner shall release all previously withheld funds promptly upon the Design/Builder addressing the issue giving rise to the withholding, which shall be determined in the sole discretion of the Owner.

**10.14 Unexcused Failure to Pay.** If the Owner, without justifiable cause or basis, fails to pay the Design/Builder any amounts due and payable to the Design/Builder within forty-five (45) days after the date established by this Article for payment of such amounts, then the Design/Builder may suspend its Design Services or, as applicable, the Work until payment is made, provided that the Design/Builder first gives five (5) days' written notice to the Owner of its intent. Any payment due 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 each individual Task, "Substantial Completion" means that stage in the progression of the Work, as approved by the Owner in writing, when the scope of work of the Task Authorization is sufficiently complete in accordance with the Agreement that the Owner can enjoy beneficial use or occupancy of the entire Task Authorization and can utilize it for all of its intended purposes. The 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. If the Owner elects to occupy a part, portion, or system of the Project, that part, phase or system, shall be deemed substantially complete; provided that the Owner shall first notify the Design/Builder of the Owner's intent to occupy that part, portion, or system, and the Owner's Representative shall then 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 shall such partial use or occupancy be determinative of Substantial Completion as defined in Paragraph 11.2.

**11.2 Determination of Substantial Completion.** When the Design/Builder considers Substantial Completion has been achieved for the Task Authorization, 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 shall then conduct an inspection to confirm that the Scope of Work identified in the Task Authorization is in fact substantially complete. Upon its confirmation that the Design/Builder's work is substantially complete, the Owner shall so notify the Design/Builder in writing and shall 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 its 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, the Owner shall repeat all, or any portion, of its Substantial

Completion inspection as often as necessary until Substantial Completion is achieved. If the Owner is required to perform more than three (3) Substantial Completion inspections for the same Task, 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. The Owner shall notify the Design/Builder, in writing, prior to commencing any inspections for which it may deduct payment to the Design/Builder. 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 Scope of Work identified in the Task Authorization, 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 Task Price, as adjusted by the operation of this Agreement less any amounts attributable to liquidated damages, if any, 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 the Design/Builder's acts or omissions.

**11.4 Final Completion Defined.** With respect to the Task Authorization, "Final Completion" means the completion of all Design Services and all Work required by, and in strict compliance with, the Agreement and Task Authorization, as approved by the Owner in writing, including the satisfactory completion or resolution of all punch list items and the Design/Builder's provision to the Owner of all documents and items 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 the Design/Builder considers the Scope of Work identified in the Task Authorization finally complete and the Design/Builder is ready for a final inspection, it shall notify the Owner and the Owner's Representative in writing. The Owner's Representative shall then perform a final inspection of the Task Authorization.

**11.6 Final Payment.** If the Owner's Representative confirms that the Scope of Work in the Task Authorization 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 shall furnish a final approval for payment to the Owner certifying to the Owner that the Task Authorization is complete and the Design/Builder is entitled to the remainder of the unpaid Fixed Task 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 the 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, the Design/Builder shall furnish the Owner, in the form and manner required by the Owner, the following:

- .1 An affidavit that all of the Design/Builder's obligations to Subcontractors, laborers, equipment or material suppliers, or other third parties in connection with the Scope of Work identified in the Task Authorization, have been paid or otherwise satisfied;

.2 If required by the Owner, separate releases or waivers from each Subcontractor, lower tier subcontractor, laborer, supplier or other person or entity with connection to the Scope of Work identified in the Task Authorization, 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 items customarily required of a contractor, or expressly required in this Agreement, as a part of or prior to Task Authorization closeout; and

.6 Verification that the 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 the Design/Builder of final payment shall constitute a waiver and release of all claims against the Owner by the Design/Builder except for those claims previously made in writing against the Owner by the Design/Builder, pending at the time of final payment and specifically identified on the 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.** The Owner shall provide the Design/Builder with information regarding the Owner's requirements for the Project, including any desired or required design or construction schedule. By furnishing such information, the Owner does not represent, warrant, or guarantee the accuracy or completeness of the design documents, drawings, or specifications, either in whole or in part, and shall have no liability. Owner shall represent, warrant, and guarantee the accuracy and completeness of the Owner's requirements for the Project, as outlined in the Contract Documents.

**12.2 Review of Documents.** The Owner shall review any documents submitted by the Design/Builder requiring the Owner's decision, and shall render any required decisions pertaining to that review in a timely manner and in accordance with the durations set forth in the applicable submittal schedules.

**12.3 Provide Notice of Defects.** In the event the 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 the Owner shall give prompt notice in writing within 7-days of discovery to the Design/Builder.

**12.4 Access to the Site and the Work; Providing Information.** The Owner shall provide the Design/Builder access to the Project site and to the Work in order to allow the Design/Builder to commence and complete the Work on an uninterrupted basis, and shall provide the Design/Builder with information, existing and reasonably available, necessary to the Design/Builder's performance of the Contract as the Design/Builder may request.

**12.5 Cooperation to Secure Permits, Licenses, Approvals, and Authorizations.** The Owner shall cooperate with the Design/Builder in securing any necessary licenses, permits, rights-of-way,



approvals or other necessary authorizations for the design, construction, and certification of the Project.

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

**12.7 Owner's Reviews, Inspections, Approvals, and Payments Not a Waiver.** The Owner's review, inspection, or approval of any Work, Design Documents, submittals, or pay requests by the Design/Builder shall be solely for the purpose of determining whether the Work and documents are generally consistent with the Owner's construction program and requirements. No review, inspection, or approval by the Owner of the Work or documents shall relieve the 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 the Design/Builder of responsibility for the strict performance of its obligations under the Agreement. Payment by the Owner pursuant to the Agreement shall not constitute a waiver of any of the Owner's rights under the Agreement or at law, and the 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 the Owner. Design/Builder performance is limited to the Contract Documents and the requirements expressly written and defined by the Owner, agreed upon in the execution of the Task Authorization.

