DIVISION OF PUBLIC WORKS

AGREEMENT BETWEEN OWNER AND CONSTRUCTION MANAGER
Where the Construction Manager is also the General Contractor -
Construction Manager / General Contractor (CM/GC)

PROJECT:
Project Name
Project Number
Description

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 CONSTRUCTION MANAGER / GENERAL CONTRACTOR:
Company
Address

THE DESIGN PROFESSIONAL:
Company
Address

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CONSTRUCTION MANAGER / GENERAL CONTRACTOR (CM/GC) CONTRACT
BETWEEN OWNER AND CONSTRUCTION MANAGER AS GENERAL CONTRACTOR

THIS CONSTRUCTION MANAGER / GENERAL CONTRACTOR (CM/GC) CONTRACT BETWEEN OWNER AND CONSTRUCTION MANAGER / GENERAL CONTRACTOR where the Construction Manager is also the General Contractor WITH GUARANTEED MAXIMUM PRICE (the "Agreement") is by and between the State of Idaho, Department of Administration, Division of Public Works ("DPW" or the "Owner") and CMCG Name (the "CM/GC") (hereinafter the "Parties") and is for the Project (the "Project") identified as DPW Project No. ##, Description, Address, as more fully described in Exhibit A, and incorporated herein by reference. This Contract shall be effective on the *date (xx) of month 202x*, when executed by both parties (the "Effective Date").

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

ARTICLE 1
GENERAL PROVISIONS

1.1 THE CONTRACT DOCUMENTS. The Contract Documents consist of the following:

.1 This Agreement, as amended.
.2 The Drawings which are the graphic and pictorial portions of the Contract Documents showing the design, location and dimensions of the Work, generally including plans, elevations, sections, details, schedules and diagrams.
.3 The Specifications, which are that portion of the Contract Documents consisting of the written requirements for materials, equipment, systems, standards and workmanship for the Work, and performance of related services.
.4 Addenda.
.5 Modifications issued after execution of the Agreement. A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, (3) a Construction Change Directive or (4) a written order for a minor change in the Work issued by the Design Professional.
.6 Other documents listed in this Agreement.

1.2 THE CONTRACT. The Contract Documents form the Contract and are as fully a part of the Contract as if attached to this Agreement or repeated herein. Upon the Owner's acceptance of the CM/GC's Guaranteed Maximum Price proposal, the Contract Documents will also include documents described in Section 2.2 and identified in the Guaranteed Maximum Price Amendment and revisions prepared by the Design Professional and furnished by the Owner as described in Section 2.2.8. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations, or agreements, either written or oral. The Contract may be amended or modified only by a Modification, and if anything in the other Contract Documents, other than a Modification, is inconsistent with this Agreement, this Agreement shall govern. The Contract Documents shall not be construed to create a contractual relationship of any kind (1) between the CM/GC and the Design Professional or the Design Professional's consultants, (2) between the Owner and a Subcontractor or a Sub-subcontractor, (3) between the Owner and the Design Professional or the Design Professional's consultants or (4) between any persons or entities other than the Owner and the CM/GC. The Design Professional shall, however, be entitled to performance and enforcement of obligations under the Contract intended to facilitate performance of the Design Professional's duties. The Guaranteed Maximum Price shall hereafter be referred as the "GMP" and the Guaranteed Maximum Price Amendment shall hereafter be referred to as the GMP Amendment.

1.3 RELATIONSHIP OF THE PARTIES. The CM/GC accepts the relationship of trust and confidence established with the Owner by this Agreement. The CM/GC shall provide all services and fully execute the Work described in the Contract Documents except as specifically indicated to be the responsibility of another. The CM/GC covenants with the Owner to furnish the CM/GC's skill and judgment and to cooperate with the Design Professional and the state agency for which the Project is being constructed (the "Agency") in furthering the interests of the Owner. The CM/GC shall furnish efficient construction administration, management services; and supervision to perform the Work in an expeditious and economical manner consistent with the Owner's interests. The Owner and CM/GC shall endeavor to promote harmony and cooperation among the Owner, Design Professional, CM/GC and other persons or entities employed by the Owner for the Project.

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1.4 THE WORK. The term "Work" means the construction and services required by the Contract Documents, whether completed or partially completed, and includes all other labor, materials, equipment, and services provided or to be provided by the CM/GC to fulfill the CM/GC's obligations. The Work may constitute the whole or a part of the Project.

1.5 THE PROJECT. The Project is the total construction of which the Work performed under the Contract Documents and may be the whole or a part and which may include construction by the Owner and by separate contractors.

1.6 DESIGN DOCUMENTS. "Design Documents" means all the design documents provided by the Design Professional and approved by the Owner, including those for use in constructing the Work, performing the Work, and rendering of the Work fully operational for its intended purposes and shall include detailed plans, Drawings, Specifications, project manuals, and related materials prepared by or on behalf of the Design Professional.

1.7 CORRELATION AND INTENT OF THE CONTRACT DOCUMENTS

1.7.1 The Contract Documents shall include all items necessary for the proper execution and completion of the Work by the CM/GC. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by the CM/GC shall be required only to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results.

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

1.7.3 The words "include," "includes," or "including," as used in this Agreement, shall be deemed to be followed by the phrase "without limitation."

1.7.4 The specification herein of any act, failure, refusal, omission, event, occurrence, or condition as constituting a material breach of this Agreement shall not imply that any other, non-specified act, failure, refusal, omission, event, occurrence, or condition shall be deemed not to constitute a material breach of this Contract.

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

1.7.6 The express or implied approval by the Owner of any shop drawings or other submittals shall not relieve the CM/GC of the continuing duties imposed hereby, nor shall any such approval be evidence of the CM/GC's compliance with this Agreement. The Design Professional has prepared documents for the Project, including but not limited to Drawings and Specifications for the Project, which are accurate, adequate, consistent, coordinated, and sufficient for construction. However, the Owner makes no express representation or warranty to the CM/GC concerning such documents. Upon acceptance of the GMP by the Owner, the CM/GC will hereby be deemed to have acknowledged and represented that it has received, reviewed and carefully examined such documents; has found them to be complete, accurate, adequate, consistent, coordinated and sufficient for construction; and that the CM/GC has not, does not and will not rely upon any representations or warranties by the Owner concerning such documents, as no such representations or warranties have been or are hereby made.

1.8 INSTRUMENTS OF SERVICE. Instruments of Service are representations, in any medium of expression now known or later developed, of the tangible and intangible creative work performed by the Design Professional and the Design Professional's consultants under their respective professional services agreements. Instruments of Service may include, without limitation, studies, surveys, models, sketches, drawings, specifications, and other similar materials.

1.9 CAPITALIZATION. Terms capitalized in this Agreement include those that are (1) specifically defined, (2) the titles of numbered articles or (3) the titles of other documents.

1.10 INTERPRETATION. In the interest of brevity, the Contract Documents frequently omit modifying words such as "all" and "any" and articles such as "the" and "an," but the fact that a modifier or an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement.

1.11 OWNERSHIP AND USE OF DRAWINGS, SPECIFICATIONS AND OTHER INSTRUMENTS OF SERVICE.

1.11.1 Unless otherwise agreed by the Owner, the party that prepared the Instruments of Service including the Drawings, Specifications and other documents is the author of such with all copyright, common law, statutory and other reserved rights. The CM/GC, Subcontractors, Sub-subcontractors, and material or equipment suppliers shall not own or claim a copyright in the Instruments of Service. The CM/GC may retain one (1) record set of the Drawings and Specifications and other documents but shall not own or claim any copyright in them.

1.11.2 The Drawings and Specifications and other documents, and any copies, are to be used solely for this Project, and not on any other project, or additions to this Project outside this Contract, without written consent of the Owner, and/or the Owner's consultants; provided, however, that copies may be made of applicable portions as necessary for completion of the Work. Such copies shall include any copyright notice on the Drawings and Specifications and other documents. The CM/GC, Subcontractors, Sub-subcontractors and material or equipment suppliers are authorized to use and reproduce the Instruments of Service provided to them solely and exclusively for execution of the Work. All copies made under this authorization shall bear the copyright notice, if any, shown on the Instruments of Service.

§ 1.12 ORDER OF PRECEDENCE. In the event of any conflict among Contract Documents, the Design Professional shall interpret the Contract Documents, and the interpretation shall be binding on both the Owner and CM/GC; provided, however, that this does not change the Owner's right to make decisions regarding Claims in accordance with Article 12. If no interpretation is provided by the Design Professional, the most stringent requirement in the Contract Documents will apply.

ARTICLE 2
CONSTRUCTION MANAGER / GENERAL CONTRACTOR'S RESPONSIBILITIES

The CM/GC shall perform the services described in this Article. The CM/GC's Preconstruction Phase responsibilities are set forth in Sections 2.1 and 2.2. The CM/GC's Construction Phase responsibilities are set forth in Section 2.3. The Owner and CM/GC may agree, in consultation with the Design Professional, for the Construction Phase to commence prior to completion of the Preconstruction Phase, in which case, both phases will proceed concurrently. The CM/GC shall identify a representative authorized to act on behalf of the CM/GC with respect to the Project.

2.1 PRECONSTRUCTION PHASE.

2.1.1 Preliminary Evaluation. No later than twenty-one (21) days following receipt of Notice to Proceed with Preconstruction Services, attached hereto as Exhibit F, the CM/GC shall provide a preliminary evaluation of the Owner's program, schedule, and construction budget requirements, each in terms of the other.

2.1.2 Consultation. The CM/GC jointly with the Design Professional shall jointly schedule and conduct meetings with the Owner to discuss such matters as procedures, progress, coordination, and scheduling of the Work. The CM/GC shall advise the Owner and the Design Professional on proposed site use and improvements, selection of materials, and building systems and equipment. The CM/GC shall also provide recommendations consistent with the Project requirements to the Owner and Design Professional on constructability; availability of materials and labor; time requirements for procurement, installation, and construction; and factors related to construction cost including, but not limited to, costs of alternative designs or materials, preliminary budgets, life-cycle data, and possible cost reductions.

2.1.3 Project Schedule. When Project requirements have been sufficiently identified, the CM/GC shall prepare and periodically update a Project schedule for the Design Professional's review and the Owner's acceptance. The CM/GC shall obtain the Design Professional's approval for the portion of the Project schedule relating to the performance of the Design Professional's services. The Project schedule shall coordinate and integrate the CM/GC's services, the Design Professional's services, other Owner consultants' services, and the Owner's responsibilities and identify items that could affect the Project's timely completion. The updated Project schedule shall include the following: submission of the GMP proposal; components of the Work; times of commencement and completion required of each Subcontractor; ordering and delivery of products, including those that must be ordered well in advance of construction; and the occupancy requirements of the Owner.

2.1.3.1 The CM/GC shall provide a written report of the following:

.1 Its findings of a design review of the documents referenced in Section 1.1 for interdisciplinary coordination among all trades.
.2 Its opinions on the overall and individual constructability of the elements of the Work; and
.3 Its recommendations regarding construction feasibility; actions designed to maximize efficiencies and minimize adverse effects on labor or material shortages, procurement time requirements and construction completion, factors related to construction costs, and the integration of commissioning activities into design and construction.

2.1.4 Phased Construction. The CM/GC shall provide recommendations with regard to accelerated or fast-track scheduling, procurement, or phased issuance of Drawings and Specifications and construction of the Work. The CM/GC shall take into consideration cost reductions, cost information, constructability, provisions for temporary facilities and procurement, time of performance, availability of labor and materials, and construction scheduling issues.

2.1.5 Preliminary Cost Estimates

2.1.5.1 When the Owner has sufficiently identified the Project requirements, and the Design Professional has prepared other basic design criteria, and based on such preliminary design and other design criteria, the CM/GC shall prepare preliminary estimates of the Cost of the Work or the cost of program requirements using area, volume or similar conceptual estimating techniques for the Design Professional's review and Owner's approval. If the Design Professional or CM/GC suggests alternative materials and systems, the CM/GC shall provide cost evaluations of those alternative materials and systems. The CM/GC, and not the Design Professional, shall ultimately be responsible for cost estimates.

§ 2.1.5.2 As the Design Professional progresses with the preparation of the Schematic Design, Design Development and Construction Documents, the CM/GC shall prepare and update, at the end of 100% Schematic Design, 100% Design Development, 50% Construction Documents, and at 95% Construction Documents as agreed to by the Owner, CM/GC and Design Professional, estimates of the Cost of the Work of increasing detail and refinement and allowing for the further development of the design until such time that the project is within budget. The estimate prepared at 95% Construction Documents is referred to herein as the "Final Cost Estimate". The Final Cost Estimate shall be provided for the Design Professional's review and the Owner's approval. The CM/GC shall inform the Owner and Design Professional when estimates of the Cost of the Work exceed the latest approved Project budget and make recommendations for corrective action to bring the Cost of the Work within the budget.

§ 2.1.5.3 If the total cost of all bids received for the Project ("the Bids") exceeds the Final Cost Estimate, the CM/GC must re-bid the project at no cost to Owner. If new or modified drawings are required, the CM/GC shall re-bid the Project based on the new drawings and Construction Documents at no cost to the Owner.

2.1.6 Subcontractors and Suppliers. Pursuant to Idaho Code section 54-4511, for each portion of the Work, competitive bids shall be solicited from not less than three (3) contractors or suppliers deemed to be qualified by the CM/GC. All bids shall be opened publicly in the presence of a representative of the Owner, once opened, bids shall be subject to the public record requirements outlined in title 74, Idaho Code. The CM/GC, or its subsidiaries and affiliated companies, may bid to perform construction work or to supply materials or equipment only if it holds a valid license pursuant to section 54-1902, Idaho Code, and for which it customarily self-performs or supplies such construction work, materials, or equipment; provided, the public entity may limit the amount of Work the CM/GC, including its subsidiaries and affiliated companies, may perform under the contract. Bids from the CM/GC and its subsidiaries or affiliated companies must be opened at the opening of any other bids. This section shall not waive the right of the Owner or Design Professional to later object to or reject any proposed subcontractor or supplier. The CM/GC shall ensure that all subcontractors shall be licensed in accordance with all applicable public works contractor licensing requirements.

2.1.7 Procurement. The CM/GC shall prepare, for the Design Professional's review and the Owner's acceptance, a procurement schedule for items that must be ordered well in advance of construction. The CM/GC shall expedite and coordinate the ordering and delivery of materials that must be ordered well in advance of construction. If the Owner agrees to procure any items prior to the establishment of the GMP, the Owner shall procure the items on terms and conditions acceptable to the CM/GC. Upon the establishment of the GMP, the Owner shall assign all contracts for these items to the CM/GC and the CM/GC shall accept assignment and thereafter accept responsibility for them.

2.1.8 Extent of Responsibility. The CM/GC shall exercise reasonable care in preparing schedules and estimates. The CM/GC, however, does not warrant or guarantee estimates and schedules except as may be included as part of the GMP. The CM/GC is not required to ascertain that the Drawings and Specifications are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the CM/GC shall promptly report to the Design Professional and Owner any nonconformity or variance therein discovered by or made known to the CM/GC as a request for information in such form as the Design Professional may require.

2.1.9 Notices and Compliance with Laws. The CM/GC shall comply with all applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to its performance under this Contract, and with equal employment opportunity programs, and other programs as may be required by the State of Idaho for inclusion in the Contract Documents, including those listed on Exhibit ITCM, hereto incorporated by referenced, which are supplied solely for your convenience and are not a comprehensive list or limitation.

2.1.10 Duty to Assist and Review. The CM/GC shall assist the Design Professional and Owner in complying with all building, historical and other codes, statutes, ordinances, rules and regulations that are applicable to the Project. The assistance shall include, but not be limited to, review of compliance, recommendations for compliance, cost estimates for compliance and alternatives for compliance. The CM/GC shall review the complete design documents and suggest modifications to improve completeness and clarity. The CM/GC shall work with the Owner and design team to determine impacts to the design and the construction delivery process brought about by the facility's location. The CM/GC shall consider all relevant factors and develop an alternative and options, if necessary for ameliorating the impacts of such conditions and constraints. It is recognized that this review is conducted in the CM/GC's capacity as a builder, not a design professional. It is not the CM/GC's responsibility to ensure that the design complies with applicable codes, statutes, ordinances, rules, and regulations.

2.1.11 Required Licensure. The CM/GC and all subcontractors performing any work pursuant to this Agreement shall be licensed as required by applicable Idaho law.

2.1.12 Naming Subcontractors. In accordance with Idaho Code section 67-2310, commonly known as the naming law, the names and addresses of the entities who will perform the plumbing, heating and air conditioning, and electrical work on the project shall be provided by the CM/GC to the Owner. A document in the form of Exhibit E shall be completed and submitted upon execution of the GMP Amendment and those subcontractors named therein shall match those subcontractors actually utilized by the CM/GC, unless agreed to in writing by the Owner.

2.2 GMP PROPOSAL AND CONTRACT TIME

2.2.1 When the Drawings and Specifications are sufficiently complete for the design package identified in Exhibit C, attached, and incorporated herein by reference, as determined by the Design Profession, CM/GC, and the Owner, the CM/GC shall issue invitations to bid to the Subcontractors and suppliers within fourteen (14) days of written authorization by the Owner. All construction work, materials and equipment shall be competitively bid and opened publicly in the presence of the Owner and shall be awarded to the lowest responsive and qualified bidders in accordance with Section 54-4511, Idaho Code.

2.2.2 The CM/GC may bid on subcontract work that it customarily performs. If the CM/GC intends to bid on any of the Work identified pursuant to this Section, it shall advise the Owner in writing prior to issuing invitations to bid and is required to submit a bid in accordance with this provision and Section 2.2.1. Notice of the CM/GC's intention to bid shall be clearly indicated in the solicitation for that portion of the Work. Whenever the CM/GC competes with other bidders, the Owner's representative shall receive, open, and read bid publicly.

2.2.3 The CM/GC shall require in the invitation to bid that subcontractors and suppliers will hold bid prices and that bid prices shall remain effective for no less than forty-five (45) days.

2.2.4 At a time to be mutually agreed upon by the Owner and the CM/GC, but in no case, later than thirty (30) days after the last bid is received, and in consultation with the Design Professional, the CM/GC shall prepare a GMP proposal for the Owner's review and acceptance. The GMP in the proposal shall be the sum of the CM/GC's estimate of the Cost of the Work, including contingencies described in Section 7.12, and the CM/GC's Fee.

2.2.5 To the extent that the Drawings and Specifications are anticipated to require further development by the Design Professional, the CM/GC shall provide in the GMP for such further development consistent with the Contract Documents and reasonably inferable therefrom. Such further development does not include such things as changes in scope, systems, kinds, and quality of materials, finishes or equipment, all of which, if required, shall be incorporated by Change Order.

2.2.6 The CM/GC shall include with the GMP proposal a written statement of its basis (the "GMP Supporting Documents"), which shall include the following:

.1 A list of the Drawings and Specifications, including all Addenda thereto, and the Conditions of the Contract used in the preparation of the GMP;
.2 The bid spreadsheet of all competitive bidders, including successful bidder, and selection criteria;
.3 A list of allowances which written statement of basis shall include what is included in each allowance and how applied;
.4 A statement of the proposed GMP, including a statement of the estimated Cost of the Work organized by trade categories or systems, allowances, contingency, and the CM/GC's Fee; and
.5 The anticipated date of Substantial Completion upon which the proposed GMP is based.

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2.2.7 In preparing the CM/GC's GMP proposal, the CM/GC shall include its contingency for the CM/GC's exclusive use to cover those costs arising under Section 7.12 and other costs considered reimbursable as the Cost of the Work but not included in a Change Order. The contingency shall equal five percent (5%) of the total estimated cost of all subcontract bid packages and is included in the Contract Sum.

2.2.8 No later than fourteen (14) days from receipt by the Owner of the CM/GC's GMP proposal, the CM/GC shall meet with the Owner and Design Professional to review the GMP proposal and GMP Supporting Documents. In the event that the Owner and Design Professional discover any inconsistencies or inaccuracies in the information presented, they shall promptly notify the CM/GC, who shall make appropriate adjustments to the GMP proposal, GMP Supporting Documents, or both, within 7 days.

2.2.9 Within seven (7) days from the later of (i) the meeting required in Section 2.2.8, or (ii) the receipt of any adjustments to the GMP proposal and/or GMP Supporting Documents as may be required in Section 2.2.8, the Owner shall accept or reject in writing the GMP proposal. Acceptance in writing is required to be effective. Failure of the Owner to respond in writing to the GMP proposal shall be deemed a rejection of the proposal.

2.2.10 If the Owner notifies the CM/GC that the Owner has accepted the GMP proposal in writing before the period specified herein, the GMP proposal shall be deemed effective without further acceptance from the CM/GC. Following acceptance of a GMP, the Owner and CM/GC shall execute the GMP Amendment amending this Agreement, a copy of which the Owner shall provide to the Design Professional. The GMP Amendment shall be issued in the form of Exhibit N and shall establish the GMP and identify the GMP Supporting Documents for Construction Phase Services.

2.2.11 The CM/GC shall not incur any cost to be reimbursed as part of the Cost of the Work prior to the commencement of the Construction Phase unless the Owner provides prior written authorization for such costs.

2.2.12 The CM/GC shall include in the GMP all sales, consumer, use and similar taxes for the Work provided by the CM/GC that are legally enacted, whether or not yet effective, at the time the GMP Amendment is executed.

2.2.13 If the CM/GC recommends a specific bidder that may be considered a "related party" according to Section 7.10, then the CM/GC shall promptly notify the Owner in writing of such relationship and notify the Owner of the specific nature of the contemplated transaction, according to Section 7.10.2.

2.3 CONSTRUCTION PHASE

2.3.1 General.

2.3.1.1 The CM/GC is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The CM/GC shall be lawfully licensed as required under the laws of Idaho. The term "CM/GC" means the CM/GC or the CM/GC's authorized representative.

2.3.1.2 The CM/GC represents that it is fully qualified to act as the CM/GC for the Project and has, and shall maintain, any and all licenses, permits or other authorizations necessary to act as the CM/GC for, and to construct the Project. The CM/GC shall perform the Work in accordance with the Contract Documents.

2.3.1.3 The CM/GC shall not be relieved of obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the Design Professional or Design Professional's administration of the Contract, or by tests, inspections or approvals required or performed by persons or entities other than the CM/GC.

2.3.1.4 The CM/GC shall furnish all material, labor, tools, equipment, apparatus, and facilities unless otherwise agree to by the parties, and perform all Work necessary to construct the Project in accordance with the Contract Documents.

2.3.1.5 The Construction Phase shall commence on the earlier of:

.1 The Owner's acceptance of the CM/GC's GMP proposal and issuance of a Notice to Proceed, or
.2 The Owner's first authorization to the CM/GC, in the event of an early bid package, to:
(a) Award a subcontract, or
(b) Undertake construction with the CM/GC's own forces, or
(c) Issue a purchase order for materials or equipment required for the Work

If the Construction Phase has commenced pursuant to Section 2.3.1.5.2, within ten (10) days of execution of this Agreement, the parties shall set forth current limits of construction and shall adjust that amount as necessary through a Change Order.

2.3.2 Administration.

2.3.2.1 The CM/GC shall schedule and conduct meetings with the Design Professional and Owner to discuss such matters as procedures, progress, coordination, scheduling, and status of the Work. The CM/GC shall prepare and promptly distribute minutes to the Owner and Design Professional.

§ 2.3.2.2 The CM/GC shall record the progress of the Project. On a monthly basis, or otherwise as agreed to by the Owner, the CM/GC shall submit written progress reports to the Owner and Design Professional, showing percentages of completion and other information required by the Owner for the entire project. The CM/GC shall also keep, and make available to the Owner and Design Professional, a daily log containing a record for each day of weather, portions of the Work in progress, number of workers on site, identification of equipment on site, problems that might affect progress of the work, accidents, injuries, and other information required by the Owner.