**12.8 Delay or Forbearance Not a Waiver.** The 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 the Design/Builder under the Agreement shall not be a waiver of the right to exercise this 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.** The Design/Builder shall request from Owner any and all written and tangible material required concerning conditions below ground or concealed at the site of the Project, including without limitation as-built documentation of existing structures, soils report, survey, and site demolition bidding documents. By furnishing these materials, the Owner does not represent, warrant, or guarantee its accuracy or completeness either in whole or in part, and shall have no liability. Additional investigation, if required, shall be executed by the Design/Builder and included in the Cost of the Work.

**12.10 Approvals and Easements.** The Owner shall obtain all easements, rights-of-way, consents, and approvals required for construction, and shall pay for necessary assessments and charges required for use and occupancy of the Work. The Design/Builder shall render the assistance as the Owner may request in obtaining any 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.** The Owner shall be responsible for testing and inspections required by sound professional practice and by governmental authorities having jurisdiction over the Project. The Design/Builder shall be responsible only for the cost of failed testing.

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

the Work may resume.

**12.13 Owner's Right to Perform Work.** In the event the Owner issues instructions to stop Work, and in the further event that the Design/Builder fails and refuses within seven (7) days of receipt of same to provide adequate assurance to the Owner that the cause of the instructions shall be eliminated or corrected, then the Owner shall have the right to carry out the Work with its own forces, or with the forces of other contractors, and the Design/Builder shall be fully responsible for the reasonable costs incurred in performing that 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 the Owner may have against the Design/Builder, including the rights to terminate or withhold payment as provided herein.

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

## **ARTICLE 13**

### **PROJECT DOCUMENTATION & OWNERSHIP OF DOCUMENTS**

**13.1 Maintenance of Project-Related Records.** The 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 the Owner.** All Project Records, which are in the possession of the Design/Builder or the Design/Builder's Subcontractors, shall be made available to the Owner for inspection and copying upon the Owner's request at any reasonable time. Additionally, such records shall be made available upon request by the 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 items which document the Project, its design, or its construction. Project Records include those documents reflecting the cost of design and construction to the Design/Builder.

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

## **ARTICLE 14**

### **PERSONNEL, SUBCONTRACTORS, AND SUPPLIERS**

**14.1 Subcontractor Defined.** "Subcontractor" means an entity or person that has a direct contract with the Design/Builder to perform a portion of the Work or the Design Services. For purposes of this 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.** Prior to any construction, and on an ongoing basis in order to keep the information current, complete, and accurate, the Design/Builder must provide to the 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 the Design/Builder rights against the Subcontractor which correspond to those rights afforded to the Owner against the Design/Builder, including those rights of Contract suspension, termination, and stop Work orders as set forth in this Agreement. It is expressly agreed that no relationship of agency, employment, contract, obligation or otherwise shall be created between the Owner and any Subcontractor of the Design/Builder and a provision to this effect shall be inserted into all agreements between the Design/Builder and its Subcontractors.

**14.5 The Design/Builder Responsible for Acts of its Subcontractors.** Should the Design/Builder subcontract all or any part of the Work, the subcontracting of the Work shall not relieve the Design/Builder from any liability or obligation under the Contract or under any applicable policy, law or regulation, and the 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.** The Design/Builder shall employ and assign only qualified and competent personnel to perform any service or task concerning the Project. The Design/Builder shall designate one person as the Project Manager. Absent written instruction from the Design/Builder to the contrary, the Project Manager shall be deemed to be the Design/Builder’s authorized representative and shall be authorized to receive and accept all communications from the Owner. Key design and supervisory personnel assigned by the Design/Builder to this Project are as follows:

.1	Name	Function
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The Design/Builder shall submit the names of other key supervisory personnel, and evidence of their competence, as the key supervisory personnel are appointed by the Design/Builder. Evidence of the above-named personnel’s competence, such as a resume, shall be provided to the Owner prior to that personnel beginning performance of the function indicated. So long as the individuals named above remain actively employed or retained by the Design/Builder, or any related entity or affiliate, they shall perform the functions indicated next to their names unless the Owner agrees to the contrary in writing or unless the Owner requests removal of any the individual from the Project. The Owner’s requests to remove any of the Design/Builder’s personnel shall be in writing and shall contain substantive reasons for the request. In the event the Owner requests the removal of any of the individuals named above, the Design/Builder shall immediately comply and shall immediately replace the individual with a qualified substitute to whom the Owner makes no objection, at no cost or penalty to the 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, the Design/Builder shall be bound by the provisions of this Paragraph 14.6 as though those individuals had been listed above.

**14.7 Removal of Subcontractors.** If, at any time during the course of the Project, the Owner reasonably determines that the performance of any Subcontractor working on the Project is unsatisfactory,

the Owner's Representative shall notify the Design/Builder of the same, and shall set forth the instances of unsatisfactory performance. Promptly on receipt of the notice, the Design/Builder shall undertake to cure the unsatisfactory performance, or shall remove the Subcontractor from the Project and promptly replace the Subcontractor. Any cure of unsatisfactory performance or any replacement of a Subcontractor pursuant to this Paragraph shall be at no cost or penalty to the Owner for any increased costs, delays or inefficiencies caused by any unsatisfactory performance, its cure, or by the replacement of a Subcontractor under this Paragraph.

## **ARTICLE 15**

### **CHANGES IN THE PROJECT**

**15.1 Owner's Right to Order Changes.** All changes in the Project, which adjust the Stipulated Sum or the Contract Time, shall be authorized only by a Change Order and the Design/Builder specifically recognizes and acknowledges that methods available for adjustments to the Stipulated Sum 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 the 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 Stipulated Sum.

**15.3 Adjustment to the Stipulated Sum.** The increase or decrease in the Stipulated Sum 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 Stipulated Sum being set forth in a Change Order; (2) the change in the Stipulated Sum 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 the Design/Builder under Paragraph 15.3.1, the change in the Stipulated Sum, if any, shall be derived by determining the reasonable costs incurred or savings achieved, resulting from revisions in the Work, utilizing the 2023 RSMeans Construction Cost Guide, as adjusted for the location of the work contemplated in the change, provided the Design/Builder shall properly itemize the costs or savings and shall submit sufficient substantiating data to permit evaluation, 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 Stipulated Sum utilizing the methodology set forth in Paragraph 15.3.1 or 15.3.2, then the amount of the change in the Stipulated Sum shall be calculated by pricing the labor at the actual wage or hourly rates paid for doing the additional Work, if any, plus the actual cost of materials and equipment, if any; provided, however, that such "actual costs" must be reasonable. In addition, the 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. Additional design services will be compensated with pre-approved rates identified in Task Authorization for that scope of services.