§ 2.3.2.3 The CM/GC shall develop a system of cost control for the Work, including regular monitoring of actual costs for activities in progress and estimates for uncompleted tasks and proposed changes. The CM/GC shall identify variances between actual and estimated costs and report the variances to the Owner and Design Professional and shall provide this information in its monthly reports to the Owner and Design Professional, in accordance with Section 2.3.2.2 above.

2.4 REVIEW OF CONTRACT DOCUMENTS AND FIELD CONDITIONS BY CM/GC

2.4.1 Execution of the Contract by the CM/GC is a representation that the CM/GC has visited the site, become generally familiar with local conditions under which the Work is to be performed and correlated personal observations with requirements of the Contract Documents.

2.4.2 Because the Contract Documents are complementary, the CM/GC shall, before starting each portion of the Work, carefully study and compare the various Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Section 3.2, shall take field measurements of any existing conditions related to that portion of the Work, and shall observe any conditions at the site affecting it. These obligations are for the purpose of facilitating coordination and construction by the CM/GC and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; however, the CM/GC shall promptly report to the Design Professional any errors, inconsistencies or omissions discovered by or made known to the CM/GC as a request for information in such form as the Design Professional may require. It is recognized that the CM/GC's review is made in the CM/GC's capacity as a contractor and not as a licensed design professional, unless otherwise specifically provided in the Contract Documents.

2.5 SUPERVISION AND CONSTRUCTION PROCEDURES

2.5.1 The CM/GC shall supervise and direct the Work, using the CM/GC's best skill and attention. The CM/GC shall be solely responsible for, and have control over, construction means, methods, techniques, sequences, and procedures and

for coordinating all portions of the Work under the Contract, unless the Contract Documents give other specific instructions concerning these matters. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences or procedures, the CM/GC shall evaluate the jobsite safety thereof and, except as stated below, shall be fully and solely responsible for the jobsite safety of such means, methods, techniques, sequences, or procedures. If the CM/GC determines that such means, methods, techniques, sequences, or procedures may not be safe, the CM/GC shall give timely written notice to the Owner and the Design Professional and shall not proceed with that portion of the Work without further written instructions from the Design Professional.

2.5.2 The CM/GC shall be responsible to the Owner for acts and omissions of the CM/GC's employees, Subcontractors and their agents and employees, and other persons or entities performing portions of the Work for, or on behalf of, the CM/GC or any of its Subcontractors.

2.5.3 The CM/GC shall be responsible for inspection of portions of Work already performed to determine that such portions are in proper condition to receive subsequent Work.

2.5.4 The CM/GC shall employ and maintain at the Project site only competent supervisory personnel. Key supervisory personnel assigned by the CM/GC to this Project are as listed in Exhibit B. If the CM/GC desires to substitute the supervisory personnel, including the superintendent, the CM/GC is required to submit a résumé to Owner for approval of substituted supervisory personnel.

2.5.5 Superintendent.

2.5.5.1 The CM/GC shall employ a competent superintendent and necessary assistants who shall be in attendance at the Project site during performance of the Work. The superintendent shall represent the CM/GC, and communications given to the superintendent shall be as binding as if given to the CM/GC.

2.5.5.2 The CM/GC (within the request for qualification or otherwise) shall furnish in writing to the Owner the name and qualifications of a proposed superintendent.

2.5.5.3 The CM/GC shall not employ a proposed superintendent to whom the Owner or Design Professional has made reasonable and timely objection. The CM/GC shall not change the superintendent without the Owner's consent, which shall not unreasonably be withheld or delayed.

2.6 LABOR AND MATERIALS

2.6.1 Unless otherwise provided in the Contract Documents, the CM/GC shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.

2.6.2 Except in the case of minor changes in the Work authorized by the Design Professional, the CM/GC may make substitutions only with the consent of the Owner, after evaluation by the Design Professional and in accordance with a Change Order or Construction Change Directive.

2.6.3 The CM/GC shall enforce strict discipline and good order among the CM/GC's employees and other persons carrying out the Work. The CM/GC shall not permit employment of unfit persons or persons not properly skilled in tasks assigned to them.

2.6.4 The CM/GC is solely liable for theft or damage of materials and equipment stored on the Worksite but not yet installed in the facility. The CM/GC shall protect and replace any loss of materials due to theft or damage, until final acceptance of the Project.

2.7 WARRANTY.

The warranties provided herein this section are in addition to any other warranties provided in this Agreement.

2.7.1 The CM/GC warrants that at the time it offers a GMP it has received, reviewed, compared, studied, and carefully examined all of the documents which make up the Contract Documents, including the Specifications, summary of Work, and any Addenda, and has found them in all respects to be complete, accurate, adequate, consistent, coordinated and sufficient for

construction. Such review, comparison, study, and examination shall be a warranty that the CM/GC believes that the documents are complete, and the Project is buildable as described except as reported to Owner in writing.

2.7.2 The CM/GC warrants to the Owner that materials and equipment furnished under the Contract will be of good quality and new unless the Contract Documents require or permit otherwise. The CM/GC further warrants that the Work will strictly conform to the requirements of the Contract Documents and will be free from defects, not inherent in the quality required or permitted. Work, materials, or equipment not strictly conforming to these requirements may be considered defective. The CM/GC's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the CM/GC, improper or insufficient maintenance, improper operation, defective design, or normal wear and tear and normal usage. If required by the Design Professional, the CM/GC shall furnish satisfactory evidence as to the kind and quality of materials and equipment. This warranty shall survive the completion of the Contract payment to the CM/GC.

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

2.8 TAXES.

2.8.1 The CM/GC shall pay sales, consumer, use and similar taxes for the Work provided by the CM/GC which are legally enacted when bids are received or negotiations conclude, whether or not yet effective or merely scheduled to go into effect.

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

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

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

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

2.9 PERMITS, FEES, NOTICES AND COMPLIANCE WITH LAWS.

2.9.1 Unless otherwise provided in the Contract Documents, the CM/GC shall secure and pay for the building permits as well as for other permits, fees, licenses, and inspections by the Idaho Division of Occupational and Professional Licenses (IDOPL) necessary for proper execution and completion of the Work that are customarily secured after execution of the Contract and legally required at the time bids are received or negotiations concluded. Owner will pay for the DOPL plan review fees.

2.9.2 The CM/GC shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to performance of the Work.

2.9.3 If the CM/GC performs Work knowing it to be contrary to applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the CM/GC shall assume appropriate responsibility for such Work and shall bear the costs attributable to correction, unless after having notified the Design Professional or Owner of the matter pursuant to this agreement, and either the Design Professional or the Owner ordered or directed the CM/GC in writing to complete said Work.

2.10 CONCEALED OR UNKNOWN CONDITIONS.

2.10.1 If the CM/GC encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents or (2) unknown physical conditions 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, the CM/GC shall promptly provide notice to the Owner and the Design Professional. The Design Professional will promptly investigate such conditions and, if the Design Professional determines that they differ materially and cause an increase or decrease in the CM/GC's cost of, or time required for, performance of any part of the Work, will recommend an equitable adjustment in the Contract Sum or Contract Time, or both. If the Design Professional determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Design Professional shall promptly notify the Owner and CM/GC in writing, stating the reasons. If either party disputes the Design Professional's determination or recommendation, that party may proceed as provided in Article 12.

2.10.2 If, in the course of the Work, the CM/GC knowingly encounters human remains or recognizes the existence of burial markers, archaeological sites or wetlands not indicated in the Contract Documents, the CM/GC shall immediately suspend any operations that would affect them and shall notify the Owner and Design Professional. Upon receipt of such notice, the Owner shall promptly take any action necessary to obtain governmental authorization required to resume the operations. The CM/GC shall continue to suspend such operations until otherwise instructed by the Owner but shall continue with all other operations that do not affect those remains or features. Requests for adjustments in the Contract Sum and Contract Time arising from the existence of such remains or features may be made as provided in Article 12.

2.11 DISCOVERING AND CORRECTING DEFECTIVE OR INCOMPLETE WORK.

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

2.11.2 If any of the Work is covered, concealed, or obscured in a manner not addressed by Section 2.11.1, it shall, if directed by the Owner or the Design Professional to be uncovered and displayed for the Owner's or Design Professional's inspection. If the uncovered Work conforms reasonably with this Contract, the costs incurred by the CM/GC to uncover and subsequently replace such Work shall be borne by the Owner. Otherwise, such costs shall be borne by the CM/GC.

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

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

2.11.5 The Owner may, but shall not be required to, choose to accept defective or nonconforming Work. In such event, the Contract Amount shall be reduced by the lesser of: (i) the reasonable costs of removing and correcting the defective or nonconforming Work; or (ii) the difference between the fair market value of the Project as constructed and the fair market value of the Project had it not been constructed in such a manner as to include defective or nonconforming Work.

2.12 ALLOWANCES

2.12.1 The CM/GC shall include in the Contract Sum all allowances stated in the Contract Documents and must be approved by the Owner. Items covered by allowances shall be supplied for such amounts and by such persons or entities as the Owner may direct.

2.12.2 Unless otherwise provided in the Contract Documents:

.1 Allowances shall cover all cost to the CM/GC including but not limited to purchasing materials, transportation, expediting, unloading, storing, installation, bonds, taxes, insurance, and any other expenses except CM/GC's GC Work (as defined in Section 7.1.1), CM/GC's Fee (as defined in Section 6.1.1), and general liability insurance;

.2 CM/GC's GC Work, CM/GC's Fee, and general liability insurance contemplated for stated allowance amounts shall be included in the Contract Sum and not in the allowances; and

.3 Whenever costs are more than or less than allowances, the Contract Sum may be adjusted accordingly by Change Order. The amount of the Change Order shall reflect (1) the difference between actual costs and the allowances under Section 2.12.2.1 and (2) changes in CM/GC's costs under Section 2.12.2.2.

.4 Any unspent Allowance funds shall be returned to the Owner.

2.12.3 Materials and equipment under an allowance shall be selected by the Owner with reasonable promptness.

2.14 CM/GC'S CONSTRUCTION SCHEDULES.

2.14.1 The CM/GC, promptly after being awarded the Contract, shall prepare, and submit for the Owner's and Design Professional's information a CM/GC's construction schedule for the Work. An updated schedule shall be provided as part of the GMP Amendment. Such schedule shall be in a form specified in the Specifications and be acceptable to the Owner The schedule shall not exceed time limits current under the Contract Documents, shall be revised at appropriate intervals as required by the conditions of the Work and Project, shall be related to the entire Project to the extent required by the Contract Documents, and shall provide for expeditious and practicable execution of the Work. Strict compliance with the requirements of this article shall be a condition precedent to the payment to the CM/GC and failure by the CM/GC to strictly comply with said requirements shall constitute a material breach of this Contract.

2.14.2 The CM/GC shall prepare a submittal schedule, promptly after being awarded the Contract and receiving the Notice to Proceed hereto attached as Exhibit F, and thereafter as necessary to maintain a current submittal schedule and shall submit the schedule(s) for the Design Professional's approval. The Design Professional's approval shall not unreasonably be delayed or withheld. The submittal schedule shall (1) be coordinated with the CM/GC's construction schedule, and (2) allow the Design Professional to review the submittals within 14 days. If the CM/GC fails to submit a submittal schedule, the CM/GC shall not be entitled to any increase in Contract Sum or extension of Contract Time based on the time required for review of submittals.

2.14.3 The CM/GC shall perform the Work in general accordance with the most recent schedules submitted to the Owner and Design Professional.

2.14.4 At intervals as required by the Owner, the CM/GC shall advise the Owner of the status of the Work on the current schedule. If any project dates are not met on schedule, the CM/GC shall immediately advise the Owner and Design Professional in writing of the proposed action to bring the Work on schedule. The CM/GC shall also submit a detailed short-term schedule, as required by the Specifications. This short-term schedule shall include a description of current and anticipated problem areas, delaying factors and their impact, and explanation of corrective action taken or proposed. If the Work is behind schedule, the CM/GC shall indicate what measures it will take to put the Work back on schedule.

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

2.15 DOCUMENTS AND SAMPLES AT THE SITE. The CM/GC shall maintain at the site for the Owner one copy of the Drawings, Specifications, Addenda, Change Orders, and other Modifications, in good order and marked currently to indicate field changes and selections made during construction, and one copy of approved Shop Drawings, Product Data, Samples and similar required submittals. These shall be available to the Owner and the Design Professional and shall be delivered to the Design Professional for submittal to the Owner upon completion of the Work as a record of the Work as constructed.

2.16 SHOP DRAWINGS, PRODUCT DATA AND SAMPLES

2.16.1 Shop Drawings are drawings, diagrams, schedules, and other data specially prepared for the Work by the CM/GC or a Subcontractor, Sub-subcontractor, manufacturer, supplier, or distributor to illustrate some portion of the Work.

2.16.2 Product Data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams, and other information furnished by the CM/GC to illustrate materials or equipment for some portion of the Work.

2.16.3 Samples are physical examples that illustrate materials, equipment or workmanship and establish standards by which the Work will be judged.

2.16.4 Shop Drawings, Product Data, Samples, and similar submittals are not Contract Documents. Their purpose is to demonstrate the way by which the CM/GC proposes to conform to the information given and the design concept expressed in the Contract Documents for those portions of the Work for which the Contract Documents require submittals. Informational submittals upon which the Design Professional is not expected to take responsive action may be so identified in the Contract Documents. Submittals that are not required by the Contract Documents may be returned by the Design Professional without action.

2.16.5 The CM/GC shall review for compliance with the Contract Documents, approve and submit to the Design Professional Shop Drawings, Product Data, Samples, and similar submittals required by the Contract Documents in accordance with the submittal schedule approved by the Design Professional or, in the absence of an approved submittal schedule, with reasonable promptness and in such sequence, as to cause no delay in the Work or in the activities of the Owner or of separate contractors.

2.16.6 By submitting Shop Drawings, Product Data, Samples and similar submittals, the CM/GC represents to the Owner and Design Professional that the CM/GC has within normal construction industry standards verified materials, field measurements and field construction criteria related thereto, or will do so and checked and coordinated the information contained within such submittals with the requirements of the Contract Documents.

2.16.7 The CM/GC shall perform no portion of the Work for which the Contract Documents require submittal and review of Shop Drawings, Product Data, Samples, or similar submittals until the respective submittal has been approved by the Design Professional.

2.16.8 The Work shall be in accordance with approved submittals except that the CM/GC shall not be relieved of responsibility for deviations from requirements of the Contract Documents by the Design Professional's approval of Shop Drawings, Product Data, Samples, or similar submittals unless the CM/GC has specifically informed the Design Professional in writing of such deviation at the time of submittal. The CM/GC shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples, or similar submittals by the Design Professional's approval thereof, unless Design Professional makes such revisions to the submittals.

2.16.9 The CM/GC shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data, Samples or similar submittals, to revisions other than those requested by the Design Professional on previous submittals. In the absence of such written notice, the Design Professional's approval of a resubmission shall not apply to such revisions.

2.16.10 The CM/GC shall not be required to provide professional services that constitute the practice of architecture or engineering unless such services are specifically required by the Contract Documents for a portion of the Work or unless the CM/GC needs to provide such services in order to carry out the CM/GC's responsibilities for construction means, methods, techniques, sequences and procedures. The CM/GC shall not be required to provide professional services in violation of applicable law. If professional design services or certifications by a design professional related to systems, materials or equipment are specifically required of the CM/GC by the Contract Documents, the Owner and the Design Professional will specify all performance and design criteria that such services must satisfy. The CM/GC shall cause such services or certifications to be provided by a properly licensed design professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings, and other submittals prepared by such professional. Shop Drawings and other submittals related to the Work designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to the Design Professional. The Owner and the Design Professional shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications and approvals performed or provided by such design professionals, provided the Owner and Design Professional have specified to the CM/GC all performance and design criteria that such services must satisfy. Pursuant to this Section 2.16.10, the Design Professional will review, approve, or take other appropriate action on submittals checking for conformance with information given and the design concept expressed in the Contract Documents. The CM/GC shall not be responsible for the adequacy of the performance and design criteria specified in the Contract Documents.

2.17 USE OF SITE. The CM/GC shall confine operations at the site to areas permitted by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities and the Contract Documents and shall not unreasonably encumber the site with materials or equipment.

2.18 CUTTING AND PATCHING.

2.18.1 The CM/GC shall be responsible for cutting, fitting, or patching required to complete the Work or to make its parts fit together properly. All areas requiring cutting, fitting, and patching shall be restored to the condition existing prior to the cutting, fitting, and patching, unless otherwise required by the Contract Documents.

2.18.2 The CM/GC shall not damage or endanger a portion of the Work or fully or partially completed construction of the Owner or separate contractors by cutting, patching, or otherwise altering such construction, or by excavation. The CM/GC shall not cut or otherwise alter such construction by the Owner or a separate contractor except with written consent of the Owner and of such separate contractor; such consent shall not be unreasonably withheld. The CM/GC shall not unreasonably withhold from the Owner or a separate contractor the CM/GC's consent to cutting or otherwise altering the Work.

2.19 CLEANING UP.

2.19.1 The CM/GC shall keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by operations under the Contract. At completion of the Work, the CM/GC shall remove waste materials, rubbish, the CM/GC's tools, construction equipment, machinery, and surplus materials from and about the Project.

2.19.2 If the CM/GC fails to clean up as provided in the Contract Documents, the Owner may do so, and Owner shall be entitled to reimbursement from the CM/GC.

2.20 TESTS AND INSPECTIONS

2.20.1 Tests, inspections, and approvals of portions of the Work shall be made as required by the Contract Documents and by applicable laws, statutes, ordinances, codes, rules and regulations or lawful orders of public authorities. Unless otherwise provided, the CM/GC shall make arrangements for such tests, inspections and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and Owner shall bear all related costs of tests, inspections and approvals. The CM/GC shall give the Design Professional timely notice of when and where tests and inspections are to be made so that the Design Professional may be present for such procedures. The Owner shall bear costs of (1) tests, inspections or approvals that do not become requirements until after bids are received or negotiations concluded, and (2) tests, inspections, or approvals where building codes or applicable laws or regulations prohibit the Owner from delegating their cost to the CM/GC.

2.20.2 If the Design Professional, Owner or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection or approval not included under Section 2.20.1, the Design Professional will, upon written authorization from the Owner, instruct the CM/GC to make arrangements for such additional testing, inspection or approval by an entity acceptable to the Owner, and the CM/GC shall give timely notice to the Design Professional of when and where tests and inspections are to be made so that the Design Professional may be present for such procedures. Such costs, except as provided in Section 2.20.3, shall be at the Owner's expense.

2.20.3 If such procedures for testing, inspection, or approval under Sections 2.20.1 and 2.20.2 reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, all costs made necessary by such failure including those of repeated procedures and compensation for the Design Professional's services and expenses shall be at the CM/GC's expense.

2.20.4 Required certificates of testing, inspection or approval shall, unless otherwise required by the Contract Documents, be secured by the CM/GC, and promptly delivered to the Design Professional.

2.20.5 If the Design Professional is to observe tests, inspections or approvals required by the Contract Documents, the Design Professional will do so promptly and, where practicable, at the normal place of testing.

2.20.6 Tests or inspections conducted pursuant to the Contract Documents shall be made promptly to avoid unreasonable delay in the Work.

2.21 ACCESS TO WORK. At all times, relevant to this Contract, the Owner and Design Professional shall have a right to enter the Project site and the CM/GC shall allow the Owner to review or inspect the work in preparation and progress wherever located. without formality or other procedure.

2.22 ROYALTIES, PATENTS AND COPYRIGHTS. The CM/GC shall pay all royalties and license fees. The CM/GC shall defend suits or claims for infringement of copyrights and patent rights and shall hold the Owner and Design Professional harmless from loss on account thereof, but shall not be responsible for such defense or loss when a particular design, process or product of a particular manufacturer or manufacturers is required by the Contract Documents, or where the copyright violations are contained in Drawings, Specifications or other documents prepared by the Owner or Design Professional. However, if the CM/GC has reason to believe that the required design, process, or product is an infringement of a copyright or a patent, the CM/GC shall be responsible for such loss unless such information is promptly furnished to the Design Professional.

2.23 PROFESSIONAL SERVICES. Section 2.16.10 shall apply to both the Preconstruction and Construction Phases.

2.25 HAZARDOUS MATERIALS. Section 15.4 shall apply to both the Preconstruction and Construction Phases.

ARTICLE 3
OWNER'S RESPONSIBILITIES

3.1 GENERAL.

3.1.1 The Administrator of DPW or his designee shall be the sole representative of the State of Idaho. The Owner shall designate in writing a representative who shall have express authority to bind the Owner with respect to all matters requiring the Owner's approval or authorization. Except as otherwise provided in Section 4.2.1, the Design Professional does not have such authority. The term "Owner" means the Owner or the Owner's authorized representative. Section 3.1 shall apply to both the Preconstruction and Construction Phases.

3.1.2 The Owner will assign a project manager and a field representative to represent Owner, identified in Exhibit B. The Owner's field representative's and project manager's, duties, responsibilities, and limitations of authority are in accordance with DPW policy and procedures.

3.1.3 The Owner shall furnish to the CM/GC within fifteen days after receipt of a written request, information necessary and relevant for the CM/GC to evaluate, give notice of or enforce mechanic's lien rights. Such information shall include a correct statement of the record legal title to the property on which the Project is located, usually referred to as the site, and the Owner's interest therein.

3.2 INFORMATION AND SERVICES REQUIRED OF THE OWNER.

3.2.1 The Owner shall provide information with reasonable promptness, regarding requirements for and limitations on the Project, including a written program which shall set forth the Owner's objectives, constraints, and criteria, including schedule, space requirements and relationships, flexibility and expandability, special equipment, systems, sustainability, and site requirements.

3.2.2 Prior to the execution of the GMP Amendment, the CM/GC may request in writing that the Owner provide reasonable evidence that the Owner has appropriation to fulfill the Owner's obligations under the Contract.

3.2.3 The Owner shall establish and periodically update the Owner's budget for the Project, including (1) the budget for the Cost of the Work as defined in Article 7 the Owner's other costs, and (3) reasonable contingencies related to all of these costs. If the Owner significantly increases or decreases the Owner's budget for the Cost of the Work, the Owner shall notify the CM/GC and Design Professional. The Owner and the Design Professional, in consultation with the CM/GC, shall thereafter agree to a corresponding change in the Project's scope and quality.

3.2.4 During the Preconstruction Phase, the Owner shall furnish the information or services contained herein this subsection with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the CM/GC's performance of the Work with reasonable promptness after receiving the CM/GC's written request for such information or services. The CM/GC shall be entitled to rely on the accuracy of information and services furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work.

3.2.4.1 The Owner shall furnish tests, inspections and reports required by law and as otherwise agreed to by the parties, such as structural, mechanical, and chemical tests, tests for air and water pollution, and tests for hazardous materials.

3.2.4.2 The Owner shall furnish surveys describing physical characteristics, legal limitations, and utility locations for the site of the Project, and a legal description of the site. The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements and adjoining property and structures; designated wetlands; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions and necessary data with respect to existing buildings, other improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All the information on the survey shall be referenced to a Project benchmark.

3.2.4.3 The Owner, when such services are requested by the Design Professional or the CM/GC, shall furnish services of geotechnical engineers, which may include but are not limited to test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, seismic evaluation, ground corrosion tests and resistivity tests, including necessary operations for anticipating subsoil conditions, with written reports and appropriate recommendations.

3.2.4.4 During the Construction Phase, the Owner shall furnish information or services required of the Owner by the Contract Documents with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the CM/GC's performance of the Work with reasonable promptness after receiving the CM/GC's written request for such information or services.

3.2.4.5 Except for permits and fees that are the responsibility of the CM/GC under the Contract Documents, including those required under Section 2.9.1, the Owner may secure and pay for necessary approvals, easements, assessments, and plan check fees with the Division of Occupational and Professional Licenses.

3.2.4.6 The Owner shall furnish surveys describing physical characteristics, legal limitations, and utility locations for the site of the Project, and a legal description of the site. The CM/GC shall be entitled to rely on the accuracy of information furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work.

3.2.4.7 The Owner shall furnish information or services required of the Owner by the Contract Documents with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the CM/GC's performance of the Work with reasonable promptness after receiving the CM/GC's written request for such information or services.

3.2.4.8 Unless otherwise provided in the Contract Documents, the Owner shall furnish to the CM/GC one (1) copy of the Contract Documents as are reasonably necessary for execution of the work.

3.3 LEGAL REQUIREMENTS. The Owner shall determine and advise the Design Professional and CM/GC of any special legal requirements relating specifically to the project.

3.4 OWNER'S RIGHT TO STOP THE WORK. In the event the CM/GC fails or refuses to perform the Work as required or fails or refuses to correct nonconforming Work, the Owner may instruct the CM/GC to stop Work in whole or in part. Upon receipt of such instruction, the CM/GC shall immediately stop as instructed by the Owner and shall not proceed further until the cause for the Owner's instructions has been corrected, no longer exists or the Owner instructs that the Work may resume. In the event the Owner issues such instructions to stop, and in the further event that the CM/GC fails and refuses within seven (7) days of receipt of same to provide adequate assurance to the Owner that the cause of such instructions will be eliminated or corrected, then the Owner shall have the right, but not the obligation, and without prejudice to other rights or remedies the Owner may have, to carry out the Work with its own forces or with the forces of another contractor, and the CM/GC shall be fully responsible and liable for the costs of performing such Work by the Owner. Without limiting what else might constitute nonconforming Work, the existence of a safety violation or other situation or condition that creates, or could imminently create, a threat of serious harm to persons or property, shall constitute nonconforming Work and any order to stop the Work issued for such reason shall not be considered an interference with the CM/GC's performance of the Work or its means and methods. The rights set forth herein are in addition to, and without prejudice to, any other rights or remedies the Owner may have against the CM/GC. Any order to stop the Work issued pursuant to this Section 3.4 shall not be used to justify any Claim by the Contractor for additional time or money.

ARTICLE 4
DESIGN PROFESSIONAL AND SUBCONTRACTORS

4.1 DESIGN PROFESSIONAL. The Owner shall retain a Design Professional to provide services, duties and responsibilities as described in the Professional Services Agreement including any additional services requested by the CM/GC that are necessary for the Preconstruction and Construction Phase services under this Agreement. The Design Professional is the properly licensed architect, properly registered professional engineer or other professional lawfully licensed in the State of Idaho, and who prepares the Drawings and Specifications. If the employment of the Design Professional is terminated, the Owner may retain a replacement professional, and the role of the replacement professional shall be the same as the role of the Design Professional in this contract.

4.1.1 The Design Professional and project manager are identified in Exhibit B. Upon Request of the CM/GC, the Owner shall provide the CM/GC a copy of the Owner's Professional Services Agreement with the Design Professional, from which compensation provisions may be deleted.

4.1.2 Duties, responsibilities, and limitations of authority of the Design Professional as set forth in the Contract Documents shall not be restricted, modified, or extended without written consent of the Owner, CM/GC and Design Professional. Consent shall not be unreasonably withheld.

4.1.3 If the employment of the Design Professional is terminated, the Owner shall employ a successor Design Professional as to whom the CM/GC has no reasonable objection and whose status under the Contract Documents shall be that of the Design Professional.

4.2 ADMINISTRATION OF THE CONTRACT.

§ 4.2.1 The Design Professional may provide administration of the Contract as described in the Contract Documents and may act as the Owner's representative during construction until the date the Design Professional issues the final Certificate for Payment. The Design Professional may have authority to act on behalf of the Owner only to the extent provided in the Contract Documents or otherwise directed by the Owner in writing.

4.2.2 The Design Professional may visit the site at intervals appropriate to the stage of construction, or as otherwise agreed with the Owner, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine in general if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Design Professional will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The Design Professional will not have control over, charge of, or responsibility for, the construction means, methods, techniques, sequences, or procedures, or for the safety precautions and programs in connection with the Work, since these are solely the CM/GC's rights and responsibilities under the Contract Documents, except as provided in Section 2.5.

4.2.3 On the basis of the site visits, the Design Professional will keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and report to the Owner (1) known deviations from the Contract Documents and from the most recent construction schedule submitted by the CM/GC, and (2) defects and deficiencies observed in the Work. The Design Professional will not be responsible for the CM/GC's failure to perform the Work in accordance with the requirements of the Contract Documents. The Design Professional will not have control over or charge of and will not be responsible for acts or omissions of the CM/GC, Subcontractors, or their agents or employees, or any other persons or entities performing portions of the Work.

4.3 COMMUNICATIONS FACILITATING CONTRACT ADMINISTRATION.

Communications by and with the Design Professional's consultants shall be through the Design Professional. Communications by and with Subcontractors and material suppliers shall be through the CM/GC. Communications by and with separate contractors shall be through the Owner.

4.3.1 Based on the Design Professional evaluations of the CM/GC's Applications for Payment, the Design Professional will review and certify the amounts due the CM/GC and will issue Certificates for Payment in such amounts.

4.3.2 The Design Professional has authority to reject Work that does not conform to the Contract Documents. Whenever the Design Professional considers it necessary or advisable, the Design Professional will have authority to require inspection or testing of the Work in accordance with Section 2.20 whether or not such Work is fabricated, installed or completed. However, neither this authority of the Design Professional nor a decision made in good faith either to exercise or not to exercise

such authority shall give rise to a duty or responsibility of the Design Professional to the CM/GC, Subcontractors, material and equipment suppliers, their agents or employees, or other persons or entities performing portions of the Work.

4.3.3 The Design Professional will review and approve, or take other appropriate action upon, the CM/GC's submittals such as Shop Drawings, Product Data and Samples. The Design Professional action will be taken in accordance with the submittal schedule approved by the Design Professional or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time in the Design Professional's professional judgment to permit adequate review. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the CM/GC as required by the Contract Documents. The Design Professional's review of the CM/GC's submittals shall not relieve the CM/GC of the obligations under Sections 2.5, 2.7 and 2.16. The Design Professional's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Design Professional, of any construction means, methods, techniques, sequences, or procedures. The Design Professional's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

4.3.4 The Design Professional will prepare Proposal Requests, Change Orders and Construction Change Directives, and may authorize minor changes in the Work as provided in Section 8.4. The Design Professional will investigate and make determinations and recommendations regarding concealed and unknown conditions as provided in Section 2.10.

4.3.5 The Design Professional will conduct inspections to determine the date or dates of Substantial Completion and the date of final completion; issue Certificates of Substantial Completion pursuant to Section 10.8; receive and forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract and assembled by the CM/GC; and issue a final Certificate for Payment pursuant to Sections 10.10 and 10.11.

4.3.6 If the Owner and Design Professional agree, the Design Professional will provide one or more project representatives to assist in carrying out the Design Professional's responsibilities at the site. The duties, responsibilities, and limitations of authority of such project representatives shall be as set forth in Exhibit B to be incorporated in the Contract Documents.

4.3.7 The Design Professional will interpret and decide matters concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or CM/GC. The Design Professional's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness.

4.3.8 Interpretations and decisions of the Design Professional will be consistent with the intent of, and reasonably inferable from, the Contract Documents and will be in writing or in the form of drawings. When making such interpretations and decisions, the Design Professional will endeavor to secure faithful performance by both Owner and CM/GC, will not show partiality to either and will not be liable for results of interpretations or decisions rendered in good faith.

4.3.9 The Design Professional's decisions on matters relating to aesthetic effect will be final if consistent with the information expressed in the Contract Documents.

4.3.10 The Design Professional will review and respond to requests for information about the Contract Documents. The Design Professional's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness. If appropriate, the Design Professional will prepare and issue supplemental Drawings and Specifications in response to the requests for information.

4.4 SUBCONTRACTOR.

4.4.1 A Subcontractor is a person or entity who has a direct contract with the CM/GC to perform a portion of the Work at the site. The term "Subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Subcontractor or an authorized representative of the Subcontractor. The term "Subcontractor" does not include a separate contractor or subcontractors of a separate contractor.

4.4.2 A Sub-subcontractor is a person or entity who has a direct or indirect contract with a Subcontractor to perform a portion of the Work at the site. The term "Sub-subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Sub-subcontractor or an authorized representative of the Sub-subcontractor.

4.5 AWARD OF SUBCONTRACTS AND OTHER CONTRACTS FOR PORTIONS OF THE WORK.

4.5.1 Unless otherwise stated in the Contract Documents or the bidding requirements, the CM/GC, as soon as practicable after the bidding, shall furnish in writing to the Owner through the Design Professional the names of persons or entities (including those who are to furnish materials or equipment fabricated to a special design) proposed for each principal portion of the Work.

4.5.2 In accordance with section 67-2310, Idaho Code commonly known as the naming law, the names and addresses of the entities who will perform the plumbing, heating and air conditioning, and electrical work on the project shall be provided by the CM/GC to the Owner. Exhibit E shall be completed and submitted upon execution of the GMP Amendment and those subcontractors named therein shall match those subcontractors actually utilized by the CM/GC, unless agreed to in writing by the Owner.

4.6 SUBCONTRACTUAL RELATIONS. By appropriate agreement, written where legally required for validity, the CM/GC shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the CM/GC by terms of the Contract Documents, and to assume toward the CM/GC all the obligations and responsibilities, including the responsibility for safety of the Subcontractor's Work, which the CM/GC, by these Documents, assumes toward the Owner and Design Professional. Each subcontract agreement shall preserve and protect the rights of the Owner and Design Professional under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights. Where appropriate, the CM/GC shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. The CM/GC shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound, and, upon written request of the Subcontractor, identify to the Subcontractor terms and conditions of the proposed subcontract agreement that may be at variance with the Contract Documents. Subcontractors will similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors.

4.7 CONTINGENT ASSIGNMENT OF SUBCONTRACTS.

4.7.1 Each subcontract agreement for a portion of the Work is assigned by the CM/GC to the Owner, provided that:

.1 Assignment is effective only after termination of the Contract by the Owner and only for those subcontract agreements that the Owner accepts by notifying the Subcontractor and CM/GC in writing; and
.2 Assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Contract.

When the Owner accepts the assignment of a subcontract agreement, the Owner assumes the CM/GC's rights and obligations under the subcontract.

4.7.2 Upon such assignment, if the Work has been suspended for more than thirty (30) days, the Subcontractor's compensation shall be equitably adjusted for increases in cost resulting from the suspension.

4.7.3 Upon such assignment to the Owner under this Section 4.7, the Owner may further assign the subcontract to a successor contractor or other entity. If the Owner assigns the subcontract to a successor contractor or other entity, the Owner shall nevertheless remain legally responsible for all of the successor contractor's obligations under the subcontract.

ARTICLE 5
COMPENSATION AND PAYMENTS FOR PRECONSTRUCTION PHASE SERVICES

5.1 COMPENSATION.

5.1.1 For the CM/GC's Preconstruction Phase services described in Sections 2.1 and 2.2, the Owner shall compensate the CM/GC as follows:

The Total Compensation for Preconstruction Services shall be a fixed fee in the amount of $ _____.

5.1.2 The CM/GC's compensation for Preconstruction Phase services shall be equitably adjusted if the originally contemplated scope of services is significantly modified.

5.2 PAYMENTS.

5.2.1 Unless otherwise agreed, payments for services shall be made monthly following the presentation of CM/GC's invoices, and in proportion to services performed.

5.2.2 Payments are due and payable upon presentation of the CM/GC's invoice. Amounts unpaid Sixty (60) Days after the invoice date shall bear interest as provided in Section 67-2302, Idaho Code.

5.3 REIMBURSABLE EXPENSES. Reimbursable expenses are to be included in the CM/GC's fixed Preconstruction Services Fee. This includes travel, mileage, meals, expenses of deliverables and reproductions of plans and specifications.

ARTICLE 6
COMPENSATION AND PAYMENTS FOR CONSTRUCTION PHASE SERVICES

6.1 CONTRACT SUM. The Owner shall pay the CM/GC the Contract Sum in current funds for Construction Phase services. The Contract Sum shall be the Cost of the Work, as defined in Article 7, plus the CM/GC's Fee.

6.1.1 The "CM/GC's Fee" shall be a fixed lump sum to be identified in the GMP Amendment and shall be calculated as xyz *(*00) % of the Estimated Cost of the Work at the time of establishment of the GMP. The Estimated Cost of Work at the time of establishment of the GMP shall exclude the Preconstruction Fee, the CM/GC Fee itself, and any other cost or charge for which this Agreement states is not to be included in calculating the CM/GC's Fee, but may include, but not limited to, the following: DC Work (as defined in Section 7.1.1); GC Work; allowances; selected alternates; selected unit cost; and negotiated CM/GC contingencies, as designated in the GMP Supporting Documents. The CM/GC's Fee shall be inclusive of profit, overhead, and all other indirect or non-reimbursable costs. Owner shall pay the CM/GC Fee's ratably with each application for payment during the Construction Phase.

The CM/GC's Fee shall not be adjusted except upon a change in the GMP in strict accordance with Section 6.2.

6.1.2 The CM/GC agrees that the amount allowed for mark-ups on any Change Order, including the CMGC fee, overhead, profit, bonds, and liability insurance, will be limited as follows:

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

.2 The CM/GC will determine how the allowable amounts described in Section 6.1.2.1 are apportioned between the CM/GC and its subcontractors.

6.1.3 Rental rates for CM/GC-owned equipment shall not exceed One Hundred percent (100%) of the standard rate paid at the place of the Project or exceed the purchase price of any comparable item.

6.1.4 Unit prices, if any shall be provided in the approved GMP Amendment to this Agreement:
(Identify and state the unit price; state the quantity limitations, if any, to which the unit price will be applicable.)

6.2 GMP

6.2.1 The CM/GC guarantees that the Contract Sum shall not exceed the GMP set forth in the GMP Amendment, as it is amended from time to time. To the extent the Cost of the Work exceeds the GMP, the CM/GC shall bear such costs in excess of the GMP without reimbursement or additional compensation from the Owner. If the Contract Sum is less than the GMP, adjusted as provided herein, such difference ("Savings") shall return one hundred percent (100%) to the Owner. The amount of Savings shall initially be determined by the CM/GC and submitted to the Owner as part of the final application for payment.

6.2.2 The GMP is subject to additions and deductions by Change Order as provided in the Contract Documents.

6.2.3 In entering this Agreement the CM/GC understands and agrees that the GMP can only be increased in limited circumstances, and in accordance with the provisions of this Agreement, including the Change Order procedures set forth herein

Article 8 and the claims procedures set forth herein in Article 12. Subject to the provisions of this Agreement, the GMP can be increased if:

.1 The Owner directs or agrees to a change in the Work that increases the reimbursable costs in the Work including a change pursuant to Section 2.2.5;

.2 The CM/GC encounters subsurface or concealed conditions at the Project Site, which meet the requirements of Section 2.10.1 and that cause the CM/GC to incur increased reimbursable costs in the Work;

.3 The CM/GC encounters Hazardous materials not brought to the site by the CM/GC, complies with the requirements of Section 15.4 and incurs increased reimbursable costs in the Work;

.4 The CM/GC incurs unavoidable increased reimbursable costs in performing the Work as a direct result of changes, after the execution of this Agreement, in directly applicable laws, codes, or ordinances, such as changes in life-safety building codes or zoning laws, legislatively enacted new categories of taxes, a legislatively enacted increase in taxes and changes in environmental regulations which relate to the project;

.5 An emergency exists not caused by the CM/GC or by any one for whom the CM/GC is responsible, that could affect the safety of persons or property, and the CM/GC incurs increased reimbursable costs to the Work;

.6 The CM/GC experiences a delay in the progress of the Work caused by an act or neglect by the Owner, the Design Professional, the Agency, or other Owner consultant, that meets the requirements of Article 12 herein and incurs increased reimbursable costs to the Work;

.7 The Owner requests additional insurance coverage under Article 11;

.8 The Owner requires replacement of damaged property under Section 11.4;

.9 The Design Professional issues clarifications or instructions pursuant to Section 2.2 and the CM/GC incurs increased reimbursable costs to the Work;

.10 The Owner is responsible for Work uncovered pursuant to Section 2.11;

.11 There is an Owner suspension, delay or interruption under Section 14.6;

.12 An increase in the GMP is specifically allowed pursuant to another Section of the Contract Documents;

.13 The CM/GC experiences additional costs due to emergencies per Section 15.5; or

.14 Costs exceed a defined allowance amount included within the GMP.

Except for the foregoing, the CM/GC agrees that the CM/GC assumes all other risks which may cause increased costs to the Work and agrees that the GMP will not be increased as a result of any such risks. In the event that the Cost of the Work exceeds the GMP, the CM/GC shall continue to perform at no additional cost to the Owner until the Work is complete. The CM/GC shall be responsible to pay all costs that may be necessary to complete the Work, even if such amounts are in aggregate excess of the GMP.

ARTICLE 7
COST OF THE WORK FOR CONSTRUCTION PHASE

7.1 COST OF WORK.

7.1.1 The Cost of the Work is included in, and not in addition to the GMP accepted by the Owner. In no event, shall the Cost of the Work to be reimbursed exceed the GMP without express written consent of the Owner in accordance with Article 8. The term "Cost of the Work" shall mean costs necessarily incurred by the CM/GC in the proper performance of the Work. Such costs shall be at rates not higher than those customarily paid at the place of the Project except with prior consent of the Owner. The Cost of the Work shall include only the items set forth in this Sections 7.1 through 7.7. "DC Work" shall mean that portion of the Work directly attributed to the work required by the contract documents, identified through negotiations between the parties and finally determined upon execution of the GMP Amendment. ("GC Work") shall mean that portion of the Work required to support construction operations, identified through negotiations between the parties and finally determined upon execution of the GMP Amendment. The cost of the GC Work shall be identified at the time of the GMP Amendment and be billed on a cost reimbursable basis with each application for payment, as demonstrated through backup documentation. If there are savings recognized within the GC Work, this amount will be combined with the construction contingency and be returned to the Owner via negative change order. Rates are fixed for the duration of the project and not auditable except to the extent of hours worked in Exhibit PR-1.

7.1.2 Where any cost is subject to the Owner's prior approval, the CM/GC shall obtain this approval prior to incurring the cost. The parties shall endeavor to identify any such costs prior to executing GMP Amendment.

7.2 LABOR COSTS.

7.2.1 Wages of construction workers directly employed by the CM/GC to perform the construction of the Work at the site or, with the Owner's prior approval, at off-site workshops. Cross reference with positions and rates in Exhibit PR-1.

7.2.2 Wages or salaries of the CM/GC's supervisory and administrative personnel when stationed at the site, or with the Owner's prior approval, the following personnel at the CM/GC's principal office to the extent they are working on the Project:
(identify personnel, if any)

7.2.3 Wages and salaries of the CM/GC's supervisory or administrative personnel engaged at factories, workshops or on the road, in expediting the production or transportation of materials or equipment required for the Work, but only for that portion of their time required for the Work.

7.2.4 Costs paid or incurred by the CM/GC for taxes, insurance, contributions, assessments, and benefits required by law or collective bargaining agreements and, for personnel not covered by such agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations, and pensions, provided such costs are based on wages and salaries included in the Cost of the Work under Sections 7.2.1 through 7.2.3. CM/GC personnel to be billed at agreed upon hourly rates listed in Exhibit PR-1. Rates listed also include costs for computer equipment, software, cell phones, and tablets issued to personnel listed.

7.2.5 Bonuses, profit sharing, incentive compensation and any other discretionary payments paid to anyone hired by the CM/GC or paid to any Subcontractor or vendor, with the Owner's prior approval.

7.3 SUBCONTRACT AND CONSULTANT COSTS.

7.3.1 Payments made by the CM/GC to Subcontractors and consultants in accordance with the requirements of such subcontracts and consultant agreements, and this Agreement.

7.4 COST OF MATERIAL AND EQUIPMENT INCORPORATED INTO THE COMPLETED CONSTRUCTION.

7.4.1 Costs, including transportation and storage of materials and equipment incorporated or to be incorporated in the completed construction.

7.5 COST OF OTHER MATERIAL AND EQUIPMENT, TEMPORARY FACILITITES AND RELATED ITEMS.

7.5.1 Costs of transportation, storage, installation, maintenance, dismantling and removal of materials, supplies, temporary facilities, machinery, equipment, and hand tools not customarily owned by construction workers that are provided by the CM/GC at the site and fully consumed in the performance of the Work. Costs of materials, supplies, temporary facilities, machinery, equipment, and tools that are not fully consumed shall be based on the cost or value of the item at the time it is first used on the Project site less the value of the item when it is no longer used at the Project site. Costs for items not fully consumed by the CM/GC shall mean fair market value.

7.5.2 Rental charges for temporary facilities, machinery, equipment, and hand tools not customarily owned by construction workers that are provided by the CM/GC at the site and costs of transportation, installation, minor repairs, dismantling and removal. The total rental cost of any CM/GC-owned item may not exceed the purchase price of any comparable item. Rates of CM/GC-owned equipment and quantities of equipment shall be subject to the Owner's prior approval.

7.5.3 Costs of removal of debris from the site of the Work and its proper and legal disposal.

7.5.4 Costs of document reproductions, facsimile transmissions and company assigned cell phones, data service, postage and parcel delivery charges, telephone service at the site.

7.5.5 That portion of the reasonable travel expenses of the CM/GC's supervisory or administrative personnel incurred while traveling in discharge of duties connected with the Work.

7.5.6 Costs of materials and equipment suitably stored off the site at a mutually acceptable location, subject to the Owner's prior approval.

7.6 MISCELLANEOUS COSTS.

7.6.1 Premiums and deductibles for that portion of insurance and bonds required or permitted by the Contract Documents that can be directly attributed to this Contract, including, but not limited to, subcontractor bonds for the cost of work up to 100% of the subcontracted portion of the GMP. Premiums for Subcontractor Default Insurance for either full or partial amounts of the coverages required by the Contract Documents, with the Owner's approval.

7.6.2 Sales, use or similar taxes imposed by a governmental authority that are related to the Work and for which the CM/GC is liable.

7.6.3 Fees and assessments for the building permit(s) and for other permits, licenses, and inspections for which the CM/GC is required by the Contract Documents to pay.

7.6.4 Fees of laboratories for tests required by the Contract Documents for which CM/GC may be responsible, except those related to defective or nonconforming Work for which reimbursement is excluded by Section 2.20.

7.6.5 Royalties and license fees paid for the use of a particular design, process or product required by the Contract Documents; the cost of defending suits or claims for infringement of patent rights arising from such requirement of the Contract Documents; and payments made in accordance with legal judgments against the CM/GC resulting from such suits or claims and payments of settlements made with the Owner's consent. However, such costs of legal defenses, judgments and settlements shall not be included in the calculation of the CM/GC's Fee or subject to the GMP.

7.6.6 Deposits lost as a result of an action or inaction by the Owner or one of its consultants

7.6.7 Not Applicable

7.6.8 Subject to the Owner's prior approval, expenses incurred in accordance with the CM/GC's standard written personnel policy for relocation and temporary living allowances of the CM/GC's personnel required for the Work if necessary to relocate such personnel from distant locations.

7.7 OTHER COSTS AND EMERGENCIES

7.7.1 Other costs incurred in the performance of the Work if, and to the extent, approved in advance in writing by the Owner.