.4 Fourth, any costs or savings shall be documented in the format and with content

and detail acceptable to the Owner.

**15.4 Extension of Contract Time.** Any extension of the Contract Time requested by the Design/Builder for performance of any change in the Design Services or the Work ordered by the 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 the Design/Builder pursuant to the terms and conditions of Article 16. The Design/Builder's failure to provide notice in writing to the Owner in accordance with Article 16 of any request for extension of the Contract Time shall constitute a waiver by the 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 the Design/Builder shall constitute conclusive evidence of the Design/Builder's and the Owner's agreement to the ordered changes in the Project, the Agreement as amended, the Stipulated Sum as amended, and the Contract Time as amended. The Design/Builder, by executing the Change Order, waives and releases any claim against the 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.** The Design/Builder shall notify and obtain the consent and approval of the Design/Builder's surety with reference to all Change Orders if the notice, consent or approval is required by the Owner, the Design/Builder's surety or by law. ~~The~~ Design/Builder's execution of the Change Order shall constitute the Design/Builder's warranty to the Owner that the surety has been notified of, and consents to, the Change Order and the surety shall be conclusively deemed to have been notified of the Change Order and to have expressly consented to it.

**15.7 Fiduciary Relationship.** The Design/Builder recognizes and accepts a fiduciary relationship of trust and confidence established between the Design/Builder and the Owner by this Agreement and agrees that it shall at all times in good faith use its best efforts to advance the 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 shall have authority to order minor changes in the Work not involving an adjustment in the Stipulated Sum, Fixed/Estimated Task Price or an extension of the Contract Time and not inconsistent with the intent of the Detailed Design and Design Documents. Minor 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 the Design/Builder's discretion, to prevent threatened damage, injury or loss. Any increase in the Stipulated Sum or extension of the Contract Time claimed by the Design/Builder 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 The Design/Builder and the Owner understand and agree that the Stipulated Sum cannot increase, unless the Owner specifically orders a Change to the Project pursuant to Article 15, or unless the Design/Builder encounters a condition or situation within the risk assumed by the Owner under this Agreement including under Paragraph 9.2 of this Agreement. In the event the

Design/Builder believes it is entitled to make claims to increase the Stipulated Sum or to extend the Contract Time, those 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 the Design/Builder contained in Paragraphs 2.1.5 and 2.1.6, the 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 the Design/Builder under this Agreement, and that any increased costs shall be absorbed by the Design/Builder, and that there shall be no increase in the Stipulated Sum as a result of the Design/Builder encountering these conditions and increased costs. Notwithstanding this general transference of the risk of these conditions, the parties agree that there are limited circumstances under which the Design/Builder may be entitled to an increase in the Fixed Task Price due to conditions that are unknown, concealed, or subsurface or concealed conditions that cannot be reasonably explored or researched that are not identified in As-Built documentation, and unforeseeable conditions, as set forth in this Article.

.2 If the Design/Builder encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract; or (2) unknown physical conditions of an unusual nature that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, then the Design/Builder may seek an adjustment to the Fixed Task Price and/or an extension of the Contract Time, in accordance with the provisions of this Article 16, and provided that the 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 the Design/Builder discovers or observes the conditions.

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

.4 Examples of conditions that would not be reasonably foreseeable and thus may qualify for an adjustment in the Fixed Task Price, and/or an extension of the Contract Time include: buried vehicles, which reasonably require the Design/Builder to utilize equipment to remove the vehicles and which was not contemplated by the 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; or subsurface or concealed conditions that cannot be reasonably explored or researched that are not identified in As-Built documentation.

.5 Examples of conditions that are reasonably foreseeable under the Contract, and do not qualify for an adjustment in either the Fixed Task 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 the Design/Builder to utilize equipment for removal and which was not contemplated by the Design/Builder for use in performing the Work; and 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. The 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 the claim must designate whether the claim affects the Design Services and Work.

.2 The Design/Builder and the Owner shall continue their performance of this Agreement 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 Task Price, as a condition precedent to any liability of the Owner for the claim, the Design/Builder shall strictly comply with the requirements of Subparagraph 16.3.1 above, and the 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 Task 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 the 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 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 the Design/Builder's control, fire, active interference by third parties with the 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, the task is on the critical path of the project schedule so that a delay in performing the task shall delay the Substantial or Final Completion of the Task as identified in the Task Authorization. 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 a 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 shall be the Design/Builder's sole remedy for any delays of the Design/Builder, whether or not delays are caused by the Owner, the Owner's Representative, and whether or not delays are foreseeable, unless delays are caused by acts of the Owner which constitute active interference with the Design/Builder's performance of the Work, and only to the extent the acts continue after the Design/Builder furnishes the Owner with written notice of the 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 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, the Owner agrees to reasonably cooperate with requests of the 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 the Owner, or contrary to any provision of the Agreement, the Work shall, if required by the Owner, be uncovered for inspection and shall be properly replaced at the 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 the Design/Builder in a manner consistent with its obligations under this Agreement, it shall, if required by the Owner, be uncovered for inspection. If the Work conforms strictly with the Agreement, the cost of uncovering and proper replacement shall by Change Order be charged to the Owner. If the Work does not strictly conform with the Agreement, the Design/Builder shall pay the cost of uncovering and proper replacement.

**17.3 Duty to Correct Rejected Work.** The Design/Builder shall promptly, upon written notice from the Owner, proceed to correct Work rejected by the Owner as defective or failing to conform to the Agreement. The Design/Builder shall pay all costs and expenses associated with correcting the rejected Work, including any additional testing and resulting inspections.