7.7.2 Costs incurred in taking action to prevent threatened damage, injury or loss in case of an emergency affecting the safety of persons and property, as provided in Section 15.5.

7.7.3 Costs of repairing or correcting damaged or nonconforming Work executed by the CM/GC, Subcontractors or suppliers, provided that such damaged or nonconforming Work was not caused by negligence or failure to fulfill a specific responsibility to the Owner by the CM/GC or subcontractor or supplier or the foremen, engineers, superintendent, or other supervisory, administrative or managerial personnel of the CM/GC, Subcontractor or supplier, or the failure of the CM/GC to adequately supervise the Work of the Subcontractors or suppliers, and only to the extent that the cost of repair or correction is not recovered by the CM/GC from insurance, sureties, Subcontractors, suppliers, Subcontractor's suppliers, or others.

7.7.4 The costs described in Sections 7.1.1 through 7.7.3 shall be included in the Cost of the Work, notwithstanding any provision of this Agreement which may require the CM/GC to pay such costs, unless such costs are excluded by the provisions of Section 7.8.

7.8 COSTS NOT TO BE REIMBURSED.

7.8.1 The Cost of the Work shall not include the items listed below:

.1 Salaries and other compensation of the CM/GC's personnel stationed at the CM/GC's principal office or offices other than the site office, except as specifically provided in Section 7.2 or elsewhere in this Agreement;
.2 Expenses of the CM/GC's principal office and offices other than the site office;
.3 Overhead and general expenses, except as may be expressly included in Sections 7.1 to 7.7;
.4 The CM/GC's capital expenses, including interest on the CM/GC's capital employed for the Work;

.5 Rental costs of machinery and equipment, except as specifically provided in Section 7.5.2;

.6 Except as provided in Section 7.7.3 of this Agreement, costs due to the negligence or failure of the CM/GC, Subcontractors and suppliers or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable to fulfill a specific responsibility of the Contract;

.7 Any cost not specifically and expressly described in Sections 7.1 to 7.7;

.8 Costs, other than costs included in Change Orders approved by the Owner, that would cause the GMP to be exceeded;

.9 Costs for services incurred during the Preconstruction Phase;

.10 Legal, mediation, and litigation costs incurred by the CM/GC and relating to the project;

.11 Work relating to the repair and replacement of previously performed work or nonconforming work, except to the extent the work was damaged or destroyed by the Owner; and

.12 Errors or omissions in coordination, scheduling, and interfacing of various work in the separate work categories or divisions shall not increase the GMP. CM/GC's contingency may be used for corrections and resolution of other unforeseen costs.

7.9 DISCOUNTS, REBATES AND REFUNDS.

7.9.1 Cash discounts obtained on payments made by the CM/GC shall accrue to the Owner if before making the payment, the CM/GC included them in an Application for Payment and received payment from the Owner. Otherwise, cash discounts shall accrue to the CM/GC. Trade discounts, rebates, refunds, and amounts received from sales of surplus materials and equipment shall accrue to the Owner, and the CM/GC shall make provisions so that they can be obtained.

7.9.2 Amounts that accrue to the Owner in accordance with the provisions of Section 7.9.1 shall be credited to the Owner as a deduction from the Cost of the Work.

7.10 RELATED PARTY TRANSACTIONS.

7.10.1 For purposes of Section 7.10, the term "related party" shall mean a parent, subsidiary, affiliate or other entity having common ownership or management with the CM/GC; any entity in which any stockholder in, or management employee of, the CM/GC owns any interest in excess of ten percent in the aggregate; or any person or entity which has the right to control the business or affairs of the CM/GC. The term "related party" includes any member of the immediate family of any person identified above.

7.10.2 If any of the costs to be reimbursed arise from a transaction between the CM/GC and a related party, the CM/GC shall notify the Owner of the specific nature of the contemplated transaction, including the identity of the related party and the anticipated cost to be incurred, before any such transaction is consummated or cost incurred. If the Owner, after such notification, authorizes the proposed transaction, then the cost incurred shall be included as a cost to be reimbursed, and the CM/GC shall procure the Work, equipment, goods, or service from the related party, as a Subcontractor, according to the terms of Section 2.1.6. If the Owner fails to authorize the transaction, the CM/GC shall procure the Work, equipment, goods or service from some person or entity other than a related party according to the terms of Section 2.1.6.

7.11 ACCOUNTING RECORDS. The CM/GC shall keep full and detailed records and accounts related to the cost of the Work and exercise such controls as may be necessary for proper financial management under this Contract and to substantiate all costs incurred. The accounting and control systems shall be satisfactory to the Owner. The Owner and the Owner's auditors shall, during regular business hours and upon reasonable notice, be afforded access to, and shall be permitted to audit and copy, the CM/GC's records and accounts, including complete documentation supporting accounting entries, books, correspondence, instructions, drawings, receipts, subcontracts, Subcontractor's proposals, purchase orders, vouchers, memoranda, and other data relating to this Contract. The CM/GC shall preserve these records for a period of four years after final payment, or for such longer period as may be required by law.

7.12 USE OF CONSTRUCTION CONTINGENCY.

7.12.1 The amount for contingencies ("Contingency"), if any, is set forth in the GMP Amendment. CM/GC shall notify Owner in writing at least three (3) days prior to any proposed use of the Contingency, or any portion thereof, and shall supply Owner with detailed information relative to such proposed use. CM/GC shall not use any portion of the Contingency without Owner's prior written approval, which approval shall not be unreasonably withheld.

7.12.2 Subject to obtaining the Owner's approval as provided in Section 7.12.1, the CM/GC is authorized to spend the Contingency to defray any Cost of the Work which is reimbursable or authorized under Article 7 for which the CM/GC is not otherwise entitled under the Contract Documents which results from any of the following causes:

.1 Conditions and events, which were not reasonably foreseen or known to the CM/GC and which could not have been reasonably foreseen or known to the CM/GC as a reasonably experienced CM/GC at the time of establishment of the GMP; provided that, within seven (7) days after learning of such condition or the occurrence of such event, the CM/GC shall have given notice thereof to the Owner.

.2 Gaps in Subcontractors' scopes of work which were not reasonably foreseen or known to the CM/GC at the time the GMP was agreed upon and which could not have been reasonably foreseen or known to the CM/GC as a reasonably experienced CM/GC at the time of establishment of the GMP; provided that, within seven (7) days after learning of such condition or the occurrence of such event, the CM/GC shall have given notice thereof to the Owner.

.3 Delays in receipt of materials or equipment not the fault of CM/GC and which were not reasonably foreseen or known to CM/GC at the time the GMP was agreed upon and which could not have been reasonably foreseen or known to the CM/GC as a reasonably experienced CM/GC at the time of establishment of the GMP; provided that, within seven (7) days after learning of such condition or the occurrence of such event, the CM/GC shall have given notice thereof to the Owner.

.4 Increases in pre-established subcontractor bids, negotiated contracts or purchase orders or failure by a subcontractor or supplier which is not recoverable by CM/GC after diligent effort.

.5 Unanticipated changes in the Schedule of Performance.

.6 Replacement costs for non-performing or defaulting Subcontractors.

The CM/GC shall keep the Owner advised of all anticipated charges against the Contingency. The Contingency shall not be construed as an amount available for upgrading or enlarging the scope of the Work, nor for covering expenses incurred for Design Professional's errors or omissions (such as compliance with code requirements). The Contingency shall not be used for remedying or repairing any defective Work, acceleration, or premium time costs to recover time lost due to error by CM/GC or any Subcontractor, Sub-subcontractor, or material supplier, nor any other charges in excess of the GC Work line-item amount within the GMP Amendment due to poor performance or non-performance by CM/GC's staff in the management and prosecution of the Work.

7.12.3 Any portion of the Contingency which remains undisbursed after the Work is fully completed shall accrue to the benefit of the Owner. In no event, shall any portion of the Contingency be used to pay any costs or expenses for work required to be performed by the CM/GC under any warranty, express or implied, made by the CM/GC or any of its Subcontractors to the Owner in connection with the Work. In no event, shall any portion of the Contingency be used to pay any costs or expenses resulting from any defaults by Subcontractors which are recoverable from the Subcontractor or from any insurance. In the event of a default by any Subcontractor, CM/GC may enforce its rights and pursue its remedies in accordance with the terms of the subcontract with such Subcontractor without using any portion of the contingency.

ARTICLE 8
CHANGES IN THE WORK

8.1 GENERAL.

8.1.1 If the CM/GC believes the RFI response warrants change in the Contract Time or the Contract Sum, the CM/GC shall notify Design Professional in writing within seven (7) days of receipt of the RFI response to notify the Design Professional of costs associated with the RFI. The CM/GC must provide costs for a proposal to the Owner with twenty-one (21) days from receiving the request.

8.1.2 The Owner may, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions, or other revisions. The Owner shall issue such changes in writing. The Design Professional may make minor changes in the Work as provided in Section 8.4. The CM/GC shall be entitled to an equitable adjustment in the Contract Time and/or Contract Sum as applicable to the specific change as a result of changes of the Work.

8.1.3 Changes in the Work may be accomplished after execution of the Contract, and without invalidating the Contract, by Change Order, Construction Change Directive, or order for a minor change in the Work, subject to the limitations stated in this Article 8 and elsewhere in the Contract Documents.

8.1.4 A Change Order is based upon agreement among the Owner, CM/GC and Design Professional. A Construction Change Directive requires agreement by Owner and Design Professional and may or may not be agreed to by the CM/GC. An order for a minor change in the Work may be issued by the Design Professional alone.

8.1.5 Changes in the Work shall be performed under applicable provisions of the Contract Documents, and the CM/GC shall proceed promptly, as required by the Contract, unless otherwise provided in the Change Order, Construction Change Directive, or order for a minor change in the Work.

8.2 CHANGE ORDERS.

8.2.1 A Change Order is a written instrument prepared by the Design Professional or CM/GC and signed by the Owner, CM/GC and Design Professional stating their agreement upon all of the following:

.1 The change in the Work;
.2 The amount of the adjustment, if any, in the Contract Sum; and
.3 The extent of the adjustment, if any, in the Contract Time.

8.2.2 Any Change Order prepared, including those arising by reason of the parties' mutual agreement or by mediation, shall constitute a final and full settlement of all matters relating to or affected by the change in the Work, including all direct, indirect, and consequential costs associated with such change and any and all adjustments to the Contract Sum and Contract Time.

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

8.3 CONSTRUCTION CHANGE DIRECTIVES.

8.3.1 A Construction Change Directive is a written order prepared by the Design Professional and signed by the Owner and Design Professional, directing a change in the Work prior to agreement on adjustment, if any, in the Contract Sum or Contract Time, or both. The Owner may by Construction Change Directive, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions, the Contract Sum and Contract Time being adjusted accordingly. The CM/GC shall not be required to proceed with any Construction Change Directive that effects the scope, cost, or duration of the work without an executed Change Order.

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

8.3.3 If the Construction Change Directive provides for adjustments in the Contract Sum, the adjustment shall be determined by any of the methods listed below:

.1 Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
.2 Unit prices stated in the Contract Documents or subsequently agreed upon;
.3 Cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or
.4 As provided in Section 8.3.7.

8.3.4 If unit prices are stated in the Contract Documents or subsequently agreed upon, and if quantities originally contemplated are materially changed in a proposed Change Order or Construction Change Directive so that application of such unit prices to quantities of Work proposed will cause substantial inequity to the Owner or CM/GC, the applicable unit prices shall be equitably adjusted.

8.3.5 Upon receipt of a Construction Change Directive, the CM/GC shall promptly evaluate the scope of the change in the Work involved and advise the Design Professional of the CM/GC's agreement or disagreement with the method, if any, provided in the Construction Change Directive for determining the proposed adjustment in the Contract Sum or Contract Time.

8.3.6 A Construction Change Directive signed by the CM/GC indicates the CM/GC's agreement therewith, including adjustment in Contract Sum and Contract Time or the method for determining them. Such agreement shall be effective immediately and shall be recorded as a Change Order.

8.3.7 If the CM/GC does not respond or disagree within seven (7) days of receipt of the method for adjustment of the Contract Sum, the Design Professional shall determine the method and the adjustment on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum, an amount for overhead and profit as set forth in the Agreement, or if no such amount is set forth in the Agreement, a reasonable amount. The CM/GC shall keep and present, in such form as the Design Professional may reasonably prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this Section 8.3.7 shall be limited to the following:

.1 Costs of labor, payroll taxes, fringe benefits required by agreement or custom, and workers' compensation insurance;
.2 Costs of materials, supplies and equipment, including cost of transportation, whether incorporated or consumed;
.3 Rental costs of machinery and equipment, exclusive of hand tools, whether rented from the CM/GC or others;
.4 Costs of premiums for all bonds and insurance, permit fees, and sales, use or similar taxes related to the Work; and
.5 Additional costs of supervision and field office personnel directly attributable to the change.

8.3.8 The amount of credit to be allowed by the CM/GC to the Owner for a deletion or change that results in a net decrease in the Contract Sum shall be actual net cost as confirmed by the Design Professional. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of net increase, if any, with respect to the change.

8.3.9 Pending final determination of the total cost of a Construction Change Directive to the Owner, amounts not in dispute for such changes in the Work shall be included in the CM/GC's Application for Payment accompanied by a Change Order indicating the parties' agreement with part or all of such costs. For any portion of such cost that remains in dispute, the Design Professional will make an interim determination for purposes of monthly certification for payment for those costs. That determination of cost shall adjust the Contract Sum on the same basis as a Change Order.

8.3.10 When the Owner and CM/GC agree with a determination made by the Design Professional concerning the adjustments in the Contract Sum and Contract Time, or otherwise reach agreement upon the adjustments, such agreement shall be effective immediately and the Design Professional will prepare a Change Order. Change Orders may be issued for all or any part of a Construction Change Directive.

8.4 MINOR CHANGES IN THE WORK. The Design Professional has authority to order minor changes in the Work not involving adjustment in the Contract Sum or extension of the Contract Time and not inconsistent with the Contract Documents; provided that the CM/GC agrees and confirms that costs associated with the changes are minor. Such changes will be affected by written order signed by the Design Professional and shall be binding on the Owner and CM/GC. CM/GC shall carry out such written orders promptly.

ARTICLE 9
TIME

9.1 DEFINITIONS.

9.1.1 Unless otherwise provided, Contract Time is the period of time, including authorized adjustments, allotted in the Contract Documents for Substantial Completion of the Work.

9.1.2 The date of commencement of the Work is the date established in the Agreement, which shall be either the Owner's acceptance of the CM/GC's GMP proposal or the Owner's issuance of a Notice to Proceed, whichever occurs earlier.

9.1.3 The date of Substantial Completion, as defined by Section 10.8.1 is the date certified by the Design Professional in accordance with Section 10.8.

9.1.4 The term "day" as used in the Contract Documents shall mean calendar day unless otherwise specifically defined.

9.2 PROGRESS AND COMPLETION.

9.2.1 Time limits stated in the Contract Documents are of the essence of the Contract. By executing the Agreement, the CM/GC confirms that the Contract Time is a reasonable period for performing the Work.

9.2.2 The CM/GC shall not knowingly, except by agreement or instruction of the Owner in writing, prematurely commence operations on the site or elsewhere prior to the effective date of insurance required by Article 11 to be furnished by the CM/GC and Owner. The date of commencement of the Work shall not be changed by the effective date of such insurance.

9.2.3 The CM/GC shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time.

9.3 DELAYS AND EXTENSIONS OF TIME.

9.3.1 If the CM/GC is delayed at any time in the commencement or progress of the Work by an act or neglect of the Owner or Design Professional, or of an employee of either, or of a separate contractor employed by the Owner; or by changes ordered in the Work; or by labor disputes, fire, unusual delay in deliveries, unavoidable casualties or other causes beyond the CM/GC's control; or by delay authorized by the Owner pending mediation and arbitration; or by other causes that the Design Professional determines may justify delay, then the Contract Time shall be extended by Change Order for such reasonable time as the Design Professional may determine.

9.3.2 Claims relating to time shall be made in accordance with applicable provisions of Article 12.

9.3.3 This Section 9.3 does not preclude recovery of damages for delay by either party under other provisions of the Contract Documents.

ARTICLE 10
PAYMENTS FOR CONSTRUCTION PHASE SERVICES AND COMPLETION

10.1 CONTRACT SUM. The Contract Sum is stated in the Agreement and, including authorized adjustments, is the total amount payable by the Owner to the CM/GC for performance of the Work under the Contract Documents.

10.2 SCHEDULE OF VALUES. The CM/GC shall submit to the Design Professional and Owner, with the GMP, a schedule of values allocating the entire Contract Sum to the various portions of the Work and prepared in such form and supported by such data to substantiate its accuracy as the Design Professional may require. This schedule, unless objected to by the Design Professional, shall be used as a basis for reviewing the CM/GC's Applications for Payment. Once approved by the Design Professional and Owner, Owner shall upload the schedule of values into Owner's web-based management system with the approved GMP.

10.3 APPLICATIONS FOR PAYMENT.

10.3.1 At least ten (10) days before the date established for each progress payment, the CM/GC shall upload into Owner's web-based management system an itemized Application for Payment prepared in accordance with the schedule of values. Such application shall be supported by such data substantiating the CM/GC's right to payment as the Owner or Design Professional may require (including as set forth in Section 10.6.4) and shall reflect retainage if provided for in the Contract Documents.

10.3.1.1 As provided in Section 8.3.9, such applications may include requests for payment on account of changes in the Work that have been properly authorized by Construction Change Directives, or by interim determinations of the Design Professional, but not yet included in Change Orders.

10.3.1.2 Applications for Payment shall not include requests for payment for portions of the Work for which the CM/GC does not intend to pay a Subcontractor or material supplier unless such Work has been performed by others whom the CM/GC intends to pay.

10.3.2 Unless otherwise provided in the Contract Documents, payments shall be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by the Owner, payment may similarly be made for materials and equipment suitably stored off the site at a location agreed upon in writing. Payment for materials and equipment stored on or off the site shall be conditioned upon compliance by the CM/GC with procedures satisfactory to the Owner to establish the Owner's title to such materials and equipment or otherwise protect the Owner's interest, and shall include the costs of applicable insurance, storage and transportation to the site for such materials and equipment stored off the site.

10.3.3 In submitting an Application for Payment, the CM/GC affirmatively warrants that the quality of the Work has reached a level for which payment is requested, that the Work has been properly installed or performed in compliance with the Contract Documents and that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of the payment. The CM/GC further warrants that upon submittal of an Application for Payment all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall, to the best of the CM/GC's knowledge, information and belief, be free and clear of liens, claims, security interests or encumbrances in favor of the CM/GC, Subcontractors, material suppliers, or other persons or entities making a claim by reason of having provided labor, materials and equipment relating to the Work.

10.4 CERTIFICATES FOR PAYMENT.

10.4.1 The Design Professional will, within seven (7) days after receipt of the CM/GC's Application for Payment, electronically approve a Certificate for Payment, for such amount as the Design Professional determines is properly due, or electronically reject and notify the CM/GC and Owner in writing of the Design Professional's reasons for withholding certification in whole or in part as provided in Section 10.5.1.

10.4.2 The issuance of a Certificate for Payment will constitute a representation by the Design Professional to the Owner, based on the Design Professional's evaluation of the Work and the data comprising the Application for Payment, that, to the best of the Design Professional's knowledge, information and belief, the Work has progressed to the point indicated and that the quality of the Work is in accordance with the Contract Documents. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to correction of minor deviations from the Contract Documents prior to completion and to specific qualifications expressed by the Design Professional. The issuance of a Certificate for Payment will further constitute a representation that the CM/GC is entitled to payment in the amount certified. However, the issuance of a Certificate for Payment will not be a representation that the Design Professional has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, (2) reviewed construction means, methods, techniques, sequences or procedures, (3) reviewed copies of requisitions received from Subcontractors and material suppliers and other data requested by the Owner to substantiate the CM/GC's right to payment, or (4) made examination to ascertain how or for what purpose the CM/GC has used money previously paid on account of the Contract Sum.

10.4.3 The Owner shall make payment to the CM/GC no more than forty-five (45) days following receipt by the Owner of the Certificate for Payment by the Design Professional. The amount of each such payment shall be the amount approved for payment by the Owner less such amounts, if any, otherwise owing by the CM/GC to the Owner or which the Owner shall have the right to withhold as authorized by this Contract. The Owner's approval of the CM/GC's Application for Payment shall not preclude the Owner from the exercise of any of its rights it may have in this Contract, at law or in equity.

10.5 DECISIONS TO WITHHOLD CERTIFICATION

10.5.1 The Design Professional and Owner shall have and be entitled to the right to refuse to make any payment, including by reducing payment under any CM/GC's Application for Payment, and, if necessary, may demand the return of a portion or all of an amount previously paid to the CM/GC for reasons that include the following:

.1 The quality of the CM/GC's work, in whole or part, is not in accordance with the requirements of this Contract or identified defective work, including punch list work, is not remedied as required by the Contract Documents;

.2 The quantity of the CM/GC's work, in whole or in part, is not as represented in the CM/GC's Application for Payment or otherwise;

.3 The CM/GC's rate of progress is such that, in the Design Professional's opinion, Substantial Completion or final completion, or both, may be inexcusably delayed or that the Owner will incur additional costs or expense related to repeated Substantial Completion or final completion inspections through no fault of the Owner;

.4 The Owner reasonably believes that the CM/GC has failed to use Contract funds, previously paid the CM/GC by the Owner, to pay CM/GC's project-related obligations, including subcontractors, laborers and material and equipment suppliers;

.5 There are Claims made or it seems reasonably likely that Claims will be made, against the Owner;

.6 The CM/GC has caused a loss or damage to the Owner, or another contractor;

.7 The Owner reasonably believes that the Project cannot be completed for the unpaid balance of the Contract Amount, or the Owner reasonably believes that the Project cannot be completed within the Contract Time and that the unpaid balance of the Contract Amount would be inadequate to cover the cost of actual or liquidated damages for the anticipated delay;

.8 The CM/GC fails or refuses to perform any of its obligations to the Owner;

.9 If in the Design Professional's opinion, the representations to the Owner required by Section 10.4.2 cannot be made; or

.10 The CM/GC fails to pay taxes as required by Title 63, Chapter 15, Idaho Code.

10.5.2 When the above reasons for withholding certification are removed, certification will be made for amounts previously withheld. In the event that the Owner makes written demand upon the CM/GC for amounts previously paid by the Owner as contemplated in this section, the CM/GC shall promptly comply with such demand.

10.5.3 The Design Professional may withhold a Certificate for Payment in whole or in part, to the extent reasonably necessary to protect the Owner, if in the opinion of the Owner the reasons identified in Section 10.5.1 exist. The Design Professional will so notify the CM/GC as provided in Section 10.4.1. The Design Professional may also withhold a Certificate for Payment or, because of subsequently discovered evidence, may nullify the whole or a part of a Certificate for Payment previously issued, to such extent as may be necessary in the Design Professional's opinion to protect the Owner from loss for which the CM/GC is responsible.

10.5.4 If the Owner, without cause, fails to pay the CM/GC any amounts due and payable Sixty (60) days after those amounts are due, the CM/GC shall have the right to cease the Work until receipt of proper payment. CM/GC must first provide written notice to the Owner of the CM/GC's intent to cease the Work ten (10) days prior to stopping the Work under this section. If any amounts remain unpaid after sixty (60) days after the Owner approves the CM/GC's Application for Payment under Section 10.4.3, interest at the rate as provided in Section 67-2302, Idaho Code shall accrue on those unpaid amounts.

10.6 PROGRESS PAYMENTS.

10.6.1 Based upon Applications for Payment submitted to the Design Professional by the CM/GC and Certificates for Payment issued by the Design Professional, the Owner shall make progress payments on account of the Contract Sum to the CM/GC as provided below and elsewhere in the Contract Documents.

10.6.2 The period covered by each Application for Payment shall be one calendar month ending on the last day of the month, or as provided in this Article 10.

10.6.3 The Owner shall make payment of the certified amount to the CM/GC not later than forty-five (45) from the Owner's receipt of the Certificate of Payment from the Design Professional.

10.6.4 With each Application for Payment, the CM/GC shall submit payrolls, petty cash accounts, receipted invoices or invoices with check vouchers attached, and any other evidence required by the Owner or Design Professional to demonstrate that cash disbursements already made by the CM/GC on account of the Cost of the Work equal or exceed (1) progress payments already received by the CM/GC, (2) less that portion of those payments attributable to the CM/GC's Fee, (3) plus payrolls for the period covered by the present Application for Payment satisfactorily demonstrate current compliance with Davis Bacon requirements. (Delete (3) if no federal funds are present).

10.6.5 Each Application for Payment shall be based on the most recent schedule of values submitted by the CM/GC in accordance with the Contract Documents. The schedule of values shall allocate the entire GMP among the various portions of the Work, except that the CM/GC's Fee shall be shown as a single separate item. The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the Design Professional may require. This schedule, unless objected to by the Design Professional, shall be used as a basis for reviewing the CM/GC's Applications for Payment.

10.6.6 Applications for Payment shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment. The percentage of completion shall be the lesser of (1) the percentage of that portion of the Work which has actually been completed, or (2) the percentage obtained by dividing (a) the expense that has actually been incurred by the CM/GC on account of that portion of the Work for which the CM/GC has made or intends to make actual payment prior to the next Application for Payment by (b) the share of the GMP allocated to that portion of the Work in the schedule of values.

10.6.7 Subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

.1 Take that portion of the GMP properly allocable to completed Work as determined by multiplying the percentage of completion of each portion of the Work by the share of the GMP allocated to that portion of the Work in the schedule of values less five percent (5%) retainage. Pending final determination of cost to the Owner of changes in the Work, amounts not in dispute shall be included as provided in Section 8.3.9;

.2 Add that portion of the GMP properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work, or if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing;

.3 Add the CM/GC's Fee, less retainage of five percent (5%). The CM/GC's Fee shall be computed upon the Cost of the Work at the rate stated in Section 6.1 or, if the CM/GC's Fee is stated as a fixed sum in that Section, shall be an amount that bears the same ratio to that fixed-sum fee as the Cost of the Work bears to a reasonable estimate of the probable Cost of the Work upon its completion;

.4 Subtract the aggregate of previous payments made by the Owner;

.5 Subtract the shortfall, if any, indicated by the CM/GC in the documentation required by Section 10.6.4 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner or its auditors in such documentation; and

.6 Subtract amounts, if any, for which the Design Professional has withheld or nullified a Certificate for Payment as provided in Section 10.5.

10.6.8 The Owner and CM/GC shall agree upon (1) a mutually acceptable procedure for review and approval of payments to Subcontractors and (2) the percentage of retainage held on Subcontracts, and the CM/GC shall execute subcontracts in accordance with those agreements.

10.6.9 Except with the Owner's prior approval, the CM/GC shall not make advance payments to suppliers for materials or equipment which have not been delivered and stored at the site.

10.6.10 In taking action on the CM/GC's Applications for Payment, the Design Professional shall be entitled to rely on the accuracy and completeness of the information furnished by the CM/GC and shall not be deemed to represent that the Design Professional has made a detailed examination, audit or arithmetic verification of the documentation submitted in accordance with Section 10.6.4 or other supporting data; that the Design Professional has made exhaustive or continuous on-site inspections; or that the Design Professional has made examinations to ascertain how or for what purposes the CM/GC has used amounts previously paid on account of the Contract. Such examinations, audits, and verifications, if required by the Owner, will be performed by the Owner's auditors acting in the sole interest of the Owner.

10.6.11 After the Design Professional has issued a Certificate for Payment, the Owner shall make payment in the manner and within the time provided in the Contract Documents.

10.6.12 Except in the event of a reasonable dispute, the CM/GC shall pay each Subcontractor no later than seven (7) days after receipt of payment from the Owner the amount to which the Subcontractor is entitled, reflecting percentages actually retained from payments to the CM/GC on account of the Subcontractor's portion of the Work. The CM/GC shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors in a similar manner.

10.6.13 The Design Professional will, on request, furnish to a Subcontractor, if practicable, information regarding percentages of completion or amounts applied for by the CM/GC and action taken thereon by the Design Professional and Owner on account of portions of the Work done by such Subcontractor.

10.6.14 The Owner has the right to request written evidence from the CM/GC that the CM/GC has properly paid Subcontractors and material and equipment suppliers' amounts paid by the Owner to the CM/GC for subcontracted Work. If the CM/GC fails to furnish such evidence within seven (7) days, the Owner shall have the right to contact Subcontractors to ascertain whether they have been properly paid. Neither the Owner nor Design Professional shall have an obligation to pay or to see to the payment of money to a Subcontractor, except as may otherwise be required by law.

10.6.15 CM/GC payments to material and equipment suppliers shall be treated in a manner similar to that provided in Sections 10.6.12, 10.6.13 and 10.6.14.

10.6.16 A Certificate for Payment, a progress payment, or partial or entire use or occupancy of the Project by the Owner shall not constitute acceptance of Work not in accordance with the Contract Documents.

10.6.17 The Design Professional has the right and shall be entitled to refuse to make any payment, to the extent reasonably necessary to protect Owner, including by reducing payment under any Application for Payment, and if necessary, may demand the return of a portion or all of an amount previously paid to the CM/GC for the reasons that are enumerated in Sections 10.5.1.1 through 10.5.1.10.

10.6.18 Unless the CM/GC provides the Owner with a payment bond in the full penal sum of the Contract Sum, payments received by the CM/GC for Work properly performed by Subcontractors and suppliers shall be held by the CM/GC for those Subcontractors or suppliers who performed Work or furnished materials, or both, under contract with the CM/GC for which payment was made by the Owner. Nothing contained herein shall require money to be placed in a separate interest-bearing account and not commingled with money of the CM/GC, shall create any fiduciary liability or tort liability on the part of the CM/GC for breach of trust or shall entitle any person or entity to an award of punitive damages against the CM/GC for breach of the requirements of this provision.

10.7 FAILURE OF PAYMENT. If the Design Professional does not electronically approve a Certificate for Payment, through no fault of the CM/GC, within seven days after receipt of the CM/GC's Application for Payment, or if the Owner does not pay the CM/GC within seven days after the date established in the Contract Documents the amount certified by the Design Professional or awarded by binding dispute resolution, then the CM/GC may, upon seven additional days' written notice to the Owner and Design Professional, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately, and the Contract Sum shall be increased by the amount of the CM/GC's reasonable costs of shut-down, delay and start-up, plus interest as provided for in the Contract Documents.

10.8 SUBSTANTIAL COMPLETION.

10.8.1 The term "Substantial Completion," as used herein, shall mean that point at which the entire Project is at a level of completion in strict compliance with the Contract Documents, such that the Owner or its designee can enjoy beneficial use or occupancy and can utilize or operate it in all respects for its intended purpose. If, in the reasonable determination of the Owner, receipt of operation and maintenance manuals or completion of training is necessary for such beneficial use or occupancy, then there shall be no Substantial Completion until such manuals are provided or such training is completed. If the Contract Documents require a manufacturer's warranty, then there shall be no Substantial Completion until such warranty has been provided. Partial use or occupancy of the Project, whereby only a portion of the Project is permitted occupancy by the authorities having jurisdiction shall not result in the Project being deemed substantially complete, or accepted as substantially complete, and such partial use or occupancy shall not be evidence of Substantial Completion. The Project shall not be deemed accepted until it is finally complete.

10.8.2 When the CM/GC considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the CM/GC shall prepare and submit to the Design Professional a comprehensive list (punch list) of items to be completed or corrected prior to final payment. Failure to include an item on such list does not alter the responsibility of the CM/GC to complete all Work in accordance with the Contract Documents.

10.8.3 Upon receipt of the CM/GC's list, the Design Professional will make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the Design Professional's inspection discloses any item, whether or not included on CM/GC's list, which is not sufficiently complete in accordance with the Contract Documents so that the

Owner can occupy or utilize the Work or designated portion thereof for its intended use, the CM/GC shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by the Design Professional. In such case, the CM/GC shall then submit a request for another inspection by the Design Professional to determine Substantial Completion.

10.8.4 When the Work or designated portion thereof is substantially complete, the Design Professional will prepare a Certificate of Substantial Completion that shall establish the date of Substantial Completion, shall establish responsibilities of the Owner and CM/GC for security, maintenance, heat, utilities, damage to the Work and insurance, and shall fix the time within which the CM/GC shall finish all items on the list accompanying the Certificate. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.

10.8.5 The Certificate of Substantial Completion shall be submitted to the Owner and CM/GC for their written acceptance of responsibilities assigned to them in such Certificate not more than thirty (30) days after the date of Substantial Completion. Upon such acceptance and consent of surety, if any, the Owner shall make payment of retainage applying to such Work or designated portion thereof. Such payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Contract Documents.

10.8.6 The CM/GC shall be subject to an assessment as set forth in Exhibit F as liquidated damages for each and every calendar day of unexcused delay in achieving Substantial Completion beyond the date set for Scheduled Completion. Any sums owed hereunder by the CM/GC shall be payable not as a penalty but as liquidated damages, representing an estimate of delay damages likely to be sustained by the Owner estimated at the time of this Agreement. When the Design Professional reasonably believes that Substantial Completion will be inexcusably delayed, the Owner shall be entitled, but not required, to withhold from any amounts otherwise due the CM/GC an amount then believed by the Owner to be adequate to recover liquidated damages applicable to such delays. The Owner shall provide CM/GC 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 CM/GC 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 CM/GC those funds withheld, but no longer applicable, as liquidated damages. The Liquidated Damages described herein shall be the Owner's sole and exclusive remedy for delay, however, the Owner shall retain all remedies at law or in equity for any such other breach of this Agreement.

10.9 PARTIAL OCCUPANCY OR USE.

10.9.1 The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the CM/GC, provided such occupancy or use is consented to by the insurer and authorized by public authorities having jurisdiction over the Project. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and CM/GC have accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents. When the CM/GC considers a portion substantially complete, the CM/GC shall prepare and submit a list to the Design Professional as provided under Section 10.8.2. Consent of the CM/GC to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the Work shall be determined by written agreement between the Owner and CM/GC or, if no agreement is reached, by decision of the Design Professional.

10.9.2 Immediately prior to such partial occupancy or use, the Owner, CM/GC and Design Professional shall jointly inspect the area to be occupied or portion of the Work to be used in order to determine and record the condition of the Work.

10.9.3 Unless otherwise agreed upon, partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of Work not complying with the requirements of the Contract Documents.

10.10 FINAL COMPLETION AND FINAL PAYMENT.

10.10.1 Upon receipt of the CM/GC's written notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Design Professional will promptly make such inspection and, when the Design Professional finds the Work acceptable under the Contract Documents and the Contract fully performed, the Design Professional will promptly issue a final Certificate for Payment stating that to the best of the Design Professional's knowledge, information and belief, and on the basis of the Design Professional's on-site visits and inspections, the Work has been completed in accordance with terms and conditions of the Contract Documents and that the entire balance found to be due the CM/GC and noted in the final Certificate is due and payable. The Design Professional's Certificate for Final Payment will constitute a further

representation that conditions listed in Sections 10.10.2 and 10.11.1 as precedent to the CM/GC's being entitled to final payment have been fulfilled.

10.10.2 Neither final payment nor any remaining retained percentage shall become due until the CM/GC submits to the Design Professional the following which shall be a condition precedent to final payment:

.1 An affidavit that all of the CM/GC's obligations to subcontractors, laborers, equipment or material suppliers or other third parties in connection with the Project have been paid or otherwise satisfied, less amounts withheld by Owner;
.2 A release by the CM/GC of all Claims it has or might have against the Owner or the Owner's property (DPW's form, Exhibit H);
.3 Contractor's Affidavit of Debts and Claims (AIA Document G706);
.4 Consent of Surety to final payment (AIA Document G707);
.5 Confirmation of all required training, product warranties, operating manuals, instruction manuals and other record documents, drawings, shop drawings, as-builts, and things customarily required of the CM/GC;
.6 A Public Works Contract Tax Release issued by the Idaho Tax Commission (See "Request for Tax Release" form, Exhibit G, to be submitted by CM/GC to the Idaho Tax Commission);
.7 A certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect and will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner;
.8 A written statement that the CM/GC knows of no substantial reason that the insurance will not be renewable to cover the period required by the Contract Documents; and
.9 If required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts, releases and waivers of liens, claims, security interests or encumbrances arising out of the Contract, to the extent and in such form, as may be designated by the Owner.

If a Subcontractor refuses to furnish a release or waiver required by the Owner, and the Owner has made payments to the CM/GC in accordance with this Agreement, the CM/GC may furnish a bond satisfactory to the Owner to indemnify the Owner against such lien. If such lien remains unsatisfied after payments are made, the CM/GC shall refund to the Owner all money that the Owner may be compelled to pay in discharging such lien, including all costs and reasonable attorneys' fees.

10.10.3 If, after Substantial Completion of the Work, final completion thereof is materially delayed through no fault of the CM/GC or by issuance of Change Orders affecting final completion, and the Design Professional so confirms, the Owner shall, upon application by the CM/GC and certification by the Design Professional, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Contract Documents, and if bonds have been furnished, the written consent of surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the CM/GC to the Design Professional prior to certification of such payment. Such payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of claims.

10.10.4 Acceptance of final payment by the CM/GC, a Subcontractor or material supplier shall constitute a waiver of claims by that payee except those previously made in writing and identified by that payee as unsettled at the time of final Application for Payment.

10.11 FINAL PAYMENT.

10.11.1 Final payment, constituting the entire unpaid balance of the Contract Sum, less amounts unpaid by the Owner to the CM/GC, shall be made by the Owner to the CM/GC as set forth in Section 10.10.2 above and when:

.1 the CM/GC has fully performed the Contract except for the CM/GC 's responsibility to correct Work as provided in Sections15.7 through 15.9, and to satisfy other requirements, if any, which extend beyond final payment;
.2 the CM/GC has submitted a final application for payment and a final accounting for the Cost of the Work and these have been reviewed and found acceptable by the Owner;
.3 the CM/GC has submitted to the Owner, with a copy to the Design Professional an affidavit that all of its obligations to subcontractors, laborers, equipment or material suppliers or other third parties in connection with the Project have been paid or otherwise satisfied (AIA Document G706);
.4 with the exception of final payment and all claims identified as still pending on its final Payment Application, the CM/GC has submitted to the Owner, with a copy to the Design Professional, a release of claims, Exhibit 'H';

.5 The CM/GC has submitted to the Owner, with a copy to the Design Professional, a Consent of Surety to final payment (AIA Document G707);

.6 The CM/GC has provided to the Owner confirmation of all required training, product warranties, operating manuals, instruction manuals and other record documents, drawings, shop drawings, as-builts, and things customarily required of a CM/GC;

.7 The CM/GC has provided to the Design Professional a detailed and comprehensive set of marked-up blue or black-lined record drawings, which drawings have been approved by the Design Professional; and

.8 A final Certificate for Payment has been issued by the Design Professional.

.9 A Public Works Contract Tax Release issued by the Idaho Tax Commission (See "Request for Tax Release" form, Exhibit G, to be submitted by CM/GC to the Idaho Tax Commission);

.10 A certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect and will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner;

.11 A written statement that the CM/GC knows of no substantial reason that the insurance will not be renewable to cover the period required by the Contract Documents; and

.12 If required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts, releases and waivers of liens, claims, security interests or encumbrances arising out of the Contract, to the extent and in such form, as may be designated by the Owner.

The Owner's final payment to the CM/GC shall be made no later than forty-five (45) days after the issuance of the Design Professional's final Certificate for Payment, or as follows in Sections 10.11.2 through 10.11.4.

10.11.2 The Owner's auditors will review and report in writing on the CM/GC 's final accounting within forty-five (45) days after delivery of the final accounting to the Design Professional by the CM/GC. Based upon such Cost of the Work as the Owner's auditors report to be substantiated by the CM/GC 's final accounting, and provided the other conditions of Sections 10..10.2 and 10.11.1 have been met, the Design Professional will, within seven days after receipt of the written report of the Owner's auditors, either issue to the Owner a final Certificate for Payment with a copy to the CM/GC, or notify the CM/GC and Owner in writing of the Design Professional's reasons for withholding a certificate as provided in Section 10.5. The time periods stated in this Section supersede those stated in Section 10.4.1. The Design Professional is not responsible for verifying the accuracy of the CM/GC's final accounting.

10.11.3 If the Owner's auditors report the Cost of the Work as substantiated by the CM/GC 's final accounting to be less than claimed by the CM/GC, the CM/GC shall be entitled to request mediation of the disputed amount without seeking an initial decision pursuant to Article 12. A request for mediation shall be made by the CM/GC within 30 days after the CM/GC's receipt of a copy of the Design Professional's final Certificate for Payment. Failure to request mediation within this 30-day period shall result in the substantiated amount reported by the Owner's auditors becoming binding on the CM/GC. Pending a final resolution of the disputed amount, the Owner shall pay the CM/GC the amount certified in the Design Professional's final Certificate for Payment.

10.11.4 If, subsequent to final payment and at the Owner's request, the CM/GC incurs costs described in Section 7.1 through 7.7 and not excluded by Section 7.8 to correct defective or nonconforming Work, the Owner shall reimburse the CM/GC such costs and the CM/GC's Fee applicable thereto on the same basis as if such costs had been incurred prior to final payment, but not in excess of the GMP.

ARTICLE 11
INSURANCE AND BONDS

11.1 INSURANCE REQUIRED OF THE CONSTRUCTION MANAGER / GENERAL CONTRACTOR.

11.1.1 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 CM/GC shall promptly 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 CM/GC will provide notification by written notice, by email with concurrent mailing by certified or registered mail, return receipt requested.

[11.1.2 is the minimum required limits. As the project estimates or cost increases, consider increasing CGL limits up to 2x the minimum limits. For projects over $10,000,000 consult with Risk Management for insurance requirement].

11.1.2 CM/GC shall maintain such Commercial General Liability insurance with minimum limits of

$1,000,000/$2,000,000 to protect its interest and that of the Owner. The State of Idaho, (Agency and State Building Authority if applicable) be named an Additional Insured on any general liability, pollution liability, and property policies carried and required by this Agreement. The insurance afforded by the CM/GC 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 CM/GC or its Sub-Contractors.

11.1.3 CM/GC 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 $1,000,000 per each occupational accident/$1,000,000 per each occupational disease, and $1,000,000 policy aggregate.

11.1.4 If any of the insurance required under this Agreement is arranged on "claims made" basis, "tail" coverage will be required at the completion of this Agreement for duration of twenty-four (24) months thereafter. The CM/GC 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 will be acceptable in lieu of "tail" coverage provided its retroactive date is on or before the effective date of this Agreement.

11.1.5 The CM/GC shall indemnify, defend and save harmless the State of Idaho, the (Agency and Idaho State Building Authority if applicable) , 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 CM/GC or the CM/GC's Sub-Contractor caused by or arising out of the negligent performance, act or omission by the CM/GC of any term(s) of the Contract Documents, or the CM/GC's failure to comply with any state, federal, or local statute, law regulation, or rule.

11.1.6 All express representations, indemnifications or limitations of liability made in or given to this Agreement will survive the completion of all services of CM/GC under this Agreement or the termination of this Agreement for any reason.

11.1.7 At the request of the Owner, the CM/GC shall, if commercially available increase the insurance limits provided herein this Article or obtain additional coverage at the Owner's expense, which shall be an additive Change Order to the GMP.

11.1.8 With the Owner's prior written approval, CM/GC may implement a Contractor Controlled Insurance Program (CCIP) to meet all or some of the requirements of this Section 11.1. The CCIP coverage, rates and other specifics will be as described in a mutually agreed upon exhibit to be incorporated into the Agreement. The CCIP may include such coverage as Commercial General Liability, Excess Liability and Worker's Compensation/Employers Liability insurance to subcontractors as well as the CM/GC. Upon approval by Owner, the CM/GC may elect to enroll subcontractors in a program which provides subcontractor default insurance coverage ("Subguard") for subcontractors. The applicable program, if any, shall be further described in the mutually agreed upon exhibit to be incorporated in to this Agreement.

11.2 PERFORMANCE AND PAYMENT BONDS. Within fifteen (15) days of the commencement of the Construction Phase, the CM/GC shall furnish separate performance and payment bonds to the Owner. Each bond shall set forth a penal sum in an amount not less than the amount of the GMP as set forth in GMP Amendment and shall include a power of attorney attached to each bond. The signature of both the CM/GC (principal) and the Surety are required. If the Surety is incorporated, both bonds must have the corporate seal. Each bond furnished by the CM/GC shall incorporate by reference the terms of this Contract as fully as though they were set forth verbatim in such bonds. In the event the GMP amount is adjusted by Change Order executed by the CM/GC, 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 CM/GC shall be AIA Document A312, or a standard surety form certified approved to be the same as the AIA Document A312, and shall be executed by a Surety, or Sureties, reasonably acceptable to the Owner and authorized to do business in the State of Idaho and having a Best's rating of A or A+. The CM/GC recognizes and acknowledges that the performance bond must cover all Construction Phase services to be provided by the CM/GC under this Agreement.

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

11.2.2 It is the CM/GC's obligation to notify the Surety in the event of changes in the Contract Documents, which in the absence of notification might serve to discharge the Surety's obligations, duties or liability under bonds or the Contract; provided that this obligation is eliminated if the Surety agrees to waive notice of any change, including changes of time, to the Contract Documents or related subcontracts, purchase orders and other obligations.

11.2.3. The CM/GC shall pay subcontractors their shares of the insurance proceeds received by the CM/GC, and by

appropriate agreements, written where legally required for validity, shall require subcontractors to acknowledge the Owner's authority under this Article 11 and make payments to their sub-subcontractors in similar manner.

11.3. ADDITIONAL INSURANCE.

Nothing contained in this Article 11 shall preclude the CM/GC from obtaining, solely at its own expense, additional insurance not otherwise required or agreed to in a CCIP exhibit.

11.4 BUILDER'S RISK INSURANCE. Unless otherwise provided in this Agreement, the CM/GC shall purchase or maintain property insurance written on a builder's risk "all-risk" policy (the "Builder's Risk Policy") in excess of WRITE OUT AMOUNT [$000.000 Total Contract Sum] to cover the Owner's property, the Project, and CM/GC's equipment, materials, and supplies.

11.4.1. The Builder's Risk Policy shall:

.1 Include perils of fire with extended coverage and mischief, collapse, earthquake, flood, windstorm, temporary buildings and debris removal, demolition, and flood damage, if commercially available for similar operation in the region of the United States where the Project is located;

.2 Be of an amount not less than the initial Contract Amount, plus value of subsequent Contract modifications and cost of materials supplied or installed by others, comprising total value for the entire Project at the site, on a replacement cost basis without optional deductibles;

.3 Cover resultant damage from errors in design, plans, specifications, faulty workmanship, materials, and construction;

.4 Include reasonable compensation for Design Professional, Project Manager, Owner and its contractors' services and expenses required as a result of an insured loss, excluding any Liquidated Damages, extra expense, and expediting expense;

.5 Contain an express, full and complete, waiver of any right of subrogation by the insurer in favor of the Owner and State of Idaho for loss or damage occurring during the Work to the extent covered by the Builder's Risk Policy.