**17.4 Duty to Correct Defective Work Discovered After Completion.** In addition to its warranty obligations set forth elsewhere in this Agreement, the Design/Builder shall be specifically obligated to correct any and all defective or nonconforming Work for a period of twelve (12) months following Substantial Completion, upon written direction from the Owner. This obligation shall survive final payment by the 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 that the Design/Builder has under the Agreement.



Establishment of the one-year time period in Paragraph 17.4 above relates only to the duty to the Design/Builder to specifically correct the Work.

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

## **ARTICLE 18**

### **SUSPENSION AND TERMINATION**

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

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

**18.3 Claim for Costs of Suspension.** In the event the Owner directs a suspension of performance under this Article 18, through no fault of the Design/Builder, and provided the Design/Builder submits a proper claim as provided in this Agreement, the Owner shall pay the Design/Builder as full compensation for the suspension the Design/Builder's reasonable costs, actually incurred and paid, of:

- .1** Demobilization and remobilization, including the costs paid to Subcontractors;
- .2** Preserving and protecting Work in place;
- .3** Storage of material or equipment purchased for the Project, including insurance; and
- .4** Performing in a later, different, or during a longer, timeframe than that contemplated by this Contract.

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

- .1** The Design/Builder reserves the right to change its personnel for the performance of the Work, to the extent its personnel are not reasonably available upon resuming the Work; provided that the Owner may direct by Change Order that personnel be retained on the Project. If the Owner directs retention, the Owner shall pay the Design/Builder the reasonable costs incurred

by the Design/Builder to keep and/or make the personnel available upon resuming 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 the 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 the suspension by the Owner or public authority is through no fault of the Design/Builder or any person or entity working directly or indirectly for the Design/Builder, the Design/Builder may, upon ten (10) days' written notice to the Owner, terminate performance under this Agreement and recover from the 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 the Owner shall persistently or repeatedly fail to perform any material obligation to the Design/Builder for a period of thirty (30) days after receiving written notice from the Design/Builder of its intent to terminate this Agreement, the Design/Builder may terminate performance under the Agreement by written notice to the Owner. In this event, the Design/Builder shall be entitled to recover from the Owner on the terms and conditions and in the amounts as though the Owner had terminated the Design/Builder's performance under the Agreement for convenience pursuant to Paragraph 18.7 below.

**18.7 Termination by Owner for Convenience.** The Owner may, for any reason whatsoever or without reason, terminate performance under the Agreement by the Design/Builder for convenience. The Owner shall give at least thirty (30) days' prior written notice of the termination to the Design/Builder specifying when termination becomes effective. The Design/Builder shall incur no further obligations in connection with the Agreement and the Design/Builder shall stop Design Services and the Work when the termination becomes effective. The Design/Builder shall also, at the Owner's direction, either terminate or assign to the Owner outstanding purchase orders and subcontracts. The Design/Builder shall settle the liabilities and claims arising out of any terminated subcontracts. The Owner may direct the Design/Builder to assign the Design/Builder's rights, title, and interest under terminated orders or subcontracts to the Owner or its designee. The Design/Builder shall transfer title and deliver to the Owner any completed or partially completed Design Documents, Work and materials, equipment, parts, fixtures, information, and appropriate contract rights as the Design/Builder has.

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

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

.2 The Owner and the Design/Builder may agree to the compensation, if any, due to the Design/Builder under this Agreement.

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

(1) That portion of the Stipulated Sum representing the value of the Design Services and the Work, as reflected on the schedule of values, performed by the Design/Builder prior to the date of termination, which is completed and accepted by the

Owner for which the 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 the Design/Builder's performance, plus a fair and reasonable allowance for direct job site overhead and profit (profit shall not include anticipated profit or consequential damages); provided however, that if the Owner can show that the 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 in this Agreement.

In no event shall the Design/Builder be entitled to recover anticipated profits or other consequential damages from the Owner on account of a termination for convenience or an erroneous termination for cause, as described below. The total sum to be paid the Design/Builder under this Paragraph 18.8 shall not exceed the Stipulated Sum, 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 the Design/Builder does not perform the Work, or any part of the Work, 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 the Owner may by written notice to the Design/Builder, without prejudice to any other right or remedy against the Design/Builder or others, terminate the performance of the 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 these cases, the Design/Builder shall not be entitled to receive any further payment until the Work is finished. Provided, however, prior to exercising the Owner's right to terminate for cause in this Paragraph 18.9, the Owner shall first provide the Design/Builder written notice detailing the facts and basis for its intended termination and provide the Design/Builder a reasonable opportunity to cure or correct the issue. The Owner shall only be authorized to terminate performance if, after receiving a notice, the Design/Builder fails within five (5) business days to commence and diligently continue corrective efforts.

**18.10 Erroneous Termination for Cause.** In the event the Owner terminates the Design/Builder's employment for cause under to Paragraph 18.9 and it is later determined by a court or other tribunal of competent jurisdiction that the termination was without cause, the termination shall then 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 the Owner for cause, if the unpaid balance of the Stipulated Sum exceeds the cost of finishing the Work, including compensation for the Owner's additional costs and expenses of every nature whatsoever made necessary, the excess shall be paid to the Design/Builder. If the costs exceed the unpaid balance, the Design/Builder shall pay the difference to the Owner. This obligation for payment shall survive the termination of this Agreement.

## ARTICLE 19

## **RETAINAGE**

**19.1 Task Authorization Retainage.** Upon execution of a Task Authorization, the Owner shall retain five percent (5%) of the total Fixed Task Price (“Task Authorizaiton Retainage”) for that Task Authorization as retainage, with the exception of items not subject to retainage per Paragraph 10.4.1. After the Design/Builder achieves, and the Owner accepts, Final Completion of a Task, the Owner shall release the Task Authorization Retainage for that Task to the Design/Builder.

## **ARTICLE 20**

### **INDEMNIFICATION**

#### **20.1 Design/Builder Indemnification of Owner.**

**.1** The Design/Builder shall indemnify, defend and hold harmless the State of Idaho, Division of Public Works, its officers, agents, employees, and volunteers from and against all liability, claims, damages, losses, expenses, actions, settlements, attorneys’ fees, and suits whatsoever caused by, arising out of, or in connection with Design/Builder’s acts or omissions under this Agreement or the Design/Builder’s failure to comply with any State or federal stature, law, regulation, or rule.