.6 Include the interest of the Owner, the CM/GC, Subcontractor's and Sub-Subcontractors in the Project

11.4.2 The CM/GC shall purchase the Builder's Risk Policy from a company or companies lawfully authorized to do business and issues contracts of insurance in the State of Idaho.

11.4.3 The CM/GC shall be responsible for the deductible, whether or not to the extent the loss is caused by the negligence or intentional misconduct of the CM/GC, any of its Subcontractors or sub-subcontractors or material suppliers or any other person for whom the CM/GC is responsible.

11.4.4 The Builder's Risk Policy shall name the Owner as additional named insured. The CM/GC shall submit to the Owner, or the Project Manager if designated by the Owner, for its approval, all items deemed by the Builder's Risk Policy carrier to be uninsurable.

11.4.5 The CM/GC shall not commence Work under the Agreement until it has obtained all required insurance and until evidence of the required insurance has been reviewed and accepted by the Owner. Owner's review of the insurance shall not relieve nor decrease the liability of the CM/GC.

11.4.6 The Builder's Risk Policy shall be maintained in force, unless otherwise provided in the Contract Documents or otherwise agreed in writing by all persons and entities who are beneficiaries of such insurance, until Substantial Completion is granted by the Owner.

11.5 Neither party shall agree to a settlement binding the other party without the other party's written consent..

11.6 The CM/GC shall deposit proceeds received under the Builder's Risk Policy in a manner in which such proceeds can be separately accounted for. The CM/GC shall distribute the proceeds in accordance with an agreement as the parties may reach. If after such loss no other special agreement is made and unless the Owner terminates the Contract pursuant to Article 15, replacement of damaged property shall be performed by the CM/GC after notification of a Change in the Work in accordance with Article 15.

ARTICLE 12
CLAIMS AND DISPUTE RESOLUTION

12.1 RESOLUTION OF DISPUTES. Any Claim (as defined below), disputes or other matters between the Owner and CM/GC arising out of the Contract shall be resolved in accordance with the provisions set forth in this Article 12. Any dispute or other matter arising between Owner and CM/GC other than a Claim, shall be subject mediation in accordance with this Article, as a condition precedent to binding dispute resolution.

12.2 METHOD OF BINDING DISPUTE RESOLUTION. For any Claim, dispute or other matter subject to, but not resolved by mediation pursuant to this Article 12, the method of binding dispute resolution shall be by litigation in a court of competent jurisdiction.

12.3 CLAIMS.

12.3.1 For purposes of this Contract, a "Claim" means a demand or assertion by the Contractor to the Owner for a change in the Contract Sum, GMP, an extension of the Contract Time, an adjustment to or interpretation of the Contract terms, or other relief with respect to the terms of the Contract, which demand the CM/GC asserts is required or allowed under the Contract Documents and which the CM/GC and the Owner or CM/GC and Design Professional have previously discussed and failed to agree upon.

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

.1 The Claim must be in writing;
.2 The Claim by the CM/GC must be signed by an authorized representative of the CM/GC;
.3 The Claim by the CM/GC must be provided to the Owner and to the Design Professional;
.4 The Claim must be made no later than twenty-one (21) days after the event or first appearance of the circumstance giving rise to the Claim;
.5 The Claim must describe in detail all known facts and circumstances that the CM/GC asserts support the Claim;
.6 The Claim must refer to the provision(s) of the Contract Documents that the CM/GC asserts support the Claim;
.7 The CM/GC must provide all documentation or other information to substantiate the Claim; and
.8 The CM/GC must continue its performance under this Contract pending the resolution of any Claim; provided, however, that the CM/GC shall not perform any additional or changed work not otherwise authorized in accordance with the Contract Documents.

12.3.3 The failure by the CM/GC to meet any of the requirements of Section 12.3.2 shall constitute a complete wavier by the CM/GC of any rights arising from or related to the Claim.

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

.1 The condition must have been previously concealed and unknown or of a type not ordinarily encountered in the general geographic location of the Project and must not have been reasonably susceptible to discovery; and
.2 The CM/GC shall notify the Design Professional and the Owner of the condition and shall not disturb the condition until the Design Professional and Owner have observed it or have waived in writing the right to observe it.

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

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

.2 The CM/GC shall notify the Design Professional and the Owner of the condition and shall not disturb the condition until the Design Professional and Owner have observed it or have waived in writing the right to observe it.

12.3.6 If the Claim by the CM/GC is for an increase in the Contract Sum, the following shall apply in addition to all other provisions applicable to the Claim:

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

.2 The Owner shall have no liability for, and the Contract Sum shall not be increased related to, any Claims of third parties, including subcontractors, including related bonds and insurance, unless and until the liability of the CM/GC for has been agreed to in writing by the parties or such liability has been established in a court of competent jurisdiction and any such liability of the Owner shall be limited in the same manner as described in subparagraph 14.5.1.

12.3.7 If the Claim by the CM/GC is for an extension of the Contract Time, the following shall apply in addition to all other provisions applicable to the Claim:

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

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

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

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

12.3.8 If a Claim is made based on an error, inconsistency or omission in the Contract that was reasonably susceptible to discovery by the CM/GC and was not reported in accordance with Section 1.7.5, that Claim shall be denied.

12.3.9 All Claims made in accordance with this Article shall be reviewed and evaluated by the Design Professional. If the Claim is not made in strict accordance with Article 12, it shall be rejected as waived. Any failure by the Design Professional to reject the Claim for failure to meet the requirements of Article 12 is not binding on the Owner and the Owner may reject the Claim for such failure.

12.3.10 No later than seven (7) days from receipt of the Claim by the Design Professional, it shall:

.1 Make a written request to the CM/GC or Owner for more data to support the Claim if desired;

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

.3 Make a written recommendation to the Owner, with a copy to the CM/GC, that the Owner reject or approve all or part of the Claim and state the reasons for the Design Professional's recommendation.

12.3.11 If the Design Professional requests more data from the CM/GC under subparagraph 12.3.10.1, the CM/GC shall respond no later than seven (7) days from receipt of such request, and provide additional data, provide a date certain by which additional data will be provided, or state that it will not provide additional data. Upon receipt of data, if any, in accordance with this section, the Design Professional will complete the evaluation of the Claim. Failure to respond at all or failure to provide data by the date specified in the response to the request shall result in the Claim being evaluated based on the information in the Design Professional's possession.

12.3.12 In evaluating the Claim, the Design Professional may consult with the CM/GC, the Owner or other persons with knowledge or expertise that may assist the Design Professional in its evaluation.

12.3.13 No later than fourteen (14) days after receipt by the Owner of the Design Professional's recommendation regarding the CM/GC's Claim, the Owner shall, in writing, notify the CM/GC and the Design Professional of its decision regarding the Claim.

12.3.14 The Owner's decision regarding the CM/GC's Claim is final between the Owner and the CM/GC subject to mediation in accordance with Section 12.4 below. The CM/GC must proceed with the Work under the terms of this Agreement and any decision made by the Owner pursuant to this Article, provided however, that CM/GC may concurrently pursue any remedies available at law or under this Contract.

12.4 MEDIATION.

12.4.1 All Claims, disputes and other issues between Owner and CM/GC arising from the Contract Documents are subject to dispute resolution attempts and mediation in accordance with this Article, as a condition precedent to binding dispute resolution.

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

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

.1 If the issue to be mediated involves only a dispute regarding the Contract Time, no request to mediate shall be made unless liquidated damages have been assessed by the Owner. If the issue to be mediated involves a Claim or other financial dispute, no request to mediate shall be made unless the amount is $50,000 or more or until there are cumulative Claims or disputes amounting to $50,000 or more;

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

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

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

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

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

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

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

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

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

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

ARTICLE 13

OWNER'S NOTIFICATION TO CONTRACTOR OF NON-CONFORMING WORK

13.1 The Owner, Owner's Representative, or the Design Professional shall notify the CM/GC of non-conforming work, which shall include work that deviates from the Contract Documents in the sole discretion of the Owner or Design Professional ("Non-Conforming Work"). The notice shall be in writing or verbally at the regular construction progress meetings as soon as reasonably practicable and documented in the meeting minutes.

13.2 This section shall not limit the Owner's remedies under this Agreement.

13.3 CM/GC shall fix Non-Conforming Work to Owner's satisfaction or the CM/GC may file a Claim pursuant to the requirements in Article 12.

13.4 The CM/GC must demonstrate to Owner, Owner's Representative or the Design Professional that Non-Conforming work has been corrected prior to covering or concealing the work.

ARTICLE 14
TERMINATION OR SUSPENSION

14.1 OWNER'S TERMINATION PRIOR TO EXECUTION OF THE GMP AMENDMENT.

14.1.1 Prior to the execution of the GMP Amendment, the Owner may terminate this Agreement upon not less than seven days' written notice to the CM/GC for the Owner's convenience and without cause In the event of termination of this Agreement pursuant to this Section 14.1.1 prior to the commencement of the Construction Phase, the CM/GC shall be equitably compensated for Preconstruction Phase services satisfactorily performed prior to the effective date of termination which shall not be earlier than fourteen (14) days after the date of receipt of a notice to terminate. In no event, shall the CM/GC's compensation under this Section exceed the compensation set forth in Section 5.1.

14.1.2 If the Owner terminates the Contract pursuant to Section 14.1.2 after the commencement of the Construction Phase but prior to the execution of the GMP Amendment, the Owner shall pay to the CM/GC an amount calculated as follows, which amount shall be in addition to any compensation payable to the CM/GC under Section 14.1.1:

.1 Take the Cost of the Work incurred by the CM/GC to the date of termination;
.2 Add the CM/GC's Fee computed upon the Cost of the Work to the date of termination at the rate stated in Section 6.1 or, if the CM/GC's Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed-sum Fee as the Cost of the Work at the time of termination bears to a reasonable estimate of the probable Cost of the Work upon its completion; and
.3 Subtract the aggregate of previous payments made by the Owner for Construction Phase services.

14.2 OWNER'S TERMINATION FOR CONVENIENCE AFTER EXECUTION OF THE GMP AMENDMENT.

14.2.1 After the GMP Amendment is executed, the Owner may, at any time and for any reason, terminate this Contract. The Owner shall give no less than seven (7) days' written notice of such termination to the CM/GC specifying when termination becomes effective. The CM/GC shall submit a termination Claim per Article 12, specifying the amounts claimed due because of the termination, together with costs, pricing or other supporting data required by the Design Professional. If the CM/GC has submitted the termination claim but there is no agreement between the Owner and the CM/GC to the amount due to the CM/GC, the amount payable to the CM/GC shall be calculated as follows:

.1 Take the Cost of the Work incurred by the CM/GC to the date of termination;
.2 Add the CM/GC's Fee computed upon the Cost of the Work to the date of termination at the rate stated in Section 6.1 or, if the CM/GC's Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed-sum Fee as the Cost of the Work at the time of termination bears to a reasonable estimate of the probable Cost of the Work upon its completion; and
.3 Subtract the aggregate of previous payments made by the Owner for Construction Phase services.

The amounts described above shall not include amounts paid in accordance with other provisions hereof. In no event shall the total sum to be paid the CM/GC under Section 14.2.1 exceed the total GMP, as properly adjusted, and shall not exceed the amount the CM/GC would otherwise have received pursuant to Sections 14.1.1 and 14.1.2 of this Agreement.

14.3 OWNER'S TERMINATION FOR CAUSE.

14.3.1 The Owner may terminate this Contract for cause if the CM/GC:

.1 does not perform the Work, or any part thereof, in accordance with the Contract Documents,
.2 in a timely manner; does not supply adequate labor, supervisory personnel, or proper equipment or materials;
.3 fails to pay Subcontractors;
.4 fails to timely discharge its obligations for labor, equipment, and materials;
.5 proceeds to disobey applicable law;
.6 should, voluntarily or involuntarily, seek protection under the United States Bankruptcy Code;
.7 make assignment for the benefit of creditors;
.8 becomes insolvent, or if a receiver should be appointed on account of insolvency; or
.9 otherwise breaches the Contract.

When any of the reasons set forth above exist, then the Owner, in addition to any other rights it may have against the CM/GC, may terminate the Contract and assume control of the Project site and of all materials and equipment at the site and may complete the Work. Upon such termination, the Owner may exercise all rights and remedies available at law or equity to the Owner, and, subject to any superior rights of the Surety, take possession of the site and of all materials, equipment, tools and construction equipment and machinery thereon owned by the CM/GC; accept assignment of those subcontracts conditionally assigned under Article 4 and finish the Work by whatever reasonable method the Owner may deem expedient. The CM/GC shall not be entitled to receive further payment until the Work is finished and shall only be entitled to payment for Work satisfactorily performed by the CM/GC in accordance with the Contract Documents. If the costs of finishing the Work, exceed the unpaid balance of the Contract Sum, the CM/GC shall pay the difference to the Owner. This obligation for payment shall survive termination of the Contract. The CM/GC shall also terminate outstanding orders and subcontracts. The CM/GC shall settle the liabilities and claims arising out of the termination of subcontracts and orders. In the event the CM/GC is terminated by the Owner for cause pursuant to this Section 14.3 and it is subsequently determined by a court of competent jurisdiction that such termination was without cause, such termination shall thereupon be deemed a termination under Section 14.2 and the provisions of Section 14.2 shall apply.

14.4 TERMINATION BY OWNER FOR FISCAL NECESSITY. It is understood and agreed that the Owner is a State of Idaho governmental entity and that the State's payments under the Contract shall be paid from Idaho State Legislative appropriations, funds granted by the federal government, or both. The Legislature is under no legal obligation to make appropriations to fulfill the Contract. Additionally, the federal government is not legally obligated to provide funds to fulfill the Contract. The Contract shall in no way or manner be construed so as to bind or obligate the state of Idaho beyond the term of any particular appropriation of funds by the Idaho State Legislature, or beyond any federal funds granted to the State, as may exist from time to time. The Owner reserves the right to terminate the Contract in whole or in part (or any order placed under it) if, in its sole judgment, the Legislature of the state of Idaho fails, neglects, or refuses to appropriate sufficient funds as may be required for the State to continue such payments, or requires any return or "give-back" of funds required for the State to continue payments, or if the Executive Branch mandates any cuts or holdbacks in spending, or if funds are not budgeted or otherwise available (e.g. through repeal of enabling legislation), or if the State discontinues or makes a material alteration of the program under which funds were provided, or if federal grant funds are discontinued. The State shall not be required to transfer funds between accounts in the event that funds are reduced or unavailable. All affected future rights and liabilities of the parties shall thereupon cease after notice to the CM/GC. Further, in the event that funds are no longer available to support the Contract, as described herein, the Owner shall not be liable for any penalty, expense, or liability, or for general, special, incidental, consequential or other damages resulting therefrom. In the event of early Contract termination under this section, the Owner will collect all CM/GC-owned equipment and accessory items distributed under the Contract within thirty (30) calendar days of Contract termination. Items will be collected at a central (or regional) location(s) designated by the Owner. CM/GC will be responsible for all costs associated with packaging and removing all CM/GC - owned items from the State-designated location(s), which must be completed within thirty (30) calendar days of written notification from the State. If CM/GC fails to remove its items within that time period, the Owner may charge CM/GC for costs associated with storing the items; and may otherwise dispose of the items as allowed by applicable law. At CM/GC's request, the Owner shall promptly provide supplemental documentation as to such Termination for Fiscal Necessity.

14.5 TERMINATION BY CM/GC.

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

.1 Issuance of an order of a court or other public authority having jurisdiction that requires all Work to be stopped;
.2 An act of government, such as a declaration of national emergency that requires all Work to be stopped;
.3 Because the Work has stopped pursuant to and in accordance with Section 10.7;
.4 Because the Design Professional has not issued a Certificate of Payment and has not notified the CM/GC of the reason for withholding certification as provided, or because the Owner has not made payment on this Certificate for Payment within the time stated in the Contract Documents; or
.5 The Owner has failed to furnish the CM/GC promptly, upon the CM/GC's request of reasonable evidence as required in Section 3.2.2.

14.5.2 The CM/GC may terminate the Contract if, through no act or fault of the CM/GC or a Subcontractor, Sub-subcontractor or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the CM/GC, repeated suspensions, delays or interruptions of the entire Work by the Owner as described in Section 14.6.3 constitute in the aggregate more than 100 percent of the total number of days scheduled for completion, or 120 days in any 365-day period, whichever is less.

14.5.3 If one of the reasons described in Section 14.5.1 exists, the CM/GC may, upon seven (7) days' written notice to the Owner and Design Professional, terminate the Contract and be compensated pursuant to Section 14.1. or 14.2 depending on the state of completion of the Project.

14.6 SUSPENSION.

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

14.6.2 In the event the Owner directs a suspension of performance under this Section 14.6, and such suspension is through no fault of the CM/GC, the Contract Sum and Contract Time shall be adjusted for increases in the cost and time caused by such suspension, delay, or interruption to cover the CM/GC's reasonable costs, actually incurred and paid, of:

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

14.6.3 The adjustment of the Contract Sum shall include an amount for a reasonable profit. The adjustment of the Contract Sum shall not include any amount not otherwise allowed under this Contract, including any limitations applicable to Claims. The CM/GC shall provide supporting documentation related to any increase upon request of the Owner. No adjustment shall be made to the extent:

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

14.7 ACTIONS UPON TERMINATION. Upon receiving a notice of termination, and except as directed otherwise by the Owner, the CM/GC shall incur no further obligations in connection with the Work and the CM/GC shall stop Work when such Termination becomes effective, and CM/GC shall immediately cease placing further Subcontracts or purchase orders for materials, services, or facilities. In addition, except as to Subcontracts or purchase orders (including rental agreements) Owner elects to take legal assignment of, the CM/GC shall terminate all Subcontracts or purchase orders to the extent they relate to the Work terminated and, with the prior written approval of the Owner, settle all outstanding liabilities and termination settlement proposals arising from the termination of Subcontracts and orders. Upon Owner's notice of termination if Owner shall so elect, the CM/Gc shall assign the Owner such subcontracts and purchase orders (including rental agreements) as Owner shall specify. In the event Owner elects to take assignment of any such Subcontract or purchase order, the CM/GC shall take such action and shall execute such documents as Owner shall reasonably require for the effectiveness of such assignment. All Subcontracts, purchase orders and rental agreements entered into by the CM/GC will contain provisions allowing for assignment to the Owner as described above. As directed by the Owner, CM.GC shall, upon termination, transfer title and deliver to the Owner all

documents, information, and other property that, if the Contract had been completed, would have been required to be furnished to the Owner.

ARTICLE 15
PROTECTION OF PERSONS AND PROPERTY

15.1 SAFETY PRECAUTIONS AND PROGRAMS. The CM/GC shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the Contract. As between the Owner and CM/GC, CM/GC is responsible to the Owner for any and all of the safety issues relating to the Work on the Project. CM/GC shall administer and manage the safety program. This will include, but not necessarily be limited to review of the safety programs of each Subcontractor.

15.2 SAFETY OF PERSONS AND PROPERTY.

15.2.1 The CM/GC shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury or loss to:

15.2.1.1 Employees on the Work and other persons who may be affected thereby;

15.2.1.2 The Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody or control of the CM/GC or the CM/GC's Subcontractors or Sub-subcontractors; and

15.2.1.3 Other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures, and utilities not designated for removal, relocation, or replacement in the course of construction.

15.2.2 The CM/GC shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities bearing on safety of persons or property or their protection from damage, injury or loss

15.2.3 The CM/GC shall erect and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations, and notifying owners and users of adjacent sites and utilities.

15.2.4 When use or storage of explosives or other hazardous materials or equipment or unusual methods are necessary for execution of the Work, the CM/GC shall exercise utmost care and carry on such activities under supervision of properly qualified personnel.

15.2.5 The CM/GC shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Contract Documents) to property referred to in Sections 15.2.1.2 and 16.2.1.3 caused in whole or in part by the CM/GC, a Subcontractor, a Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the CM/GC is responsible under Sections 15.2.1.2 and 15.2.1.3, except damage or loss attributable to acts or omissions of the Owner or Design Professional or anyone directly or indirectly employed by either of them, or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the CM/GC. The foregoing obligations of the CM/GC are in addition to the CM/GC's obligations under the Contract Documents.

15.2.6 The CM/GC shall designate a responsible member of the CM/GC's organization at the site whose duty shall be the prevention of accidents. This person shall be the CM/GC's superintendent unless otherwise designated by the CM/GC in writing to the Owner and Design Professional.

15.2.7 The CM/GC shall not permit any part of the construction or site to be loaded so as to cause damage or create an unsafe condition.

15.3 INJURY OR DAMAGE TO PERSON OR PROPERTY.

If either party suffers injury or damage to person or property because of an act or omission of the other party, or of others for whose acts such other party is legally responsible, written notice of such injury or damage, whether or not insured, shall be given

to the other party within a reasonable time not exceeding twenty-one (21) days after discovery. The notice shall provide sufficient detail to enable the other party to investigate the matter.

15.4 HAZARDOUS MATERIALS.

15.4.1 The CM/GC is responsible for compliance with any requirements included in the Contract Documents regarding hazardous materials. If the CM/GC encounters a hazardous material or substance not addressed in the Contract Documents and if reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the CM/GC, the CM/GC shall, upon recognizing the condition, immediately stop Work in the affected area and report the condition to the Owner and Design Professional in writing.

15.4.2 Upon receipt of the CM/GC's written notice, the Owner shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the CM/GC and, in the event such material or substance is found to be present, to cause it to be rendered harmless. Unless otherwise required by the Contract Documents, the Owner shall furnish in writing to the CM/GC and Design Professional the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of such material or substance or who are to perform the task of removal or safe containment of such material or substance. The CM/GC and the Design Professional will promptly reply to the Owner in writing stating whether or not either has reasonable objection to the persons or entities proposed by the Owner. If either the CM/GC or Design Professional has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the CM/GC and the Design Professional have no reasonable objection. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and CM/GC.

15.4.3 The CM/GC shall indemnify the Owner for the cost and expense the Owner incurs (1) for remediation of a material or substance the CM/GC brings to the site and negligently handles, or (2) where the CM/GC fails to perform its obligations under Section 15.4.1, except to the extent that the cost and expense are due to the Owner's fault or negligence.

15.5 EMERGENCIES. In an emergency affecting safety of persons or property, the CM/GC shall act, at the CM/GC's discretion, to prevent threatened damage, injury, or loss. Additional compensation or extension of time claimed by the CM/GC on account of an emergency shall be determined as provided in Article 12 and Article 8.

15.6 OFF SITE STORAGE.

15.6.1 Off-site storage will not be approved at locations more than thirty (30) miles from the Project site or outside the State of Idaho, and any payment for any off-site storage is subject to the following:

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

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

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

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

.5 The CM/GC must maintain and must provide to the Owner, upon request, a current log of stored materials and equipment, which reflects when materials and equipment are used or added; and

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

15.7 UNCOVERING OF WORK.

15.7.1 If a portion of the Work is covered contrary to the Design Professional's written request or to requirements specifically expressed in the Contract Documents, it must, if requested in writing by the Design Professional be uncovered for the Design Professional's examination and be replaced at the CM/GC's expense without change in the Contract Time.

15.7.2 If a portion of the Work has been covered that the Design Professional has not specifically requested to examine prior to its being covered, the Design Professional may request to see such Work and it shall be uncovered by the CM/GC. If such Work is in accordance with the Contract Documents, costs of uncovering and replacement shall, by appropriate Change Order, be at the Owner's expense. If such Work is not in accordance with the Contract Documents, such costs and the cost of correction shall be at the CM/GC's expense unless the condition was caused by the Owner or a separate contractor in which event the Owner shall be responsible for payment of such costs.

15.8 CORRECTION OF WORK.

15.8.1 Before or After Substantial Completion. The CM/GC shall promptly correct Work rejected by the Design Professional or failing to conform to the requirements of the Contract Documents, whether discovered before or after Substantial Completion and whether or not fabricated, installed or completed. Costs of correcting such rejected Work, including additional testing and inspections, the cost of uncovering and replacement, and compensation for the Design Professional's services and expenses made necessary thereby, shall be at the CM/GC's expense.

15.8.2 After Substantial Completion.

15.8.2.1 In addition to the CM/GC's obligations under Section 2.7 if, within one year after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Section 10.9.1, or by terms of an applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the CM/GC shall correct it promptly after receipt of written notice from the Owner to do so unless the Owner has previously given the CM/GC a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. During the one-year period for correction of Work, if the Owner fails to notify the CM/GC and give the CM/GC an opportunity to make the correction, the Owner waives the rights to require correction by the CM/GC and to make a claim for breach of warranty. If the CM/GC fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner or Design Professional, the Owner may correct it in accordance with Section 3.4.

§ 15.8.2.2 The one-year period for correction of Work shall be extended with respect to portions of Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual completion of that portion of the Work.

§ 15.8.2.3 The one-year period for correction of Work shall not be extended by corrective Work performed by the CM/GC pursuant to this Section 15.8.

15.8.3 The CM/GC shall remove from the site portions of the Work that are not in accordance with the requirements of the Contract Documents and are neither corrected by the CM/GC nor accepted by the Owner.

15.8.4 The CM/GC shall bear the cost of correcting destroyed or damaged construction, whether completed or partially completed, of the Owner or separate contractors caused by the CM/GC's correction or removal of Work that is not in accordance with the requirements of the Contract Documents.

15.8.5 Nothing contained in this Section 15.8 shall be construed to establish a period of limitation with respect to other obligations the CM/GC has under the Contract Documents. Establishment of the one-year period for correction of Work as described in Section 15.8.2 relates only to the specific obligation of the CM/GC to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the CM/GC's liability with respect to the CM/GC's obligations other than specifically to correct the Work.

15.9 ACCEPTANCE OF NONCONFORMING WORK. If the Owner prefers to accept Work that is not in accordance with the requirements of the Contract Documents, the Owner may do so instead of requiring its removal and correction, in which case the Contract Sum will be reduced as appropriate and equitable. Such adjustment shall be affected whether or not final payment has been made.

ARTICLE 16
MISCELLANEOUS PROVISIONS

16.1 TERMS. The phrase "award of contract", "awarding of contract", and similar phrases used herein shall be deemed in this Agreement to refer to the Owner's acceptance of the GMP proposal.

16.2 OWNERSHIP AND USE OF DOCUMENTS. Section 1.12 shall apply to ownership and use of Drawings, Specifications, and other Instruments of Service for both the Preconstruction and Construction Phases. Reports, documents, schedules, and other documents prepared by the CM/GC for delivery to the Owner, Design Professional, or Program Manager shall belong to the Owner.

16.3 GOVERNING LAW, The Contract shall be governed and construed under the laws of the State of Idaho, and parties hereto consent of the jurisdiction of the state courts of Ada County in the State of Idaho in the event of any dispute with respect to the Contract.

16.4 ASSIGNMENT. The Owner and CM/GC, respectively, bind themselves, their agents, successors, assigns and legal representatives to covenants, agreements, and obligations contained in the Contract Documents. The CM/GC shall not assign the Contract or any part of it or right or obligation pursuant to it without prior written consent of the Owner. Provided, however, the CM/GC is permitted to subcontract portions of the Work for the Project as set forth in this Agreement. If CM/GC attempts to make assignment without consent of Owner, CM/GC shall remain legally responsible for all obligations under the Contract Documents.

16.5 OWNERS DETERMINATION OF WORK. The Owner is not obligated, required or responsible for determining whether the Work is constructed in accordance with the Drawings and Specifications in a good workmanlike manner and in conformity with good construction and engineering practices; that responsibility is allocated to the CM/GC.

16.6 INDEMNITY

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

.1 In the event of concurrent negligence of CM/GC, its agents, employees or subcontractors, and that of the Owner or its contractors, which concurrent negligence results in injury or damage to persons or property and relates to the construction, alteration, repair addition to, subtraction from, improvement to or maintenance of the property, or the improvements to be constructed in accordance with this Contract, CM/GC's obligation to defend, indemnify, and hold harmless the Owner as set forth in this section shall be limited to the extent of CM/GC's negligence and that of its agents, employees, invitees, licensees or subcontractors, including CM/GC's proportional share based upon each parties negligence of costs, attorney's fees and expenses incurred in connection with any claim action or proceeding brought with the respect to such injury or damage.

.2 The obligations of the CM/GC under this Section shall not extend to the liability of the Design Professional, Owner, their agents, or employees, arising out of the preparation or approval of maps, drawings, opinions, reports, surveys, Change Orders, design or specifications; or the giving of or failure to give directions or instruction by the Design Professional, Owner, their agents or employees.

16.6.2 The limits of any insurance of the CM/GC shall not be, and shall not be deemed to be, a limitation of the CM/GC's defense and indemnity obligations contained in Section 16.6.

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

16.6.4 The Owner shall have the right, at its option and expense, to participate in the defense of any action that the CM/GC is obligated to defend under this section without relieving the CM/GC of any such obligation. The CM/GC's obligations under this Section do not limit any other obligation it has under this Agreement.

16.6.5 In no event shall this Agreement or any act by the STATE OF IDAHO, be a waiver of any form of defense or immunity, whether sovereign immunity, governmental immunity, immunity based on the Eleventh Amendment to the Constitution of the United States or otherwise, from any claim or from the jurisdiction of any court. If a claim must be brought in a federal forum, then it must be brought and adjudicated solely and exclusively within the United States District Court for the State of Idaho. This Section applies to a claim brought against the STATE OF IDAHO only to the extent Congress has appropriately abrogated the state's sovereign immunity, and is not consent by the STATE OF IDAHO, to be sued in federal court, or a waiver of any form of immunity, including, but not limited to, sovereign immunity, and immunity based on the Eleventh Amendment to the Constitution of the United States..

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

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

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

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

16.8 AFFIDAVIT CONCERNING TAXES. Before entering into a Contract, the CM/GC shall be authorized to do business in the State of Idaho and shall submit a properly executed CM/GC's Affidavit Concerning Taxes.

16.9 EMPLOYMENT OF IDAHO RESIDENTS. Pursuant to Section 44-1002, Idaho Code, it is provided that CM/GC "must employ ninety-five percent (95%) bona fide Idaho residents as employees on any job under any such contract except where under such contracts fifty (50) or less persons are employed the CM/GC may employ ten percent (10%) nonresidents, provided, however, in all cases employers must give preference to the employment of bona fide residents in the performance of said work, and no contract shall be let to any person, firm, association, or corporation refusing to execute an agreement with the above mentioned provisions in it; provided, that, in contracts involving the expenditure of federal aid funds this act shall not be enforced in such a manner as to conflict with or be contrary to the federal statutes prescribing a labor preference to honorably discharged soldiers, sailors, and marines, prohibiting as unlawful any other preference or discrimination among citizens of the United States." (Ref. Section 44-1001, Idaho Code)

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

16.11 STATUTE OF LIMITATIONS. As between the Owner and CM/GC as to acts or failures to act, any applicable statute of limitations shall commence to run, and any legal cause of action shall be deemed to have accrued in any and all events in accordance with Idaho law.

16.12 SEVERABILITY. In the event, any provision or section of this Contract conflicts with applicable law or is otherwise declared or held to be invalid or unenforceable, such invalidity shall not affect the validity or enforceability of the remaining provisions which shall be carried into effect.

16.13 EQUAL OPPORTUNITY. The CM/GC shall maintain policies of employment as follows:

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

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

16.14 THIRD PARTIES. Nothing contained in this Agreement shall create a contractual relationship with or cause of action in favor of a third party against either the Owner or the CM/GC.

16.15 NOTICE. Notice required by this agreement to be in writing shall be hand delivered, sent by email, prepaid night courier or the United States' mail, certified return receipt requested. All such notices shall be addressed to the parties at the following addresses as the parties may from time to time direct in writing:

OWNER:
Division of Public Works
502 N 4th Street
Boise, ID 83720

CM/GC:
Company
Address

DESIGN PROFESSIONAL:
Company
Address

Notice shall be deemed delivered immediately upon actual delivery or refusal to accept delivery, upon email and read receipt or seventy-two (72) hours after deposit in the United States' mail.

16.16 RELATIONSHIP OF THE PARTIES. Nothing contained in this Agreement shall be construed as creating a joint venture, partnership, employee or agency relationship between the Owner and the CM/GC.

16.17 USE OF NAME. CM/GC shall not, prior to, in the course of, or after performance under the Contract, use the State's name in any advertising or promotional media, including press releases, as a customer or client of CM/GC without the prior written consent of the State.

16.18 TIME IS OF THE ESSENCE. All limitations of time set forth herein are material and time is of the essence of this Agreement.

16.19 ATTORNEY FEES. Notwithstanding any statute to the contrary, in the event suit is brought by any party to this Contract to enforce the terms of this Contract or to collect any moneys due hereunder, the prevailing party shall be entitled to recover reimbursement for reasonable attorneys' fees and costs, in the amount determined by a court of competent jurisdiction, in addition to any other available remedies.

16.20 REMEDIES CUMULATIVE. Duties and obligations imposed by the Contract Documents and the rights and remedies available under the Contract Documents shall be in addition to, and not a limitation of, duties, obligations, rights, and remedies otherwise imposed by law. No action or failure to act by the Owner, CM/GC, Design Professional, or Program Manager shall constitute waiver of a right or duty under the Contract nor shall action or failure to act constitute approval of or acquiescence to a breach, except as may be specifically agreed to in writing.

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

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

16.23 The CM/GC shall substantiate that all employees providing services or involved in any way on projects funded directly by or assisted in whole or part by State funds or federal stimulus dollars can legally work in the United States. Any knowing or willful misrepresentation in this regard or knowing or willful failure to confirm that an employee is eligible to work in the United States constitutes a material breach and shall be cause for the imposition of monetary penalties up to five (5%) percent of the Contract Sum set forth in Article 6, per violation, and/or termination of this Contract. The CM/GC also acknowledges that, if it is a natural person, it is subject to Title 67, Chapter 79, Idaho Code regarding verification of lawful presence in the United States.

16.21 ENTIRE AGEEMENT. This Agreement represents the entire and integrated agreement between the Owner and the Construction Manager / General Contractor and supersedes all prior negotiations, representations, or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both Owner and Construction Manager / General Contractor

ARTICLE 17
CONSTRUCTION MANAGER / GENERAL CONTRACTOR'S REPRESENTATIONS, WARRANTIES AND CERTIFICATIONS

17.1 REPRESENTATIONS AND WARRANTIES. In order to induce the Owner to execute this Agreement and recognizing that the Owner is relying hereon, the Construction Manager / General Contractor, by executing this Agreement, and without superseding, limiting, or restricting any other representation or warranty set forth elsewhere in this Agreement, or the Contract Documents, or implied by operation of law, makes the following express representations and warranties to the Owner

.1 The CM/GC, on its behalf or through contracts with others, is professionally and fully qualified to act as the CM/GC and general contractor for the Work and is, and will remain, properly licensed in the State of Idaho to practice construction management and general contracting by all public entities having jurisdiction over the CM/GC or the Work. Prior to commencing the Work, the CM/GC shall submit a properly executed Affidavit Concerning Taxes, the form of which can be obtained from the Owner;

.2 Unless otherwise expressly provided in this Agreement, the CM/GC will obtain and maintain all necessary licenses, permits (including elevator permits) or other authorization necessary to allow the CM/GC to perform the Work for the Project until the CM/GC's duties have been fully satisfied;

.3 The CM/GC is financially solvent and has sufficient working capital, expertise, experience, and knowledge and has the necessary plant, tools, materials, supplies, equipment, and labor to perform the Work in accordance with the terms of the Agreement;

.4 Prior to execution of this Agreement, the CM/GC has visited and inspected the entire Project site and relevant areas adjacent thereto and the local conditions under which the Work is to be constructed and operated; has reviewed the site as necessary to determine the conditions under which the Work will be performed; and accepts the conditions of the Project site and areas adjacent thereto which may impact the performance of the Work, having taken those conditions into account in entering into the Agreement, provided, however, that the CM/GC's acceptance herein in subject to the other terms and conditions of the Contract Documents and applies to the extent that the site conditions are unchanged in an material respect from those described in Section 1.1;

.5 In entering this Agreement, the CM/GC represents that it has made such independent inspections as it determined to be reasonably necessary and prudent. The GMP will include amounts which the CM/GC understands and agrees are sufficient to cover any reasonably foreseeable conditions;

.6 The CM/GC acknowledges that there may be other design professionals (other than the Design Professional identified in Exhibit B) and other contractors working on the site and some overlap in time and space between them may be unavoidable. The CM/GC shall fully cooperate with the other design professionals or contractors to minimize disruption related to the Project;

.7 The CM/GC warrants that, after the GMP Amendment has been entered into and agreed upon the Contract Time is a reasonable period for performing the Work, and that the scheduled Completion Date provides a reasonable period of time for performing the Work;

.8 The CM/GC assumes full responsibility to the Owner for the improper acts and omissions of its subcontractors or other employed or retained by the CM/GC in connection with the Work;

.9 The CM/GC shall perform all the Work with respect to the Construction Phase for an amount not to exceed the GMP established pursuant to Section 2.2 as the GMP is to be adjusted pursuant to the requirements of the Contract Documents, and all Work performed by the CM/GC shall be sufficient to accomplish the purposes of the Work, as identified by the Owner, and shall be in conformity and comply with the Design Documents and with all applicable law, codes, regulations;

.10 The CM/GC shall maintain in compliance with Idaho Code Title 72, Chapter 17, a drug-free workplace program through the duration of the Contract and shall only subcontract work to Subcontractors who have programs that comply with Idaho Code Title 72, Chapter 17. The CM/GC shall not knowingly hire or engage any illegal aliens or persons not authorized to work in the United States and has taken and will take steps to verify that it does not hire or engage any illegal aliens or persons not authorized to work in the United States. The CM/GC recognizes that any misrepresentation in this regard or any knowing employment of persons not authorized to work in the United States constitutes a material breach and shall be cause for termination of the Contract.

.11 All labor furnished to progress the Work shall be competent to perform the tasks undertaken and of the specified quality reasonably obtainable the product of such labor shall yield only specified quality results in compliance with the Contract Documents; materials and equipment to be installed into the Project shall be of a specified quality and new unless otherwise permitted by the Contract Documents; and the Work will be of a specified quality, free from faults and defects and in compliance with the Contract Documents except for those inherent in the quality of the Work the Contract Documents require or permit. Any and all Work not complying with these requirements shall be considered defective and a breach of this warranty.

17.2 REQUIRED CERTIFICATIONS. CM/GC certifies to the matters set forth below in this Section. CM/GC shall promptly notify Owner upon any such certification becoming untrue or incorrect during the term of the Agreement. The Owner may immediately terminate the Agreement at its convenience or for cause upon receipt of information that the CM/GC is in violation of any term in this section.

17.2.1 Boycott of Israel. Pursuant to Idaho Code section 67-2346, if payments under the Contract exceed one hundred thousand dollars ($100,000) and CM/GC employs ten (10) or more persons, CM/GC certifies that it is not currently engaged in, and will not for the duration of the Contract engage in, a boycott of goods or services from Israel or territories under its control. The terms in this section defined in Idaho Code section 67-2346 shall have the meaning defined therein.

17.2.2 Ownership or Operation by China. Pursuant to Idaho Code section 67-2359, CM/GC certifies that it is not currently owned or operated by the government of China and will not for the duration of the Contract be owned or operated by the government of China. The terms in this section defined in Idaho Code section 67-2359 shall have the meaning defined therein.

17.2.3 Boycott of Various Industries. Pursuant to Idaho Code section 67-2347A, if payments under the Contract exceed one hundred thousand dollars ($100,000) and CM/GC employs ten (10) or more persons, CM/GC certifies that it is not currently engaged in, and will not for the duration of the Contract engage in, a boycott of any individual or company because the individual or company: a) engages in or supports the exploration, production, utilization, transportation, sale, or manufacture of fossil fuel- based energy, timber, minerals, hydroelectric power, nuclear energy, or agriculture; or b) engages in or supports the manufacture, distribution, sale, or use of firearms. The terms in this section defined in Idaho Code section 67-2347A shall have the meaning defined therein, including through reference to another section of Idaho Code.

17.2.4 Disclosure of Abortion Related Matters. The State is subject to the No Public Funds for Abortion Act, Idaho Code title 18, chapter 87 and State employees who intentionally violate the provisions of the No Public Funds for Abortion Act are subject to criminal prosecution. By executing this Contract, CM/GC certifies that it is not and will not for the duration of the Contract be an abortion provider or affiliate abortion provider as those terms are defined in Idaho Code § 18-8702.

CM/GC will not assign or seek to assign the Agreement to any person or entity who operates in violation of any the statutes set forth above.

ARTICLE 18
PROJECT RECORDS

18.1 Subject the provisions of the Idaho Public Records Act, Title 74, Chapter 1, Idaho Code, all documents relating in any manner whatsoever to the Project, or any designated portion thereof, which are in the possession of the CM/GC or any subcontractor of the CM/GC, shall be made available to the Owner or the Owner for inspection and copying upon written request. Furthermore, said documents shall be made available, upon request by the Owner, to any state, federal or other regulatory authority and any such authority may review, inspect, and copy such records. Said records include all drawings, plans, specifications, submittals, correspondence, minutes, memoranda, tape recordings, videos or other writings or things which document the Project, its design, and its construction. Said records expressly include those documents reflecting the cost of construction to the CM/GC. The CM/GC shall maintain and protect these documents for no less than four (4) years after final completion or Termination of the Contract or for any longer period of time as may be required by law or good construction practice.

ARTICLE 19
WAIVER OF CONSEQUENTIAL DAMAGES

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

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

.2 Damages incurred by the CM/GC for principal office expenses, including the compensation of personnel stationed there; for losses of income, financing, business, and reputation; and for loss of profit except profit arising directly from the Work.

19.2 This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article 15. Nothing contained in this Article shall be deemed to preclude an award of the assessment of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents.

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Signature Page to Follow.

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

OWNER:

State of Idaho
Division of Public Works

By: _____
Kelly Berard, Administrator

_____
Date Executed

CM/GC:

_____

(SEAL)

By: _____
Signature

_____
Printed Name

_____
Title

_____
Date Executed

**** THIS EXHIBIT TO BE COMPLETED AT TIME OF EXECUTED GMP****

EXHIBIT A

****INSERT PROJECT NUMBER, PROJECT TITLE, LOCATION AND BRIEF DESCRIPTION BELOW****

OWNER'S PROJECT IDENTIFICATION INFORMATION:

DPW Project No. ####
Project Title: Name
Project Location: Address

General Project Description: Description

Scope of work includes xxx. ****INSERT PROJECT ADDENDA AND DATES BELOW****

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

Addendum No. __ Dated _____
Addendum No. __Dated _____
Addendum No. __Dated _____

FIXED PRICE CONTRACT AMOUNT AND ACCEPTED ALTERNATES:

Base Bid Amount:			$.00
Alternate No. __	(_____)	add	$.00
Alternate No. __	(_____)	add	$.00
Alternate No. __	(_____)	add	$.00
Total Fixed Price Contract Amount			
(_____) Dollars			$.00

CM/GC's Applications for Payment are to be submitted for Work accomplished through the _____ day of each month as described in Paragraph 7.3.

****INSERT CONTRACT TIME AND LIQUIDATED DAMAGES IN PARAGRAPHS B AND C BELOW****

TIME FOR PERFORMANCE AND LIQUIDATED DAMAGES:

A. The CM/GC shall commence construction of its scope of the Work in accordance with the Notice to Proceed issued by the Owner, and which will become Exhibit F to this Contract.

B. The CM/GC shall accomplish Substantial Completion as defined in the Contract within _____ (_____) consecutive calendar days from the date authorized to proceed in the Notice to Proceed.

C. The amount of liquidated damages per day for each and every day of unexcused delay as outlined in the Contract is: _____ Dollars ($_____)

Footer

**** THIS EXHIBIT TO BE COMPLETED PRIOR TO EXECUTING CM/GC AGREEMENT****

EXHIBIT B

ADDRESSES and AUTHORIZED REPRESENTATIVES: The names, addresses and authorized representatives of the Owner, the CM/GC and the Design Professional are:

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

Project Manager:
State of Idaho
E-mail: TBD
Telephone: (208) 332-xxxx TBD

Field Representative:
State of Idaho
E-mail: TBD
Telephone: (208) xxx-xxxx TBD

CM/GC:
Company
Address

Public Works Contractors License No. ####
Construction Manager License No. #####

Officer:
_____ (name and title)
_____ (telephone)
_____ (e-mail)

CM/GC's
Project Manager:
_____ (name)
_____ (telephone)
_____ (e-mail)

CM/GC's
Superintendent:
_____ (name)
_____ (telephone)
_____ (e-mail)

DESIGN PROFESSIONAL:
Company
Address

Professional's
Project Manager:
Name TBD
Phone TBD
E-mail TBD

Professional's
Field Representative:
Company
Address
Phone TBD
E-mail TBD

Footer

*** THIS EXHIBIT TO BE COMPLETED AT TIME OF EXECUTED GMP****

EXHIBIT C

****LIST ALL DRAWINGS AND SPECIFICATIONS. COORDINATE WITH DRAWINGS AND PROJECT MANUAL TABLE OF CONTENTS****

LIST OF DRAWINGS:

0.0 Cover Sheet

Architectural

A.1 Site Plan
A.2 Foundation Plan

Structural

Mechanical

Electrical

LIST OF SPECIFICATIONS:

DIVISION 1 - GENERAL REQUIREMENTS

Section 01010 Scope of the Work

DIVISION 2 - SITE WORK

Section 02020 Site Clearing

Footer

**** THIS EXHIBIT TO BE COMPLETED PRIOR TO EXECUTING CM/GC AGREEMENT****

EXHIBIT D

CONSTRUCTION MANAGER / GENERAL CONTRACTOR'S
AFFIDAVIT CONCERNING TAXES

STATE OF _____)

COUNTY OF _____)

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

SEAL

_____
Name of CM/GC

_____
Address

_____
City and State

By: _____
(Signature)

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

Commission expires:

_____
NOTARY PUBLIC, residing at

_____

_____

**** THIS EXHIBIT TO BE COMPLETED AT TIME OF EXECUTED GMP****

EXHIBIT E

NAMED SUBCONTRACTORS

Idaho State Tax Commission
WH-5 Public Works Contract Report

Ref. No. (State use only)

Idaho Code sections 54-1904A and 63-3624(g) require all public works contracts to be reported to the Tax Commission. This form must be filed with the Tax Commission within 30 days after a contract is awarded.

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 ☐ Sole proprietorship ☐ Partnership ☐ Corporation ☐ LLC		Public Works contractor license number
Sole proprietor's Social Security number	Idaho sales/use tax 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 is not available at this time, please indicate date it will be: _____

all subcontractors

Name		Federal EIN
Address		Public works contractor number
City, State, ZIP	☐ LLC ☐ Corporation ☐ Sole proprietorship ☐ Partnership	Amount of subcontract $
Description of work		

Name		Federal EIN
Address		Public works contractor number
City, State, ZIP	☐ LLC ☐ Corporation ☐ Sole proprietorship ☐ Partnership	Amount of subcontract $
Description of work		

ALL SUBCONTRACTORS (CONTINUED)

Name		Federal EIN
Address		Public works contractor number
City, State, ZIP	☐ LLC ☐ Corporation ☐ Sole proprietorship ☐ Partnership	Amount of subcontract $
Description of work		

Name		Federal EIN
Address		Public works contractor number
City, State, ZIP	☐ LLC ☐ Corporation ☐ Sole proprietorship ☐ Partnership	Amount of subcontract $
Description of work		

Name		Federal EIN
Address		Public works contractor number
City, State, ZIP	☐ LLC ☐ Corporation ☐ Sole proprietorship ☐ Partnership	Amount of subcontract $
Description of work		

SUPPLIERS

Use the space below to report major suppliers of materials and supplies; items removed from inventory; equipment purchased, rented, or leased for use in project; materials provided by government agency. Please indicate how sales or use tax was paid.