**.2** Upon receipt of the State’s tender of indemnity and defense, Design/Builder shall immediately take all reasonable actions necessary, including, but not limited to, providing a legal defense for the State, to begin fulfilling its obligation to indemnify, defend, and save harmless the State. Design/Builder’s indemnification and defense liabilities described herein shall apply regardless of any allegations that a claim or suit is attributable in whole or in part to any act or omission of the State under this Agreement. Design/Builder shall not be required to hold the State harmless for damages attributed to the State in a final order issued by a court of competent jurisdiction.

**.3** Any legal defense provided by the Design/Builder to the State under this Section must be free of any conflicts of interest, even if retention of separate legal counsel for the State is necessary. Any attorney appointed to represent the State must first qualify as and be appointed by the Attorney General of the State of Idaho as a Special Deputy Attorney General pursuant to Idaho Code sections 67-1401(13) and 67-1409(1). The State must approve all settlement offers and agreements made on its behalf and has the option to attend any settlement or alternative dispute resolution proceedings.

**20.2 Design/Builder Indemnification of Owner for Violations of Laws, Environmental Requirements, and Licensing Requirements.** The Design/Builder shall indemnify and hold harmless the Owner and its affiliates, officers, directors, and employees from and against all claims, liabilities, damages, losses, costs, expenses (including reasonable attorneys’ 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** 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 the Design/Builder, its Subcontractors, Suppliers, representatives, employees,

or agents; or

.3 The failure of any of the 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, and health and safety matters of the Project.

**20.3 Hazardous Materials.** In the event the Design/Builder discovers hazardous or contaminated materials, including, but not limited to asbestos, PCBs, petroleum, hazardous waste, or radioactive materials ("Hazardous Materials"), the Design/Builder shall stop all Work in connection with the hazardous condition and in any area affected by the hazardous condition, and notify the Owner of the discovery of the condition. The Design/Builder shall strictly comply with all laws, regulations, rules or other promulgations by governing bodies, agencies, authorities or organizations having jurisdiction over the Design/Builder's activities on the Project relating to Hazardous Materials. The 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. The Design/Builder shall secure the Work site to prevent access by unauthorized persons. If the 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 the Design/Builder without notice to the Owner, the Design/Builder shall be solely responsible for all costs and fines resulting from that failure or knowing transportation. Design/Builder shall not be responsible for any losses, fines, liabilities, or expenses relating to any existing Hazardous Materials encountered at the Project site, or Hazardous Materials required by the Contract Documents, unless and to the extent Design/Builder negligently handles, disposes, or transports such Hazardous Materials.

## ARTICLE 21

### DESIGN/BUILDER INSURANCE

**21.1 Insurance Carriers.** All insurance carriers providing coverage under this Agreement, shall be rated an "A" or above by Best's Insurance Rating Service. Evidence of such insurance coverage or self-insurance shall be in the form of a certificate of insurance or statement of financial responsibility. The Design/Builder shall immediately notify the Owner of notice of knowledge of cancellation, refusal to renew, or change in any material way the nature or extent of the coverage provided by such policies. The Design/Builder shall provide notification by written notice, by certified or registered mail, return receipt requested.

**21.2 Commercial General Liability.** Design/Builder shall maintain such Commercial General Liability insurance with minimum limits of \$1,000,000/\$3,000,000 to protect its interest and that of the Owner. The State of Idaho, Division of Public Works, (name(s) of agencies) shall be named an Additional Insured on any general liability and property policies carried and required by this Agreement. The insurance afforded by the Design/Builder shall be primary insurance. The State of Idaho's retained risk program coverage is only applicable to the acts or omissions of the State's officials, agents, or employees and shall not cover the acts or omissions of the Contractor or its Sub-Contractors.

**21.3 Worker's Compensation Insurance.** Design/Builder shall carry Worker's Compensation Insurance to cover obligations imposed by federal and state statutes covering all employees and employers' liability insurance with a minimum limit of \$100,000.

**21.4 Professional Malpractice Insurance.** The Design/Builder shall provide Professional Liability Insurance, unless waived in writing by the Owner, in an amount no less than \$5,000,000.00

combined single limit. If liability insurance required by this section is obtained through a “claims made” policy, this coverage or its replacement shall have a retroactive date of no later than the inception of this Agreement. The Design/Builder must maintain such liability insurance for two (2) years from the date services are last provided under this Agreement. The Design/Builder shall be responsible to pay all premiums, deductibles and all costs not covered by such insurance.

**21.5 Tail Coverage.** If any of the insurance required under this Agreement is arranged on “claims made” basis, “tail” coverage shall be required at the completion of this Agreement for duration of twenty-four (24) months thereafter. The Design/Builder shall be responsible for furnishing certification of “tail” coverage or continuous “claims made” liability coverage for twenty-four (24) months following the completion of this Agreement. Continuous “claims made” coverage shall be acceptable in lieu of “tail” coverage provided its retroactive date is on or before the effective date of this Agreement.

**21.6 Indemnification.** The Design/Builder shall indemnify, defend and save harmless the State of Idaho, the Division of Public Works, (names of agencies), their officers, agents and employees, from and against any liability, claims, damages, losses, expenses, actions and suits whatsoever, including injury or death of others or any employees of the Design/Builder or the Design/Builder’s Sub-Contractor caused by or arising out of the negligent performance, act or omission by the Design/Builder of any term of this contract.

**21.7 Survival.** All express representations, indemnifications or limitations of liability made in or given to this Agreement shall survive the completion of all services of Design/Builder under this Agreement or the termination of this Agreement for any reason.