Name		Federal EIN	Total value $
Address		Materials and equipment purchased and used	
City, State, ZIP	Phone	☐ Tax paid to supplier ☐ Tax paid to state* ☐ No tax paid	

Name		Federal EIN	Total value $
Address		Materials and equipment purchased and used	
City, State, ZIP	Phone	☐ Tax paid to supplier ☐ Tax paid to state* ☐ No tax paid	

Name		Federal EIN	Total value $
Address		Materials and equipment purchased and used	
City, State, ZIP	Phone	☐ Tax paid to supplier ☐ Tax paid to state* ☐ No tax paid	

Name		Federal EIN	Total value $
Address		Materials and equipment purchased and used	
City, State, ZIP	Phone	☐ Tax paid to supplier ☐ Tax paid to state* ☐ No tax paid	

* If tax was not paid to suppliers but **was** or **will be** reported as "items subject to use tax" under your permit number, indicate period of return on which payment **was** or **will be** reported: _____

If tax was paid to a state **other** than Idaho, name state next to "total value" box(es) above. If tax is due and has **not previously been reported**, attach payment to this form. **if you need more room, please photocopy this page.**

Authorized signature	Print name	Phone number	Date

File with the Idaho State Tax Commission, PO Box 36, Boise ID 83722-2210.

For more information, call (208) 334-7618 • Fax: (208) 332-6619 • E-mail: Contractdesk@tax.idaho.gov.

**** SAMPLE OF NTP TO BE INCLUDED AT TIME OF EXECUTED GMP****

EXHIBIT F

NOTICE TO PROCEED

TO CM/GC: _____ DPW NUMBER: _____

CONTRACT DATE: DESIGN PROFESSIONAL:

CONTRACT AMOUNT: $

DATE OF ISSUANCE: OWNER: State of Idaho

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

The contract provides for the sum of **$** as liquidated damages for each consecutive calendar day after the above established substantial completion date that the work remains incomplete. Completion date will be established by "Certificate of Substantial Completion."

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

Your payment estimates must be submitted on Division of Public Works forms which are located on our website at dpw.idaho.gov. We will be most happy to assist you in preparing the payment estimate forms.

has been appointed Field Representative for this project. Please contact him at **332-** prior to beginning work. A pre-construction meeting will be held **,** at , at **(location)**

Sincerely,

PAT DONALDSON
ADMINISTRATOR

DISTRIBUTION: Tax Commission
Division of Professional & Occupational Licenses
Risk Management (w/ Builder's Risk Application, if applicable)
(Project Manager)
Fiscal Office TAX ID xx-xxxxxxx

sample

**** THIS EXHIBIT TO BE COMPLETED WITH PROJECT CLOSE OUT DOCUMENTATION****

EXHIBIT G

Idaho State Tax Commission
REQUEST FOR TAX RELEASE

Date:_____

PART I -- AWARDING AGENCY INFORMATION:		
Name of agency	Mailing address	City, state, and ZIP Code
Contact name	Phone number	Email address

PART II -- CONTRACTOR INFORMATION:			
Name of contractor	Mailing address		City, state, and ZIP Code
Federal EIN	Contact name	Phone number	Email address

PART III -- CONSTRUCTION/CONTRACT MANAGER INFORMATION (if applicable):			
Name of business	Mailing address		City, state, and ZIP Code
Federal EIN	Contact name	Phone number	Email address

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

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

PART IV -- PROJECT INFORMATION:	
Name of project	Location of project

Description of project

Project number assigned by awarding agency	Project start date	Project completion date	Final/closing contract amount (includes all change orders)

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

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

List Materials	List Dollar Values of Materials
	$
	$
	$

Send to: Contract Desk/Sales TaxAudit
Idaho State Tax Commission PO
Box 36
Boise ID 83722-0410
Phone: (208) 334-7618 • Fax: (208) 332-6619 • Email: **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.*

**** THIS EXHIBIT TO BE COMPLETED WITH PROJECT CLOSE OUT DOCUMENTATION****

EXHIBIT H

RELEASE OF CLAIMS

(TO BE COMPLETED FOR FINAL PAYMENT)

I, _____, upon receipt of the final payment of $_____ do hereby release the State of Idaho from any and all claims of any character whatsoever arising under and by virtue of contract number _____ Dated _____ as amended, except as herein stated.

CM/GC Signature_____

Dated _____-

**** THIS EXHIBIT TO BE COMPLETED WITH PROJECT CLOSE OUT DOCUMENTATION****

EXHIBIT I

Conditions Precedent to Final Payment

Date: _____
DPW Project No. _____
Project Title:_____
Location:_____

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

Copy to:
Design Professional
_____
_____
_____

Construction Manager/General Contractor's Responsibilities:

Per Section 10.11 of the CM/GC Agreement with the Owner: As a condition precedent to final payment, the CM/GC must furnish the owner, in the form and manner required by Owner, to be submitted to the Design Professional for approval, the following:

- ❒ Contractor's Final Application for Payment Form has been provided;
- ❒ Release of Claims form has been provided (DPW's form, Exhibit H);
- ❒ Contractor's Affidavit of Payment of Debts and Claims Form has been provided (AIA G706);
- ❒ Consent of Surety to Final Payment has been provided (AIA G707);
- ❒ Confirmation of all required training (DPW's Training Confirmation Exhibit J), product warranties, operating manuals, instruction manuals and other record documents, drawings and items customarily required of the CM/GC has been provided.
- ❒ Public Works Contract Tax Release from the Idaho Tax Commission has been provided (Exhibit G);
- ❒ Division of Professional & Occupational Licenses Letter of Completion/Final Inspection Sign-Off (as required);
- ❒ Project Finalization and Start Up has been provided (as required, Exhibit K);

_____

Construction Manager's Signature Date

Design Professional's Approval for Payment:

- ❒ All Documents Required per Section 10.11 of the CM/GC Agreement with the Owner have been received.
- ❒ All Warranties, Guarantees, etc. have been received, approved and have been provided.
- ❒ As-Built Drawings have been received, reviewed and approved.
- ❒ Record Drawings have been completed. All of the required copies of the Record Documents and electronic media are attached and/or uploaded to OMS.
- ❒ All punch list items have been verified and signed off as complete.

To the best of my knowledge, information, and belief, and on the basis of my observations and inspections, I certify the Work has been completed in accordance with the terms and conditions of the Contract Documents and that the required documentation required per Section 10.11 of the CM/GC Agreement with the Owner been received. The entire balance, as shown on the attached Final Application for Payment, is due and payable.

_____

Design Professional's Signature Date

**** THIS EXHIBIT TO BE COMPLETED WITH PROJECT CLOSE OUT DOCUMENTATION****

EXHIBIT J

STATE OF IDAHO

DIVISION OF PUBLIC WORKS

Training Confirmation Sign-In Sheet

DPW Project: _____ Agency: _____

Project Name: _____ Project Location: _____

Field Representative: _____ Date & Time:_____

Name	Company	E-mail	Telephone	Signature

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

**** THIS EXHIBIT TO BE COMPLETED WITH PROJECT CLOSE OUT DOCUMENTATION****

EXHIBIT K

PROJECT FINALIZATION AND START-UP

Upon completion of the equipment and systems installation and connections, the contractor shall assemble all equipment factory representative 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 and system subcontractor 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 Construction Manager/ General Contractor, associated factory representative and subcontractors, have started each system and the total system; and have proven their normal operation to the agency's representative(s) and maintenance/operation personnel and have instructed him/them in the operation and maintenance thereof."

Agency's Representative	Construction Manager
Signature	Signature
Date	Date

**** THIS EXHIBIT TO BE COMPLETED AT TIME OF EXECUTED GMP****

EXHIBIT L

CONTRACTOR'S AFFIDAVIT
CONCERNING ALCOHOL AND DRUG-FREE WORKPLACE

STATE OF _____

COUNTY OF _____

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

_____
Name of Construction Manager/ General Contractor

_____
Address

_____
City and State

By: _____
(Signature)

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

_____
NOTARY PUBLIC
Residing at: _____
Commission expires:

EXHIBIT M - MATRIX FOR COST OF WORK	Column1	Column2	Column3	
Costs Related to Cost of Work - General Conditions - Staffing & Job Office	**Direct Cost of Work**	**General Conditions/ Requirements Work Cost**	**Costs included in CMGC Fee**	**Misc Costs paid by Owner.**
Principal in Charge/Project Executive (for project specific time only)		X		
Senior Project Manager (for project specific time only)		X		
Project Manager		X		
Project Superintendent		X		
Project Engineers		X		
Scheduler (for project specific time only)		X		
Estimator (for project specific time only)		X		
Coordinator		X		
On Site Project Administrative Staff/Accounting/Payroll		X		
Labor Burden for General Conditions Staffing		X		
Travel, Hotel, Meals, etc.		X		
GC Staffing Auto rental/fuel & maintenance reimbursement		X		
Office Trailer Rental		X		
Office Furniture/Equipment		X		
~~Telephone~~ (Included in hourly rates)		X		
Plan and Document Printing		X		
Postage/Courier/Fed Ex		X		
Project Photos/Drones		X		
Webcam (discuss if for CMGC marketing use or security for project site)		X		
~~Personal Computer/software(Procore)~~ (Included in hourly rates)		X		
Costs Related to Cost of Work - General Requirements - CMGC Controlled Site Logistics				
Mobilization/Demobilization		X		
Rental-Contractor Owned equipment provided by the CMGC for general use on the project site.		X		
Small tools provided by the CMGC for general use on the project site.		X		
Storage Trailer rental provided by the CMGC for general use on the project site		X		
Manlift rental/delivery when supplied by CMGC for general site use		X		
Forklift rental/deliver provided by CMGC for general site use.		X		
Temporary scaffolding for general site use.		X		
Weather protection performed by the CMGC.		X		
Water pumping/dewatering equipment		X		
Temporary toilets		X		
Drinking water		X		
Parking		X		
Project Signage		X		
Site Security		X		
Temporary Fencing/Barricades/Enclosure/Stairs/Trash Chute		X		

Safety railing and nets		X		
Safety equipment for CMGC personnel		X		
First Aid equipment for CMGC personnel		X		
Flagging/traffic control by CMGC staff or direct subcontract		X		
Dust control by CMGC staff or direct subcontract		X		
Cleanup by CMGC staff or direct subcontract		X		
Trash dumpster/removal/hauling by CMGC staff or direct subcontract		X		
Dump permits/fees by CMGC staff or direct subcontract		X		
SWPPP Execution		X		
Costs Related to CMGC for Bid Work				
Insurance Builders All Risk	X			
General Contractor Bond	X			
Subcontractor Bonds/Default Insurance	X			
Subcontracts (for all work not specifically defined as a General Requirement)	X			
Surveying	X			
Temp Utility bills	X			
Building permits/Fees/Trade Permits	X			
AE fees for design services as required by the Contract for delegated design.	X			
BIM services	X			
Testing, Adjusting and Balancing (TAB)	X			
Cost Related to CMGC Overhead and Profit				
Principal in Charge (non-project specific time)			X	
General Accounting/Payroll Staffing			X	
Main office administrative staffing			X	
Main office building and main office utility costs			X	
IT Staffing			X	
Legal Staffing			X	
General Liability Insurance			X	
Warranty Work			X	
Corrective/Non-conforming repair			X	
Food and beverages other than water			X	
Bonuses			X	
Cost covered by Owner Outside of Contract				
Soils Report				X
Testing and Inspections, Special Inspections, Commissioning.				X
Temp utilities provided through Owner's systems. (Discuss prior to GMP)				X
Corrective work not due to contractor default				X
Designers of Record (Except as specifically noted for delegated design)				X
Usage charges to serving utilities (SUEZ, Idaho Power, City, Cable, etc.)				X
IDOPL Plan Review				X

Property insurance (other than Builders All Risk)				X
Boiler & Plant Insurance				X
Hazardous Materials Testing, abatement, and disposal				X

**** THIS EXHIBIT TO BE COMPLETED AT TIME OF EXECUTED GMP BUT SHOULD BE PROVIDED BY ROOFING SUBCONTRACTOR PRIOR TO BID OPENING WHEN PROJECT SCOPE INCLUDES SIGNIFICANT ROOFING-REROOFING WORK (EXCLUDES SIMPLE PATCH AND REPAIR WORK AND ASPHALT SHINGLE WORK.)****

EXHIBIT MCF

MANUFACTURER'S CERTIFICATION

The undersigned roofing manufacturer hereby certifies that he has reviewed the drawings, specifications and conditions of the site and the terms of the roofing guarantee included in the specification and find them acceptable, and if the manufacturer's materials are installed on the project in accordance with the drawings and specifications and upon inspection by the manufacturer's technical representative, manufacturer will issue the guarantee in the form specified.

DATED THIS _____ DAY OF _____ 20____

_____
(MANUFACTURER)

_____
(AUTHORIZED REPRESENTATIVE)

EXCEPTIONS: Subject to the following exceptions and or modification, (attach any details or added verbiage that is required) the undersigned roofing manufacturer will certify to the conditions stated above:

_____

_____

_____

_____

_____

DATED THIS_____ Day of _____ 20____

_____
(MANUFACTURER)

_____
(AUTHORIZED REPRESENTATIVE)

APPROVED APPLICATORS: The following roofing contractors are approved applicators of the roofing system specified (or approved) and as manufactured by the above-named manufacturer:

NAME	ADDRESS
_____	_____
_____	_____

**** THIS EXHIBIT TO BE COMPLETED AT TIME OF EXECUTED GMP BUT SHOULD BE PROVIDED BY ROOFING SUBCONTRACTOR PRIOR TO BID OPENING WHEN PROJECT SCOPE INCLUDES SIGNIFICANT ROOFING-REROOFING WORK (EXCLUDES SIMPLE PATCH AND REPAIR WORK AND ASPHALT SHINGLE WORK.)****

EXHIBIT MSRF

ROOFING MATERIALS SUBSTITUTION REQUEST FORM

(Submit not less than ten (10) days prior to bid date)

DPW Project No. _____

_____

_____

_____

TO: (Design Professional)

We hereby submit for your consideration the following products in lieu of those specified for the above referenced project:

MATERIAL	SPECIFIED	PROPOSED SUBSTITUTION
Vapor Barrier	_____	_____
Roof Insulation	_____	_____
Roofing Membrane	_____	_____
Surfacing	_____	_____

Description of Proposed Components: _____

_____

_____

_____

_____

_____

_____

Differences between specified and proposed components including type of insulation, method of anchoring, details, surfacing, application methods, etc. _____

_____

_____

_____

_____

Attach complete technical data, including manufacturer's published specifications, standard details, laboratory tests and certifications, material samples and similar information to fully describe the products and methods of application.

If changes are required in specifications, drawings or details, provide revised specifications and details for consideration.

Answer the following:

1. Does proposed substitution affect details or dimensions shown on the drawings?
   _____YES _____NO

2. Will proposed substitution meet specified Underwriters Laboratory and ICBO ratings?
   _____YES _____NO

3. Is insulation and roofing method of attachment listed with Factory Mutual against wind loss?
   _____YES _____NO

4. Are all components of the roofing system (vapor barrier, insulation, fasteners, membrane components, flashings and surfacing) manufactured by or acceptable to the roofing manufacturer?
   _____YES _____NO

5. Will the manufacturer's authorized representative sign the Manufacturer's Certification included in the specification?
   _____YES _____NO

The undersigned manufacturer's representative states that the above information is true and correct, and that the proposed materials function, appearance, and quality are equivalent or superior to the specified materials.

_____
(Manufacturer)

_____
(Manufacturer's Representative)

_____
(Address)

_____
(Signature)

_____
(Date)

END OF ROOFING MATERIALS SUBSTITUTION REQUEST FORM

**** THIS EXHIBIT TO BE COMPLETED PRIOR TO EXECUTING CM/GC AGREEMENT****

EXHIBIT PR-1

CM/GC PERSONNEL RATES

EXHIBIT ITCM
BIDDING INSTRUCTIONS TO CM/GC

The information provided herein is intended to assist the CM/GC in meeting applicable State of Idaho Public Works bidding requirements but is not exhaustive or intended to be used for instructions to subcontractors. The Owner will not be responsible for any failure by the CM/GC to meet applicable requirements.

GENERAL PROVISIONS

DEFINITIONS: Capitalized terms used in these Bidding Instructions to CM/GC ("Bidding") shall have the meaning given to them in the Division of Public Works' Agreement Between Owner and Construction Manager "CM/GC".

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

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

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

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

PERFORMANCE AND PAYMENT BONDS: A performance bond and payment bond are required for this Project, each in an amount of not less than one hundred percent (100%) of the total construction GMP. The performance and payment bonds shall be AIA Document A312, 1984 or the most recent Edition, or a standard surety form certified approved to be the same as the AIA A312 form and shall be executed by a surety or sureties reasonably acceptable to the Owner and authorized to do business in the State of Idaho.

BID SUBMISSION PROCESS

BID DOCUMENTS: The bid documents are available from the Design Professional. The responsibility is on the CM/GC to use a complete set of bid documents to prepare its bid packages and neither the Owner nor the Design Professional shall incur any liability for the CM/GC'S failure to do so. CM/GC obtains no ownership interest or any use rights, except to use in preparation of their bid packaging, by issuance of the bid documents.

CM/GC and Sub-bidders shall field verify all dimensions pertaining to the Work and shall be responsible for the determination of all quantities of materials required for the completion of the Work. The CM/GC nor the sub-bidders shall not rely on the scale drawings of the Bidding Documents in their determination of required materials quantities. No allowance shall be made for CM/GC's failure to field-verify dimensions.

ADDENDA: In the event it becomes necessary to revise any part of the bid documents, addenda will be issued. Information given to the CM/GC shall be available to all other sub-bidders if such information is necessary for purposes of submitting a bid or if failure to give such information would be prejudicial to uninformed sub-bidders. It is the CM/GC's responsibility to make

all addenda available to sub-bidders prior to bid opening. A sub-bidder is required to acknowledge receipt of all addenda by identifying the addenda numbers on the bid proposal form. Failure to do so may result in the bid being declared non-responsive. No addenda will be issued less than four (4) calendar days before the closing date unless the bid closing date is extended.

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

All manufacturers of roofing systems, including those specifically named or listed as "approved" in the specifications, as well as those not specifically named or listed as "approved" shall submit to the Design Professional a fully executed MANUFACTURER'S CERTIFICATION from the manufacturer's authorized representative certifying that the manufacturer's representative has received the bidding documents for the project, that required guarantees can and will be issued for the specific installation, and that all specifications and detail as written and as shown are appropriate or that alternate specifications and/or details enclosed with the signed statement must be used, noting all exceptions, and listing approved applicators. THIS COMPLETED FORM SHALL BE RECEIVED BY THE DESIGN PROFESSIONAL NO LATER THAN SEVEN (7) DAYS PRIOR TO THE DATE FOR RECEIPT OF BIDS.

THE MANUFACTURER'S CERTIFICATION FORM included in the Project Manual following these Instructions to CM/GC shall be used for this purpose. Additional copies of this form may be obtained from the Design Professional.

The Roofing Manufacturer shall include all information required to complete the form.

PRODUCTS SPECIFIED AND PROPOSED SUBSTITUTIONS: Materials, products or equipment, if specified by name or manufacturer, establish the standard of quality required and that must be met by any proposed substitution. Requests for substitutions must be made in writing to the Design Professional no less than ten (10) calendar days prior to the bid closing unless provided otherwise via an addendum. Such requests must provide detailed information to allow the Design Professional to determine if the proposed substitution is acceptable, including drawings or performance or test data and a detailed statement of how the substitution would change any other part of the Work. It is the CM/GC's obligation to satisfy this requirement and the Design Professional's decision shall be final. To be allowed, substitutions must be approved in an addendum to the bid documents.

All requests for approval of roofing materials not specifically named or listed as "approved" in the specifications shall be accompanied by a fully executed ROOFING MATERIALS SUBSTITUTION REQUEST FORM from the manufacturer. THIS COMPLETED FORM SHALL BE RECEIVED BY THE DESIGN PROFESSIONAL NO LATER THAN TEN (10) DAYS PRIOR TO THE DATE FOR RECEIPT OF BIDS.

The ROOFING MATERIALS SUBSTITUTION REQUEST FORM included in the Project Manual following these Instructions to CM/GC shall be used for this purpose. Additional copies of this FORM may be obtained from the Design Professional.

ALTERNATES: If the solicitation includes alternate bid items or unit prices, failure to bid on the alternates or unit prices may disqualify the bid. If bidding on an alternate does not change the base bid, indicate by "No Change." If bidding on all items is not required by the Contract Documents, bidders must affirmatively indicate that they are not bidding on those items.

TIME FOR SUBMISSION: Bids must be submitted on or before the time specified in the advertisement for bids. Any bid submitted late will be rejected. **LATE SUBMISSIONS WILL BE REJECTED, WILL NOT BE OPENED AND WILL BE RETURNED TO THE BIDDER. NO DEVIATIONS WILL BE ALLOWED.**

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

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

ILLEGAL ALIENS: CM/GC and all sub-contractors shall warrant that they do not knowingly hire or engage any illegal aliens or persons not authorized to work in the United States; CM/GC and all sub-contractors shall take steps to verify that they do not hire or engage any illegal aliens or persons not authorized to work in the United States; and that any misrepresentation in this regard or any employment of persons not authorized to work in the United States constitutes a material breach and shall be cause for the imposition of monetary penalties and/or termination of Contract.

PUBLIC WORKS CONTRACTOR'S LICENSE: This Project is financed in whole or in part by federal funds. No prime contractors, subcontractors and/or specialty contractors shall be required to have a current, and appropriate, license as a public works contractor in the State of Idaho in order to submit a bid on this Project but at or prior to the award and execution of the GMP, the successful bidder shall have secured a public works contractor's license.

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

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

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

AWARD OF BID PACKAGES

AWARD METHOD: All construction work, materials and equipment shall be awarded to the "lowest responsive qualified bidder." The low bidder, for purposes of award, shall be the responsible and responsive bidder offering the low aggregate amount for the base bid item, plus any additive bid alternates selected by the Owner, and within funds available as determined by the Owner. Award is also subject to the requirements of Idaho Code, including without limitation: Title 67, Chapter 57; Title 67, Chapter 23; Title 54, Chapter 19; and Title 44, Chapter 10. It is the CM/GC's responsibility to ensure that all sub-contractors conform to **ALL** applicable federal, state, and local statutes or other applicable legal requirements.

OWNER'S RIGHT TO REJECT: Prior to execution of the GMP, the Owner or Design Professional shall provide written notice of any reasonable objection to any subcontractor or material supplier proposed by the CM/GC. Upon receipt of such notice, the CM/GC may propose a substitute and identify any change in any bid package amount caused by such substitution for negotiation with the Owner.

AWARD CERTIFICATIONS: Certification Concerning Boycott of Israel. Pursuant to Idaho Code section 67-2346, if payments under the Contract exceed one hundred thousand dollars ($100,000) and Contractor employs ten or more persons, Contractor certifies that it is not currently engaged in, and will not for the duration of the Contract engage in, a boycott of goods or services from Israel or territories under its control. The terms in this section defined in Idaho Code section 67-2346 shall have the meaning defined therein.

END OF INSTRUCTIONS