## ARTICLE 22

### PROPERTY INSURANCE

**22.1 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.

**ARTICLE 23**  
**SURETY BONDS**

**23.1 Performance Bond and Payment Bond.** Prior to the start of construction, the Design/Builder must furnish separate performance and payment bonds to the Owner for each Task Authorization. Each bond shall set forth a penal sum in an amount not less than the Stipulated Sum. Each bond furnished by the Design/Builder shall incorporate by reference the terms of this Agreement as fully as though they were set forth verbatim in the bonds. In the event the Stipulated Sum is adjusted by Change Order executed by the 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 the Design/Builder shall be in form suitable to the Owner and shall be executed by a surety, or sureties, properly licensed in Idaho and having a Best's rating of A. The 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 24**  
**MISCELLANEOUS PROVISIONS**

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

**24.2 Successors and Assigns.** The Owner and the Design/Builder bind themselves, their successors, assigns, executors, administrators, and other legal representatives to the other party to this Agreement and to successors, assigns, executors, administrators, and other legal representatives of the other party in respect to all terms and conditions of this Agreement.

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

**24.4 Notices.** Any notice required to be given in this Agreement 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 the 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:**

**Company Name**  
**Address**

All notices shall be effective upon receipt.

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

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

**24.7 Mutual Waiver of Consequential Damages.** The parties mutually agree to waive claims against each other for indirect, special, or consequential damages arising from the Project and of the services, including, but not limited to, damage to reputation, loss of revenue, loss of use or other similar claims.

## **ARTICLE 25 DISPUTE RESOLUTION**

**25.1 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.

**25.2 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.

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

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

**25.5 Prevailing Party.** In the event any dispute resolution proceedings, including litigation or arbitration, are commenced, the prevailing party in the dispute shall be entitled to recover its attorneys' fees, expert witness costs, and other costs and expenses awarded by a court of competent jurisdiction.

**25.6 Counterparts.** This Amendment may be executed in one or more counterparts, each of which shall constitute an original and all of which shall be one and the same agreement.

*Signature Page to Follow.*



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

**OWNER**

Division of Public Works  
Boise, Idaho

**DESIGN/BUILDER**

By: \_\_\_\_\_  
Pat Donaldson, Administrator

By: \_\_\_\_\_  
Name, Title  
Tax ID. No. xx-xxxxxx

**EXHIBIT A**

**ADDRESSES and AUTHORIZED REPRESENTATIVES**

The names, addresses and authorized representatives of the Owner and the Design/Builder are:

**OWNER:**

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

**Project Manager:**

(Owner's Rep)

[Name]

Jacobs Project Management Co.

Phone (direct):

Phone (cell):

E-mail:

May sign for Owner:      Yes [ X ]    No [   ]

**Field Representative:**

(Owner's Rep)

[Name]

Jacobs Project Management Co.

Phone (direct):

Phone (cell):

E-mail:

May sign for Owner:      Yes [ X ]    No [   ]

**DESIGN/BUILDER:**

\_\_\_\_\_ (company name)  
\_\_\_\_\_ (address)  
\_\_\_\_\_ (city, state, zip)  
\_\_\_\_\_ (telephone and FAX)  
\_\_\_\_\_ (E-mail)

Public Works Contractors License No. \_\_\_\_\_

**Officer:**

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

**Contractor's**

**Project Manager:**

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

May sign for Contractor: Yes [   ]    No [   ]

Change Orders: up to:      \$ \_\_\_\_\_ .00

Contractor's Request for Payment

**Contractor's**

**Superintendent:**

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

May sign for Contractor: Yes [   ]    No [   ]

**EXHIBIT B**

**DESIGN/BUILDER'S AFFIDAVIT CONCERNING TAXES**

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

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

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

\_\_\_\_\_  
Name of Design/Builder

\_\_\_\_\_  
Address

\_\_\_\_\_  
City and State *SEAL*

By:

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

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

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

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

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

## EXHIBIT C

### Idaho State Tax Commission REQUEST FOR TAX RELEASE

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

#### PART I -- AWARDING AGENCY INFORMATION:

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

#### PART II -- DESIGN/BUILDER INFORMATION:

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

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

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

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

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

#### PART IV -- PROJECT INFORMATION:

Name of project	Location of project		
Description of project			
Project number assigned by awarding agency	Project start date	Project completion date	Final/closing contract amount (includes all change orders)
			\$
Did any government entities supply materials which were installed by this contractor or its subs?: _ Yes <input type="checkbox"/> No <input type="checkbox"/>			
If YES, list these materials and their dollar values. (Attach additional information if needed)			
List Materials		List Dollar Values of Materials	
		\$	
		\$	
		\$	

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

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

**EXHIBIT D**

**RELEASE OF CLAIMS  
(TO BE COMPLETED FOR FINAL PAYMENT)**

I, \_\_\_\_\_, do hereby release the State of Idaho from any and all claims of any character whatsoever arising under and by virtue of Task Authorization Number \_\_\_\_\_

Dated \_\_\_\_\_ as amended, except as herein stated.

Dated \_\_\_\_\_ Design/Builder \_\_\_\_\_

## EXHIBIT E

### Conditions Precedent to Final Payment

Date: \_\_\_\_\_  
DPW Project No. \_\_\_\_\_  
Task Authorization No. \_\_\_\_\_  
Task Authorization Title: \_\_\_\_\_  
Location: \_\_\_\_\_

Send to:  
State of Idaho  
Division of Public Works  
502 N. Fourth Street  
Boise, Idaho 83702

#### **Design/Builder's Responsibilities:**

Per Paragraph 11.7 of the Design/Build Agreement: As a condition precedent to final payment, the Contractor must furnish the owner, in the form and manner required by Owner, the following:

- ☐ Contractor's Final Request for Payment Form has been uploaded to OMS;
- ☐ Release of Claims form has been uploaded to OMS (Exhibit D);
- ☐ Contractor's Affidavit of Payment of Debts and Claims Form has been uploaded to OMS (AIA G706);
- ☐ Consent of Surety to Final Payment has been uploaded to OMS (AIA G707);
- ☐ Confirmation of all required training (DPW's Training Confirmation Exhibit F), product warranties, operating manuals, instruction manuals and other record documents, drawings and items customarily required of the Contractor has been uploaded to OMS.
- ☐ Public Works Contract Tax Release from the Idaho Tax Commission has been uploaded to OMS;
- ☐ Division of Building Safety Letter of Completion/Final Inspection has been uploaded to OMS (as required);
- ☐ Project Finalization and Start Up has been uploaded to OMS (as required, Exhibit G);
- ☐ All Documents Required per Paragraph 11.7 of the Design/Build Agreement have been uploaded to OMS.
- ☐ All Warranties, Guarantees, etc. have been received, approved and have been uploaded to OMS.
- ☐ Contractor's As-Built Drawings, have been received, reviewed, approved and uploaded to OMS in PDF format.
- ☐ Final punch list with DPW and Agency's verification that all items have been completed, has been uploaded to OMS.
- ☐ Record Drawings have been completed by Design-Builder. All required copies of the Record Documents and electronic media are attached and uploaded to OMS in PDF, and DWG 2010 format. DWG files should be bound in zip folder, or "e-transmit" folder, containing all drawing files with relevant dependencies (i.e. x-refs, images, title blocks, and pen settings). *Record Drawings are a requirement for the AE's final payment; not the Contractor's.*

---

Design/Builder's Signature

Date

To the best of my knowledge, information, and belief, and on the basis of my observations and inspections, I certify the Work has been completed in accordance with the terms and conditions of the Contract Documents and that the required documentation required by Paragraph 11.7 of the Design/Build Agreement has been received. The entire balance, as shown on the attached Final Request for Payment, is due and payable.

**EXHIBIT F**

**STATE OF IDAHO  
DIVISION OF PUBLIC WORKS**

**TRAINING CONFIRMATION SIGN-IN SHEET**

DPW Project: \_\_\_\_\_

Agency: \_\_\_\_\_

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

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

Task Authorization Name: \_\_\_\_\_

Task Authorization Number: \_\_\_\_\_

Owner's Representative: \_\_\_\_\_

Date & Time: \_\_\_\_\_

Design/Builder \_\_\_\_\_

Topic: \_\_\_\_\_

Name	Company	E-mail	Telephone	Signature

V:\Design and Construction\CONTRACT ADMINISTRATION\Close Out\Training Confirmation Sign In Sheet.xlsx

**EXHIBIT G**

**PROJECT FINALIZATION AND START-UP**

Upon completion of the equipment and systems installation and connections, the Design-Builder shall assemble all equipment factory representatives and subcontractors together for system start-up.

These people shall assist in start-up and check out their system(s) and remain at the site until the total system operation is acceptable and understood by the agency's representative(s). The factory representative(s) and system subcontractor(s) shall also give instructions on operation and maintenance of their equipment to the agency's maintenance and/or operation personnel. To prove acceptance of operation and instruction by the agency's representative(s), this written statement of acceptance shall be signed below.

"I, the Design-Builder, associated factory representative and subcontractors, have started each system, completed commissioning activities required for the individual system and the total system; have proven their normal operation to the agency's representative(s) and maintenance/operation personnel's satisfaction; provided required operation and maintenance documentation; provided required as-built documentation; and have instructed him/them in the operation and maintenance thereof."

DPW Project No: \_\_\_\_\_

Project Task Authorization No: \_\_\_\_\_

Project Task Authorization Description: \_\_\_\_\_

\_\_\_\_\_  
Agency's Representative

\_\_\_\_\_  
Design-Builder

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date



**EXHIBIT H**

**DESIGN-BUILDER'S AFFIDAVIT  
CONCERNING ALCOHOL AND DRUG-FREE WORKPLACE**

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

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

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

\_\_\_\_\_  
Name of Design-Builder

\_\_\_\_\_  
Address

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

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

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

Commission expires:

\_\_\_\_\_  
NOTARY PUBLIC, residing at

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**EXHIBIT J**

# SUBSTANTIAL COMPLETION CERTIFICATION

---

Project: \_\_\_\_\_ DPW Project No. \_\_\_\_\_

Task Authorization: \_\_\_\_\_ Design-Builder \_\_\_\_\_

---

Date Required by Task Authorization and Change Orders \_\_\_\_\_ Contract Amount Paid to Date

Actual Date of Substantial Completion \_\_\_\_\_ \$ \_\_\_\_\_

---

A list of items to be completed or corrected, prepared by the Design-Builder, is attached hereto. Failure by the Design-Builder to include any items on this list does not alter the responsibility of the Design-Builder to complete all Work in accordance with the Contract Documents.

---

The work performed under this contract and any approved change orders have been reviewed and found to be substantially complete. The Date of Substantial Completion is also the date for commencement of applicable warranties required by the contract unless exempted in an attached list.

---

I will complete or correct the Work on the attached list within \_\_\_\_\_ days from the Date of Substantial Completion.

---

Design-Builder	By: Authorized Representative	Date
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The Owner accepts the Work or designated portion thereof as substantially complete and will assume full possession thereof at 8:00 a.m. the day following the Date of Substantial Completion.

---

Agency Representative	Date	Initial DPW FR	Initial DPW PM
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State of Idaho  
Division of Public Works

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Owner	By: Administrator	Date
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**EXHIBIT K**

**DPW PROJECT NO. [REDACTED]**  
**TASK VALIDATION REPORT**  
**TASK NO. [REDACTED]**

DATE

NARRATIVE

*Provide a description of the basic tasks, requirements, and other considerations related to this project.*

DESIGN WORK TO BE COMPLETED

*Check all boxes that apply.*

- ☐ Begin Work. *No specifications or drawings required.*
- ☐ Schematic Design. *Conceptual specifications and drawings required.*
- ☐ Design Development. *Specifications and drawings required.*
- ☐ Permit Drawings. *Drawings required to obtain permits.*
- ☐ Construction Documents. *Detailed specs and drawings required.*

ESTIMATED TASK COMPLETION TIMEFRAME

ESTIMATED TOTAL TASK COST

**DESIGN/BUILDER**

\_\_\_\_\_

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

Name, Title

**EXHIBIT L**  
**STATE OF IDAHO DIVISION OF PUBLIC WORKS**  
**DEFERRED MAINTENANCE**  
**DPW PROJECT NO. #####**  
**DESIGN-BUILD AGREEMENT – TASK AUTHORIZATION NO. ###**

This DESIGN/BUILD AGREEMENT TASK AUTHORIZATION (“Task Authorization”) 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 **DESIGN/BUILDER**, hereinafter referred to as the Design/Builder.

1. The terms of the Design/Build Agreement between DPW and Design/Builder signed on **DATE** remains in full force and effect in accordance with its terms except as specifically modified in this Task Authorization. All of the terms herein shall have the same meaning as contained in the Design Build Agreement, except as specifically defined otherwise in this Task Authorization.

2. The effective date of this Task Authorization is **DATE**.

3. Pursuant to the terms of the Design/Build Agreement, the parties agree to the following terms:

**Design Phase**

Task Authorization Design Duration:	XX days from effective date above
Task Authorization Design Fees:	<b>#####</b> (Not-to-Exceed)

**Procurement and Construction Phase**

Estimated Procurement/Construction Duration:	XX days from Design Completion
Estimated Procurement/Construction Cost:	<b>#####</b> (Estimated)

<b>Estimated Total Task Authorization Duration</b>	<b>XX days from effective date above</b>
<b>Estimated Total Task Authorization Cost:</b>	<b>#####</b> (Estimated)

**SELECT ONE OF THE FOLLOWING NUMBER 4 PROVISIONS.**

4. Owner and Design/Builder elects “Direct Damages” for this Task Authorization, which shall be defined as: **[INSERT DEFINITIONS/COSTS]**.

**OR**

4. Owner and Design/Builder elects Liquidated Damages for this Task Authorization in the following amounts, and as more particularly described in Section 7 of the Agreement:

Substantial Completion Date Liquidated Damages	<b>#####</b>
--	--------------

Final Completion Date Liquidated Damages	<b>#####</b>
--	--------------

5. The Design/Build Agreement, as amended by this Task Authorization constitutes the entire agreement between the parties and supersedes all prior agreements or understandings between the Parties. The Agreement or Task Authorization may not be further amended in any manner except in a writing signed by the parties. This Task Authorization may be executed in one or more counterparts, each of which shall constitute an original and all of which shall be one and the same agreement. This Task Authorization shall be governed by, construed, and enforced in accordance with, the laws of Idaho without regard to its conflicts of law principles.

*Signature Page to Follow.*

NOW THEREFORE, the parties have entered into this Task Authorization effective as of the date first written above.

**OWNER**

Division Of Public Works Boise, Idaho

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

Pat Donaldson, Administrator

**DESIGN/BUILDER**

Company Name

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

Name, Title

Tax ID. No. xx-xxxxx

**EXHIBIT M**  
**STATE OF IDAHO DIVISION OF PUBLIC WORKS**  
**DEFERRED MAINTENANCE**  
**DPW PROJECT NO. #####**  
**DESIGN-BUILD AGREEMENT – TASK AUTHORIZATION NO. ###**  
**CHANGE ORDER NO. ##**

This DESIGN/BUILD AGREEMENT with Fixed Price TASK AUTHORIZATION (“Task Authorization”) 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 **DESIGN/BUILDER**, hereinafter referred to as the Design/Builder.

1. The terms of the Design/Build Agreement between DPW and Design/Builder signed on **DATE** remains in full force and effect in accordance with its terms except as specifically modified in this Task Authorization. All of the terms herein shall have the same meaning as contained in the Design Build Agreement, except as specifically defined otherwise in this Amendment.
2. The effective date of this Task Authorization Change Order is **DATE**.
3. DPW hereby grants Design/Builder a **Notice to Proceed with Construction for Task Authorization No. ###, description**, more particularly described in the Drawings and Specifications, attached to this Task Authorization and hereby incorporated by this reference.
4. Pursuant to the terms of the Design/Build Agreement, the parties agree to the following terms:

**Design Phase**

Task Authorization Design Duration:	XX days from effective date above
Task Authorization Design Fees:	<b>#####</b> (Not-to-Exceed)

**Procurement and Construction Phase**

Estimated Procurement/Construction Duration:	XX days from Design Completion
Estimated Procurement/Construction Cost:	<b>#####</b> (Estimated)

<b>Estimated Total Task Authorization Duration</b>	<b>XX days from effective date above</b>
<b>Estimated Total Task Authorizaiton Cost:</b>	<b>#####</b> (Estimated)

**SELECT ONE OF THE FOLLOWING NUMBER 5 PROVISIONS.**

5. Owner elects “Direct Damages” for this Task Authrozation, which shall be defined as: **[INSERT DEFINITIONS/COSTS]**.

**OR**

5. Owner elects Liquidated Damages for this Task Authorization in the following amounts, and as more particularly described in Section 7 of the Agreement:

Substantial Completion Date Liquidated Damages	<b>#####</b>
--	--------------

Final Completion Date Liquidated Damages	<b>#####</b>
--	--------------

6. The Design/Build Agreement, as amended by this Task Authorization constitutes the entire agreement between the parties and supersedes all prior agreements or understandings between the Parties. The Agreement or Task Authorization may not be further amended in any manner except in a writing signed

by the parties. This Task Authorization may be executed in one or more counterparts, each of which shall constitute an original and all of which shall be one and the same agreement. This Task Authorization shall be governed by, construed, and enforced in accordance with, the laws of Idaho without regard to its conflicts of law principles.

NOW THEREFORE, the parties have entered into this Amendment effective as of the date first written above.

**OWNER**

Division Of Public Works Boise, Idaho

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

Pat Donaldson, Administrator

**DESIGN/BUILDER**

Company Name

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

Name, Title

Tax ID. No. xx-xxxxx

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

--

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

Contract awarded by (public body and address)

Contract awarded to (contractor's name and address)

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

**Project Dates**

Scheduled project start date: \_\_\_\_\_ Completion date: \_\_\_\_\_

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

**All Subcontractors**

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



**All Subcontractors (continued)**

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

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

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

**Suppliers**

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

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

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

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

<b>Sign Here</b>	Authorized signature	Print name	Phone number	Date
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File with the Idaho State Tax Commission, PO Box 36, Boise ID 83722-0410

For more information, call (208) 334-7618 | Fax: (208) 332-6619 | Email: [contractdesk@tax.idaho.gov](mailto:contractdesk@tax.idaho.gov)